

Devils in Diversity

EXPORT CONTROLS FOR MILITARY SMALL ARMS

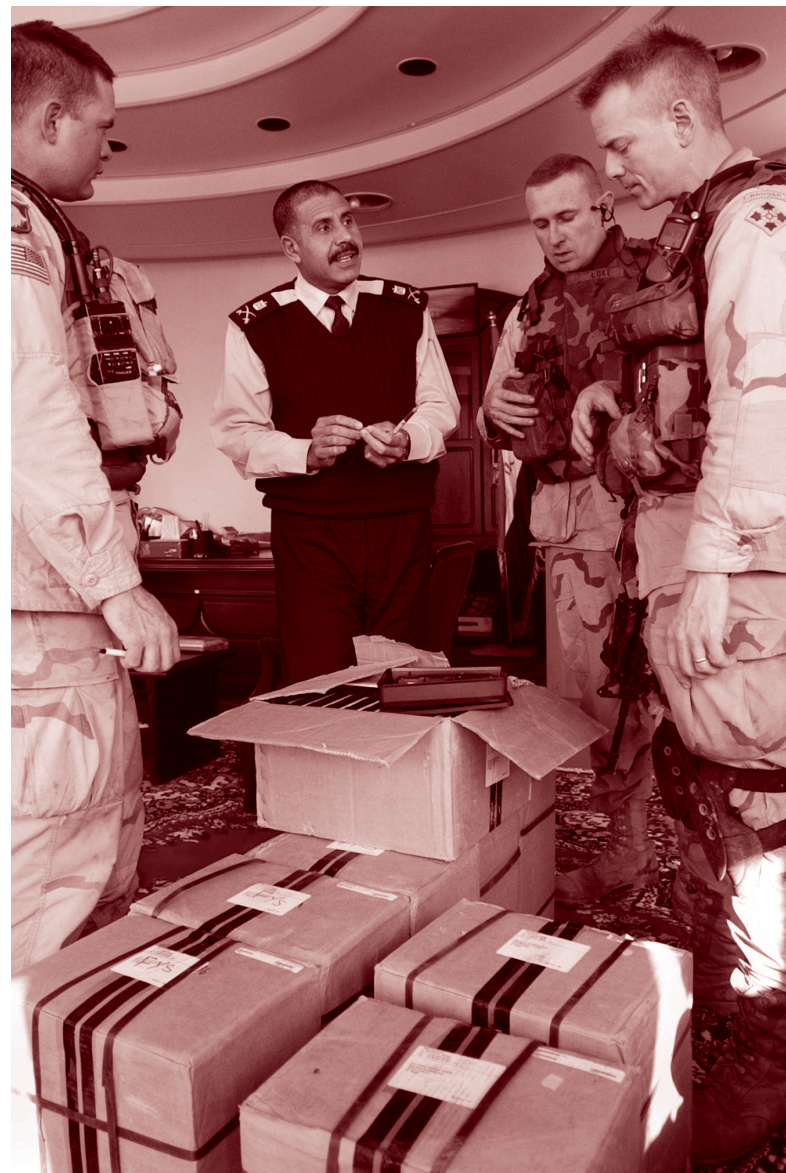
Rigorous export controls are an essential tool in the fight against the illicit small arms trade. Most of the major exporters of conventional arms, including small arms and light weapons, participate in multilateral export control regimes and arrangements, which seek to regulate the international transfer of military and other sensitive equipment. 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.

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. 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. It analyses the laws, regulations, and administrative procedures that exporting states use to regulate the export of military small arms in an effort 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).

The 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 licences 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. It acknowledges the complex nature of export licensing decisions, which involve economic, defence, security, and foreign policy considerations. Throughout, the chapter highlights the wide variations in national export control systems, identifying specific strengths and weaknesses.

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



Members of the US military deliver weapons and ammunition to the Salah Ad Din Provincial Police Headquarters in Tikrit, Iraq, February 2004.
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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—such as pre-licensing requirements, interagency decision-making, end-user certification, and sanctions—appear to be in place in virtually all of the world's major small arms exporters. 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.

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

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. Yet post-shipment controls, including the selective use of end-use monitoring, constitute essential—and cost-effective—tools in the diversion-prevention arsenal. 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. 📌