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Small Arms Transfer Control Measures and the Arms Trade Treaty



A Small Arms Survey Review (2007–10)

CAMBRIDGE

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About the Small Arms Survey

The Small Arms Survey is an independent research project located at the Graduate Institute of International and Development Studies in Geneva, Switzerland. It serves as the principal source of public information on all aspects of small arms and armed violence and as a resource centre for governments, policy-makers, researchers, and activists. The project has an international staff with expertise in security studies, political science, law, economics, development studies, sociology, and criminology, and collaborates with a network of partners in more than 50 countries.

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PREFACE

In July 2012, UN member states will meet to negotiate a legally binding international instrument governing the transfer of conventional arms: the Arms Trade Treaty (ATT). The ATT initiative represents an important and timely step in the global struggle against illicit arms transfers and signifies that the issue of arms transfer controls has risen to the top of the UN agenda.

The Small Arms Survey has conducted extensive research and analysis of international transfer controls governing the export, import, transit, and transshipment of small arms, light weapons, and their ammunition from, to, or across national territory. As a contribution to the ATT discussions, this volume compiles several chapters from the Small Arms Survey's flagship publication—the annual *Small Arms Survey*—that explore international transfer controls and diversion issues. These include:

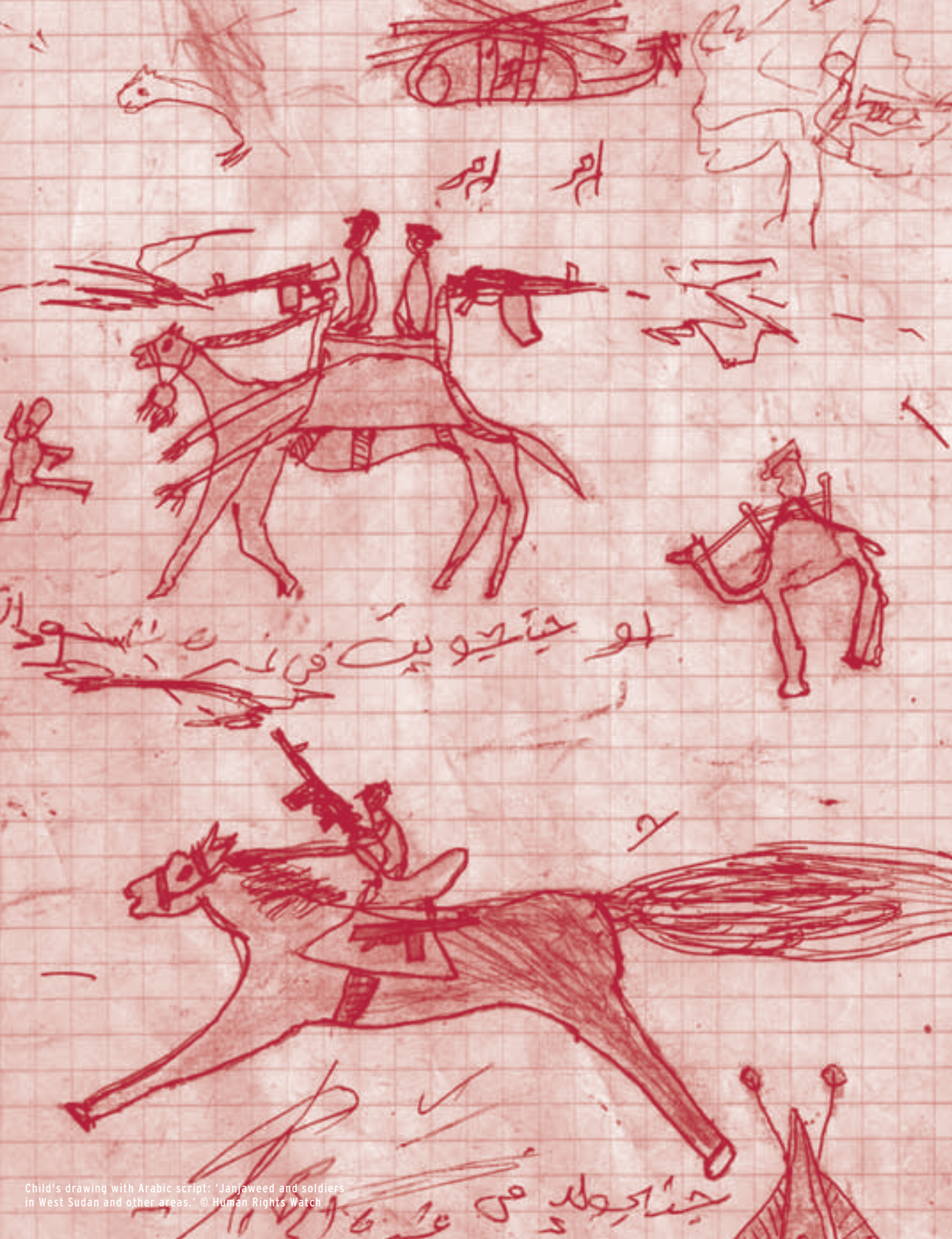
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This compilation is intended to help inform the ATT discussions by illustrating some of the strengths and weaknesses in the current export control regime, as well as to highlight some options for improvement. In brief, the Survey's findings are that small arms control is often weakest where the jurisdiction of one state ends and that of another begins. Weapons shipments can be diverted to unauthorized recipients while en route to a declared destination, or even after they reach the intended end user. Diversion is one problem, irresponsible export practices another. Transparency, which can help bolster confidence in national transfer policies, remains patchy worldwide despite some improvements.

Measures serving to prevent and detect the diversion of small arms shipments include end-user certification and verification as well as post-shipment controls designed to assess compliance with export licence conditions. Other elements of effective and responsible transfer control systems include transparent licensing criteria reflecting the state's international obligations and commitments, the sharing of licensing decisions across government agencies, cooperation among the countries of export, import, and transit, and effective national mechanisms for the investigation, prosecution, and punishment of transfer control violations.

The ATT presents an opportunity to establish clearer guidance on arms export licensing and post-shipment follow-up as well as to improve transparency with respect to export licensing decisions. It is hoped that this volume will serve to help inform the deliberations on this complex issue.

—Keith Krause, Programme Director



Child's drawing with Arabic script: 'Janjaweed and soldiers in West Sudan and other areas.' © Human Rights Watch

Back to Basics

TRANSFER CONTROLS IN GLOBAL PERSPECTIVE

INTRODUCTION

In December 2006 a large majority of UN member states voted to begin a process that could lead to the adoption of a legally binding Arms Trade Treaty (ATT). This capped a year marked by other important achievements, notably the adoption of *The Geneva Declaration on Armed Violence and Development* (*Geneva Declaration*, 2006), and a major disappointment, the 2006 UN Programme of Action Review Conference (Review Conference).¹ Although their focus has narrowed following the failure of the Review Conference to reach a substantive outcome, UN member states are now attending to fundamentals.

Much of the illicit small arms trade depends, in fact, on the control—or lack of control—of legal transfers. As they grapple with the specifics of the transfer controls issue, states are moving towards a clearer understanding of their core commitments within the UN small arms framework. Key challenges include clarifying existing responsibilities, deciding whether and how to address the question of transfers to non-state actors, and developing means of effectively implementing transfer licensing criteria.

This chapter takes stock of the latest developments in the global small arms process, with a specific focus on new initiatives and continuing debates relating to transfer controls. Its principal conclusions include the following:

- The failure of the Review Conference to reach a substantive outcome derived from a broad range of factors, notably the inability of the UN small arms process to accommodate aspects of the issue falling outside of the traditional arms control/disarmament paradigm.
- The global small arms process is fragmenting. While not a problem as such, this does pose certain risks, such as inconsistency among measures and the possible neglect of the universal framework provided by the UN.
- States' existing obligations in relation to small arms transfers are extensive. Relevant, binding legal norms include direct limitations on certain transfers, as well as the rule holding states 'complicit' in violations of international law committed with arms that they transfer notwithstanding a known (or knowable) risk of misuse.
- While the question of banning arms transfers to non-state actors (NSAs) remains controversial, only NSAs that are *not authorized* to import arms by the state where they are located are, in fact, a major concern.
- Guidelines identifying factors to be considered as part of arms transfer licensing decisions can help states ensure that these are systematic, rigorous, and objective.

The chapter is divided into two parts. The first provides an overview of recent activity at the global level—in particular the 2006 Review Conference—while the second focuses on the issue of transfer controls. The transfer control sections include brief descriptions of the latest initiatives, as well as an exploration of key questions and challenges arising in this area.

GLOBAL UPDATE

This part of the chapter reviews key developments in global measures in 2006 and early 2007, focusing firstly on the 2006 Review Conference and then briefly recapping some of the other main initiatives. As we will see, the UN, long the leading standard setter at the global level, now has competition.

A collision of interests: the 2006 UN Review Conference

For the UN small arms process, the key event on the 2006 calendar was the first Review Conference for the *UN Programme of Action (Programme)*. As specified in the *Programme* and repeated in the mandate conferred by the UN General Assembly, the Review Conference was 'to review progress made in the implementation of the Programme of Action' (UNGA, 2001b, para. IV.1.a; 2003, para. 1).

The two-week session of the Review Conference's Preparatory Committee (PrepCom), held from 9 to 20 January 2006, made clear that there was no consensus on how to interpret that mandate, nor on most of the specific issues states brought to the table. While the PrepCom, under the chairmanship of Ambassador Sylvester Rowe of Sierra Leone, adopted several decisions and recommendations of an organizational nature, it forwarded no substantive recommendations, let alone draft text, to the Review Conference.² During the period following the PrepCom, the conference president-designate, Ambassador Prasad Kariyawasam of Sri Lanka, held a series of informal consultations with UN member states and produced two versions of a draft Review Conference outcome document (Sri Lanka, 2006a; 2006b).

The Review Conference was held at UN headquarters in New York from 26 June to 7 July 2006. No meetings were held on 4 July, the US national holiday. Over half of the remaining nine days were devoted to organizational matters, high-level statements by and exchanges of views among states, and statements from civil society and international organizations. On one estimate, this left the conference only 20 hours to negotiate the outcome document (Prins, 2006, p. 117). In an effort to make up additional time, informal negotiating sessions were held until late in the evening on 5 and 6 July. During the two weeks, Conference President Kariyawasam issued several new versions of his draft outcome document (Sri Lanka, 2006c–g). In an effort to secure agreement on a limited number of points in the conference's last hours, he proposed adoption of the *Draft Declaration* (Sri Lanka, 2006h).

There were a few silver linings to the Review Conference.

At the end of the day, the Review Conference reached no substantive agreement of any kind. This included the question of post-conference follow-up, which was left dangling.³ The failure of states to wrestle some minimum outcome from the Review Conference process was deeply disappointing to many. Nevertheless, there were a few silver linings.

States, international organizations, and civil society exchanged much information on *Programme* implementation at the Review Conference. Although this was far removed from the systematic review (and evaluation) of implementation that many wanted, it did constitute a small step in that direction.

Perhaps more importantly, the event sparked renewed national and international attention to the small arms issue. Civil society and, to some extent, the media were mobilized. Governments were also obliged to focus on the small arms issue as they prepared their ministers or other 'high-level' representatives for the event. At the beginning and end of the conference, states repeatedly expressed their renewed commitment to the *Programme*. They also seemed to agree that, while significant progress had been made in implementing the *Programme*, much more needed to be done.

Moreover, as disappointing as the non-result was, as Conference President Kariyawasam pointed out at the very end of the conference, it at least preserved the status quo.⁴ Much of the language discussed during the last week of the conference represented a step back from existing provisions in the *Programme* (UNGA, 2001b) and *International Tracing Instrument* (UNGA, 2005a; 2005e),⁵ underlining their ‘extreme vulnerability’⁶ to a process that seemed increasingly counter-productive. In an interesting twist of fate, the Review Conference, seen by many as a chance to ‘fix’ the *Programme*, ‘renewed appreciation for this often maligned document’ (Buchanan, 2006, p. 3). The Review Conference also steeled the resolve of many diplomats to achieve rather better results at the autumn 2006 session of the General Assembly’s First Committee (see text below).

However one assesses the Review Conference, there can be little doubt that it represented a lost opportunity to advance the cause of effective *Programme* implementation and, however modestly, strengthen the UN’s existing normative framework for small arms. Yet, given the forces at play, it is hard, in retrospect, to see how anything substantive could have emerged from the Review Conference process.

States came to that process with conflicting interpretations of the mandate, a broad and diverse set of interests, and, in many cases, an acute aversion to compromise. Any structure would have had difficulty coping with such tensions. The task was certainly beyond the means of the Review Conference, which relied on consensus for its decisions. The following sub-sections explore, in greater detail, the difficult mix of factors contributing to the failure of the Review Conference.⁷

Much of the language discussed during the last week represented a step back from the existing *Programme*.

Conflicting objectives. Up to the final stages of negotiations on the *Programme* in July 2001, the draft language concerning the review conference included a mandate to ‘examine ways to strengthen and develop measures contained’ in the *Programme* (Small Arms Survey, 2002, pp. 227–28). This text was not retained in the final version of the provision, which, like the General Assembly resolution that convened the 2006 Review Conference, simply indicated that states would ‘review progress made in the implementation of the Programme of Action’ (UNGA, 2001b, para. IV.1.a; 2003, para. 1).

In 2006, many states were eager to ‘strengthen and develop’ various aspects of the *Programme*, even championing issues that had been excluded from it due to a lack of consensus, such as transfers to NSAs, or others that had attracted relatively little attention in 2001, such as ammunition. Other states, however, insisted that there could be no discussion of any ‘new issues’, i.e. those not already explicitly included in the *Programme*. These states, moreover, tended to cling to a literal interpretation of the mandate. In their view, the Review Conference should concentrate on a review of *Programme* implementation, not the development of new norms. Whatever space for compromise that might have existed between these two camps was squeezed by the sheer number of issues the pro-norm group brought to the table.

A complex issue. Quite a few of the ‘new issues’ states promoted, such as development, human rights, or gender, are dealt with in other UN forums; many arms control diplomats have trouble grasping their relationship to small arms.⁸ Although the *2005 World Summit Outcome* document underlines the ‘interlinked and mutually reinforcing’ nature of development, peace, security, and human rights (UNGA, 2005b, para. 9),⁹ this understanding has yet to influence the mechanisms employed to address the small arms issue within the UN, which remains confined to the General Assembly’s First Committee (Disarmament and International Security).

At the Review Conference, some countries, in particular European Union (EU) states, sought to break down such barriers, while others, such as the United States, insisted on maintaining them. In practical terms, the number of

issues being debated before and during the Review Conference became a problem, for the simple reason that time was relatively short and many states were in no mood to compromise.

Political will. Many observers singled out the United States as the main author of the Review Conference ‘melt-down’ (IANSA, 2006b). As discussed below, the United States made no secret of its willingness to block consensus on a number of issues it considered vital (its so-called ‘redlines’). These included issues, such as global follow-up, that were crucial components of any minimally useful outcome document. This approach suited a number of states that had equally strong views on certain issues, but did not need to subvert or block the conference, so long as this was being done for them by the United States.

The prevailing mood favoured pulling things apart.

Yet, while some of this resistance was hidden, a good deal was apparent.¹⁰ The Review Conference arguably set a new standard among small arms conferences for displays of diplomatic ill-will. The prevailing mood favoured pulling things apart, thwarting compromise, and sticking to established positions (or even hardening them). Many of the countries that suffer disproportionately from the small arms problem remained quiet, while some states took the opportunity to attack the United States. Overall, there was little or no substantive discussion. Politics prevailed and the search for compromise foundered. All of which was completely incompatible with a process based on consensus.¹¹

The consensus-based approach. From the beginning, UN small arms negotiators have preferred a consensus-based approach. This was important for many states because of the issue’s (perceived) implications for national security. It also had the undeniable advantage of strengthening a process that, to date, has evolved within a political—as opposed to legal—framework.¹² This practice came under considerable strain during the UN tracing negotiations (Batchelor and McDonald, 2005). It had met with even rougher treatment at the 2005 and 2006 sessions of the General Assembly First Committee. At the Review Conference, an increasing number of states seemed prepared to use (and abuse) the rule to their advantage. As explained below, this led to its abandonment at the 2006 session of the First Committee.

Time. As noted earlier, states had very little time to negotiate a conference outcome document. The failure of the PrepCom to reach any substantive agreement made the task considerably more difficult, notwithstanding the informal consultations Conference President Kariyawasam undertook during the period bridging the PrepCom and the Review Conference.

Much of the time initially set aside for negotiations at the Review Conference was gobbled up by the ‘high-level segment’, as 116 states took the floor to outline their policies and practices on small arms.¹³ Relatively few of these statements, however, were designed to feed into the negotiations. When negotiations got under way in earnest, in the second (and last) week of the conference, some states had difficulty receiving timely instructions from their capitals on the issues under debate.

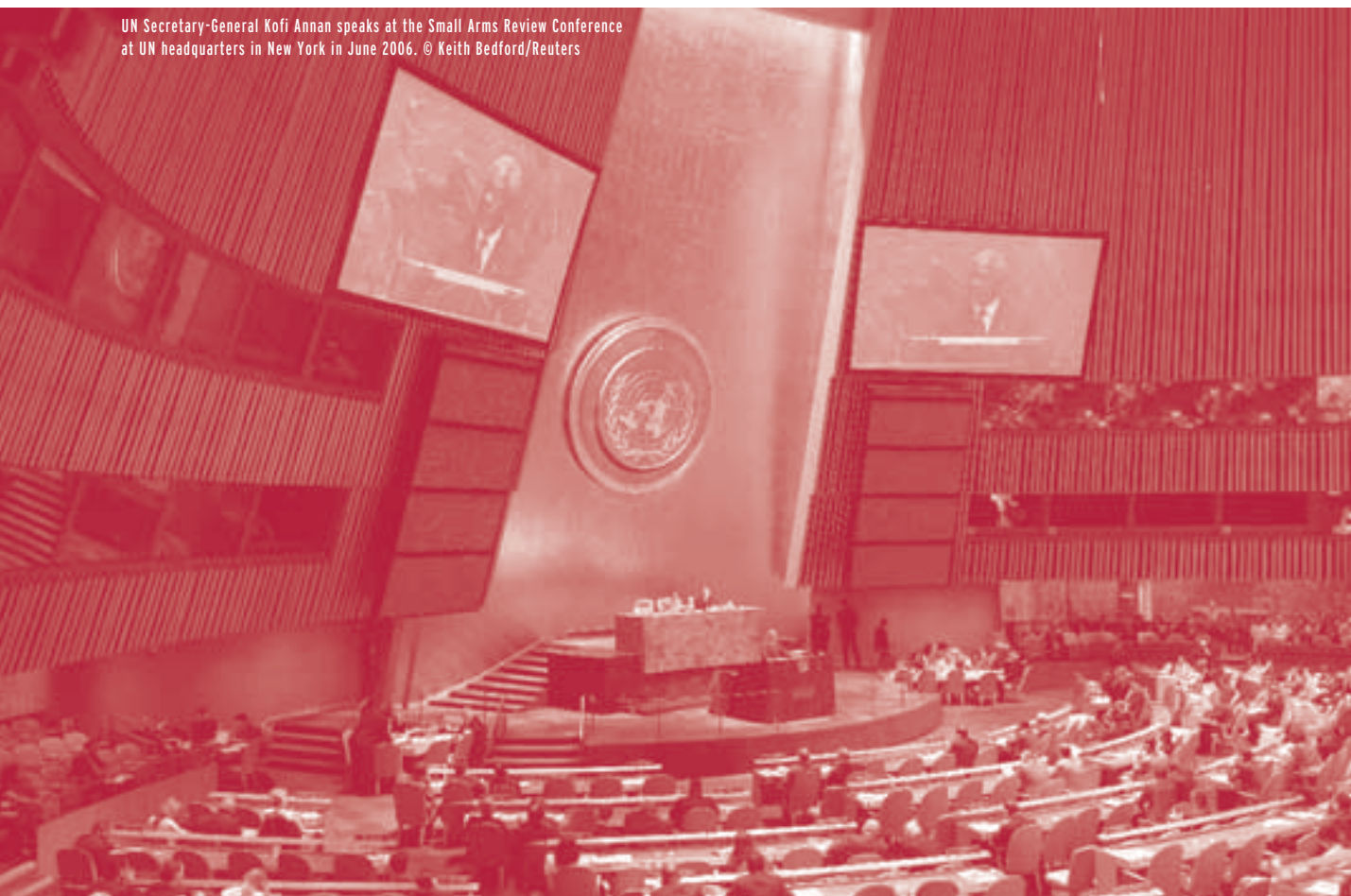
Process. The conference president, Prasad Kariyawasam, was ‘in a difficult situation’.¹⁴ Too much firmness, and he risked provoking a backlash; not enough, and states would run away with the process. Facilitators were appointed to broker consensus on the three main sections of the draft outcome document.¹⁵ The range of outstanding issues was broad, however, and differences at the end of the first week, when the facilitators submitted their initial proposals to the conference president, remained deep.

A brief experiment with rolling text early in the second week proved disastrous, as states blanketed the provisions of the draft text with their preferred language. Conference President Kariyawasam then returned to his earlier practice of issuing new versions of his draft outcome document based on continuing discussions. Some conference participants, interviewed by the Small Arms Survey, felt that the conference president should have asserted more control and provided clearer guidance during the conference. Others noted that the extreme tensions in play rendered any form of 'direction' difficult.

Venue. Not for the first time, some stakeholders wondered if the result would have been different had Geneva (the home of many arms control processes), rather than New York, been the venue of the Review Conference. Geneva-based diplomats, by and large, tend to have a better understanding of small arms issues than their New York counterparts. The latter, in contrast, are well versed—arguably too well versed—in the hard political issues that tend to dominate the UN New York agenda. In fact, at the Review Conference it often appeared that the differences among countries were more political than substantive in nature.

In its immediate aftermath, many dismissed the Review Conference as a colossal waste of time and resources. Certainly, it appeared that the limits of UN norm-building had been reached. Yet, although it was difficult to find much of value in the Review Conference rubble, some of the debates undoubtedly helped to identify the most promising terrain for future normative work, within or outside the UN. The issue of transfer controls was prominent among these.

UN Secretary-General Kofi Annan speaks at the Small Arms Review Conference at UN headquarters in New York in June 2006. © Keith Bedford/Reuters



Good, bad, and ugly: Review Conference debates

In order to ascertain progress made at the Review Conference in various issue areas, including the question of obstacles to consensus, the Small Arms Survey solicited the views of key actors in the process. Unless otherwise noted, the following sections rely on this study.¹⁶ The discussion begins with a consideration of transfer controls, including transfers to NSAs, before turning to some of the other issues debated at the conference. Since no outcome document was agreed, many states never indicated their final position on the subjects under discussion. The following analysis can therefore provide only a tentative account of the state of play in the areas under review.

Transfer controls

As described below, the United Kingdom has championed the cause of small arms transfer controls since early 2003. At the Review Conference it led efforts to secure agreement on some significant elaboration of the *Programme of Action's* basic, national-level commitment, namely:

To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons 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 illegal trade (UNGA, 2001b, para. II.11).

Also under discussion were measures designed to enhance multilateral coordination on small arms transfers, including information exchange.

The UK led efforts to secure some significant elaboration of the Programme's basic transfer controls commitment.

Many of the conference participants interviewed by the Small Arms Survey claimed that states reached consensus on such issues before the end of the meeting. A few others, however, questioned this. It is, in fact, impossible to know the truth of these claims. States that remained opposed to language on transfer controls could have concealed their opposition so long as there was no agreement on a text (a final outcome document) within which to anchor such language. Moreover, the Survey found some discrepancy in texts that members of different delegations claimed reflected final consensus.

One of these texts was a UK proposal discussed in the late-night negotiating session of 6–7 July and incorporated in the draft text that the conference president issued the following morning, on the last day of the conference. States would have agreed, at the national level:

To ensure effective control on the import, export, transfer and re-transfer of small arms and light weapons in accordance with national laws and practices and according to States' existing responsibilities under relevant international law including their obligations under the UN Charter and any other relevant international treaties to which they are party, as well as to apply an end user certificate and authentication process, with a view to avoiding their diversion into the illicit trade (Sri Lanka, 2006g, para. II.6).¹⁷

While its references to the UN Charter and international treaty law helped clarify the phrase 'relevant international law', found in paragraph II.11 of the *Programme*, overall this text represented a step back from paragraph II.11. The phrase 'in accordance with national laws and practices' conflicts with the commitment states have made in the *Programme* to abide by 'relevant international law' when exporting small arms and light weapons. In essence, 'national laws and practices' would have trumped 'relevant international law'. This problem was noticed by some, though not all, delegations.¹⁸

Such language, if it had consensus support, at least meant the end of opposition to any discussion of legal transfers. In the months preceding, and again during, the Review Conference, some states argued that legal transfers were beyond the scope of the *Programme*, which, they claimed, covered only ‘illicit’ small arms and light weapons. In fact, the *Programme* regulates many legal activities, such as international arms transfers and brokering, in order to prevent legal weapons from becoming illicit. Paragraph II.11 is just one example of this approach.¹⁹

A more tangible gain of the Review Conference was consensus—or at least widespread agreement—on the need for further consideration of global measures. China had previously resisted this, preferring to keep all transfers-related initiatives at the regional or sub-regional levels. Paragraph II.25 of the conference president’s 7 July draft text is modest, aiming only at an exchange of views at the global level; there is no commitment to develop global transfers guidelines, still anathema to several states. The draft also puts rather more emphasis on regional—as opposed to global—practices and measures (Sri Lanka, 2006g, para. II.21).

Those states that appeared most sceptical about international transfer controls at the Review Conference included China, Cuba, Egypt, India, Iran, Israel, Pakistan, the Russian Federation, and Venezuela. The US position was unclear.²⁰

End-user certification

The issue of end-user certification was largely uncontroversial. States seemed to understand its importance in preventing weapons diversion. A US proposal to broaden the term ‘end-user certificate’, used in the *Programme* (UNGA, 2001b, para. II.12), to ‘end-user certification process’²¹ probably enjoyed consensus support. Yet, the establishment of a UN Group of Governmental Experts (GGE) on the subject met with opposition and was deleted from later draft outcome documents. Despite broad acceptance of the concept, there was little substantive discussion of end-user certification at the Review Conference. Without a structure, such as a GGE, that would allow states to develop the issue further, it may not progress much at the global level.

States seemed to understand the importance of end-user certification in preventing weapons diversion.

Transfers to non-state actors

Along with the regulation of civilian possession, the issue of a ban on small arms transfers to NSAs nearly broke the back of the July 2001 UN Small Arms Conference (Small Arms Survey, 2002, p. 220). Before the 2006 Review Conference, many of the states that wanted strong language on the NSA issue hoped that the United States, which had adamantly opposed this in 2001, would soften its position, especially in the light of recent General Assembly resolutions that encourage UN member states ‘to ban the transfer of man-portable air defence systems [MANPADS] to non-State end-users’, excepting ‘agents authorized by a Government’ (UNGA, 2004, para. 5; 2005c, para. 5).

Yet, in 2006 the issue remained a ‘redline’ for the United States, and it firmly opposed any consideration of the NSA question by the Review Conference. A few other states also expressed opposition to the creation of a specific framework for such transfers, while, on the other side of the divide, sub-Saharan African states, joined by Israel and a few others, pushed for significant measures.

Conference President Kariyawasam offered language that sought to define a middle ground. States would have agreed:

To continue exchanging views on the policies, practices and considerations related to the transfer of small arms and light weapons to actors not authorized by the recipient State, with a view to developing common understandings or measures, taking into account the different contexts and approaches of States (Sri Lanka, 2006e, para. II.26).

Yet, the United States and supporters maintained their opposition to any consideration of the issue, and there was little or no discussion of substance at the conference.

Other issues

Ammunition. Ammunition was one of the issues that bedevilled the UN tracing negotiations in 2004–05 (Small Arms Survey, 2006, pp. 102–03), and it remained contentious at the 2006 Review Conference. The EU and many other states sought to secure a place for ammunition in the conference outcome document, arguing, in some cases, that it was implicitly addressed in parts of the existing *Programme*. A few other states, most prominently the United States, indicated they would not accept any reference to ammunition in the conference outcome document.

In line with the recommendation agreed, by consensus, at the end of the UN tracing negotiations, Conference President Kariyawasam's final draft outcome document proposed dealing with ammunition as part of a separate UN process.²² This too, however, was resisted by the United States.

Appropriate use/human rights. All references to human rights were purged from the *Programme* as a result of opposition from a number of states, including China, when the document was negotiated in July 2001 (Small Arms Survey, 2002, p. 221). Some states hoped to change this during the Review Conference process, pushing specifically for a reference to UN standards governing the use of force and firearms by law enforcement officials.²³ While included in Conference President Kariyawasam's pre-conference draft outcome documents,²⁴ the issue fell by the wayside soon after the Review Conference started. Those states that were opposed to human rights language expressed this indirectly, insisting, for example, on a narrow interpretation of *Programme* scope that would limit its application to the *trade in illicit* small arms and light weapons—not the use of legally procured weapons.²⁵ In this case, too, there was little or no discussion of substance.

The regulation of civilian possession was another 2001 controversy that was revisited in 2006.

Civilian possession. The regulation of the civilian possession of small arms was another 2001 controversy²⁶ that was revisited in 2006. Some states, such as Mexico, as well as most civil society groups, pushed hard to get language in the final outcome document in 2006. Overall, it appeared that, since 2001, there was increased understanding of the importance of regulating civilian access in order to prevent the misuse of weapons and their diversion to the illicit market.

The issue, however, cuts quite close to the core of national sovereignty and, moreover, constitutes a red flag for the influential, US-based National Rifle Association (NRA).²⁷ True to 2001 form, the United States, with some support, insisted there could be no discussion of civilian weapons at the Review Conference. Attempts to find a compromise led nowhere, though attention was drawn to the use of the word 'possession' in the existing *Programme*. Arguably, the latter already applies, to a limited extent, to civilian possession.²⁸

Demand. Although the document, as a whole, focuses on the supply of small arms, the *Programme* does mention the issue of demand in its preamble (UNGA, 2001b, para. I.7). The challenge, five years after its adoption, was to flesh out the concept and, above all, operationalize it. Yet the 2006 Review Conference made no progress towards this end. Conference participants and observers interviewed by the Small Arms Survey offered several explanations for this. Firstly, it appears that many diplomats, especially those based in New York, are unfamiliar with the issue and do not understand its policy implications. Recent research on demand issues²⁹ has yet to filter through. Secondly, the compartmentalized nature of the committee system within the UN General Assembly undoubtedly impairs consideration of an issue that exemplifies the cross-cutting, multi-dimensional nature of the small arms problem. Finally, many

developing countries associate the demand question with state—as opposed to individual or community—demand, any discussion of which they oppose. These factors helped push the issue quickly and quietly off the Review Conference table.

Development. To the surprise of many, language linking small arms and development proved highly controversial at the Review Conference. While some developing countries supported proposals made by the EU along such lines, many others initially opposed them—whether because of concerns over conditionality, possible substitution, or a loss of control over national priority setting. Among the opponents, Barbados, representing Caribbean Community states, was especially vocal. The United States also resisted the linkage on the grounds that development was not an arms control issue and should therefore be addressed in other forums. Compromise text that mentioned plans or strategies³⁰ drawn up by recipient states themselves appeared to rally most—perhaps all³¹—of the sceptics by the end of the conference:

*Noting the steps taken by the developed countries to provide development assistance towards efforts aimed at preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects, States and appropriate international and regional organizations are encouraged to support such efforts, upon request and in accordance with overall national priorities and practices, and, where appropriate, to assist in their continued integration into relevant national and local plans and strategies.*³²

Follow-up. At the end of the Review Conference, the United States stood alone in its opposition to any form of global follow-up to the *Programme*. This was a hardening of its position. In its high-level statement at the beginning of the conference, the United States indicated that it would ‘not commit to another Review Conference’, but left open the possibility of ‘follow-on actions that are focused, practical, and intended to strengthen the implementation of the Program of Action’ (US, 2006).³³

No other state disputed, at least openly, the importance of global follow-up to *Programme* implementation.³⁴ Many states argued that the 2003 and 2005 Biennial Meetings of States (BMSs) had been unproductive and needed revamping, although there was some disagreement on this point. In his draft outcome documents, Conference President Kariyawasam rejected the term ‘BMS’ in favour of ‘Action Implementation Meeting’. His 27 June text stated, moreover, that the chair’s report of such meetings ‘can serve as a basis for further recommendations by the General Assembly, if appropriate, on implementation of the Programme of Action’ (Sri Lanka, 2006c, para. IV.3). Yet, the conference did not grapple with the details of a more practical, problem-solving approach to *Programme* follow-up.

The conference did not grapple with the details of a more practical, problem-solving approach to *Programme* follow-up.

Gender/age considerations. In this area as well, the diplomatic community mostly failed to respond to the latest research—in this case, illustrating the differential impact of weapons on society. States were comfortable with the themes of child soldiers and the protection of women, but did not understand the practical implications gender and age distinctions have for small arms policy and programmes. The conference president’s drafts reflected this, dropping, at an early stage, references to ‘women and men’ in favour of ‘women’ alone.³⁵ By the end of the Review Conference, gender and age had largely faded from view as states wrestled over other issues.

MANPADS. Israel, with support from the United States, pushed hard at the Review Conference for language on MANPADS. Somewhat surprisingly, given the existence of two General Assembly resolutions on the issue (UNGA, 2004; 2005c), this was resisted by several Non-Aligned Movement states, in particular Egypt and Iran. Officially, these

countries opposed ‘singling out’ a particular weapon system for special treatment, yet most observers point to other factors. The common, US–Israeli front on MANPADS may have triggered the reflexive opposition of some states, while others could have been seeking a bargaining chip, especially vis-à-vis the United States. More fundamentally, some countries in the Muslim Middle East are reportedly concerned that the transfer of MANPADS—and eventually other light weapons—to governments could be restricted.

Victim assistance. The issue of victim assistance was discussed at the PrepCom and figured in the two draft texts Conference President Kariyawasam circulated during the period preceding the Review Conference (Sri Lanka, 2006a, para. I.16; 2006b, para. I.10). At the conference itself, however, it met with relative indifference and some suspicion. The issue was unfamiliar to most states, while others were wary of the potential financial implications of recognizing a new—and potentially very broad—category of victims.³⁶

UN General Assembly First Committee 2006

The 2006 session of the UN General Assembly’s First Committee³⁷ offered an opportunity to pick up some of the pieces left by the Review Conference, including the question of *Programme* follow-up. In the event, states seized the opportunity, and several important resolutions were adopted, providing, among other things, for a continuation of the *Programme* process. At the same time, however, the committee’s 2006 session confirmed and amplified the recent trend away from consensus adoption of the small arms resolutions.

The 2006 session of the General Assembly’s First Committee adopted several important resolutions.

The principal resolution on small arms, termed ‘omnibus resolution’, was adopted by a margin of 176 votes to 1 (the United States).³⁸ Most significantly, Resolution 61/66 provides for the continuation of the *Programme* process, with the convening of another BMS in 2008 (UNGA, 2006c, para. 4). Despite broad dissatisfaction with the 2003 and 2005 BMSs, the First Committee took no steps to ensure that the 2008 BMS will do more to bolster *Programme* implementation. Several states remain uncomfortable with new approaches to *Programme* follow-up.³⁹ It remains to be seen whether the committee can achieve more in this regard at its 2007 session.

A second resolution on the issue of ‘conventional ammunition stockpiles in surplus’ provided for a process of consultation and—‘no later than 2008’—the establishment of a group of governmental experts (UNGA, 2006d, paras. 5, 7). It was adopted by 175 votes, with 1 state voting against (the United States) and 1 abstaining (Japan).⁴⁰ The 2006 resolution on the Arms Trade Treaty or ATT (UNGA, 2006e), like that on ammunition stockpiles, targeted not only small arms and light weapons, but all conventional weapons. It was adopted by 153 votes, with 1 vote against (the United States) and 24 abstentions,⁴¹ and is discussed in more detail below. The First Committee also articulated next steps for the implementation of the *International Tracing Instrument* (UNGA, 2005a; 2005e), calling on states to provide the UN with critical information needed for weapons tracing and deciding that the first meeting on *Tracing Instrument* implementation would be held within the framework of the 2008 BMS (UNGA, 2006c, paras. 3, 5).

Overall, the 2006 session of the First Committee successfully put the UN small arms process back on track, yet this achievement was diminished somewhat by the loss of consensus support for critical elements of this process.

Other UN Initiatives

Independently of the 2006 First Committee, several other UN initiatives on small arms progressed in the latter part of 2006 and early 2007. These included the GGE on brokering, due to report to the UN Secretary-General in mid-2007 (UNGA, 2005d), as well as efforts by the UN Office on Drugs and Crime (UNODC) to advance implementation of

the *UN Firearms Protocol* (UNGA, 2001a).⁴² Several weeks after the 2006 Review Conference, the UN Sub-Commission on the Promotion and Protection of Human Rights endorsed the *Principles on the Prevention of Human Rights Violations Committed with Small Arms*, developed by Special Rapporteur Barbara Frey (UNGA HRC, 2006),⁴³ transmitting them to the Human Rights Council for consideration and possible adoption.

Non-UN initiatives⁴⁴

For a time, the UN had a monopoly on the development of small arms norms at the global level. The *Programme of Action* (UNGA, 2001b) and *UN Firearms Protocol* (UNGA, 2001a) provided the key frameworks. Yet, UN pre-eminence in global standard setting, already eroding before 2006,⁴⁵ declined further in June 2006 with the adoption of *The Geneva Declaration on Armed Violence and Development* (*Geneva Declaration*, 2006).

A number of governments, international organizations, and NGOs had stressed the relationship between armed violence and development well before this.⁴⁶ Crucially, the links among development, peace, security, and human rights were spelled out in the *2005 World Summit Outcome* document (UNGA, 2005b, para. 9).⁴⁷ In the same year, the Development Assistance Committee of the Organization for Economic Co-operation and Development agreed that official development assistance could be used for conflict prevention and peace-building activities, including measures to tackle small arms proliferation.⁴⁸

The Geneva Ministerial Summit, convened in June 2006 by Switzerland and the United Nations Development Programme, sought to generate international support for a set of practical commitments that would reduce the negative impact of armed violence on socioeconomic and human development. While the resulting *Geneva Declaration* (2006), adopted by 42 states⁴⁹ and 17 international organizations and NGOs, can hardly lay claim to universality, it is a global initiative, since participating states come from all regions of the world.

A core group of like-minded states⁵⁰ was established in November 2006 to promote the implementation of the *Geneva Declaration* and develop follow-up activities. The core group has drafted an Action Plan, which will be submitted to *Geneva Declaration* states later in 2007. Regional meetings are planned for South America and the Caribbean, Africa, and Asia in 2007–08. Progress made in the implementation of the *Geneva Declaration* is to be reviewed at a ministerial meeting, scheduled for June 2008.

The global small arms process is fragmenting.

Variable geometry in global measures

The global small arms process, centred on the UN and the *Programme of Action*, is fragmenting. Some of the latest initiatives apply to the full UN membership, while others involve a narrower group of states. At the same time, not all UN initiatives have the support of all UN member states. The United States has broken ranks over the issue of *Programme* follow-up. The United States and other leading exporters, such as China and the Russian Federation, appear sceptical about the merits of an ATT.

While it makes sense for some states, such as those endorsing the *Geneva Declaration*, to move forward at a faster pace on issues of interest to them, the current cracks in the UN's universal framework for small arms are cause for concern. Consensus support lends important strength to the political norms contained in the *Programme* and *International Tracing Instrument*. US backing for the UN small arms process, while clearly useful, will not make or break the regime; yet there is a risk of it unravelling if other states follow the US example and opt out as well, whether wholly or partially.

Fragmentation also raises the prospect of inconsistency or incoherence among different initiatives. The problem is not that some states undertake measures that require more of them than the common minimum standards set out in the *Programme* and *International Tracing Instrument*. A problem arises, rather, where by complying with one norm, states breach a second.⁵¹ In this regard, it is especially important that standards developed in relation to all conventional weapons—e.g. as part of the UN ATT or ammunition initiatives—do not conflict with those applicable to small arms and light weapons.

Last, but not least, even assuming the needs of consistency are met as states push forward on various fronts, it is crucial that the universal framework provided by the *Programme* not be left too far behind. Many of the common minimum standards found in the *Programme* are quite basic. Paragraph II.11 concerning transfer licensing has attracted attention for this reason. Moreover, even from a narrow arms control/disarmament perspective, critical gaps remain in the UN small arms framework, such as specific norms for ammunition.

SPOTLIGHT ON TRANSFER CONTROLS

While several multilateral instruments of the past decade regulate the licensing and conduct of weapons transfers, only the *UN Programme of Action*, specific to small arms, is of universal scope (UNGA, 2001b, sec. II, paras. 11–15).⁵² There are few comparable standards covering the broader range of conventional weapons.⁵³ Yet, precisely because *Programme* norms in this area are relatively open-ended, the subject of arms transfer controls has risen to the top of the UN agenda. The question of a prohibition on arms transfers to non-state actors, first discussed at the 2001 UN Small Arms Conference, also remains important to many states. This part of the chapter will review recent initiatives in these areas and, above all, explore in some depth relevant concepts and debates.

The subject of arms transfer controls has risen to the top of the UN agenda.

While strengthened measures to prevent the diversion of weapons to unintended recipients, such as end-user certification, appear to have fairly broad support, the next steps at the global level are unclear. The latest initiatives on transfer controls focus on licensing decisions—specifically, the criteria and guidelines to be used in deciding whether to transfer arms to specific end users. This chapter also concentrates on these issues.

New initiatives⁵⁴

Civil society has led efforts to develop global principles for arms transfers. Although some states, such as Costa Rica and Mali, were early converts, most governments have prioritized the issue only recently. Some of these initiatives have been developed with small arms and light weapons in mind, while others encompass the full range of conventional weapons.

Civil society initiatives

An important starting point for civil society initiatives was the formal launch, in May 1997, of the *International Code of Conduct on Arms Transfers* by Nobel Peace Prize laureates (*Nobel Laureate Code*, 1997). It was followed, in 2000, by the Framework Convention on International Arms Transfers (Framework Convention).⁵⁵ Modelled on components of the *Nobel Laureate Code* (1997) and the *EU Code of Conduct* (EU, 1998), it was drafted by a group of civil society organizations in collaboration with legal experts at Cambridge University. In contrast to the *Nobel Laureate Code*, which, in some areas, reached well beyond the status quo,⁵⁶ the Framework Convention sought to codify states' existing



The shipping label on a box of guns from an Austrian manufacturer, found by US troops in the private arms collection of Odai Hussein, son of Saddam Hussein, in Baghdad in April 2003. © John Moore/AP Photo

obligations under international law, drawing on the UN Charter (UN, 1945) and other sources. The term ‘framework’ anticipated the development of related, but separate protocols covering various issues. Although the original draft applied to all conventional weapons, it was refined to focus on small arms and light weapons after the adoption of the *Programme* in July 2001.

A Steering Committee was established in 1999 to shape the initiative’s strategic direction.⁵⁷ As of 2003, the Framework Convention became known as the Arms Trade Treaty (ATT).⁵⁸ The Control Arms Campaign⁵⁹ was launched in October 2003 in order to increase awareness and pressure governments on transfer control issues, in particular the ATT. After the UK government swung its support behind a legally binding treaty covering all conventional weapons in March 2005 (see below), the civil society initiative was again recast. The initial emphasis on a specific text gave way to the promotion of general principles designed to underpin an eventual instrument. The latest version of the *Global Principles*, issued by the ATT Steering Committee in March 2007, apply to all conventional arms, as well as their ammunition. They are equally applicable to the narrower category of small arms and light weapons (ATT SC, 2007).

In the period 2003–05, the Biting the Bullet Project⁶⁰ led a series of discussions involving governments, international organizations, and civil society designed to develop shared understandings in relation to small arms transfer guidelines, as well as restrictions on transfers to NSAs. The outcomes of the Small Arms Consultative Group Process include concrete proposals for transfer guidelines, which, reflecting the approach taken by the civil society ATT initiative, are addressed not only to exporting states, but also to importing and transit states (BtB, 2006b).

Government initiatives

Following the adoption of the *Programme* in July 2001, government initiatives on transfer controls targeted small arms and light weapons. More recently, they have also encompassed the full range of conventional arms. The UK

government's Transfer Controls Initiative (TCI), launched at a conference at Lancaster House in London in January 2003 (UK, 2003), is situated within the *Programme's* small arms framework. The Lancaster House conference, with participation from around the world, was followed by a series of meetings designed to build support for strengthened controls within different regions, as well as to ensure that regional perspectives were reflected in the initiative.

The TCI returned to the global stage in April 2006 when Kenya and the UK convened a meeting in Nairobi of nine other states from various regions, along with representatives of civil society. This meeting resulted in the adoption of *Suggested Common Guidelines* designed to elaborate upon the *Programme's* basic commitments on transfer controls (*Nairobi Guidelines*, 2006). Participants hoped these would be used as the basis for further negotiations, but in the event, as noted earlier, relatively little progress was made on transfer controls at the 2006 Review Conference. There did, however, appear to be widespread agreement—even consensus—on the need for further consideration of global measures. An informal global meeting on *Programme*-related issues, including transfer controls, to be convened in Geneva by Canada and Switzerland at the end of August 2007, offers an initial opportunity to pursue these discussions.

As governments
wrestle with the
transfer controls
issue, they confront
some basic questions
and challenges.

Since 2005, in parallel with the TCI, the UK has supported—indeed, promoted—an initiative covering all conventional arms. In contrast to the TCI, it aims at the negotiation of a legally binding treaty. Like the civil society initiative on transfer controls, it has been labelled the Arms Trade Treaty (ATT). In 2006, Argentina, Australia, Costa Rica, Finland, Japan, Kenya, and the United Kingdom joined forces to draft the UN General Assembly ATT resolution, mentioned earlier (UNGA, 2006e). It provides for the establishment of a group of governmental experts with a mandate 'to examine, commencing in 2008, the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms' (UNGA, 2006e, para. 2).

Resolution 61/89 also requests the UN Secretary-General 'to seek the views of Member States' on these issues (UNGA, 2006e, para. 1). A deadline of 30 April 2007 was set for written submissions by governments, with the Secretary-General then reporting to the General Assembly during its 62nd session (2007–08). The report of the planned group of governmental experts is to be prepared for the General Assembly's 63rd session (2008–09).

Key challenges

As governments wrestle with the transfer controls issue, they confront some basic questions and challenges: how to elaborate upon the *Programme of Action's* basic norms; whether and how to address the question of transfers to non-state actors; and how to apply licensing criteria effectively.

'Existing responsibilities . . .'⁶¹

As outlined above, as of April 2007 the *Programme* is the only universal instrument that establishes standards for the transfer of small arms and light weapons. Paragraph II.11 of the *Programme* usefully points out that national export licensing decisions must be 'consistent with the existing responsibilities of States under relevant international law' (UNGA, 2001b). This, however, begs the question. What are these 'existing responsibilities'? What international law is 'relevant'? Government officials responsible for arms licensing decisions, along with their national legislatures, need more specific guidance than that provided by paragraph II.11. The *Nairobi Guidelines*, *Global Principles*, and other initiatives described previously in the chapter are designed to address this need. They are based on certain principles of international law, which, however translated, will be crucial to any common interpretation of paragraph II.11 that UN member states may, in future, agree upon.

The two principal sources of international law are treaty and custom. Treaties bind states that are party to them, whereas customary international law binds all states.⁶² As we will see, many of the international legal norms that are most relevant to international arms transfers are customary in nature, applicable to all states. Others, including UN Security Council arms embargoes, derive from the UN Charter (UN, 1945)—a treaty, yet of near-universal application.

Box 4.1 Complicity in violations of international law

The relationship between arms exporting and importing states is not simply a matter of policy or ethics; it is, in fact, defined by law. Rules drafted by the International Law Commission (ILC)⁶³ specify when states incur legal responsibility as a result of assistance they give to a second state in its commission of an internationally wrongful act.⁶⁴

Article 16

Aid or assistance in the commission of an internationally wrongful act

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

- (a) That State does so with knowledge of the circumstances of the internationally wrongful act; and
- (b) The act would be internationally wrongful if committed by that State (UNGA ILC, 2001).

While the UN General Assembly took note of the ILC articles and commended them to the attention of governments, it did not formally adopt them. Nor have they been incorporated in any legally binding instrument. In early 2007, however, in its judgement in the Bosnian genocide case, the International Court of Justice (ICJ) indicated that Article 16 reflects customary international law (ICJ, 2007, para. 420), meaning that it legally binds all states. This is an important development, since, before the ICJ ruling, the principle's status had been unclear.

Article 16(b) limits the scope of the rule to those cases where both assisting and assisted states are subject to the same primary rule of international law. This would exclude a treaty that the assisted—but not assisting—state is party to. It has little or no application to international arms transfers, as virtually all of the relevant primary rules form part of customary international law, binding on all states. There are many primary rules that apply to non-state actors as well as states, including international humanitarian and international human rights norms. It therefore seems reasonable also to apply the complicity rule where the assisted entity (i.e. the arms recipient) is a non-state actor.

The practical application of the rest of Article 16 raises more complex questions. What 'knowledge' must the assisting state have if it is to be considered complicit in the commission of an internationally wrongful act? What counts as 'aid or assistance'? At this relatively early stage in the interpretation and application of the rule, there are no definite answers. In his commentary on Article 16, the ILC's last Special Rapporteur on state responsibility asserted that 'the aid or assistance must be given with a view to facilitating the commission of that act, and must actually do so' (Crawford, 2002, p. 149). Yet, this interpretation is at odds with the text of Article 16 and would, moreover, render its application extremely difficult.

If one focuses on the text of Article 16, one must conclude that the assisting state does not have to *intend* to facilitate the commission of the internationally wrongful act. Under the terms of that Article 16, it must simply have 'knowledge of the circumstances' of the act (UNGA ILC, 2001, art. 16(a)). This would include, for example, knowledge that a state receiving transferred weapons has a poor human rights record. It is unclear whether the assisting state must actually know of such circumstances or could instead be presumed to know—specifically where a problem, though not actually known, could easily be ascertained by the exporting state. This latter interpretation would obviously enhance the effectiveness of the rule.

Article 16 provides little guidance on the question of what would qualify as 'aid or assistance'. More specifically, do transferred weapons need to be used in actual violations of international law before the transferring state becomes complicit in these? In discussing 'complicity in genocide', which it acknowledged was 'similar' to the concept of 'aid or assistance' mentioned in Article 16, the ICJ referred to 'the provision of means to enable or facilitate the commission of the crime' (ICJ, 2007, para. 419). This hints at a relatively accommodating standard: the assistance would not have to be essential to the commission of the wrongful act, but merely 'facilitate' it in some less direct sense.⁶⁵

The ICJ has stated that the complicity rule is customary international law, applicable to all states. While its exact contours have yet to be defined, if exporting states wish to remain well beyond the reach of the rule, they would be well advised not to transfer arms if they know (or should know) of circumstances creating a significant risk that these weapons will be used for violations of international law.

Whether they take the form of custom or treaty, ‘primary rules’ of international law establish substantive obligations for states, while ‘secondary rules’ specify the conditions under which the primary rules are breached, as well as the legal consequences of such breaches (Cassese, 2005, p. 244). Secondary rules include those governing state responsibility—in particular the concept of complicity, relevant to all arms exporting states (Box 4.1).

Direct limitations on arms transfers. Many primary rules of international law limit or prohibit the transfer of arms in specific circumstances. Mandatory UN Security Council arms embargoes, legally binding on all UN member states (UN, 1945, art. 25),⁶⁶ offer one prominent example. Certain principles of the UN Charter—for example, that of non-intervention in the internal affairs of another state—also serve as direct restraints on international arms transfers.⁶⁷ Certain rules of international humanitarian law (IHL) also limit the right of states to transfer arms. These include the rule requiring parties to an armed conflict to distinguish between combatants and civilians, and, by extension, prohibiting the use of weapons intrinsically incapable of doing so (*Add. Protocol I*, 1977, arts. 48, 51(2), 52(2); *Add. Protocol II*, 1977, art. 13(2)); and the rule prohibiting the use of weapons that ‘cause superfluous injury or unnecessary suffering’ (*Add. Protocol I*, 1977, art. 35(2)). While both prohibitions concern weapons use, not transfer, they are clearly incompatible with a right of transfer. Both rules are customary in nature (ICJ, 1996, paras. 78–79).

Limitations based on likely use. Other restrictions on international arms transfers derive from the risk that such weapons will be used for violations of primary international rules. An arms exporting state would be considered ‘complicit’ in such violations if it knew (or ought to have known) of circumstances creating such a risk (Box 4.1).

The ‘existing responsibilities of States under relevant international law’ are, in fact, extensive. Relevant primary rules include UN Charter and customary rules relating to the use of force and non-intervention; IHL;⁶⁸ international human rights law; as well as the crime of genocide, crimes against humanity, and war crimes. Focusing, purely for purposes of illustration, on international human rights law, the norms most relevant to international arms transfers (and possible misuse) are those enshrining the right to life (UNGA, 1948, art. 3; 1966, art. 6), and the right not to be subjected to torture or to cruel, inhuman, or degrading treatment or punishment (UNGA, 1948, art. 5; 1966, art. 7). These rules, too, are customary in nature, legally binding on all states.

This chapter will not offer a complete enumeration of international norms that are directly or indirectly applicable to international arms transfers, as this can be found elsewhere (Gillard, 2000; ATT SC, 2007). For our purposes, it is sufficient to note that the ‘existing responsibilities of States under relevant international law’ are, in fact, extensive. States commit an ‘internationally wrongful act’ if they transfer small arms in violation of a direct limitation on such transfers (e.g. an arms embargo). They are probably also in breach of their international obligations if they transfer arms even though they know (or should know) of circumstances creating a significant risk that these weapons will be used for violations of international law (e.g. human rights norms); they are ‘complicit’ in such violations. While the scope and application of the complicity rule is not yet settled, at a minimum one would have to conclude that transfers of this kind are of questionable legality and thus irresponsible (TRANSFERS).

Non-state actors⁶⁹

Several regional instruments incorporate the principle of a ban on small arms transfers to NSAs (OAU, 2000, para. 4(i); EU, 2002, art. 3(b); ECOWAS, 2006, art. 3(2)). UN Security Council Resolution 1373, adopted just after the 11 September 2001 terrorist attacks on the United States, takes the same approach with respect to ‘the supply of weapons to terrorists’ (UNSC, 2001, para. 2(a)).⁷⁰ International concern about the potential for terrorist or insurgent use of

MANPADS has prompted a range of regional and global measures, including two UN General Assembly resolutions (UNGA 2004; 2005c), that similarly aim to curtail and control the supply of these weapons to NSAs.⁷¹

Nevertheless, as described earlier in the chapter, the question of banning the transfer of all small arms and light weapons to NSAs, deeply divisive when the *Programme of Action* was adopted in July 2001, remained so at the 2006 Review Conference. In part, this can be attributed to differences in the nature of the perceived threat. MANPADS concerns mostly stem from fears of diversion, while proposals to ban the transfer of all small arms and light weapons to NSAs are more often motivated by the prospect of their deliberate transfer to rebel groups.

The Small Arms Consultative Group Process (CGP), mentioned earlier, examined the NSA transfer issue in depth from 2003 to 2005. The following text is informed, to a large extent, by the CGP's discussions and conclusions.⁷²

What are NSAs? This seemingly simple question accounts for much of the polarization of the NSAs issue. During the 2001 UN Small Arms Conference, some states feared that any commitments relating to NSAs would impinge upon legitimate civilian possession and trade in firearms. Yet, those states seeking strong language on NSAs had different actors in mind: rebel groups, and criminal and terrorist organizations.

Only some non-state actors are a concern for states.

A wide variety of NSAs acquire, use, and misuse small arms and light weapons. Their relationships with states range from legally authorized extensions of the state security sector to insurgent forces seeking to overthrow the established government. They include:

- *Armed rebel groups, 'freedom fighters', paramilitaries, or warlords;*
- *Paramilitaries and other NSAs closely associated with state agencies;*
- *Civilian militia including communal groups and militias, civil defence forces, vigilante groups;*
- *Terrorists and terrorist organisations;*
- *Criminals and criminal groups, including black market arms traders;*
- *Political parties and associated political groups;*
- *Private military companies;*
- *Private security companies, and other private companies with their own security staff;*
- *Arms traders: domestic legal retail markets, traders and wholesalers, arms brokers, and front companies;*
- *Civil institutions, such as museums;*
- *Civilians: sports shooters, hunters, gun collectors, holders of guns for personal protection (BtB, 2006a, p. 3).*

Only some of these actors are a concern for states; they may or may not pose a significant risk of small arms diversion or misuse. National policy clearly needs to be sensitive to such differences, yet it is important to note that simple disaggregation of actor types, though useful, does not yield a neat separation of problematic and unproblematic NSAs. A more policy-relevant distinction is that between those NSAs authorized to import arms by the government on whose territory they are located and those who have no such authorization.

Within the CGP, transfers to authorized NSAs, including authorized civilians, were not seen as a major source of concern. By contrast, arms flows to unauthorized NSAs were associated with adverse impacts on internal and international security, and a relatively high risk of weapons misuse and diversion. Such transfers also raise concerns surrounding sovereignty.

These considerations explain why most governments support a ban on any transfer to an unauthorized NSA. Some governments, however, maintain that in certain exceptional cases, such a transfer would be justified. Discussions

within the CGP consequently focused on two policy options: a total ban on transfers to unauthorized NSAs and a presumption of non-transfer with an international framework that would allow for 'hard case' exceptions. A third option is to address NSA transfer concerns through regular licensing systems and principles. Rigorous transfer licensing systems could, arguably, remove the need for separate measures on NSAs.

The CGP explored at some length the 'hard cases' that might offer grounds for an exceptional transfer of small arms to an unauthorized NSA (the second policy option). Four elements were identified that, in combination, could provide such justification. These relate to the context of the transfer, the motivations for it, the characteristics of the NSA, and the potential effectiveness of the transfer in achieving legitimate aims.

In the view of the CGP, only two contexts might yield a 'hard case', specifically where the territory to which arms were to be sent was:

- experiencing civil war or internal armed conflict; or
- experiencing large-scale oppression or genocide.

The only legitimate motivations would be to:

- protect vulnerable communities or populations from imminent or ongoing attack, violent oppression, or genocide;
- promote a relatively desirable peace settlement (e.g. by preventing an unjust victory by better-armed forces); or
- support international peace operations or humanitarian interventions (e.g. by providing small arms to NSAs working directly under instruction from the international operations/interventions).



Rebels of the Moro Islamic Liberation Front raise their weapons at their main base in Darapanan, Maguindanao, on the Philippine island of Mindanao, in June 2005. © Erik de Castro/Reuters

Only NSAs with certain characteristics would be considered potentially legitimate recipients of small arms. Such NSAs should:

- command substantial legitimacy and internal support among the population of the relevant state;
- have unselfish aims consistent with the motivations underlying the proposed transfer;
- have demonstrated commitment and capacity to use the supplied arms effectively and with appropriate restraint;
- be unlikely to misuse the arms supplied to them on a substantial scale; and
- have a credible commitment and capacity to control the transferred arms effectively, including relatively safe and secure storage, and low risk of re-export or diversion to unauthorized uses or users.

Even if these elements of a hard case were present, any decision to supply small arms would need to be informed by an assessment of the transfer's potential effectiveness. It would have to have a reasonable prospect of achieving its aims and would normally be part of a package of other measures, including efforts to reduce risks of diversion. Some CGP participants also argued that states transferring arms to NSAs should accept responsibility for their misuse and, moreover, take action to prevent such misuse. A final conclusion was that any transfer of arms to NSAs, even in hard cases, should not replace more robust and effective international responses (BtB, 2006a; Bourne, 2007).

In practice, very few situations would satisfy this four-part test. The international community's response to the Rwandan genocide was largely ineffectual. A non-state actor, the Rwandan Patriotic Front (RPF), put an end to a genocide that was being perpetrated by the Rwandan government and allied militia. Yet, there is no evidence that the RPF needed additional supplies of arms or ammunition, or that such supplies would have enhanced its capacity or resolve to protect civilian populations (Bourne, 2007). While the Rwandan genocide offers a compelling example of a situation in which, one might think, a transfer of arms to an NSA would be justified, the facts of the case leave the question open.⁷³

The fight against international terrorism would also seem to offer promising ground for hard case exceptions. In the weeks following the 11 September terrorist attacks, the United States and allied states gave the Northern Alliance arms and direct military support in its successful fight against Afghanistan's Taliban government. Nevertheless, it appears that it was the direct military support—not the (additional) weapons—that was the key to the Northern Alliance's success against the Taliban. It is debatable, moreover, whether this case belongs under the NSA rubric, as the international community had progressively withdrawn its recognition of the Taliban government as a result of its support for and protection of al Qaeda (Bourne, 2007).

Independent observers have also reported that both the RPF and Northern Alliance committed serious violations of international humanitarian law, including revenge killings of civilians and the summary execution of prisoners (HRW, 1999; 2002).

This brief consideration of two cases cannot settle the question of whether arms transfers to NSAs are ever justified. Yet it demonstrates the practical difficulty of meeting the criteria discussed by the CGP. Arguments favouring the exceptional transfer of weapons to NSAs tend to emphasize the context and motivation underlying such transfers. Often overlooked are the practical hurdles exporters face in ensuring that recipient NSAs act responsibly and that transferred weapons are effective in achieving their (legitimate) aims. Although the CGP has helped clarify some of the issues surrounding the NSA transfer question, the latter's complexity probably precludes an early end to the current diplomatic stalemate.

The question of whether arms transfers to non-state actors are ever justified remains unresolved.

The challenge of implementation⁷⁴

As indicated earlier, the ‘existing responsibilities of States under relevant international law’ are extensive. Despite the controversies that surround attempts to spell them out at the global level, there is, in reality, no escape. Key legal norms governing non-intervention, the non-use of force, the conduct of armed conflict, and human rights are customary in nature, applicable to all states. In the context of arms transfer licensing, these norms apply where the recipient is a state; many also apply where the recipient is an (unauthorized) NSA. Whatever the outcome of discussions on global criteria, arguably the critical challenge is the effective implementation of such principles.

The question of how to apply arms transfer criteria has received limited attention to date, even though they are increasingly part of national (and regional) control frameworks. In some cases, their application is relatively straightforward—as when determining, for example, whether a recipient is subject to an arms embargo. Yet, when the

Box 4.2 Applying IHL criteria

Whether within the framework of a regional instrument or independently, many states have agreed to take the recipient's respect for IHL into account in their arms transfer decisions. The specific wording used to formulate such criteria varies, but most stipulate that arms transfers should not be authorized if there is a ‘serious’, ‘clear’, or ‘likely’ risk that transferred weapons or material would be used to commit violations of IHL.

These terms raise difficult questions of interpretation. When does a risk become ‘serious’ or ‘clear’ or ‘likely’? What time period is relevant to an assessment of potential future misconduct? Isolated examples of past violations may not provide sufficient grounds for concern. Yet, if there is evidence of a pattern of violations, or if no steps have been taken to prevent violations from recurring, there may well be a problem. The degree to which past behaviour is indicative of present or future conduct is also highly dependent on such developments as changes in government or to the country's political system.

Factors that are not directly related to a recipient's compliance with IHL may also be relevant when determining whether transferred weapons might be used for IHL violations. These include the security situation in the recipient state, the stability of its government, and its record of respect for human rights. Equally important is the possibility of diversion to other destinations where arms could be used for violations of IHL. Important considerations therefore include previous known or suspected cases of diversion involving the recipient, the quality of stockpile management and security for transferred arms, and control over re-exports.

The ICRC has distilled these and other factors in the form of nine key indicators (ICRC, 2007):

- Whether a recipient which is, or has been, engaged in an armed conflict has committed serious violations of IHL;
- Whether a recipient which is, or has been, engaged in an armed conflict has taken all feasible measures to prevent violations of IHL, or cause them to cease, including by punishing those responsible for serious violations;
- Whether the recipient has made a formal commitment to apply the rules of IHL and taken appropriate measures for their implementation;
- Whether the recipient state has in place the legal, judicial and administrative measures necessary for the repression of serious violations of IHL;
- Whether the recipient disseminates IHL, in particular to the armed forces and other arms bearers, and has integrated IHL into its military doctrine, manuals, and instructions;
- Whether the recipient has taken steps to prevent the recruitment of children into the armed forces or armed groups and their participation in hostilities;
- Whether accountable authority structures exist with the capacity and will to ensure respect for IHL;
- Whether the arms or military equipment requested are commensurate with the operational requirements and capacities of the stated end-user;
- Whether the recipient maintains strict and effective control over its arms and military equipment and their further transfer (ICRC, 2007).

Each indicator is accompanied by a checklist of questions for arms licensing officials (ICRC, 2007).

recipient's likely use of transferred arms is at issue, the assessment is more complex. By developing regulations or guidelines for the application of certain arms transfer criteria, states can facilitate licensing decisions.

Guidelines that identify specific factors to be considered when making assessments can contribute to more consistent implementation of arms transfer criteria adopted at the national, regional, or global level. They can also be a helpful tool for government officials involved in arms transfer decisions. With the increased number of criteria and instruments to be taken into account, the task of export-licensing officials has become more complex, yet it cannot be assumed that they will be experts in the range of areas they need to assess.

For this reason, in 2003 the EU Working Party on Conventional Arms Exports (COARM) began to develop best practice for the interpretation of the eight criteria in the *EU Code of Conduct* (EU, 1998). Of these criteria, best practices have so far been developed for the five criteria related to human rights, internal situation, regional stability, risk of diversion, and sustainable development (EU, 2006). As of early 2007, work on the last three was under way. The International Committee of the Red Cross (ICRC) has also produced a set of guidelines to assist states in their assessment of a recipient's compliance with the rules regulating the conduct of armed conflict, i.e. IHL (ICRC, 2007) (see Box 4.2).

While these evaluations will always involve an element of subjective judgement, guidelines such as those developed by COARM and the ICRC can help states to take a more systematic, rigorous, and objective approach to arms transfer licensing. They can also encourage decision-makers to articulate the risks they believe are associated (or not) with specific transfers.

CONCLUSION

Six years on from the adoption of the *UN Programme of Action*, the UN small arms process remains alive and relatively well—though somewhat resistant to those aspects of the issue falling outside of the traditional arms control/disarmament paradigm. A smaller group of states, from all parts of the world, are pushing ahead on the issue of armed violence and development (*Geneva Declaration*, 2006), putting a more intricate—and potentially more dynamic—stamp on global small arms activity. While the fragmentation of the global process is not a problem as such, it does carry certain risks. These include inconsistency among measures, as well as the possible neglect of the universal framework provided by the UN.

For the moment, despite the loss of consensus support for important elements of the process, UN member states are forging ahead on several fronts, including that of transfer controls. Championed by civil society at an early stage, governments are now prioritizing this issue. Key challenges include unpacking the *Programme's* basic commitments on transfer controls, deciding whether and how to address the question of transfers to non-state actors, and developing means of effectively implementing transfer licensing criteria.

As the chapter describes, in the area of transfer controls states' 'existing responsibilities . . . under relevant international law' (UNGA, 2001b, para. II.11) are extensive. Relevant legally binding norms include direct limitations on certain arms transfers, as well as the rule holding states 'complicit' in violations of international law that are committed with arms they transfer to others, notwithstanding a known (or knowable) risk of misuse (see the section on 'Existing responsibilities . . .', above). Whatever the outcome of discussions on global criteria, arguably the critical challenge is the implementation of such principles. Guidelines identifying factors to be considered when deciding whether or

not to authorize a particular transfer can help states take a more systematic, rigorous, and objective approach to these decisions.

In short, UN member states have much to consider as they attempt to come to terms, collectively, with their 'existing responsibilities . . . under relevant international law'. This includes the risk that the UN small arms process, recently revived, could again fade if the current focus on core transfer control commitments proves to be superficial. ■

LIST OF ABBREVIATIONS

ATT	Arms Trade Treaty	ILC	International Law Commission
BMS	Biennial Meeting of States (<i>UN Programme of Action</i>)	MANPADS	man-portable air defence system
CGP	Small Arms Consultative Group Process	NRA	National Rifle Association
COARM	European Union Working Party on Conventional Arms Exports	NSA	non-state actor
EU	European Union	PrepCom	Preparatory Committee (UN Programme of Action Review Conference)
Framework Convention	Framework Convention on International Arms Transfers	<i>Programme</i> Review Conference	<i>UN Programme of Action</i> 2006 UN Programme of Action Review Conference
GGE	Group of Governmental Experts	RPF	Rwandan Patriotic Front
ICJ	International Court of Justice	TCI	Transfer Controls Initiative
ICRC	International Committee of the Red Cross	UNODC	United Nations Office on Drugs and Crime
IHL	international humanitarian law		

ENDNOTES

- 1 The full, official name of the conference was the United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNGA, 2006b).
- 2 For more information on the PrepCom, see IANSA (2006a) and UNGA (2006a).
- 3 In the *Programme*, states recommended that the UN General Assembly convene a review conference in 2006, as well as biennial meetings to consider *Programme* implementation (no dates specified) (UNGA, 2001b, para. IV.1). Pursuant to these recommendations, the General Assembly convened Biennial Meetings of States in July 2003 and July 2005, along with the 2006 Review Conference. It made no provision for post-2006 follow-up, as the Review Conference was expected to decide this question.
- 4 'We haven't lost anything', Conference President Kariyawasam said in remarks made at the conference's closing session.
- 5 In relation to transfer controls, see the text below.
- 6 Remarks by a participant in a Geneva Forum meeting, held on the margins of the Review Conference on 6 July 2006.
- 7 This analysis draws on the Small Arms Survey study described in greater detail in the 'Review Conference Debates' section, below.
- 8 For more on these issues, see Small Arms Survey (2003, ch. 4; 2004, ch. 7; 2006, ch. 12).
- 9 See also UNGA (2005b, paras. 6, 12, 72).
- 10 See the 'Review Conference Debates' section, below, for more information on national positions.
- 11 Concerning the failure of (and opportunities for) disarmament diplomats to actively seek and develop compromise solutions in such negotiations, see Prins (2006).
- 12 Both the *Programme* (UNGA, 2001b) and the *International Tracing Instrument* (UNGA, 2005a; 2005e) are expressions of political commitment ('politically binding').

- 13 This number includes statements made by permanent observers to the UN. Some of the statements were given on behalf of regional or other groups of states. Text, and in some cases video, is available at <<http://www.un.org/events/smallarms2006/mem-states.html>>
- 14 Remarks of one conference participant, interviewed by the Small Arms Survey in December 2006.
- 15 Colombia acted as facilitator for section II (national, regional, and global measures), Switzerland for section III (international cooperation and assistance), and Japan for section IV (follow-up).
- 16 Eighteen participants in, or close observers of, the Review Conference process participated in the study (11 from government, 3 from international organizations, 4 from civil society). In relation to 12 different issue areas, they were asked to identify: (1) how close states came to reaching agreement on the issue; (2) the substance of any agreement or understanding; and (3) the main obstacles to progress. Participants were also asked for their general impressions of the conference, including those factors they thought had contributed to the failure to reach agreement on an outcome document. Participants responded in writing, or during in-person or phone interviews. Individual responses are confidential.
- 17 See also Sri Lanka (2006g, paras. II.5, II.21, II.25).
- 18 See Kidd (2006). Several participants in the Survey's study of the Review Conference also expressed concern about, or otherwise noted, this problem.
- 19 In relation to international transfers and brokering, see also UNGA (2001b, paras. II.2, 12–14).
- 20 See Kidd (2006).
- 21 This broader term would encompass other safeguards, such as delivery verification. For more on post-delivery controls applicable to man-portable air defence systems, see Small Arms Survey (2005, pp. 134–36).
- 22 See Sri Lanka (2006g, para. IV.4) and Small Arms Survey (2006, p. 102).
- 23 For more, see Small Arms Survey (2004, ch. 7).
- 24 See, for example, Sri Lanka (2006b, paras. I.3, II.22).
- 25 The phrase 'in All Its Aspects', included in the title of the *Programme*, was a key element of the bargain struck in July 2001 between those states that preferred a more comprehensive treatment of the small arms problem and those more comfortable with a narrower approach tied to the 'illicit trade'.
- 26 See Small Arms Survey (2002, pp. 223–24).
- 27 The influence of the NRA in Washington was reflected in the composition of the US delegation to the Review Conference; see Stohl (2006).
- 28 See UNGA (2001b, para. II.3).
- 29 See, for example, Centre for Humanitarian Dialogue (2005, theme 6) and Small Arms Survey (2006, ch. 6).
- 30 The word 'development' was omitted in the final version.
- 31 The US position, in particular, remained unclear.
- 32 One of two versions of substantially identical text retained at the end of the conference by key participants in the small arms–development debate.
- 33 Some conference participants interviewed by the Survey said that US diplomats had indicated, in advance of the conference, that the United States would not accept *any form* of global follow-up. This was not, however, the message that it relayed in its high-level statement at the beginning of the meeting.
- 34 Israel did, however, indicate that its support for follow-up would depend on the content of the conference outcome document.
- 35 See Sri Lanka (2006a, para. I.18; 2006b, para. II.25). Young men are the principal victims and perpetrators of small arms violence worldwide; see Small Arms Survey (2004, ch. 6; 2006, ch. 12).
- 36 Instruments relating to anti-personnel landmines and explosive remnants of war provide for victim assistance. For more information, see Brinkert (2006).
- 37 The First Committee on Disarmament and International Security meets annually, in October, for a 4–5 week session. It negotiates and drafts the resolutions that are formally adopted by the General Assembly as a whole in December. For more on the committee's 2006 session, see Parker (2007).
- 38 All voting results reported here were derived from the Reaching Critical Will Web site: <<http://www.reachingcriticalwill.org/political/1com/1com06/res/resindex.html>>
- 39 Interview with First Committee participant, 7 November 2006.
- 40 On the separate vote concerning para. 7 alone (the establishment of a GGE), both Japan and the United States voted no.
- 41 Those countries that abstained included major small arms exporters, such as China, Iran, Israel, and the Russian Federation (2004 data). For more information on these exporters, see Annexe 3 (TRANSFERS) at <<http://www.smallarmssurvey.org/yearb2007.html>>. Most Arab states also abstained on the ATT vote. Separate votes on paras. 2 and 3 followed these same trends. For more on the ATT vote, see <<http://www.reachingcriticalwill.org/political/1com/1com06/res/resindex.html>>

- 42 In consultation with experts from states, inter-governmental organizations, and civil society, UNODC is developing guidelines designed to assist states parties in implementing the provisions of the *UN Firearms Protocol*. An initial expert working group meeting was held in November 2006, in Vienna. A draft of the guidelines is scheduled for completion by the end of 2007. Source: written correspondence with UNODC (16 March 2007).
- 43 For the reports of Special Rapporteur Frey, see the University of Minnesota Web site: <<http://www1.umn.edu/humanrts/demo/subcom.html>>
- 44 This section is based on Dreyer (2007).
- 45 See, for example, WA (2002).
- 46 See, for example: Small Arms Survey (2003, ch. 4); <<http://www.bradford.ac.uk/acad/cics/projects/arms/AVPI/>>
- 47 See also paras. 6, 12, and 72.
- 48 For more information, see <<http://www.hdcentre.org/OECD-DAC>>
- 49 As of April 2007, 8 additional states have formally endorsed the *Geneva Declaration*, bringing the total number of participating countries to 50.
- 50 As of April 2007, the members of the core group were Canada, Finland, Guatemala, Kenya, Morocco, the Netherlands, Norway, Switzerland, Thailand, and the United Kingdom. The group is coordinated by Switzerland.
- 51 There would be inconsistency, for example, if (hypothetical) instrument A required states to paint all weapons for export red, while instrument B required them to paint the same weapons green. It would be impossible to comply with both commitments.
- 52 Regional instruments that establish criteria for transfer licensing decisions include EU (1998), OSCE (2000, sec. III.A), and SICA (2005). At the international level, the Wassenaar Arrangement has adopted a set of *Best Practice Guidelines* for small arms transfers (WA, 2002), yet membership in the organization is not universal.
- 53 See China et al. (1991); UNGA (1996).
- 54 This section is based on Stevenson (2007).
- 55 Since 2003, the original text of the Framework Convention (more recently called the ATT) has been redrafted several times. It is no longer circulating due to the new emphasis on the *Global Principles* (ATT SC, 2007).
- 56 See *Nobel Laureate Code* (1997, arts. 5, 7–10).
- 57 The current members of the ATT Steering Committee are listed at <<http://www.armstradetreaty.com/att/aboutus.php>>
- 58 This is distinct from the UN ATT initiative, discussed elsewhere in the chapter (UNGA, 2006e).
- 59 The Control Arms campaign is jointly run by Amnesty International, the International Action Network on Small Arms (better known as IANSA), and Oxfam.
- 60 International Alert, Saferworld, and the University of Bradford.
- 61 This section is based on Hasan (2007).
- 62 For more, see Small Arms Survey (2003, pp. 216–18).
- 63 In 1947, the UN General Assembly established the ILC with a mandate for the progressive development and codification of international law in accordance with Article 13(1)(a) of the UN Charter (UN, 1945). The ILC dealt with the topic of state responsibility from 1949 until 2001, when it adopted its articles on *Responsibility of States for Internationally Wrongful Acts* (UNGA ILC, 2001).
- 64 An ‘internationally wrongful act’ is an action or omission, attributable to a state, that ‘[c]onstitutes a breach of an international obligation’ of that state (UNGA ILC, 2001, art. 2).
- 65 Clapham (2006, p. 263) comes to a similar conclusion in relation to corporations.
- 66 See also Small Arms Survey (2004, pp. 263–65).
- 67 The principle of non-intervention is expressed in Article 2(1) (as a corollary of the principle of the independence and equality of states) and in Article 2(7) (in relation to the UN itself) of the UN Charter (UN, 1945). It is part of customary international law, and is thus applicable to all states (ICJ, 1986, para. 202).
- 68 Note that under IHL, states also have an obligation ‘to ensure respect’ for IHL by the parties to an armed conflict. This means that third states have a responsibility not to encourage a party to an armed conflict to violate IHL, not to take action that would assist in such violations, and to take appropriate steps to cause such violations to cease; see ICRC (2003, pp. 48–52).
- 69 This section is based on Bourne (2007).
- 70 See also paras. 3(a) and 4. Pursuant to para. 6 of the resolution, the Security Council established a Counter-Terrorism Committee; see <<http://www.un.org/sc/ctc>>
- 71 See also Small Arms Survey (2005, ch. 5).
- 72 For more, see BtB (2006a) and Bourne (2007).
- 73 For more on the Rwandan case, see Bourne (2007).
- 74 This section is based on Waszink with ICRC (2007).

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AKM-pattern assault rifles seized by Indian troops from rebel forces in Gurez, India, May 2006.
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Arsenals Adrift

ARMS AND AMMUNITION DIVERSION

INTRODUCTION

Diversion lies at the heart of illicit arms proliferation. In northern Kenya, 40 per cent of ammunition on the illicit market has leaked from Kenyan armed forces. Across the world, theft from civilian owners may result in the unlawful acquisition of as many as 1 in every 1,000 weapons. These are examples of diversion: the unauthorized transfer of arms and ammunition from the stocks of lawful users to the illicit market.

Across the world, the diversion of arms and ammunition sustains the activities of non-state armed groups, terrorist organizations, and armed criminals. It includes, but is not limited to: large, international transfers organized by corrupt military officials; low-level, localized theft and resale by military and police forces; and the loss of civilian weaponry through home burglary and other forms of theft.

Diversion can present a serious threat to the safety of civilian populations and even to the security of the state itself. In some countries it threatens the state's monopoly on the use of force by allowing armed groups that are denied other sources of weaponry to challenge state authorities. For these reasons, diversion has the potential to thoroughly undermine any measures taken to strengthen domestic and international regulations governing the arms trade—making it an increasingly important field of both national and international concern. Among this chapter's principal observations are:

- Diversion is largely a self-inflicted problem that stems from negligence by states, militaries, and civilians.
- Weapons that are diverted from state stockpiles or from civilian hands can fuel crime as easily as they can fuel insurgency or international terrorism.
- Diversion can often be addressed by relatively low-cost improvements to accounting, monitoring, and the physical security of arms and ammunition.
- Measures to curtail diversion must be comprehensive, addressing both security force stocks and civilian holdings.

The chapter addresses diversion in two parts: the unauthorized acquisition of arms and ammunition held by state security forces, and the acquisition of legally held civilian stocks by criminals. It emphasizes that diversion operates at many different levels. Tackling the problem therefore requires comprehensive controls over all arms and ammunition—regardless of where they are stored or used.

DIVERSION IN CONTEXT

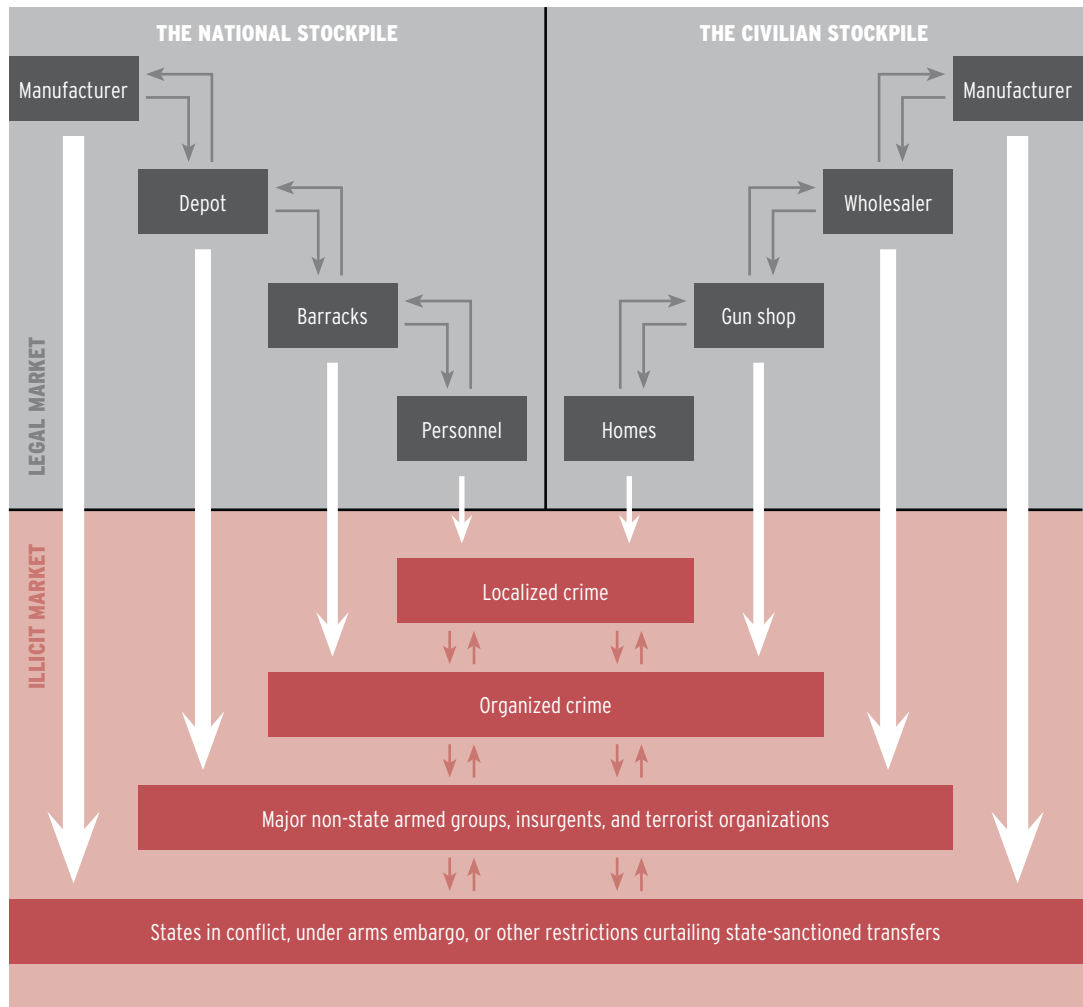
Stockpile diversion can occur from any legally held quantity of small arms and ammunition, whether in military or in civilian hands. Before analyzing diversion, however, it is useful to sketch a number of 'baseline' features of stockpiles.

Stockpiles

'Stockpile' (or simply 'stocks') refers to any collection of arms and ammunition, of any scale, and under the possession of any actor. The term, as used in this chapter, should therefore not be confused with the stereotypical, mass storage depots that militaries use to house munitions, although the term does encompass these facilities. This chapter deals with two, analytically distinct, stockpiles: the state-owned or 'national stockpile' and civilian stocks—the 'civilian stockpile' (see Figure 2.1).

The *national stockpile* encompasses every item of arms or ammunition under the control of—or destined for—a state's defence and law and order apparatus. Its components range from munitions stored in manufacturing facilities to large arms and ammunition depots and the weapons and ammunition issued to individual soldiers and police officers. It also includes the weapons and ammunition of paramilitary personnel that are nominally under state control. Diversion can, and does, occur anywhere in the national stockpile.

Figure 2.1 **Avenues of diversion from national and civilian stockpiles**



The *civilian stockpile* includes all arms and ammunition that are in the hands of—or destined for—authorized civilian users. Its components include weapons located in manufacturing facilities (which may be the same as those that supply the security forces); arms and ammunition stored by wholesale firms, which supply smaller businesses in the arms trade; weapons and ammunition held in gun shops and sports shooting associations; and those that are stored by private users at home (civilian holdings). Again, stocks anywhere in the civilian stockpile can be subject to diversion.

Arms and ammunition flows

Weapons and ammunition are not static and do not usually reside permanently in any one place. In the state-owned national stockpile, they flow throughout the security apparatus in response to patterns of deployment, changing demand, and the need to 'return' items for repair or alteration. Similar dynamics apply in the civilian market, as weapons and ammunition are sold, resold, or, in the case of ammunition, consumed.

Both in the national stockpile and among civilian stocks, ammunition is notably 'mobile' because it is a rapidly consumable good and needs to be regularly replenished when used—whether expended during training or combat or for recreational purposes. In the case of national stockpiles, for example, a single round of ammunition may be stored under tight security in a military depot. However, if it is transferred to a barracks or a police station with ineffective physical security measures, the ammunition risks being lost or stolen and thereby diverted to the illicit market. The same is also true of weapons that are transferred from one locale to another or from one set of users to others.

Ammunition is a rapidly consumable good.

This flow effect, which is present in both national stockpiles and civilian holdings, means that efforts to prevent diversion at any one point in the supply chain can be undermined by weaknesses at other points. Effective physical security needs to apply to arms and ammunition everywhere and not just to certain parts of either stockpile.

A multiplicity of sources

The diversion of arms and ammunition can have serious consequences regardless of whether it originates from the state-owned national stockpile or from civilian stocks. Diversion from either source—whether military or civilian—can provide illicit users with compatible weapons and ammunition because there are relatively few common small arms calibres, and frequently these are used by both militaries and civilians.

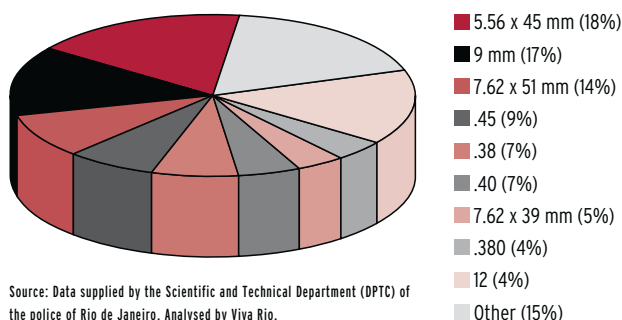
For example, a military assault rifle can fire civilian-marketed ammunition and vice versa. Common military calibres, such as the 5.56 x 45 mm SS109 rifle and 9 mm Parabellum pistol rounds, are widely used by civilian shooters in many Western countries (in the case of 5.56 x 45 mm, the civilian equivalent is the .223 Remington).¹ It is often relatively easy for illicit users to find appropriate calibres to suit diverted small arms or, conversely, the small arms to fire diverted ammunition.

Clear evidence of the impact of calibre compatibility comes from seizures of ammunition by the Police of Rio de Janeiro (see Figure 2.2). Not only do there appear to be relatively few calibres in use on the illicit market, but these calibres have both military and civilian applications. While all are 'restricted use' and therefore subject to some control (Bevan and Dreyfus, 2007, pp. 303–04), they are nevertheless used by a wide range of actors including sporting shooters, hunters, collectors, and various branches of the Brazilian state security forces (Presidência da República, 2000, arts. 16, 17, chs. VIII and IX of Title V; 2004, art. 19).

In some countries there are even fewer calibres in service among both military and civilian users than in the case of Brazil. For example, most civilian users in East Africa are equipped with military assault rifle ammunition (such

as the 7.62 x 51mm and 7.62 x 39 mm calibres in Figure 2.2). They rarely use pistols, and hence pistol calibres (9 mm, .38, etc.), which means that there is very little difference between the arms and ammunition used by civilians and the military.² In these cases, minimal calibre diversity makes it easier for illicit users to obtain the required types of ammunition as a result of diversion from either civilian or military sources.

Figure 2.2 **Ammunition calibres seized by police from criminal factions, Rio de Janeiro 2003-06 (n = 2860)**



Paths of diversion

The diversion of arms and ammunition takes many forms and ranges from thefts that involve high-level decision-maker complicity to low-level pilfering by petty criminals. Its contributing factors are various, and extend from private motivations, such as the need for hard cash by underpaid security personnel, to major political changes that affect the entire structures of states and their capacity to secure national stockpiles.

Table 2.1 **Categories of diversion and regulatory frameworks**

Stockpile	Type of diversion	Dynamic	Description	Reach	Regulatory framework
National stockpile	Low-order	Intra-security force theft	Theft by members of the armed forces	Localized	Stockpile management
		Extra-security force theft	Theft through unauthorized access to stocks or attack	Regional to international	Stockpile management / security sector reform
	High-order	High-level corruption	Defence sector officials orchestrate diversion	International	Institutional capacity building / combating corruption / security sector reform
		Mass looting or dispersal	State or security sector collapse leading to the dissolution of stockpiles	Regional to international	Political (domestic governments prior to collapse, possibly occupying powers)
Civilian stockpile	Low-order	Theft from users	Theft from persons, homes, and vehicles	Localized	National firearms laws (ownership, carrying, and storage)
		Unauthorized sales	Sale to unauthorized users	Localized	National firearms laws (commerce and resale)
	High-order	Theft from gun shops, wholesalers, and factories	Targeted thefts by organized crime and other organized non-state groups	Regional to international	National firearms laws (commerce and security thereof)

Faced with such divergent conditions, the following sections present a typology of diversion, its contributing factors, and measures that can be applied to limit its occurrence (see Table 2.1). They address diversion from civilian and security force (national) stocks separately—in recognition of the often different illicit markets each can feed and the differing sets of responses that are required.

In each case the sections make a simple dichotomy by assigning high and low orders to diversion. These orders recognize a number of factors including: differing scales of diversion (quantities diverted); the ‘reach’ of diverted munitions (whether transferred locally or internationally); and the impact of diversion (for example, enabling small-scale armed crime or larger-scale organized crime or armed insurrection) (see Table 2.1).

DIVERSION FROM THE NATIONAL STOCKPILE

The diversion of state-owned arms is not a new phenomenon. As early as the third century BC, weapons looted from Roman armouries and transferred via illicit arms deals were used to arm Germanic war bands (Penrose, 2005, p. 210). The national stockpile has always been a source of weapons for non-state armed groups with few other sources of weaponry. Moreman (2006), for instance, notes the pivotal role that diversion by members of the armed forces played in supplying groups along the Northwest Frontier Province of India in the late 19th and early 20th centuries. In recent times, cases ranging from the Tuareg Rebellion in Mali (Florquin and Pézard, 2005, p. 51) to the streets of Rio de Janeiro (Bevan and Dreyfus, 2007, pp. 301–11) demonstrate that diversion is still a major problem leading to the loss of state stocks and the acquisition of arms and ammunition by armed groups and civilians.

The diversion of state-owned arms is not a new phenomenon.

Low-order national stockpile diversion

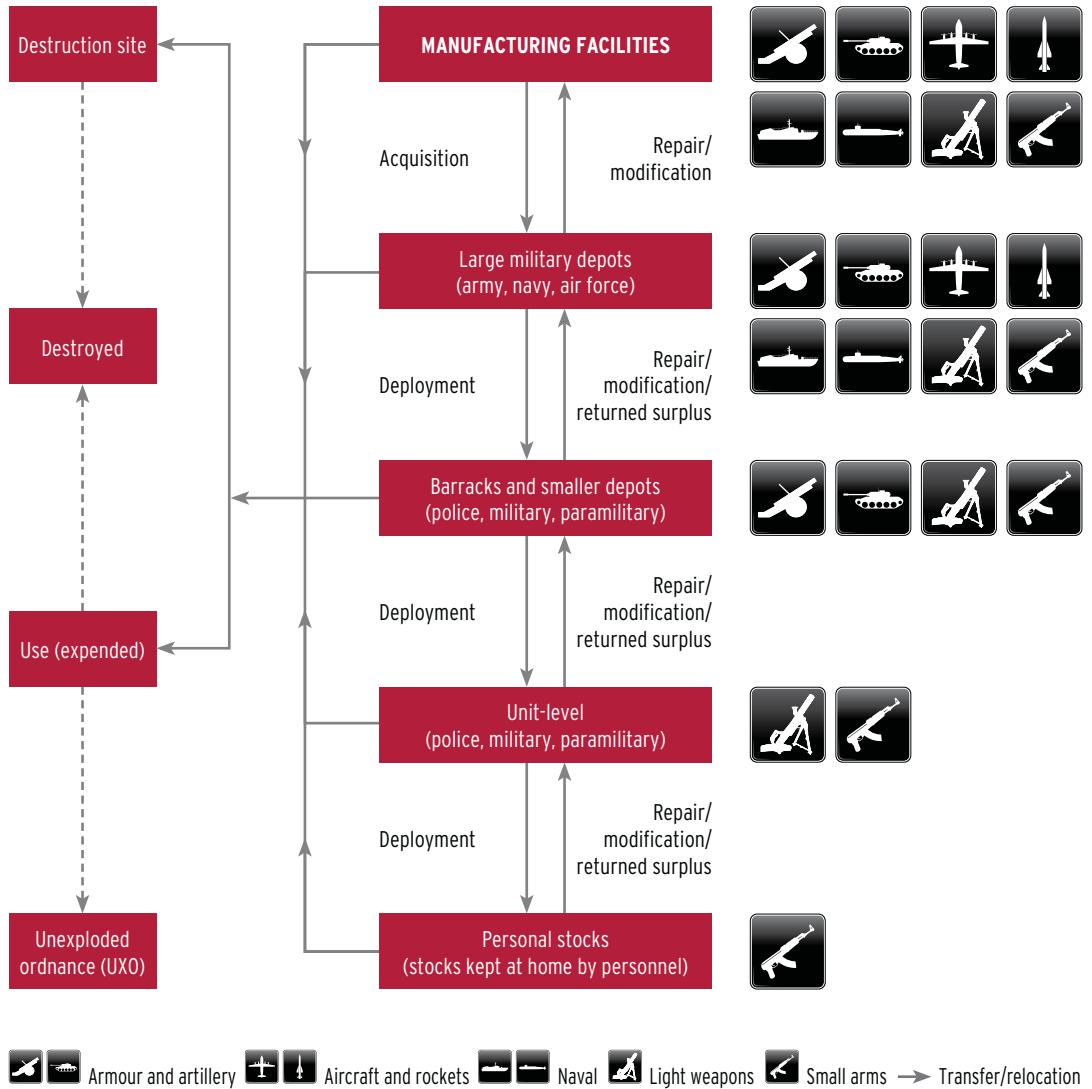
Low-order diversion of the national stockpile is the theft of relatively minor quantities of weapons and ammunition by individuals and small groups of people. It may occur at all levels of the national stockpile, but is generally characterized by its links to localized illicit trade rather than regional or international transfers. The problem is largely a result of microeconomic demand factors combined with poor stockpile management. It is often facilitated by the concealability and portability of small arms.³ In addition, two factors make small arms, light weapons, and their ammunition particularly susceptible to low-order diversion.

First is their wide distribution throughout security force stockpiles (see Figure 2.3). While larger conventional arms, such as artillery and missile systems, are rarely deployed to smaller units of a country’s security forces, small arms and light weapons feature in all levels of the national stockpile. This wide distribution results in a greater number of potential opportunities for diversion, ranging from the manufacturing facility to military depots, barracks, and deployed personnel.

Second, the fact that small arms and light weapons tend to be distributed at ‘lower’ levels than larger weapons can lead to diminishing security measures and an increased risk of diversion. When command and control is weak, oversight over arms and ammunition is likely to be progressively weaker when weapons are dispersed throughout progressively smaller units of the security forces.

Weak oversight and poor physical security measures facilitate several forms of diversion, including theft by both personnel (intra-security force diversion) and ‘external’ actors (extra-security force diversion).

Figure 2.3 **The distribution of conventional arms and ammunition within the national stockpile**



Intra-security force diversion

Lower-order, intra-security force theft involves the diversion of arms and ammunition by military, police, or paramilitary personnel, and can take two forms—theft from arms and ammunition storage facilities, and illicit transfers from the individual stocks of security force members.

Theft from storage sites

Diversion is often orchestrated by the stockpile security personnel who are themselves charged with monitoring and securing stocks from theft. Small facilities, such as police stations and military barracks, may be particularly susceptible if few personnel are responsible for record-keeping and the physical inventorying of stocks. Illustrative in this regard is the case of Papua New Guinea, where the diversion of arms and ammunition from the Royal Papua New

Guinea Constabulary (RPNGC) has been particularly prominent. A 2004 audit estimated that around 30 per cent of the RPNGC's stocks of small arms had been sold onto the illicit market. The problem prompted authorities to issue weapon safes to the smaller police stations—many of which, like the weapons they were designed to protect, were subsequently stolen (Alpers, 2005, pp. 49–50).

At larger storage facilities the problem of diversion may be similarly problematic and, from a public security perspective, perhaps more so, given that these facilities are likely to stock explosive light weapons. In Sydney, Australia, for instance, military personnel, including a munitions technical officer, stole an estimated eight M-72 LAW rocket launchers from military stockpiles between 2002 and 2007. These light weapons were sold to one or a number of Sydney's criminal networks (AAP, 2007; Braithwaite et al., 2007). Light weapons such as these can pose both an elevated risk of diversion (if that kind of explosive firepower is in high demand by certain users) and, as a result, an elevated risk once they have been diverted (Box 2.1).

In virtually all cases where individuals, or small groups of military personnel, appear to have been able to divert arms and ammunition, their actions have been facilitated by two factors. First, they frequently perform duties that give them regular access to stocks and to stock accounting systems. Russian military supply officers in Chechnya, for instance, have been implicated in 'writing-off' weapons as destroyed and then selling them (JIG, 2005). Second, in some cases, such as Papua New Guinea, personnel have access to stocks that are poorly inventoried. Both of these factors are made critical because the personnel concerned are poorly monitored by peers or superiors—facilitating both theft and account-tampering.

Diverted FN FAL rifles, stolen from a military base and recovered by Brazilian authorities, Rio de Janeiro, March 2006. © Antonio Scorza/AFP/Getty Images



Box 2.1 Prioritizing the security of certain types of ammunition

Different varieties of ammunition and their component parts present different security risks if lost or stolen from stockpiles. These risks are proportional to: 1) the operational (i.e. tactical and destructive) potential of the ammunition in question; and 2) the ease and speed with which persons illicitly acquiring the ammunition can make it operational and use it. While it is clear that all arms and ammunition pose risks to security when in the wrong hands, certain states have attempted to prioritize risks for different types and allocate specific security measures accordingly.

For these reasons, the United States Department of Defense (USDoD, 1989, p. 30) classifies conventional ammunition according to 'the degree of protection needed against loss or theft by terrorists or other criminal elements'. As a result the DOD ranks ammunition higher in sensitivity (see Table 2.2) when it is explosive, can threaten high value military assets, and can be deployed quickly.

For example, Code 1 munitions include man-portable air defence systems (MANPADS) and anti-tank guided weapons (ATGW) that are either stored or transported as a complete system (missile and launcher) or sufficiently proximate to one another to enable quick assembly into a functioning weapon system. Code 2 ammunition includes explosive munitions that are either ready to use (such as grenades and mines); or could be improvised for other purposes (such as raw explosives and missiles). All of these weapons could either be used quickly and with great effect or used in weapons that already circulate on the illicit market.

This accounting system is designed to ensure that weapons listed under Code 1 are subject to enhanced security at all times. Measures include specific regulations on physical security, such as guard levels at storage facilities, modes of perimeter security, and communications equipment to alert authorities of a loss or theft of weapons (USDoD, 2000, pp. 24-25).

It is worth noting that the Department of Defense ranks small arms ammunition as Code 4 (low sensitivity), despite the often ready availability of arms capable of firing military calibres. Given the potential destabilizing impact of leakages of most types of ammunition, it is probably safe to conclude that security measures should be as comprehensive as possible for all categories. While the codes listed in Table 2.1 prioritize protective measures to prevent loss or theft, they do not entail different accounting standards. The United States stockpile management and security system dictates comprehensive accounting of *all* stocks—regardless of assigned codes.

Table 2.2 United States military ammunition and explosives security risk codes

Code	Designation	Category of ammunition included
1	Highest sensitivity	Ready-to fire (ammunition and weapon) missiles, including Hamlet, Redeye, Stinger, Dragon, LAW, and Viper. This category includes non-nuclear missiles and rockets in a <i>ready-to-fire</i> configuration. It also applies when the launcher (tube) and the associated explosive rounds, though not in a ready-to-fire configuration, are stored or transported together.
2	High sensitivity	The following items are included: (a) Grenades, both high explosive and white phosphorous. (b) Antitank and antipersonnel mines with an unpacked weight of 100 lbs or less each. (c) Explosives used in demolition operations, such as C-4, military dynamite, TNT, and the like. (d) Explosive rounds for missiles and rockets other than Category I that have an unpacked weight of 100 lbs or less each.
3	Moderate sensitivity	(a) Ammunition, .50 calibre and larger, with explosive-filled projectile and having an unpacked weight of 100 lbs or less each. (b) Incendiary grenades and grenade fuses. (c) Blasting caps. (d) Detonating cord. (e) Supplementary charges. (f) Bulk explosives.
4	Low sensitivity	(a) Ammunition with non-explosive projectiles and having an unpacked weight of 100 lbs or less each. (b) Fuses, except those in Category III. (c) Grenades, illumination, smoke and practice, and CS/CN (tear producing). (d) Incendiary destroyers. (e) Riot control agents in packages of 100 lbs or less.

All of these risk factors can be attenuated by effective, rule-based stockpile management procedures. As a result of the theft of M-72 LAWs, for instance, the Australian defence forces have enforced a strict ‘two-person policy’ whereby personnel are prohibited unsupervised access to weapons and explosives stores (Blenkin, 2007). Other countries already have such measures in place. In the United States, personnel tasked with storage functions are not allowed access to records. Similarly, record-keeping personnel are prohibited from conducting physical inventories without the supervision of storage personnel (USDOD, 2002, p. 8). These ‘check and balance’ procedures also ensure that law-abiding personnel are better protected from blame should a loss or theft occur.

Diversion of individual stocks

A second type of intra-force theft occurs when members of a state’s armed forces or other state agents divert *issued* stocks of arms and ammunition to the illicit market.

Issued weapons are those that are required by personnel to perform their duties. They rarely include light weapons, and, in most countries, consist of small calibre weapons and ammunition, such as pistols and assault rifles,

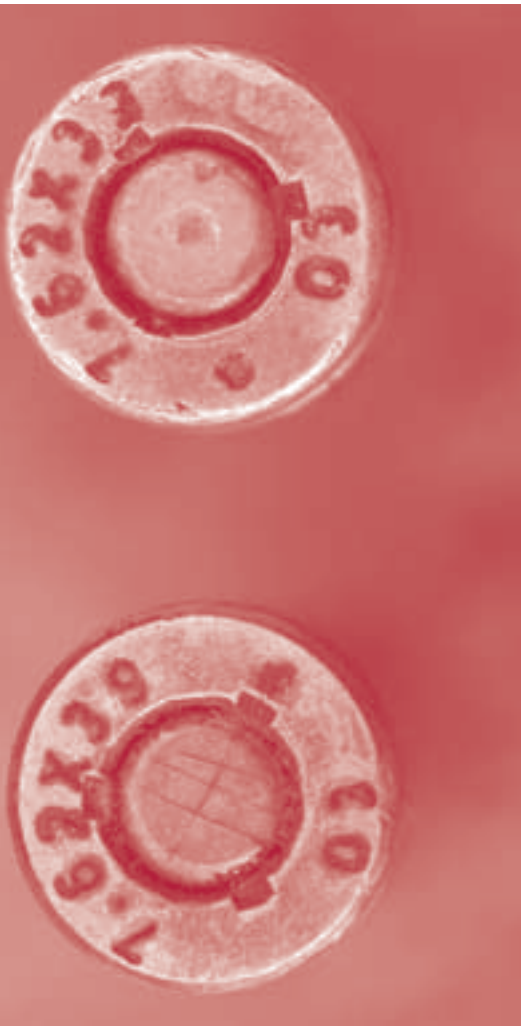
which comprise the individual weapons of police, military, paramilitary, and other government agents. While many states issue arms and ammunition only in time of need, others allow individual weapons (and their ammunition) to remain in the hands of security force personnel, whether on or off duty.

Because these issued stocks are already in the charge of personnel, and access to them is not subject to entry to an armoury or other weapons storage facility, they can pose a particular risk of diversion—particularly in the case of ammunition. In northern Kenya, for instance, 7.62 x 39 mm assault rifle ammunition circulates widely among Turkana pastoral communities and can be attributed to diversion from Kenyan security forces, most notably the Kenya Police Reserves (KPR), which has a track record of ‘losing’ arms and ammunition.⁴ In northern Uganda the situation is similar, with paramilitary Local Defence Units (LDU) as well as members of the Uganda People’s Defence Forces (UPDF) implicated in diversion (Bevan and Dreyfus, 2007, pp. 288–301).

Reasons for low-order diversion

Low-order diversion, whether directly from weapons storage facilities or from the issued stocks of security force personnel, is generally a response to localized illicit demand.

A common feature of low-order diversion is that the security force personnel make very local contacts with



Ammunition on the loose: 7.62 x 39 mm ‘AK’ ammunition photographed in the hands of non-state groups in northern Kenya, January 2008. © James Bevan

Box 2.2 The particular case of ammunition diversion

Unlike a soldier's weapon, such as an assault rifle or pistol, the disappearance of ammunition is often unnoticed or can easily be explained to superiors. Where security forces do not have to account for the ammunition they expend in engagements or training, when commanding officers cannot oversee the use of weapons, and where no records are kept of the numbers of rounds issued: ammunition is easily diverted. In many countries the scale of diversion remains unclear for precisely these reasons.⁶

Although the impact of such small-scale diversion may seem relatively slight when viewed from the perspective of individual transactions—major legal ammunition shipments often run into millions of rounds—on aggregate low-level diversion can assume very large proportions. In Rio de Janeiro a stockpile manager was convicted in 2005 for diverting around 10,000 rounds to drug-trafficking organizations (Bevan and Dreyfus, 2007, p. 310). Similarly, in March 2007 four army personnel, including one warehouse guard, were arrested in Albania for diverting around 100,000 rounds of ammunition (JIG, 2007a). In Peru, in 2006 and 2007 alone 80,000 assault rifle rounds were recovered after having been diverted in a number of instances from police and military stocks. The ammunition was believed to be destined for the Colombian Fuerzas Armadas Revolucionarias de Colombia (FARC) (JIG, 2007c).

Even the smallest of trades, of perhaps three or four rounds, can reach large proportions when sufficient numbers of personnel are involved for long periods of time. In northern Kenya, for instance, research by the Small Arms Survey suggests that around 40 per cent of 7.62 x 39 mm ammunition circulating illicitly in the region can be attributed to diversion from Kenyan security forces. In this case individual instances of diversion are small in volume, but when combined they have a strong impact on the propensity for armed violence.⁷

the illicit market. Such transfers can be relatively large in scale. For example, in 2002 four Israeli soldiers were charged with the theft of around 60,000 5.56 x 45 mm assault rifle rounds, destined for Palestinian factions in the Hebron region (BBC, 2002; Greenberg, 2002). But more often than not they are small transfers.

These may take the form of interaction with criminal gangs in cities and towns, as in the Australian M-72 case (Braithwaite et al., 2007). In the Israeli case it appears to have involved Israeli Arabs with social ties to Palestinian factions, and included other illicit activity including the smuggling of non-military goods (Greenburg, 2002). In Kenya and Uganda diversion by paramilitary personnel often occurs between members of the same clan or sub-clan (Bevan and Dreyfus, 2007, p. 299).

For the most part, the motive behind these locally connected thefts is personal economic gain. The value of such transactions may run into many hundreds of thousands of dollars or it may be confined to very small trades. In northern Kenya, for instance, a round of 7.62 x 39 mm ammunition sells for around 200 Kenyan shillings (around USD 3 or the price of a beer).⁵

The attractiveness of such small trades cannot be overestimated. In many developing countries security force personnel receive extremely low or intermittent pay. Small arms, and ammunition in particular (Box 2.2), can provide a ready currency with which to purchase items required for daily subsistence, such as foodstuffs or perhaps a pair of boots or a new shirt.

Policy implications

Accounting and oversight are two fundamental pillars of arms and ammunition management that can be employed to address low-order diversion. Effective accounting covers three basic processes:

- 1. Stocks issued:** The numbers and types of arms and ammunition issued to security forces (at all levels) are recorded and this information is stored securely at progressively higher administrative levels.
- 2. Stocks expended:** The numbers and types of arms and ammunition expended or rendered unfit for use (whether in training or combat) are documented and the circumstances of such expenditure specified.

3. Stocks audited: All stocks are thoroughly audited and the balance checked against reports detailing issuance and expenditure.⁸

These three procedures are contingent on functioning command and control within security force administrations.⁹ Where there is little oversight, it is unlikely that such measures will operate effectively.

If internal monitoring of personnel is weak, however, external monitoring can be employed to detect instances of diversion and trace thefts back to the security forces responsible—particularly with respect to ammunition. Lot-marking is one such measure, whereby ammunition is assigned a code that specifies the particular unit within a state's security apparatus to which it has been issued. Lot-marking can be an effective way to highlight instances of diversion and remedy theft within security forces, in addition to deterring theft in the first place. Few countries, however, directly lot-mark small arms ammunition. Austria, Brazil, Colombia, France, and Germany are exceptions whereby national regulations require that all or certain security forces use only lot-marked ammunition (Anders, 2006, p. 212; Bevan and Dreyfus, 2008).

Extra-security force diversion

Low-order, extra-security force theft involves diversion from national stockpiles by non-state actors. These unlawful users may target weapons storage facilities or the personal stocks of members of the security forces. In either case their access to arms and ammunition is often contingent on lax stockpile management practices—including stockpiles that are made vulnerable to violent attack by minimal investments in security and a lack of planning on the part of relevant authorities.

Many weapons storage facilities are unguarded.

Diversion via unauthorized entry

Stockpile facilities that are extremely poorly guarded allow the entry of unauthorized personnel and the theft of arms and ammunition. Direct, unaided entry by non-state actors is probably rare for larger stocks of weapons, such as those held in barracks and larger security force facilities, because intruders have to confront relatively large numbers of state agents before gaining access to arms and ammunition. However, cases such as the theft in 1999 by local teenagers of man-portable air defence systems (MANPADS) from a state factory in Poland suggest that large facilities can be prone to the most basic incursions (Golik, 1999; PNB, 2000).

For the most part, however, smaller stockpiles appear to be the most vulnerable to non-violent thefts by unauthorized personnel. For example, Capie (2003, pp. 97–109) noted the ease with which national stockpiles in a number of Pacific states could be accessed by outsiders. Among the risks he identified were: hundreds of assault rifles secured only by single doors with single padlocks, and, in the worst cases, weapons stored on floors, or simply leaning against walls, in unlocked, unguarded rooms.

The Pacific states were, and are, not unique. Numerous reports from South-east Asia suggest that many weapons and ammunition storage facilities are left unguarded and in an almost comical state of repair—one, for instance, was described as having a locked door, a roof, but only three walls.¹⁰ Certain parts of Africa display similar problems. One US State Department Official recalled a 2003 case in Monrovia, Liberia, in which a monitoring team found four MANPADS inside a shed 'guarded only by a chicken with no tail feathers'.¹¹

Storage conditions such as these require little concerted effort on the part of thieves. Diversion can be a relatively passive process whereby local people simply walk into the stockpile and help themselves to arms and ammunition. Although such pilferage may be localized, the easy availability of high-value weapons such as MANPADS, which are

in great demand by some non-state groups, suggests the potential for these local dynamics to link with the international trade in illicit weaponry.

Diversion by force

The above cases are illustrative of situations in which security has been sufficiently lax to enable the unchallenged entry of unauthorized personnel into storage facilities, but there are also cases where non-state actors gain access to arms and ammunition by force.

State forces often inadvertently provide large quantities of arms and ammunition to opposing non-state armed groups. Diversion via capture from state security forces—whether on the field of battle or through direct assault on

military facilities—is a major source of illicit arms and ammunition. As Florquin and Berman (2005) note, in seven out of nine West African countries where armed groups have operated in recent years, the groups in question have acquired arms and ammunition through one or both of these means.¹²

Captured weapons are often pivotal in allowing insurgencies to gain momentum through a process described by Bevan (2005, pp. 186–87) as the ‘acquisition spiral’. One example of this phenomenon described by Humphreys and Mohammed (2003, p. 247) was the rapidly strengthening position of the Malian Mouvement Populaire de Libération de l’Azawad, as it used successively larger quantities of captured weapons and ammunition to launch attacks on military facilities—thereby obtaining yet greater amounts of arms and ammunition.

State stockpiles are tempting targets for many groups—whether criminally or politically motivated—that wish to augment their fire-power. The long-term impact of such attacks can be devastating when large numbers of weapons and ammunition are released onto the illicit market. In 1979, for instance, the Matheniko Karimojong sub-clan of northern Uganda overran a Ugandan Army barracks in Moroto, resulting in the capture of an estimated 60,000 assault rifles and extensive stocks of ammunition (Mkutu, 2007a, p. 36). Many of the rifles and ammunition of that period still circulate in the region and help sustain armed violence that claims many hundreds of lives annually.¹³

The impact of such attacks can be particularly pronounced when this form of diversion comprises the only source of arms for non-

state actors. The Solomon Islands provide a fairly unique, self-contained case. Almost all of the factory-manufactured weapons and ammunition that proved pivotal in intensifying the 1998–2003 conflict were captured from stocks of the Royal Solomon Island Police (RSIP) and there were few such weapons in civilian hands at the outbreak of the conflict (Muggah and Bevan, 2004, p. 8).



An East Timorese police officer with military-issue AUG assault rifles looted by civilians during violence in May 2006. Balibar-Aileu district, East Timor, June 2006. © Candido Alves/AFP/Getty Images

The capture of arms and ammunition often continues throughout conflicts and enables otherwise poorly equipped non-state armed groups to sustain military offensives. In East Timor, for instance, the rebel faction led by Alfredo Reinado has consistently targeted security forces as a source of arms and ammunition. In February 2007 the group attacked police stations along the East Timor–Indonesian border, resulting in the capture of around 17 assault rifles (BBC, 2007).

Even troops that are stationed to prevent or end hostilities can help sustain them when their weapons are forcibly diverted. In September 2007, for instance, the African Union Mission in Sudan (AMIS) base at Haskanita in southern Darfur was overrun by rebels, resulting in the loss of weapons and ammunition (JIG, 2007b).

Not all diversion by force is large in scale. United Nations security reports from northern Uganda, for instance, indicate numerous instances in which soldiers have been waylaid by groups of criminals, resulting in the theft of arms and ammunition.¹⁴ Similarly, in 2003 an attack in Venezuela blamed on ‘common criminals’ resulted in the deaths of four National Guard soldiers and the theft of their weapons (Olson, 2003). Soldiers, operating alone or in small units, can be an attractive target specifically because they carry weapons and ammunition.

Policy implications

Diversion by unauthorized access to national stockpiles is preventable through the application of basic physical security components of stockpile management.

Physical security refers to the protection of ammunition, weapons, and explosives against any malevolent actions, including theft, sabotage, damage, or tampering. The most effective means to ensure security is by restricting access by unauthorized personnel and installing measures to *detect, slow, and counteract* intrusion. Multiple fences and locked doors slow intruders, regular patrolling detects incursion, and police or troops stationed within easy reach of a facility can intervene to counter unauthorized access.

Additions such as electronic surveillance systems, perimeter lighting, and electrical alarms make facilities safer; but in many states the most basic, low-cost stockpile security procedures could be applied with minimal expenditure¹⁵ and sufficient political will. The first step in this process is to draft a plan detailing security measures, their requirements, and actions to take in the event of malfeasance (Annexe 2.1).

While these measures can detect, slow, and counteract unauthorized entry, it is important to note that monitoring and accounting procedures must also be in place to dissuade stockpile management personnel from facilitating unauthorized access to facilities. Physical security is only as reliable as the personnel charged with keeping it, which again underlines the need for effective oversight and accountability. In 2004, for example, the chief armourer of a Moldovan military brigade’s storage facility was sentenced to three years in prison for allowing unauthorized access to military facilities. Although the armourer did not personally take possession of the munitions, his actions enabled the theft of 200 grenades, 31 grenade-launchers, and more than 90,000 rounds of ammunition (SEESAC, 2006, pp. 101–02).

However, it is not just the facilities themselves that account for unauthorized entry and theft. Very often diversion results from negligence on the part of state agents working in otherwise secure environments. Diversions of this kind include the theft of unsecured weapons from the homes or vehicles of security force personnel,¹⁶ or the theft of weapons and ammunition that have been left unattended on desks in security force facilities.¹⁷

Safe storage is critical in the case of theft from homes and vehicles. Even in the most organized of security forces, procedures related to securing deployed weapons may be inadequate. In 2005, for instance—in an event that was far from isolated—a service weapon was stolen from the car of a Washington Police Chief (AP, 2005). Although

Basic security procedures could be applied with minimal expenditure.

members of the US police readily admit that stolen police weapons are usually used in other crimes (Klein and Dvorak, 2006), the official in this case, having left his weapon in a locked car, broke no rules (AP, 2005).

The problem may be more pronounced elsewhere. Many security force personnel in developing countries do not have the physical security measures to protect their own homes, let alone their weapons and ammunition. Military and police forces in East Africa, for instance, are often deployed to villages where an earth or wicker wall is all that protects valuables—including weapons—from theft. Short of carrying an assault rifle into a local bar at night, often the only option for off-duty service men and women is to leave the weapon in the care of a friend or relative.¹⁸

The logical solution, in these cases, would be to enforce a strict policy that weapons cannot leave military or police facilities if they cannot be secured. Given that many such facilities, however, remain less secure than people's homes, this will not always be appropriate.

In the case of violent attack resulting in diversion it may be difficult for security forces to guard against such assaults. This is particularly the case in attacks against individual personnel. However, the same basic tenets of physical security that apply within stockpile facilities—detect, slow, and counteract—also apply to how they are situated and protected in a broader sense. These include: 1) adequate garrisons of well-equipped forces to slow potential attacks and lessen the likelihood that they will result in diversion; 2) communications channels to warn against potential attack or seek assistance in the event of assault; and 3) the proximity of forces that are able to repel attacks should they occur.

Very often the susceptibility of stocks to attack is commensurate with the insecurity facing members of the security forces in many countries, who are often deployed far from central control—sometimes in dangerous border regions—with little support from other state forces. As with many factors associated with diversion, vulnerability in these cases often stems from weaknesses in broader security sector management.

High-order national stockpile diversion

High-order stockpile diversion involves the theft of large volumes of arms and ammunition, sometimes running into many hundreds of tonnes of weaponry. Like low-order diversion it is often facilitated by poor stockpile management practices, but in many cases it results from factors that are much broader than the management of arms and ammunition per se.

Weak state structures, a lack of accountability within political and military administrations, and associated loopholes in transfer regulations, conspire to present often highly placed individuals with the opportunity to divert weapons. As the following sections note, however, curbing high-order diversion is not beyond the scope of arms management, and there are certain basic measures that can be adopted to dissuade illicit activity. For the most part these involve taking steps to ensure that the departments responsible for intra-state arms and ammunition transfers are accountable to central authorities and that these flows are well documented. The greatest danger of high-order diversion arises where individuals, departments, and military units are able to misuse the authority granted them by the state to divert arms and ammunition in their charge, while still receiving a supply of weapons from the national stockpile.

Official conspiracy in high-order diversion

In 1992 the value of Ukraine's military stocks was estimated at USD 89 billion. By 1998 around USD 32 billion had been stolen and much of it resold abroad.¹⁹ Loss on this scale does not simply result from the kind of low-order

diversion described earlier. It occurs because large parts of a state's stockpile management system become opaque, allowing senior individuals—and sometimes entire departments—unregulated control over the management and transfer of weapons and ammunition.

This 'personalized control' facilitates illicit diversion and can result from a number of factors, including: administrative breakdown following major political upheaval (for example, Ukraine and other eastern European states in the early 1990s); loss of control over large parts of the security sector (such as Cambodia and Russia in the 1990s); and ad hoc arms management systems that give unregulated actors control over key parts of the military supply chain (for example, contemporary Iraq, described in detail below).

In all of these instances high-order diversion does not necessarily result from breaches in security or lax accounting in a particular depot or facility—although this may often occur under the same conditions. Rather, it is characterized by the wholesale redirection of large volumes of weaponry out of the state's arms management system and onto the illicit market.

Several interacting factors appear to be pivotal in facilitating high-order diversion.

First, political instability and economic downturn prompt short-term gain-seeking activities among all levels of security force personnel (and indeed society at large). Second, nationwide illicit activity rises as the state and its institutions weaken, creating increased illicit demand for military materiel by organized crime or non-state armed groups. Third, and pivotally, security force oversight and accounting mechanisms become weak and prove unable to prevent or identify diversion.

Turbiville's (1995) analysis of rising crime in the Russian armed forces in the late 1980s and early 1990s is illustrative. The collapse of the Soviet system prompted a general increase in all forms of crime within the security forces (around 14.5 per cent between 1988 and 1989). A parallel, flourishing black market provided a ready demand for all forms of stolen state assets. To compound this, the institutions responsible for curtailing intra-military crime (namely, military counterintelligence operating under the KGB) were ill-equipped to deal with it, and were quickly dissolved, along with the KGB, in 1991. Incidences of weapons theft, in particular, grew dramatically under this permissive environment, rising 50 per cent between 1989 and 1990 and a further 64 per cent between 1992 and 1993 (Busza, 1999, p. 565).

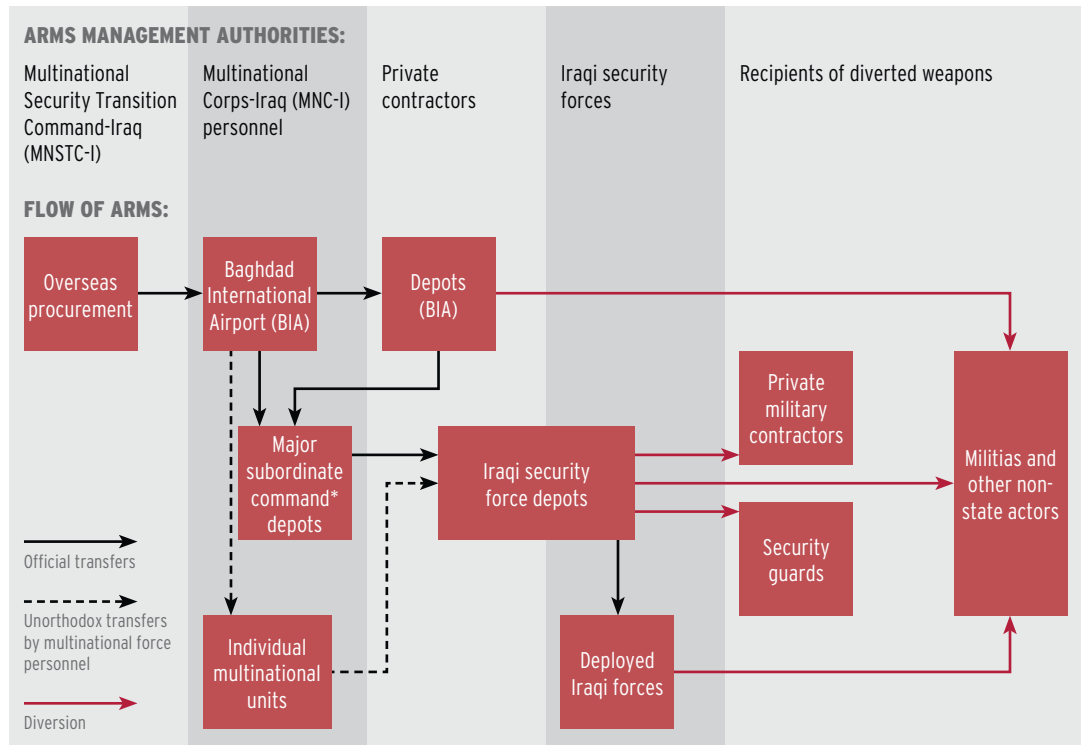
Very often it was the 'compartmentalization' of arms management responsibilities that appeared to have the greatest bearing on diversion. Highly placed military officials were able to capitalize on their personal command of military finances, equipment, and personnel—and the fact that their units continued to receive military equipment—to plunder state assets. Russian parliamentary investigations in 1994, for instance, charged the Soviet/Russian Western Group of Forces (WGF) commander-in-chief with creating an environment 'in which illegal commercial activities by his senior commanders were unrestricted if not actively encouraged' (Turbiville, 1995).

Similar situations have arisen elsewhere when senior military officials have been able to use their personal control over parts of the military to divert arms and ammunition, while still receiving a ready supply of weapons from the national stockpile. In 1990s Cambodia, for instance, military officers were able to sell entire armouries belonging to 'phantom' military units, which existed only on paper (JIG, 2000).

At higher levels in the defence establishment this compartmentalization of control can result in massive cases of diversion. In April 1997, for instance, Russian authorities noted that arms worth over USD 1 billion had been transferred to Armenia since 1992 without any state-to-state agreement or formal government permission. Among other things, the shipments included more than 230 million rounds of small arms ammunition. While the defence minister

'Personalized control' facilitates diversion.

Figure 2.4 Arms management responsibilities in Iraq, 2004-2005



* Multinational divisions responsible for seven different geographic areas of operations.
Sources: USGAO (2007); Schmitt and Thompson (2007)

at the time claimed no knowledge of the transfers, the chief of the general staff was aware of the policy, which had commenced under the former defence minister (JIG, 1997).

Opacity and the associated compartmentalization of arms management responsibility can be strong risk factors in diversion. They are not always confined to states that experience major systemic failure, and can occur in the most efficient military systems when those systems are subverted. Even when highly organized modern military systems are nominally responsible for arms management, control over arms and ammunition can become fragmented when insufficient attention is paid to ensuring transparency and accountability for weapons.

In July 2007, for instance, the US Government Accountability Office (USGAO, 2007, pp. 10–11) noted that the Department of Defence and Multinational Force in Iraq could not account for more than 190,000 weapons reportedly issued to Iraqi security forces between June 2004 and September 2005. As a result of a failure to institute an effective accounting system, many of these weapons may have entered the illicit market (TRANSFER DIVERSION). But as one director at the GAO later reported to *The New York Times*, the problem went beyond accounting practices (Schmitt and Thompson, 2007).

As Figure 2.4 sketches, in the Iraq case a lack of oversight and accounting was compounded by the fact that arms and ammunition moved relatively unchecked between a number of disparate authorities, ranging from multinational forces to private contractors and Iraqi security forces. The lack of oversight and the unorthodox measures some military units adopted in order to shorten a lengthy supply chain made it impossible to establish where many

weapons and ammunition were stored, and in what quantities. As a result, entire arsenals were diverted en route between one nominal authority and another (Schmitt and Thompson, 2007).

Policy implications

High-order diversion is a systemic problem, involving the plunder of all types of state assets, ranging from theft of military funds to illegal loans of government capital, the use of military aircraft for commercial charter, and the expropriation of military facilities and land. Taken at face value, controlling diversion of this magnitude appears to be contingent on very broad structural changes to state administrations and has linkages to wider issues such as good governance and accountability. But relatively simple arms management procedures could do much to control high-order diversion.

The Iraq case is one in which accounting procedures and effective oversight could have both deterred diversion and made its detection and policing much more effective. However, these measures were not implemented because military officials deemed that the rapid transfer of weapons and ammunition was more important than ensuring the security of those arms. As the USGAO report (2007, p. 9) noted:

Until December 2005, no centralized set of records for equipment distributed to Iraqi security forces existed . . . a fully operational distribution network was not established until mid-2005, over 1 year after [the multi-national force] began distributing large quantities of equipment to the Iraqi security forces. [The multi-national force] did not have the personnel necessary to record information on individual items distributed to Iraqi forces. Further, according to [multi-national force] officials, the need to rapidly equip Iraqi forces conducting operations in a combat environment limited [the multi-national force's] ability to fully implement accountability procedures.

The other cases noted above, in particular that of Ukraine, demonstrate that curtailing diversion may sometimes be a more challenging task and one related to deeper reforms of state security and defence-export sectors. In these cases high-order diversion may be particularly difficult to eradicate because officials use their positions to direct extant stockpile security systems—and the broader arms management system—to their personal advantage. The problem may not be one of stockpile management per se, because arms can be well secured in their particular facilities and among military units, but that departments may act in isolation from the rest of the government apparatus to engage in illicit transfers that *appear* to be sanctioned by the state. In such cases officials typically divert arms and ammunition using the network of international contacts, supply chains, and resources of the state itself.

However, curtailing high-order diversion is not an insurmountable challenge. Addressing it requires detecting it in the first place. Effective stockpile management and, in particular, accounting procedures have the potential to play a critical role in identifying corrupt officials and weak points in the national stockpile. High-order diversion may be a deep structural problem in the defence sectors of some states, but relatively basic management mechanisms may be pivotal in combating it in others.

Centralized record-keeping is one example where records of transactions made by all departments are stored by one, central authority—thereby minimizing the risks that those departments, or individuals within them, can gain relatively unchecked power to divert munitions. The United Kingdom, for instance, gives particular branches of the armed forces arms management—notably accounting—responsibilities for certain weapons systems. Each branch is responsible for all weapons of its allocated category within the national stockpile, regardless of which other branches

High-order diversion
is a systemic problem.

use the weapons. This measure is in place for logistical reasons.²⁰ However, it arguably illustrates how cross-departmental systems of responsibility could potentially minimize the risk of any department gaining unchecked power over weapons and ammunition—particularly in countries where the risks of high-order diversion are very much greater than in the United Kingdom.

Military collapse

Military collapse provides the most favourable conditions for large-scale diversion of arms and ammunition. State forces lose control over stocks or disband, resulting in the dispersal of these weapons throughout society. Sometimes military collapse is associated with the collapse of the state itself, such as in Liberia and Somalia in the 1990s. In other cases it results from militaries briefly losing control of national stockpiles (such as Albania in 1997) or from armed forces disbanding yet retaining their weapons (for example, Iraq in 2003).

Large sections of the national stockpile become privatized. While such large-scale ‘external’ shocks to military control over arms and ammunition may appear to pose an insurmountable challenge to curtailing diversion, as the following sections note, the risk is aggravated—and even bred—by the adoption of arms management polices that fundamentally weaken existing accounting and oversight systems.

Policies prior to collapse

One of the most striking aspects of diversion resulting from military collapse is that it is often closely linked to the factors that prove pivotal in the collapse itself. In cases where states have dissolved into a morass of competing armed factions, many of these factions have been armed by the state in question.

Faced with non-state challenges to their monopoly on violence, the response of numerous state administrations has been to further erode this monopoly by arming ‘aligned’ civilian factions. In Haiti, for instance, this process occurred under both the Aristide and Cédras presidencies of the 1990s. While nominally under state control at one time, many militias subsequently became embroiled in localized, politically motivated violence and crime that continues to challenge the creation of a strong state (Muggah, 2005, pp. 1–7, 50–52).

Diversion occurs in these contexts, not necessarily because state parties act unlawfully in distributing arms (although they may) but because they retain little or no control over state-provided weapons, resulting in a hazy delimitation between legal and unlawful uses. Large sections of the national stockpile become privatized and subject to diversion or illicit use. Minimal control over state-armed groups often leads to their use of weapons in contravention of the objectives of the state or in direct opposition to it.

Whether symptomatic of military collapse or precipitating it, state-armed militia groups have proved pivotal in sustaining armed conflict following the most extreme cases of state collapse, including Liberia, Sierra Leone, and Somalia.²¹ These practices can prove costly when governments and international agencies have to fund disarmament programmes that are aimed explicitly at removing weapons from such militia groups.²²

Dealing with the aftermath

Dealing with the large volumes of arms released by collapsing militaries is critical to ensuring that the weapons do not become diverted to illicit users.

In 2004 the Small Arms Survey estimated that more than 4 million small arms alone were released into Iraqi society from the stocks of state security forces (Karp, 2004, p. 49). This was technically not a case of diversion. There is no law against possession of military weapons in Iraq; they did not cross a legal-illicit threshold when the Iraqi army disbanded.

Box 2.3 Diversion and improvised explosive devices

Improvised explosive devices (IEDs) can be made from any explosive material, including items with explicitly civilian applications, such as compounds derived from nitrate-based agricultural fertilizers, and military explosives, such as TNT²³ and RDX²⁴ (DHS, 2005; TRADOC, 2007). Many of these ingredients are readily available to non-state armed groups around the world.

Diversion of light weapons ammunition from state stocks, however, poses a particular threat because it involves the release of weapons with specific military capabilities onto the illicit market. These weapons can be used, in their entirety or as components, to manufacture IEDs. They differ from civilian explosives because they are designed exclusively for military applications. Light weapons ammunition (as well as ammunition for larger conventional weapons) can be used in the following ways:

- removal of explosives from warheads and subsequent use in home-made bombs and projectiles;
- remote firing of projectile weapons, such as mortars and rocket launchers and ammunition thereof;
- adaptation of existing ammunition, such as mortar bombs, to detonate under pressure (mines); and
- use of shaped charges from anti-armour weaponry to increase the penetrative capacity of IEDs.

These features make national stockpiles attractive targets for non-state armed groups, allowing them to drastically increase both the speed with which they can manufacture IEDs and the capacity of these weapons against modern military targets. They have proven especially deadly in Iraq (LIGHT WEAPONS).

However, what happened to those weapons after the event is critical. By dramatically increasing the gross volume of weaponry in society, military collapse or disbandment also increases the numbers that are available to illicit users, including criminals and insurgent groups. In Iraq former state-owned weapons have been used in attacks ranging from small arms shootings to MANPADS attacks on civilian airliners (Bevan, 2004, p. 84) and roadside bombings. Notably, the ready availability of conventional ammunition with specific military capabilities has greatly facilitated the development of effective improvised explosive devices (IEDs), as Box 2.3 illustrates.

The dispersal of arms following military collapse illustrates how important it is for states to maintain effective control over national stockpiles, even at times of internal strife. Any weapons and ammunition that become subject to minimal oversight (whether through deliberate state distribution policies or military collapse) pose a threat to states, societies, and international peace and stability. Many states continue to rely on militia forces for the suppression of armed insurrection. History proves that, in cases ranging from the Congo to Colombia, it is a dangerous game to play, and groups that are subject to little state oversight and arms management can direct violence towards the state that created them.

In states where the national stockpile has already diffused into society, recovering weapons and ammunition should be a matter of priority. In Iraq, for instance, US military officials estimated that between 540,000 and 900,000 metric tonnes of ammunition and explosives were stored in around 130 sites



Sign in a gun shop window in the aftermath of Hurricane Charley, Port Charlotte, Florida, August 2004. © Mario Tama/Getty Images

in autumn 2003. However, by December 2003 only 227,000 metric tonnes had been partially secured by coalition forces and the rest remained at high risk of diversion or was already on the black market (Klingelhoef, 2005).

DIVERSION FROM THE CIVILIAN STOCKPILE

The civilian stockpile (see Figure 2.1) encompasses a wide range of arms and ammunition storage locations, ranging from manufacturers and wholesalers to gun shops and weapons stored at home or in vehicles. Diversion from any one of these locales has the potential to contribute to unlawful use, armed crime, and violence.

In particular, the diversion of civilian-owned weapons and ammunition provides a ready source of weapons that are later used in crime. The following sections focus primarily on this phenomenon—dividing it into higher and lower orders of magnitude, as outlined for the case of military stockpiles above.

At one end of the spectrum arms and ammunition are particularly susceptible to theft when inadequately stored in homes and vehicles. In these cases of low-order diversion, weapons often enter the illicit market as a by-product of other illegal activity, such as burglary and car theft. At the other end of the spectrum, relatively large quantities of weapons held in gun shops and wholesale warehouses can be attractive targets for organized crime, often with links to the international illicit market. These high-order cases of civilian weapons diversion can in some instances be a source of arms and ammunition for insurgent and terrorist groups.

Low-order civilian stockpile diversion

One in every 1,000 civilian weapons may be subject to diversion. Low-order civilian stockpile diversion is the theft of relatively minor quantities of arms and ammunition from gun shops, civilian homes, and vehicles. It also includes cases where firearms sellers have sold arms and ammunition to persons who are unauthorized under national legislation to possess firearms (PUBLIC HEALTH APPROACH). Low-order diversion serves a relatively localized market, although it may have cross-border dimensions.

Theft from civilian holdings releases many hundreds of thousands of legally owned arms onto illicit markets each year. Data for ten countries²⁵ suggests that around 1 in every 1,000 weapons in civilian hands may be subject to diversion (Karp, 2004, p. 63). Taken at face value, this number may seem small, but, given a global civilian stockpile of around 650 million firearms (Karp, 2007, p. 39), diversion from civilian stocks is, cumulatively, a grave problem. At a diversion rate of 1:1,000 civilian weapons, annual losses could total 650,000 weapons.

Illegal sales or resales are also a significant source of diversion. In the United States, for instance, licensed gun dealers are prohibited from selling weapons to a convicted felon, a person convicted of a domestic violence misdemeanor, or a person previously committed to a mental institution. This interdict does not prevent some dealers from selling to an eligible intermediary, who then immediately resells to a prohibited purchaser—a process known as ‘straw purchasing’. Straw purchasing is easier because civilian-owned firearms are typically not registered, so immediate retransfer entails little or no risk for the intermediary. Technically, if this kind of private sale is conducted with the dealer’s knowledge that the end-user is ineligible, the transaction is illegal and constitutes diversion. There is no federal law requiring the intermediary to obtain proof of the final purchaser’s eligibility, although some states require these secondary sales to go through a formal background check. Straw purchasing is particularly problematic because many US criminals have a preference for brand-new weapons, which can be obtained only from licensed gun dealers (LeBrun, 2007) (PUBLIC HEALTH APPROACH).

Despite unlawful practices such as straw purchasing, however, most arms and ammunition diversion from civilian holdings appears to originate from home burglaries. An Australian study by Mouzos and Sakurai (2006, p. 35), for instance, notes that more than 70 per cent of stolen firearms in the reporting period (February–July 2004) were taken from private residential premises. Motor vehicles comprised the second-largest source (14 per cent), and business premises the third (10 per cent). The situation in the United Kingdom is similar (see Figure 2.5). Data for the United States, while aggregated differently, suggests that domestic burglary is responsible for a comparable 60 per cent of all stolen weapons (Rand, 1994).

Most such thefts appear to accompany other, economically motivated crime. In the Australian case 58 per cent of weapons were stolen at the same time as other goods, leading Mouzos and Sakurai (2006, p. 39) to conclude that opportunistic household burglary was a major source of diversion.

Low-order diversion from the civilian stockpile appears to respond to highly localized (and in some sense ad hoc) demand.²⁶

Its primary beneficiaries appear to be petty criminals. Studies in the United States, for instance, reveal that as many as 50 per cent of criminals in correctional facilities have stolen a weapon at some point in their career (Zawitz, 1995, p. 3).

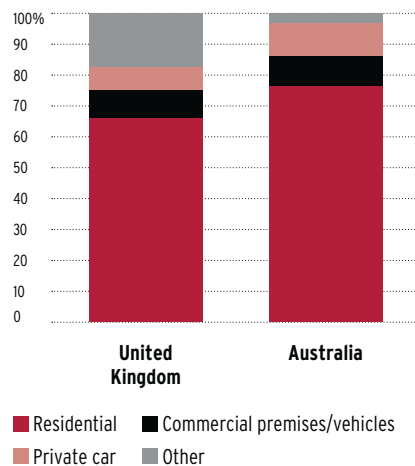
Potentially more serious cases arise where criminals have explicitly targeted homes and gun shops in order to acquire arms and ammunition. In Australia, for instance, 40 per cent of cases in which a weapon was stolen targeted *only* arms and ammunition and no other commodities (Mouzos and Sakurai, 2006, p. 39), suggesting that arms acquisition was the sole motive for the theft.

Arms and ammunition that enter the illicit market as a result of theft from the civilian stockpile typically feed local crime, but can also have much wider impacts. In May 2007 Florida law-enforcement officials made arrests over the theft of weapons from gun shops in the United States, which were later shipped via Florida International Airport to Puerto Rico (UPI, 2007). There are other international dimensions to domestic diversion. According to a report by the Mexican National Defence Commission, for instance, an estimated 99 per cent of weapons confiscated from criminals in Mexico had been sourced in the United States (Núñez, 2007). There is evidence to suggest that the United States–Mexico cross-border arms trade is often organized by criminal gangs linked to the drugs trade (Roig-Franzia, 2007).

High-order civilian stockpile diversion

High-order diversion of civilian holdings occurs when criminal groups target larger, non-state arms and ammunition storage facilities, such as gun shops and wholesalers. This chapter labels the process ‘high-order’, not because it shares structural similarities with high-order diversion of military stocks, but simply because it is very much larger in scale than the often petty thieving from civilian holdings described above. High-order civilian diversion is often linked to large organized criminal networks and can sometimes be used to fuel insurgency.

Figure 2.5 Proportion of locations from which firearms were stolen in Australia (n = 372) and the United Kingdom (n = 4697)



Notes: Australian data for period 1 February–1 July 2004; UK aggregated from years 1999–2006.

Sources: Mouzos and Sakurai (2006, p. 37); UKHO (2000; 2001; 2003; 2004; 2005; 2006; 2007)

In countries with high civilian firearm ownership rates, organized criminal gangs can source weapons and ammunition through illicit trade that has its origin in the kinds of small-scale theft noted above. However, where access to firearms is more difficult, or certain types of weapon are scarcer, criminals have robbed more difficult targets such as larger gun shops and other secure warehouses. Often these attacks are orchestrated by organized criminal gangs, which have the necessary resources to engage in this form of robbery.

In September 2007, for instance, thieves stole weapons and ammunition from a gun shop in Ipswich, Australia, in a sophisticated robbery that involved piercing the roof of the building, disabling the alarm system, and removing the hard drive of the computer surveillance system. The theft involved more than 50 firearms and large quantities of ammunition. Police were reportedly concerned that the robbery exhibited the hallmarks of organized crime (ABC, 2007; Swanwick, 2007).

In other instances the prospect of gaining access to specific types of weapon seems to have prompted criminal organizations to target commercial establishments. In October 2007 criminals robbed a gun shop in Florida. The robbery was notable because the weapons stolen were selected by type. The thieves in question took only semi-automatic versions of military assault rifles, including 57 Armalite- and Kalashnikov-pattern weapons. These high-velocity weapons are reportedly favoured by organized crime (Curtis, 2007).

**It is relatively easy
for criminals to
acquire weapons.**

High-order diversion can therefore be a transition point whereby criminal factions gain access to far greater firepower—enhancing their status and offensive capacity *vis-à-vis* other factions, but also presenting a greater challenge to the forces of law and order. In Rio de Janeiro, for instance, there has been a marked increase in the acquisition of high-powered rifles and sub-machine guns by the city's organized drug factions since the late 1980s (Downey, 2003, pp. 96–97), not least because of their offensive capacity against security forces (Bevan and Dreyfus, 2007, pp. 304–05).

In some cases the challenge to the state posed by high-order diversion may not be restricted to organized crime. Gun shops and other civilian storage facilities are tempting targets for non-state armed groups—particularly those that experience supply difficulties. In 2005, for instance, Chechen fighters in the town of Nalchik targeted two shops as part of a wider attack that included an assault on a police station (Chivers, 2005).

In many countries, therefore, the availability of large quantities of relatively poorly secured civilian arms and ammunition poses a latent threat to states and societies.

Securing civilian holdings

Many civilian holdings are insecure and present criminals with easy opportunities to divert arms and ammunition. The main reason for such accessibility is poor physical security of arms and ammunition—primarily in homes.

Firearms are stored, unlocked, in 40 per cent of US homes. In around 30 per cent of these unlocked cases, weapons are stored while loaded, with a further 15 per cent of unlocked weapons stored alongside ammunition (RAND, 2001). There is no reason to suspect that the United States differs from many other countries, and the figures are clear: it is relatively easy for criminals to acquire weapons, including ready-to-fire weapons.

The United Kingdom, for instance, has particularly low levels of civilian weapons holdings, and yet more than 700 weapons are stolen annually.²⁷ Most of these thefts are the result of criminal access to inadequately secured weapons.²⁸ While UK legislation stipulates that weapon must be kept 'safe and secure' (Box 2.4), it does not specify measures required to achieve this or minimum storage standards. Such vagueness as to what constitutes adequate security appears to lead to the uneven application of security measures in many countries.

Table 2.3 Modes of firearms theft from secured containers in Australia, February–July 2004 (n = 189)

Forced open	45%
Removal of whole safe	12%
Keys found and used	12%
Locks cut	10%

Source: Mouzos and Sakurai (2006, p. 11)

Around 60 per cent of weapons stolen from Australian homes are ‘secured’ in safes and other locked receptacles that comply with Australian laws on firearms storage. The findings displayed in Table 2.3 suggest, however, that these storage practices are insufficient, and thieves had the time to break into safes, cut locks, or locate keys. In some cases safes could be removed and broken into at a later date.

Box 2.4 Evidence of increased physical security? The United Kingdom post-1997

The United Kingdom has experienced a dramatic decline in the number of reported shotgun thefts since 1997, a trend that is arguably illustrative of increasing physical security of weapons in the country.

Figure 2.6 (see overleaf) plots reported thefts of shotguns and handguns in the United Kingdom between 1986 and 2006. It illustrates a pronounced decline in the number of thefts of each type of weapon reported to the police following the 1996 shooting of 16 children and a teacher in Dunblane, Scotland. The shooting resulted in the 1997 Firearms Amendment Act, which banned virtually all²⁹ handguns from private ownership (UK, 1997).

Taken at face value, the data in Figure 2.6 appears to reflect the impact of the 1997 Act. However, the Act did not significantly affect civilian shotgun possession, which suggests that other factors may be responsible for the rapidly diminishing reports of shotgun thefts.

There is reason to suspect that overall shotgun ownership rates did not fall particularly dramatically after 1997—and certainly not as fast as handgun ownership, which was, by contrast, highly restricted by the Act. The marked (30 per cent) decrease in shotgun theft reporting rates in Figure 2.6 is therefore unlikely to result from a decline in opportunity for theft.

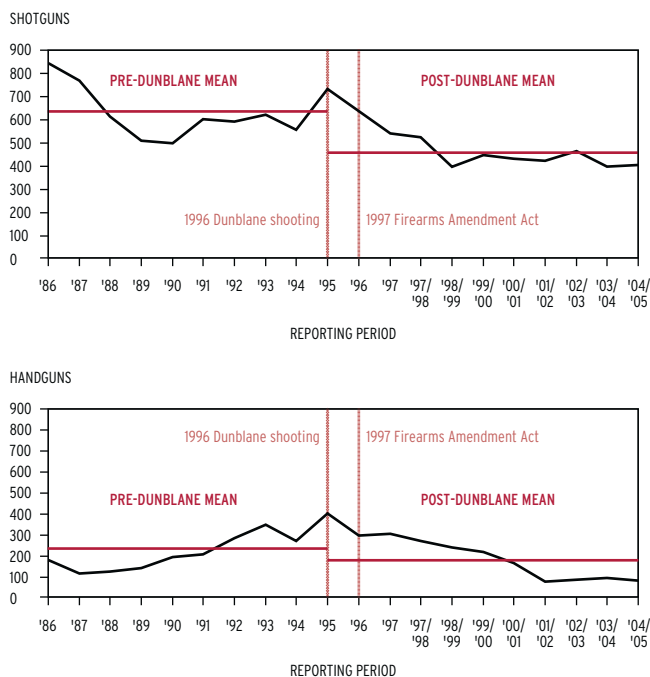
The selective scope of the Act suggests that the theft of shotguns may have diminished as a result of non-legislative factors, including increased public awareness of the dangers of weapons and, pivotally, the fact that authorities responsible for issuing firearms licences made the process contingent on the security of weapons—including spot checks of domestic security arrangements.

The 1997 Act did *not* impose tighter controls on shotgun storage practices beyond those of previous Acts, which merely specified weapons should be ‘kept safe and secure’ at all times. As the Metropolitan Police (2007) notes:

The Firearms Acts are not specific regarding security except to state that the weapons must be kept safe and secure at all times so as to prevent unauthorised access, as far as is reasonably practical . . . It therefore follows that the issuer of the certificate [the Police] must set the standards to be met, within the limitations of the Acts. . . . all shotguns and firearms should be kept in bona-fide gun cabinets. That is, cabinets which are purpose built for the keeping of shotguns and firearms. The cabinets must be located within the confines of the house and not stored in a garage or outbuilding. They should be rawl-bolted to a solid brick wall and out of sight of casual callers. Section 1 ammunition should be stored separately and securely from Section 1 weapons. BS7558 is a British Standard for gun cabinets since 1992 which practically all cabinets, sold by reputable Registered Firearms Dealers, will meet.

Given the dramatic decline in UK shotgun thefts post-1997 (see Figure 2.6), policies such as these appear to have played a critical role in increasing the security of firearms and preventing diversion.³⁰ Although UK arms and ammunition storage standards are far from optimal, applying a relatively simple set of storage criteria appears to be one of the key reasons for a reduction in reported shotgun theft.

Figure 2.6 **Shotguns and handguns stolen in the United Kingdom: 1986-2005 (n = 15,063)**



Note: Event separators are drawn at the beginning of the year in which the event occurred and in which data collection for that year commenced.

Source: UK (2006)

The same principles that apply to securing military stockpiles apply equally to civilian stocks. As Table 2.4 illustrates, most basic stockpile management approaches that can be applied to national security force stockpiles have civilian equivalents. But the findings in this section, and Table 2.4, show that in many (if not all) countries civilian stockpile management and security does not even begin to meet the basic tenets of security applicable to national stockpiles, particularly with respect to ammunition.

Civilian stockpile management falls far short of military standards, for several reasons. First, and despite the fact that many states have national registration systems for firearms, ammunition is almost always poorly regulated. Diverted ammunition cannot be traced back to its original owners, making it difficult to establish either the scale of ammunition diversion or the nature of security weaknesses for civilian holdings.

Table 2.4 **Standard military stockpile security measures and civilian equivalents** (particular weak points marked in red)

Military stocks	Civilian stocks
Accounting	Firearms registration
Records of stocks issued	Firearms/ammunition registration
Records of stocks expended	n/a
Monitoring	Periodic registration
Physical inspection	Periodic (yearly) registration of arms
Stock audits	Inspection of registered weapon (yearly)
Stock loss/theft reports	Mandatory reports of theft to police
Lot-marking by unit	Lot-marking by retailer and records of sales
Stock security	Domestic/commercial security
Perimeter security; secure doors and access routes; lockdown of portable weapons	Weapon safes; secure doors; keys stored elsewhere
Separation of arms and ammunition	Separation of arms and ammunition
Guards, dog patrols, and random patrols	Electronic alarms
Proximate additional security forces	Electronic alarms (perhaps linked to police stations)

Second, only in a handful of countries is there anything approaching the kind of stock audit expected within functional stockpile management systems of national stockpiles. Very few states have systematic checks or periodic re-registration which might enable law-enforcement officials to determine whether private holdings have been lost or stolen, and to take appropriate measures. Theft reporting is mandatory in effective military stockpile management systems, but this is not the case with most thefts from civilian holdings.

Third, the physical security of civilian holdings remains poor. Measures taken to *slow, detect, and counteract* intrusion reduce the risk of diversion. Some states, such as Australia and the United Kingdom, specify storage criteria. Yet even these may be insufficient. In the United Kingdom, for instance, between 1999 and 2006 the rate of reported small arms loss or theft from military establishments was 1 in 29,000.³¹ The rate of civilian loss or theft was approximately 1 in 400 firearms.³² A safe or gun cabinet is not sufficient in many cases to prevent theft.

In the absence of measures to detect and counteract theft, such as alarm systems, thieves may be able to spend considerable time penetrating safes and other storage systems. It is worth noting that only one of the premises in the Australian study was fitted with an alarm (Mouzos and Sakurai, 2006, p. 47).

Lessons from national stockpile security suggest that physical security extends beyond locks and doors to regular patrolling and the stationing of security forces to rapidly interdict the theft of arms. This is not feasible in the case of civilian holdings, but there is arguably some justification for claiming that electronic alarms—and particularly systems that notify security forces of thefts of registered weapons—could do much more to bring civilian diversion within acceptable limits.

The security of homes, vehicles, or any other repositories of civilian weapons holdings remains substandard in most countries. Whether through changes in national legislation, regulatory measures, or awareness campaigns focusing on secure storage, curtailing diversion will be contingent on effectively securing civilian holdings. Although there are critical variations in the scale and types of stock, physical measures adopted to control diversion from the civilian holdings differ very little from those that are required for national stockpiles.

CONCLUSION

Diversion lies at the heart of illicit arms proliferation. In varying degrees of severity, in almost all countries it facilitates the acquisition of arms and ammunition by criminals, terrorist organizations, and non-state armed groups. By providing a source of arms and ammunition to users who might otherwise have difficulty acquiring arms, it intensifies armed conflict and criminality, threatening communities, societies, and the state itself.

This chapter is deliberately wide in scope, recognizing that diversion of munitions operates at many different levels. It highlights the fact that all forms of diversion play a mutually supporting role in sustaining illicit proliferation. In recognition of this fact, the chapter emphasizes the need for comprehensive, mutually reinforcing controls over the security of all stocks of arms and ammunition—whether in the hands of civilians or state agents.

Effective control requires measures at a number of levels. It may involve tightening national stockpile security through the more effective management of military and police stockpiles. Equally, it requires comprehensive attention to national firearms laws and non-legislative regulations governing how civilians store their weapons at home.

In some instances controls may extend to broader changes in the way states manage arms and ammunition. Security sector reform to improve accountability within administrations is one measure that could protect national

stockpiles from high-order diversion. In other cases, controls are contingent on improving national and international regulations over the export of arms and ammunition.

Although resources play a critical role in the lack of progress towards enhanced stockpile security in many countries, a growing number of states participate in bilateral and multilateral initiatives that are designed to assist states with enhancing stockpile security. Recipients of this kind of support, however, remain few in number, and there is a clear need for donors to better advertise such initiatives and the fact that they can make a tangible difference to stockpile security.

The most severe cases of diversion—such as can occur with state collapse—are dependent on broader political factors that may seem beyond the scope of small arms and light weapons control. Nevertheless, even in these catastrophic instances, diversion can be alleviated by concerted efforts to address weak points in national stockpile management at the earliest possible moment, and by ensuring that any subsequent rearmament occurs under effective arms management systems.

Some measures to control diversion are relatively easy to apply—such as placing a padlock on a door, installing a gun safe at home, or posting a guard at a weapons storage facility. But in many countries, whether as a result of insufficient political will or through a lack of awareness, these small issues remain unaddressed. The primary barrier to preventing most cases of diversion is not expenditure but foresight.

The interface between the legal and illicit arms markets lies at home: with private citizens and state security forces. Diversion is not a product of shadowy deals in the world's crime and conflict zones, but a problem that stems directly from the negligence of legal users. Unless greater attention is paid to this fact, states and societies will continue to 'shoot themselves in the foot'. ■

ANNEXE 2.1

Model security plan

	Item	Comments
1.	Registration of the name, location, and telephone number of the establishment security officer.	One, single security authority. This person, or a deputy, must be contactable 24 hours a day.
2.	Scope of the plan.	What does the plan cover: which areas, individuals, and possible scenarios?
3.	Content of the stockpile.	Types of weapon. Types of ammunition nature.
4.	Security threat.	What sorts of interests might try to remove weapons and when (e.g. nightly theft, armed robbery, children).
5.	Detailed geographic map of the site location and its surroundings.	This should clearly indicate fences, access roads, bunkers/storage areas, and access routes.
6.	Detailed diagram of the layout of the site, including locations of: <ul style="list-style-type: none"> • all buildings and structures • entry and exit points • electricity generators/substations • water and gas main points • road and rail tracks • wooded areas • hard- and soft-paved areas • guard points 	Ideally a proper survey map of the site at around 1:5,000 scale or less.
7.	Outline of the physical security measures to be applied to the site, including, but not limited to, details of: <ul style="list-style-type: none"> • fences, doors, and windows • lighting • perimeter intruder detection systems • intruder detection systems • automated access control systems • guards • guard dogs • locks and containers • control of entry and exit of persons • control of entry and exit of goods and material • secure rooms • hardened buildings • closed-circuit television 	
8.	Security responsibilities (including, but not limited to, the following personnel, as applicable): <ul style="list-style-type: none"> • security officer • guards and guard commanders • transport officer • inventory management and verification personnel • all personnel authorized to have access to the site 	The greatest possible specificity of responsibilities, even on a case-by-case basis—e.g. 'In the event of an attempted break-in, the security officer shall be responsible for...' Even personnel with no specific security brief (transport officer, other personnel) may have security responsibilities—e.g. 'You are responsible for locking all doors you have previously unlocked.'

9.	Security procedures to be followed in: <ul style="list-style-type: none"> • stock reception areas • pre-storage processing • bunkers • during all stock withdrawals 	For example, how are people to be admitted to perform these functions? What security procedures should be followed when withdrawing stocks?
10.	Control of access to buildings and compounds.	Detail fences, gates, and how they operate, for whom they are to be opened, etc.
11.	Transport procedures	<ul style="list-style-type: none"> • Who provides security? • How is handover to another authority to be secured? • How are external recipients to be identified?
12.	Control of security keys (those in use and their duplicates).	<ul style="list-style-type: none"> • Where are keys to be located? • Who can have them? <p>It is often a good idea to attach keys permanently to large metal key tags so that they are highly visible.</p> <p>New technologies such as embedded Radio Frequency Identification (RFI) chips can aid in locating keys.</p>
13.	Security education and staff briefing.	<ul style="list-style-type: none"> • How are the staff to be briefed? • When? • By whom? <p>New personnel must be briefed as soon as possible. Refresher briefings should be conducted as a matter of course.</p>
14.	Action on discovery of loss.	<ul style="list-style-type: none"> • The security aspects of every loss must be investigated. • Lessons must be drawn and amendments made to the security plan if necessary.
15.	Details of response force arrangements (e.g. size, response time, orders, means of activation and deployment).	<p>How and when to activate the site's guard response force? Expected response times and actions.</p> <p>How to contact the police/security forces?</p> <p>How long will it take them to respond?</p>
16.	Actions to be taken in response to activation of alarms.	Who must deploy where when an alarm is sounded?
17.	Security actions to be taken in response to security emergency situations (e.g. robbery, attack).	Clear instructions on the use of force, on alerting police and security services, and on post-event investigation.
18.	Security actions to be taken in response to non-security emergency situations (e.g fire or flood).	You must have procedures in place to coordinate activities of rescue and emergency teams with the security needs of the site (access in times of emergency, securing keys, avoiding theft during the confusion).

Sources: This plan has been adapted from the OSCE (2003a) 'Best Practice Guide on National Procedures for Stockpile Management' by Michael Ashkenazi of the Bonn International Centre for Conversion (BICC) and is part of a chapter on stockpile security in Bevan (2008a).

LIST OF ABBREVIATIONS

DoD	(United States) Department of Defense	MANPADS	Man-portable air defence systems
IED	Improvised explosive device	RPNGC	Royal Papua New Guinea Constabulary
LAW	Light anti-tank weapon		

ENDNOTES

- 1 It is worth noting that the SS109 and .223 Remington are not entirely interchangeable. The military SS109 differs from the civilian .223 in having a higher gas pressure. This means that, while the .223 can be fired from weapons intended for the civilian market, when fired from military rifles it delivers lesser performance than the SS109. Conversely, firing the SS109 from civilian-specification rifles can cause excessive stresses to the weapons and may present a danger to the user.
- 2 Field research in Kenya, Uganda, and Sudan. Conducted by James Bevan, 2005–08.
- 3 Size should not be overemphasized as a factor in diversion. In 1997, for instance, one person was convicted of stealing a Sheridan light tank, 17 armoured personnel carriers, and 136 other vehicles from the Fort McCoy Army Base (JIG, 2000).
- 4 Field-based ammunition tracing conducted by James Bevan for the Small Arms Survey, 2006–08.
- 5 Field-based ammunition tracing conducted by James Bevan for the Small Arms Survey, 2006–08.
- 6 See for instance the United Nations Sanctions Committee report on the Democratic Republic of Congo, which noted: 'The failings in the establishment, management and sharing of arms inventories in the Democratic Republic of the Congo are factors that facilitate illegal appropriations or diversions. The few databases that do exist are too inaccurate to enable an efficient enquiry' (UNSC, 2006, para. 24).
- 7 Field-based ammunition tracing conducted by James Bevan for the Small Arms Survey, 2006–08.
- 8 For further information on accounting, see OSCE (2003a, p. 8; 2003b, p. 4).
- 9 Diversion of this type is not restricted to domestic security forces. In September 2006, for instance, the South African Defence Minister, Mosiuoa Lekota, reported that '50,000 rounds of ammunition, 97 mortar bombs, 46 R-4 assault rifles, three light machine guns, two pistols and two grenades had been lost or stolen in the course of [South African] peace-support missions' in Burundi, the Democratic Republic of Congo, and Sudan (Glatz and Lumpe, 2007, pp. 85–86).
- 10 Presentation by Dr Owen Green to the Joint Arms Control Implementation Group (JACIG), RAF Henlow, United Kingdom, 19 September 2007.
- 11 State Department Official cited in Stohl, Schroeder, and Smith (2007, p. 124).
- 12 The seven countries noted by Florquin and Berman (2005) are: Côte d'Ivoire (p. 249), Guinea-Bissau (p. 290), Liberia (p. 302–03), Mali (p. 313), Nigeria (p. 341), Senegal (p. 362), and Sierra Leone (p. 372).
- 13 See Bevan and Dreyfus (2007, p. 296) for a breakdown of ammunition by age alongside political events in Ugandan history (Figure 9.4). See also Bevan (2008b) for an assessment of the distribution and impact of armed violence in Karamoja.
- 14 UN daily, weekly, and monthly security summaries kindly provided by the UN Field Security Office, Gulu.
- 15 Expenditure is a relative concept, and it is worth noting that some states have minimal budgets for enhancing the security of national stockpiles. A growing number of stockpile assistance programmes, however, offer technical assessments of security requirements and can provide states with advice concerning potential donors for security enhancements.
- 16 See, for instance, the case of a Dallas police officer whose 9 mm pistol and 46 rounds of ammunition were stolen after he had left his gun belt on the seat of his vehicle while playing basketball (Eiserer, 2007).
- 17 See, for instance, Klein and Dvorak (2006) for a reported theft from a desk within a police station. The gun was later used in at least three shooting incidents and a robbery.
- 18 Field research conducted by James Bevan in Kenya, Sudan, and Uganda, 2005–07.
- 19 Report of a Ukrainian state-instigated investigation cited in Kuzio (2002). See also JIG (2002) and interviews conducted with Ukrainian officials at the Ministry of Foreign Affairs, with former government officials at the Ministry of Economy by International Alert (von Tangen Page, Godnick, and Vivekananda, 2005).
- 20 These logistical reasons stem from economies of scale in which it is more effective for the branch of the armed forces that uses the majority of a particular type of weapon to assume responsibility for managing all stocks of that system in the national stockpile.

- 21 See, for instance, analysis of the role of state-armed militias in the collapse of the Somali state by Clapham (2007, pp. 231) and Compagnon (1998, pp. 76–77).
- 22 See, for example, UNICEF and Guinean government programme to disarm, demobilize, and reintegrate members of the Guinean government-supported 'Young Volunteers' militia (Florquin and Berman, 2005, pp. 280–81).
- 23 Trinitrotoluene.
- 24 Cyclotrimethylenetrinitramine.
- 25 These countries were Australia, Canada, England and Wales, Finland, Norway, Philippines, South Africa, Spain, Sweden, and the United States. See table on page 63 of Karp (2004).
- 26 It is important not to overlook theft from homes that is not associated with burglaries. One of the best-publicized examples has been the use of diverted arms and ammunition in school-related shooting incidents in the United States. Between 1992 and 1999, for instance, around 37.5 per cent of firearms used in school-related shootings that resulted in homicide involved weapons that had been sourced from the home of the perpetrator (Reza et al., 2003, p. 1626). Available evidence suggests that many juveniles had access to arms and ammunition because of poor domestic security.
- 27 Mean average of shotgun, rifle, and handgun thefts for the years 1986–2005. Data from UKHO (2000; 2001; 2003; 2004; 2005; 2006; 2007).
- 28 UKHO (2000; 2001; 2003; 2004; 2005; 2006; 2007).
- 29 The Act did not ban muzzle-loading guns, pistols produced before 1917, or pistols of historical or aesthetic interest.
- 30 Normative changes in the way British society views firearms in the aftermath of the March 1996 Dunblane shooting are difficult to assess, but cannot be ignored as another potential source of reduced firearm theft. It is quite plausible that many firearm-owning residents began increasingly to view firearms as dangerous and either disposed of them or took steps to ensure that they were better secured, regardless of national regulations or police policies. Either course of action could have an impact on gun theft rates.
- 31 Thefts: UKHO (2000; 2001; 2003; 2004; 2005; 2006; 2007). Firearm inventory estimate: correspondence with Aaron Karp. The figure 1,179,056 is an estimate used to generate findings for the Small Arms Survey (2006, pp. 37–63).
- 32 Thefts: UKHO, (2000; 2001; 2003; 2004; 2005; 2006; 2007). Firearm inventory estimate: Small Arms Survey (2004, p. 63). Firearm inventory refers to pre-1997 Act numbers (1996) and probably overestimates civilian holdings.

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Who's Buying?

END-USER CERTIFICATION

INTRODUCTION

For as little as USD 200, an arms trafficker can buy a blank end-user certificate (EUC) from the right (corrupt) government official. After filling in the date, supplier name, and item description, the trafficker uses this document to procure and transport war material to the destination of his choice. The blank EUC has the necessary signatures and stamps. If no one checks its authenticity—often the case—he can ship his wares to the world's hot spots with minimal risk, for maximum profit.

EUCs and other kinds of end-user documentation constitute a key line of defence against the diversion of authorized small arms transfers to unauthorized—often illicit—end-users and end uses. These documents, however, are effective only in the context of a broader system that includes a thorough consideration of diversion risks at the licensing stage, the verification of end-user documentation, and complementary post-shipment controls.

The 2007 edition of the *Small Arms Survey* focused on the criteria states need to consider when authorizing transfers of small arms and light weapons in a responsible manner. These criteria, typically rooted in international law, include respect for international humanitarian and human rights law in the recipient state (Small Arms Survey, 2007, ch. 4). Yet this is only half of the story. At the time of licensing and even beyond, it is also important that states ensure that weapons and ammunition, once transferred outside their territory, are not diverted to unauthorized end-users and end uses. This chapter examines the task of ensuring 'effective control' over small arms transfers (UNGA, 2001b, para. II.12), with a specific focus on end-user systems and documentation.

The chapter's principal conclusions include the following:

- The basic components of systems designed to prevent small arms shipments being diverted to unauthorized end-users or used for unauthorized purposes appear to be in place in the world's leading exporting states.
- It is unclear, however, whether the discretion these systems tend to grant individual licensing officials aids or impedes the diversion prevention task.
- Most governments provide very little information on the policies and practices they use in assessing diversion risks at the time of licensing.
- Nor do states indicate whether they systematically verify end-user documentation in advance of export.
- While it may make sense to devote the lion's share of resources and attention to licensing, post-shipment controls help reinforce and improve pre-shipment risk assessment.
- Practice among the ten leading exporters, however, indicates that these measures are underutilized (delivery verification) or largely neglected (end-use monitoring).
- States have yet to demonstrate that they are fulfilling their commitment under the *UN Programme of Action* 'to ensure the effective control' of small arms transfers (UNGA, 2001b, para. II.12).

The chapter examines the problem of diversion in its first section, focusing on the manipulation of end-user documentation by illicit traffickers. In subsequent sections it outlines the main features of systems designed to prevent the diversion of authorized arms transfers, reviews relevant international standards and best practices, and analyses national practices among leading exporting states. The policy implications of this discussion are elaborated in the chapter's final section and in its conclusion. The chapter concentrates throughout on end-user documentation and other elements of end-user systems. As such, it complements the broader discussion of transfers diversion and diversion prevention found in Chapter 4 (TRANSFER DIVERSION).

DIVERSION: A QUICK GUIDE

It is worth recapping some of the main features of diversion as it affects international arms transfers. These are discussed at much greater length in Chapter 4 (TRANSFER DIVERSION). While this chapter will mostly refer to the diversion of 'weapons' or 'small arms', this is merely shorthand for the diversion of small arms and light weapons, their ammunition, and parts and components.

For the purposes of this chapter, the term 'diversion' refers to a breakdown in the transfer control chain such that, either before or after arriving at their intended destination, exported weapons are transferred to unauthorized end-users or used in violation of commitments made by end-users prior to export. This definition of diversion covers both unauthorized possession and



Parts of a US-made AR-15 rifle are removed from a box at a customs warehouse in Manila as part of an investigation into an alleged coup plot, June 2005. © Pat Roque/AP Photo

use. As understood here, diversion is not simply the movement of arms from the legal to illicit spheres, but rather an *unauthorized* change in possession or use that has this result. A deliberate government decision to transfer, or allow the transfer, of legal arms to an illicit end-user would not count as ‘diversion’ under this definition. Diversion occurs, rather, when a state loses control over transferred weapons and thus inadvertently—but often negligently—fuels the illicit trade.

The arms transfer chain involves a shift in control at four distinct stages: licensing, in-transit movement, delivery, and post-delivery use and retransfer. An initial opportunity to combat—indeed prevent—diversion comes at the licensing stage. Licensing criteria, procedures, and documentation are all used for this purpose—while the weapons are still under the jurisdiction of the exporting state. Opportunities for transfer diversion arise once the weapons clear customs at the port of export.

Brokers and transport agents act as intermediaries and facilitators for much of the legitimate small arms trade. In certain cases, however, these actors intervene to divert weapons as they transit between the states of export and declared import—usually by exploiting gaps in national and international regulation. Although this chapter does not focus specifically on illicit brokering and transport, the diversion methods and preventive measures it discusses are as relevant to these activities as to other aspects of the illicit trade. The 2008 transfers chapter provides additional information on diversion techniques, including those used by brokers and transport agents (TRANSFER DIVERSION).¹



The arms consignment's arrival at its intended destination, far from representing an end to diversion risks, opens up new possibilities. The authorized end-user may use the weapons in contravention of the agreement struck with the exporter or exporting state. The end-user may also—*intentionally*—retransfer the arms in violation of initial undertakings. Alternatively, poor stockpile management and security in the originating or destination countries, often exploited by corrupt officials, may result in an *unintentional* loss of control over the material and its consequent diversion to armed criminal or rebel groups (STOCKPILE DIVERSION).

As already mentioned, this chapter focuses on systems used at the licensing stage to confirm the intended (and actual) end-user, and thereby minimize the risk of diversion. It also discusses measures, such as delivery verification and non-retransfer undertakings, that are frequently incorporated in end-user commitments. Licensing offers exporting states their best opportunity to prevent the diversion of weapons and ammunition; yet this is also where illicit traffickers focus their attention. Once they obtain an export licence, it is usually relatively easy to get weapons past the customs authorities in the exporting country and transport them to the (undeclared) destination of their choice (Griffiths and Wilkinson, 2007, sec. 6.1).

When applying for an export licence, a small arms manufacturer or dealer normally provides the national licensing authority with an end-user certificate (EUC) or similar documentation detailing the basic elements of the proposed transaction, including the type and quantity of weapons for export, as well as the end-user and end use of the goods. Illicit traffickers use false end-user documentation, or falsify information in otherwise valid documentation, to obtain such licences. Illicit EUCs take three main forms: forged, government-issued without 'follow-up service', and government-issued with 'follow-up service'.

Illicit traffickers use false or falsified documentation to obtain an export licence.

Forged EUCs. Despite appearances, forged end-user documents are not issued by the state or other (commercial) entity they are supposed to represent. The broker that diverted Nicaraguan arms to Colombian rebels in the Otterloo case apparently acquired a blank Panamanian Police purchase order, then forged the necessary signatures to produce the sham EUC used in that deal (OAS, 2003). Obvious forgeries can still be effective. A Polish licensing officer approved the sale of weapons to Yemen (in fact, Croatia) on the basis of an EUC that was supposed to have been issued by the 'People's Democratic Republic of Yemen', even though this country had ceased to exist two years earlier (UNSC, 2003, paras. 41–45, Annex V). In some cases a genuine EUC, provided by a friendly government, is used as a model to generate a series of forgeries (UNSC, 2000, paras. 43, 49, 55).

Government-issued, no service. A second type of illicit EUC is acquired from a corrupt government official with no provision for subsequent authentication by that official. Such an EUC is issued by a government authority and signed by an authorized official who knows it will be used to facilitate an illicit transaction, but will not pretend the document is valid if questioned by export licensing authorities. EUCs of this type have been widely used in illicit arms deals, especially in Africa, during the post-cold war period. In the experience of one observer, the fee exacted by corrupt officials for these EUCs has ranged from USD 200, in the case of a Rwandan-origin document, to USD 2,000 for an EUC signed by a government official in Chad (Johnson-Thomas, 2007).

The Rwandan EUC just referred to features in a story of pseudo-illicit trafficking recounted elsewhere in this volume (COMIC STRIP). Acquired in 2003, the document was issued on Rwandan Defence Ministry letterhead and signed by an authorized representative of the ministry with crucial information omitted, including contract number, date, supplier name, and a description of the material (Johnson-Thomas, 2007). Arms traffickers subsequently fill in these details when arranging a sale to a buyer other than that declared on the EUC. The same EUC, if copied, can

also be used to fill more than one order, a task made easier by the simplicity of the document in question. The Rwandan EUC, with its uncomplicated letterhead and language, is similar to those issued by several other developing country defence ministries and armed forces (see Griffiths and Wilkinson, 2007, sec. 6.1).

An exporting state can easily ascertain the illicit nature of the two types of EUCs described above (forged and government-issued, no service) provided it checks the information with the declared country of import. Verification is more difficult for a third category of illicit EUC.

Government-issued, full service. This last type of illicit EUC is also procured from a corrupt government official, but in this case a full ‘follow-up service’ is included in the package. Though perfectly aware of the illicit nature of the transaction, the official undertakes to reassure any exporting country officials that seek such assurances that the proposed transaction is legitimate and for the benefit of the state that has issued the EUC. In these, much rarer, cases the fee for the corrupt official is far higher—in some cases a percentage of the total value of the proposed deal (Johnson-Thomas, 2007).

Simple checks with the declared country of import will unmask many illicit EUCs.

CONTROL MEASURES

In this section, the chapter presents norms, instruments, and systems designed to prevent the diversion of small arms transfers, with a specific focus on end-user certification and verification. It begins, however, by sketching out the basic features of transfer control systems. Although the chapter provides background information on diversion prevention measures, readers should consult Chapter 4 for a more detailed treatment (TRANSFER DIVERSION).

Transfer control basics

Before grappling with the details of end-user documentation and procedures, it is useful to situate them in broader context. Under the *UN Programme of Action* states have agreed:

to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons. (UNGA, 2001b, para. II.11)

The OSCE *Handbook of Best Practices*, while noting that ‘[t]here is no single model for an export control system’, identifies ‘certain features which any export control system needs to have to be effective: a legal basis, an export policy, a decision-making mechanism, and an enforcement mechanism’ (OSCE, 2003, ch. V, p. 2).

Legal basis. National transfer control systems should be based in law. This is reflected in paragraph 2, section II of the *Programme of Action*, which requires states ‘[t]o put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control . . . over the export, import, transit or retransfer’ of small arms and light weapons (UNGA, 2001b).

Export policy. National laws and regulations should reflect the state’s international obligations and commitments. Additional policy guidance is incorporated in national legislation and/or policy documentation. Both the Nairobi and OSCE best-practice guides underline the importance of transparency in the formulation and implementation of

national export policy. National parliaments and civil society also have a role to play in its formulation (*Nairobi Best Practice Guidelines*, 2005; OSCE, 2003).

Decision-making mechanism. The two best-practice guides state that a licence or permit should be required for any transfer of small arms or light weapons. They recommend keeping exceptions to a minimum. In such exceptional cases, a simplified licensing procedure is preferable to a complete exemption. Among their key recommendations:

- That the authorizing state ensure it receives from the state of import an import licence or other official authorization. The transfer of small arms and light weapons is, fundamentally, a shared responsibility between exporting and importing states;
- That the authorizing state ensure that appropriate transit authorizations have been issued; and
- That licensing decisions are shared across government, with all competent authorities involved (*Nairobi Best Practice Guidelines*, 2005; OSCE, 2003).

The best-practice guides underline the need for information exchange and cooperation. **Enforcement mechanism.** The Nairobi and OSCE best-practice guides note that national transfer control legislation should provide for the investigation, prosecution, and punishment of transfer control violations. This requires effective penalties—which, depending on the case, may involve the revocation of licences, fines, and/or criminal sanctions—as well as customs supervision. Customs authorities intervene, not only at the point of import, but also when the weapons leave the state’s territory. The best-practice guides underline the need for information exchange and cooperation between arms licensing and enforcement officials, and also among the different agencies dealing with enforcement within the state. Cooperation among enforcement agencies in different countries is also important to the effective prosecution of transfer control violations (*Nairobi Best Practice Guidelines*, 2005; OSCE, 2003).

Preventing diversion

No matter how sophisticated a country’s transfer licensing system, the job is only half done if it takes no steps to prevent weapons shipments from being diverted to unauthorized end-users or used for unauthorized purposes. After presenting the normative framework at the multilateral level, this section outlines the main features of national systems designed to prevent diversion.

Multilateral measures

Section II, paragraphs 11–13 of the *UN Programme of Action* set out the basic commitments in this area (UNGA, 2001b). Paragraph 11 requires states to take account of diversion risks in authorizing small arms exports. Paragraph 12 underlines the need for ‘effective control’ over small arms exports and transit, making specific reference to ‘the use of authenticated end-user certificates’, while paragraph 13 relates to the retransfer of weapons by an initial recipient.

These provisions, applicable to all UN member states, provide a useful normative framework for the prevention of diversion. Yet they lack the level of detail and operational specificity that would foster their translation into national laws, regulations, and administrative practices (Greene and Kirkham, 2007, p. 10). There is, however, nothing more specific at the universal level in relation to small arms. Proposals for the establishment of a UN group of governmental experts on end-user certification, made at the 2006 UN Programme of Action Review Conference, did not gain consensus support despite broad acknowledgment of the issue’s importance (see *Small Arms Survey*, 2007, p. 123).

More detailed, operationally oriented norms can be found in some regional and (non-universal) multilateral instruments. With respect to the prevention of diversion generally, these include: the *Illicit Firearms Convention* and

Model Regulations of the Organization of American States (OAS, 1997; 1998); the *OSCE Document* (OSCE, 2000); the *UN Firearms Protocol* (UNGA, 2001a);² the *Nairobi Protocol* (2004); and best-practice documents produced by the Wassenaar Arrangement (WA, 2000; 2002), the Organization for Security and Co-operation in Europe (OSCE, 2003), east African states (*Nairobi Best Practice Guidelines*, 2005), and the European Union (EU Council, 2007).

States have agreed to exercise especially close scrutiny over the export of man-portable air defence systems (MANPADS). Instruments adopted by the Wassenaar Arrangement (WA, 2003a), OSCE (2004a), and OAS (2005) mandate strict controls over the international transfer of MANPADS in order to minimize the risk of their diversion (see *Small Arms Survey*, 2005, ch. 5).

Multilateral measures focusing on end-user certification are few in number, yet important. They include the *OSCE Handbook of Best Practices* (2003, ch. V) and *Standard Elements* (OSCE, 2004b), the *Nairobi Best Practice Guidelines* (2005, sec. 2.1.e), the Wassenaar Arrangement *Indicative List* (WA, 2005), and the *EU User's Guide* (EU Council, 2007, ch. 2). The chapter does not review these instruments in detail, but instead refers to them selectively as it completes its mapping of systems—especially end-user systems—designed to prevent diversion.



Men exchange money for weapons over tea in a Baghdad home, June 2007. © Karim Kadim/AP Photo

National systems³

This section reviews the constituent elements of national systems designed to verify the identity of end-users and prevent arms transfer diversion. It draws on elements of (good) national practice, as well as multilateral norms and instruments.

Arms transfer licensing is instrumental in preventing diversion further down the transfers chain. An important part of the licensing task involves the thorough consideration of diversion risks before any transfer authorization (UNGA, 2001b, para. II.11). Industry has a contribution to make to such assessments (GRIP et al., 2006; WA, 2003b). Diversion risks that need to be considered at the licensing stage relate to: the intermediaries involved in the transaction, including brokers and transport agents; the capacity of the end-user and importing state to retain control over the weapons; and the intentions of the end-user regarding weapons end use and retransfer (Greene and Kirkham, 2007, p. 13). Concerns surrounding potential diversion may be sparked, for example, by an application to export weapons that are not known to be used by an importing state's armed forces, or if prospective destination countries or end-users are known—or suspected—to have illicitly trafficked arms or violated retransfer restrictions.⁴

As part of its licence application, an arms exporter normally provides the national licensing authority with documentation—such as an EUC—identifying the material to be transferred, destination country, end-user, and end use (see EU Council, 2007, sec. 2.1.2; OSCE, 2004b, para. 1). These documents often also include undertakings by the end-user regarding the use and retransfer of the weapons it receives.

Arms transfer
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In relation to end use, the recipient typically undertakes not to use the weapons for other than declared purposes (see *Nairobi Best Practice Guidelines*, 2005, sec. 2.1.e; WA, 2005). As reflected in national practice and various international instruments, undertakings concerning retransfer take a variety of forms. From most to least restrictive, these include: an absolute ban on re-export; subjecting any re-export to the prior authorization of the exporting state; allowing re-export without the authorization of the exporting state, but only to certain countries; allowing re-export provided it is authorized by the export licensing authorities in the end-user state; and mere notification of the exporting state in case of re-export (EU Council, 2007, sec. 2.1.3; *Nairobi Best Practice Guidelines*, 2005, sec. 2.1.e; OSCE, 2004b, para. 1; WA, 2005).⁵

Such undertakings tend to feature in small arms and light weapons exports to foreign state entities. Export agreements with commercial entities, on the other hand, may stipulate that transferred weapons are to be resold only on the domestic commercial market or in states identified as part of the transfer authorization.

End-user documents may originate in either the country of export or the country of import. They are signed and stamped by the prospective end-user and/or importing state government. Verification of such documentation, along with the information it contains, is an essential aspect of the licensing process (*Nairobi Best Practice Guidelines*, 2005, sec. 2.1.e; OSCE, 2004b, para. 3). A failure to verify end-user documentation and information is the primary facilitator of many cases of diversion (Griffiths and Wilkinson, 2007, sec. 6.1).

As explained earlier, an EUC may be forged or, though genuine, may not reflect the actual end-user or end use of transferred weapons. For these reasons, national licensing authorities need to check that end-user documents have been issued and signed by the right agencies. This assessment may be carried out by the exporting state's diplomatic mission in the country of prospective import (see Greene and Kirkham, 2007, p. 17). For commercial exports, licensing authorities often try to confirm that the end-user is operating a legal and reputable business in accordance with the laws of the importing state.⁶ Even when thoroughly vetted, however, end-user documents cannot substitute for a broader consideration of diversion risks at the licensing stage (Anders, 2005, sec. 4.2).

Box 5.1 Common end-user documentation

Documentation required by national export authorities in support of a licence application usually depends on the type, destination, and end-user of transferred weapons. If small arms and light weapons are to be exported to a foreign state entity, the latter is often asked to submit an 'end-user' (or 'end-use') certificate. Any restrictions on retransfer contained in the certificate apply to the importing state. Exports of small arms to commercial markets often necessitate the prior provision of an 'international import certificate' and sometimes an 'end-use statement'.

International import certificates are signed and stamped by the authorities of the importing state. They confirm that the importing government is aware of, and does not object to, the proposed transfer to the commercial entity or individual. The importing state does not commit to any restrictions in relation to such weapons. 'End-use statements' are signed and stamped by the commercial importer. Any retransfer restrictions they contain apply to the commercial importer.

National export authorities may also ask a licence applicant to submit proof of delivery to the authorized end-user or importer. A 'delivery verification certificate', confirming this, is issued to the exporter by the customs authorities of the importing state. Most often, such a certificate is requested, along with an international import certificate, for exports of small arms to a foreign commercial importer.

Source: Anders (2007)

Diversion risks are further minimized by securing, in advance of export, the cooperation of interested states. For example, States Parties to the OAS *Firearms Convention* and the *UN Firearms Protocol* must ensure, before exporting firearms, that the import and transit states approve the transfer, or at least indicate they have no objection to it (OAS, 1997, art. IX; UNGA, 2001a, art. 10(2)).

Diversion remains an issue long after the transfer is authorized. Post-shipment controls, such as delivery verification and end-use monitoring, help ensure that weapons arrive at their intended destination and that end-users comply with any restrictions on use or retransfer imposed in connection with the export. Licensing systems can play a role here as well, establishing a framework for cooperation between exporting and importing countries after the weapons have been exported. End-user documentation may stipulate that delivery be confirmed (EU Council, 2007, sec. 2.1.3; OSCE, 2004b, para. 1; WA, 2005). A few exporting countries also use these documents to secure permission to verify the possession and use of exported weapons in the recipient state.

Delivery verification allows exporting states to check whether weapons have been diverted en route to the importing country. It can also serve to deter such diversion. Yet it offers no protection against diversion occurring after the time of delivery. End-use monitoring can be used for this purpose, but, as the next section demonstrates, is quite exceptional in practice. When used at all, end-use monitoring tends to be ad hoc and dependent on voluntary cooperation from the importing state. Only a small number of countries systematically provide for end-use monitoring at the licensing stage.

Ad hoc end-use checks are usually initiated in response to allegations that a specific end-user is not respecting restrictions on end use or retransfer. This information may come from government sources, NGOs, or the media. End-use checks may include a request by the exporting state to the importing state to clarify in writing the actual use of exported weapons.⁷ Unless end-use undertakings are included in the contract between exporter and importer, there is often no legal remedy if they are violated. Most often, end-user undertakings take the form of a 'declaration of honour'. The principal sanction available to export authorities when commitments of this type are breached is to deny future export licences for the same destination or end-user. As indicated below, a few countries have made this national policy.

Sample EUCs of Brazil,
Germany, and the
United States.

NATIONAL PRACTICE

This section looks at the extent to which states are using the norms, instruments, and systems described earlier for purposes of verifying end-users and preventing diversion. The chapter uses the term ‘national practice’ to refer to relevant legislative frameworks (laws and regulations), as well as administrative practices.

Ten-country study⁹

This section reviews (in alphabetical order) end-user certification practices in the world’s leading exporters of small arms and light weapons: Austria, Belgium, Brazil, Canada, China, Germany, Italy, Japan, the United Kingdom, and the United States (Small Arms Survey, 2007, p. 74).⁹ Given the volume of their annual exports, one would expect these countries to have relatively well-developed end-user certification systems. Whether they do is the subject of the following study. Any shortcomings, especially if systematic, are likely indicators of problems among other exporters.

Austria

In Austria, the *Kriegsmaterialgesetz* (*War Material Act*; Austria, 2005a) regulates exports of ‘war material’, a category which encompasses semi-automatic carbines and rifles, all automatic small arms, and all light weapons (Austria, 1977, arts.1–4). Exports of weapons not considered war material, such as revolvers and semi-automatic pistols, are regulated by the *Aussenhandelsgesetz* (*Foreign Trade Act*; Austria, 2005b). Under both regimes, an export licence may be made subject to the submission of an end-use statement (Austria, 2005a, art. 3.2; 2005b, art. I, para. 28.2.1). For non-war material, a delivery verification certificate may also be required (Austria, 2005b, art. I, para. 28.2.1). Austrian licensing authorities decide whether to certify end-users or delivery on a case-by-case basis, depending on the type, quantity, or destination of the equipment, as well as any concerns that may exist in relation to end use (Austria, 2006, p. 3; EU Council, 1998).

The end-use statements submitted to the Austrian export control authorities include: a detailed description of the goods to be exported, their quantity and value, details of the supplier, the country of final destination, and details of end use, purchaser, and/or ultimate consignee (end-user). These statements are signed by the purchaser and end-user who undertake, in particular, to use the goods only as indicated in the statement and not to re-export them to third countries

without the approval of the Austrian government. Weapons that are not considered ‘war material’ may be re-exported without Austrian government approval to EU member states, plus Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, and the United States (Austria, n.d.).¹⁰ Austria rarely undertakes post-delivery checks of exported weapons.¹¹

Belgium

Belgian legislation governing small arms and light weapons exports requires that licence applications be accompanied by an international import certificate or end-use certificate (Belgium, 2003b, art. 5.1). Those exporting from Belgium must also provide the exporting state¹² with proof of delivery to the destination country and importer within three months of such delivery. This may take the form of a certificate in which the customs authorities of the importing state attest that the importer has received the exported equipment (Belgium, 2003b, art. 7). The legislation also specifies that export licences may be made conditional on a commitment of no re-export without prior approval, and further that licence requests must be rejected if recipients in the country of destination have failed to comply with such commitments in the past (Belgium, 2003a, arts. 3, 4.4.e).

In practice, Belgian export authorities do not require an end-use certificate if the destination country is an EU or North Atlantic Treaty Organization (NATO) member. For exports of small arms and light weapons to these states, as well as some additional states, such as South Africa,¹³ an international import certificate must be supplied. For other countries, end-use certificates must be produced by the authorities of the recipient state. These may be verified by Belgium’s diplomatic services abroad, and often include a commitment not to re-export the weapons without first notifying the Belgian authorities (Belgium, Walloon Government, 2006, p. 18; EU Council, 1998). Belgian export officials have some discretion in their choice of procedures and requirements. Verification of EUCs and inclusion of no-re-export clauses are required, in principle, but exceptions are made on a case-by-case basis.¹⁴

Belgian export officials have some discretion in their choice of procedures and requirements.

Brazil

Under Brazil’s *Decreto no. 3.665* (Brazil, 2000a), all exports of small arms and light weapons must be authorized by the Brazilian army. Export licence applicants need to supply an end-user certificate, international import certificate, or confirmation by Brazil’s diplomatic missions abroad that the import is not subject to legal restrictions in the importing country (Brazil, 2000a, art. 178.1–2; 2005, pp. 9–10). The army determines when an end-user or international import certificate is required (see Dreyfus, Lessing, and César Purcena, 2005, p. 57). End-user certificates must indicate the quantity, description, and value of the exported equipment, as well as the exporter, importer, final purchaser, and final destination. The final purchaser certifies that the imported equipment will be used only for the purposes stated in the certificate (Brazil, 2000b).

Exports of military small arms and light weapons are subject to additional controls under the *Política Nacional de Exportação de Material de Emprego Militar* (Brazil, 2005, p. 10). It is again the army that determines whether weapons are military or civilian in nature (see Dreyfus, Lessing, and César Purcena, 2005, p. 57). Information on these additional controls is not publicly available.

Canada

Canadian legislation on small arms exports derives from the *Export and Import Permits Act* (Canada, 2007a) and the related *Export Permits Regulations* (Canada, 2007b). End-use documentation is required for all licence applications. It may take the form of an end-use certificate, an international import certificate, or an import permit issued by the

government of the importing country. Irrespective of the form the document takes, it must identify the exporter, importer, final consignee (recipient), and intended end use of the exported equipment (Canada, 2007b, sec. 3.1.j).

End-use statements from commercial businesses in the importing country are accepted for 'sporting' (non- and semi-automatic) firearms. Canada's diplomatic missions abroad verify whether the business is 'reputable' (Canada, 2006b, p. 9). These end-use statements must provide full information about the goods, their end-user, and intended

Box 5.2 State-to-state transfers

Governments often sell or supply small arms and light weapons directly to other governments, especially those that are surplus to national requirements. They may also facilitate the sale of arms to foreign governments from companies within their territory. How are end-users certified in such cases?

The following text represents a preliminary attempt to answer this question. Although its findings appear valid for the majority of EU and Wassenaar Arrangement states, no firm conclusions can be drawn in relation to the much broader range of arms-exporting countries worldwide. The research task is complicated by the fact that law and practice governing state-to-state transfers is sometimes distinct from that regulating private commercial exports. In some cases state-to-state transfer is conducted, above all, on the basis of government policy, which is less easily accessed by the public than is legislation.

In many EU and Wassenaar Arrangement states, state-to-state transfers are treated no differently from private commercial sales. Export licences are issued upon fulfilment of the same end-user certification requirements that apply to commercial exports. These requirements may be waived or relaxed for certain reasons (for example, when the purchaser is a 'friendly' government), but this is not typically influenced by the nature of the transaction, whether state-to-state or commercial.

Two cases, drawn from the principal exporters list, give some sense of current practice in this area.

United States

The United States allows foreign states to acquire US military systems or defence items by:

- purchasing items from the US government (USG) through the foreign military sales programme (FMS); or
- purchasing items directly from arms-producing companies in the United States (direct commercial sales /DCS).

Only certain states are deemed FMS eligible by the US president, and some sensitive items are designated 'FMS only', meaning they can be acquired only through that programme. The US Department of Defense provides items acquired under FMS contracts from its own stocks¹⁵ or procures them from private contractors.

In practice, there is little difference between DCS and FMS transactions with respect to end-use or end-user undertakings. As part of their export licence application, DCS exporters must ensure that a statement is incorporated in the sales contract confirming that the items to be exported will not be transferred, transhipped, or otherwise disposed of without the prior written approval of the US government. No export licence is required for an FMS transfer, but the Letter of Acceptance (LOA) that authorizes the transaction includes a commitment from the purchaser not to transfer or dispose of the items, nor use or permit their use, for purposes other than those authorized without the written consent of the US government. In the LOA, the purchaser also agrees to permit scheduled inspections of physical inventories upon US government request, except when other forms of end-use monitoring have been mutually agreed.

Canada

Canadian government-to-government sales sometimes also involve the supply of arms that are not simply surplus to Canadian defence force requirements. The companies involved, however, must still apply for export permits and provide end-use certificates.

Most of Canada's government-to-government sales are with the United States. Under the terms of the Defence Production Sharing Agreement (DPSA), signed by Canada and the United States in 1956, an export licence is not required for many items on Canada's export control list if the final destination is the United States. Nevertheless, an export licence is required for the export of small arms and light weapons¹⁶ to the United States. The end-use certification requirements applicable to commercial sales apply equally to state-to-state sales of such weapons.

end use. They may include a declaration by the final consignee that the goods will not be re-exported or that any retransfer will respect the legislation of the country of final destination. Export authorizations for small arms and light weapons may be conditioned on the provision of a delivery verification certificate (Canada, 2006a, pp. xv–xvi).

China

China's *Arms Export Regulations* require end-use certification from the importing state for all small arms and light weapons exports (China, 2002, art. 15; 2003a, p. 4). Chinese export officials may require that the end-user and/or importing country issue end-user certificates and international import certificates for this purpose. These documents are authenticated by China's diplomatic missions abroad. They must identify the end-user and intended end use of the equipment, and may include an undertaking not to modify the end use from that stated in the certificate or transfer the goods outside the state of final destination without the permission of the Chinese government (see China, 2003b).¹⁷

Germany

German export control legislation distinguishes between 'war weapons'—which include semi-automatic rifles, all automatic firearms, and light weapons—and small arms, such as non-automatic pistols and revolvers (Germany, 2007a; 2007b). Applications for the export of all small arms and light weapons must include documentation identifying the recipient, the final consignee or end-user, and the end use (Germany, 2007b, arts. 5.1, 17.2). The form this documentation takes depends, in particular, on the nature of the weapons being exported. German export authorities may also require that a delivery verification certificate be provided (Germany, 2005, p. 29). Political guidelines on arms exports stipulate that licence applications to export war weapons to states that have previously failed to respect end-user undertakings will be denied until the risk of diversion has been removed (Germany, 2000, para. IV.4).

Those seeking to export war weapons must submit an end-use certificate that is provided by the government of the importing state (Germany, 2000, para. IV.2; 2005, p. 29). End-use certificates must identify the goods, their quantity and value, the supplier, and the final consignee. They include a declaration by the final consignee that the goods are for the consignee's own use, will remain in the country of final destination, and will be used only as stated in the document. They also prohibit re-export without the approval of the German government (Germany, n.d., sample form 1; 2000, para. IV.2; 2005, p. 29).

For exports of non-war weapons, Germany requires that the commercial importer furnish an end-use statement, with the importing country issuing a complementary international import certificate.¹⁸ As provided in the end-use statement, non-war weapons can be re-exported, without German government approval, to EU member countries, Australia, Canada, Japan, New Zealand, Norway, Switzerland, and the United States (Germany, n.d., sample form 2).¹⁹

Italy

Legislation governing the export of small arms and light weapons from Italy obliges licence applicants to submit information identifying the type, quantity, and value of the equipment, the country of final destination, and the final consignee (Italy, 1990, art. 11.2.a–b). Applications for exports to states with which Italy has a 'reciprocal arms export control agreement' (those belonging to NATO and the Western European Union, WEU) are conditional on an international import certificate (Italy, 1990, art. 11.3.c.1). Applications for exports to all other states require the submission of an end-use certificate that is issued by the importing country (Italy, 1990, art. 11.3.c.2; 2003, sec. 3d). These EUCs include a declaration by the consignee that the country of final destination and the end use of the imported equipment are as stated on the certificate. They may also contain a clause prohibiting re-export without Italian government

Officials in Canada and Germany may require provision of a delivery verification certificate.

authorization. Italian diplomatic missions abroad have the task of verifying these documents (Italy, 1990, arts. 11.3.c.2, 11.4; 2003, sec. 3i).

Italian legislation also stipulates that small arms and light weapons exporters, irrespective of the destination, have to provide, within 180 days of delivery, a delivery verification certificate. The latter attests to the receipt of the exported equipment by the consignee in the country of final destination (Italy, 1990, art. 20.1.b). It appears Italy conducts no end-use monitoring after the time of delivery (Italy, 2003, sec. 3j).



An Italian policeman inspects a container after the seizure of more than 8,000 Kalashnikovs and other weapons on a ship at the southern Italian port of Gioia Tauro, April 2004. © Antonio Condorelli DJM/WS/Reuters

Japan

Under long-standing policy, Japan bans the export of small arms and light weapons for military use (Japan METI, 2002a). In practice, this means that Japan does not authorize the export of military small arms and light weapons to foreign governments or commercial importers. The export of non-military small arms is regulated by the *Foreign Trade and Exchange Law* (Japan, 1997) and its associated ordinance (Japan, 2006). Such exports require prior authorization (Japan, 1997, art. 48.1; 2006, art. 1.1). Licence applicants must submit information identifying the type of small arms for export, along with their intended end use, consignee/end-user, and country of final destination. Applicants may also be asked to submit a 'letter of assurance' from the consignee (end-use statement) regarding the country of final destination and intended end use (Japan METI, 2002b). Formal end-user certificates, signed by the authorities of the importing state, are not required (Japan, 2007, p. 11).

United Kingdom

The *Export Control Act* (UK, 2002) and its implementing orders²⁰ furnish the legislative framework for UK exports of small arms and light weapons. Export licence applicants must submit information identifying the exporter, consignee, exported equipment, intended end-user, and end use (UK, n.d.). Required end-user documentation may include end-user and international import certificates. The export of small arms and light weapons generally requires an end-user undertaking in which end-user and consignee provide certain written assurances concerning end use and retransfer. The consignee, for example, either certifies that the goods will not be re-exported from the country of final destination, or lists the countries to which the arms 'are likely to be transferred' (UK, n.d.). Exports of small arms to EU member states require an import permit in which the importing country confirms it has no objection to the importer's acquisition of the arms (UK, 2005, p. 12).

UK export policy requires that licensing authorities consider the 'risk that the equipment will be diverted within the buyer country or re-exported under undesirable conditions' (UK, 2000, criterion 7). The United Kingdom's strategy for preventing diversion emphasizes, above all, 'a thorough risk assessment at the licensing stage' rather than non-re-export clauses and end-use monitoring. UK licensing officials carry out checks to satisfy themselves of 'the end-user's reliability and integrity' before authorizing the export (UK, 2005, p. 13).

The UK will, however, conduct post-shipment monitoring of exported equipment, on a case-by-case basis, where it believes this 'can add value' (UK, 2005, p. 13). Desk officers in London are instructed to advise missions abroad of 'any approved arms licence that it is felt should be monitored post-export', while overseas missions have orders to inform London of 'any suspected mis-use, or diversion, of UK arms exports' (O'Brien, 2003). The UK, for example, has monitored the end use of military equipment exported to India and Israel on the condition that it not be used in Kashmir and the Palestinian territories, respectively. Diplomatic missions used information received from the UK government and other sources to determine whether any violation of end-use restrictions was occurring.²¹

The UK conducts post-shipment monitoring where it believes this 'can add value'.

United States

The *Arms Export Control Act* (US, 2005) and accompanying *International Traffic in Arms Regulations* (US, 2007) regulate the export of small arms and light weapons from the United States. Licence applicants must submit information identifying the quantity, type, and value of the equipment to be exported, the country of final destination, and the consignee, end-user, and intended end use (USDoS, 2005). Applicants must also furnish a written statement from the foreign purchaser confirming the specified end-user and end use (USDoS, 2005, p. 2). Like other leading exporters, US authorities screen licence applications with a view to identifying those exports at greatest risk of diversion or misuse. 'Indicators of concern' for the US include:

unfamiliar foreign parties, unusual routing, overseas destinations with a history of illicit activity or weak export/customs controls, [and] commodities not known to be in the inventory of the host country's armed forces. (USDoS, 2007b, p. 2)

Under US legislation, contracts between arms exporters and consignees must include a clause prohibiting retransfer to a third country or a change in end use without the prior written approval of US authorities (US, 2007, art. 123.9). Export licences for fully automatic firearms, rifles with a calibre of .50 inches or greater, and other types of firearms in quantities of 50 or more require the submission of a 'nontransfer and use certificate' (USDoS, 2007a, pp. 3–4). This certificate includes commitments by the final consignee and end-user not to retransfer the exported equipment

without the prior written approval of the US government (USDoS, n.d.). Export licences for small arms also require an import authorization issued by the government of the importing state (USDoS, 2005, p. 3; 2007a, pp. 2–3).

US law also allows for the use of delivery verification certificates to confirm the receipt of small arms by commercial consignees (US, 2007, 123.14.b). In principle, the end use of exported small arms and light weapons is monitored to 'provide reasonable assurance' that recipients are complying with retransfer and end-use restrictions (US, 2005, subchapter III-A, sec. 2785.a.2.B). In practice, US authorities consistently monitor only certain types of exported light weapons. Specific measures are agreed in the export contract and can include the physical inspection of end-user stockpiles. For most types of small arms and light weapons, US export authorities initiate post-delivery checks only in response to allegations of a violation of retransfer or end-use restrictions. These are conducted in cooperation with the government of the importing state (see Box 5.3).

Box 5.3 End-use monitoring of US-origin arms

The Golden Sentry programme

Small arms and light weapons manufactured in the United States and exported to the armed forces of a foreign state may be subject to pre-licence and post-delivery controls under the Golden Sentry end-use monitoring programme. The programme is implemented by the US Department of Defense for the purposes of ensuring the recipient's compliance with restrictions on the re-export, retransfer, and end use of the equipment. The scope and intensity of verification activities are tailored to the weapons system and country of import. Certain equipment exported to 'trusted partners' may be subject to 'routine' end-use monitoring, while other equipment and destinations may require 'enhanced' monitoring. Verification activities can include visits to end-user facilities, a review of end-user records, and regular inventories of US-exported equipment. Enhanced end-use monitoring may also include physical inspections of the stockpiles where US-exported equipment is stored (USDoD, 2003, pp. 321–36).

End-use monitoring of US-manufactured MANPADS

US-exported man-portable air defence systems (MANPADS) are subject to enhanced end-use monitoring. Recipients must agree to specific verification measures in the LOA they sign for the purchase of US-origin MANPADS. US army personnel typically inspect the physical security arrangements for the MANPADS in the importing state prior to delivery. Within 30 days of delivery, the recipient and a US government representative, by means of an inspection and/or inventory, must verify receipt of the missiles, grip stocks, and other essential components by serial number. US officials also conduct an annual physical check of all imported MANPADS that includes a review of inventory records that the recipient must establish on a monthly basis (USDoD, 2003, p. 337).

The Blue Lantern programme

Commercial exports of US-manufactured small arms may be subject to pre-licence or post-shipment controls under the Blue Lantern end-use monitoring programme that is implemented by the Department of State. The controls may include requests for information and investigations by US diplomatic missions in the country of import to verify the delivery and proper end use of the equipment. Post-delivery controls may, for example, be initiated following receipt of information received post-export regarding a particular end-user and end use of US-manufactured small arms (USDoS, 2007b, pp. 1–2).²²

The Department of State considers the programme useful to its efforts to deter diversion, assist in the disruption of illicit supply networks, and contribute to informed export licensing decisions. It cites, in particular, the effectiveness of Blue Lantern end-use checks in combating the use of fraudulent export documentation and other forms of misrepresentation for purposes of obtaining US equipment for retransfer to unauthorized end-users. During fiscal year 2006, US authorities conducted 613 Blue Lantern end-use checks, representing a little less than one per cent of all licence applications and other export requests received during that period.²³ An 'unfavorable' determination was reached in 94 of the 489 Blue Lantern cases closed in 2006 (19 per cent). Thirty-eight per cent of these 'unfavorable' checks related to applications for exports to the Americas. Firearms and ammunition were involved in over 70 per cent of the 'unfavorable' Americas cases (USDoS, 2007b, pp. 1–6).

Ten-country assessment²⁴

What are the key similarities and differences in the systems used by the world's principal exporters to certify end-users? The preceding study illustrates that much, in fact, depends on the type of weapons for export, as well as the destination country. Moreover, in many of these countries export licensing officials have some discretion over whether to employ various requirements and control measures.

With these caveats in mind, one can conclude that the leading exporting states typically require that export licence applicants submit information identifying the type, quantity, and value of weapons for export, as well as the country of final destination, end-user, and end use. Such documentation may be issued by the authorities of the importing state (end-user or international import certificates) and/or the end-user (end-use declarations or statements). Exports of small arms and light weapons to the armed forces of another state are often made conditional on an end-user certificate that is issued by the relevant department of the importing country. Exports of small arms to foreign commercial importers normally require an import certificate in which the importing state confirms that it does not object to the transfer, along with an end-use statement from the foreign commercial importer.

Most of the sample countries also report imposing restrictions on the retransfer of exported small arms and light weapons. In many cases these governments stipulate that exported weapons not be retransferred without their prior approval. Those imposing non-retransfer restrictions, either systematically or selectively, are Austria, Belgium, Canada, China, Germany, Italy, the UK, and the United States. US legislation stipulates that a non-retransfer clause be included in the contract between the exporter and the consignee (US, 2007, 123.9.a–b, d). Austria, Belgium, Canada, Germany, Italy, the UK, and the United States may (selectively) require the submission of a delivery verification certificate. In Belgium and Italy, delivery verification certificates are required, by law, for all small arms and light weapons exports (Belgium, 2003b, art. 7; Italy, 1990, art. 20.1.b).

States also differ in their employment of end-user and international import certificates. The decision to require one or the other is made on a case-by-case basis, at the discretion of export authorities in, for example, Austria and Brazil (Austria, 2006, p. 3; Dreyfus, Lessing, and Purcena, 2005, p. 57). In other states this is determined by national export policy. Germany requires an end-use certificate for all exports of 'military' small arms and light weapons, but an import certificate for all exports of 'non-military' small arms (Germany, n.d., sample forms 1–2). The Belgian and Italian governments require an end-use certificate for the export of all types of small arms and light weapons to non-EU or non-NATO countries and an import certificate for small arms and light weapons exports to EU or NATO states (Belgium, Walloon Government, 2006, p. 18; EU Council, 1998; Italy, 1990, arts. 11.3.c.2, 11.4). The United Kingdom generally requires an end-user undertaking for its small arms and light weapons exports. It uses import certificates only for the export of non- and semi-automatic small arms to EU member states (UK, 2005, p. 12).

Non-retransfer practices also show important variations. The Austrian and German governments, for example, waive the requirement that foreign importers obtain prior authorization if retransferring 'non-military' small arms to EU countries and certain other states (Austria, n.d.; Germany, n.d., sample form 2).

The United Kingdom and the United States are the only countries that report monitoring small arms and light weapons exports after delivery, albeit quite selectively in the UK case (O'Brien, 2003; USDoD, 2003, ch. 8). The United States, alone, indicates that it conducts physical inspections of end-user stockpiles following export of US-manufactured MANPADS. These inspections are stipulated in the associated export licence (see Box 5.3).

States differ in their employment of end-user and international import certificates.

Table 5.1 End-user documentation required for small arms and light weapons exports

	Requirement for end-user certificates	Requirement for international import certificates	Re-export and end-use restrictions	Requirement for delivery verification certificate
Austria	Can be requested	Can be requested	Waived for re-export of non-military SALW to EU and certain other states	Can be requested
Belgium	For exports to non-EU/NATO states	For exports to EU/NATO states	For re-exports to non-EU/NATO states	Required for all exports
Brazil	Can be requested	Can be requested	Can be requested	Not known
Canada	Can be requested	Can be requested	Can be requested	Can be requested
China	Can be requested	Can be requested	Can be requested	Not known
Germany	For military SALW	For non-military SALW	Waived for re-export of non-military SALW to EU and certain other states	Can be requested
Italy	For exports to non-NATO/WEU states	For exports to NATO/WEU states	Can be requested when authorizing exports to non-NATO/WEU states	Required for all exports
Japan	No (ban on military exports)	Not known	Not known	Not known
UK	Can be requested	For export of non-military small arms to EU states	Can be requested	Can be requested
US	For military SALW	For non-military SALW	For all SALW	Can be requested

Notes: In their export control systems, some states distinguish between 'military' small arms and light weapons on the one hand, and 'non-military' small arms on the other. While there is no common definition of these categories, 'non-military' small arms usually denote non- and semi-automatic firearms,²⁵ whereas military small arms and light weapons typically refer to fully-automatic small arms (firearms) and all light weapons.

Overall, the legislative framework required to ensure 'effective control' over small arms and light weapons transfers (UNGA, 2001b, para. II.12) appears quite complete in nearly all of the leading exporting states. Yet this legislation tends to leave much to the discretion of export control officials, allowing them to decide, for example, when to require certain types of end-user documentation or impose retransfer or end-use restrictions on a particular end-user. It is unclear how such discretion is exercised in practice.

With rare exceptions, the ten countries reviewed in the chapter provided no information on the practical implementation of their transfer control systems. We do not know, in particular:

- what policies and practices states employ to assess diversion risks at the licensing stage (e.g. warning flags that trigger a denial of licence or a higher level of scrutiny);²⁶ nor
- the extent to which governments verify end-user documents and the information they contain before authorizing a transaction.

Future research, combined with greater transparency from governments, will, one hopes, lead to a better understanding of national practice. Each of the measures just mentioned is critical to an effective transfer controls (diversion prevention) system. No news is not, in this case, good news.

Despite the uncertainties that exist, this study of national practice has generated some clear findings. First, the world's leading small arms exporters employ a wide range of documents and procedures for purposes of certifying end-users. These vary, in particular, as a function of the type of material that is to be exported (especially whether military or non-military in nature) and the destination country. Second, looking past the licensing stage, the study has revealed that, while the ten principal exporters often require that the importing country confirm receipt of exported weapons by issuing a delivery verification certificate, this is not uniform practice.

Delivery verification is, in any case, no panacea. Many opportunities for diversion arise after weapons have been delivered to their intended destination; yet exporting states rarely conduct any checks beyond this point—the study's third major finding. Among the ten countries reviewed here, only two monitor the end use and retransfer of weapons that they export—specifically the United Kingdom (very selectively) and the United States (more often, but not consistently). While end-use monitoring may, in theory, figure in the control 'arsenals' of other leading exporters, it is not employed in practice. This finding echoes a study of national practice worldwide (BtB with IANSA, 2006. p. 162).

POLICY IMPLICATIONS

In its examination and assessment of national practice, the chapter has focused on the ten leading exporters of small arms and light weapons. What are the implications for the world as a whole? First, one should note that a high volume of exports does not necessarily translate into a more sophisticated end-user system. Examples of good practice situated outside the principal exporters' list include Swedish practices designed to prevent EUC forgery (discussed below), as well as Switzerland's use of selective end-use monitoring.²⁷ It seems likely, however, that gaps in control among the ten leading exporting countries are shared by many other states. Moreover, regulatory weaknesses anywhere in the world are cause for concern given the proven ability of arms traffickers to exploit them.²⁸

Setting priorities

Transfer control systems have significant resource requirements. Necessary personnel must be recruited, trained, and paid. Systems for the acquisition, dissemination, and retention of crucial knowledge have to be established and maintained. Time is often in short supply. Resources for diversion prevention must compete with other pressing needs. States cannot eliminate the risk that the weapons they authorize for export will be diverted or misused. Yet careful priority-setting, coupled with the effective use of existing policy instruments such as end-user certification, can reduce this risk considerably at reasonable cost.

As the discussion of national practice has demonstrated, in tackling the problem of diversion states concentrate most of their efforts on the licensing stage. Interventions at this point are much easier for the exporting state (the weapons are still on its territory) and, as a rule, less costly (TRANSFER DIVERSION). And they have the important advantage of preventing diversion rather than discovering it after the fact. It is not surprising, then, that states like the UK, while retaining a role for end-use monitoring, emphasize the thorough assessment of diversion risks at the licensing stage.

Post-shipment controls present various complications. It may be politically difficult—even impossible—for the exporting country to intervene once the weapons have left its jurisdiction. The cooperation of the state of import will invariably be needed for reasons of sovereignty. Resources are also an issue. The exporting state may lack diplomatic

Exporting states rarely conduct any checks beyond the point of delivery.

representation in the recipient state. More often, existing diplomatic personnel may lack the time and/or expertise needed for routine end-use monitoring. For this reason, there is a temptation for states to rely on licensing alone to weed out diversion risks.

Post-shipment controls, including delivery verification and end-use monitoring, are, however, an indispensable component of the broader transfer controls (diversion prevention) package. Delivery verification can uncover and ultimately deter the diversion of weapons while en route to the importing state. End-use monitoring, where a condition of the export licence, can also exert a powerful deterrent effect on potential transgressors. By testing the reliability of the end-user, it also helps to reinforce and improve risk assessment at the time of licensing. If a state makes no attempt to verify possession and end use after export, there is a strong chance that any diversion that does occur will go undetected. Unless the diversion is revealed by other means, nothing prevents the state from approving further exports to the same end-user (Anders, 2007).

The resource arguments against end-use monitoring, though important, are less compelling than might first appear. The goal is not to monitor the end use of each and every export, but rather to deploy this measure periodically and selectively, paying special attention to cases presenting greater diversion risks. Developing countries may face capacity constraints, not only on post-shipment verification, but also on assessing diversion risks at the licensing stage. But these can be addressed in a variety of ways, most notably through the pooling of information and resources (GRIP et al., 2006).

The conclusion, then, is that while it may make sense to devote the lion's share of resources and attention to licensing, post-shipment verification—including some degree of end-use monitoring—is also essential to national efforts to combat diversion. Practice among the ten leading exporters, however, indicates that these measures are underutilized (delivery verification) or largely neglected (end-use monitoring).



A SWAT team provides back-up for police officers arresting a suspected illegal arms trafficker, near Yabucoa, Puerto Rico, September 2007. © Brennan Linsley/AP Photo



Enhancing end-user certification

Although governments are devoting far greater attention to licensing and end-user certification than to post-shipment control measures, the quality of that attention is something of a question mark. On paper, it appears the norms, instruments, and systems needed to combat diversion are in place among the world's leading exporting states. Yet whether and how this framework translates into effective action remains unclear in the vast majority of cases.

As noted earlier, all of the principal exporters undertake some form of end-user certification when licensing small arms and light weapons exports, but the kinds of documents and procedures they use vary widely. This is not, in and of itself, a problem. Licensing decisions are, and are bound to remain, the prerogative of individual governments. The variation in end-user documents and procedures reflects differing national approaches to arms transfer licensing and, in particular, different perceptions of risk and acceptable risk. International instruments and best-practice guidelines, including those mentioned earlier, help raise standards across the board and ensure that certain minimum requirements are met when governments authorize small arms transfers. It is,

however, neither helpful nor realistic to expect governments to use the same documents and procedures for end-user certification.

Certainly much more could be done to make the forgery of end-user documentation more difficult. Sweden, for example, prints the document it uses for state-to-state transfers ('Declaration by End User') on banknote paper precisely for this reason (Sweden ISP, 2005).²⁹ As for content, exporting states around the world could undoubtedly do more to ensure, pursuant to international best practice,³⁰ that end-user documents contain complete information, including details of the material to be transferred, destination country, end-user, and end use. Yet, whatever the form and content of end-user documents, they are worth little more than the paper they are written on if the documents themselves and the information they contain are not verified in advance of export.

Placing a phone call to an official who has signed an EUC is of little use if that individual has been bought off by an illicit trafficker (see above). Additional checks are needed. That said, a simple phone call can catch any forgery and any illicit EUC acquired from a government representative without ‘follow-up service’ (an official prepared to lie about a document’s validity; see above). It is unclear, however, whether exporting states are systematically verifying end-user documents, even though this is vital to the exercise of ‘effective control’ over small arms transfers (UNGA, 2001b, para. II.12).

CONCLUSION

This chapter has reviewed national practices in the world’s leading exporting states with a view to determining how well these countries meet their commitments, notably under the *UN Programme of Action*, to exert ‘effective control’ over small arms transfers (UNGA, 2001b, para. II.12). The best time to prevent the diversion of small arms and light weapons is obviously in advance of export, at the time of licensing. At this stage, diversion risks can be thoroughly assessed and end-users carefully vetted. Licensing alone, however, is insufficient. Post-shipment controls, including delivery verification and end-use monitoring, help detect (and deter) actual cases of diversion and ultimately reinforce licensing itself.

The challenges are clear, much less so the extent to which states are meeting them. The basic components of effective transfer control (diversion prevention) systems appear to be in place in the principal exporting countries; yet these systems leave much to the discretion of individual licensing officials, allowing them to decide when to increase or decrease the level of scrutiny required for a particular transaction. It is unclear, in particular, how thoroughly diversion risks are being assessed at the licensing stage, or how systematically end-user documentation is being verified.

It is quite clear, however, that post-shipment controls are being neglected. Many governments require that the delivery of weapons at destination be verified, but this is not uniform practice. Equally important, with rare exceptions verification stops at the time of delivery. As a rule, governments do not monitor the end use of exported weapons, not even selectively. They do not know, in other words, whether their decision to export weapons to a specific end-user was correct.

Rigorous licensing and end-user certification, coupled with targeted post-shipment controls, are obviously not the end of the story. These measures cannot eliminate diversion; yet, in concert with other policy instruments—such as the control of brokering and transport, plus systematic tracing—they would make it vastly more difficult. States have yet to demonstrate they are doing what is needed. ▀

LIST OF ABBREVIATIONS

EU	European Union	OAS	Organization of American States
EUC	End-user certificate	OSCE	Organization for Security and
LOA	Letter of Acceptance		Co-operation in Europe
MANPADS	Man-portable air defence system	SALW	Small arms and light weapons
NATO	North Atlantic Treaty Organization	WEU	Western European Union

ENDNOTES

- 1 See also UNGA (2007); Griffiths and Wilkinson (2007, secs. 6.2, 6.4, 6.5); Cattaneo (forthcoming).
- 2 Note that, in contrast to the *UN Programme of Action*, the *UN Firearms Protocol* is not an instrument of universal application as it binds only those states that have ratified, or otherwise adhered to, this treaty. For a list of States Parties to the *Firearms Protocol*, see <<http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-firearmsprotocol.html>>
- 3 This section is partly based on Anders (2007).
- 4 Interviews by Holger Anders with arms export officials from various states, April–September 2007 (Anders, 2007).
- 5 The *UN Programme of Action* is exceptionally weak on the question of retransfer. It merely recommends that importing states notify the original exporting state before any retransfer (UNGA, 2001b, para. II.13).
- 6 Interviews by Holger Anders with arms export officials from various states, April–September 2007 (Anders, 2007).
- 7 Interviews by Holger Anders with arms export officials from various states, April–September 2007 (Anders, 2007).
- 8 This section is based on Anders (2007).
- 9 See also Chapter 3, Annexe 3.1, available online at <<http://www.smallarmsurvey.org/files/sas/publications/yearb2007.html>>
- 10 Telephone interview by Holger Anders with an Austrian arms export official, October 2007.
- 11 Telephone interview by Sarah Parker with an Austrian arms export official, February 2008.
- 12 Depending on the export, this could mean the Belgian federal government or the government of one of the three regions (Brussels, Flanders, Wallonia).
- 13 There is no fixed list of these additional states; Belgian licensing authorities have some discretion in this area. Telephone interview by Holger Anders with Walloon arms export official, October 2007.
- 14 Telephone interview by Holger Anders with Walloon arms export official, October 2007.
- 15 Note: this is different from the Excess Defense Articles (EDA) programme administered by the Defense Security Cooperation Agency, under which defence articles declared as excess by US military departments can be offered to foreign governments or international organizations in support of US national security and foreign policy objectives.
- 16 The categories of weapon requiring an export licence include items 2-1, 2-2, and 2-3 of the Canadian Export Control List, echoing items ML1, ML2, and ML3 of the Wassenaar Munitions List. See Canada (2006a, p. 49).
- 17 The White Paper refers, above all, to weapons of mass destruction. Chinese export authorities can, however, apply the same end-use controls to small arms and light weapons exports. Interview by Holger Anders with Chinese official, August 2007.
- 18 Interview by Holger Anders with German arms export official, July 2007.
- 19 As of October 2007, new EU members Romania and Bulgaria were not yet included on the list of countries benefiting from the waiver relating to the re-export of non-war weapons. Germany was, however, in the process of updating its regulations for this purpose. Interview by Holger Anders with German arms export official, October 2007.
- 20 Available at <<http://www.berr.gov.uk/europeandtrade/strategic-export-control/legislation/export-control-act-2002/eca-2002-orders/index.html>>
- 21 Interview by Holger Anders with British arms export official, August 2007 (Anders, 2007).
- 22 Interview by Holger Anders with US arms export official, August 2007.
- 23 ‘Blue Lantern checks are not conducted randomly, but are rather the result of a careful selection process to identify transactions that appear most at risk for diversion or misuse’; USDoS (2007b, p. 2).
- 24 This section is partly based on Anders (2007).
- 25 Some states define semi-automatic carbines and rifles as military weapons, however. See Austria (1977, art. 1).
- 26 For information on the US system, see Chapter 4 (TRANSFER DIVERSION).
- 27 In cases of concern, Switzerland verifies weapons exports post-delivery. It estimates that ‘up to 5% of total exports (value)’ undergo such verification. Written correspondence with Swiss export control authorities, February 2008.
- 28 See, for example, Griffiths and Wilkinson (2007).
- 29 See also Sweden ISP (n.d., ‘Declaration by End User’; n.d., *National Practices*).
- 30 See EU Council (2007, sec. 2.1.2); *Nairobi Best Practice Guidelines* (2005, sec. 2.1.e); OSCE (2003, ch. V, sec. IV.6); OSCE (2004b); WA (2005).

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French EUFOR soldiers in Abeche, Chad, June 2008.
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Devils in Diversity

EXPORT CONTROLS FOR MILITARY SMALL ARMS

INTRODUCTION

Rigorous export controls are an essential tool in the fight against the illicit small arms trade. Under the United Nations *Programme of Action* on small arms, states have committed themselves to establishing effective export control systems and to assessing applications for export authorizations according to strict national regulations and procedures that are consistent with their existing responsibilities under relevant international law (UNGA, 2001, para. II.11). Many states claim to have developed strong, effective systems. It is clear, however, that legally traded weapons continue to reach the illicit market. Panels appointed to monitor UN Security Council arms embargoes regularly uncover violations, while expert groups continue to urge states to ensure their national systems and internal controls are at the highest possible standard (UNGA, 2008, para. 29). This begs the question: how well are states currently regulating small arms exports? What more needs to be done?

This chapter compares the export control systems in 26 states that have been consistently classified as ‘major exporters’ by the Small Arms Survey (TRANSFERS).¹ Its principal conclusions include the following:

- All the major exporters have export controls and licensing procedures in place, but these vary considerably in terms of procedure and content.
- Many states regulate the export of military and non-military small arms under separate mechanisms, but different countries do not categorize the same weapons in the same way.
- States apply varying levels of scrutiny to export decisions depending on the nature of and reason for the export.
- Many states require non-re-export undertakings as part of the licensing process, but there are indications that states seldom follow up on these.
- The decision to establish a ‘common market’ in the European Union for defence-related goods raises a number of concerns regarding the possible re-export and ultimate end use of such goods.

This chapter focuses on legislation and regulations governing the permanent export of *military* small arms. It does not analyse the licensing systems for non-military exports, except to the extent that they are governed by the same law as military exports. Nor does it analyse other components of transfer control systems, such as the regulation of import, transit, trans-shipment, or brokering.

The first section of this chapter provides an overview of the nature and purpose of export controls. It explains what is meant by the term ‘export’ and reviews the principal types of small arms and light weapons affected by export controls. The chapter then compares export licensing processes in the selected countries, with a focus on pre-licensing requirements, exceptions to licensing requirements, the types of licenses granted, and diversion-prevention mechanisms. The final section reviews the government ministries that are involved in decisions to export small arms, as well as the criteria that are applied to such decisions. Throughout, the chapter highlights the wide variations in national export control systems, identifying specific strengths and weaknesses.

OVERVIEW

This section introduces the basic concepts that will underpin the review of national export controls in the rest of the chapter. It outlines the various components of these systems and addresses such basic questions as the purpose and scope of export controls. It situates national controls against the backdrop of states' international commitments and examines the types of weapons covered by the systems under review.

What are export controls?

Export controls comprise the laws, regulations, and administrative procedures that a country uses to regulate the export of strategic goods, including military equipment. They seek to control: the destination of the strategic goods; the person or entity that ultimately takes control of and uses the goods (end user); and their ultimate use (end use). In most states, the export of strategic goods requires the permission of the government, obtained through a licensing process. Governments decide whether to authorize exports on the basis of applicable national legislation and policy.

There is no single model for an export control system; however, any export control system needs to have certain features to be effective, as identified in the *Handbook of Best Practices on Small Arms and Light Weapons* of the Organization for Security and Co-operation in Europe (OSCE). These include a legal basis, an export policy, a decision-making mechanism, and an enforcement mechanism (OSCE, 2003, part V, p. 2). Additionally, there should be effective oversight and scrutiny of the export control regime ensuring some minimum degree of transparency and allowing other branches of government (typically parliaments) to monitor national export policies.

Various multilateral arrangements attempt to regulate the export of arms, including small arms.² The nature and scope of these arrangements vary. Some, such as the UN *Firearms Protocol*, the *Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* (CIFTA), and the *Protocol* of the Southern African Development Community (SADC), are legally binding; some, such as the 1996 *Disarmament Commission Guidelines*, establish non-binding guidelines; and others, such as the *Model Regulations*

of the Organization of American States, serve as templates. Some instruments cover all conventional weapons, such as the Wassenaar Arrangement and the European Union (EU) *Code of Conduct*,³ others cover small arms and light weapons only, such as the UN *Programme of Action*, the OSCE *Document on Small Arms*, and the Wassenaar *Best Practice Guidelines for Exports of Small Arms and Light Weapons*. Levels of regional activity and participation in the various instruments also vary. Table 2.1 contains a list of the instruments affecting small arms transfers to



Supplies ready to be transported to the Gulf region from the US military base at Ramstein, Germany, April 2003.

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Table 2.1 Small arms transfer instruments applicable to major exporting states

Instrument	Legally binding												
	CIFTA (1997)		UN Firearms Protocol (2001)		SADC Protocol (2001)	OSCE Principles Governing Conventional Arms Transfers (1993)	Disarmament Commission Guidelines (1996)	EU Code of Conduct (1998) ⁴	Letter of Intent (1998)	OAS Model Regulations (1998)	OSCE Document on Small Arms (2000)	UN Programme of Action (2001)	Wassenaar 'Best Practice Guidelines' (2002)
	Signed	Ratified	Signed	Ratified									
Austria			■			■	■	■			■	■	■
Belgium				■		■	■	■			■	■	■
Brazil		■		■			■			■		■	
Bulgaria				■		■	■	■			■	■	■
Canada	■		■			■	■			■	■	■	■
China			■				■					■	
Czech Republic						■	■	■			■	■	■
Finland			■			■	■	■			■	■	■
France						■	■	■	■		■	■	■
Germany			■			■	■	■	■		■	■	■
Israel							■					■	
Italy				■		■	■	■	■		■	■	■
Japan			■				■					■	■
Norway				■		■	■				■	■	■
Portugal			■			■	■	■			■	■	■
Republic of Korea			■				■					■	■
Romania				■		■	■	■			■	■	■
Russian Federation						■	■				■	■	■
Singapore							■					■	
South Africa				■	■		■					■	■
Spain				■		■	■	■	■		■	■	■
Sweden			■			■	■	■	■		■	■	■
Switzerland						■	■				■	■	■
Turkey				■		■	■	○			■	■	■
United Kingdom			■			■	■	■	■		■	■	■
United States	■					■	■			■	■	■	■

Notes: Shaded type indicates that instruments serve to guide states in deciding whether to grant an export licence (see 'Licensing criteria', below).

○ Candidate country

Box 2.1 Glossary of export control terms

Actors

Consignee (also known as the 'foreign consignee'): The consignee is a recipient of the exported goods. The goods may remain with the consignee (in which case the consignee is the end user), or they may be forwarded on to the end user. There may be several intermediate consignees who assist in effecting delivery to the end user, who is the ultimate consignee.

End user (also known as the 'ultimate consignee'): The person or entity in the importing state that ultimately receives and uses the exported items.

Exporting state (or 'country of origin'): The country from where the arms are exported; responsible for authorizing the export (granting the export licence).

Foreign intermediate parties: Entities involved in the transaction, such as freight forwarders, customs brokers, agents or representatives, and arms brokers.

Importing state (or 'country of final destination' or 'final destination country' or 'recipient country'): The country where the end user is located.

Activities

End use: Normally the licence application or associated documentation indicates how the end user (or 'ultimate consignee') intends to use the items being exported.

Export: The physical movement of goods from one state to another.

Re-export (or 're-transfer'): Generally, the export of goods that have been imported from another country (the 'country of origin'). In some jurisdictions, goods in transit are considered 're-exports' (or 'exports') when they leave the territory of the transit state.

Transfer: A transfer of arms, like an export, involves the physical movement of goods. However, technically the term 'transfer' is broader than the term 'export' because it covers not only the movement of goods from one state to another (i.e. international transfer), but also the movement of goods *within* a country.

Transit/trans-shipment: The transit of arms involves their movement from State A (exporting state) through State B (transit state) to State C (importing state), where (in contrast to trans-shipment) there is no change in the mode of transport. The arms may be deemed 'exports' and in some cases 're-exports' by the transit state when they leave its territory.

Documents

End-user certificate: An end-user certificate (EUC) is a document provided by the end user in the importing country. Practice varies, but generally the EUC contains details of the goods being exported, their value and quantity, and the parties involved in the transaction, notably the end user. It may also specify the end use of the goods and contain an undertaking on the part of the end user not to re-export the goods without the approval of or notification to the exporting state.

International import certificate: An international import certificate (IIC) is issued by the government of the importing state. It indicates that the latter is aware of and has no objections to the import of specified items and quantities of controlled goods. The importer obtains the IIC and provides it to the exporter, who in turn attaches it to their application for an export licence if required.

Delivery verification certificate: A delivery verification certificate (DVC) is a certificate provided by the government of the importing state that confirms the controlled goods have been delivered or have arrived in the importing state. The importer applies for the DVC and is required to provide evidence that the delivery has taken place, such as a bill of lading, airway bill, or a form endorsed by the customs authority of the importing state. Once obtained, the importer provides the DVC to the exporter. If the exporting state requires a DVC, it will generally appear as a condition on the face of the export licence, and the exporter will be expected to provide the DVC within a certain timeframe following shipment of the goods (e.g. 90 days in the United States⁵).

which major exporting states are parties or in which they are participants. In addition, there are international legal norms that apply to arms transfers, including UN Security Council arms embargoes prohibiting transfers to certain states or groups (Small Arms Survey, 2007, p. 130–32).⁶

Box 2.1 provides an overview of the terms commonly used to describe the actors involved in an export and their transactions. Additionally, there are two other conceptual issues that warrant analysis before embarking on a comparison of states' export controls: what is an 'export'? And what types of small arms are subject to export controls?

What is an export?

In simple terms, an export involves the physical movement of goods from one country (the 'exporting country') to another country (the 'importing country', 'recipient country', or 'country of destination'). Small arms may be exported in a variety of circumstances:

- **Permanent exports.** Permanent exports of small arms can occur through:
 - *Commercial sales:* a manufacturer in the exporting state sells its small arms to an entity in a foreign country. That entity could be a government or a fire-arms dealer in the importing state.
 - *Government-to-government sales:* the government of the exporting state sells small arms to the government of the importing state for use by its defence or police forces. These arms may be procured from the surplus stocks of the exporting government; they may be produced by a state-owned company; or the exporting government may procure them on behalf of the importing government from a private arms manufacturing company operating in the exporting state.
 - *Government donation:* the exporting government may give the arms to another government free of charge as part of a military assistance project.



Members of the US military deliver weapons and ammunition to the Salah Ad Din Provincial Police Headquarters in Tikrit, Iraq, February 2004. © Stan Honda/AFP

- **Temporary exports.** Small arms may be moved to another country on a temporary basis. These include military small arms that accompany the defence forces of an exporting state on a temporary peacekeeping assignment and are later returned to the exporting country, or weapons that are exported to another country for repairs or for display in trade fairs. Since ownership of these arms does not pass to the recipient country, such exports are not considered to be international transfers (TRANSFERS).⁷ Temporary exports also occur when individuals take their firearms on hunting expeditions in a foreign country.
- **Transit.** The arms are transported from State A ('exporting state'), through State B ('transit state'), to State C ('importing state').

States regulate these transactions in a variety of ways, with some providing exemptions from licensing requirements for certain transactions, especially temporary exports by their own armed forces or transfers to allies. In other words, states apply varying levels of scrutiny to export decisions depending on the nature of and reason for the export.

Types of small arms subject to export controls

The states reviewed for this chapter are classified by the Small Arms Survey as 'major exporters' based on the total value of *all* of their small arms exports, with no differentiation made as to whether they export military small arms, non-military small arms, or both. Given the chapter's focus on export control systems for *military* small arms, a few of the major exporters are thus less relevant for this review. Some of these countries predominantly and, in some cases, exclusively, export non-military firearms. In certain cases, this is a matter of policy. For example, **Japan** states that the export of 'arms' has been banned since 1976 (Japan METI, 2002), but excludes from this category 'hunting guns and sport guns' (Japan, 2008). Other countries, such as **Norway**, no longer produce military small arms although they do produce ammunition for such weapons (Weidacher, 2005, p. 59; Norway, 2008, p. 3).

States apply varying levels of scrutiny to export decisions.

Many states regulate the export of military equipment or so-called 'war material'⁸ under a legislative and administrative framework that is distinct from the one governing the export of commodities without strategic applications. Small arms straddle both categories since they can be used for both military and non-military purposes. Accordingly, in many jurisdictions, separate legislation and procedures govern the export of military small arms vs. non-military small arms. Moreover, since not all states use the same classification system, certain arms may be considered *military* arms in one state and *non-military* arms in another.

Separate regulation of the export of military and non-military small arms is consistent with the fact that export control regimes, such as the Wassenaar Arrangement and the EU *Code of Conduct*, were established to govern the export of *military* equipment, including small arms for military use. This focus is reflected in the control lists associated with these regimes: the Wassenaar Munitions List and the EU Common Military List (WA, 2008; EU, 2008b). Both control lists cover the same broad range of conventional arms and dual-use equipment, including most small arms, all light weapons, and their ammunition (see Box 2.2). Small arms that are not covered include: (1) smooth-bore weapons used for hunting or sporting purposes that are not specially designed for military use and are not fully automatic (most types of shotgun); and (2) weapons using non-centre fire cased ammunition and that are not fully automatic, such as modern pistols and rifles primarily designed for sport shooting.⁹

As illustrated by Table 2.1 many of the major exporters are members of the EU and/or participate in the Wassenaar Arrangement. Not surprisingly, most have harmonized their national control lists with the EU Common Military List or the

Box 2.2 Small arms-related categories in the Wassenaar Munitions List and EU Common Military List

ML1¹⁰ Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.5 in.) or less and accessories, as follows, and specially designed components therefor:

- a. Rifles, carbines, revolvers, pistols, machine pistols, and machine guns;
- b. Smooth-bore weapons, as follows:
 1. Smooth-bore weapons specially designed for military use;
 2. Other smooth-bore weapons, as follows:
 - a. Of the fully automatic type;
 - b. Of the semi-automatic or pump-action type;
- c. Weapons using caseless ammunition;
- d. Silencers, special gun-mountings, clips, weapons sights, and flash suppressors for arms controlled by sub-items ML1.a., ML1.b., or ML1.c.

(The notes to ML1 state: 'ML1 does not control smooth-bore weapons used for hunting or sporting purposes.')

ML2 Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 in.), projectors and accessories, as follows, and specially designed components therefor:

- a. Guns, howitzers, cannon, mortars, anti-tank weapons, projectile launchers, military flame throwers, rifles, recoilless rifles, smooth-bore weapons, and signature reduction devices therefor;
- b. Military smoke, gas and pyrotechnic projectors or generators;
- c. Weapons sights.

Source: WA (2008)

Wassenaar Munitions List (which are equivalent) or are in the process of doing so.¹¹ Even some states that do *not* participate in either arrangement have adopted one of these lists. For example, **Israel** and **Singapore** have harmonized their control lists with the Wassenaar Munitions List even though they do not participate in the arrangement (Israel, 2007;¹² Singapore, 2007, sch., part I, div. 2).

Some states, such as **South Africa** and **Spain**, have simply annexed one of the lists in their entirety to the relevant regulations (South Africa, 2004; Spain, 2007b). Others have adapted the Wassenaar Munitions List slightly, with most countries—such as the **Czech Republic** and **Switzerland**—expressly excluding weapons for hunting and sporting purposes or, as is the case for **Sweden**, emphasizing that only small arms designed or adapted for combat purposes are covered by the control list (Czech Republic, 1994b, annexe; Switzerland, 1998, annexe 1). In other words, it is clear from their control lists that their export controls governing the export of strategic and military equipment are only intended to regulate the export of *military* small arms, while non-military exports are subject to a different regulatory regime.

Yet some states, such as **Canada** and the **United Kingdom**, use adapted versions of the Wassenaar Munitions List that do not exclude hunting and sporting or non-military weapons (Canada, 2006, p. 49; UK, 2009). Accordingly, the same controls apply to exports of military and non-military small arms, although the range of exclusions and exceptions to the licensing of non-military exports is correspondingly larger. This means that the same licensing authority regulates the export of military and non-military small arms and that they are subject to the same foreign policy considerations and transfer criteria. In contrast, **Finland** includes some items from the Wassenaar list but excludes 'non-automatic rifles, carbines, revolvers and pistols and smooth-bore weapons', which it classifies as civilian firearms, whose export is licensed under a separate regime (Finland, 2008).

It is common for one licensing authority to authorize exports of military small arms, and for a different government agency to approve the export of non-military arms. For example, in both **Finland** and **Portugal**, the Ministry of Defence has primary responsibility for licensing exports of military small arms, but the Ministry of Interior is

responsible for licensing exports of non-military arms. In the **Republic of Korea** and **South Africa**, the national police service makes the decision to license exports of non-military small arms, and different agencies authorize military exports (see Table 2.3). If, however, a proposed export involves more than ten firearms or 20,000 rounds of ammunition, the National Commissioner of the South African Police Service must submit the licensing application to the interagency committee charged with licensing military exports—the National Conventional Arms Control Committee (NCACC)—for consideration (South Africa, 2004, sec. 7). In other countries, certain transactions of non-military small arms are also subject to the same scrutiny as military exports.

In **Sweden**, military equipment has been divided into two separate categories for the purpose of export controls: military equipment for combat purposes (MEC) and other military equipment (OME). Barrelled weapons with a calibre of less than 20 mm are classified as MEC if they are ‘designed for combat’, while those ‘designed for hunting and sport purposes’ are classified as OME. Barrel weapons over 20 mm calibre are classified as OME if they are ‘designed for the launching of non-destructive ammunition’ (Sweden, 1992b, annexe). The same licensing authority controls the export of both categories, but different export criteria are applied (see below).¹³

Exports of non-military small arms are also at risk of diversion and misuse.

The question of whether states subject their exports of non-military small arms to the same scrutiny and foreign policy considerations as their exports of military small arms is important since exports of non-military small arms are also at risk of diversion to and misuse by unauthorized end users (Small Arms Survey, 2008, ch. 2).¹⁴ It is difficult to quantify the scale or proportion of non-military arms exports relative to military small arms exports, largely due to the lack of comprehensive data on the small arms trade. However, United Nations Commodity Trade Statistics Database (UN Comtrade) data suggests that in 2006, for example, sporting and hunting shotguns and rifles accounted for almost half (49 per cent) of all firearms exported that year (TRANSFERS). To this figure must be added handguns, which remain in wide demand among civilians.

Source of exported arms

The small arms that states export may be new weapons produced by the arms industry (state- or privately owned), or they may be sourced from surplus stockpiles belonging to the state.¹⁵

Industry. The size and nature of the arms industry in each of the major exporters varies. In the **Russian Federation**, for example, the industry consists of one wholly state-owned corporation, Rostekhnologii (Pyadushkin, 2008). In **Romania**, the core of the arms industry also remains state-owned, with the two principal companies being RomArm and the trade company RomTehnica; however, the government has encouraged limited privatization and the creation of joint ventures with foreign partners (Wood, 2007, p. 12).

Brazil's arms industry is made up of both state-owned and private companies. Indeed, the industry in Brazil is dominated by two private companies—Forjas Taurus S.A. and the Companhia Brasileira de Cartuchos—and a public company—IMBEL—administered by the Ministry of Defence (Dreyfus, Lessing, and Purcena, 2005, p. 50). **France** also has both private and state-owned corporations, with the retention of one state-owned corporation, Nexter (formerly GIAT Industries) (Elluin, 2008). Other states have privatized the industry completely, such that there are no state-owned entities engaged in production (e.g. **Austria** and the **United Kingdom**).

State stockpiles and surplus. Some of the major exporting states, such as **Norway** and **Portugal**,¹⁶ no longer produce military small arms (Weidacher, 2005, pp. 59–61 ; Portugal, 2008, p. 2; Teixeira, 2007). Consequently, exports of military small arms from these countries consist of transfers of surplus stocks, transfers to peacekeeping and defence forces or weapons in transit.

Indeed, despite the presumption in favour of the destruction of surplus stocks in the *Programme of Action*, the OSCE *Document on Small Arms*, and a European Council Joint Action of 2002, many of the major exporters indicate in their national reports on *Programme of Action* implementation that they still export their surplus small arms to other states.¹⁷ This is the case for: **Canada**, the **Czech Republic**, **Finland**, **Germany**, **Israel**, **Portugal**, and the **Russian Federation** (Cattaneo and Parker, 2008, p. 83). Other states also export their surplus small arms—including the **United Kingdom** (UK, 2008b, sec. 4.1) and the **United States** (US, 2005b, sec. 516)—although they may not mention this in their national reports.

The Wassenaar *Best Practices for Disposal of Surplus/Demilitarised Military Equipment* stipulate that surplus military equipment, including small arms and light weapons, should remain subject to the same export controls as new equipment (WA, 2000).¹⁸ Similarly, the OSCE *Document on Small Arms and Light Weapons*—while expressing a preference for the destruction of surplus arms—notes that: ‘if their disposal is to be effected by export from the territory of a participating State, such an export will only take place in accordance with the export criteria’ set out in the document (OSCE, 2000, sec. IV.C.1). **Israel** asserts that the export of surplus small arms and light weapons ‘is followed by the exact same stringent export control and authorization procedures, including marketing and export licenses’ that govern the export of new firearms (Israel, 2008). However, as discussed below, some states exempt exports by state agencies from export licensing and authorization procedures; presumably this includes exports of state surplus.

Many major exporters export their surplus small arms instead of destroying them.

THE LICENSING PROCESS

In general terms, the process for authorizing arms exports is virtually the same in all states under review. Prospective exporters must obtain an export licence. A designated government ministry or department decides whether to grant the licence in consultation with other ministries, based on the country’s legislation and specific political and security considerations.

However, the question of *what* arms are subject to control, *how* the licensing process operates, *who* makes the decision, and *how* that decision is made (including the criteria that are considered) varies from state to state. Table 2.2 provides a comparative overview of the major elements of the licensing process.

Pre-licensing requirements

In many states, companies or persons wishing to export arms must complete certain administrative steps before they can apply for a licence to export a specific shipment. In some states, they are simply required to register themselves on a national register by lodging certain information regarding their activities and operations. In other states, they must seek prior authorization before entering into contractual negotiations for a specific transfer or some other form of preliminary licence. Some states require both registration and another form of authorization before an export licence can be sought. In most cases, registration or authorization is valid for a limited time, and thereafter must be renewed (see Table 2.2). In some states, such as **Spain**, however, once a company is registered to trade in military equipment, there is no need to reregister.

State agents such as the police and defence agencies are generally not required to register or seek any special authorization to export arms. In some states, state agents are also exempted from having to obtain an export licence, as is discussed below.

Table 2.2 Overview of pre-licensing and licensing systems of major exporters

State	Pre-licensing				Types of licences							Licensing requirements		
	Registration	Transaction authorization	Requirements for exporter	Duration of exporter's pre-licensing authorization	Required	Exceptions	Individual	General	Global	Duration	EUC	No re-transfer	Import certificate	DVC
Austria	■		Licence to trade.		■		■	■			■	■	■	■
Belgium	■	■	Accreditation as an 'arms dealer' and 'preliminary licence'.	Registration and accreditation: indefinite.	■	■	■		1 year.	■	■	■		■
Brazil		■	Authorization to initiate preliminary negotiations.	2 years.	■		■				■	■	■	
Bulgaria	■	■	'Activities authorization' required.	First authorization: 1 year; subsequent authorizations issued for 3 years.	■	■	■		Up to one year and may be prolonged only once for up to 6 months.	■	■	■	■	■
Canada	■			5 years.	■	■	■	■	Individual licences are issued for a single shipment. The export becomes invalid after the first shipment is made even if the shipment is only a partial one.	■	■	■	■	
China	■	■	Authorization to engage in military export activities.		■		■				■	■		



Country	Record-keeping: duration	Penalties for exporting without a licence	
		Fine ^d	Imprisonment
Austria	Licensee: 3 years.	Up to 360 units of net daily income.	Up to 2 years.
Belgium		EUR 1,000-1,000,000 (USD 1,400-1,400,000).	Up to 5 years (penalties are doubled in case of a second conviction).
Brazil		n/a	4 to 8 years.
Bulgaria	Licensee must keep a separate register for the transactions concluded and keep the commercial and shipping documents and info relating to the transactions for at least 10 years.	A fine of BGN 5,000-50,000 (USD 3,500-35,000) for natural persons and company officials; a property sanction of BGN 25,000-250,000 (USD 17,400-174,000) for legal persons and sole proprietors; a fine or a property sanction of BGN 50,000-500,000 (USD 35,000-350,000) for repeated infringement.	1 to 6 years; extended to 2-8 years if the act is committed by an official or for a second time; where it involves a large amount, increase to 3-10 years; and where for a particularly large amount and the case has been especially grave: 5-15 years.
Canada	All those registered must keep and maintain records of transactions during the period of registration and for a period of 5 years after the day on which the person ceases to be registered.	Offence punishable on summary conviction: fine up to CAD 25,000 (USD 21,000); indictable offence: court has discretion to set fine.	Offence punishable on summary conviction: up to 12 months; indictable offence: up to 10 years.
China	China reports that since 2006, all companies are required to register detailed information on small arms exports with the competent authority. These records are retained on a long-term basis by the authority.	CNY 100,000-500,000 (USD 15,000-73,000).	Depends on whether the offence violates criminal law.
Czech Republic		Up to CZK 5 million (USD 260,000). If the violation has caused damage to the Czech Republic or important policy, commercial, or security interests, the fine may be up to CZK 30 million (USD 1.6 million).	1-8 years; 3-10 years if in collusion with an organized group, if committed during state emergency; repeat offence; if the person has 'gained considerable benefit' from the act, or if it has caused great damage.
Finland		Minimum penalty is a fine (not specified).	Maximum penalty is 4 years; Penal Code also contains provisions concerning forfeiture of the economic benefit produced by the crime.

France	Licensee: records must be kept (duration unspecified).	EUR 100,000 (USD 140,000); increased to EUR 500,000 (USD 700,000) when the offence is committed by an organized gang.	7 years (increased to 10 years when the offence is committed by an organized gang).
Germany		Fine (not specified).	Up to 5 years; up to 10 years for serious cases.
Israel	Licensee: 10 years from date of completion of the defence export.	30 times greater than fine set out in the Criminal Code; 50 times greater if 'severe circumstances' apply (e.g. exporting to the enemy).	3 years (5 years if 'severe circumstances' apply, e.g. exporting to the enemy).
Italy	Licensee: 5 years (10 years for some information, e.g. details acquired from carriers and transport agents on the transport route and arrangements).	EUR 2,500-250,000 (USD 3,400-340,000).	3-13 years.
Norway	Licensee: at least 10 years after expiry of the licence.	Fine can be imposed, size depends on discretion of judge (and degree of violation).	Prison sentence may be imposed, term depends on discretion of judge (and degree of violation). Intentional violation: up to 5 years; negligent violation of regulations: up to 2 years.
Portugal ^e		A company involved in the unlawful possession or sale of forbidden firearms (including military firearms) could be fined EUR 12,000-7,200,000 (USD 16,000-9,800,000).	Imprisonment from 2 to 10 years, in ordinary cases, but could be aggravated to 4 to 12 years if: a) the offender is a police officer; b) the weapons were destined for use by criminal gangs or criminal organizations; or c) if this constitutes the seller's livelihood or main income.
Republic of Korea		Fine of less than KRW 50 million (USD 38,000).	Maximum of 10 years.
Romania			2-7 years.
Russia	Not specified, but must submit quarterly reports to the Federal Service on Military-Technical Cooperation.	Up to RUB 1 million (USD 34,000) or an annual income for 5 years as a possible supplement to a prison sentence (plus termination of permit to export weapons for a company).	3-12 years (for a private person).
Singapore	Licensee: 5 years from end of calendar year in which authorized transaction took place.	Fine not exceeding SGD 100,000 (USD 67,000) or 3 times the value of the goods (SGD 200,000; USD 135,000); or 4 times value for a second or subsequent conviction.	Imprisonment not exceeding 2 years (and/or fine); 3 years for a second or subsequent conviction.

South Africa	Not specified. Regulations merely stipulate that a person trading in conventional arms must keep full records and permits of all trade activities.	Fine.	Maximum 25 years (and/or fine). Seizure and disposal of the goods is also possible.
Spain	Licensee: 4 years following date of expiration of authorization.	Smuggling (export without a permit) is punishable by a short-term prison sentence and a fine ranging from twice to four times the value of the goods.	Smuggling (export without a permit) is punishable by a short-term prison sentence.
Sweden	5 years.	If the offence is deemed 'petty' a fine (unspecified) will be imposed.	Grave smuggling: imprisonment for 6 months to 6 years; gross negligence: fine (unspecified) or imprisonment for up to 2 years.
Switzerland	Licensee: at least 10 years.	Wilfully: up to CHF 1 million (USD 900,000) or term of imprisonment; serious cases: penal servitude up to 10 years and fine up to CHF 5 million (USD 4,500,000); and negligence: imprisonment up to 6 months or fine up to CHF 100,000 (USD 90,000).	
Turkey	Exporters provide information on exports to the Ministry of National Defence every 3 months. The Ministry keeps export records for 5 years.	Fine.	1-5 years imprisonment. Ministry of Defence reserves the right to apply to the Court of Justice with a request for closure of enterprises that are deemed to be unfit for functioning in this sector.
United Kingdom	Licensee: 3 years.	On summary conviction: fine is the prescribed sum or 3 times the value of the goods, whichever is greater; conviction on indictment, to a penalty of any amount.	Summary conviction: up to 6 months; conviction on indictment: up to 10 years.
United States	5 years from expiration of licence or date of transaction.	No more than USD 1 million.	Not more than 10 years.

Notes: This table collects information from legislation and other publicly available sources, including national reports on implementation. Blank cells reflect gaps in information deriving from those sources. In practice, however, states may include elements in their export controls that are not reflected in their national legislation or other publicly available sources.

* Although Japan is one of the countries reviewed, it does not form part of this table on licensing systems for military small arms exports because of Japan's declared policy of not exporting arms other than hunting and sport guns (Japan, 2008).

^d In Portugal, the commercial manufacture and export of military small arms is prohibited, but exports of surplus military small arms may take place subject to a permit issued by the Ministry of Defence (Teixeira, 2007; Portugal, 2008).

^b The National Conventional Arms Control Amendment Bill includes a proposed amendment that would exempt the South African Police Service or the South African National Defence Force from the provisions of the National Conventional Arms Control Act in cases of an emergency or special operations (South Africa, 2008, art. 254).

^c In Switzerland, the EUC must include a pledge that the Swiss authorities have the right to verify the end use and end-use location of any supplied item at any time on their demand. Although no delivery verification certificate, as such, is required, the Federal Office of the Police Central Office for combating illegal transactions in war material is responsible for the monitoring of the arrival of deliveries (Liatowitsch, 2008).

^e The financial penalties were converted from the national currency to US dollars using currency conversion rates as of 8 January 2009. These amounts have been rounded.

^f Portugal prohibits the export of military small arms (which are included in the category of 'class A' weapons, whose possession, use, and transfer are forbidden). The penalties described here apply to the unlawful possession or transfer of prohibited firearms (including 'class A' weapons) in a domestic setting.

Source: Parker (2009)

In some cases, the precondition to the issuance of a licence takes the form of an authorization to initiate and conduct contractual negotiations to export arms. For example, in **Brazil**, when a commercial opportunity appears, companies must ask the Ministry of Foreign Affairs for authorization to initiate preliminary negotiations. If the ministry has no objections then negotiations are authorized for a period of two years. In **France** an exporter must go through several preliminary steps before an export licence may be sought: authorization to trade (valid for up to five years) must first be obtained from the Ministry of Defence. Once a potential commercial opportunity has been identified, the exporter must then seek two preliminary agreements from the prime minister: one at the ‘negotiating phase’ to negotiate the contract and a second at the ‘signature phase’ (Aubin and Idiart, 2007, p. 139).

In **Belgium**, in addition to being included on the national database of registered exporters, anyone wanting to export small arms must obtain two kinds of accreditation before applying for an export licence. The first one is an accreditation as an ‘arms dealer’ issued by the governor of the province where the company is located,¹⁹ the second is a preliminary licence issued by the minister of justice (called ‘licence of integrity’) as a proof of integrity (Moreau, 2008).

Pre-licensing
registration offers
an additional layer
of scrutiny.

In **Switzerland**, in addition to an ‘initial licence’, any individual or entity wishing to trade in war material (including military small arms) but not manufacturing such weapons must obtain a ‘trading licence’ before applying for an export licence (Switzerland, 1996b, art. 16a). In the **United States**, in addition to a requirement that exporters be registered before receiving an export licence, prior approval of or prior notification to the Directorate of Defense Trade Controls is needed before making certain proposals to a foreign person if the proposal involves the sale of ‘significant military equipment’ (defined as including small arms and light weapons) valued at USD 14 million or more for use by the armed forces of a country other than a NATO member or Australia, New Zealand, or Japan (US, 2007, sec. 126.8).

The number of individuals and companies authorized to trade in military equipment varies considerably among the major exporters. The **Czech Republic**, for example, reports that as of the end of 2007, 155 business entities held trading permits for military equipment (Czech Republic, 2007a, p. 5); data for 2006 indicates that in the **United States**, more than 5,000 entities were registered to manufacture, export, or broker defence articles or services (US, 2006). In both cases the number of entities authorized to export small arms is not specified. **China**, on the other hand, reported in 2008 that only 10 companies were authorized to engage in arms export activities and only four of these were authorized to *export* small arms (China, 2008, p. 10).

There are obvious benefits associated with a pre-licensing registration system. It offers an additional layer of scrutiny, providing an opportunity to vet potential exporters before they apply for a licence and to inform traders about applicable legislation. Depending on the country, the registration or authorization process may also provide information on the legal status of the exporter, the nature of its business activities, and details of any foreign ownership. In many states registration also entails reporting and record-keeping obligations beyond those required as part of the licensing process, thus bolstering existing checks and balances.

The **United Kingdom**, however—after considering the possible introduction of pre-licensing registration in 2007—remains ‘unconvinced’ that such a system adds anything to the licensing process. In the British case, exporters must provide full details of the proposed transaction as part of their licence application, and licences may be revoked or refused by the government at that stage (UKBERR, 2007, p. 38).

Interestingly, **France** is examining the possibility of moving to single prior approval by merging its ‘negotiating’ and ‘sale’ steps (France, 2007, p. 10). This is seen as a way of reducing administrative burdens and taking account of the fact that, due to the changing nature of the arms industry—which increasingly involves subcontracting to

Box 2.3 Free trade in arms within Europe?

On 16 December 2008, the European Parliament and the Council of the European Union adopted a directive that allows the free movement of defence products, including small arms and light weapons, among EU member states. At this writing, the directive was set to enter into force 20 days after its publication in the *Official Journal of the European Union* in the first half of 2009 (EC, 2008, art. 18).

The European Commission proposed the directive to simplify transfers of defence-related products within the European Community in December 2007, following the publication of a study on obstacles to intra-community transfers in 2005 and a consultation process involving the public and member states in 2006 and 2007 (EC, 2007c). Carried out by Unisys on behalf of the European Commission to assess obstacles to intra-community transfers, the study concludes that the diverse licensing requirements of EU countries impose a significant administrative burden on companies and 'appear to be out of proportion with actual control needs', especially in the light of the fact that 'license applications for intra-community transfers are almost never rejected' (Unisys, 2005, p. 5).

The Commission cited this finding in its explanatory memorandum to the proposed directive and noted that the aim of the directive was to reduce the obstacles to the circulation of defence-related products created by the patchwork of licensing schemes and to diminish the resulting distortions in competition (EC, 2007a, p. 2). The broader aim is to increase the competitiveness of the European defence industry and make it economically more efficient. The concern is that if better cooperation and integration are not promoted in Europe's defence industry, it will cease to be competitive on the world market, which will not only have economic costs, but will also hamper the pursuit of the European security and defence policy (EC, 2007b, p. 6).

The directive seeks to achieve these objectives using a twin-track approach. First, in order to simplify intra-community transfers, it encourages the use of general and global licences for transfers of defence products, envisaging only exceptional use of an individual licence, specifically:

- a. where the request for a licence is limited to one transfer;
- b. where it is necessary for the protection of essential security interests, or the protection of public policy;
- c. where it is necessary for compliance with international obligations and commitments of Member States;
- d. where a Member State has serious reasons to believe the supplier will not be able to comply with all the terms and conditions necessary to grant it a global licence (EC, 2008, art. 7).

Second, in order to harmonize EU transfer policies, the directive requires states to establish general licensing systems for transfers to the armed forces of EU member states and to *certified companies* in other EU countries (as well as in cases where items are being transferred for exhibitions or repairs in another member state) (EC, 2008, art. 5). Member states will be responsible for certifying recipients of defence-related products within their territories. This certification establishes that the company in question can be relied on to observe any export limitations imposed as part of the transfer licence, that is, limitations on the ability to export the goods to a country that is outside the European Community (EC, 2008, art. 9).

As noted, part of the reasoning behind the decision to simplify intra-Community transfers is the claim that licensing requirements appear to create a disproportionate administrative burden compared to the actual control needs. The evidence given to support this conclusion is the fact that no intra-community transfer of defence equipment has been denied since 2003, as reported in the impact assessment that accompanied the proposed directive (EC, 2007b, p. 15). However, the impact assessment only includes data for 2003, 2004, and 2005. Subsequent annual reports on the EU *Code of Conduct* indicate there have been at least 3 denials of intra-community export licences since 2003, and at least one of these pertained to small arms (EU, 2007; 2008a).

The impact assessment also notes that all the 15 denials registered in 2003 concerned exports to three Baltic states that were not yet EU members, and rather dismissively claims that the refusals were primarily linked to a lack of awareness of the legislation in the new member states and a 'lack of established trust concerning the actual enforcement of re-exportation controls by these new occasional buyers' (EC, 2007b, p. 15). Most importantly, the report notes that the 'categories where refusals occurred (small, light arms) concerned *equipment with a potentially higher risks (sic) of uncontrolled dissemination (re-export)*' (EC, 2007b, p. 15, emphasis added).

The European Union has grown considerably in recent years, with ten new member states admitted in 2004 and two in 2007.²⁰ Three candidate countries are awaiting admission: Croatia, the former Yugoslav Republic of Macedonia, and Turkey. Many of these new and candidate countries are exporters of small arms and other conventional weapons. Clearly, whatever the sophistication of their export control systems, these states do not have the same experience as older EU members in implementing the EU *Code of Conduct*. This, plus the acknowledged risk of diversion for small arms exports, raises questions about the desirability of the proposed market liberalization (Saferworld, 2006, para. 12(v)).

subsidiaries in other countries and increased cooperation—‘growing interdependence among control systems is unavoidable’ (France, 2007, p. 9). This emphasis on the need for increased overall efficiency among European partners is shared by other states and underpins a proposal to allow the free movement of defence products within the European Union (see Box 2.3).

Exceptions to the licensing requirement

As noted, all the major exporters of small arms require a licence to export military small arms. There are a range of exceptions to this requirement that are dependent on the nature of the exporter, the end user, and the end use.

Nature of exporter

Exceptions to licensing requirements depend on the exporter, end user, and end use.

Government exports. Many states expressly exempt arms exports by their own state agencies from relevant export controls. In some cases, an exemption is granted for government-to-government sales. **Israel** exempts state exports of defence equipment to another state from the provisions of its export control laws and subjects them to a separate procedure (Israel, 2007, sec. 47(b)). **Spain** exempts ‘exports or concessions between governments for the purposes of military aid, under the terms of international agreements’ from export controls (Spain, 1990, sec. 9(b)). **Norway** exempts exports by the Norwegian defence authorities if the recipient is a defence authority in a NATO or EU member state (Norway, 2007, sec. 3(i)), while the **United States** exempts exports related to its foreign assistance or government sales programmes and subjects them to a separate process (US, 2007, sec. 126.6).²¹

Nature of the end use and end user

Peacekeeping and humanitarian activities. In some instances the exemption for government exports is limited to temporary exports conducted for a specific purpose. For example, many states exempt from regulation or automatically grant authorization to exports of military equipment destined for use by their own or other armed forces in operations overseas, such as peacekeeping operations, humanitarian activities, and other international exercises authorized by the UN or regional organizations such as the OSCE. **Bulgaria**, the **Czech Republic**, **Finland**, **Italy**, and **Spain** fall into that category.²²

Participants in export control regimes and regional arrangements. Some states waive the requirement for an export licence if the recipient country is a member of a particular export control regime or regional arrangement. For example, transfers to NATO members are entirely exempt from the licensing regime in **Romania** and **Finland** (Wood, 2007, pp. 9, 21; Finland, 1990, art. 3).

Other states grant something akin to preferential treatment in such circumstances. If prospective recipients are members of international export control regimes and ‘conduct a responsible export policy’, **Finland** does not seek foreign and security policy advice when making a licensing decision (Finland, 2008). Similarly, in **Germany**, exports of war weapons and other military equipment to NATO and EU member states as well as ‘NATO equivalent countries’ such as Australia, Japan, New Zealand, and Switzerland are not subject to restrictions ‘unless in specific cases this is warranted on particular political grounds’ (Germany, 2008). **Canada** also reports that it has a fast-track procedure for most members of NATO and the Organisation for Economic Co-operation and Development (OECD), where there are fewer *prima facie* concerns about export control regimes and the risk of diversion (Canada, 2008).

Other states, such as **Sweden**, seem to take a more general approach, noting that:

There are no foreign policy obstacles in relation to co-operation with or exports to the Nordic countries and traditionally neutral countries in Europe. . . . As co-operation with other countries within the European

Community expands, the same principles for overseas co-operation and exports should be applied where these countries are concerned. (Sweden, n.d.a)

Such preferential treatment is common among EU member states, and in fact the complete removal of restrictions on exports between EU members is under consideration (see Box 2.3).

Country lists. Some states keep lists of countries to which preferential treatment is given in the context of arms exports. This either involves an expedited process or no licence requirement at all. For example, arms transfers between Benelux countries (**Belgium**, the **Netherlands**, and **Luxembourg**) do not require a licence. In the **Russian Federation**, the Ministry of Foreign Affairs prepares a list of states to which military items may be transferred, while transfers to all other states are subject to a presidential decree (Russian Federation, 2007, p. 12). In **Switzerland**, a pre-licensing 'trading licence' is not required if the transaction involves one of 25 specifically listed countries (Switzerland, 1998, annexe 2).²³ In **Canada**, a permit to export arms to the United States is only required if it involves prohibited firearms (such as sawn-off shotguns and automatic firearms). In fact, Canada only allows these firearms to be exported to countries it lists in its Automatic Firearms Control List (Canada, 2006, p. xix).

At the same time, many states keep lists of countries to which exports of arms or military equipment are banned. These correspond with arms embargoes imposed by the UN Security Council or regional bodies such as the EU or the OSCE; they may be included in an annexe or schedule to states' legislation or posted on government Web sites.²⁴

Types of licences

States issue three main types of export licences: individual, general, and global.

Individual licence: An individual licence authorizes the shipment of specified goods to a specified consignee or end user. It is a single, one-off authorization that may lapse after a specified period of time or when a specified quantity or value of goods has been delivered.

General licence: Offering a simplified procedure, a general licence can take one of several forms. It is a broad grant of authority to all exporters for certain categories of goods to almost all destinations. If a general licence has been granted with respect to a certain item, exporters do not need to apply for a licence to export that item, but they will usually need to register with the relevant authority to indicate that they will be using the general licence. General licences remain in force until they are revoked by the relevant authority.

Global licence: A global licence is granted to a specific exporter and allows for the export of an unlimited quantity of goods to one or several destinations, consignees, or end users. This is a more flexible means of licensing and is often used as a means of preventing an undue administrative burden for the exporter if an unusually large number of licences would otherwise be required. A global licence will be granted for a specific period of time.

All of the major exporters of small arms issue individual licences for the export of small arms and light weapons, and some stipulate that they *only* issue individual licences for small arms exports (e.g. **Czech Republic**, **Finland**, **Germany**, **Norway**, and **Turkey**).²⁵ Few of the states reviewed permit the use of general licences for exports of military equipment, including small arms. For example, the **United Kingdom** grants Open General Export Licences (OGELs), which allow an exporter to export specified items without having to apply for an individual licence, provided the exporter has registered to use the open licence and that conditions of the licence are met.²⁶

At this writing, the United Kingdom appears to be the only state offering a general licence for military small arms. This OGEL covers small arms and other defence equipment being transferred to certain countries as part of a UK

Some states only issue individual licences for small arms exports.

Government Defence Contract.²⁷ The United Kingdom also has an OGEL that allows an individual who holds a firearms certificate to export up to six rifles, smooth-bore weapons, and related ammunition for sporting purposes from the United Kingdom to Uganda or Tanzania, provided that the person returns the firearms to the United Kingdom within three months.²⁸

Global licences for exports of military equipment are generally only issued for the export of dual-use goods. However, six states—**France, Germany, Italy, Spain, Sweden,** and the **United Kingdom**—signed a letter of intent in 1998 and a follow-up Framework Agreement (FA) in 2000 that established a framework for cooperation regarding the production and export of military equipment. Global project licences (GPLs) were introduced as part of this framework. These simplify the arrangements for licensing military goods and technologies between FA states that are collaborating in defence projects. Each FA state issues its own GPL that permits multiple exports of specified goods and technology needed for a project or intended for the armed forces of another FA state. In practice, these have not been extensively utilized by FA partners.

The system for strategic goods control in **Singapore** establishes three ‘tiers’ of licences or permits for exporting strategic goods, including military small arms (Singapore, 2008). Tier 1 permits are equivalent to individual licences in that they authorize single, one-off transactions; Tier 2 permits allow the export of a specific product to multiple destinations or multiple products to a single end user; and Tier 3 permits allow multiple products to be exported to

Box 2.4 Tracker: software for processing, recording, and monitoring export licences

The United States has developed software that allows licensing bodies to process export licence applications. The so-called ‘Tracker’ system acts as a central location for governments to input, process, track, review, and approve or reject licence applications. It also facilitates electronic submission and monitoring of licence applications by applicants.

The software aims to increase the efficiency of pre-licence review, licensing, and post-licence procedures by:

- Storing information about organizations, individuals, products, and locations involved in exports and allowing searches to be conducted in any field;
- Providing secure information exchange for departments engaged in the licensing decision;
- Supporting enforcement activities by providing customs officers at remote sites with access to licence data. Photographs of suspicious items can be uploaded into Tracker at the customs point and reviewed by technical experts at other locations;
- Assisting with generating reports to satisfy domestic and international reporting requirements. For example, data from Tracker can be exported into other reporting software.²⁹ Accordingly, it is hoped the Tracker system will reduce administrative burdens and promote national reporting (e.g. under the UN Register of Conventional Arms and the EU *Code of Conduct*).

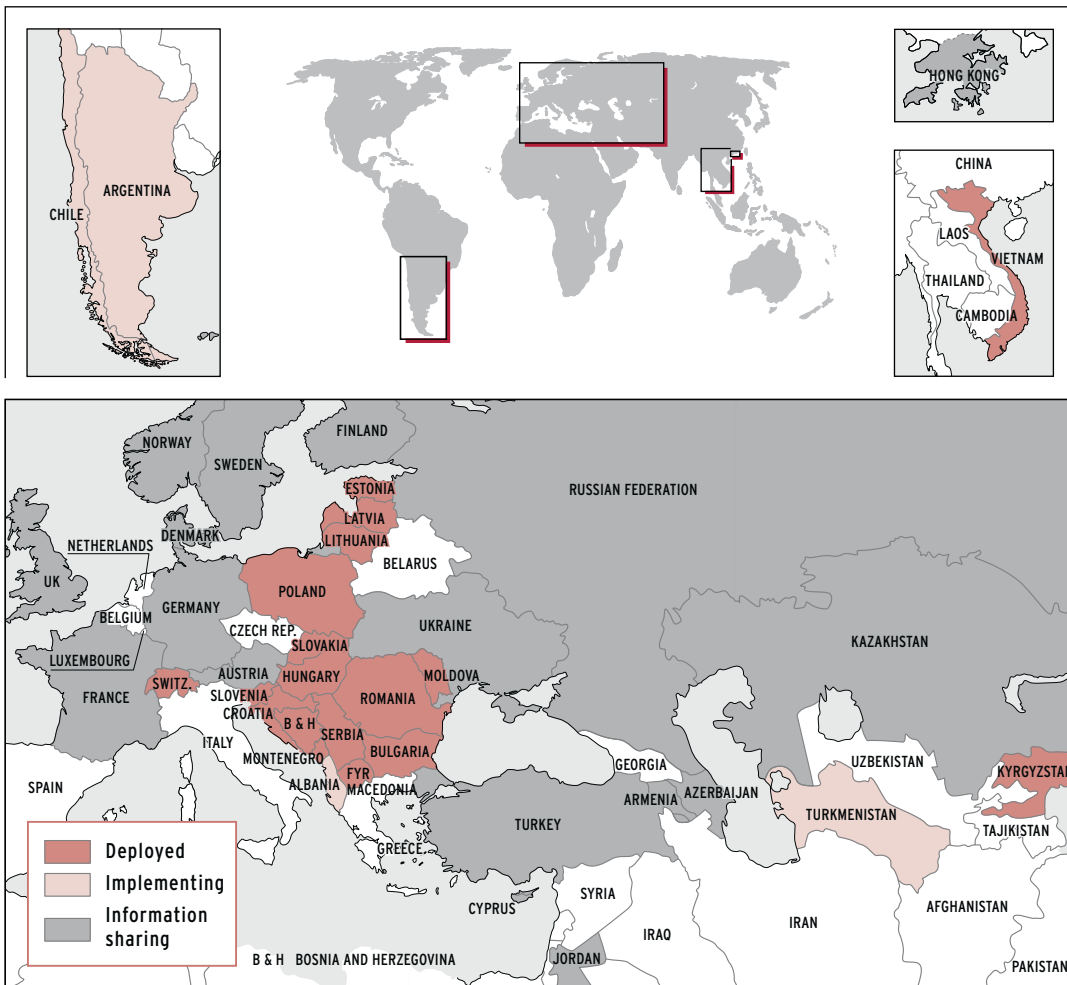
New developments

- An Internal Compliance Program is being integrated to help the industry develop internal procedures to ensure compliance with export legislation;
- A tool that provides automatic feedback on end users of potential concern is being incorporated;
- A Licensing Officer Information System that provides a training tool for licensing officers is being incorporated; and
- A search tool called the Product Identification Search Engine (PISE) is being introduced; it links items on the country’s National Control List with images and descriptions of the items.³⁰

Who has it?

The US State Department’s Export Control and Related Border Security (EXBS) programme has been working in cooperation with other governments to improve strategic trade control systems; it has shared the Tracker system software with more than 20 countries. Map 2.1 shows the countries where the Tracker system has been deployed or is being implemented, and where information sharing is taking place.

Map 2.1 Countries using the Tracker system software



Source: www.trackernet.org

pre-approved destinations. Eligibility for Tier 2 and 3 permits depends on the nature of the goods being exported (for instance, goods intended or likely to be used for weapons of mass destruction can only be exported under Tier 1 permits) as well as the exporter's compliance record with Singapore Customs and implementation of an effective internal (export control) compliance programme. Internal compliance programmes must include such elements as record-keeping, audits, and end-user screening (to ensure exports are to known legitimate customers or end users).

Licensing bodies in more than 20 countries currently use the US software 'Tracker' in processing export licence applications (see Box 2.4).

Licensing requirements

End-user certification

As part of the licensing process, applicants are normally required to provide the relevant licensing authority with documentation, such as an end-user certificate (EUC), identifying the goods to be exported, the recipient country,

the end user, the end use, and, in some cases, the value of the goods and the identity of other parties involved in the transaction. As illustrated by Table 2.2, all the major exporting states include the provision of an EUC as part of the licensing application (with the exception of **Japan**, which has a declared policy of not exporting military small arms). Some states insist on an EUC for *all* exports, while others *may* request an EUC depending on the circumstances. In some cases, for example, an import certificate provided by the recipient state may be provided in lieu of an EUC if the recipient state is an EU member state, NATO ally, or other ‘friendly’ country.

Given the risks of diversion, it is important that the exporting state obtain some kind of confirmation that the importing state is aware of and authorizes the weapons transfer (Small Arms Survey, 2008, chs. 4–5). Good practice dictates that states verify the information contained in EUCs when considering licence applications, ensuring, in particular, that recipient state authorizations are genuine (OSCE, 2004, para. 3). While some states say they conduct such verification through their local embassies in recipient states, for example, it is unclear to what extent small arms exporters, as a whole, do so (Small Arms Survey, 2008, p. 172).

Additional information—such as a commitment by the final consignee to provide a delivery verification certificate (DVC)—may also be included in an EUC (OSCE, 2004, para. 1). Table 2.2 indicates which major exporters seek the provision of DVCs as part of export licensing. While checks applied at the licensing stage offer exporting states the most cost-effective means of preventing arms diversion, post-shipment verification is also useful in deterring unauthorized changes in end user or end use, and in bolstering the assessment of diversion risks prior to export (Small Arms Survey, 2008, pp. 173–76). In this spirit, the OSCE *Document on Small Arms* suggests that states conduct physical inspections of shipments at the point of delivery to ensure the arms have been delivered securely, as a means of preventing illegal diversion (OSCE, 2000, sec. III.6). The European Parliament has echoed this recommendation by issuing a ‘demand to set up a transfer verification and post-export monitoring system that should include systematic physical inspections at points of transfer and of stockpiles by the competent national authorities’ (EU, 2004).

It is unclear to what extent small arms exporters conduct verification.

Some states, such as **Bulgaria** and the **United States**, specifically make reference to physical inspections as part of their delivery controls (Bulgaria, 2007a, art. 71.6; USDoS, 2008, p. 7). Other states, such as Ukraine, include ambiguous provisions in their laws that might include physical checks: ‘the duly authorized state export control body . . . shall be entitled to conduct . . . verification of delivery or end-use of goods at any stage of the international transfer and after actual delivery to the end-user’ (Ukraine, 2003, art. 19). In practice, however, it seems that few states other than the United States conduct significant physical and post-delivery checks (Macalesher and Parker, 2007, p. 23; Small Arms Survey, 2008, pp. 171–73).

Re-export provisions

Re-export (or re-transfer) notification requirements are another important means of preventing diversion.³¹ The *Programme of Action*, the Wassenaar *Best Practice Guidelines for Exports of Small Arms and Light Weapons*, and the OSCE *Document on Small Arms* all encourage states to notify the original exporting state before they re-export imported weapons (UNGA, 2001, para. II.13; WA, 2002, para. I.3; OSCE, 2000, sec. III, (2)(B)(5)). These instruments, however, fall short of best practice as they fail to stipulate that the original exporting state *consent* to the re-export, requiring merely that it be notified. Nevertheless, in practice states often require that their written authorization be obtained before any re-export.

As indicated in Table 2.2, at least 22 of the major exporters reviewed have restrictions on the re-export of arms. These usually take the form of a requirement that a clause be included in the sales contract that the importer and/

or end user will not re-export the arms without the prior written consent of the exporting state, as is the case in **Bulgaria** and the **United States** (Bulgaria, 2007a, art.70(1); US, 2007, sec. 123.9(b)); or the inclusion of an undertaking in the end-user certificate that the arms will not be re-exported without the authorization of the exporting state (e.g. **Brazil, France, Germany, Italy, Romania, the Russian Federation, South Africa, Spain**).³² Re-export provisions are not automatic; typically they *may* be required depending on the circumstances of the transaction and the identity of the end user.

In some cases, as in **Bulgaria** and **Romania**, the undertaking not to re-export has to be made by the importer or end user (Bulgaria, 2007a, art. 70(1); Wood, 2007, p. 24). In **Canada** the export licence applicant must submit a declaration that, to the best of the applicant's knowledge, the goods will enter into the economy of the recipient country and will not be trans-shipped or diverted from that country (Canada, 2001, sec. 3(2)(a)). In other cases, as in **Switzerland**, the recipient state undertakes not to authorize the re-export of the arms without the consent of the original exporting country (Switzerland, 1996b, art. 18). In the case of **France** the end user and the government of the recipient country may be required to declare that they will not re-export or authorize a re-export (respectively) without the prior written approval of the French government (France, n.d.).

In almost all cases where prior consent is required in advance of re-export, it is the consent of the original exporting state that is meant. **Bulgarian** regulations, however, provide that the consent to re-export may be given by the national competent authority of the recipient state if it is a Wassenaar member (Bulgaria, 2007a, art. 70(1)).³³ Clearly, this removes any control the original exporting country may have over the final destination of the small arms. In theory, participating states in the Wassenaar Arrangement may apply the same criteria to exports of small arms, but in practice their assessment of the risks involved in a particular export will often differ.

Post-shipment controls are essential tools in the diversion-prevention arsenal.

Once the original exporting state has surrendered physical control of the arms, it is difficult to monitor their use and any subsequent transfer. Costs are one factor, problems in securing cooperation from recipient governments another. Nevertheless, post-shipment controls, including the selective use of end-use monitoring, constitute essential—and cost-effective—tools in the diversion-prevention arsenal.³⁴

Problems associated with the extraterritorial application of laws, and the fact that the original exporter surrenders legal ownership of the weapons it exports, mean that non-re-export clauses have a political rather than a legal effect. The strongest response to a breach of such provisions is to refuse future exports to the offending state. Such is the response adopted by **Sweden** and **Germany**, which do not allow future exports of military equipment to states that have permitted or failed to prevent the re-export of military arms in breach of previous undertakings (Sweden, n.d.a; Germany, 2000, para. IV). Unauthorized re-transfer will also, in many cases, lead exporting states to conclude that the recipient presents an unacceptably high risk of diversion for any future arms transfers.

In principle, the onus is on the recipient state to notify the original exporting country that it is contemplating a re-export of arms. Some insight into the question of whether any of the major exporters do this can be gleaned from their national reports. **Norway** comments that it has 'no experience with such cases' (Norway, 2008). **Sweden** notes that it depends on the type of small arms. So, for example, if hunting rifles were involved, it would not usually notify the original exporting state unless the exporting state required it, but if man-portable air defence systems, or MANPADS, were to be re-exported, the original exporting state would be notified for approval (Sweden, 2008).

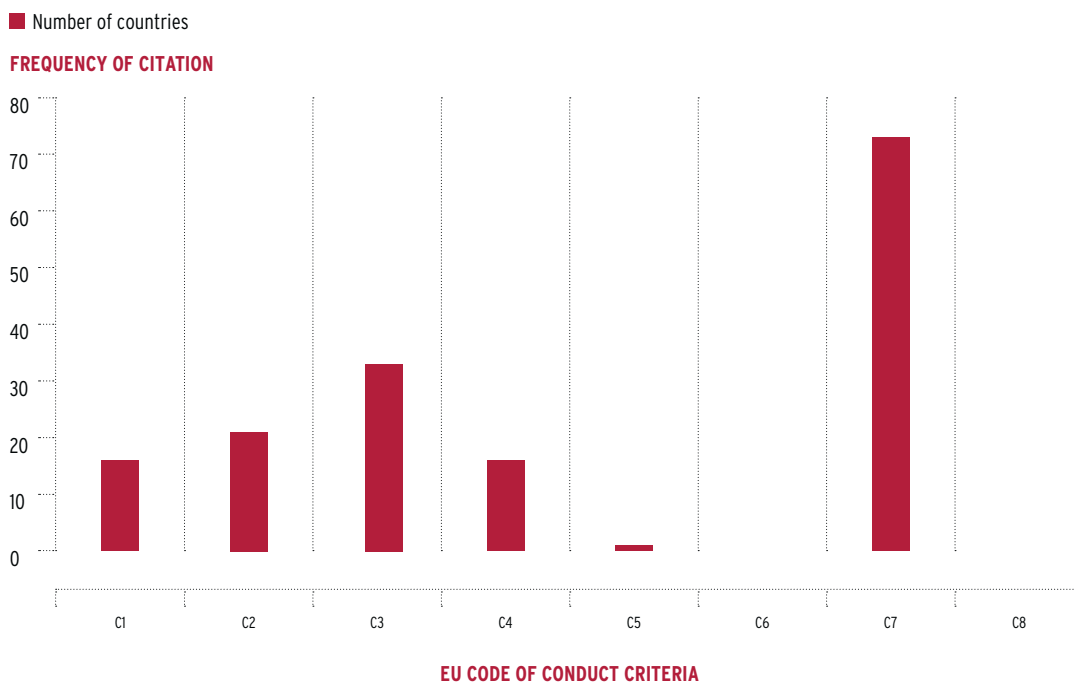
Other states, such as **Austria** and **Germany**, note that it depends on the re-export clauses in the original documentation (Klob, 2007; Germany, 2008). **Switzerland** indicates that the federal law on war material 'does not

expressly require Switzerland to notify the original exporting State when re-exporting [small arms and light weapons]'. However, the federal law on the control of dual-use and specific military goods, which include some light weapons, 'stipulates that there must be consultation with the original exporting State if the latter insists on its formal consent in all cases of re-exporting. Consequently the export permit may be denied in the absence of approval by the original exporting State' (Switzerland, 2005). **Israel**, for its part, notes that the re-export of surplus small arms and light weapons that are of foreign origin 'will require re-export approval by the country of origin, as appropriate' (Israel, 2008).

The **Bulgarian** regulations provide that, where an export licence application pertains to the re-export of arms, the applicant must submit a licence for re-export issued by the original exporting state or, where the original exporting state does not issue such licences, the foreign forwarder must issue a statement certifying that no prohibition on re-export has been imposed (Bulgaria, 2007b, art. 6). In other words, the onus is on the exporting company rather than on the licensing authority to confirm that re-export authorization is not required.

It is difficult to get a clear picture of how and indeed whether exporting states monitor end use with a view to identifying unauthorized re-transfer. It is clear, however, that states do seriously consider the risk that arms might be re-exported when making a licensing decision. Concern that equipment might be diverted within the buyer country or re-exported under undesirable conditions—Criterion 7 of the EU *Code of Conduct*—was the reason EU member states most often gave for refusing an export licence for small arms in 2007. Figure 2.1 shows that Criterion 7 was invoked 73 times out of a total of 160 reasons provided (46 per cent).³⁵

Figure 2.1 Frequency with which EU member states cite EU Code of Conduct criteria to refuse export licences, 2007 (n=160)



Legend: C1=respect for international commitments of EU member states; C2=respect for human rights in the country of final destination; C3=the internal situation of the country of final destination; C4=preservation of regional peace, security, and stability; C5=the national security of the member states and of territories whose external relations are the responsibility of a member state; C6=the behaviour of the buyer country with regard to the international community (especially its attitude towards terrorism); C7=concern that equipment might be diverted within the buyer country or re-exported under undesirable conditions; C8=compatibility of the export with the technical and economic capacity of the recipient country.

In fact, the consultation carried out by the European Commission as part of the preparations for the directive on intra-community transfers reveals that ‘the main justification for applying export control systems to the transfer of defence-related products to other Member States was the *risk of re-exportation* outside the Community after the transfer to another Member State’ (EC, 2006, p. 6, emphasis in original). The directive acknowledges that there is a risk that less stringent controls and a reduction in the number of individual licences in favour of general licences may weaken re-export controls. To compensate for this, the proposal notes the need to create conditions for mutual confidence and trust through the inclusion of guarantees that ensure that defence-related products are not exported to third countries in violation of transfer restrictions (EC, 2008, recital 29).

Indeed Article 10 of the directive on intra-community transfers of defence-related products provides that member states must ensure that, if recipients of defence-related products are attempting to export items originally transferred from another member state, the recipients have respected any export limitations attached to them; if the consent of the originating member state is required but has not been obtained, the member state shall consult the originating member state (see Box 2.3). The directive does not, however, incorporate a proposed amendment to Article 10 stipulating that if the consent of the originating member state is not obtained, the export shall not take place (EP, 2008, amend. 18). Nor did the directive incorporate the suggestion that member states should establish, *as a criminal offence*, the re-export to third countries of defence-related products in breach of conditions attached to their use (EP, 2008, amend. 23).

As discussed earlier, despite the presumption in favour of destruction, some states continue to sell their surplus small arms. One way an exporting state can ensure its weapons are not re-exported is to review the importing state’s policy with regard to surplus. If the original exporter only transfers military small arms to states that *destroy* surplus as a matter of national policy, this can help ensure the arms are not re-exported.

Indeed, the *User’s Guide* to the EU *Code of Conduct* suggests posing the following question when assessing the risk that arms might be diverted or re-exported to unauthorized end users (Criterion 7): ‘Does the country of stated end use have any history of diversion of arms, including the re-export of surplus equipment to countries of concern?’ (EU, 2006, p. 48). Moreover, the version of the *Code* adopted as the Common Position in December 2008 contains an amended version of Criterion 7 that calls on states to consider ‘the record of the recipient country in respecting any re-export provision or consent to re-export’ (EU, 2008c).

Another consideration often overlooked in the context of re-exports is the issue of re-transfers *within* the recipient state. Non-re-export undertakings tend to focus on the re-sale of arms to other *states*, but the re-transfer of arms within the recipient state may also warrant attention—in particular, the possible transfer of military small arms to the civilian population.

The re-transfer of arms within the recipient state warrants attention.

Enforcement

The enforcement of export control violations involves several agencies. Generally, customs authorities have responsibility for inspecting export shipments and detecting licence violations or attempts to export without a licence (smuggling). When violations are detected, customs and police authorities will be involved in an investigation, which may lead to civil or criminal prosecution. It is beyond the scope of this chapter to explore the specific powers granted to enforcement agencies in the states under review, or to compare the number of licence violations or prosecutions that take place in each state, but a comparison of administrative and criminal penalties linked to export control offences shows they vary considerably in terms of type and scale (see Table 2.2).

The decision to export military equipment involves economic, defence, security, and foreign policy considerations.

Administrative penalties include fines, confiscation of the goods to be exported, and/or revocation of licences or trading permits. The amount of administrative fines varies considerably among the states reviewed. Some countries use a formula to calculate the fine based on the value of the goods (e.g. **Japan, Singapore, Spain, United Kingdom**³⁶); others, such as **Austria** and the **Russian Federation**, base the fine on the income of the offender (Klob, 2007; Pyadushkin, 2008). Other states prescribe a set fine, with minimums ranging from EUR 1,000 (USD 1,355) in **Belgium** to CHF five million (USD 4.5 million) in **Switzerland** (Moreau, 2008; Switzerland, 1996b, art. 33(2)). In some states, aggravating factors may serve to increase the fine imposed. For example, in **France**, the fine will be increased from EUR 100,000 (USD 135,000) to EUR 500,000 (USD 680,000) if the offence is committed by an organized gang (Elluin, 2008). In **Israel**, the fine imposed will be 50 times greater in 'severe circumstances', such as if the end-user is an enemy of the state (Israel, 2007, sec. 33(1)).

With respect to sentencing, among the states reviewed imprisonment for exporting without a licence ranges from 6 months (e.g. **Sweden, Switzerland, the United Kingdom**) to 25 years (**South Africa**).³⁷ Again, aggravating factors may serve to increase the sentence in a few cases: if it involves an intentional as opposed to a negligent violation (e.g. **Norway, Sweden, Switzerland**); if the offence has been committed for a second time (e.g. **Belgium, Bulgaria, Singapore**); or if the violation has caused damage to foreign policy, commercial, or security interests of the state (**Czech Republic**).³⁸

LICENSING AUTHORITY: WHO DECIDES?

Each of the major exporters has appointed a particular department or ministry to manage the export licensing process, although in most cases the actual decision to grant an export licence involves consultation across a number of agencies. As indicated in Table 2.3, most export control authorities are located in the Ministry of Economy and/or Trade or its equivalent, while consultations with the Ministries of Foreign Affairs, Defence, or the Interior form part of the decision-making process.

This reveals two important points. First, it highlights the fact that the decision to export military equipment, including small arms, is a complex one that involves economic, defence, security, and foreign policy considerations, hence the need for interagency consultation. Second, and perhaps more surprising, given that the central organ responsible for export licensing in most of the major exporters is the Ministry of Economy and/or Trade, it may be inferred that states see this process primarily as an economic issue.

The influence of the representatives of different ministries during the interagency consultancy process varies. For example, in **Bosnia and Herzegovina**, while the Ministry of Foreign Trade and Economic Relations is the main agency responsible for licensing decisions, the Ministries of Foreign Affairs, Defence, and Security must all give their consent to a licence, and accordingly each has the power to veto a licensing decision.³⁹ In contrast, in **Romania**, although licence applications are submitted to the Inter-Ministerial Council for Export Control for review, decisions do not have to be made on the basis of consensus, and the president of the National Agency for Export Controls (ANCEX) has the final say (Wood, 2007, p. 16). As Saferworld points out, the power held by the president of ANCEX in the licensing process is of concern, not only because it diminishes interagency cooperation, but also because the president of ANCEX is appointed directly by the Romanian prime minister, which could allow the latter to unduly influence the final decision (Wood, 2007, p. 16).

The **Bulgarian** system seems to have found a middle ground whereby licensing decisions are adopted by a two-thirds majority of all Inter-Ministerial Commission members when representatives of all ministries and agencies represented on the Commission are in attendance. If not all representatives are present, decisions must be unanimous (Bulgaria, 2007a, art. 30(7)). In **Israel**, if the representative of the Ministry of Foreign Affairs participating in an advisory committee on a commercial export licence makes a recommendation or reservation that is not accepted by the committee, the matter is put to senior members of the Ministries of Defense and Foreign Affairs for their joint deliberation. If a conclusion still cannot be reached, the matter is resolved by the subcommittee of the Ministerial Committee for National Security, which is responsible for considering government-to-government exports (Israel, 2007, secs. 24, 47(c)). In

Sweden, the Export Control Council, composed of representatives of all parliamentary parties, assists the director-general in interpreting and applying the export control guidelines in place. The Council has an advisory role only, and it is ultimately up to the director-general to decide whether to grant an export licence (Sweden, 2007, p. 20; 2008, p. 15).

The use of interagency consultation in the licensing process helps ensure that all state interests are reflected and represented. Generally speaking, the Ministry of Foreign Affairs will offer guidance based on the country's international export control commitments (e.g. the EU *Code of Conduct* or the OSCE *Document on Small Arms*), while the Ministry of Defence will advise on the security aspects of the proposed trade. Of course, while such a process helps bring all government perspectives into the licensing mix, it will not prevent a single interest (e.g. economic) from overriding others (e.g. security or human rights concerns) if decision-making power is concentrated in a single department.

In addition to the competing *national* interests represented by the different agencies and ministries involved in an export licensing decision, the *personal* interests of representatives may also influence the decision. For this reason, **South African** legislation stipulates that any member of the licensing committee or any other person involved in the decision-making process who has a financial or other interest that might conflict with relevant professional duties must disclose that interest and may not take part in the decision (South Africa, 2002, sec. 25). A failure to disclose such an interest may lead to a fine or imprisonment of up to ten years (sec. 24(2)(c)).



A technician holds a Beretta 92S semi-automatic pistol at the Beretta manufacturing plant in Gardone Val Trompia, Italy, January 2007. © Andreas Solaro/AFP

Table 2.3. Overview of licensing agencies and interagency consultations

Country	Licensing agency	Ministry of Foreign Affairs	Ministry of Economy	Ministry of (Industry and) Trade	Ministry of Interior	Ministry of Defence	Other ministries consulted
Austria*	Items under the War Material Act: Ministry of the Interior.	c			L		
	Items under the Foreign Trade Act: Ministry of Economics and Labour.	c	L				
Belgium**	Federal: Ministry of Economy.	c	L			c	
	Wallonia: Economy and Employment Department.	c	L			c	Ministry of Justice, Customs Service, and semi-public organization Wallonie-Bruxelles International, which manages the international relations of the Walloon Region and the French-speaking Community.
Brazil	Brussels Capital Region: International Relations Department.	L				c	Ministry of Justice and Customs Service.
	Flanders: Flemish Ministry of Economy, Business, Science, Innovation and Foreign Trade.	c	L			c	Ministry of Justice and Customs Service.
	Ministry of Defence.	c	c			L	Ministry of Development, Industry, and Foreign Trade, Ministry of Science and Technology.
Bulgaria	Export Control and Weapons of Mass Destruction Non-Proliferation Interministerial Commission, within the Ministry of Economy and Energy.	c	L		c	c	
	Ministry of Foreign Affairs.	L		c		c	May consult: Industry Canada, the Royal Canadian Mounted Police, the Canadian Security and Intelligence Service, the Communications Security Establishment, Customs and Excise.
China	State Administration for Science, Technology and Industry for National Defence, within the Ministry of Industry and Information Technology.						'Relevant departments of the State Council' and the Central Military Commission (China, 2002, art. 14).
Czech Republic	Ministry of Industry and Trade.	c		L	c	c	



Finland	Ministry of Defence.	c											National Board of Customs and the Security Police.
France	Director-general of Customs acting in the name of the Minister of the Economy, Finance and Industry, after approval of the Ministries of Defence and Foreign Affairs and transmission to the National Defence General Secretariat acting on behalf of the prime minister.	c	L										
Germany	Federal Ministry of Economics and Technology (for 'war weapons').	c	L										
Israel	Commercial sales: director-general or head of the Defence Export Control Division, Ministry of Defence.	c											Advisory Committee (incl. employees of the Ministries of Defence and Foreign Affairs and defence forces plus Ministry of Industry, Trade and Labor if dual-use item is involved).
	Government-to-government exports: Ministry of Defence.	c	c										Must be submitted for approval to sub-committee of the Ministerial Committee for National Security (chaired by the prime minister and including the ministers of Foreign Affairs, Justice, and Finance).
Italy	Ministry of Foreign Affairs: Armaments Authorization Unit.	L	c										Environment, Industry, Foreign Trade, and Finance.
Japan	Minister of Economy, Trade and Industry.	c	L										
Norway	Ministry of Foreign Affairs.	L											
Portugal	Ministry of Defence.	c											
Republic of Korea	Defence Acquisition Program Administration, reports to Ministry of National Defence.	c											National Intelligence Service.
Romania	National Agency for Export Controls (ANCEX), activities coordinated by Ministry of Foreign Affairs.	L	c										Ministry of Administration and Interior, National Customs Authority, Romanian Intelligence Service, and the Foreign Intelligence Service.
Russian Federation	Federal Service on Military-Technical Cooperation with Foreign States, operating under the authority of the Ministry of Defence.												President (the Ministry of Foreign Affairs may also be involved, but this is unclear).

Singapore	Singapore Customs, Strategic Goods Control Branch.								Unknown.
South Africa	National Conventional Arms Control Committee (NCACC).	***		***			***		South African Police Service, National Intelligence Agency, and South African Secret Service.
Spain	Inter-Ministerial Regulatory Board on Foreign Trade in Defence or Dual-Use Items, attached to the Ministry of Industry, Tourism and Trade.	c		L		c	c		National Centre for Intelligence, Department of Customs and Excise Duties of the National Tax Administration Agency.
Sweden	MEC and OME destined for non-OECD countries: National Inspectorate of Strategic Products, answers to Ministry for Foreign Affairs. OME destined for OECD countries: Swedish Police Service.	c					c		Export Control Council (11 members of parliament representing all parties).
Switzerland	State Secretariat for Economic Affairs, within the Federal Department of Economic Affairs.	c	L						
Turkey	Ministry of National Defence.	c					L		Turkish General Staff.
United Kingdom	Export Control Organisation, Department for Business, Enterprise and Regulatory Reform (BERR).	c		L			c		Department for International Development may be consulted if application is to developing countries eligible for concessional loans from the World Bank International Development Association.
United States	Government-to-government sales: Defense Security Cooperation Agency, Department of Defense.						L		Department of State; approval of Congress is also required for certain exports.
	Commercial sales: Directorate of Defense Trade Controls, within the Bureau of Political-Military Affairs in the Department of State.						c		Approval of Congress is also required for certain exports, including firearms valued at USD 1 million or more.

Notes:

c: the ministry in question is consulted or participates in the interagency decision-making process.

L: the ministry in question is the lead agency responsible for processing the licensing application and, in some instances, the ultimate decision-maker.

** The Austrian legislation distinguishes between war material (governed by the War Material Act) and all other military items on the EU Common Military List that fall under the Foreign Trade Act.

*** Under the Special Act of 12 August 2003, the three regions of Belgium (Brussels capital, Flanders, and Wallonia) were given jurisdiction over the import, export, and transit of arms, munitions, and equipment intended for military use or law enforcement and associated technology as well as dual-use items and technology. Each region has created an Arms Unit to exercise these powers. Note that the Belgian federal authority (Ministry of Economy) retains authority for export licences issued to the Belgian armed forces and federal police; it is also responsible for combating illicit arms trafficking.

*** The NCACC consists of ministers and deputy ministers appointed by the president (South Africa, 2002, sec. 5). In practice, it includes the ministers for Foreign Affairs, Defence, and Trade and Industry, although ministers who do not have a line-function interest in the trade in conventional arms are also included. The composition of the NCACC in 2003, for example, included the ministers for the Intelligence Services; Transport, Housing; Health; and Science and Technology (South Africa, 2003, p. 2).

LICENSING CRITERIA: TO SELL OR NOT TO SELL?

Fundamental to any export control system are the principles or criteria states apply when authorizing an export.

In addition to general considerations of international and regional peace and security, and national interests as a whole, the issues states consider in deciding whether to permit the export of small arms can be broadly categorized as follows:

- *Considerations based on existing international and regional commitments:* whether the proposed export would be contrary to applicable regional instruments, the UN Charter, arms embargoes, or other existing legal and political commitments;
- *Considerations based on the likely user of the arms:* whether the arms to be exported might be used by terrorists, criminals, or insurgent groups, or diverted to such groups;
- *Considerations based on the likely use of the arms:* whether the arms to be exported might be used to commit human rights violations, violations of international humanitarian law (IHL), or acts of genocide;
- *Considerations based on the likely impact of the arms transfer:* whether the proposed export might contribute to regional or internal instability, exacerbate an existing conflict, or undermine sustainable development; and
- *Considerations based on other features of the recipient country:* such as their record of compliance with international obligations or their legitimate defence needs.

These categories are derived from the instruments shaded in red in Table 2.1; these contain principles or guidelines that states have agreed to take into account when deciding whether to grant an export licence. All of the instruments in Table 2.1 that contain detailed transfer criteria are politically rather than legally binding, except the EU *Code of Conduct*, which became legally binding in December 2008. Regardless of whether these undertakings are legal or political in nature, states have committed themselves to fulfilling them.

The OSCE *Document on Small Arms*, the EU *Code of Conduct*, and the Wassenaar *Best Practice Guidelines for Exports of Small Arms and Light Weapons* are of particular relevance to this chapter since they contain extensive, similar lists of export criteria to be applied to the export of military small arms. All but three—**Brazil**, **China**, and **Israel**—of the major exporters under review participate in at least one agreement. According to the tenth annual report on the EU *Code of Conduct*, **Canada** and **Norway** have also aligned themselves with the EU *Code of Conduct* (EU, 2008a, p. 2).

In some cases, details of the transfer criteria applied by states to export licensing decisions are reflected in their national legislation; examples include **China**, the **Republic of Korea**, **South Africa**, and **Switzerland**.⁴⁰ Some EU member states have incorporated the EU *Code of Conduct* in their national legislation; these include **Belgium**, **Bulgaria**, **Italy**, and **Spain**.⁴¹ However, transfer criteria are not always specified in main legal instruments and often appear in guidelines or policy documents instructing government agencies as to how they should decide on licence applications. For example, **Finland** has established a set of guidelines that specifically refer to and annexe the EU *Code of Conduct* and the OSCE *Principles Governing Arms Transfers* (Finland, 1995, sec. 1(2.2)).

Table 2.4 provides an overview of the different transfer criteria applied by states. The list of criteria is based on the EU *Code of Conduct* and is supplemented by additional criteria derived from the OSCE *Document on Small Arms* and the Wassenaar *Best Practice Guidelines for Exports of Small Arms and Light Weapons*. The list is by no means exhaustive and states do of course apply other criteria to their export licensing decisions that are not reflected in the table. A distinction has been made between the criteria each country has committed to by virtue of its participation in

Transfer criteria are not always specified in main legal instruments.

a relevant instrument or arrangement (reflected in the row marked ‘Commitment’) and the criteria incorporated by each country in its export controls system according to publicly available sources (reflected in the row marked ‘Control system’). Information is derived from a variety of sources, including states’ national legislation, their national reports, and policy statements reflected in annual reports and government Web sites. Grey shading indicates the information was sourced from a state’s national report on *Programme of Action* implementation. In these reports, many EU states indicate that they apply the EU *Code of Conduct* to their export licensing decisions.

In their national reports on *Programme of Action* implementation, their annual reports on arms transfers, and on the Web sites of relevant agencies, some states indicate that they apply the EU *Code of Conduct* to their export licensing decisions; these states include **Austria**, the **Czech Republic**, **France**, **Germany**, **Portugal**, **Romania**, **Sweden**, and the **United Kingdom**.⁴² Relatively few countries, however, expressly mention their commitment to the OSCE or Wassenaar criteria governing small arms exports. While quite similar, they are not identical. One undertaking that does not appear in the EU *Code of Conduct* but is reflected in the OSCE and Wassenaar documents is that states should take into account the stockpile management and security procedures of a potential recipient country (OSCE, 2000, sec. III.1 (A)(2)(c); WA, 2002, sec. II.1).⁴³ Only a few of the major exporters reviewed—e.g. **Belgium**, **Italy**, and **Norway**—make express reference in their licensing principles to the need to consider whether the recipient has stockpile security sufficient to prevent theft, loss, diversion, or unauthorized transfers (Moreau, 2008; Fallani, 2007; Leonhardsen, 2007).

States have incorporated numerous other criteria in their licensing systems that are not reflected in Table 2.4. For example, in addition to the regional stability and legitimate defence needs principles, **China** has adopted a third principle: no interference in the internal affairs of the recipient country (China, 2002, art. 5). This reflects the principle of non-intervention in the internal affairs of another state enshrined in the UN Charter (UN, 1945, art. 2(7)). **Austria**, **Finland**, and **Norway** also consider whether the recipient is in breach of a ceasefire agreement (Klob, 2007; Kotiaho, 2008; Leonhardsen, 2007); the **Republic of Korea** takes into account whether the transfer involves a ‘high possibility of causing diplomatic friction’ (Republic of Korea, 2008, p. 16); and **Belgium** and **Switzerland** consider whether child soldiers are used in the recipient’s army (Moreau, 2008; Switzerland, 1998, art. 5(b)).

Only a few major exporters consider the status of stockpile security in the recipient country.

In addition to understanding what criteria states have incorporated in their export control systems, it is also worth exploring the challenges of practical implementation. The EU *Code of Conduct* provides some elaboration of its criteria. For example, under Criterion 8 (technical and economic capacity of the recipient country), the *Code* stipulates that ‘States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country.’ Further practical guidance is provided in the *User’s Guide to the EU Code of Conduct on Arms Exports* (EU, 2006). The Wassenaar Arrangement has also developed guidelines to assist states in evaluating the risks associated with a potential export (WA, 1998).

Many governments utilize national intelligence sources to inform their arms licensing decisions. This information is sometimes shared between friendly governments. States may also make use of numerous non-governmental tools and information sources, including the media, reports by non-governmental organizations and human rights agencies, as well as data sets such as the Cingranelli–Richards Human Rights Data Set, the Universal Human Rights Index, the World Bank’s Worldwide Governance Indicators, the Ibrahim Index of African Governance, and the Countries at the Crossroads Survey.⁴⁴ Box 2.5 describes one such tool. The International Committee of the Red Cross has also produced a set of guidelines to assist states in their assessment of a recipient state’s compliance with international humanitarian law (ICRC, 2007).

Box 2.5 Practical tools for assessing export criteria

In **Germany**, the Federal Ministry for Economic Development and Cooperation funds a project run by the Bonn International Center for Conversion designed to provide information on the extent to which potential recipients of German arms exports meet EU *Code of Conduct* criteria. The project Web site hosts a database that measures 170 countries against the following seven criteria, based on the EU *Code*: international or regional arms embargoes, respect for human rights, good governance, internal conflict, membership in human rights and arms control conventions, arms export controls, and the danger of disproportionate military capacities impairing development.

For each criterion, each country is classified as either 'green', 'yellow', or 'red' with each colour indicating the respective degree of correspondence, and an explanation of how the evaluation was made. See Figure 2.2 for an example for a sample recipient.

Figure 2.2 **Evaluation of sample country's compliance with EU Code of Conduct criteria**

1. International or Regional Arms Embargoes



[show details](#)

2. Adherence to Human Rights



[show details](#)

Source: BICC (n.d.)

Despite an abundance of practical tools, which could, in theory, facilitate a more harmonized approach to arms transfer licensing, different states do make varying decisions regarding the risks inherent in a particular transaction, even when applying the same criteria. This is well illustrated by the incident involving the export of rifles by Austria to Iran in 2004. Austria approved the sale of 800 Steyr .50 HS rifles after it concluded in 2004 that they would be used by Iran to fight narcotics smugglers. Approval was granted despite concerns raised by the United States and the United Kingdom that the weapons might end up in the hands of insurgents. Indeed, in 2007, US troops recovered more than 100 of the rifles in the hands of insurgents in Iraq (IHT, 2007).

This case highlights the fact that different states may approach the same decision differently, depending on their assessment of the circumstances. The incident also illustrates another difficulty associated with licensing decisions: circumstances may change. It is reported that in defending the approval of sale, the Austrian Foreign Ministry spokeswoman Astrid Harz noted that the proposal was assessed very carefully and that the situation in Iraq and the region in 2003–04—when the decision was made—was very different from the situation in 2007, when the weapons were discovered in Iraq (IHT, 2007; *Daily Telegraph*, 2007).

A similar response was put forward by China following media reports of the shipment of arms from China to Zimbabwe in April 2008, at a time of heightened political tensions due to upcoming national elections. Foreign Ministry spokeswoman Jiang Yu stated that the shipment 'was perfectly normal trade in military goods between China and Zimbabwe', adding that 'the contract for the shipment was signed last year and was unrelated to the recent changes in Zimbabwe's domestic situation' (*China Daily*, 2008). While circumstances can change unpredictably, overtaking initial licensing decisions, it may be convincingly argued, in these cases, that the deterioration was foreseeable and—along with existing red flags—should have been factored into the licensing decision.

CONCLUSION

This chapter has reviewed national export controls in the world's major exporting states with a view to comparing and, to some extent, evaluating these systems. The chapter's first observation is one of sheer diversity. States employ a dizzying array of policies and procedures in an effort to ensure their arms exports serve national policy goals and, no less important, that once authorized for shipment abroad, the weapons reach their intended end users and are used according to the terms of the corresponding licensing agreement.

The chapter's second observation is that existing control measures are of varying quality. The basic components of export control systems appear to be in place in virtually all of the world's major small arms exporters (such as pre-licensing requirements, interagency decision-making, end-user certification, and sanctions). But the effectiveness of those components varies. Some states easily meet accepted standards of best practice, while others appear to fall short; yet more detailed information is required for a definitive assessment of national export controls. More often than not, given resource and space limitations, the chapter stops at an assessment of national practices. The extent to which states implement their legislation remains, in most cases, undisclosed.

Awareness of the need to maintain robust, effective export controls is increasing among states, which has resulted in a growing list of regional and international commitments on small arms transfers, together with a growing recognition of the relevance of existing legal norms in this area. The chapter makes an initial assessment of the degree to which states have translated international and regional commitments into legislative form. While this is a crucial step towards full compliance with such norms, it is only an initial step and not one that all states have taken.

In diversity lies danger. As the chapter indicates, there are many control gaps among the world's major exporting states. These extend to all aspects of national export controls but appear particularly acute once weapons leave the national territory. Gaps also exist between the licensing criteria states have incorporated in their legislation or policy guidance and the practical application of such criteria to specific cases. As illustrated, different states can reach very different conclusions in the same case. Clearly, there is much work to do, at the international level, to ensure that national control systems complement, rather than contradict, one another. ■

LIST OF ABBREVIATIONS

ANCEX	National Agency for Export Controls (Romania)	GPL	Global project licence
		IIC	International import certificate
CIFTA	Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials	IHL	International humanitarian law
		MEC	Military equipment for combat purposes (Sweden)
DVC	Delivery Verification Certificate	NCACC	National Conventional Arms Control Committee (South Africa)
EU	European Union	OAS	Organization of American States
EUC	End-user certificate	OECD	Organisation for Economic Co-operation and Development
FA	Framework Agreement (France, Germany, Italy, Spain, Sweden, and the UK)	OGEL	Open general export licence (UK)

OME	Other military equipment (vs. MEC, Sweden)	SADC	Southern African Development Community
		SEESAC	South Eastern and Eastern Europe
OSCE	Organization for Security and Co-operation in Europe		Clearinghouse for the Control of Small Arms and Light Weapons
PISE	Product Identification Search Engine	UN	United Nations

ENDNOTES

- 1 The 26 states reviewed in this chapter have been classified by the Small Arms Survey as major exporters of small arms and light weapons for at least four of the past five years (since 2004). That is, their annual exports have exceeded USD 10 million. Note: Mexico also qualifies in this category, but more research is necessary to assess its status with respect to transfer controls.
- 2 For a detailed list of regional and multilateral instruments affecting small arms transfers, see Parker (2008).
- 3 Although the EU *Code of Conduct* was transformed into a legally binding Common Position in December 2008, references throughout this chapter are to the EU *Code of Conduct* rather than the *Common Position*. Since research for the chapter was completed before the adoption of the *Common Position*, it reflects the situation as it existed under the EU *Code*. See EU (1998).
- 4 The EU *Code of Conduct* became a legally binding Common Position in December 2008. See endnote 3.
- 5 See US (1997, part 748.13).
- 6 For online details of current UN Security Council arms embargoes, see UNSC Sanctions Committees (n.d.).
- 7 The *Report of the Governmental Technical Experts on the Register of Conventional Arms* states, 'Since the supply of equipment by a State to units of its armed forces stationed abroad does not involve transfer of national title and control, such supply is not considered an international transfer.' See UNGA (1992, paras. 10–12).
- 8 Also referred to as 'war materiel'.
- 9 See WA (2008, notes to sec. ML1) and EU (1998, Op. Provision 1; 2008b, notes to sec. ML1).
- 10 In the Wassenaar Munitions List, items are categorized numerically as 'Munitions List 1' (ML1), 'Munitions List 2' (ML2), and so forth. They are similarly identified in the EU Common Military List.
- 11 France is in the process of repealing the order of 20 November 1991 establishing its list of war materiel and related materials, and integrating the EU Common Military List (Elluin, 2008).
- 12 Under the *Defense Export Control Law, 5766-2007*, 'defense equipment' is defined to include 'combat equipment', which in turn is defined to cover 'equipment included in the Munitions List of the Wassenaar Arrangement, as periodically updated' (Israel, 2007, ch. B).
- 13 With regard to the export of hunting and sporting rifles, however, Sweden's National Inspectorate of Strategic Products (ISP) handles exports to states that are not members of the Organisation for Economic Co-operation and Development (OECD) while the Swedish Police Service handles exports to other OECD states.
- 14 In the *Programme of Action*, states have undertaken to assess export applications 'according to strict national regulations and procedures that cover all small arms and light weapons' (UNGA, 2001, para. II.11, emphasis added).
- 15 In some jurisdictions arms that are transiting the state may be considered 'exports' when they leave the territory of the state. However, some states expressly exclude goods in transit from the definition of 'export' (e.g. Singapore).
- 16 In addition, the commercial export of military small arms is prohibited (Teixeira, 2007).
- 17 See UNGA (2001, para. II.18), OSCE (2000, sect. IV.C.1), and EU (2002, art. 4(c)).
- 18 The Wassenaar *Best Practices for Disposal of Surplus/Demilitarised Military Equipment* (agreed at the plenary in December 2000), provides a list of best practices for disposal of surplus military equipment (items that may or may not have been demilitarized) drawn from the responses provided by participating states on this subject. These practices are those actually followed or aspired to by Wassenaar Arrangement participating states and are illustrative of effective export control over surplus/demilitarized military equipment.
- 19 Belgium is composed of three regions: Brussels Capital, Flanders, and Wallonia. Flanders and Wallonia are each subdivided into five provinces.
- 20 Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia were admitted in 2004; Bulgaria and Romania joined in 2007.
- 21 See also Small Arms Survey (2008, p. 166).
- 22 Bulgaria (2007a, art. 3); Czech Republic (1994a, art. 3); Finland (2008b, p. 12); Italy (2007); Spain (2004a, ch. 1, sec. 1, art. 2(2)(d)(5)); Switzerland (1997, art. 13(f)); US (2007, sec. 126.4).

- 23 The 25 countries are: Argentina, Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, New Zealand, the Netherlands, Norway, Poland, Portugal, Sweden, Spain, the United Kingdom, and the United States.
- 24 For example, the Swedish Inspectorate of Strategic Products hosts a site listing all UN, OSCE, and EU arms embargoes in force (Sweden, n.d.a); in the United Kingdom, the Department for Business Enterprise and Regulatory Reform maintains a site detailing arms embargoes in place and other restrictions (UKBERR, n.d.a.).
- 25 Czech Republic (2007b, p. 4); Finland (2008); Germany (2008); Norway (Leonhardsen, 2007); Turkey (2008, p. 9).
- 26 See UKBERR (n.d.b).
- 27 For further details, including a full list of destination countries to which the open licence applies, see UKBERR (2008).
- 28 For a full list of the conditions attached, see UKBERR (2004).
- 29 Such reporting software includes the Annual Arms Report CD produced by the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC). Designed for use in the western Balkans, it provides templates for reporting arms sales.
- 30 The United Kingdom uses PISE for its 'Goods Checker', a Web-based tool that helps exporters determine whether their goods, software, or technology is controlled by UK or EU strategic export control legislation. See UKBERR (n.d.c).
- 31 See Small Arms Survey (2008, ch. 5).
- 32 Dreyfus and Perez (2007); Elluin (2008); Germany (2008); Fallani (2007); Romania (Wood, 2007, p. 24); Russian Federation (2007, p. 13); South Africa (2002, sec. 17(c)); Spain (2004a, ch. 2, sec. 1, art. 23(1)(c)).
- 33 This is also in line with the OSCE *Standard Elements* (OSCE, 2004, para. 1).
- 34 See Small Arms Survey (2008, chs. 4–5).
- 35 See EU (2008a). These findings are based on the approximate number of times each criterion was invoked as the basis for a refusal. Sometimes more than one criterion is invoked for a refusal. Accordingly, the number of times criteria were invoked exceeds the total number of refusals made. The calculation includes licence refusals for categories ML1 and ML2 of the EU Common Military List. If export refusals for ML3 (ammunition) are also included, Criterion 7 was invoked in 89 out of 206 cases (43 per cent).
- 36 Japan (1997, art. 69-6(1)); Singapore (2003, sec. 5(6)(a)); Spain (2004b, p. 8), UK (1979, sec. 68(3)).
- 37 Sweden (2000, sec. 5); Switzerland (1996b, art. 33(3)); UK (1979, sec. 68(3)); South Africa (2002, s. 24(2)).
- 38 Norway (1987, para. 5); Sweden (2000, sec. 7); Switzerland (1996b, art. 33(3)); Moreau (2008); Bulgaria (2002); Singapore (2003, sec. 5(6)(b)); Czech Republic (1994a, art. 25(2)).
- 39 Although Bosnia and Herzegovina falls outside the sample of exporting states under review (it has only been classified as a major exporter twice in the last five years), it is referred to here because the veto power granted to each agency involved in the inter-agency consultancy process is an unusual feature (SEESAC, 2006, p. 22).
- 40 China (2002, art. 5); Republic of Korea (2008, p. 16); South Africa (2002, sec.15); Switzerland (1998, art. 5).
- 41 Moreau (2008); Bulgaria (2001, art. 5); Fallani (2007); Spain (2004a, art. 8).
- 42 Austria (2007b); Czech Republic (2007b, p. 11); France (2007, p. 5); Germany (2008, p. 24); Romania (2005b, p. 10); Sweden (2008, p. 14); and UK (2008a).
- 43 Consideration of the recipient country's stockpile management is not mentioned within the EU *Code of Conduct* criteria; however, according to the *User's Guide*, one of the elements to consider when formulating a judgement regarding the recipient's ability to exert effective export controls under Criterion 7 is: 'Is stockpile management and security of sufficient standard?' (EU, 2006, sec. 3.4.3, p. 48).
- 44 For details on these data sets, see CIRI (n.d.); UN (n.d.); World Bank (n.d.); Mo Ibrahim Foundation (n.d.); and Freedom House (n.d.).

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Members of the Slovenian Army load cases with guns and ammunition destined for Afghanistan at Ljubljana Airport, November 2006. © Srdjan Zivulovic/Reuters



Controlling Air Transport

PRACTICE, OPTIONS, AND CHALLENGES

INTRODUCTION

In early 2006, the French and Belgian governments launched a joint initiative to prevent illicit trafficking of small arms by air. Reflecting growing concerns over the inadequacy or lack of regulations governing transportation agents—especially in the air aviation sector, which is central to much of the illicit small arms trade—the initiative rested on the claim that transport was the ‘weak link’ in the arms transfer chain, as the physical movement of weapons leaves traces—such as flight records and cargo and customs documents—that can be used to detect and stem illicit transfers.¹

While the argument appears sound on paper, there is always a risk that new control frameworks ‘reinvent the wheel’ or are difficult to implement. This chapter steps back from the political debate to assess the strengths and weaknesses of current—and proposed—approaches to the regulation of arms and ammunition transport. It reviews existing laws, regulations, and procedures applicable to the transportation sector, focusing specifically on air transport. It is based on a study of control regimes in place at the international level and in 23 major small arms-exporting states.² The chapter covers three main bodies of law: arms export legislation, customs laws, and civil aviation regulations.³

Its main conclusions include the following:

- Concrete initiatives to control (air) transportation agents have been hampered by the debatable claim that the globalized nature of trade, the large number of economic actors, and the tendency to outsource arms transport-related services to third parties make this unfeasible.
- Arms transfer regimes in the majority of the world’s major exporting countries control transportation directly—through licensing—or indirectly—through the submission of transport information by exporters.
- Customs rules and procedures can be used to trace fully the transport segment of an arms transfer.
- Civil aviation rules are not specifically aimed at preventing arms trafficking. Many of their provisions, however, could be adapted to this goal, particularly those relating to aircraft registration and safety and security measures.
- Existing rules governing arms exports, customs, and civil aviation could be used to tackle illicit weapons transport. Major obstacles in this regard include weak coordination and communication among the different spheres of control and divergent priorities.
- The successful thwarting of small arms trafficking by air will require engaging a much wider spectrum of actors, including customs officials and civil aviation authorities, not only at the policy-making level, but also through monitoring and enforcement.

The chapter starts with a brief description of a legal arms transfer scheme, highlighting its typical processes and actors, including transportation agents. The second section provides an overview of the political debate on transportation

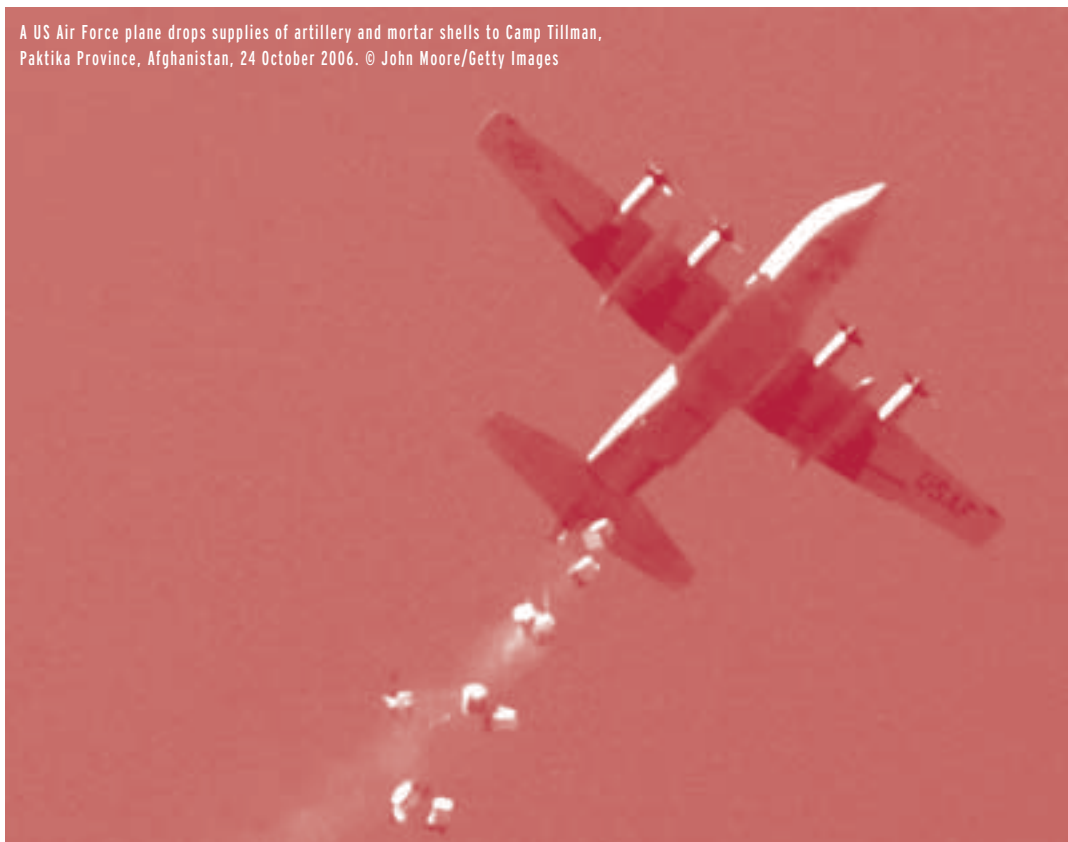
and illicit small arms transfers, and a detailed account of the French–Belgian initiative. The third section analyses existing international and national control regimes, including arms export controls, customs rules and procedures, and civil aviation regulations. This section shows that an extensive body of rules exists to control transportation agents, which could help prevent illicit small arms trafficking. Nevertheless, effective implementation for such purposes requires overcoming several practical and political hurdles, among them the divergent goals of authorities in charge of issuing arms transfer licences, enforcing customs regulations, and applying civil aviation rules.

ARMS TRANSFERS AND TRANSPORTATION⁴

Arms deals are complex transactions that involve a multitude of actors—each with specific roles and responsibilities—along with several states and applicable control regimes. In basic terms, these transactions can be described as involving an exporter, importer, transportation companies, and, potentially, one or more transit countries. In practice, however, many other actors are involved. They include the following:

Brokers are frequently used by producing or exporting companies and governments. They may be in charge of facilitating one or more aspects of the arms transfer, such as the initial identification of buyers and sources of weapons and the organization of transportation and financing.

A US Air Force plane drops supplies of artillery and mortar shells to Camp Tillman, Paktika Province, Afghanistan, 24 October 2006. © John Moore/Getty Images



Freight forwarders are agents contracted by the exporter. Usually specialized in the organization of the shipment of the goods, they may take charge of several services, including the preparation of export and shipping documents, the booking of cargo space, and the collection of freight.

Transportation agents may be thought of as ‘carriers’, companies that physically move goods—by air, land, or sea (AI and TransArms, 2006, p. 2, table). In a broader sense, they have been defined as ‘agents involved in arrangements for the transportation of the arms and associated goods, and include shipping agents and brokers, freight forwarders

Table 2.1 Legal transfer scheme

Stage	Contract negotiation	Preparation of export	Transit	Import
Actions	Decision on the terms of the deal: what is bought, at what price; financing scheme; transportation scheme.	Packaging of weapons; obtaining relevant authorization; transportation to the point of loading; clearing customs of exporting country.	Warehousing/possible transfer to a different mode and/or company of transportation.	Warehousing; transportation to importer/final end user; post-delivery check.
Actors	Buyer/seller/manufacturer; broker.	Manufacturer/exporter; broker; freight forwarder; carrier (air, land, or sea); warehousing agent; handling agent.	Carrier (air, land, or sea); broker; warehousing agent; handling agent.	Importer/end user; broker; warehousing agent; carrier (air, land, or sea); handling agent.
Authorities	In some countries negotiations are subject to licensing; in such cases, relevant authorities are usually those responsible for issuing export licences.	Export licensing authority; origin port, airport, and/or land transport authority; customs authority at export.	Transit port, airport, and/or land transport authority; customs authority at transit.	Import licensing authority; import port, airport, and/or land transport authority; customs authority at import.
Documents	Negotiation licence.	Export licence; end-use documentation; transportation licence/authorization; brokering licence; customs export documents (goods declaration for export); transportation documents (airway bill/bill of lading); dangerous goods declaration (if applicable); forwarders' documents (e.g. certificate of origin, packing list, certified description of quantity and type of goods).	Transit authorization; transit customs documents; transportation/warehousing/handling documents.	Import licence; customs import documents; warehousing documents; transportation documents; delivery verification certificate.

and charterers' (UN, 2001, p. 24). The legal systems analysed in this chapter tend to define the term 'transportation agent' broadly, encompassing not only those responsible for physically moving arms—air carriers and ships, for instance—but also third parties in charge of the organization of transportation.

Warehousing and handling agents are companies responsible for the storage of arms and their handling, especially during transit or transshipment.⁵

Table 2.1 offers an overview of the arms transfer process, including relevant actors, authorities, and documentation.⁶

One of the reasons why arms transfers are very complex is the overlap of roles among the various actors involved. For example, there may be a significant overlap between the activities of a broker and those of a freight forwarder, or between those of a freight forwarder and transportation companies. As a result, there may be confusion as to who is legally responsible for which stage of the arms transfer.

Companies transporting arms are often involved in the shipping of other goods.

Another source of complexity stems from the plurality of legal frameworks that typically govern an arms transfer. Applicable rules tend to be a complicated combination of regimes established by the various countries concerned—those of origin, transit, and destination. Although international standards exist, the prevailing legal reality is one of diversity among the countries involved in a transfer. Such complexity is not unique to the arms trade sector, but arms traffickers can use it to obfuscate the chain of responsibility in an illicit transfer.

Absent safety measures that may be needed, the transportation of small arms does not present particular logistical challenges. Materiel can be shipped in large quantities and in different types of containers; it may also be transported together with other goods on commercial ships and aircraft (AI and TransArms, 2006, p. 30).

The choice of mode of transportation will depend—for small arms, as for any other goods—on the combination of exporter/importer needs, cost, and the destination. While transportation by sea is cheaper and allows for the movement of sizeable cargoes, air transfers will be favoured when 'difficult' places must be reached—including zones of conflict and embargoed recipients. The willingness of some air companies to take on an illicit consignment of arms, provided the pay is good, increases the likelihood that transportation by air will be the chosen means for an illicit arms deal.

The transportation of small arms is usually integrated with that of other commercial goods. By the same token, companies that transport small arms will often be involved in the shipping of other goods. In fact, a recent study indicates that some of the companies involved in the illicit transfer of small arms have also been contracted by government agencies for the transport of humanitarian goods (Griffiths and Bromley, 2009). Commercial flows of small arms are thus not part of a discrete regime that can be easily controlled or restricted—a situation that is exploited by arms traffickers. While this does not preclude effective counter-measures to curb arms trafficking, it does call for more than the mere regulation of arms transfers in isolation.

THE POLITICAL DEBATE

The early small arms debate and the Group of Governmental Experts on brokering

The role of transportation in the delivery of weapons to illicit users and destinations has been a central element of the small arms debate since its very beginning. As early as 1997, the first Panel of Governmental Experts' report on small arms noted that the illicit supply of weapons was 'characterized by a lack of transparency that is due to the

characteristics of small arms and light weapons which can be easily concealed during transport' (UN, 1997, para. 52). The same report pointed to the use of ships with 'bogus registration and flags of convenience' as a typical means of illicitly transferring small arms (para. 53).

Nevertheless, discussions regarding the role of transportation agents in illicit arms deals mainly developed as part of the debate on controlling arms brokering activities. Since 2001—with the publication of the first report by the Group of Governmental Experts (GGE) on small arms brokering (UN, 2001)—transportation has been defined as an 'associated' (or 'related') activity of intermediation, together with such activities as the financing of arms deals. Arguments in favour of more—or more stringent—controls on transportation have been a constant feature of this debate, albeit treated as a 'corollary' to the central issue of intermediation and brokerage. In fact, for at least ten years, such arguments have been effectively trumped by the claim that the nature of the transportation business—globalized and transnational, with outsourcing to third parties on the increase—makes it impossible to enforce state controls effectively.⁷

The elements of the transportation question that are central to current research and political action were all contained in the 2001 GGE report. Based on evidence that transportation agents play a key role in transferring small arms in violation of United Nations (UN) Security Council arms embargoes (UN, 2001, para. 69), the GGE proposed several options for control. These included:

- penalizing actors that take part in the transport of weapons to embargoed destinations (para. 70);
- establishing an additional licensing process for the transport of arms by air, in addition to that applying to arms exports (para. 71);
- requiring the broker to disclose the names of agents, airlines, and routes used in a particular arms deal (para. 73); and
- encouraging industry to adopt a code of conduct with undertakings to provide full information on cargoes and flight plans relating to an arms shipment, and not to ship arms to destinations where they 'could be used in conflict, etc.' (para. 74).

In some sense, the GGE report took one step forwards and two back, as it coupled these proposals for control with counter-arguments that proved powerful in the debate on the issue for the following years. For example, when discussing the possible introduction of an additional 'layer' of licensing applicable to air transport, the GGE emphasized that this would sit uneasily with the 'short deadlines' typical of the airline industry (para. 72). On the other hand, such observations sought to strike a balance between security and trade considerations, a goal seldom pursued in recent transport control efforts.

The GGE also considered the possibility of focusing on the effective implementation of existing legal frameworks rather than on the creation of new rules. Based on 'international agreements and domestic legislation already available to control the airline industry', the report underlined the need for:

- verifying flight plans, particularly those of cargo aircraft on ad hoc charters, at the points of departure and transit;
- comparing end-use documentation submitted at the time of the export licence application with landing permits or certificates issued by the importing state;
- encouraging and assisting national administrations in the enforcement of existing civil aviation regulations, for instance those governing the certification of individual aircraft and airlines (para. 75).

While some regional instruments following the 2001 UN small arms conference provided for the control of transportation agents, at the UN level the question remained largely in the shadows. The two major global instruments for the control of small arms—the UN Programme of Action and the Firearms Protocol—make no mention of the control of transportation agents. Indeed, this gap in the Programme of Action is one of the main reasons behind the French–Belgian initiative.⁸

The most significant UN process on small arms brokering to date—the second brokering GGD—resulted in a report that treated the question of transportation only tangentially (UN, 2007). The document lists transport and freight forwarding among:

activities closely associated with brokering in small arms and light weapons that do not necessarily in themselves constitute brokering [but that] might be undertaken by brokers as part of the process of putting a deal together to gain a benefit (para. 10).⁹

The 2007 GGE report does not contain any specific recommendations for the control of transportation, although it notes that national brokering legislation may provide for:

the control of financial, transport and other services when these are arranged or facilitated by a broker as an integral part of a small arms and light weapons transaction designed to benefit the broker (para. 46).

The French–Belgian initiative

Global instruments on small arms do not provide for the control of transportation. To date, the French–Belgian initiative represents the most concerted effort to prevent illicit small arms trafficking by air. Launched in early 2006, it is a response to the claim that around 80 per cent of small arms transfers in violation of international arms embargoes are carried out using air transportation.¹⁰ During the Security Council debate on small arms in March 2006, the French representative stated that, in the context of the crises dealt with by the Council:

there is a crucial problem, a practical problem, that arises every time: the problem of the transport, including aerial transport, of small arms and light weapons (UNSC, 2006, p. 16).

The problem, continued the French representative, was compounded by the absence or inconsistency of domestic regulations; the fluid connections between the legal and the illegal trade; and the unequal capacities of states to control their airspace. Emphasizing that, despite these challenges, the time to act had come, the representative proposed ‘a process of reflection on the various dimensions of this problem’ within ‘the framework of the European Union and in other contexts’ (UNSC, 2006, p. 16).

The French government proposed tackling the transportation of illicit small arms as a way of dealing with the ‘weak link’ in the chain of illicit transfers; unlike brokering transactions, illicit transportation is likely to be reconstructed and potentially broken due to the ‘paper trail’ it inevitably leaves behind.¹¹ This approach was also aimed at dealing with the lack of relevant provisions in the Programme of Action (UNSC, 2006, p. 16).

From the start, the French–Belgian initiative followed a distinctly regional approach, with parallel tracks being pursued simultaneously within the European Union (EU), the Organization for Security and Co-operation in Europe (OSCE), and the Wassenaar Arrangement (WA). The OSCE was the forum chosen for a first awareness-raising meeting on the issue of air traffic and small arms proliferation, held in Vienna on 21 March 2007. It was selected because

of its capacity to establish regional norms and because of its membership, which comprises some of the major small arms players. The meeting also allowed different economic and political actors to come together and debate the issue; participants included representatives from the International Air Traffic Association (IATA), the International Civil Aviation Organization (ICAO), and the World Customs Organization (WCO) (OSCE–FSC, 2007).

Wassenaar Arrangement best practices

The first normative document to emerge from the French–Belgian initiative was adopted in 2007 by the Wassenaar Arrangement: the *Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport* (WA, 2007). The best practices (BP) cover air transport of small arms, ‘excluding those that are transported by government, military or Government-chartered aircraft’, for which WA participating states ‘recognise that they assume full responsibility’ (sec. 1).¹² The core measures in the BP are aimed at enhancing WA members’ control of air transport through additional requirements at the export licensing stage. In particular, the BP establish that, when issuing export licences, and before the actual export has taken place, a WA member may require information on:

The first normative document of the French-Belgian initiative was adopted by the Wassenaar states.

- the air carrier and freight forwarding agent involved in the transportation;
- aircraft registration and flag;
- the planned flight route, including stopovers;
- records of previous similar transfers by air;
- compliance with national and international norms relating to air transport of weapons (WA, 2007, sec. 2.1).

Mindful of the fact that some of the requested information may not be available at the time of the export licence application (such as details on the transport route), the BP provide that states are entitled to condition the actual export of the material on the submission of such outstanding information (sec. 2.1).

The BP also encourage Wassenaar participating states to exchange information relating to: exporters, air carriers, or agents that fail to provide requested information; ‘an identified destabilising attempt to export [small arms and light weapons] by air’; and planned exports that could ‘contribute to a destabilising accumulation’ or otherwise threaten the ‘security and stability of the region of destination’ (sec. 2.2).

In addition, the BP envisage the provision by exporters of documentation confirming delivery at the intended destination (sec. 2.3) and the referral of cases of concern to ‘relevant national enforcement authorities’ (sec. 2.5).

The BP were later adopted as ‘standard elements for implementation’ by the Forum for Security Co-operation of the OSCE (OSCE, 2008, p. 2). A questionnaire is annexed to the relevant decision, which OSCE members agreed to use to exchange information on national practices to prevent the proliferation of small arms through illicit air transport (OSCE, 2008, annex 2).

The EU strategy

In the context of the European Union, the French–Belgian initiative built on the *Strategy to Combat Illicit Accumulation and Trafficking of SALW and Their Ammunition* (CoEU, 2006). Adopted in December 2005, this document focuses on the small arms problem in parts of Latin America, Central and East Asia, the Balkans, the Middle East, and Africa. Up to that point, the EU’s small arms strategy was essentially based on reaction (such as through disarmament and peacekeeping), but the 2005 *Strategy* also calls for preventive measures to ‘tackle illegal supply’ and include ‘controls on exports of conventional weapons’ (para. 14). In addition, it urges members to pay greater attention to weapons

stockpiles, particularly those in Eastern and South-east Europe, and to 'the ways and means by which they are disseminated in Africa (illegal brokering and transport)' (para. 14).

Among its various recommendations for action, the EU *Strategy* emphasizes cross-border measures, including strengthened border controls—in particular air borders—in exporting and importing states (para. 20(a)). More specifically, it advocates:

- programmes to provide equipment and assistance in drafting national legislation on export controls and to train institutions in the states of sub-Saharan Africa;
- training programmes for customs departments and other agencies, in particular in Eastern European countries (para 20(a)).

Within the EU, the *Strategy* calls for: implementation of the EU 2003 Common Position on the control of arms brokering; the establishment of mechanisms for the exchange of information on small arms trafficking networks, in particular for monitoring UN and EU arms embargoes; and the development of a counter-trafficking policy (illicit brokering and transport) using EU air, sea, and land space, together with new alert and cooperation mechanisms and Europe-wide police operations (para 20(a)).

Within this framework, the French–Belgian initiative aimed to update and strengthen the EU Joint Situation Centre's list of air cargo carriers of concern. First established in 2007, the list was intended as a way to exchange information on suspect air transportation companies among designated national contact points,¹³ and to bring this information to bear on EU states' arms export licensing decisions. As of May 2009, however, efforts to strengthen and update the list, as pursued by the French and Belgian governments, had yielded few tangible improvements.¹⁴

In addition, during its presidency of the EU, the French government promoted the inclusion of language stressing the need to combat small arms proliferation in the Union's cooperation agreements with third countries.¹⁵ Failure to comply with these clauses may now entail the suspension of relevant cooperation agreements (French MFA, n.d.).

The French-Belgian initiative targets mainly 'sizeable' transfers to embargoed recipients.

Overall, the French–Belgian initiative aims to prevent 'sizeable' small arms transfers in violation of international arms embargoes. More specifically, it seeks to make states more transparent and responsible in this area through the exchange of information between national authorities. The initiative implicitly encourages exporters to make greater use of state aircraft or state-contracted private companies, which would entail more protection for the contracted companies and more responsibility for the state contracting them.¹⁶ The underlying idea is to curb the increased freedom enjoyed by private trade companies in the post-cold war era—a goal that arguably clashes with the reality of today's globalized commodities markets, including small arms, and the pivotal role of private companies within these.

The potential impact of the initiative is also likely to be limited by its restricted geographic and substantive scope. Proponents of the instruments adopted within the WA and the OSCE had intended them as the first step of an 'incremental' process that would lead to the adoption of similar, consensual arrangements by other regional bodies, which would eventually cover other modes of small arms transportation (maritime and land) as well.¹⁷ There are no signs of this occurring in the near future; the initiative seems to have lost momentum since the adoption of the *Best Practices* by the OSCE.¹⁸

Some of the measures proposed by the initiative also create practical problems of implementation as they do not adequately reflect certain trade realities. For instance, the Wassenaar and OSCE *Best Practices* request that information on aircraft registration and flag be submitted at the time of the export licence application. Yet, while the flag may be known at that time, 'the registration will almost certainly not be'; in the 'unlikely event' it is known, the

registration may change for technical or operational reasons.¹⁹ In some EU countries, the issuing of an export licence is made conditional on the later provision of information on transport modalities, which suggests that such a system is possible.²⁰ The practicality of such measures is open to challenge by actors that would be called upon to implement them. Yet diplomatic discussions on the French–Belgian initiative were conducted without the meaningful involvement of customs and air industry organizations,²¹ despite initial signs that the process would be inclusive.²²

THE REGULATORY DIMENSION

A broader approach to the development of transfer controls—one involving all stakeholders and different spheres of regulation—would facilitate the identification of existing measures that could be harnessed to attain counter-proliferation goals. As this section of the chapter shows, transportation agents—both general and specific to air transportation—are subject to several control and monitoring measures at the national and international levels. While the priorities of each control regime may vary (such as customs vs. transfer licensing authorities) and do not typically prioritize arms control, these regulations could be used to better effect in tackling the problem of illicit small arms transportation.

Both internationally and domestically, at least three bodies of law are relevant for the control of small arms transportation. The first is represented by arms control regimes. At the national level, these comprise both trade controls—the laws and regulations governing the export, import, and transit of military equipment by or through a country—and the rules on the domestic possession and circulation of weapons. The second body of law is represented by customs controls, which establish—among other things—the information that must be provided when arms shipments cross national borders (imports, exports, and transits). Finally, as far as transportation by air is concerned, a third relevant body of law is represented by national and international civil aviation regulations.

Transportation agents are subject to several national and international control measures.

Arms control regimes

The international dimension

The secondary attention accorded the control of transportation activities in international initiatives on small arms is reflected in the near-total neglect of the issue in international and regional small arms agreements (legally binding or not). As mentioned above, neither the UN Programme of Action nor the UN Firearms Protocol addresses the issue.

Transportation standards do exist at the international level, but only in relation to dangerous goods, which include ammunition. These are contained in the *Model Regulations Elaborated by the Sub-committee of Experts on the Transport of Dangerous Goods of the United Nations Economic and Social Council* (ECOSOC, 2007). Applicable to all modes of transportation (air, rail, road, and sea), the Model Regulations include ‘principles of classification and definition of classes, listing of the principal dangerous goods, general packing requirements, testing procedures, marking, labelling or placarding, and transport documents’ (p. 1). While technically non-mandatory, the Regulations enjoy ‘worldwide acceptance’ (Berkol and Gramizzi, 2004, sec. 2).

Regionally, provisions for the control of transportation can be found in a minority of documents dealing with small arms: the Nairobi Protocol (2004), the Organization of American States’ Model Regulations on brokering (OAS, 2003), and the Economic Community of Western African States (ECOWAS) Convention (ECOWAS, 2006).

The Nairobi Protocol, which commits states parties to adopt national measures to control brokering activities, includes the regulation of small arms transporters through a system of licensing (Nairobi Protocol, 2004, art. 11). In the OAS Model Regulations, the control of transportation agents is effected through the definition of 'brokering activities', which include:

transporting, freight-forwarding, [. . .] 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 (OAS, 2003, art. 1).

The ECOWAS Convention, which also defines brokering as including the activity of weapons transportation, contains several specific provisions on the issue (ECOWAS, 2006, art. 1.8). When applying to the ECOWAS Executive Secretariat for an exemption to the Convention's ban on small arms imports, states parties must include information on:

the number and period of shipments, the routes including transit locations, the type of transport to be used, all companies involved in importing, freight forwarding and handling, details of the storage and management of the weapons whilst being transferred' (art. 5.1.c).

The Convention also mandates the inclusion in national registries of transport-related information for individual transactions (art. 9.2.e); the national registration of transportation agents (art. 20.1); and the inclusion of information on shippers, routes, and shipping points in brokering licence applications (art. 20.3).

The national dimension

Licensing. Within national arms export regimes, the control of transportation agents can be broadly divided into direct and indirect measures. In the first case, transportation companies are required to possess a written licence in order to transport weapons—either within the national territory or abroad, or both. In the second case, transportation companies do not need a licence to transport small arms; however, those who apply for an export licence must



Thai police officers and soldiers surround a cargo plane from Kazakhstan with a cache of weapons found on board, Don Muang Airport, Bangkok, December 2009. © AP Photo



provide information on transportation (such as companies involved and routes).

The majority of the 23 countries analysed for the study have in place one or both forms of control, although these measures vary in their details.

In eight countries a licence is required before a company may transport small arms (Bulgaria, China, the Czech Republic, France, Germany, South Africa, the United Kingdom, and the United States). In the United States, transportation is included in the definition of brokering activities,²³ which are subject to licensing, regardless of whether they are conducted on US territory.

In Bulgaria, Germany, and the United Kingdom, the licensing requirement explicitly applies to nationals or residents transporting small arms between third countries; that is, it does not cover arms being transported from or to national territory. In Bulgaria, registration is also necessary for individuals and companies wishing to transport small arms. The latter must specify what military items are to be included in the authorization (Bulgaria, 2007a, art. 10(3).13). In Germany, the licensing requirement applies to all nationally registered ships and aircraft that are to transport war weapons—which

include many classes of small arms—when they are loaded and unloaded outside federal territory and do not transit German territory (Germany, 1961, sec. 4(1)). In these cases, general licences may be granted ‘in or to certain regions’ (sec. 4(2)).²⁴

In the United Kingdom, the transportation of category B weapons—including small arms—between third countries must be licensed in ‘limited circumstances’, including when the transfer relates to a country under embargo (UK, 2008, arts. 22(2), 22(4); UK, 2009, secs. 5, 7).²⁵ Importantly, the explanatory note annexed to the law clarifies that drivers, pilots, and other individuals who provide services to transport contractors already subject to the controls are not ‘caught in their own right’ (UK, 2008). Authorization of the transportation of category B weapons between third countries can take the form of general licences for transfers towards specified lists of countries provided certain conditions are met (UK, 2008, sec. 8). In other cases—including all transfers to embargoed destinations—individual licences are necessary.

In the five other countries mentioned above, all transportation of military goods must be licensed. For example, in the Czech Republic, a five-year licence is needed to transport military firearms (Czech Republic, 2002, sec. 31). The competent police directorate (sec. 32(1)) issues it only to those in possession of a trade licence (sec. 33(a)) and on the basis of an application, which is to specify the categories of arms in which the business deals (sec. 32(2)).

An individual transport licence is also necessary for each case of export, import, and transit. For arms falling in the categories A–C, the relevant police directorate grants the licence based on an application that must be accompanied by the export/import authorization (sec. 50(1)).²⁶ The authorization contains information on the quantity of arms that are the object of the transfer (50.2.d) as well as on the types and means of transport, the carrier, and the dates of dispatch and takeover, unless the transfer occurs between ‘businessmen or entrepreneurs dealing in arms and/or ammunition’ (sec. 50(2)f–g). The police issues a one-off document that must contain the above information and accompany the goods (sec. 50.3). A licence is also needed to transport non-military small arms from and to EU states (Czech Republic, 2005a, art. 1(3); 2005b). The licence application must include the name, quantity or volume, and additional specifications of the product (2005a, art. 2(2)(c)); customs tariff code (art. 2(2)(d)); information on the manufacturer, the foreign partner, the end user (art. 2(2)(e–g)); and the purpose of the transport (art. 2(2)(i)). The decision to grant the licence may contain the names of the states through which the goods are authorized to transit as well as information on the international contracting partner and on the end user (art. 4(2)).

In some cases, provisions regulating the transit of arms through a country’s territory have direct relevance to the control of trans-



A mobile X-ray machine used for screening cargo at Logan Airport, Boston, October 2003. © Douglas McFadd/Getty Images

portation agents. For example, in Japan, transit licences must be obtained by transportation companies themselves—as opposed to the exporter or importer (Japan METI, n.d.). Similarly, transportation companies resident or domiciled in Switzerland may request a general authorization for the transit of war materiel to a specified list of end users (Switzerland, 1998, art. 9e.2). In other countries, transit is controlled by means of a licensing requirement, but it is unclear which party to the transaction must obtain the authorization to move the weapons. For instance, in Finland, the transit of military equipment, defined as the ‘transport through Finnish territory into a third country’, must be authorized by an export licence (Finland, 1990, sec. 2.1).

As mentioned above, an indirect form of control on transportation agents takes place through the provision of information on transport in conjunction with the application for an export or transit licence. While several of the countries under review require such information to be submitted at the time of the export licence application, the requisite details and the relative stringency of these provisions vary greatly. For example, in Belgium, licensing authorities *may* request that information on transport modalities, customs office of clearance, and day, hour, and place of exit from Belgian territory be submitted at least three days before the actual export takes place (Belgium, 1993, art. 9). In the case of transportation by air, the information includes all stopovers (art. 10.2). The wording of the law indicates that the submission of such information is not always required, but is instead subject to a case-by-case decision of the licensing authorities.

Similar, non-mandatory requirements are in place in Canada, Italy, and South Africa. In Italy, the law expressly stipulates that arms export applications must contain a copy of any existing contract relating to the transportation and financing of the deal (Italy, 1990, art. 11.3.b). Nevertheless, the provision of such a contract is not a condition for the issuance of the licence.²⁷ Generally speaking, in Italy arms exporters are responsible for the accuracy of the information provided by transportation companies and carriers and for any variation that occurs during the transfer. Exporters have the obligation to store relevant documents for ten years (art. 19.1).²⁸

Conversely, Bulgaria, the Czech Republic, France, Portugal, Spain, and the United States all *require* that information on transportation be included in any export licence application. This must include: details on forwarders/carriers; points of loading/unloading (also abroad); points of entry/exit in the national territory; modes of transportation; approximate date of delivery; and transit countries.²⁹

Record-keeping. In eight of the states under review, transportation companies, exporters, or both are required to keep records of their transactions together with associated documentation (such as airway bills and transportation contracts). In Bulgaria, China, and South Africa, information kept by individuals and companies is also entered in central registers. In China and Spain, such records must be kept by exporters; however, requested details also cover transportation. In China these records specifically cover small arms transfers and include information on importing countries, end users, shippers, transporters, means of transport and number of shipments, shipping manifests, product model, quantity shipped, and label numbers. These records are consolidated and retained on a long-term basis in national registers (China, 2008, p. 11).³⁰ In Singapore, relevant companies operating with ‘bulk permits’ may be asked to submit reports that include information on the final recipients (Singapore, 2004, art. 7). In the United States, annual reporting of brokering activities is mandatory (US, 2009, sec. 129.9).³¹

Safety and security measures. Six of the countries under review provide for safety measures relating either to the conditions that must be respected when transporting weapons or to secure storage. For instance, in France, safety measures apply to all transportation of weapons in specified categories—including firearms—regardless of whether

Several countries request information on transportation at the export licensing stage.

their transfer is subject to a licence. The external packaging containing the weapons shipment must not identify the nature of the contents (France, 1995, art. 60.1). Firearms themselves must be transported in two separate consignments: on the one hand, the actual arms, from which security components have been removed, and, on the other, the security components, with an interval of at least 24 hours between the two shipments (France, 1995, art. 60.2).³² In the United Kingdom, transit of goods must comply with the following security rules:

(a) the goods in question remain on board a vessel or aircraft for the entire period that they remain in the United Kingdom or are goods on a through bill of lading or through air waybill and in any event are exported before the end of the period of 30 days beginning with the date of their importation;

(b) the destination of the goods in question following exportation from the United Kingdom has been determined in the country from which they were originally exported prior to their original exportation in connection with the transaction which has given rise to transit or transshipment and has not been changed prior to their exportation from the United Kingdom, or the goods are being returned to that country; and

(c) the goods in question were exported from that country in accordance with any laws or regulations relating to the exportation of goods applying there at the time of exportation of the goods (UK, 2008, art. 17(4)).³³

Criminalization. The violation of arms transfer regimes, including provisions on weapons transport, is criminalized in all of the countries reviewed in this chapter, with penalties commonly including both fines and imprisonment. States also generally distinguish between ‘serious’ violations, treated as criminal offences, and administrative violations, usually entailing fines.³⁴

Customs laws and procedures

Customs officials have the advantage of the physical proximity to the transferred goods. Customs laws, regulations, and procedures apply to the control of arms transportation in several ways. First, they establish the rules that must be followed when goods—including arms—cross international borders. Among these are rules governing what must be declared, how, and by whom. As the analysis below shows, in the majority of states under review customs procedures require the submission of information that—if provided in full—would allow for the complete tracing of the transportation chain.

Second, all national regimes establish rules whereby customs authorities are entitled to search shipments and retain or seize goods that are transferred in violation of relevant national laws. Unlike licensing authorities, customs officials have the advantage of the physical proximity to the transferred goods, enabling them to effectively monitor and stop illicit activities. That said, in practice customs authorities tend to focus on imports, rather than exports or transits, which undermines their potential advantage compared to transfer licensing authorities.

The international dimension

The World Customs Organization is the only intergovernmental organization with competence in customs issues outside the EU.³⁵ Its areas of activity include the development of common standards, relating in particular to: the harmonization of customs procedures; ensuring the security and facilitation of trade supply chains; and building the capacity of national customs authorities.

In 2002, the WCO issued two recommendations directly relating to small arms and light weapons. The first proposed the insertion, in national statistical nomenclatures, of small arms-related sub-headings. This measure, agreed following

the adoption of the UN Firearms Protocol, was aimed at facilitating monitoring and control through the creation of a more detailed classification system for firearms (WCO, 2002b).

Based on the acknowledgement that ‘effective controls on the legitimate movements of firearms are essential in order to distinguish illicit movements’ (WCO, 2002b, preamble), the second recommendation listed a series of measures aimed at facilitating the implementation of the Firearms Protocol. These included:

- adopting the statistical nomenclature proposed by the WCO Harmonized System Committee in order to facilitate the monitoring and control of Firearms Protocol items;
- allowing customs declarations and supporting documentation to be submitted to customs authorities prior to shipment;
- verifying that appropriate authorizations are available or in place at the time the items are presented for import, export, or transit;
- verifying the authenticity of licensing or authorization documents for the import, export, or transit of the items;
- implementing appropriate security measures for the import, export, and transit of the items (such as security checks on temporary storage, warehouses, and means of transport), and vetting persons involved in these operations;
- considering designating specific offices or sites for processing shipments of items covered by the Firearms Protocol in order to enhance control over their transborder movement;
- broadening information exchanges, increasing cooperation between law enforcement agencies, and promoting the use of specialized systems and techniques in their jurisdictions (WCO, 2002a).

Most states gather information on arms transportation through customs procedures.

The WCO also helps standardize customs procedures for ‘risk assessment’. The large volume of goods traded worldwide makes the physical inspection of all shipments impossible, even in countries with abundant financial, technical, and human resources. As a consequence, physical inspections are carried out based on an assessment of the potential risk that a given consignment may contain illicit goods. The WCO has developed indicators for these assessment procedures, including some for the identification of illicit small arms and light weapons.³⁶

The WCO also has mechanisms and resources designed to facilitate the exchange of information between different national customs authorities. Potentially, these mechanisms could be used to exchange information on illicit small arms transfers although, as discussed below, member states have tended to prioritize responding to other security risks. Finally, the non-binding nature of WCO recommendations constitutes an obstacle to enforcing compliance by member states.³⁷

The national dimension

Most states have adopted customs procedures for goods entering or exiting their territory that are useful for the control of arms transportation in that they tend to require the submission of information on the physical movement of weapons.

The EU has established customs procedures applicable to its members, including those contained in the *Single Administrative Document* (SAD). The SAD is a standard customs declaration form that is used for trade with third countries and for the movement of non-EU goods within the EU. Since 1987, it also applies to the European Free Trade Association countries Iceland, Norway, and Switzerland and to trade between these countries and the EU (EC, n.d.j).

The SAD was created with several goals in mind, including the harmonization of administrative procedures and documentation, the promotion of openness in relevant national requirements, and the standardization of data submitted

during customs procedures (EC, n.d.l). The *Document*, which must be filled out in eight copies, indicates the information that must be declared to customs in the context of any international transfer. A distinction is made between mandatory information, information that states may request, and information that operators may choose to provide but states cannot demand (EC, n.d.m).

The following details contained in the SAD are particularly relevant to weapons transport, as they would allow for the tracking of all phases of a goods shipment, from departure to destination, and also provide information on the type of transferred goods and transit countries:

- Customs procedures in the EU allow for the tracking of all phases of a goods shipment.**
- total number of packages (EC, n.d.b);
 - consignee (mandatory for transits) (EC, n.d.b);
 - country of dispatch/export (mandatory for transits) (EC, n.d.b);
 - country of destination (mandatory for transits) (EC, n.d.b);
 - identity and nationality of means of transport at departure; in the case of air transportation, this may include the number and date of flight or, in their absence, the aircraft's registration number (EC, n.d.c);
 - identity and nationality of active means of transport crossing the border (mandatory for exports and transits); this refers to the means of transport 'crossing the Community's external frontier as known at the time of completion of formalities' (EC, n.d.d);
 - mode of transport at the border ('the active means of transport which it is expected will be used on exit from the customs territory of the Community') (EC, n.d.e);
 - inland mode of transport (mode of transport after clearing customs) (EC, n.d.f);
 - place of loading (mandatory for transits): 'the place, as known at the time of completion of formalities, at which the goods are to be loaded onto the active means of transport on which they are to cross the Community frontier' (EC, n.d.g);
 - office of exit (mandatory for exports and transits): customs office at which the goods will leave Community customs territory (EC, n.d.h);
 - packages and description of goods; marks, numbers (such as container numbers), quantity, and kind: information necessary to identify the goods, in conformity with EU and national classifications (EC, n.d.i);
 - intended offices of transit (and country) (mandatory for transits) (EC, n.d.j);
 - transshipments (mandatory for transits): 'The first three lines of this box are to be completed by the carrier where, during the operation in question, the goods are transhipped from one means of transport to another or from one container to another' (EC, n.d.k).

As Table 2.2 shows, a great deal of harmonization exists among EU countries with respect to the information included in customs declarations.

In non-EU countries it is also common for customs declarations to request information relating to transportation. For instance, in Canada, exported goods must be reported (declared) by exporters, carriers (i.e. transporters), and customs service providers (Canada, 2005, art.2). Normally one declaration is required per shipment. In the case of restricted goods—which include firearms—exporters may report bulk or homogeneous goods on a monthly basis as long as they receive written confirmation to that effect from the authority administering this more restrictive regime prior to the export (art. 4). While exporters can delegate the reporting to a carrier or customs service provider, they

Table 2.2 Information routinely collected in the SAD by selected EU states³⁸

Information collected*	Austria	Belgium	Bulgaria	Finland	Germany	Italy	Spain	Sweden
Total packages (6)		e, t		e, t				
Consignee (8)		t				t	e, t	
Country of dispatch/export (15)	t	t	t	t	t	t	t	t
Country of destination (17)	t	t	t	t	t	t	t	t
Identity and nationality of means of transport at departure (18)	e, t	e, t	e, t	t	e	t	t	e, t
Identity and nationality of active means of transport crossing the border (21)	e, t	e, t	e, t	e, t	e, t	e	e, t	e
Mode of transport at the border (25)	e, t	e, t	e, t	r	e	r, t	e	e, r
Inland mode of transport (26)	e, t	e	t	e	r, t	e, r	t	e
Place of loading (27)		t	t					
Office of exit (29)	e, r	e, r	e, r		e	e, r	e, r	e, r
Packages and description of goods; marks, numbers, quantity, and kind (31)								
Intended offices of transit (and country) (51)	t	t	t	t	t	t	t	t
Transhipments (55)	t	t	t	t	t	t	t	t

Legend:

- Mandatory
- Optional
- Not specified

e = export

t = transit

r = re-export

Note: * The numbers in brackets indicate the relevant sections in the SAD form.

remain responsible for meeting reporting requirements (Canada, 2007, sec. 2). Finally, the transporter must also file a conveyance report for the export of the vessel or aircraft³⁹ (Canada, 2005, art. 9).

The customs laws and regulations of the countries under review also commonly provide for the following:

- the legal basis for inspection of cargo and possible seizure;
- rules for safe transit and warehousing of goods in customs zones (such as the sealing of containers);
- penalties (such as for undeclared goods or the refusal to allow inspection);
- specification of documentation in addition to the customs declaration (such as export permits).

In many respects, customs authorities are best placed to identify illicit arms transfers, as they deal with the actual movement of goods. By reinforcing transfer controls through customs procedures—including the declaration of goods when they enter, exit, or transit national territory—customs authorities are in principle in a position to assess all aspects of the transfer based on a complete set of documentation, including earlier export/transit permits. Nevertheless, several factors hamper the application of current customs rules and procedures to the detection of illicit small arms transfers.

In general, most—if not all—customs administrations place more of an emphasis on import controls and less on export consignments and transshipments,⁴⁰ thus diminishing the likelihood of stopping an illicit consignment at its point of origin. Even in the case of import controls, however, national capacities vary greatly. A lack of capacity for effective border control is a particular problem in developing countries, where most customs administrations have few or no investigative powers, risk management strategies and techniques are lacking, and effective technical equipment is rarely available. Additional impediments to border control in developing states include weak governance (such as poor inter-agency cooperation and corruption) and porous borders featuring multiple unguarded entry points.⁴¹ Yet in all countries, only a small share of incoming shipments is physically inspected,⁴² the exact proportion depending on national risk assessment policies, technical capabilities, available resources, and level of training.

The use of customs procedures to prevent illicit small arms transfers is not a priority at the global level.

Nonexistent or inadequate communication between customs and licensing authorities presents an additional problem. Information relating to a given shipment is rarely conveyed to licensing authorities. As a result, they cannot know when weapons have been transferred, how many are involved, which part of the licence covers them, or whether they have reached the authorized destination. Delivery verification certificates are not requested systematically. Even when they are, confirmations may arrive long after a delivery has been completed; in the best cases, the rate of response to delivery verification requests does not exceed 65 per cent of exported arms (Berkol and Moreau, 2009, p. 18ff).

At a more fundamental level, the use of customs resources and procedures to stop illicit small arms transfers is obstructed by the differing priorities of customs and arms export authorities. Currently, WCO members do not consider preventing illicit small arms transfers a priority.⁴³ Areas of priority for border checks include counter-terrorism, violations of intellectual property norms (such as counterfeit goods, especially medicine), and drug trafficking. The three regional groupings of states within the WCO emphasize different elements of this list: EU countries tend to focus on the protection of national economies and societies, thus paying greater attention to the smuggling of highly taxable goods (such as cigarettes); the United States stresses anti-terrorism measures; and the largest group (including most African and many Asian countries) is revenue-oriented. To that group, taxes levied on imported goods represent an important source of revenue, which sometimes wholly replaces weak or non-existent systems for the generation of national income. From this perspective, the nature of goods coming into a country is not as important as the value they have in the form of potential customs duties.⁴⁴

Like the regimes in place to control civil aviation (see the next section), those established for customs controls offer considerable potential for the improved monitoring of arms flows and the prevention and stopping of illicit consignments. Yet the concerted use of these regulatory frameworks for such purposes is not imminent. It will require the enhanced coordination of relevant agencies—especially customs and licensing authorities—including improved information flows. Before this can happen, however, the fundamental goals pursued by the different control agencies need to be aligned, or at least coordinated, at the political level.

Civil aviation regimes

A broad set of measures established at all levels—global, regional, and national—makes civil aviation one of the most highly regulated sectors in the world (Doganis, 2002). This complex set of rules follows goals that do not directly coincide with those of an arms non-proliferation regime—as it relates mostly to the facilitation of civil aviation worldwide and to ensuring equal economic regulation across countries (such as airport landing fees). Nevertheless, this body of rules becomes relevant because the provision of small arms to illicit end users or destinations by air often, if not always, entails violations of civil aviation rules, even if these do not specifically relate to the movement of arms. UN investigative panels have highlighted this point. In violating the arms embargo on Liberia, for example, traffickers used the following ‘deceptive practices’ to avoid detection:

- multiple requests filed to civil aviation authorities in different countries for flights at the same time, all relating to the same aircraft;
- use of false flight plans and routings;
- refusal of the pilots to contact control towers or aviation authorities in the countries they overfly;
- ‘flexible’ and sometimes fraudulent use of call-signs and flight numbers;
- use of forged documents with respect to registration, operating licences, or airworthiness certificates of aircraft used in the trafficking (UNSC, 2002, para. 62).⁴⁵

The provision of small arms to illicit end users or destinations by air often, if not always, entails violations of civil aviation rules.

This list also includes the well-known practice by which irresponsible air cargo companies register their aircraft—and obtain relevant operating licences—in states where civil aviation rules are insufficiently developed, or not enforced, or both.⁴⁶

The centrepiece of civil aviation regulations is represented by the Convention on International Civil Aviation, signed in 1944 in Chicago and now with virtually universal membership (190 contracting states). Implementation of the Convention is the main responsibility of the International Civil Aviation Organization, which was established with the goal of facilitating the ‘safe and orderly’ development of civil aviation worldwide (Chicago Convention, 1944, preamble).

In addition to a framework treaty, the Chicago Convention comprises a set of 18 annexes that formulate standards in areas such as the nationality and registration marks of aircrafts (annex 7); customs procedures (annex 9); air traffic controls (annex 11); security (annex 17); and dangerous goods (annex 18). Since 1998, ICAO has audited all its members for compliance with the safety rules and, since 2002, for security.⁴⁷

Civil aviation rules have also been adopted regionally, bilaterally, and at the domestic level. The EU Commission, an important player in aviation security, has developed an extensive set of regulations that are directly applicable to the EU’s 27 member states and that are also legally binding for members of the European Civil Aviation Conference, together with other states that have close transportation ties to the EU and consent to the application of these rules. Rounding out the picture are the standards created by air industry associations—most notably the International Air Traffic Association.

Among the various measures regulating civil aviation, the following appear particularly relevant with respect to their actual or potential application to the prevention of illicit small arms transfers.⁴⁸

Cargo restrictions. The provision most directly relevant to the control of small arms transportation by air is contained in article 35 of the Chicago Convention, according to which:

No munitions of war or implements of war may be carried in or above the territory of a State in aircraft engaged in international navigation, except by permission of such State. Each State shall determine by regulations what constitutes munitions of war or implements of war for the purposes of this Article (Chicago Convention, 1944, art. 35).

The translation of this provision into domestic systems is anything but uniform among European states. Even where these authorizations are required, and national civil aviation authorities are empowered to grant or deny them, available flight and cargo information typically allows only for an assessment of compliance with aviation safety rules, not broader proliferation risks (Bromley et al., 2009, p. 45).⁴⁹

This, once again, points to the need for greater coordination among different control spheres and enforcing authorities. Civil aviation authorities would not normally be expected to make political decisions on whether to grant or deny a specific arms-carrying flight permission to overfly or land on national territory. Nevertheless, they have information on the transaction that is often unavailable at the time of an export licence application.

Registration of aircraft. Articles 17–20 of the Chicago Convention deal with the registration of aircraft, establishing that:

- Civil aviation authorities have transfer information that is often unavailable at the export licensing stage.**
 - an aircraft has the nationality of the country in which it is registered (art. 17);
 - an aircraft cannot be registered in more than one state at once, although the country of registration can be changed (art. 18);
 - rules on registration—including its transfer from one country to another—are to be elaborated at the national level (art. 19);
 - nationality and registration marks will be shown appropriately on any aircraft (art. 20);
 - ICAO member states will exchange, among themselves or with ICAO, on demand, information on the registration and ownership of any aircraft registered by them. For aircraft ‘habitually engaged in international air navigation’ this information is also to be submitted to ICAO (art. 21).

Annex 7 of the Convention expands on these provisions by specifying the characteristics of nationality and registration marks and where they should be displayed.

Customs clearance. The Chicago Convention also regulates the customs clearance of aircraft. Article 10 establishes that, with limited exceptions, aircraft should land at and depart from airports designated by an ICAO member state for the purpose of ‘customs and other examination’.⁵⁰

Article 29 requires every aircraft engaged in international navigation to carry certain documents, including a certificate of airworthiness, journey log book, and, if it carries cargo, a manifest and detailed declarations of the cargo.

Annex 9 of the Convention, building on these and other articles, provides a detailed set of recommended practices. Because the main goal of these provisions is to avoid delays to air navigation, while simultaneously ensuring respect for national customs laws, the practices are unsurprisingly geared towards providing ‘a frame of reference for planners and managers of international airport operations’ as well as ‘describing maximum limits on obligations of industry and minimum facilities to be provided by governments’ (Chicago Convention, 1944, annex 9). Faced with the growing volume of air traffic, the provisions of Annex 9 have been adjusted with a view to ‘reducing paperwork, standardizing documentation and simplifying procedures’. Greater emphasis has also been placed on inspection techniques based on risk assessment (secs. 1.3, 4.5).

Security and safety measures. Measures specifically targeting the transportation of (small) arms are scarce in civil aviation regulations since—as mentioned earlier—their goals differ from those of an arms control regime. Historically, the civil aviation sector has been more concerned with the safety of passengers, crew, and airports than with the security risks associated with illicit arms deliveries.⁵¹ Nevertheless, as shown above, there are regulatory structures already in place in this sector that could be adapted to the control of small arms transportation.

In addition to the measures already mentioned, one example of a security-specific aviation rule is IATA's *Recommended Practice 1630* on cargo security (IATA, 2009). The document was adopted to counter 'acts of lawful interference' against air carrier operations; it gives concrete expression to Annex 17 (security) and Annex 18 (safe transportation of dangerous goods by air) of the Chicago Convention, as well as related guidance material (ICAO, n.d.; 2009). In general terms, *Practice 1630* states: 'All cargo intended to be carried on passenger or all-cargo aircraft should be subjected to security controls before being uplifted on the aircraft' (IATA, 2009, para. 3.1). As a corollary, 'regulated agents' should have security programmes in place.⁵² In support of these principles, 'known shippers' are required to certify in writing that:

- their consignments are prepared in secure premises (para. 3.3.2.1);
- they employ reliable staff in preparing the consignments (para. 3.3.2.2);
- consignments are protected against unauthorized interference during preparation, storage, and transportation (para. 3.3.2.3);



Lufthansa Cargo employees control the freight of a Boeing 747 at Frankfurt Airport, May 2002.
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- they accept that packages and contents of the consignment may be examined for security reasons (para. 3.3.4); and, finally,
- ‘the consignment does not contain any explosives/ammunition/flammable liquids/corrosives or disabling or incapacitating items, which they are not licensed to ship in accordance with IATA Dangerous Goods Regulations, or unknown cargo’ (para. 3.3.3).

If consignments are accepted from ‘unknown shippers’, they should be ‘physically searched, electronically screened or screened by other means’ (para. 3.6.3). This IATA recommendation reflects the international standard found in Annex 17 of the Chicago Convention. Regardless of whether shippers are known, air carriers are required to ‘ensure that from the time of acceptance and until completion of air transportation, cargo consignments are protected from unauthorized interference’ (para. 3.7.1).

CONCLUSION

Recent initiatives to control transportation agents have been predicated on two claims: on the one hand, that these actors are central in the delivery of arms to illicit destinations or end users; on the other, that despite this centrality, transportation agents are insufficiently regulated, if at all.

These initiatives—most notably that led by the French and Belgian governments against small arms trafficking by air—have marked a significant turn in the debate on small arms. As the chapter has shown, attention to the importance of transportation in illicit arms deliveries has always been present in international discussions on small arms proliferation. At the same time, concrete initiatives for control have been hampered by the frequent—yet repeatedly disproven—argument that the complexity of modern trade does not lend itself to effective monitoring of transportation companies and of the increasing numbers of third-party service providers, such as freight forwarders.

As a contribution to this debate, this chapter has analysed existing controls on transportation—particularly by air—at the international, regional, and national levels. Measures relevant to the control of transportation agents fall into three main bodies of law, namely, arms transfer controls, customs rules and procedures, and civil aviation regulations.

As part of their arms transfer control regimes, the majority of the 23 reviewed states regulate transportation agents, either directly or indirectly. Direct controls take the form of a licensing requirement directly applicable to transportation companies—in addition to exporters—while indirect controls entail an obligation on exporters to submit information on transportation when they apply for an arms export licence.

Customs laws are also relevant to transport controls, to the extent that they demand that information on transportation—means, routes, and content of the cargo—be submitted when goods cross a state’s border. Such information is commonly requested in the countries analysed in this chapter. In addition, customs regulations usually establish powers of search, inspection, and seizure of cargo, as well as measures to secure shipments transiting or warehoused in customs-controlled areas.

Finally, the extensive body of rules governing civil aviation also contains measures that either directly concern the transportation of arms or could be adapted to this end. These comprise rules of aircraft registration and of customs clearance, as well as safety and security standards that, for instance, outline recommended practices when dealing with cargo coming from ‘unknown shippers’.

The existence of these measures does not automatically translate into effective control of transportation agents. Besides the question of whether these rules are actually implemented—something that should be verified—a major impediment to effective regulation stems from the lack of coordination among the various spheres of control within a single state. Most often, this means that all the information concerning an arms transfer is not concentrated in one institution but rather scattered among many. Information on transportation means and routes will be available to customs and civil aviation authorities but not to licensing agencies; the political or security considerations affecting arms export decisions will be clear at the licensing stage but not relevant for customs clearance; and so on. Additional challenges include: huge variations in the capacity, authority, and effectiveness of civil aviation authorities across countries; overlapping or inconsistent rules; and the practice adopted by many irresponsible air companies of registering in states where transport rules are not strict or not enforced (regulatory gaps).

At a more fundamental level, however, the effective application of existing customs and civil aviation measures to stem illicit small arms trafficking is prevented by the divergent goals of the various control agencies. The primary aims of export control, customs, and civil aviation authorities are quite distinct. Efforts to ensure that an arms transfer is legal (and responsible) will not always—or even routinely—line up with those aimed at avoiding tax fraud or ensuring that a consignment not jeopardize the safety of passengers and crew. In short, different agencies will focus on different aspects of the same transfer.

At the end of the day, bodies that have the means to prevent illicit small arms transportation—for example, customs agencies—often will not do so because they have other priorities.

This analysis suggests some promising avenues for further action. There is the option, in consultation with all relevant actors, including industry, of strengthening or adapting existing control mechanisms so that they can be used to detect and prevent illicit small arms transport. As emphasized throughout the chapter, however, any enhancements to current control strategies will depend on improved coordination and information flows between arms transfer, customs, and civil aviation authorities. That, in turn, requires action at the political level; in other words, governments must include the issue of illicit air transport among their priorities. ■

LIST OF ABBREVIATIONS

BP	Best practices
ECOWAS	Economic Community of Western African States
EU	European Union
GGE	Group of Governmental Experts
IATA	International Air Traffic Association
ICAO	International Civil Aviation Organization
OSCE	Organization for Security and Co-operation in Europe
SAD	<i>Single Administrative Document</i>
UN	United Nations
WA	Wassenaar Arrangement
WCO	World Customs Organization

ENDNOTES

- 1 See Griffiths and Bromley (2009, p. 1).
- 2 The states selected for the study are: Austria, Belgium, Brazil, Bulgaria, Canada, China, the Czech Republic, Finland, France, Germany, Israel, Italy, Japan, Norway, Portugal, Singapore, South Africa, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. They are among the 27 states identified by the Small Arms Survey as 'major exporters' (annual exports of small arms and light weapons exceeding USD 10 million) in four out of five years, from 2004 to 2008. Four of the 27 countries were not retained for analysis in this chapter because of a lack of access to original legal texts: the Republic of Korea, Mexico, Romania, and the Russian Federation.
- 3 While transfer controls in transit and import countries are important, this chapter focuses on controls applicable in *exporting* states. The farther an illicit consignment of arms moves from the source of export, the more difficult it becomes to identify and stop it—mainly due to the ability of arms traffickers to break the transfer into many segments and diversions (Griffiths and Wilkinson, 2007, p. 7).
- 4 The purpose of this section is not to provide an in-depth analysis of the dynamics of arms transportation, but rather to offer a simple sketch of the multiplicity of actors involved in an arms deal and the administrative steps that are usually necessary for a legal transfer to take place. For detailed studies on the dynamics of arms transportation and the arms logistics sector, see AI and TransArms (2006) and Griffiths and Wilkinson (2007).
- 5 The terms *transit* and *transshipment* are commonly used as synonyms but define two different activities. Specifically, transshipment refers to a transit during which a given cargo is transferred from one mode of transportation to another (such as from land to air) or from one carrier to another within the same mode of transportation. AI and TransArms (2006, pp. 38–40); interview with IATA official, February 2008.
- 6 Table 2.1 provides a general indication rather than a precise breakdown of each stage of the transfer process in all countries. For instance, the requirement for a 'negotiation licence' (i.e. authorization to start contract negotiations) is the exception rather than the rule; similarly, an arms producer may also be an exporter for some or all shipped goods.
- 7 This observation stems from the author's direct participation in international debates on arms brokering controls (such as the 'UN Workshop in Preparation for the Broad-based Consultations on the Illicit Brokering in Small Arms and Light Weapons' held in Geneva on 3 June 2005).
- 8 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 9 Other mentions of transportation are contained in UNSC (2006, paras. 2, 15, 23, 27, 34, 46).
- 10 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 11 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 12 This reflects the common practice whereby national arms exports controls—and specifically export licensing requirements—do not apply to operations conducted by, or on behalf of, national armed and security forces.
- 13 Interview and correspondence with an official of the French Ministry of Foreign Affairs, October 2009.
- 14 For details on the Situation Centre's list and its impact to date, see Bromley et al. (2009, pp. 62–63).
- 15 Email communication with a French government official, October 2009; see also Giannella (2008).
- 16 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 17 Interview with an official of the French Ministry of Foreign Affairs, 13 February 2008.
- 18 Email communication with an official of the French Ministry of Foreign Affairs, October 2009.
- 19 Email communication with an IATA official, March 2008.
- 20 For details, see Bromley et al. (2009).
- 21 This point was confirmed by IATA and WCO officials during interviews with the author, and reiterated by an official of the French Ministry of Foreign Affairs (interview, 13 February 2008).
- 22 IATA and WCO representatives were invited to the 2007 conference on the French–Belgian initiative at OSCE headquarters, mentioned above.
- 23 'Financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service' (US, 1976, sec. 2778(b)(1)(A)(ii)).
- 24 Contrary to individual licences, which are issued on a case-by-case basis, a general licence allows for multiple transfers of one or more weapon categories towards one or more specified destinations. The specific characteristics of a general licence vary across countries.
- 25 As of December 2009, relevant UK authorities had not publicly specified the 'limited circumstances' in which such licences are necessary (UK, 2009, sec. 5).
- 26 In the Czech Republic, firearms are divided into four categories (A to D); category E comprises related ammunition that is not 'banned'. For details of these categories, see Czech Republic (2002, ch. II).
- 27 Phone interview with an official of the Italian Ministry of Foreign Affairs, March 2008.
- 28 Similar provisions exist in Canada, where exporters are required to 'evaluate' foreign clients, which includes indicating in the licence application whether the shipping routes requested by the consignee are 'unusual' (Canada, 2009, p. 29, box 3).
- 29 See Bulgaria (2007b, arts. 5(1).6, 5(3)); Czech Republic (1994, annex 4); France (1992); Portugal (2006, arts. 67.2.g–h, 68.4); Spain (2007, art. 4.2); US (1976, sec. 2778(g)(2)).
- 30 See also, Bulgaria (2007a, art. 19) and Spain (2007, art. 15.1).
- 31 See also relevant provisions in the Czech Republic (2002, sec. 39(1)(k.2); Germany (1961, sec. 12(2)); UK (2009, p. 10).
- 32 In Belgium, the main text regulating arms transfers provides for the adoption of transport safety measures by government decree (Belgium, 1991, art. 3). See also Portugal (2006, art. 41).

- 33 See also, France (1995, art. 66) and the Czech Republic's provisions on the safekeeping of weapons (2002, sec. 58).
- 34 For more details on this point, see Parker (2009).
- 35 Currently, 176 customs administrations in the world are members of the WCO; altogether, these process approximately 98 per cent of world trade (see WCO, n.d.).
- 36 For security reasons, these indicators are not made public by the WCO.
- 37 Email communication with a WCO official, November 2009.
- 38 Unless otherwise indicated, the sources for this table are implementation reports submitted by EU members (EC, n.d.a). For a legend, see EC (n.d.m).
- 39 This measure does not apply to scheduled flights.
- 40 Email communication with a WCO official, November 2009.
- 41 Email communication with a WCO official, November 2009.
- 42 According to one source, only around five per cent of shipments are physically inspected to ensure that their contents match accompanying documentation. Chapter review provided by Ilhan Berkol, November 2009.
- 43 Interview with a WCO official, March 2008.
- 44 Interview with a WCO official, March 2008.
- 45 Earlier UN Panels investigating arms embargo violations similarly underlined the link between air safety violations and illicit small arms trafficking. For more information, see Griffiths and Bromley (2009).
- 46 The phenomenon of 'offshore registration' or use of 'flags of convenience' has been consistently highlighted by research on illicit arms brokering activities. See, for example, Wood and Peleman (1999); Small Arms Survey (2001, ch. 3).
- 47 Interview with former ICAO official, July 2009.
- 48 For more information on the impact of EU civil aviation regulations on illicit small arms flows, see Griffiths and Bromley (2009).
- 49 The cited study covers EU countries as well as Belarus, Croatia, Norway, the Russian Federation, Switzerland, Turkey, and Ukraine (Bromley et al., 2009, p. 7).
- 50 See also, Chicago Convention (1944, art. 13).
- 51 Interview with an IATA official, February 2008.
- 52 See also Chicago Convention (1944, annex 17).

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