

SEIZING THE OPPORTUNITY: SCOPE FOR EU ADVOCACY ON SALW CONTROL AT THE UNITED NATIONS

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Abstract

This background paper investigates the scope for a more ambitious role of the European Union in advocating high common standards at the United Nations on combating the illicit trade in illicit small arms and light weapons. The first part of the paper reviews the main policy initiatives on SALW control at the UN and provides an update on relevant developments at the 59th UN First Committee meeting in October-November 2004. The second part looks at specific control issues that the EU should advocate at the UN. They relate to high common standards on arms transfers, the tracing of illicit arms and ammunition, the advance of international norms on arms brokering controls, the promotion of transfers and stockpile security, and the strengthening of common understandings on controls on end-use and re-transfers of SALW. The paper concludes by arguing that these measures are mutually reinforcing and are essential to effective controls on SALW. The paper's final section spells out specific recommendations to the EU and its member states in this context. The annex to the paper contains a summary of the UN Programme of Action on SALW, which provides the main framework for global SALW controls.

I. Introduction

The European Union and its member states have an important voice at the United Nations regarding international efforts to combat the illicit trade in small arms and light weapons (SALW). Comprising several significant arms exporters as well as major donors for post-conflict reconstruction and development, it is very welcome that the EU and its member states are strong advocates at the UN for high common standards on SALW controls on national, regional and international levels. For example, the EU has called for several years already for international legally binding instruments on arms brokering controls as well as on co-operation in tracing illicit arms and ammunition. At the same time, the EU can and should adopt a more pro-active approach in the UN SALW process. There remain several loopholes in international controls on SALW, which urgently need addressing. In addition, some issues critical to controlling the SALW trade are not yet adequately included in the UN agenda.

Over the coming 18 months, the EU and its member states have valuable opportunities at the UN to build on their recent efforts and to actively promote a comprehensive vision for the international combat of SALW proliferation and misuse. These opportunities arise in particular in the framework of the biennial review of the implementation the UN Programme of Action (UN PoA) on SALW and the

review conference of this programme in the summer of 2006, the current negotiations of an international instrument on tracing illicit SALW, and the broad-based consultations on co-operation in combating illicit arms brokering.

This briefing urges the EU and its member states to fully seize these opportunities and to adopt a strategic view of how best to advocate necessary controls at the level of the UN. This entails also that EU member states adopt adequate controls on national and the EU level so as to have a credible voice at the UN, and that they work towards the inclusion on the UN agenda for SALW control issues which remain largely ignored.

II. Major UN initiatives on SALW

The United Nations have provided since the mid 1990s the main international forum for the development and adoption of common understandings and standards to combat the proliferation and destabilising accumulations on SALW. Following a General Assembly resolution in 1995, a panel of governmental experts reported in 1997 on the nature and causes of small arms proliferation. The panel recommended that the UN further engage in efforts to counter SALW proliferation.[1] Its report and other awareness-raising efforts opened the way for several UN initiatives and the regular reoccurrence of SALW issues on the UN agenda. For example, the illicit trafficking of SALW is by now regularly addressed by the UN Secretary General in reports and speeches on armed conflicts, by the UN Security Council in context of arms embargoes, and by agencies such as the UN Development Programme in the framework of, among other, its technical assistance in post-conflict situations.

1. UN Firearms Protocol

The first major policy document adopted at the UN was the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (UN Firearms Protocol) of March 2001.[2] Measures stipulated in the UN Firearms Protocol include strengthening national legislation and enhanced information exchanges among governments on illicit firearms, their traders, sources and trafficking routes. At the same time, the scope of firearms addressed by the document is restricted, and a significant loophole exists due to the exclusion from stipulated controls of state-to-state transfers of firearms.

So far, this protocol, which supplements the 2001 UN Convention against Transnational Organised Crime, has 52 signatories. These signatories include the European Community and most EU member states. The protocol has also been ratified or acceded to by Belgium, Cyprus, Estonia, Latvia, Slovakia, and Slovenia. Regrettably though, more than three years after the negotiation of the Firearms Protocol, it still needs 10 of the required 40 ratification or accessions by signatories to enter into force as a legally binding document. [3]

2. UN Programme of Action on SALW

The main focus for policy initiatives on SALW control is the July 2001 UN Programme of Action.[4] This programme was adopted as a politically binding instrument at the first ever global conference on combating the illicit SALW trade in all its aspects. The UN PoA promotes, among other, strengthened national legislation on manufacture and transfers of SALW, the marking of SALW, and improved stockpile and surplus weapons management. On the regional level, it encourages negotiations of instruments aimed at combating illicit SALW trafficking, as well as enhancing cross-border information among law enforcement agencies. On the global level, it encourages demobilisation and reintegration programmes in post-conflict situations, as well as the further development of common understandings of SALW (see Annex for a more comprehensive summary of the UN PoA principles).

While the PoA addresses a more comprehensive scope of SALW than the UN Firearms Protocol and also pertains to state-to-state transfers of SALW, it falls short of what advocates for high common control standards had hoped for. Thus, many of the stipulated measures remain rudimentary in their formulation, and no consensus could be reached on a ban of civilian possession of military-style SALW, or of a ban on their transfers to non-state actors.

In contrast, among the strong points of the PoA is the commitment made by governments to meet every two years to exchange information on their implementation of the PoA. The first of the biennial meetings of states (BMS) took place in New York in July 2003. It offered governments the occasion to present reports on their national efforts to pursue the aims of the PoA and to consult on future priorities on the UN SALW agenda. The next UN BMS is planned for the summer of 2005. In July 2006, there will then also be a review conference in New York during which amendments to the UN

PoA may be negotiated and adopted.

3. Open-Ended Working Group on Tracing illicit SALW

Complementing the UN Firearms Protocol and the UN PoA is a process launched in early 2004 at the UN to negotiate an international instrument to trace, in a timely and reliable manner, illicit SALW. Such tracing aims to systematically track illicit SALW recovered in the context of armed conflict or crime from their point of manufacture or last known point of legal import through their trade chains and up to the point and people who diverted the weapons from the licit into the illicit sphere. Tracing illicit SALW and their ammunition can, by identifying points of arm diversions and those responsible, significantly strengthen state abilities to identify and prevent illicit arms flows, as well as enhance accountability and transparency in the SALW trade.

Specifically, an open-ended working group on tracing illicit SALW was created to negotiate an international tracing instrument. The first substantive session of this working group took place in New York in June 2004. At the meeting, a broad majority of states voiced their support for a legally binding treaty on marking, record-keeping and co-operation in tracing, as well as for the inclusion of ammunition in such a treaty. However, there was no consensus on these issues, risking that the eventual instrument will be of weak binding character and contain significant loopholes.

There is also no clear idea as to the possible role of an international centre such as Interpol to facilitate co-operation in tracing between states. Moreover, states largely ignored and did not even deliberate measures to strengthen common approaches to critical issues such as the organisation and strengthening of national record-keeping systems or enhancing physical controls on arms transfers and stockpiles to ensure timely and reliable detection of arms diversions. Two further sessions of the working group are scheduled for January/February and June 2005 with a view to present the final text of the instrument at the 2005 biennial meeting of states on the UN PoA.

4. Broad-based Consultations on Arms Brokering Controls

Further complementing the current UN initiatives on SALW control are the broad-based consultations on further steps to enhance international cooperation in preventing, combating and eradicating illicit SALW brokering. Brokering activities include the facilitation of contract negotiations between arms exporters and buyers as well as other assistance in, for example, transportation and financing for arms transfers. There exists abundant evidence that individual brokers and networks of brokers and shipping agents play a key role in the illicit SALW trade.

Initiated in late 2003, four informal meetings were held at the UN on further steps to enhance international co-operation on arms brokering controls. While most states favoured at these meetings the establishment of a group or a panel of governmental experts to further consider future steps on arms brokering, no timetable was agreed on. Among other, some governments are concerned that the current SALW agenda at the UN is already overburdened until the 2006 SALW Conference. [5]

III. UN First Committee, October - November 2004

As in previous years, the UN First Committee on Disarmament and International Security paid much attention at this year's meeting in October - November 2004 to the combat of small arms proliferation. Many states pointed to progress made in efforts to combat the illicit trade in small arms on national, regional and international levels. At the same time, numerous states remain gravely concerned about the continuing threat of and devastation associated with small arms trafficking.

Several states emphasised in this context the negative impact of small arms proliferation on the consolidation of peace in post-conflict situations and on sustainable development, and reiterated their full support for the implementation of the UN Programme of Action on Small Arms.

States further held informal consultations on the currently negotiated instrument on tracing illicit small arms, including on issues regarding the instrument's scope and definitions, record-keeping, cooperation in tracing, implementation of the instrument, and final provisions. Many states continue to argue for a legally binding instrument, and there is support for the inclusion of small arms related ammunition in the instrument. However, other states, including the USA, oppose both the adoption of a legally binding instrument and the inclusion of ammunition. There is also no consensus yet on the possible role of Interpol in assisting states in tracing illicit small arms.

Regarding consultations on arms brokering, the International Committee of the Red Cross called on states to mandate an Expert Group to develop proposals for an international system of controls on

arms brokers. However, falling short of the recommendation made by the ICRC, the First Committee only requested the UN Secretary-General to continue the broad-based consultations on further steps to enhance international co-operation in combating illicit brokering in small arms.[6] The committee further encouraged states to ensure a positive outcome of the negotiations on a tracing instrument for small arms, and to submit to the UN, on a voluntary basis, national reports on the implementation of the UN PoA.

The UN First Committee also decided on the dates for the future UN SALW meetings on the UN PoA review (see box below). Noteworthy is also a resolution sponsored by some 58 states on the prevention of the illicit transfer and unauthorised access to and use of man-portable air defence systems. The resolution encourages states, among other, to enact or improve national controls over access to and transfer of man-portable air defence systems so as to prevent the illicit transfer and unauthorised access and use of such weapons, to ban the transfer of such weapons to non-state end-users, and to ensure that such weapons are exported only to governments or agents authorised by a government.[7]

Main UN meetings on SALW 2005-2006

Open-ended working group on tracing illicit SALW

- Second substantive session : 24 January to 4 February 2005
- Third substantive session : 6 June to 17 June 2005

Review of the UN PoA on SALW

- Second biennial meeting on the UN PoA : 11 to 15 July 2005
- Preparatory committee for review conference : 9 to 20 January 2006
- Review conference on the UN PoA : 26 June to 7 July 2006

IV. Control Issues

As shown above, EU member states have several opportunities over the next months to push at the UN for a comprehensive global approach on SALW control. In several respects, EU member states already advocate for high common standards at the UN. As mentioned, this includes calls for legally binding instruments on arms brokering and on tracing illicit SALW, as well as the inclusion of ammunition in the tracing instrument.

But there is scope and a need for a considerably more ambitious EU agenda. Many essential controls still remain rudimentary in their formulation and implementation. Others are still absent in the UN SALW initiatives. The continuing lack of high common international standards therefore continues to facilitate illicit arms trafficking and abuse. Relevant controls that must be further developed at the UN level include:

1. Transfer Controls

Governments must fully commit to stop and prevent arms transfers which violate international law. What is required is a clear international legal framework which bans transfers of arms and ammunition which are likely to be used to commit human rights violations or violations of international humanitarian law. In other words, all states must refrain from authorizing those transfers where they know or ought to know that the weapons of the kind in question are likely to be used in violations of international law. No such framework exists so far and standards stipulated in the UN PoA are disappointing and seriously insufficient. Thus, the PoA commits states "to assess applications for export authorizations according to strict national regulations and procedures that cover all SALW and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade". [8] However, there is no further specification of these existing responsibilities, and states continue to apply vastly different interpretations thereof.

Need for international standards

To illustrate, since 1994, EU member states have operated an arms embargo on Sudan “to promote lasting peace and reconciliation within Sudan”. This EU embargo was reaffirmed in January 2004 and extended to include, for example, paramilitary equipment.[9] This decade old restriction of EU arms export politic, in the absence of a corresponding international embargo, has little impact on the ability of armed actors in Sudan to acquire weapons. China and Iran, for example, are some of the governments who exported arms and ammunition to Sudan in the last years.[10]

Further, although the UN Security Council also declared an arms embargo on 20 July 2004, this embargo is non-mandatory and only applies to arms supplies to non-governmental entities and individuals.[11] This blatantly ignores that certain armed Sudanese para-military forces are sponsored and equipped by the Sudanese government, and that both state and non-state forces are continuing to misuse arms in serious violations of international human rights and humanitarian law.

A clear international legal framework for arms transfers and the strict implementation of state responsibilities in their arms transfers under international law would imply that a comprehensive arms embargo on all actors in Sudan’s armed conflicts would be mandatory on all arms transferring states. This would significantly enhance the impact of the EU’s embargo on Sudan.

Arms Trade Treaty

EU member states are urged to commit to and build support for an international Arms Trade Treaty (ATT) that bans international arms transfers violating international law and makes every other transfer subject to authorisation by state licenses. Licenses must be denied if the transferred weapons are likely to be used in violation of the UN Charter, to commit serious violations of human rights or international humanitarian law, to commit genocide or crime against humanity, or to be diverted for these uses. There must further be a consideration when deciding on transfer authorisations of the likely impact of the transferred weapons on violent crime, regional security, sustainable development, and the likelihood of diversion. States must also regularly report international transfers to a designated international authority.

The explicit support for an Arms Trade Treaty based on these principles by the governments of Finland, the UK, Costa Rica, Mali, Cambodia, Iceland and others is very welcome in this context. The governments of other EU member states are encouraged also publicly express their support for an international instrument codifying the ATT principles. They should join the UK, in the words of the British foreign Secretary Jack Straw, in working “with international partners, drawing on experience from the EU, to build support for an International Arms Trade Treaty, further to extend the international rule of law”. [12]

An important opportunity for this will be the third inter-governmental meeting of interested governments to be held in Tanzania in February 2005. Previous such meetings to deepen dialogue on the desirability and feasibility of international legal transfer criteria on high common standards took place in the UK (November 2003) and in Finland (June 2004), and were attended by six and 15 governments respectively. EU member states should express and build support for an ATT at the July 2005 UN biennial meeting of states on the small arms and light weapons.

Strengthening EU standards

To demonstrate their seriousness, EU member states should also proceed to transform the 1998 EU Code of Conduct on Arms Exports into a EU Common Position and thereby oblige themselves to assure that their national policies are in compliance with the EU code criteria. This would send out a clear message to other arms exporting countries and regions that the governments of EU member states are fully supportive of legally binding arms export criteria and restrictions.

2. Tracing Arms and Ammunition

Governments currently face severe difficulties in their attempts to trace illicit SALW recovered in the context of armed conflict or crime. This hampers efforts to detect points at which legally traded SALW are diverted into the illicit trade and to prevent future diversions during transfers and from stockpiles. It also implies that those diverting arms and those who authorise or fail to prevent or punish illicit arms transfers are rarely held accountable and act with impunity. The start to negotiations at the UN of an international instrument to assist states in the timely and reliable tracing of illicit SALW is therefore very welcome.

Model Convention on Tracing SALW

Governments can rely in their negotiations on a range of already existing national and regional best practices on marking, record-keeping and tracing SALW. The non-governmental Belgian research

centre, GRIP, also developed a draft model convention to assist in the negotiations. This draft convention provides a both technically and financially feasible model for tracing illicit arms and the proactive prevention of arms diversions. In particular, the model convention promotes the creation of national tracing agencies which would maintain national arms registers on arms manufacture, stockpiles and transfers, and would undertake relevant controls to verify the accuracy of these registers. These national agencies should be complemented with an international agency to facilitate co-operation in tracing and provide the focal point for a global system to track arms transfers. [13] Regrettably, governments have already made clear that this proposed system goes further than what they are willing to negotiate at present. Moreover, there is a clear risk that the present negotiations will result in a weakly formulated code which codifies the existing inadequacies in international norms on marking and tracing SALW, and which fails to include best practices as common minimal standards.

The EU position

EU member states already argue for some elements in the negotiations on a tracing instrument, which will be essential to creating an effective international system for tracing arms. This includes the advance made by Germany to include ammunition in the scope of the tracing instrument. This would include an obligation on producers of ammunition to mark every smallest packaging unit for cartridges and shells (which currently may contain, depending of the ammunition type from 10 shells to rounds of thousands to tens of thousands or more cartridges) with information on the type of ammunition, on the production lot, and on the country of production.

Germany's proposal further suggest that states should, in addition, encourage producers to mark individual cartridges and to maintain records on markings of the packaging, on the date of production, and on the first recipient.[14] This would greatly contribute to the identification of large illicit flows of ammunition. EU member states are also arguing in the UN negotiations for a legally-binding tracing instrument and support the creation of review mechanisms for the instrument to monitor its implementation.

Missing elements

These elements of marking ammunition boxes, a legally binding instrument, and review mechanisms are critical to allowing the instrument to effectively contribute to combating SALW trafficking. But the EU must complement these elements with several others to allow for effective SALW tracing and prevention of SALW diversions. In particular, EU governments should promote at the United Nations best practices including markings of cartridges which identify the original recipient military or police force or commercial dealer, markings at the point of import, and a ban of all inadequately marked or registered SALW. The tracing instrument must also provide detailed record-keeping standards, including the establishment of electronic inventories of arms stockpiles and registration of official and civilian gun ownership as well as of domestic and cross-border arms transfers.

There must further be common standards for verifying the accuracy of national record-keeping systems and complementary measures to enhance transfer and stockpiles security of SALW. These measures are essential to allow for the pro-active prevention of arms diversions as the tracing instrument will, otherwise, limit itself to only identifying those diversions where an illicit weapon is subsequently recovered.

Also, EU member states must argue for a viable international tracing infrastructure, which can facilitate co-operation in tracing between states. In particular, an appropriate international agency such as Interpol should be designated to maintain an international database on illicit SALW recovered or seized by UN member states or UN peace-keeping forces, and which, if so requested, can conduct tracing requests on behalf of a UN member state or the UN Security Council.

3. Arms Brokering Controls

One of the continuing frustrations of advocates of comprehensive SALW controls is the slow progress of international, regional and national efforts to strictly control arms brokering activities. For example, the UN PoA merely recommends to states to "develop adequate national legislation or administrative procedures regulating the activities of those who engage in SALW brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control". [15] Moreover, there are still about only 25 states which have a legal framework for brokering activities that allows for criminalizing the activities of those who broker or otherwise facilitate illicit arms transfers.[16]

In addition, the results of the UN broad-based consultation on arms brokering are disappointing. The decision taken in October 2004 at the UN First Committee to appoint a group of governmental experts

after the 2006 UN PoA review conference and the conclusion of negotiations of an international tracing instrument [17] contains no commitment to actually negotiate international standards on brokering controls and further delays the actual start to such negotiations.

Model Convention on Arms Brokering

This delay is even more regrettable as there already exists a model convention on the registration of arms brokers and the suppression of unlicensed arms brokering. This model convention was presented at the 2001 UN Conference on SALW by the non-governmental US think tank Fund for Peace. The model convention proposes a comprehensive scope of brokering activities to be controlled, including transportation and financing services for arms transfers, and controls on all brokering activities taking place on a state's territory and on activities abroad of nationals and persons who habitually reside on that state's territory. The model convention further proposes a registration and licensing requirement for brokers and brokering activities, stipulates criteria which, when not met, would lead to the denial of a brokering license, and penalties for violations of national legislation and regulations.[18]

However, given the lack of commitment so far on the international level to advance more quickly in international debates on arms brokering, even the negotiation by governments of the desirability and feasibility of such principles on brokering controls is still a far way off. Thus, if negotiations on an international brokering instrument will ever be agreed on at the UN, the earliest possible date for this by now seems to be in some three to four years. This means that for years to come, brokers involved in illicit arms trafficking will continue to benefit from the present lack of international standards on the control on their activities.

EU controls on arms brokering

Regarding EU member states, it is commendable that some 21 states from the European region have already in place brokering controls.[19] In particular, EU member states have committed to harmonize their national controls on arms brokering under the EU Common Position on the control of arms brokering of 23 June 2003.[20] But only about a third of the EU member states are already in full compliance with the obligatory standards stipulated in the EU common position, notably that brokering arms transfers between countries outside the EU of any item on the EU Common List of military equipment is subject to a state license.

Further, even less EU member states have, or are willing to adopt, one or both of the recommended measures stipulated in the EU common position, that is, the recommendations to register arms brokers and to control brokers of their nationality resident or established in the EU when these brokers operate outside the territory of the EU.

The adoption of these recommendations is important as they will counter the continuing lack of transparency in the brokering business and loopholes which allow EU brokers to facilitate with impunity illicit arms transfers from outside the EU. In addition, no mention is made in the EU Common Position of the need to not only control the facilitation of contract negotiations for arms transfers, but also for financing and shipping services as well as other services facilitating arms transfers.

In order to advance international debates on brokering controls and to speak with a credible voice, EU member states are urged to speed up national processes to ensure that their national policies on arms brokering are in conformity with the EU Common Position, adopt its optional elements, and extend national legislation to cover shipping and other brokering services. EU member states are also urged to re-launch efforts to promote on regional levels common understandings on brokering controls. Such efforts should be a priority over the next years to ensure that if negotiations will be agreed on and started at the UN level, there is a broader consensus on desirable and feasible elements that should become international standards.

4. Transfer and Stockpile Security

Insufficient physical verification of the accurate registration of arms transfers and stockpiles as well as limited operational capacities of the competent authorities responsible for these tasks remain a significant weakness in the legal arms trade. The lack of relevant common standards and controls continues to facilitate diversions of arms during transfers or by original recipients, as well as loss and theft from official and private stockpiles. Moreover, in the absence of systematic verification of SALW transfers and holdings by competent national authorities, arms diversions remain largely unnoticed, or if they are discovered, are identified long after the diversion has taken place. By then however, the diverted weapons will already have been misused.

Again, minimal standards in this regard are embedded in the UN PoA. For example, states have committed themselves under the PoA to "exercise effective controls" over production and transfers of

SALW; to ensure that “the armed forces, police or any other body authorised to hold SALW establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons”; and to regularly review such stockpiles so as to identify and responsibly dispose of SALW identified as surplus to the state’s security needs.[21] While these standards point into the right direction, they must be much more clearly specified and detailed to effectively contribute to the combat of SALW proliferation and misuse.

Control on MANPADS

It should be pointed out in this context that several governments have already build upon such existing standards with regards to controls on man-portable surface-to-air missiles (MANPADS). MANPADS fall under the category of light weapons and pose particular risks in the hands of terrorists and to civil aviation. States member to the Wassenaar Arrangement and the Organisation for Security and Co-operation in Europe have responded to these threats by agreeing in 2003 on specific guidelines governing MANPADS exports by them, including an assessment of the recipient government’s security measures designed to achieve protection and accountability of transferred MANPADS.

Such measures are specified to include “written verification of receipt of MANPADS shipments”, “inventory by serial number of the initial shipments of all transferred [weapons] and maintenance of written records of inventories”, as well as monthly “physical inventory of all MANPADS subject to transfer”. Further the recipient government should ensure that “storage conditions are sufficient to provide for the highest standards of security and access control. These may include ... ensuring continuous (24-hour per day) surveillance ... [and] establishing safeguards under which entry to storage sites requires the presence of at least two authorised persons”. [22]

Necessary standards

These and similar measures to enhance transfer and stockpile security are not only needed with regards to MANPADS, but also with regards to other SALW categories. Moreover, such security measures must be implemented by exporting, transiting and importing states and be complemented with, in particular, national physical verification of stockpiles and of transfers at points of loading, transit and unloading. That is, there must be adequate controls to verify that recorded information on arms corresponds to the actual serial numbers, types, and quantities in the shipment or stockpile. EU member states should therefore promote at the UN further international efforts to elaborate on existing common standards on transfer and stockpile security. High common standards can be elaborated on as part of, if adopted, review meetings on the international instrument on SALW tracing. A group of experts should be mandated as part of these review mechanisms to develop guidelines on record-keeping and verification falling under the scope of the tracing instrument.

To recall, detailed standards on transfer and stockpile security are essential to quickly alerting states to arms diversions and therewith to a pro-active international approach to combating illicit SALW trafficking. EU and its member states, in their role as major donors, should also offer in this context technical and financial assistance to states requesting such assistance in building up adequate national structures and mechanisms. They should also include such assistance into their assistance for combating destabilising accumulation and spread of SALW under its 2002 EU Joint Action on SALW.[23]

5. Controls on End Use and Retransfers

A further continuing weakness in the SALW trade is the inadequate control of exported arms once they leave the exporting state’s territory. For example, information on end use and end user provided to export licensing officials may have been intentionally false or misleading with the result of exported arms being delivered to unauthorised end users. End users may also violate undertakings they gave regarding the end use of imported equipment, or may re-transfer weapons to third actors or destinations to which the originally exporting state would not authorise transfers. If it is agreed that the responsibility of a state regarding its arms exports does not stop at the state’s territorial boundaries, there must be greater international efforts to strengthen end use monitoring of SALW. Such monitoring by exporting as well as by recipient countries should verify that transferred arms reached their intended destination, are still in the possession of the intended recipient, and are used in accordance with obligations tied to the arms transfer.

End-user certificates

One issue that has received some attention in this context is the use of end user certificates (EUC) which identify the end user and/or end use of exported equipment. EUC are usually requested at the stage of licensing an export to allow licensing officials to make an informed decisions about the

desirability of a given export. Following the emergence of overwhelming evidence collected by UN investigations into arms embargo violations that relevant EUC were frequently forged or misleading, governments agreed in the UN PoA to use “authenticated end-user certificates” in their arms export systems. Governments further agreed, “without prejudice to [their] right to re-export SALW, ... to notify the original exporting State in accordance with their bilateral agreements before the retransfer of those weapons”.^[24] EU member states have complemented this recommendation with an agreement in 2002 under the EU code of conduct on arms exports on common core elements that should be found in an EUC where required by a member state. Core elements include information on the exporter, end user, country of final destination, type and quantity of exported goods, date of the EUC, and an indication of end use of the goods. Additional elements member states may require in their EUC include a ban on re-exports or a requirement for prior written authorisation by the authorities of the originally exporting state, and an undertaking that equipment will only be used for declared purposes.^[25]

Risk assessment at the licensing stage

There is also an understanding among EU member states that, to prevent arms diversions, there must be adequate risk assessment at the licensing stage of arms exports. Thus, if there is a risk that a recipient will divert weapons or use them in violation of undertakings, the export should not be authorised. Pre-licensing measures should also include the verification of the authenticity of the recipient’s signature on an EUC and the capacity of the signatory to make relevant commitments regarding the exported arms. It is welcome in this context that EU member states are increasingly using the EU Council working group on conventional arms exports to share information on the results of their national risk assessments and on sensitive destinations and end users. Standards on end-user certificates and re-transfers in the EU are therefore already more developed than those existing at the level of the UN.

Regional and international standards

However, even the common standards agreed on in the EU fall short of existing best national practices. For example, there is neither a requirement under the EU code to systematically require an EUC, nor a requirement that an EUC must be signed or co-signed by the government of the arms importing country. These measures would significantly strengthen the ability of exporting states to hold to account importers and importing states’ governments in those cases where weapons exported by EU member states are later found to have been used in, for example, violations of international law. Further, EU member states have agreed on exactly these requirements with regards to MANPADS under the Wassenaar and OSCE documents on these weapons.^[26] These requirements must be extended and applied to also other SALW categories.

Also, there is no stipulation in the EU standards of penalties on those who violate their obligations under an EUC. In contrast, national political guidelines on arms exports in Germany stipulate that countries which violate end use obligations will be barred from further German exports of weapons of the type in question. This ban will only be lifted when the situation leading the violation has been redressed. Violations can include the disregard by the recipient country to obtain prior consent to re-transfers by German authorities, a failure to prevent un-authorised re-exports, or a failure to sanction such violations.^[27] This standard should be a common minimal standard both on the level of the EU and the UN.

Controls on licensed production overseas

Further, there should be clear standards regarding obligations on importers of production facilities and technology for SALW and their ammunition. EUCs should be obligatory for such transfers, take the form of legally binding contracts, and impose strict limits on the quantities that may be produced, the duration of the contract, and the intended end use of the goods derived from the imported production facilities or technology. This should include a ban on re-transfers of such facilities and technology. There should also be high standards regarding the authorised recipients of goods derived from imported production technology. This could include a stipulation that produced arms or ammunition will only be delivered to the military and police forces of the importing state or, if goods are to be exported, an identification of the permissible destinations and recipients. Any transfer not explicitly authorised under the EUC should be subject to prior written authorisation by the authorities of the state originally exporting the production technology or facilities from which for the goods were derived.

End use and delivery verification

In addition, greater emphasis should be placed in SALW controls on verification and end use

monitoring. One possible means to strengthen such monitoring is the inclusion in an EUC of a clause reserving the right of competent authorities of the exporting state to inspect in the importing country the stockpiles and weapons in active use by recipients. EU member states should in this regard also develop further their co-operation in consulting with each other on sensitive destinations and end users and the sharing of information regarding their risk assessments at the licensing stage. Situations may also arise where an EU member state does not have a diplomatic representation in a recipient country that could collect information necessary for risk assessment or delivery and post-delivery verification. EU member state which do have a diplomatic representation in the recipient country should offer their assistance in such cases to gather relevant information. Importantly, greater emphasis should also be put on delivery and post-delivery verification and monitoring by the competent authorities in the importing state. To an extent, this obligation is subsumed under the responsibility of states under the UN PoA to ensure adequate national controls on all SALW under their jurisdiction. But there is a need for the further specification of this responsibility, including of the already referred to controls of national inventories and controls of weapons held in official or commercial stockpiles. Again, the designation of competent national authorities would considerably advance the presently inadequate international standards and strengthen state abilities to combat SALW proliferation and misuse. These authorities would maintain national record-keeping systems on all SALW entering or leaving a state's jurisdiction, verify the accuracy of records, and check compliance of end users with their obligations

V. Need for an integrated approach

There is a clear need for progress on a whole range of SALW control issues if SALW proliferation is to be effectively ended. These issues include those here suggested, all of which are interlinked and mutually reinforcing. EU member states should therefore adopt an integrated approach which covers the multitude of individual control issues which make up the complex field of SALW control. Indeed, SALW proliferation and misuse can only be ended if all control elements are in place. To illustrate, an observer mission to, for example, Sudan recovers arms which were misused by paramilitary forces in a targeted attack on the civilian population. An international arms trade treaty would provide a clear baseline for the identification of these arms to have probably been transferred to the perpetrators in violation of international law. Effective tracing of these weapons would allow to identify those governments or private actors that were complicit in the illicit transfer to the perpetrators. In turn, a convention on arms brokering would provide the legal basis for penalising private brokers and shipping agents who might have been involved in the arms transfer. High common standards on end use and re-transfers would provide exporting governments with the adequate foundation to prevent future arms transfers to those who illicitly re-transferred and used weapons. Importantly, strengthened physical controls on transfers and stockpiles would contribute to preventing future diversions and misuse of weapons in the first place or, at a minimum, alert governments to a diversion in a timely and reliable manner.

VI. Conclusions

There is little doubt that the EU and its member states already pursue a progressive agenda at the United Nations in the global efforts to prevent, combat, and eradicate the illicit trade in SALW in all its aspects. In addition, EU member states have agreed on a regional level on SALW control standards which in many ways are already more developed than globally existing standards. However, this is not enough, and the EU and its member states can and should adopt a more ambitious agenda and play a more prominent role in advancing the necessary controls. The EU and its member states should integrate the here suggested control issues in their individual and joint positions in the UN processes on SALW. Important opportunities to promote high common standards are the second and third substantive sessions of the open-ended working group on tracing illicit SALW in January/February and June 2005 respectively, the biennial review of the UN PoA in July 2005, as well as the preparatory committee meeting for the review conference on the UN PoA (January 2006) and this conference itself (June/July 2006). The EU and its member states should simultaneously strengthen their regional controls on the SALW trade. This would close still existing loopholes in EU arms export controls, and also send out a powerful message to other governments that EU member states are sincere and serious in their aim to

effectively end SALW proliferation and misuse.

Failing this, EU member states will squander an important opportunity to advance SALW controls.

Failing the adoption of strengthened global SALW controls, hundreds of thousands of men women and children will continue to live in daily fear of armed violence.

VII. Recommendations

The EU and its member states are urged to:

- express their support for and actively promote an international Arms Trade Treaty to provide a clear legal international framework for existing responsibilities of states in their arms transfers under international law;

- continue and deepen common understandings among member states on the desirability of adopting a EU Common Position on the EU code on arms exports which would oblige member states to ensure the conformity of their national arms export policies and practices with the EU code;

- sign and /or ratify, if they have not yet done so, the UN Firearms Protocol. Member states which have not yet signed the protocol are the Czech Republic, France, Hungary, Ireland, Malta, Spain and the Netherlands. Member states which have signed but not yet ratified the protocol are Austria, Denmark, Finland, Germany, Greece, Italy, Lithuania, Liechtenstein, Poland, Portugal, Sweden and the UK;

- make every effort in the current negotiations on an international tracing instrument to win support for the EU position in favour of a legally binding instrument which includes SALW ammunition and is regularly reviewed;

- go further in this position by promoting best practices on marking SALW, detailed record-keeping standards on all SALW transfers and the verification of the accuracy of these records, and the designation of an international centre to undertake tracing on behalf of a member states or the UN Security Council;

- investigate means and possibilities for re-launching EU efforts to promote common international understandings on arms brokering controls with EU partner countries and organisations so as to complement the UN consultations on arms brokering and advance international debates;

- adopt, if they have not yet done so, national controls as stipulated in the EU Common Position on arms brokering, or, where applicable, speed up national processes to ensure the conformity of national controls with the EU common position. Member states which still have to adopt relevant controls are Spain, Portugal, Ireland, Greece, Cyprus, Malta, Denmark, Luxembourg. Member states which have to revise their national controls include Germany and Italy;

- criminalize brokering activities in violation of national, regional and international arms embargoes by nationals and residents when acting from abroad, adopt a registration scheme for arms brokers, and license the activities of transport agents and those providing financial services for arms transfers;

- strengthen in regional and international debates on SALW the awareness for greater need of common standards on physical transfer and stockpile security for SALW, including the need for measures similar to those recently adopted by EU member states with regards to MANPADS in the Wassenaar Arrangement and the OSCE;

- review the EU Joint Action on SALW so as to integrate support for adequate national standards on marking, record-keeping, tracing, arms brokering, and transfer and stockpile security into the offer of financial and technical assistance to EU partner countries;

- harmonize national controls on end-use, re-transfers and licensed production overseas of SALW on high common standards in the EU and deepen common international understandings on the need for a further elaboration of existing international standards for such controls.

VIII. Annex: Summary of UN PoA [28]

Among other measures, Member States participating in the 2001 United Nations Conference on SALW undertook to:

At the national level

- put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of SALW within their areas of jurisdiction, and over the export, import, transit or retransfer of such weapons,
- identify groups and individuals engaged in the illegal manufacture, trade, stockpiling, transfer, possession, as well as financing for acquisition, of illicit SALW, and take action under appropriate national law against such groups and individuals;
- ensure that licensed manufacturers apply appropriate and reliable marking on each SALW as an integral part of the production process;
- ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of SALW under its jurisdiction,
- ensure responsibility for all SALW held and issued by the State and effective measures for tracing such weapons;
- put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of SALW, including the use of authenticated end-user certificates;
- make every effort, without prejudice to the right of States to re-export SALW that they have previously imported, to notify the original exporting State in accordance with their bilateral agreements before the retransfer of those weapons;
- develop adequate national legislation or administrative procedures regulating the activities of those who engage in SALW brokering;
- take appropriate measures against any activity that violates a United Nations Security Council arms embargo;
- ensure that confiscated, seized or collected SALW are destroyed;
- ensure that armed forces, police and any other body authorized to hold SALW establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons;
- develop and implement, where possible, effective disarmament, demobilization and reintegration programmes;
- address the special needs of children affected by armed conflict.

At the regional level

- encourage regional negotiations with the aim of concluding relevant legally binding instruments aimed at preventing, combating and eradicating the illicit trade, and where they do exist to ratify and fully implement them;
- encourage the strengthening and establishing of moratoria or similar initiatives in affected regions or sub-regions on the transfer and manufacture of SALW;
- establish subregional or regional mechanisms, in particular trans-border customs cooperation and net-works for information-sharing among law-enforcement, border and customs control agencies;
- encourage regions to develop measures to enhance transparency to combat the illicit trade in SALW.

At the global level

- cooperate with the United Nations system to ensure the effective implementation of arms embargoes decided by the Security Council;
- encourage disarmament and demobilization of ex-combatants and their reintegration into civilian life;
- encourage States and the World Customs Organization to enhance cooperation with the International Criminal Police Organization (Interpol) to identify those groups and individuals engaged in the illicit trade in SALW in all its aspects;
- encourage international and regional organizations and States to facilitate the appropriate cooperation of civil society, including non-governmental organizations, in activities related to the prevention, combat and eradication of the illicit trade in SALW;
- promote a dialogue and a culture of peace by encouraging education and public awareness programmes on the problems of the illicit trade in SALW.

[1] United Nations (1997) Report of the Panel of Governmental Experts on Small Arms. UN Document A/52/298. New York: United Nations, 27 August.

[2] United Nations (2001a) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. UN Document A/RES/55/255. New York: United Nations, 31 May 2001.

[3] Signatories which have not yet ratified the protocol include the European Community, Austria, Denmark, Finland, Germany, Greece, Italy, Lithuania, Liechtenstein, Poland, Portugal, Sweden and the UK.

[4] United Nations (2001b) *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. UN Document A/CONF.192/15. New York: United Nations, 21 July 2001.

[5] See <http://disarmament2.un.org/cab/salw-brokering.html> for further information on the consultations on brokering controls

[6] United Nations (2004b) *The illicit trade in small arms and light weapons in all its aspects*. UN Document A/C.1/59/L.43/Rev.1, 27 October 2004, para. 5.

[7] United Nations (2004c) Prevention of the illicit transfer and unauthorized access to and use of man-portable air defence systems. UN Document A/C.1/59/L.49/Rev.2. New York: United Nations, 3 November.

[8] UN 2001b, section II, para. 11.

[9] see European Union (2004) *Council Common Position of 9 January 2004 concerning the imposition of an embargo on arms, ammunition and military equipment on Sudan*. EU Document 94/165/CFSP. Brussels: OJ L6 10.1.2004, p. 55.

[10] Amnesty International (2004) *Sudan: Arming the perpetrators of grave abuses in Darfur*. AI Index: AFR 54/144/2004. London: AI, International Secretariat, 16 November 2004, section 6.3.

[11] UN (2004a) UN Security Resolution 1556 on the Sudan. UN Document: S/RES/1556 (2004). New York: UN, 30 July 2004.

[12] Jack Straw (2004) *Delivering progressive values to the wider world*. Speech by Jack Straw, UK Foreign Secretary, Labour Party Annual Conference, Brighton Centre, UK. 30 September 2004. Available at http://www.labour.org.uk/ac2004news?ux_news_id=ac04js (accessed: 10 November 2004).

[13] see Ilhan Berkol (2004) *Marking, Registration and Tracing Small Arms and Light Weapons: Draft Convention*. GRIP Report 2004/4. Brussels: Groupe de recherche et d'information sur la paix et la sécurité, p. 56f. (available at http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf).

[14] Information kindly provided by the Federal Foreign Office of Germany Ministry (e-mail, 26 October 2004).

[15] EUN 2001b, section II, para. 14.

[16] see Sivilia Cattaneo (2004) 'Targeting the middlemen: controlling brokering activities'. In *Small Arms Survey (2004) Rights at Risk*. Geneva: Small Arms Survey, p. 152.

[17] UN 2004b, para. 5.

[18] Fund for Peace (2001) *Model Convention on the Registration of Arms Brokers and the Suppression of Unlicensed Arm Brokering*. Prepared for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. Washington, DC: Fund for Peace, July 2001.

[19] see Cattaneo, p. 152.

[20] EU (2003) *Council Common Position of 23 June 2003 on the control of arms brokering*. EU Document 2003/468/CFSP. Brussels: OJ L 156, 25.6.2003, p.79f.

[21] UN 2001b, section II, paras. 2; 17; and 18.

[22] Wassenaar Arrangement (2003) *Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)*. Agreed at the 2003 Plenary, para. 2.9; and Organization for Security and Co-operation in Europe (2004) *Decision No. 3/04 OSCE Principles for Export Controls of Man-Portable Air Defence Systems (MANPADS)*, FSC Journal No. 429, FSC.DEC/3/04, 26 May 2004, para. 2.7.

[23] European Union (2002) *Council Joint Action of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP*. EU Document 2002/589/CFSP. Brussels: OJ L 191, 19.7.2002, p. 1f.

[24] UN 2001b, section II, paras. 12; and 13.

[25] European Union (2003) *Fifth Annual report according to operative provision 8 of the European Union Code of Conduct on Arms Exports*. EU Document 14712/1/03 REV 1. Brussels: EU Council, 26 November 2003, p. 20.

[26] See Wassenaar Arrangement 2003, para. 2.1; and OSCE 2004, para. 2.1.

[27] Federal Republic of Germany (2000) *Politische Grundsätze der Bundesregierung für den Export von Kriegswaffen und sonstigen Rüstungsgütern*. 19th January 2000, section iv.4.

[28] Taken from <http://www.dfait-maeci.gc.ca/arms/convweap3-en.asp> (accessed 29th September 2004).



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