

# **combating the illicit trade in small arms and light weapons**

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enhancing controls on legal transfers

Briefing 6

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**BASIC - INTERNATIONAL ALERT - SAFERWORLD**

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BRITISH AMERICAN SECURITY INFORMATION COUNCIL

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The British American Security Information Council is an independent research organisation that analyses international security issues. BASIC works to promote awareness of security issues among the public, policy-makers and the media in order to foster informed debate on both sides of the Atlantic. BASIC has worked on small arms and light weapons issues since 1995. BASIC's Project on Light Weapons has facilitated a network of analysts and activists working on the issue around the world.

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Saferworld is an independent foreign affairs think tank working to identify, develop and publicise more effective approaches to tackling and preventing armed conflicts. Saferworld's Arms Programme, initiated in 1991, aims to foster greater international restraint over transfers of arms – from light weapons to major conventional weaponry – and dual-use goods. At the same time, Saferworld aims to work with governments and non-government groups on the ground in regions of conflict in order to better control flows of, and reduce demand for, arms.

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# Combating the Illicit Trade in Small Arms and Light Weapons: Enhancing Controls on Legal Transfers

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# Executive Summary

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## **Introduction: scope and context**

A prerequisite for effective international action to prevent and combat the illicit trade in small arms and light weapons (SALW) is that states develop a common understanding of what constitutes the “legal” trade and therefore what is “illicit”. At the same time, failure to exert effective control over the legal trade in SALW opens up possibilities for diversion to illicit markets and end-users and blurs the lines between the legal and illicit trade. All governments are potential suppliers of SALW, since even those with no manufacturing capacity will have the potential to export surplus weapons once owned by their police and/or armed forces. A major concern for the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects should thus be to define clear parameters for and to agree on a comprehensive mechanism for controlling the legal trade in these weapons.

## **Relevance of legal controls on SALW transfers**

There is extensive evidence that many of the weapons circulating in the illicit market originate as state-sanctioned, or legally transferred, weapons. An essential element of efforts to combat illicit trafficking must therefore be control of the legal trade to prevent diversion to unauthorised end-users. At the same time, some governments have restrictively defined the illicit trade as those international transactions which are not authorised by either one or both states concerned in the transfers. Whilst such transfers are clearly illicit, a wider, global definition of the illicit trade in SALW has, in fact, been articulated by the UN Disarmament Commission (UNDC) whose definition of the illicit trade is *“that international trade in conventional arms, which is contrary to the laws of States and/or international law”*.

There is thus a clear need to take an holistic view of what constitutes the illicit trade in SALW, and by so doing initiate a more comprehensive approach to combating the proliferation and misuse of these weapons.

## **Background to controls on government- authorised transfers of SALW**

International law specifies a number of direct prohibitions on transfers of arms. These can take the form of UN arms embargoes and trade sanctions, which impose a ban on the export of some or all categories of arms to particular end-users, or controls on specific types of weapons whose effects are deemed inhumane or excessively injurious. International law also curtails states’ freedom to authorise transfers with restrictions primarily dependent upon the use being made of the weapons. Accordingly, states should not transfer arms which they know could be used to violate the following principles: the prohibition on the threat or use of force; non-intervention in internal affairs of other states; preventing terrorism; international humanitarian law; human rights law and standards; and preventing genocide.

Beyond these restrictions, there are a number of other factors that governments, to a greater or lesser extent, take into account when deciding whether or not to grant or refuse an export licence for SALW. These concerns include the following: the threat of use of SALW in conflict; the potential effect on international/regional stability; the undermining of economic development; and the risk of diversion or transshipment to an illicit end-user.

## **Overview of existing controls: UN and regional embargoes, national, regional and international initiatives**

If states actively develop and implement effective legislation and mechanisms for implementing UN and regional arms embargoes, such action will go a considerable way to preventing the proliferation and misuse of SALW. However, to be effective, UN arms embargoes also need to be grounded in a framework of national, regional and internationally agreed export criteria that provide for strict control and limitation of arms transfers that might be diverted to embargoed destinations.

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# Executive Summary

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## **Legal controls and the UN 2001 process**

The development of regional declarations has gathered pace as governments, sub-regional and regional organisations have developed initiatives to bring to the 2001 Conference. The assertion of the inextricable link between the illicit and legal trade in SALW has been made by the Organisation of African Unity (OAU), the Organisation for Security and Co-operation in Europe (OSCE) and the European Union (EU). Development of regionally accepted norms and standards on legal transfers should pave the way towards the articulation of internationally agreed norms and standards at the UN Conference.

## **Towards Developed International Norms and Standards**

The Preparatory Committee *Draft Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/PC/L.4)* of January 2001 articulates a range of measures that are necessary at national, regional and global level in order to prevent and reduce “the diversion of the legal manufacture and transfer [of SALW] to illicit channels” and with a view to fostering “responsible behaviour with regard to the transfer of SALW and thereby reduc[ing] the opportunities to engage in the illicit trade in SALW”.

The principles and measures set out represent minimum standards but nevertheless provide a solid foundation for the establishment of effective international controls on the legal trade in SALW. At the same time, the UN Conference should agree upon a comprehensive set of legal, administrative and practical measures including agreement on effective end-use controls and provisions for information exchange on transfers of SALW to ensure that the elaborated norms and standards are enforced rigorously by all states.

The UN Conference should also agree provisions for follow-up in these areas including an annual review of the application of the norms and standards based on the provision of comprehensive information on transfers of SALW on the part of all states. The progressive development of the elaborated international norms and standards should be included in a formal review of the implementation of the UN Conference Programme of Action; this review Conference should moreover explore the development of a legally binding international agreement on the regulation of SALW transfers.

## **Conclusion**

Despite the development of national and regional arrangements which elaborate on the necessity for controlling legal transfers of SALW, the illicit trade and misuse of these weapons has continued. Only through the establishment of a detailed and comprehensive set of internationally agreed norms and standards governing the legal trade in SALW, coupled with the full implementation of national controls on legal transfers, will effective progress in tackling the illicit trade in SALW be achieved.

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## Introduction: Scope and Context

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A prerequisite for effective international action to prevent and combat the illicit trade in small arms and light weapons (SALW)<sup>1</sup> is that states develop a common understanding of what constitutes the “legal” trade and therefore what is “illicit”. At the same time, failure to exert effective control over the legal trade in SALW opens up possibilities for diversion to illicit markets and end-users and blurs the lines between the legal and illicit trade. A major concern for the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects thus should be to define clear parameters, and to agree on a comprehensive mechanism for controlling the legal trade in these weapons.

All governments are potential suppliers of SALW, since even those with no manufacturing capacity will have the potential to export surplus weapons once owned by their police and/or armed forces. The nature of the export, import, in-transit licensing and end-use certification requirements imposed by governments, and the rigour with which they are monitored and enforced, are therefore of great international importance since they can have a significant role to play in ensuring that legitimate transfers of SALW are not diverted to illicit markets or end-users.

The purpose this briefing is, however, to examine the external factors that governments take into account during the SALW licensing process and, in particular, to assess how governments can better control the “legal” trade in SALW so as to limit possibilities for the illicit trade in, and use of, these weapons. Ultimately the objective is, in the context of the UN Conference, to explore possibilities for developing a set of universal norms or principles that could be applied to government-authorised transfers of SALW.

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# Relevance Of Legal Controls on SALW Transfers

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## **Towards a definition of illicit**

The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects is an historic opportunity for the international community to agree global action to prevent and reduce the spread and misuse of these weapons.

If the conference is to fulfil its potential, it is vital that it thoroughly address all aspects of illicit SALW trafficking. One aspect of the trade in SALW that is clearly illicit concerns those transfers that are not authorised by all states in the chain, including importing, exporting and transit states. However, there is pressure from a number of countries to define illicit trafficking narrowly – making the conference applicable only to non-state sanctioned transfers and not to the control of the state-sanctioned trade in SALW.

There is extensive evidence that many of the weapons circulating in the illicit market originate as state-sanctioned, or legally transferred weapons. Case studies show that legal transfers can be diverted to illicit destinations, as similarly, firearms licensed to civilians are stolen and enter the black market.

For example, in June 1998, the UN Security Council passed a resolution prohibiting the sale of arms and related material to non-governmental forces in Sierra Leone. Despite this arms embargo, there is strong evidence to suggest that arms continued to reach the Revolutionary United Front (RUF), who subsequently used them to carry out widespread and brutal human rights violations on the civilian population in Sierra Leone. The UN Secretary General, as requested by Security Council Resolution 1306 (2000), appointed a panel of experts to investigate allegations of violations of the embargo and the role of the trade in diamonds from rebel-held areas. In December 2000 the UN Panel of Experts released its report.<sup>2</sup> Contained in the report is a detailed analysis of how 68 tons of weapons from the Ukraine reportedly found their way to Liberia. It is an illuminating case study illustrating how arms, which originate in the legal market, make their way into the illegal market.

### **Box 1 Case study: how legal transfers turn illicit– the case of arms to the RUF**

A shipment of 68 tons of weapons, including SALW, arrived at Ouagadougou, Burkina Faso on 13 March 1999. The weapons were part of a contract between a Gibraltar-based company representing the Ministry of Defence of Burkina Faso, and the Ukrainian state-owned company Ukrspetsexport. A Ukrainian licence for sale of the weaponry was granted after Ukrspetsexport had received an end-user certificate from the Ministry of Defence of Burkina Faso. The end-user certificate authorised the Gibraltar-based company to purchase the weapons for sole use of the Ministry of Defence of Burkina Faso. The document also certified that Burkina Faso would be the final destination of the cargo and the end-user of the weaponry. The weapons, however, were not retained in Burkina Faso. They were temporarily off-loaded in Ouagadougou and some were trucked to Bobo Dioulasso, also in Burkina Faso, where they were then trans-shipped.

Another UN Panel – the Group of Governmental Experts on Small Arms – outlined the interconnection between the legal and illicit trade in small arms in its 1999 report:<sup>3</sup> “Illicit arms supply networks often involve legal arms purchases or transfers which are subsequently diverted to unauthorized recipients, or leakage from arms storage facilities. Arms brokers play a key role in such networks, along with disreputable transportation and finance companies. Illicit arms trafficking can sometimes be helped by negligent or corrupt governmental officials and by inadequate border and customs controls. Smuggling of illicit arms by criminals, drug traffickers, terrorists, mercenaries or insurgent groups is also an important factor. Efforts to combat illicit arms trafficking are in some cases hampered by inadequate national systems to control stocks and transfers of arms, shortcomings or differences in the legislation and enforcement mechanisms between the States involved, and a lack of information exchange and cooperation at the national, regional and international levels.”

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## Relevance Of Legal Controls on SALW Transfers

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### Towards a definition of illicit

As an essential element in combating illicit trafficking therefore, governments must stringently control the “state sanctioned” or “legal” trade. To be effective, a number of interlocking controls on the legal trade are required, for example: import/export controls, end-use certification systems, post delivery authorisation and controls on the activities of arms brokering and shipping agents.

But as well as combating the risk of diversion, there is a second reason why controlling legal transfers is fundamental to combating the illicit trade in SALW. Of those arms transfers of concern, many are used illicitly in breach of international law. However, some governments have restrictively defined the illicit trade as those international transactions that are not authorised by either one or both states concerned in the transfers. Whilst such transfers are clearly illicit, the UN Disarmament Commission (UNDC) has in fact, articulated a wider, global definition of the illicit trade in SALW. The Disarmament Commission Guidelines on Conventional Arms Transfers<sup>4</sup> have defined illicit trafficking as “*that international trade in conventional arms, which is contrary to the laws of States and/or international law*”. Years of research by non-governmental organisations have shown that some SALW legally exported by states have ultimately been used to violate international law, through their use in human rights violations and breaches of international humanitarian law, by fuelling conflict and violent crime, and undermining development and regional stability. Some state-authorized transfers have directly contributed to such violations; others have been re-exported or diverted to unauthorised end-users who have used them for such purposes.

There is therefore a clear need to take an holistic view of what constitutes the illicit trade in SALW, and by so doing initiate a more comprehensive approach to combating the proliferation and misuse of SALW. This analysis will then allow the international community to uncover tools to combat the illicit market more effectively, by utilising mechanisms required for more rigorous control of the legal trade.

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# Background to Controls on Government-Authorised Transfers of SALW

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## Prohibitions under international law

The UN Charter states that all governments have the right to self-defence. As a direct consequence, most governments claim that they have a commensurate right both to acquire the means of self-defence and to transfer them to other states. Indeed the primary rationale (if not motivation) for the international trade in SALW is the right of states to acquire the means of self-defence. Whilst it is incumbent upon states to ensure that they only acquire arms in accordance with their legitimate internal and external security needs and their commitments in the context of international peacekeeping missions,<sup>5</sup> difficulties in arriving at a common definition of a state's legitimate security requirements have led governments to use significant discretion in the application of this principle.

Nevertheless, a free market in SALW is far from existing. In general, governments do not allow the transfer of arms to all prospective recipients, since not all potential recipients are regarded as legitimate or desirable end-users. Indeed, unregulated arms trading could lead to arms entering into the hands of those who may seek to use them in a manner that conflicts with the interests or wider concerns of the exporting state.

International law lays down a number of express prohibitions on transfers of arms. These can take the form of arms embargoes and trade sanctions (see below) imposed by the UN Security Council or some other international body banning the export of some or all categories of arms to particular end-users. Beyond this, international law also expressly prohibits transfers of certain specific weapons such as anti-personnel mines, blinding laser weapons and the mines, booby traps and other devices addressed in Protocol II (as amended) to the 1980 Convention on Certain Conventional Weapons (CCW).<sup>6</sup>

Furthermore, international law also curtails states' freedom to authorise transfers in situations where the use made of the weapons by the recipient would be unlawful. Whilst states bear primary responsibility for breaches of international law that they, themselves, commit, there are also circumstances where a state may bear "secondary" or indirect responsibility for violations committed by other states.<sup>7</sup> The International Law Commission has identified the transfer of arms as a case in point and has stated that for this indirect responsibility to arise, the state transferring the arms does not need to intend to support the recipient in the illicit use of the arms.<sup>8</sup> Rather, the exporting state need only be aware of the relevant circumstances i.e. that the arms may be used for the commission of an internationally wrongful act by the recipient state or an actor under its direct control.

On the basis of this principle, states should not transfer arms which they know could be used to violate the following rules:

### **The prohibition on the threat or use of force:<sup>9</sup>**

Whilst the right of self-defence is often invoked by governments, this right is subject to limitations that flow from the prohibition on the threat or use of force. Accordingly, if it appears likely that a recipient of arms will use them to violate the prohibition on the threat or use of force, then the arms transfer should be considered illicit under international law.

### **Non-intervention in internal affairs of other states:**

If a state exports arms without ensuring that the transfer complies with the laws of the recipient state and without the state's authorisation, the supply could constitute unlawful interference in the recipient state's internal affairs.<sup>10</sup> Accusations of unlawful interference are all the more likely if the weapons are supplied to opposition forces within the recipient state, whilst the prohibition also applies if the weapons are used by the recipient state to intervene in the affairs of a third state.

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# Background to Controls on Government-Authorised Transfers of SALW

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## Prohibitions under international law

### **International humanitarian law:**

International humanitarian law prohibits the use of weapons intrinsically incapable of distinguishing between combatants and civilians or which are of a nature to cause serious injury or unnecessary suffering.<sup>11</sup> Some of these weapons have been the subject of specific conventions, the most recent of which have prohibited not only the use of the weapons but also their transfers (see above). With regard to those weapons which are incapable of distinguishing between combatants and civilians or which are of a nature to cause serious injury or unnecessary suffering, but which are not the subject of a specific convention, a prohibition on transfers can be inferred from the obligation in common Article 1 of the Geneva Convention “to respect and ensure respect” for international humanitarian law.

Indeed this commitment has wider implications for the transfer of all arms, to the end that states would be in violation of their obligations under the Geneva Conventions if they transferred arms that are likely to be used to commit violations of international humanitarian law.<sup>12</sup>

### **Human rights law and standards:**

Following on from the prohibitions enshrined by the Geneva Conventions, it is also the case that states cannot legally transfer arms that are likely to be used for serious violations of international human rights standards, as set out in the International Convention on Civil and Political Rights and numerous other regional instruments.<sup>13</sup> In addition, the duty of states to protect the right to life could also be interpreted as meaning that it is illegal for states to supply arms to private actors in another country when the actors are operating outside the control of the host country and committing violent crimes.

### **The prohibition on genocide:**

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide, prohibits and criminalizes acts of genocide as well as conspiracy to commit genocide and complicity in genocide. Accordingly, provided it has the necessary intent to destroy a group in whole or in part, a state that provides weapons to another state or actor that uses them to commit genocide will be guilty of genocide. Even when the state transferring the weapons does not itself have the necessary intent of committing acts of genocide, if it is apparent that the weapons will be used for these ends, the transfer will be considered illicit.

### **Prevention of terrorism:**

On a number of occasions the General Assembly has asserted states’ duty to refrain from giving assistance, whether direct or indirect, to terrorist groups.<sup>14</sup> Furthermore, the 1988 version of the International Law Commission’s Draft Code of Crimes Against the Peace and Security of Mankind stated that “fomenting subversive terrorist activities by organising, assisting or financing such activities *or by supplying arms for the purpose of such activities* (emphasis added), thereby [seriously] undermined the free exercise by that state of its sovereign rights” thus representing a crime against the peace. Accordingly, transferring arms that may be used in the commission of acts of terrorism is considered illicit under international law.

# Background to Controls on Government-Authorised Transfers of SALW

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## **Areas of emerging international consensus**

Beyond the restrictions that are laid down in international law, there are a number of other factors that governments, to a greater or lesser extent, take into account when deciding whether or not to grant or refuse an export licence for SALW. The extent to which such concerns do, in fact, have a material impact on the decision to licence exports of SALW varies, depending on the particular perspective of the exporting government and on the nature and situation of the recipient. There is, however, increasing recognition of the need to take into account concerns such as the following:

### **The threat of use of SALW in conflict:**

Beyond the need to observe the prohibition on the use of force as set out in the UN Charter (see above), the potential use of arms in a conflict situation is also an important consideration. A number of governments, including Italy and Belgium, are prohibited, by their domestic legislation, from transferring arms which could be used in a conflict situation, regardless of whether the recipient is the aggressor or the subject of aggression.

### **The potential effect on international/regional stability:**

Some governments take into account the potential impact of arms transfers on regional and international stability. Certain regions of the world can be prone to conflict at a particular time and the unregulated transfer of arms can exacerbate tensions or upset a delicate balance of power. The destabilising accumulation of conventional arms in the Middle East region is widely regarded as having been a contributing factor to the 1991 Gulf War. The flurry of initiatives that emerged in the aftermath of this conflict – including the UN Register of Conventional Arms – demonstrated a desire on the part of the international community to learn lessons from this period.

### **The undermining of economic development:**

Governments are becoming increasingly aware of the potential for expenditure on arms in recipient states to contribute to the diversion of resources from social development projects. Whilst SALW have a comparatively low unit cost, large shipments could have the effect of undermining development in a recipient country, particularly when part of a large-scale procurement exercise. The lack of transparency in many countries' arms export and procurement programmes, however, makes it difficult to identify situations when the acquisition of SALW is part of such a concerted military build-up.

### **The risk of diversion or transshipment to an illicit end-user:**

Beyond the possibility of arms being used for illicit purposes by the intended recipient, as set out above, arms exporting states also assess the risk of the diversion or transshipment of the arms to an unauthorised entity. In making their assessment, states need to take into account factors such as the international good standing of the recipient and its record in complying with international treaties, with international and regional arrangements, and with UN sanctions and resolutions.

The main problem with seeking to elaborate on principles for the purposes of controlling arms exports is that, whilst states may agree on what their main concerns are, it is nevertheless difficult to agree what the application of the criteria means for arms transfers in the quantitative and qualitative sense. Some of the above concerns may lead one government to institute a unilateral embargo on the transfer of SALW to a recipient, whilst other states may take a different view.

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# Overview of Existing Controls: UN and Regional Embargoes, National, Regional and International Initiatives

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## UN and regional sanctions/embargoes

If states actively develop and implement effective legislation and mechanisms for implementing UN arms embargoes, such action will go a considerable way to preventing the proliferation and misuse of SALW. However, to be effective, UN arms embargoes also need to be grounded in a framework of national, regional and internationally agreed export criteria that provide for strict control and limitation of arms transfers that might be diverted to embargoed destinations.

Under Chapter VII of the UN Charter, the UN Security Council has the power to adopt binding resolutions imposing sanctions and embargoes when it considers there to be “a threat or breach of the peace or act of aggression”.<sup>15</sup> Many UN arms embargoes have been imposed in response to violations of international law by a state or non-state actor. All United Nations Member States – and arguably all states – are required to adhere to these resolutions by refraining from transferring arms to the embargoed entity; they are also required to take steps to enforce the embargo against individuals within their jurisdiction. In a resolution of 1998, the Security Council called upon states to adopt legislation making the violation of arms embargoes a criminal offence.

As well as legally binding embargoes the UN can also adopt embargoes which are non-mandatory in nature. In the last decade the UN Security Council has imposed 14 arms embargoes, either mandatory or non-mandatory (see Annex 1). In certain cases these embargoes have extended to neighbouring states and, in recent examples, to non-state actors such as the Revolutionary United Front (RUF) and the Armed Forces Revolutionary Council (AFRC) in Sierra Leone.

In practice, however, the enforcement of arms embargoes has proven problematic and states and private actors have violated them with impunity.

### Box 2: Case study: Rwanda the arming of a genocide<sup>16</sup>

Between April and July 1994 genocide was committed in Rwanda during which up to one million men, women and children were murdered. In May 1994, in response to the gross human rights violations being committed, a UN arms embargo was imposed against the *genocidaires* by Security Council Resolution 918. However despite this UN embargo, arms continued to reach those committing genocide.

In September 1995 the UN Security Council established an International Commission of Inquiry (UNICOI) on Rwanda. Its primary mandate was to “collect information on the sale or supply of arms and related materiel to former Rwandan government forces” in violation of the May 1994 UN arms embargo on weapons deliveries to the exiled Rwandan armed forces and militia.

The Commission’s investigations and reports confirmed the continuation of illegal flows of weaponry and ammunition to the exiled former Rwandan government forces, often from or through South Africa, Angola, Eastern Europe and the former Yugoslavia and Kinshasa. It was discovered that these forces had received brand-new weapons, including Kalashnikov rifles and anti-personnel landmines, which were not available to them before the imposition of the UN embargo.

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# Overview of Existing Controls: UN and Regional Embargoes, National, Regional and International Initiatives

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## Regional non-binding prohibitions on transfers

### Regional Arms Embargoes

A number of regional organisations, including the EU, OSCE, the Commonwealth and a grouping of eight African states,<sup>17</sup> have also developed a mechanism whereby they can agree on the imposition of arms embargoes. These regional embargoes are, on the whole, well observed and, in the absence of a UN agreement, can be an important demonstration of political will on the part of a group of states. Moreover, they can act as important building blocks for wider international action. However, whilst such embargoes send an important message to the international community, their effectiveness can be limited for two important reasons. Firstly these agreements are often politically rather than legally binding and there is little recourse should a Member State decide to ignore the terms of an embargo. Secondly they are, by their very nature, regional in scope and can be thus undermined by countries outside the arrangement who may not subscribe to the same political view.

### ECOWAS Moratorium

To date the only agreement banning transfers specifically of SALW is the moratorium concluded on 31 October 1998 by the members of the Economic Community of West African States (ECOWAS). This non-binding Moratorium prohibits the "importation, exportation and manufacture of light weapons in ECOWAS Member States" for a renewable period of three years.

The establishment of the Programme for Coordination and Assistance for Security and Development (PCASED) in March 1999, was an important step toward implementing the Moratorium. This programme, supported financially by external donor states, is intended to operationalise and reinforce the Moratorium by building internal capacity among states (including within the police and judiciary) to sustain efforts against arms trafficking. It promotes arms collection efforts, the development of legal and regulatory measures relating to weapons possession and transfer, and the establishment of a regional arms register.<sup>18</sup>

A number of states outside the region have publicly stated their adherence to the Moratorium. The Wassenaar Arrangement, the EU and the OSCE have stated such respect and adherence to the Moratorium, and Member States have largely refrained from authorising SALW transfers to the ECOWAS region. However, regardless of such pledges, concerns have been expressed about the Moratorium's effectiveness, for example, in the report of December 2000 by the UN Panel of Experts on Diamonds and Arms in Sierra Leone.<sup>19</sup>

During the 1990s, the Security Council has begun to develop mechanisms to follow up and oversee embargo monitoring and implementation. In addition to the resolution of 1998, in which the Security Council called upon states to adopt legislation making the violation of arms embargoes a criminal offence, in September 1999, following a Ministerial meeting of the Security Council to consider the issue of SALW, a Presidential Statement was issued calling for implementation of Security Council arms embargoes. In April 2000, the Panel of Experts appointed to investigate alleged violations of the sanctions imposed against UNITA in Angola, also made an extensive set of recommendations for effective embargo enforcement, many of which should be applied to all UN embargoes.<sup>20</sup>

Whilst the speedy enactment and stringent enforcement of UN and regional arms embargoes are a crucial part of efforts to prevent and combat illicit trafficking in SALW they remain, at best, a partial solution. Whilst UN embargoes may be useful tools for limiting the influx of weapons into an area of conflict or to a human rights crisis zone, they are of limited use in preventing the build-up of arms in the first instance as they are often imposed only after the Security Council has determined that a threat or breach of the peace exists which may only be recognised after a military build-up has occurred. In addition, lack of political will within the Security Council or other relevant bodies has frequently prevented or delayed the imposition of such sanctions despite a clear need for such action.

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## Enforcement of embargoes and prohibitions

# Overview of Existing Controls: UN and Regional Embargoes, National, Regional and International Initiatives

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## National controls on arms exports

Ultimately controls on SALW are operationalised at the national level. Such national controls often incorporate a licensing determination system, which requires export licence applications to be judged against an objective set of criteria. The criteria used by states for such licence determinations typically include security considerations, the danger of illegal trafficking or of the arms being used by terrorists organisations or against the exporting state itself. However a growing number of exporting states such as South Africa, Germany and the United Kingdom, have also included development concerns or human rights and humanitarian law considerations in their export licensing systems.

### Box 4: United Kingdom guidelines, 1997

In July 1997 the United Kingdom Foreign Secretary announced new UK Government guidelines to be used in considering conventional arms export licence applications.<sup>21</sup> A principal concern related to the possible use of UK arms exports for "internal repression". Under these guidelines: "An export licence will not be issued if the arguments for doing so are outweighed by the need to comply with the UK's international obligations and commitments, or by concern that the goods might be used for internal repression or international aggression, or by the risks to regional stability, or by other considerations as described in these criteria."

More specifically, the guidelines state that "The Government will not issue an export licence if there is a clearly identifiable risk that the proposed export might be used for internal repression". In elaborating on what will constitute grounds for refusing a licence, the guidelines make the case for refusal where "there is clear evidence of the recent use of similar equipment for internal repression by the proposed end-user... or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression."

Whilst the development and stringent enforcement of comprehensive national arms export controls are a vital element to ensuring SALW are not transferred to human rights violators or other illicit end-users, such measures are not in themselves sufficient when implemented by a minority of states. The positive initiatives of certain states to halt the flow of SALW to illicit end-users have in the past been undermined by the actions of other states who have less stringent controls and which have been willing to "undercut" more responsible exporting states. Initiatives to develop sub-regional, regional and international controls on the legal trade in SALW are key to ensuring effective prevention and combating of the illicit trade.

## Regional initiatives to control arms exports

Although regional small arms transfer limitation agreements are a relatively recent concept, they are gaining in currency. The following sets out examples of two types of initiatives that have been undertaken in the last decade.

### OSCE Criteria

In November 1993 the then Conference on Security and Cooperation in Europe (CSCE), now the Organisation for Security and Co-operation in Europe (OSCE), adopted a document entitled "Principles Governing Conventional Arms Transfers". This required states, when considering proposed transfers to take into account a number of factors concerning recipient states, including their human rights record; their record of compliance with international commitments; the internal and regional situation; and the nature and cost of the arms in question in relation to the circumstances of the recipient states. The criteria provided that states "will avoid transfers which would be likely to", among other things, be used for "the violation or suppression of human rights and fundamental freedoms"; "threaten the national security of other states"; contravene UN sanctions or arms control, disarmament or non-proliferation agreements; prolong or aggravate existing conflicts or support or encourage terrorism.<sup>22</sup>

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# Overview of Existing Controls: UN and Regional Embargoes, National, Regional and International Initiatives

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## Regional initiatives to control arms exports

This document is an important advance in regional efforts to address legal arms transfers. Firstly, the range of countries covered by the criteria is large – the then CSCE covered the continent of Europe including the North Atlantic Treaty Organisation (NATO) and former Warsaw Pact states together with the United States (US) and Canada and hence included many of the world's leading arms exporters. Secondly, the range of concerns covered by the criteria are relatively comprehensive, addressing all the major principles that governments should adhere to in the regulation of arms transfers. The main drawback of the OSCE principles is that a number of criteria lack detail and so are open to varying interpretations. Beyond this, the nature of the OSCE as an institution has meant that the criteria are politically rather than legally binding. The absence of an agreement for ensuring consistent application of the principles by OSCE states has left their implementation by many members in doubt.

### **EU Code of Conduct on Arms Transfers**

The Code of Conduct for Arms Exports was agreed by Foreign Ministers in May 1998 and adopted by the Council of the European Union in June 1998. It is an important initiative in that it represents a first major step towards the development of a common, responsible approach to arms exports by EU Member States. The Code covers exports of military equipment and dual-use goods.<sup>23</sup> The EU Code has subsequently been adopted by the EU Associated States of Eastern and Central Europe with which the European Union has concluded association agreements, Cyprus, the EFTA countries, members of the European Economic Area and Canada. It is also referred to in the EU-US and EU-Canada Small Arms Declarations of December 1999. In November 2000, the second Consolidated Report of the EU Code recorded that Malta and Turkey have pledged to subscribe to the principles of the Code.

The Code of Conduct requires EU Member States to consider requests for exports of military equipment (including SALW) on a case-by-case basis, assessing their compatibility with eight criteria covering the following issues: respect for international commitments; respect for human rights; the internal situation of the recipient state; preservation of regional stability; the international security of Member States; the recipient state's attitude towards terrorism; the risk of diversion; and promotion of development.

The European Union Code also contains operative provisions aimed at harmonising its application by Member States, increasing the transparency, enabling consultation and preventing undercutting. Under these provisions, states are required to notify each other of export licences they have refused for failure to meet the criteria. Before any Member State can grant a licence which has been denied by another Member State for an essentially identical transaction in the preceding three years, it is required to consult the state that denied the licence. Although the power to take the final decision remains with individual states, if a licence is granted in these circumstances, the licensing state will have to provide a detailed explanation of its reasoning. The Code of Conduct also imposes an annual reporting obligation on states.

With its comprehensive determination, criteria coupled with the operative provisions, the EU Code represents an important advance in regional control. However, the Code does have a number of important weaknesses. Firstly the EU Code is a politically binding agreement only. Furthermore a number of the criteria, such as those relating to internal and regional instability, are not sufficiently explicit, leaving too much scope for individual interpretation by Member states. A further weakness is that Code fails to include violations of international humanitarian

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# Overview of Existing Controls: UN and Regional Embargoes, National, Regional and International Initiatives

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## Regional initiatives to control arms exports

law in the receiving state as a ground for refusing the transfer – under the Code such violations are merely elements that the exporting state should “take into account”.

Additionally, the consultations on possible undercutting (when one state wishes to take up a licence previously denied by another) are conducted on a bilateral basis, depriving the wider group of EU states of potentially valuable information and insights into concerns relating to arms export controls. Despite such concerns, the EU Code represents a major advance in regional export controls and should be seen as a crucial step towards the development of harmonised international controls.

## International initiatives to control arms exports

### UN Security Council P5 Guidelines

In 1991, the five permanent members of the Security Council also adopted a set of guidelines with regard to conventional arms transfers.<sup>24</sup> These provide that the states in question would avoid transfers likely to prolong or aggravate an existing armed conflict; increase tension or introduce destabilising military capability in a region; contravene embargoes or other internationally agreed restraints; be used otherwise than for legitimate defence and security needs; support international terrorism; be used to interfere in the internal affairs of sovereign states; or seriously undermine the recipient state’s economy. The methods for implementing the guidelines were left to the individual states. Following a breakdown of the discussions in 1992, no further progress was made in the implementation of the guidelines.

### UN Disarmament Commission Guidelines

The 1996 Disarmament Commission *Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991* represented the first collective articulation by UN Member states of the need for controls on the export of arms.

The Disarmament Commission guidelines acknowledge states’ right to self defence and right to transfer means of self defence, but note that there are “serious and urgent” concerns regarding the nature and extent of the international arms trade and the level of illicit trafficking. Whilst the guidelines refer, to a significant degree, to the illicit trafficking in arms they do state that “Arms transfers should be addressed in conjunction with maintaining international peace and security, reducing regional and international tensions, preventing and resolving conflicts and disputes, building and enhancing confidence and promoting disarmament as well as social and economic development.” The guidelines then go on to say that “Restraint and greater openness, including various transparency measures, can help in this respect and contribute to the promotion of international peace and security” and that states should “recognise the need for transparency in arms transfers”. States are also required to exercise “restraint over the production and procurement of arms as well as transfers” whilst beyond economic or commercial considerations states are requested to consider *inter alia* “efforts aimed at easing international tensions,... peacefully resolving regional conflicts, preventing arms races and achieving disarmament...”. Exporters and importers of arms alike are required to ensure that their activities in these respects do not contribute to instability and conflict or to illicit trafficking.

Although far from exhaustive, the Disarmament Commission guidelines could be viewed as the beginnings of an international consensus. Whilst the concerns to which they allude place an emphasis on avoiding contributing to conflict and illicit trafficking, the references to the role of transparency in encouraging restraint and the potential adverse affect of arms transfers on economic development are positive indicators. However, they are lacking in a number of respects

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# Overview of Existing Controls: UN and Regional Embargoes, National, Regional and International Initiatives

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## **International initiatives to control arms exports**

and fail to include several concerns that are afforded high priority by many states, such as the need to safeguard human rights and fundamental freedoms, and the need to respect and ensure respect for international humanitarian law. Nevertheless, as baseline principles, the Disarmament Commission guidelines represent a starting point for the international community.

When examining the relevance of the Disarmament Commission guidelines to the UN 2001 Conference, perhaps the most important statement is the assertion that “Illicit arms trafficking is understood to cover that international trade in conventional arms which is contrary to the laws of states and/or international law.” The assertion that transfers of arms, including SALW, which conflict with international law are, in fact, illicit raises an interesting prospect – namely, that it is within the scope of the UN Conference to examine and seek to codify the application of international law in the field of SALW transfers.

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# Legal Controls and the UN 2001 Process

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## **OSCE Document – November 2000**

The development of regional declarations has gathered pace as governments, sub-regional and regional organisations have developed initiatives to bring to the 2001 Conference. Whilst such initiatives have divergences, reflecting their own regional priorities, resources, and established control structures, there are many areas of commonality. The development of regionally accepted norms and standards on legal transfers should pave the way towards the articulation of internationally agreed norms and standards at the UN Conference. The following initiatives give an indication of the breadth of activity that is forming around the Conference process.

An important initiative in the development of harmonised regional controls has been the recent OSCE Document on Small Arms and Light Weapons<sup>25</sup> which was adopted at the 308th Plenary meeting of the OSCE Forum for Security Co-operation in November 2000. Throughout this document, there is a clear acknowledgement that legal export controls are crucial elements in combating the illicit SALW trade. Since the OSCE now includes 55 countries, including many of the leading SALW manufacturers and exporters, this is an important development.

Among a number of detailed measures outlined in the document, Member States have agreed to:

- exchange information on exports and imports of SALW within the OSCE region;
- combat illicit trafficking of SALW by prosecuting illegal manufacture, marking SALW and destroying or marking any unmarked weapons; and
- control the legal trade by adopting:
  - (i) commonly agreed standards, building on the 1993 OSCE criteria, for licensing SALW exports; and
  - (ii) common OSCE wide standards for documentation for import, export and transit of SALW.

## **Bamako Declaration – December 2000**

During a Ministerial Conference from 30 November - 1 December 2000, the Organisation of African Unity adopted the Bamako Declaration on an African common position on the illicit proliferation, circulation and trafficking of SALW.<sup>26</sup> This Declaration presented a multilateral plan of action for both exporting and recipient countries.

At the national level the Declaration called on exporting states to:

*“take appropriate measures to control arms transfers by manufacturers, suppliers, traders, brokers, as well as shipping and transit agents, in a transparent fashion.”*

This demand was reinforced by a call at the regional level to:

*“encourage the codification and harmonisation of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition.”*

Furthermore the OAU appealed to the international community and particularly, “arms supplier countries” to:

“iv) enact appropriate legislation and regulations to control arms transfers by manufacturers, suppliers, traders, brokers, shipping and transit agents” and

“v) enact stringent laws, regulations and administrative procedures to ensure the effective control over the transfer of small arms and light weapons, including mechanisms with a view to facilitating the identification of illicit arms transfers”.

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## Legal Controls and the UN 2001 Process

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### **EU Plan of Action – December 2000**

The recognition of the need to strenuously control the legal trade in SALW in order to effectively combat the illicit trade is also addressed throughout the recently agreed EU Plan of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.<sup>27</sup>

The EU Plan of Action also recognises that action to combat illicit trafficking cannot be restricted to national controls. At sub-regional, regional and international levels, the participating states undertake to:

- adopt and implement regional or sub-regional moratoria on the transfer and manufacture of SALW, and to respect such moratoria and co-operate with the countries concerned in the implementation thereof, including through technical assistance;
  - consider additional regional or sub-regional instruments or codes of conduct to improve control over and restraint in the legal transfer of SALW, as well as to combat illicit trafficking; and
  - control the production, transfer, acquisition and holdings of SALW in accordance with states' legitimate defence and internal security interests, in connection with surplus weapons.
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# Towards Developed International Norms and Standards

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## Defining international norms and standards

The foregoing declarations issued by regional and sub-regional groupings in advance of the UN Conference show, in clear terms, that the need to control, effectively, the legal trade in SALW is a major concern for many states. The assertion of the inextricable link between the illicit and legal trade in SALW has been made by the OAU, the OSCE and the EU. The elaboration of what legal controls should constitute, however, does vary across these documents. A major challenge for the UN Conference, therefore is to agree upon and articulate a set of clear, comprehensive and detailed norms and standards relating to the legal trade in SALW.

Significant progress has, nevertheless, already been made. The Preparatory Committee *Draft Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*<sup>28</sup> of January 2001 articulated a range of measures that are necessary at the national, regional and global level in order to prevent and reduce “the diversion of the legal manufacture and transfer [of SALW] to illicit channels” and with a view to fostering “responsible behaviour with regard to the transfer of SALW and thereby reduc[ing] the opportunities to engage in the illicit trade in SALW”. The measures stipulated can be summarised as follows:

### National:

- Laws, regulations and administrative procedures to exercise effective control over the export, import, transit or retransfer of SALW;
- Applications for export authorisations of SALW to be assessed according to strict national criteria;
- The use of authenticated end-user certificates, and enhanced legal and enforcement measures to safeguard against unauthorised re-transfer of SALW;
- Holdings of SALW to be limited to levels consistent with legitimate self-defence and security interests including the ability to participate in UN peacekeeping operations;
- The establishment of rules, regulations and procedures for national collection of information on production, stocks and transfers of SALW;
- The supply of arms only to governments, either directly or through entities authorised to procure arms on behalf of governments;
- The control over and criminalisation of illicit arms brokering activities; and
- The prohibition on the transfer of SALW to arms brokers as end-users.

### Regional:

- Harmonisation of measures, procedures and documents for monitoring and controlling the export, import, transit or retransfer of SALW; and
- Development of regional information exchange on arms brokers engaged in illicit activities.

### Global:

- Establishment of export criteria applicable to all states;
- Development of a common understanding of the role and definition of arms broker;
- Collection and publishing of “best practice” for national legislation and procedures for the control of arms brokers; and
- A legally binding agreement on arms brokers.

These principles and measures represent minimum standards, but they nevertheless provide a solid foundation for the establishment of effective international controls on the legal trade in SALW in order to prevent the illicit trade and misuse of these weapons.

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# Towards Developed International Norms and Standards

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## Defining international norms and standards

Accordingly, the removal from the Second Draft Programme of Action (February 2001) of the need to establish “export criteria applicable to all states” should be considered a retrograde step. The Third Preparatory Committee and UN Conference should reinstate this important commitment and should seek to build upon the above principles and measures through the articulation of a comprehensive and detailed set of norms and standards governing the international trade in SALW.

Based on the foregoing discussion of international principles governing the legal trade in SALW and current government practice in this area, these norms and standards can be divided into two categories: i) those principles which are based in existing international law; and ii) those which are increasingly recognised as important factors in the international regulation of the trade in SALW.<sup>29</sup>

Those norms or principles that are based in international law include the following:

- The need to ensure adherence to UN embargoes and other limitations placed upon the transfer of SALW by the UN Security Council;
- The need to respect international treaties prohibiting the transfer of specific types of SALW;
- The prohibition on transfers of arms which are banned by international humanitarian law because they are incapable of distinguishing between combatants and civilians or because they may cause excessive injury or suffering;
- The prohibition on transfers of SALW which would be used by the recipient to violate the prohibition on the use of force or to interfere in the internal affairs of another state (as set out in the UN Charter);
- The prohibition on transfers of SALW that would be used to commit serious violations of human rights;
- The prohibition on transfers of SALW that would be used to commit serious violations of international humanitarian law;
- The prohibition on transfers of SALW that would be used in the commission of acts of genocide or crimes against humanity;
- The prohibition on transfers of SALW that would be used to commit acts of terrorism;
- The necessity of ensuring that transfers of SALW are not diverted for any of the above purposes.

Those areas of emerging international consensus include the need to avoid transfers of arms that would:

- Undermine the social and economic development of the recipient state;
- Lead to the destabilising accumulation of weapons in a region or contribute to existing regional instability;
- Contribute to internal instability in the recipient state; and
- Be used for the violent suppression of democratic rights.

In addition, states should consider the necessity of ensuring that transfers of SALW are not diverted for any of the above purposes.

The UN Conference should elaborate on each of these principles with the view to arriving at a common understanding amongst all states regarding what each of these principles means for the transfer of SALW. Priority areas for in-depth consideration should include: enforcement of embargoes; observance of international human rights standards and international humanitarian law; regional destabilisation as a result of the excessive accumulation of SALW; and risk of diversion to unauthorised end-users.

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# Towards Developed International Norms and Standards

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## **The development of supporting mechanisms**

In addition, the UN Conference should agree upon a comprehensive set of legal, administrative and practical measures to ensure that the elaborated norms and standards are enforced rigorously by all states. A number of such measures are set out in the Draft Programme of Action of January 2001. Minimum standards should, however, include:

- An agreement on effective measures for certifying and monitoring the end-use of SALW post-export with a view to preventing the diversion or misuse of legal SALW transfers;
- Provisions for regular information exchange between all states on SALW transfers;
- Provisions for regular public reporting by each state on transfers of SALW;
- Model regulations governing SALW import, export and in-transit licensing and certification;
- An international agreement on the registration of arms brokering agents and on licensing of their activities in accordance with elaborated norms and standards (as set out above).

## **The development of follow-up mechanisms**

In order to ensure consistent application and progressive development of the above norms and standards and of the associated legal, administrative and practical measures, the UN Conference should also agree provisions for follow-up in these areas. An “ad hoc mechanism” such as that referred to in the Draft Programme of Action (or other appropriate international body) should be charged with conducting an annual review of the application of the norms and standards based on the provision of comprehensive information on transfers of SALW on the part of all states. Beyond this, the progressive development of the elaborated international norms and standards should be included in a formal review of the implementation of the UN Conference Programme of Action which should take place by 2004 and no later than 2005. This review Conference should moreover explore the development of a legally binding international agreement on the regulation of SALW transfers.

## **Conclusion**

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Despite the development of national and regional arrangements which elaborate on the necessity for controlling legal transfers of SALW, the illicit trade and misuse of these weapons has continued. The absence of an explicit agreement at international level on a comprehensive set of norms governing the legal trade in SALW is a significant obstacle to the promotion of global restraint and responsibility in this area. Many governments still trade on the assumption that “if we don’t sell, someone else will”. The UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects provides a crucial opportunity for addressing this damaging preconception. Only through the establishment of a detailed and comprehensive set of internationally agreed norms and standards governing the legal trade in SALW will effective progress in tackling the illicit trade in SALW be achieved.

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# Endnotes

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- <sup>1</sup> The acronym SALW is from hereon used to describe all types of small arms and light weapons and their ammunition.
  - <sup>2</sup> UN Security Council, *Report of the Panel of Experts appointed pursuant to Security Council Resolution 1306 (2000), paragraph 19 in relation to Sierra Leone, S/2000/1195*, UN, New York, December 2000.
  - <sup>3</sup> UN General Assembly, *Report on the UN Group of Governmental Experts on Small Arms, A/54/258*, UN, New York, 19 August 1999.
  - <sup>4</sup> UN Disarmament Commission, *Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991*, Fifty-first Session, Supplement No. 42 (A/51/42) 1996, para. 17.
  - <sup>5</sup> See UN Disarmament Commission Guidelines for international arms transfers.
  - <sup>6</sup> *Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be Deemed to be Excessively Injurious or to have Indiscriminate Effects* (and Protocols), 1980.
  - <sup>7</sup> According to the International Law Commission (the UN body established to promote the progressive development of international law) "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 the knowledge of the circumstances of the internationally wrongful act; and b) the act would be internationally wrongful if committed by that State." International Law Commission, Fifty-second session 1 May to 9 June and 10 July to 18 August 2000 – State Responsibility – Draft articles provisionally adopted by the Drafting Committee on Second Reading, A/CN.4/L.600.
  - <sup>8</sup> *Yearbook of the International Law Commission*, 1978, Vol. II, Part 2, p.103.
  - <sup>9</sup> The prohibition on the threat or use of force is laid down in Article 2(4) of the UN Charter.
  - <sup>10</sup> The question of interference in the domestic affairs of another state was also addressed by the International Court of Justice in *Case concerning Military and Paramilitary Activities in and against Nicaragua* between Nicaragua and the United States, *ICJ Reports*, 1986, p.14.
  - <sup>11</sup> Articles 51(4) and 35(2) Additional Protocol to the Geneva Conventions of 12 August 1949, and the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.
  - <sup>12</sup> Those crimes that are considered violations of International Humanitarian Law are set out in the *Statute of the International Criminal Court, A/CONF.183/9\**, UN, 1999.
  - <sup>13</sup> Instruments include the *European Convention on Human Rights, the American Convention on Human Rights and the African Charter on Human and Peoples' Rights*.
  - <sup>14</sup> See for example General Assembly Resolution 42/22 (1988) of 17 March 1988, para. I.6.
  - <sup>15</sup> UN Charter, Article 39.
  - <sup>16</sup> Extracted and summarised from Susannah Dyer & Geraldine O'Callaghan, *One Size Fits All? Prospects for a global convention on illicit trafficking by 2000*, BASIC 1999.
  - <sup>17</sup> Democratic Republic of the Congo, Eritrea, Ethiopia, Kenya, Rwanda, Tanzania, Uganda and Zambia.
  - <sup>18</sup> For a further discussion of the PCASED see Biting the Bullet Briefing No. 2 *Regional Initiatives and the 2001 Conference: Building mutual support and complementarity*.
  - <sup>19</sup> "Despite an ECOWAS Moratorium on arms shipments to West Africa, the region is awash in small arms. Guerrilla armies receive weapons through inter-linked networks of traders, criminals and insurgents moving across borders. Systematic information on weapons smuggling in the region is non-existent, and information that could be used to combat the problem on a regional scale – through ECOWAS or through bilateral exchanges – is generally not available. Few states in the region have the resources or the infrastructure to tackle smuggling." UN Panel of Experts Report on Diamonds and Arms in Sierra Leone, December 2000, Para 19.
  - <sup>20</sup> UN Security Council, Report of the panel of experts on violations of Security Council Sanctions Against UNITA, S/2000/203, UN, New York, 10 March 2000.
  - <sup>21</sup> [http://projects.sipri.se/expcon/natexpcon/UK/uk\\_criteria.html](http://projects.sipri.se/expcon/natexpcon/UK/uk_criteria.html)
  - <sup>22</sup> Decision of the OSCE Forum for Security Cooperation, November 1993, *FSC Journal* No.49, 24 November 1993.
  - <sup>23</sup> *The European Union Code of Conduct for Arms Exports, June 1998* see *SIPRI Yearbook 1999*, p. 503.
  - <sup>24</sup> Guidelines for Conventional Arms Transfers agreed by the five permanent members of the Security Council in London, 18 October 1991, *SIPRI Yearbook 1992*, p. 304.
  - <sup>25</sup> *OSCE Document on Small Arms and Light Weapons, A/Conf.192/PC/20*, UN, New York, 28 December 2000.
  - <sup>26</sup> *Bamako Declaration, A/Conf.192/PC/23*, UN, New York, 10 January 2001.
  - <sup>27</sup> *EU Plan of Action, A/Conf.192/PC/21*, UN, New York, 28 December 2000.
  - <sup>28</sup> UN, Draft Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/PC/L.4, UN, New York, December 2000.
  - <sup>29</sup> Many of these principles have been expounded in the *Nobel Peace Laureates International Code of Conduct on Arms Transfers* of May 1997, which currently has the support of 19 Nobel Peace Prize winners.
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# Annex 1

## International arms embargoes instituted from 1990<sup>1</sup>

<sup>1</sup> Information extracted from SIPRI Yearbook 2000, Armaments, Disarmament and International Security, Stockholm International Peace Research Institute.

<sup>a</sup> Does not apply to deliveries to ECOMOG forces in Liberia.

<sup>b</sup> The arms embargo was suspended on this date and formally ended on 1 Sept. 1996.

<sup>c</sup> Does not apply to deliveries to government forces in Rwanda. The embargo is also on equipment for persons in neighbouring states if the equipment is for use in Rwanda.

<sup>d</sup> Does not apply to deliveries to government or ECOMOG forces in Sierra Leone.

<sup>e</sup> Does not apply to deliveries under existing contracts.

<sup>f</sup> The Central and East European Countries associated with the EU, the associated country Cyprus and the EFTA countries (Iceland, Liechtenstein, Norway and Switzerland), members of the European Economic Area, have declared that they share the objectives of these embargoes.

<sup>g</sup> Imposed as an embargo against the territory of the former Yugoslavia.

<sup>h</sup> A 'decision the sale of any military equipment' was made by the EU General Affairs Council on 29 July 1991. On 28 Oct. 1991. On 28 Oct. 1996 a decision confirming the embargo (96/635/CFSP) was made by the EU Council of Ministers for Foreign Affairs.

<sup>i</sup> On this date the embargo was changed to a case by case evaluation governed by the EU common criteria on arms exports adopted in 1991. The embargo was officially lifted on 10 Aug. 1998.

<sup>j</sup> Only on deliveries to forces engaged in combat in the Nagorno-Karabakh area (these would include Azerbaijani, Armenian and local forces).

<sup>k</sup> DRC, Eritrea, Ethiopia, Kenya, Rwanda, Tanzania, Uganda and Zambia.

Target	Entry into force	Lifted	Legal basis	Organisation
<b>Mandatory UNembargoes</b>				
Angola (UNITA)	15 Sept. 1993	–	UNSCR 864	UN
Iraq	6 Aug. 1990	–	UNSCR 661	UN
Liberia <sup>a</sup>	19 Nov. 1992	–	UNSCR 788	UN
Libya	31 Mar. 1992	5 Apr. 1999	UNSCR 748	UN
Rwanda	17 May 1994	16 Aug. 1995 <sup>b</sup>	UNSCR918	UN
Rwanda (rebels) <sup>c</sup>	16 Aug. 1998	–	UNSCR1011	UN
Sierra Leone	8 Oct. 1997	5 June 1998	UNSCR 1132	UN
Sierra Leone (rebels) <sup>d</sup>	5 June 1998	–	UNSCR 1171	UN
Somalia	23 Jan. 1992	–	UNSCR 733	UN
Yugoslavia	25 Sept. 1991	1 Oct. 1996	UNSCR713	UN
Yugoslavia (FRY)	31 Mar. 1998	–	UNSCR 1160	UN
<b>Non-mandatory UNembargoes</b>				
Afghanistan	22 Oct. 1996	–	UNSCR1076	UN
Eritrea	12 Feb. 1999	–	UNSCR 1227	UN
Ethiopia	12 Feb. 1999	–	UNSCR	UN
<b>EU embargoes (non-mandatory)</b>				
Afghanistan <sup>e</sup>	17 Dec. 1996	–	96/746/CFSP	EU
Bosnia and Herzegovina <sup>f</sup>	5 July 1991	–	–	EU
China	27 June 1989	–	–	EU
Croatia <sup>f</sup>	5 July 1991	–	–	EU
DRC <sup>e</sup>	7 April 1993	–	–	EU
Ethiopia <sup>ef</sup>	15 Mar. 1999	–	–	EU
Eritrea <sup>ef</sup>	15 Mar. 1999	–	–	EU
Indonesia <sup>f</sup>	17 Sept. 1999	17 Jan. 2000	–	EU
Iraq	4 Aug. 1990	–	–	EU
Libya	27 Jan. 1986	–	–	EU
Macedonia <sup>g</sup>	5 July 1991	26 Feb. 1996	–	EU
Myanmar (Burma) <sup>e</sup>	29 July 1991 <sup>h</sup>	–	–	EU
Nigeria <sup>e</sup>	20 Nov. 1995	1 June 1999	95/515/CFSP	EU
Sierra Leone <sup>f</sup>	8 Dec. 1997	–	98/409/CFSP	EU
Slovenia <sup>g</sup>	5 July 1991	26 Feb. 1996 <sup>i</sup>	–	EU
Sudan <sup>e</sup>	15 Mar. 1994	–	94/165/CFSP	EU
Yugoslavia <sup>g</sup>	5 July 1991	–	–	EU
<b>Other international embargoes (non-mandatory)</b>				
Azerbaijan <sup>k</sup>	28 Feb. 1992	–	–	OSCE
Burundi	6 Aug. 1996	23 Jan. 1999	–	8 African Countries <sup>k</sup>
Nigeria	24 Apr. 1996	Nov. 1999	–	Commonwealth