United Nations Development Programme

How to Guide
Small Arms and Light Weapons Legislation

Bureau for Crisis Prevention and Recovery

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Advocacy Series

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Photos: IRIN - humanitarian news and analysis - www.irinnews.org

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Acronyms

ATT	Arms Trade Treaty
CASAC	Central America Small Arms Control Project
CICAD	Inter-American Drug Abuse Control Commission
CIFTA	Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Explosives and other related materials
COARM	Working Party on Conventional Arms Exports
DTCC	Office of Defence Trade Controls Compliance
ECOWAS	Economic Community of West African States
EU	European Union
EUC	End-User Certificate
FLP	Foreign Licensed Production
GGE	Group of Governmental Experts
IANSA	International Action Network on Small Arms
ICRC	International Committee of the Red Cross
Interpol	International Criminal Police Organization
MANPADS	Man-Portable Air Defense Systems
NATO	North Atlantic Treaty Organization
NCACA	National Conventional Arms Control Act
OAS	Organization of American States
ODA	Official Development Assistance
OSCE	Organization for Security and Co-operation in Europe
PoA	UN Programme of Action
PSC	Private Security Companies
RECSA	Regional Centre on Small Arms
SADC	South African Development Community
SALW	Small Arms and Light Weapons
SEESAC	South Eastern and Eastern Europe Clearing House for the Control of Small Arms and Light Weapons
SICA	Central American Integration System
TMSD	Framework Treaty on Democratic Security
UN	United Nations
UNDP	United Nations Development Programme
UN-LiREC	UN Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNODA	United Nations Office for Disarmament Affairs
UNODC	United Nations Office on Drugs and Crime
WA	Wassenaar Arrangement

Foreword

Armed violence is now widely recognized as having a significant negative impact on long-term sustainable development and human security. One of the main contributing factors toward the prevalence, severity and longevity of armed violence, is the widespread, uncontrolled proliferation and illicit trafficking of small arms and light weapons (SALW).

Over the last decade, however, important progress has been made - both at the policy and programmatic levels – to strengthen controls over and reduce the availability of SALW.

At the policy level, a range of international and regional initiatives and agreements have been concluded that commit Member States to a series of regulatory and control measures to tackle the proliferation of SALW.

At the programmatic level, dealing with the widespread availability of SALW has become a priority for many States, particularly for those in the developing world which have been most severely affected by SALW. An increasing number of States have now developed (or are in the process of developing) national strategies and action plans to address the uncontrolled proliferation and illicit trafficking of SALW.

The existence and enforcement of comprehensive legislative and regulatory frameworks are critical for the control of SALW. Many States, however, have legislation that is out-of-date or limited in scope, which reduces the effectiveness of efforts undertaken. In this context, the review and strengthening of the legislative and regulatory frameworks have become a priority for many governments, but a successful review process is reliant on significant technical expertise and financial resources, which are not always available.

Recognizing that the uncontrolled presence of SALW and the armed violence which often ensue constitute major threats to sustainable development, the United Nations Development Programme (UNDP) has played a significant role over the last decade in assisting governments to address the proliferation and illicit trafficking of SALW effectively and comprehensively. Our primary emphasis is on support to national authorities for the review and amendment of existing SALW legislation. The set of guidelines contained in this How to Guide seeks to assist national authorities, as well as practitioners, in developing an effective and comprehensive legal framework to regulate the manufacturing, possession, transfer and tracing of SALWs.

It is our hope that this *Guide on SALW Legislation*, together with the *Guide on the Establishment and Functioning of National SALW Commission* published by UNDP in 2008, will enable national authorities to develop appropriate legislative and institutional frameworks to address effectively the issue of SALW proliferation.

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Chapter 1

Introduction

Chapter 1 Introduction

1.1 About this *How to Guide*

1.1.1 Purpose and objectives

This *How to Guide* is designed for national law makers tasked with supporting or leading the review of SALW legislation, in addition to others, such as UN staff in-country or civil society organizations, who may engage in, or support a review process. It is intended to provide practical information on the process to review SALW legislation, on key issues and factors that should be considered and to outline the measures that states may consider when reviewing their legislation. The specific objectives of the guide are therefore to help practitioners to:

- Understand the basic requirements and recommendations of international and regional SALW instruments;
- Assess the relevance and comprehensiveness of their respective national legal frameworks governing SALW;
- Assess whether all legal issues governing the possession, use, production, sale and transfer (import, export and transit) of SALW are covered, or at least, considered in the framing of legislation; and
- Address deficiencies within existing legal frameworks.

1.1.2 Scope

This guide focuses on the range of issues relating to SALW. It addresses:

- Regulating small arms in the hands of civilians (including by private security companies);
- Transfer controls (including the import, export, transfer, brokering, transit and transhipment of SALW);
- Controls on manufacturers, dealers and gunsmiths;
- Marking and record keeping; and
- Controls on state-owned SALW.

The focus of this guide is limited only to those legal controls that relate specifically to SALW. It does not touch upon connected issues of legal control that may contribute directly or indirectly to addressing the proliferation of SALW. For example, whilst this guide addresses the control of SALW in possession of Private Security Companies (PSC), it is beyond the purview of this guide to consider the general regulation of PSCs, even if employees from PSCs are sometimes committing crime and may be a cause of insecurity which fuels the demand for arms for self protection.

1.1.3 Methodology

The guide presents an overview of emerging international norms in relation to SALW legislation for each issue addressed. However, as will be evident to the reader, the level of attention paid and degree of consensus emerging differs greatly from issue to issue, as well as between international discussions and those within particular regions. For instance, on certain areas of transfer controls a clear international consensus is emerging. Conversely, the issue of controls on civilian possession remains contested.

The content of this guide is drawn from the guidelines contained in the increasing number of regional and international instruments on SALW and from examples of national legislation. It is not an exhaustive review of national legal controls, nor is it intended as such.

1.1.4 Application

The guide is not intended to prescribe best practice nor act as a set of model regulations, but rather to provide policy makers and practitioners with good practices from which they can draw. Nonetheless, it seeks to present a progressive set of control measures, which if applied in their totality (with the necessary caution and adaptation to national context) would provide a detailed and extensive control regime.

It is important to note that the approach taken, issues covered and nature of controls developed, will necessarily differ from country to country. The nature of the challenges faced, political priorities, levels of available material and human capacity, legal system, and regional and international commitments, along with other issues, will need to guide the development of SALW legislation. In light of these and other factors, practitioners should then use this guide as a point of reference from which to draw, in full, or in part, as appropriate.

The decision to implement the approaches outlined in this guide is a prerogative of each state and therefore the use of the term "should" is to be understood as suggesting an advised course of action which experience has shown to be effective, rather than indicating any requirement.

1.2 Structure and content

This guide contains seven chapters and has been structured as follows:

Chapter 1 – **Introduction**

- Provides information on: definitions; background to the *How to Guide*; purpose and objectives; scope, methodology and application; and content and structure

Chapter 2 – **Reviewing SALW legislation**

- Provides discussion on the process of and key factors to consider when reviewing SALW legislation.

Chapters 3 – 7 focusing on key elements of SALW legislation:

Chapter 3 – **Regulating small arms in the hands of civilians**

Chapter 4 – **Transfer controls**

Chapter 5 – **Manufacturers, dealers and gunsmiths**

Chapter 6 – **Recordkeeping and marking**

Chapter 7 –**State-owned SALW**

Each Chapter provides the following information:

1. **Definitions and scope**
2. **Purpose of controls** – an overview of the purpose of controls and the issues that they seek to address
3. **Emerging international standards and norms**
    - an outline of emerging standards and norms: how nationally and internationally States have addressed controls
    - reference to relevant regional and international instruments, highlighting the provisions of key instruments
4. **Legislative measures** – the main content of the Chapter. This sub-section provides an outline of a comprehensive set of measures that States may consider enacting in national legislation
5. **Implementation and enforcement** – a brief outline of the key considerations in relation to the implementation and enforcement of controls
6. **Checklist** – a checklist of provisions that may be included in national legislation
7. **Further information and resources** – reference to further useful sources of information

Boxed examples – throughout the individual issue chapters a series of examples have been included. Three kinds of boxed example have been included highlighting:

- **Key instruments** – information on notable / far reaching provisions contained in regional and international instruments
- **National / regional examples** – highlighting how particular areas of control have in practice been addressed, either contrasting different approaches or providing examples of far-reaching provisions
- **Issues** – discussion of key issues relating to SALW legislation

Annex 1 – **Regional and international instruments**:

- Provides a breakdown of regional and international instruments that contain commitments, guidance and references relating to the content of SALW legislation.
- Organized into sub-sections on Global; Multilateral; and Regional instruments.
- Covers:
  - legally-binding protocols and conventions;
  - politically-binding declarations, agreements, statements and resolutions; and
  - recommendatory best practice guidelines and model regulations
- Presents the following information on each instrument;
  - Name of instrument
  - Parties / coverage – who are bound by it / to which state does it apply?
  - Status – legally-binding; politically-binding; recommendatory
  - Purpose and provenance of the instrument (agreed within a particular forum EU, UN) including the rationale for its creation and its relationship to other formal state groupings or structures, or other agreements or protocols
  - Scope of agreement – what issues does it cover
  - Relevant coverage of legislative issues – brief outline of its relevant provisions; and reference to the specific articles/chapters/paragraphs that contain these references
  - Source – reference to where the full text of the instrument can be accessed

1.3 Definitions

The working definition of SALW that is used in this *How to Guide* is that formulated in the *International Tracing Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*. Article 4 of the International Tracing Instrument, states that:

"*'small arms and light weapons' will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:*

(a) "Small arms" are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;

(b) "Light weapons" are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person."

Although small arms and light weapons are thus distinct categories of weapons, UNDP uses the term "small arms" to cover both small arms and light weapons.

As such, this guide focuses solely upon SALW and does not include other weapons such as clubs, knives and machetes.[1] It should be noted, however, that different definitions of SALW are used and that the definitions contained in the range of regional and international instruments on SALW may vary slightly from the definition stated above.

1 There is no universally recognised definition of SALW. The UN Group of Governmental Experts that explored the issue of SALW in 1997 put forth a definition that included clubs, knives and machetes, though most of the subsequent regional and international instruments have narrowed the definitions used to focus exclusively on firearms. See, United Nations, 'Report of the Panel of Governmental Experts on Small Arms', United Nations General Assembly, A/52/298, 27. August 1997. Available at: http://www.un.org/Depts/ddar/Firstcom/SGreport52/a52298.html

Chapter 2

Reviewing Legislation to Regulate Small Arms and Light Weapons: Key Issues and Process

Chapter 2: Reviewing Legislation to Regulate Small Arms and Light Weapons: Key Issues and Process

There are a range of issues to consider when reviewing and amending laws and policies to regulate and control the use, transfer, possession and storage of SALW. This chapter provides an overview of key issues relating to the process and scope of review efforts, and the content of national SALW legislation.

A wide range of factors influence the demand, supply and misuse of SALW; hence legislation needs to be comprehensive in scope to effectively address these challenges. The evidence about the costs of *not* acting to control small arms and reduce armed violence is well established.[2] Comprehensive and harmonised laws – within a nation and amongst neighbouring nations – provide a framework for regulating weapons manufacture, possession, storage, transfer and use, setting the parameters for permissible behaviour and practice, and providing measures for enforcement. It is important to note that legislative reform and implementation alone cannot end the misuse of SALW; it needs to be complemented, for example, by measures as diverse as police reform, employment schemes, reconciliation efforts, urban planning and youth programmes which can influence the demand for weapons and individual's behaviour and compliance with laws. Legislators and policy makers are encouraged to assess the many social, political, economic and cultural factors that can support *and* undermine legislative changes.

Process of legislative review

A number of key steps can be identified during the process of legislative review. These include:

2.1 Information collection
2.2 Objective setting
2.3 Policy development
2.4 Gauging the extent of the review
2.5 Consultation processes
2.6 Enforcement and implementation
2.7 Training
2.8 Awareness raising and communications

In addition, the following issues should also be considered:

2.9 Harmonisation of legislation
2.10 Monitoring and evaluation

2.1 Information collection

One of the most important aspects of the legislative review process is ensuring that it is informed by a sound evidence base. Data and analysis of the distribution, availability and users of SALW is crucial for informing legislative review(s) and policy development and is ideally generated on the following issues:

2 For more information see Small Arms Survey Yearbooks from 2001 to 2008 and Securing Development: UNDP's support for addressing small arms issues (2005), available at: www.undp.org/cpr/documents/sa_control/securing_development.pdf;

The nature and extent of SALW availability and presence and current state of laws and policies – identifying the nature and extent of the factors driving SALW availability and presence varies between *and* within nations and includes for example, information on the numbers of weapons, patterns of possession and use, factors prompting the demand for SALW, production capacity, or types of storage techniques.

The challenges in implementing and enforcing existing laws – specific analysis is required to identify potential blockages or obstacles to the effective enforcement of existing laws, as well as forecasting issues related to enforcement capacity. This information can be generated through consultation with law enforcement officials, the judiciary, customs services, and a targeted selection of the public such as those addressing family and partner violence, youth workers, medical practitioners and SALW owners. In particular the h*uman and financial capacity necessary to implement the legislation* should be carefully considered. Indeed, developing a clear picture of the current and potential resource implications of implementing existing legislation *and* new laws or amendments is important for assessing priorities and informing the legislative reform process and timetable. .

Assessing existing laws for measures related to weapons control – the bulk of legislative controls are often contained within one piece of legislation, typically, a firearms or arms and ammunition, act. However, SALW control measures also appear in other pieces of legislation. For example, measures related to the use of SALW and force by the police may be contained in the policing law(s), or specifications on the use of arms for hunting within a parks and wildlife act, or provisions related to the import and export of certain SALW may be found in customs law. There may be several pieces of legislation to consider. Provisions from different acts can become inconsistent or contradictory and a key objective of a review process is to rationalise and ensure harmonisation across laws and regulations.

Identifying gaps in legislation – there will also be many pieces of legislation that require proactive consideration of where SALW control could *and* should be included. Lawmakers and policy analysts are encouraged to examine other so called non-security related laws and policies where SALW control provisions may be relevant such as laws tackling intimate partner and family violence ('domestic violence'), youth crime, and the use of certain public spaces.

Regional or international commitments that need to be reflected in legislation – at a minimum, all nations have made some form of political commitment to take action to ensure effective controls of small arms as part of the 2001 *UN Programme of Action*.[3] Additionally, many are party to international and regional agreements, declarations, protocols and conventions, some of which are legally-binding, compelling states to detailed action such as the 2001 *UN Firearms Protocol*.[4] In Annex 1, an overview of regional and international instruments is provided to assist the reader in identifying commitments their country may be bound by or provisions that could inform the

3 Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. Available at http://disarmament.un.org/cab/poa.html

4 The United Nations Convention against Transnational Organized Crime, was adopted by General Assembly resolution 55/25 of 15 November 2000. It has three additional protocols, one of which is the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. It entered into force on 3 July 2005. It is available at www.unodc.org/pdf/crime/a_res_55/255e.pdf

review process. Additionally, in each chapter, instruments of particular relevance are highlighted. Instruments are also included that reflect standards that have been successfully tested around the world or are particularly well-developed, even if they are not subject to global or regional commitments.

Box 1: *Issue:* National surveys and mappings

To build an evidence base to inform the development of national policies, legislative reviews and related programmes, it is useful to undertake national assessments of the small arms problem in a given context.

Key questions include: What legal control framework exists? Who holds SALW and why? What SALW are in circulation? What types of impacts does the misuse of SALW lead to? What issues influence people to own or hold a SALW? What factors propel the illicit market? How do SALW flow and move around the country and surrounding nations?

UNDP has sponsored a number of these assessments, such as for instance in Albania, Bulgaria, Bosnia and Herzegovina, Burundi, Croatia, Kosovo, Republic of Congo, Serbia, etc. These have involved public perception surveys, roundtable discussions, key informant interviews, cataloguing or digitalising old records, undertaking inventories, and reviewing mortality and injury data. Leadership from the government has been crucial for undertaking such research and linking findings to policy development. In this regard, National SALW Commissions (as encouraged in the *UN Programme of Action*) can play a leading role in coordinating government agencies involvement in the assessment process.[5]

2.2 Objective setting

It is important to establish clear objectives for the legislative review process and to guide and inform its content and scope. These may include one or all of the following: enhancing the safety and security of citizens; reducing arms related homicide and injury rates; tackling specific crimes or security challenges; developing compliance with regional or international commitments; amending or harmonising existing inconsistent or inadequate provisions, among other possibilities.

2.3 Policy development

Countries such as Australia, Brazil, Cambodia, Canada, Kenya, Uganda and South Africa (amongst others) have undertaken a detailed process to develop SALW control policies that guide and inform the review of legislation. These policies set out a 'roadmap' of the parameters, scope and content of legislative measures.

5 See for example the surveys of the UNDP South Eastern and Eastern Europe Clearing House for the Control of Small Arms and Light Weapons (SEESAC) available at: http://www.seesac.org/index.php?content=41&section=2

Box 2: *National example:* The development of South Africa's gun laws[6]

South Africa's Firearms Control Act was passed in 2000, replacing the 1969 Arms and Ammunition Act. Given the high rates of armed violence and weapons theft and loss, changing the gun laws was considered a priority to reduce armed violence. The Act introduced comprehensive provisions, including more stringent eligibility and competency criteria for licensing of both civilian and authorised state users; a license renewal system; restrictions on the number of firearms that any one individual may possess; restrictions on the circumstances in which a gun owner may loan or lend their firearm to another person; and the demarcation of 'Firearm free Zones', among other changes. The process to develop the new laws began several years earlier and included the following key phases and aspects:

- A National Crime Prevention Strategy that identified firearm crime as a priority issue and one that required coordinated effort across government agencies (in 1996);
- The articulation of a strategy including research goals, policy development, identifying possible new laws, upgrading the Central Firearms Register, ideas for communicating the changes, among other elements (ongoing both during the policy phase 1997-2000 and during the drafting of regulations phase – 2001-2004);
- A Parliamentary Portfolio Committee on Safety and Security established to develop policy recommendations, including a police official and representatives from civil society organizations (in 1997);
- The collection and publication of disaggregated firearms data for the years 1994 to 1998, showing the preponderance of handguns in armed violence (in 2000);
- Firearms Control Bill released for input and consultation including parliamentary discussion and a public hearings and submissions process. Individuals and organizations were given six weeks to provide written submissions on the Bill, which was then debated in the parliament over a six-week period (in 2000);
- Firearms Act passed after amendments and additions made from the consultation process (in 2000); and
- Regulations to guide the enforcement of the laws developed over three year period bringing the Act into full force (in 2004).

For more information: www.saps.gov.za/crime_prevention/firearms.htm

2.4 Gauging the extent of the review

Through formulating policy, setting objectives and collating and analysing information on the availability, distribution and users of SALW, and the scope of existing legislation, a clearer determination is possible about the extent of the review and about the types of measures necessary to carry out successfully this review. In some instances entirely new laws will need to be drafted, whereas in other cases, the revision of the legal framework governing SALW issues will only require minor adjustments to the existing text and/or the adoption of additional regulatory measures.

6 South African Police Service website accessed 8. April, 2008 www.saps.gov.za/crime_prevention/firearms.htm; See also Kirsten, Adele (2007), A Nation without Guns? The Story of Gun Free South Africa, University of Kwa-Zulu Natal Press.

2.5 Consultation processes

Open consultation promotes transparency and accountability, and can enhance ownership and understanding of the new laws and policies. This ideally involves two elements:

Inter-government consultation – all relevant government ministries, departments and agencies ought to be consulted during the review of legislation and policy. This can be achieved by requesting comment on draft documents, seeking technical input, convening a working committee to explore various issues, or constituting a legislative drafting committee. Input from many different government agencies can enrich the process and may include representatives from customs, health, police, gender, defence and municipal government.

Public consultation – seeking input from the public is critical for informing and fine-tuning the content of changing policy and legislation, and in building awareness of, and support for, the proposed new laws. Such consultation is possible through open discussion forums, hearings and meetings at the parliament and around the country, online discussions, and encouraging submissions (written or verbal) on the proposed legislation or policy documents. Groups with particular interest may include, among others, survivors of armed violence, trade union movements, human rights organizations and women's groups, as well as SALW dealers, manufacturers, private security companies, hunting and sport shooting associations. Representatives can be formally and systematically involved by inclusion in working groups or drafting committees.

Box 3: *National example:* Consultations on Kenya's National Policy

As part of the implementation of Kenya's National Action Plan on small arms control, policies were developed to inform the review of legislation and set clear political direction. The government sought to involve a wide-range of stakeholders to ensure the relevance of its content, create awareness and promote ownership of the outcomes through the following consultation process:

- A policy drafting committee was established with members from a number of government departments such as Attorney General office, Kenya Wildlife Services, Kenya Police, Department of Defence, Ministry of Environment, Department of Mines and Geology, Ministry of Trade among others as well as civil society organizations (in 2005);
- The resulting document was circulated amongst government ministries and agencies (such as the police, and other stakeholders including companies and private enterprises (such as gun clubs and private security companies) and civil society organizations (in 2006);
- Written comments from government agencies were requested and encouraged from civil society for consideration by the drafting committee (in 2006);
- Consultations were held across the country drawing together a range of government and civil society representatives. Participants were introduced to the policy process and the draft document and invited to comment and submit suggestions and concerns (in 2007);
- Individual meetings with key stakeholders, such as senior police officials, were conducted by the national focal point on small arms to further review and fine-tune the draft policy (in 2007); and
- Workshops were convened to discuss final policy and presented to the government for approval (in 2008);

For more information: www.recsasec.org/kenya.htm and www.provincialadministration.go.ke

2.6 Enforcement and implementation

The effectiveness of legislation is marked by both content *and* implementation. Good laws poorly enforced can significantly undermine confidence and compliance. Developing laws that are understood by a range of groups and agencies, and that have provisions commensurate with the human and material capacity available to implement them is well within reach – with planning, clear information and political will. Laws are sometimes made in isolation from the practicalities and challenges of implementation and enforcement. The involvement of operational agencies and civil society groups is one way to avoid good laws existing solely on paper. Ensuring appropriate capacity to consistently enforce the laws is crucial if legislation is to have credibility and impact, and this should be considered from the beginning.

In the last decade, governments of various size and capacity have amended their national SALW laws, generating lessons for low-, middle- and high-income settings. Thinking creatively and critically regarding expenditure and capacity for developing new laws and policies is important. For example, identifying clear phases and tiered efforts over time can be one way of managing large upfront costs associated with training or moving records to electronic format. Implementation costs can significantly influence the effectiveness of enforcement efforts; therefore understanding and taking advantage of the assistance that is offered by international organisations, other states and civil society organizations are important to support effective implementation.

2.7 Training

Implementing new legislation may require those involved in its implementation, including law enforcement, justice officials and administrative personnel to receive training on the detail of its provisions. For example, paper records may be converted to electronic files as part of more systematic record keeping and monitoring, and in this regard personnel may require training. Planning for such training should be undertaken in advance of the entry into force of any new or amended legislation. New or updated equipment – and any costs associated with them – could also be considered as well as advance planning on procurement.

2.8 Awareness raising and communications

For legislation to be effective it is important that those affected by its provisions are aware of their new obligations and responsibilities. As such, providing accessible information to the public and across government agencies on the content and implications of new or revised laws is vital. Identifying and preparing key messages, popular spokespeople, and multilingual information through mediums such as radio, television, websites, print media advertisements can start well in advance of laws coming into force. For example, in 2005 when the Cambodian government set the goal of a 'gun free society', some 20,000 copies of the new Arms Law were printed for wide distribution throughout the country, particularly to police posts and local government offices in all 1,621 communes/districts in the country.

Box 4: *Issue:* Harmonisation of legislation

There are two principal strategies related to harmonisation to effectively strengthen laws and ensure effective implementation: the first strategy relates to identifying related laws internally and ensuring complementarities across diverse laws that are connected to regulating weapons use and movement such as customs and imports legislation, tackling family and partner violence, wildlife and public parks bills, amongst others. Furthermore, ensuring laws are consistent across a nation, and that the state or provincial laws do not weaken, undermine or create loopholes in the national law. The second strategy relates to maintaining or developing similar standards among neighbouring countries, ensuring that one nation's laws do not undermine other's efforts to control weapons and reduce armed violence.

Internal harmonisation – involves assessing that laws across provinces, states, territories are consistent, do not undermine one another and that the national standard is the benchmark. The key goal is to eliminate any loopholes that undermine the new laws and policies. This requires convening appropriate officials and interested parties such as civil society, from each state, territory or province to review sub-national laws and identify where they may undermine or conflict with proposed national legislation. Provinces or territories may have additional or differing laws but it is crucial that they are not weaker than the national standard or over-ride national laws for some reason. For example, in Australia there is a minimum five-year prohibition on owning guns for those subject to a restraining order for partner or family violence or a conviction for violent offence. In some of the states this has been increased to up to ten years. The national standard is the minimum with state/province level additions adding further restrictions or measures.

External harmonisation – Regulate and ease the legal movement of SALW among countries, *as well as* ensures that jurisdictions that have strong (or relatively strong) controls over arms do not find those controls undermined by neighbouring countries with less strict controls. In Canada, for instance, a country with moderately strong national arms laws, it is estimated that half of all handguns recovered in crime are illegally imported from the United States.[7] Similarly, in Southern Africa, Botswana's restrictive policies (and low armed crime rate) have been compromised by neighbouring South Africa's (previously) more permissive policies.[8]

Harmonisation does not mean that all states should have identical legislation. Rather that the efforts of one nation are not undermined by weak laws or poor implementation in neighbouring states. Various regional agreements provide positive examples of collective progress, including the European Council Directive on Control of Acquisition and Possession of Weapons (1991)[9], the *Bamako Declaration* (2000),[10] the *Nadi Framework* (2000),[11] the Southern African Development Community (SADC) *Firearms Protocol* (2001), the *Andean Plan* (2003),[12] and the *Nairobi Protocol* (2004).[13] Harmonisation may alternately be based on informal dialogue and consultation between two or more countries to help address a specific common issue such as cross-border arms trafficking.

Harmonising laws between nations entails agreement on common definitions of particular concepts, establishing minimum standards of control, creating a common or minimum set of offences and ensuring consistency in the sphere of penalties. Information sharing between states is of critical importance and regular meetings of key officials face to face, by phone or by web-dialogues can greatly facilitate collegial relationships that foster information sharing.

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7 Francis, Geoffrey (1995), 'Illicit firearms in Canada: Sources, smuggling and trends', Royal Canadian Mounted Police Gazette, Vol. 57, Issue 2, pp. 22–24

8 Botswana does not issue handgun licences to individuals; the only people who can possess and carry firearms are serving members of the police and defence force. Hunters are subject to strict control, with only 400 licenses issued annually, by lottery–200 for shotguns and 200 for rifles.

9 Available at: http://ec.europa.eu/enterprise/regulation/goods/dir91477_en.htm

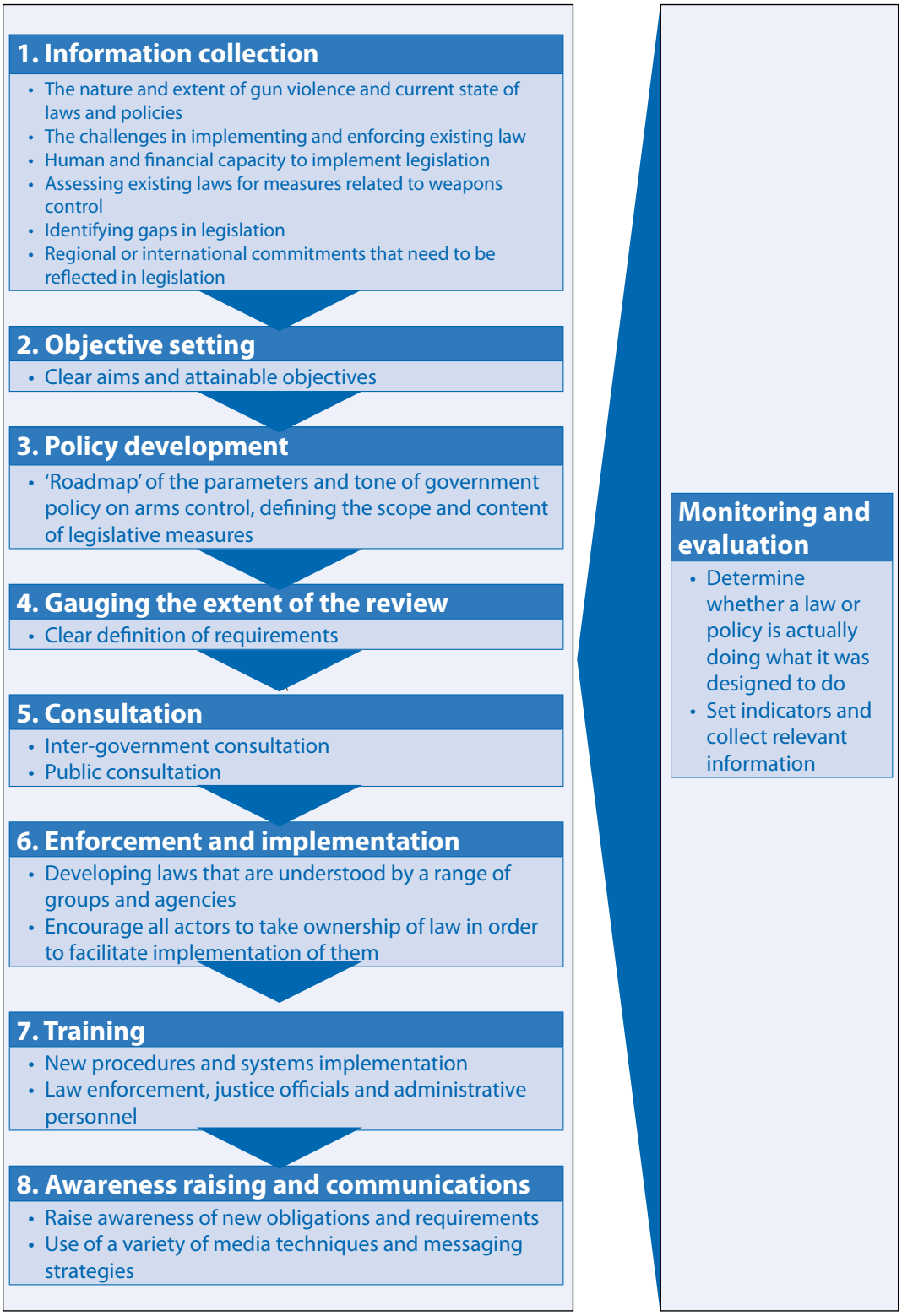
10 Bamako Declaration on: an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Available at: http://www.smallarmssurvey.org/files/portal/issueareas/measures/reg.html

11 South Pacific Chiefs of Police Conference and Oceania Customs Organization (2000), Towards a Common Approach to Weapons Control ('Nadi Framework'), Nadi, 10 March. Available at: www.globalpolicy.org/security/smallarms/regional/nadi.rtf

12 Organization of American States (2003), Andean Plan to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, OAS Decision 552, 25. June 2003. Available at: www.comunidadandina.org/normativa/dec/D552.htm

13 The Nairobi Protocol includes Burundi, the Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania, and Uganda. The agreement is available at: www.recsasec.org/pdf/Nairobi%20Protocol.pdf

Key Issues and Process



Box 5: *Regional example:* Harmonisation of SALW legislation – Central America

In response to the increment of armed violence and criminality in Central America, the UNDP supported **Central America Small Arms Control Project (CASAC)** promotes the establishment of a regional framework to: a) control Small Arms and Light Weapons (SALW), b) reduce/prevent the incidence of armed violence and crime, and c) strengthen security, stability and sustainable development in Central America.

In the area of legislation, CASAC focuses its support on creating the conditions necessary to strengthen and harmonize the SALW legislation, in order to eliminate legal and technical voids, in accordance with existing regional and international commitments (including UN PoA 2001 and the Geneva Declaration on Armed Violence and Development, etc.).

A number of priorities have been identified, including:

- Support the adoption and implementation by countries of the region of existing standards and norms
- Raise the awareness of relevant national and regional actors on the need to develop appropriate SALW legislation (including Ministers, lawmakers, judges, judges, attorneys, police, etc.)
- Sensitize the civil society of Central America on how to best promote and support reforms to national SALW legislation ,
- Provide advice and technical assistance necessary to develop national, regional initiatives based on the realities of Central America,
- Support the formulation of policies; and
- Conduct legal research.

For more information: Visit: www.casac-uer.org

2.9 Monitoring and evaluation

Monitoring the effects of new laws over time is an important aspect of the overall weapons control process. At its core, monitoring and evaluation simply seeks to determine whether a law is actually doing what it was designed to do – and at the same time, if it is having any unforeseen consequences (positive or negative). The criteria for evaluation (sometimes called indicators) can range from effects on overall levels of armed violence, levels of armed violence among certain populations (men, youth, women), the number of SALW recovered from crimes, the ratio of licensed to unlicensed SALW recovered, the perception of personal safety within a community, and so on. It is important that the evaluation criteria match the objectives of the laws, and that enough meaningful data can be collected to draw credible conclusions about efficacy. Data collection can include review of police crime data, health department statistics; arm sales data, perception surveys, key informant interviews, polling, among many other techniques. The results of these evaluations should help fine tune the legislative and regulatory frameworks so as to revise and consolidate them if necessary. In this light, it is as important to know that a law is working as it is

to know that a law is not working – and why. Unfortunately, the vast majority of SALW laws are not rigorously evaluated, leading to a loss of learning about good practice, and limiting the collective evidence base for future interventions.

2.10 Further information and resources

Publications:

Centre for Humanitarian Dialogue with the Inter-Parliamentary Union (2007), *Missing Pieces: A Guide for Reducing Gun Violence Through Parliamentary Action*. Available at: www.hdcentre.org in French, Spanish, Catalan and English. The 2005 version is available in Arabic.

Maze, Kerry and Sarah Parker (2006), *International Assistance for Implementing the PoA to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects: Findings of a Global Survey*, United Nations, Geneva

Online resources:

- International Action Network on Small Arms: www.iansa.org
- United Nations Development Programme: www.undp.org
- Saferworld: www.saferworld.org.uk
- Small Arms Survey: www.smallarmssurvey.org
- Parliamentary Forum on Small Arms and Light Weapons: www.parliamentaryforum.org

Chapter 3

Regulating arms in the Hands of Civilians

Chapter 3: Regulating arms in the Hands of Civilians[14]

This chapter addresses regulating the use, possession and holding of small arms by civilians, and examines the key elements to include and consider in the process of changing legislation.[15]

This chapter should be read in conjunction with Chapters 1, 2 and 7 but also has direct links with legislative provisions in:

- Chapter 5 on Manufacturers, Dealers and Gunsmiths – where there may be a responsibility placed on Dealers and Gunsmiths only to work with legally possessed SALW and to sell or repair only those weapons permitted for possession and use by civilians.
- Chapter 6 on Marking and Recordkeeping – where there may be a responsibility placed upon the state to maintain records of all civilian persons and entities licensed to possess SALW and of all licensed SALW. In addition, there may be a requirement to ensure that all civilian owned SALW are marked according to prescribed criteria.

3.1 Definitions and scope

There is a wide range of civilian users, holders and owners of firearms. Government responsibility and necessity to regulate diverse populations of firearms users typically includes a mixture of legislation, research and policy development, and raising public awareness. This chapter focuses solely on civilians and does not address state holdings and use (e.g. police, military). However, poor enforcement of laws and weak stockpile security by state forces can see leakage of SALW into the illicit civilian market. These issues are further addressed in Chapter 7 – State-owned Small Arms and Light Weapons.

3.2 Purpose of controls

It is estimated that civilians hold nearly 75 percent (650 million) of the world's small arms and light weapons (of a total of 875 million).[16] Many of these are misused, stolen or otherwise leaked into the illicit trade, and governments increasingly respond by strengthening national legislation to clearly regulate access, ownership and standards of use.

In the last decade, several countries[17] have undertaken significant reforms to regulate firearms

14 Sections of this chapter include text from the Centre for Humanitarian Dialogue 2007 (first published in 2005) publication, Missing Pieces: A Guide for Reducing Gun Violence Through Parliamentary Action. The information related to this theme was further updated in April 2008 by Cate Buchanan with invaluable input from Alun Howard, Emile LeBrun, Valerie Yankey-Wayne and Francis Sang.

15 There is wide recognition that civilians should not be allowed to possess Light Weapons. Accordingly, and for the purpose of this chapter the term SALW will not be use and will be replaced by the terms "weapons", "guns" and "firearms" which will be used interchangeably.

16 Small Arms Survey 2007: Guns and the City, Cambridge University Press, p. 39.

17 Including Afghanistan, Australia, Brazil, Belgium, Cambodia, Canada, Germany, Ireland, Macedonia, Mauritius, Sierra Leone, South Africa, Turkey, United Kingdom and Yemen.

ownership. Many other governments[18] – are currently in the process of strengthening laws and policies.

Such reform is propelled mainly by local realities: armed massacres that provoked widespread public outrage in Australia, Canada, and the UK; alarming levels of random and/or organized armed violence in Brazil and Guatemala; post-war or democratic transitional processes in Cambodia, Sierra Leone, and South Africa; and, ensuring conformity with regional agreements, as is the case with Ghana, to meet commitments agreed in the 2006 *ECOWAS Convention*.[19] Many governments recognise a connection between armed violence and the uncontrolled, or loosely controlled, trade in and possession of arms. There is also growing awareness that most of the problems posed by the availability of SALW and misuse are 'civilian' – meaning most firearms (both legal and illicit) are owned by civilians, and most perpetrators and victims of armed violence are civilians.

3.3 Emerging international standards and norms

In addition to the trend among governments to strengthen outdated, weak or incomplete national SALW laws, several multilateral processes have encouraged greater national arms control. Most significantly, in May 1997, 33 countries sponsored a resolution in the UN Commission on Crime Prevention and Criminal Justice that emphasised the importance of state responsibility for effective regulation of civilian possession of small arms, including licensing owners, record keeping for arms, safe storage requirements, and appropriate penalties for illegal possession.[20] This effort culminated in the 2001 adoption of the *UN Firearms Protocol*. It entered into force in mid-2005, criminalises illicit trafficking, and necessitates that firearms be marked at the point of manufacture, import, and transfer from government into private hands. It is the first legally-binding international agreement on small arms control.[21]

Within the context of the UN Programme of Action (PoA), many states have reported on their efforts to strengthen national SALW laws.[22] Possibly encouraged by the call for participating states to implement legislative or other measures required to criminalise '*t*he illegal manufacture, possession, stockpiling and trade' in small arms.[23] The PoA also calls on states to adopt 'all the necessary

18 Including those of Argentina, Angola, Benin, Bolivia, Botswana, Burkina Faso, Burundi, Central African Republic, Democratic Republic of the Congo, Djibouti, Ecuador, El Salvador, Eritrea, Ethiopia, Ghana, Guatemala, Japan, Jordan, Kenya, Lebanon, Liberia, Montenegro, Mozambique, Namibia, Nicaragua, Nigeria, Panama, Papua New Guinea, the Philippines, Portugal, Rwanda, Senegal, Seychelles, Somalia, Sudan, Sweden, Tanzania, Thailand, Uganda, and Uruguay..

19 Economic Community of West African States Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, agreed 14 June 2006. Available in English and French at: www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.PDF

20 UN Commission on Crime Prevention and Criminal Justice, Sixth Session (1997). The resolution was sponsored by Angola, Australia, Botswana, Brazil, Brunei, Burundi, Canada, Colombia, Croatia, Fiji, France, Gambia, Germany, Greece, Haiti, Italy, Japan, Lesotho, Malaysia, Mexico, Morocco, the Netherlands, the Philippines, Poland, Qatar, South Korea, Romania, the Russian Federation, Saudi Arabia, Sweden, Tanzania, Thailand, and Tunisia.

21 The list of signatories and states that have ratified the Protocol is available at www.unodc.org/unodc/en/treaties/CTOC/countrylist-firearmsprotocol.html Also see the Legislative Guide for the entire Protocol developed by the UN Office on Drugs and Crime available at http://www.unodc.org/pdf/crime/legislative_guides

22 See Kytömäki, Eli and Valerie Yankey-Wayne (2006), Five Years of Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Regional Analysis of National Reports, United Nations, Geneva

23 UN (2001), Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/15, July, para. II.3

measures to prevent the…possession of any unmarked or inadequately marked SALW'[24], as well 'to identify…groups and individuals engaged in the illegal trade, stockpiling, transfer, possession… and take action under appropriate national law...'[25] Additionally, states are exhorted "to ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of SALW within their jurisdiction. These records should be organized and maintained in such a way as to ensure that accurate information can be promptly retrieved and collated by competent national authorities." [26] In practice, this entails the establishment of a firearms registration system.

Regional action

In growing recognition that the cross-border movement of SALW is directly related to how well states regulate their internal stockpiles, regional security agreements increasingly include provisions calling for careful regulation of small arms in the hands of civilians. The most relevant agreements include the *Bamako Declaration* (2000),[27] the *Nadi Framework* (2000),[28] the Southern African Development Community (SADC) *Firearms Protocol* (2001), the *Andean Plan* (2003),[29] and the *Nairobi Protocol* (2004),[30] the *ECOWAS Convention* (2006),[31] the European Union *Firearms Directive* (2007).[32]

The Nairobi and SADC Protocols are the most advanced and specific on the regulation of firearms in the hands of civilians. One of the objectives of the Nairobi Protocol is to 'encourage accountability, law enforcement and efficient control and management of small arms held by States Parties and civilians'. Each of the 12 East African nations is responsible for incorporating into their national law:

- prohibition of unrestricted civilian possession of small arms;
- total prohibition of civilian possession and use of all light weapons and automatic rifles, semi-automatic rifles, and machine guns;
- regulation and centralised registration of all civilian-owned small arms in their territories;
- provisions for effective storage and use of civilian-held firearms, including competency testing of prospective owners;

24 Ibid, para. II.8
25 Ibid, para. 11. 6
26 Ibid, para. II.9
27 Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons. Available at: http://www.smallarmssurvey.org/files/portal/issueareas/measures/reg.html
28 South Pacific Chiefs of Police Conference and Oceania Customs Organization (2000), Towards a Common Approach to Weapons Control ('Nadi Framework'), Nadi, 10 March. Available at: www.globalpolicy.org/security/smallarms/regional/nadi.rtf
29 Organization of American States (2003), Andean Plan to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, OAS Decision 552, 25 June 2003. Available at: www.comunidadandina.org/normativa/dec/D552.htm
30 The countries that negotiated the agreement are Burundi, the Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Somalia, Sudan, Tanzania, and Uganda. For the text of the agreement, see www.recsasec.org
31 Economic Community of West African States Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials, agreed 14 June 2006. Available in English and French at: www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.PDF
32 Adopted in 1991 and amended in 2007 to reflect the EU's signature to the UN Firearms Protocol and changes in patterns of illicit firearms. The Directive is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31991L0477:EN:HTML. Information on 2007 amendments available at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P6-TA-2007-0559+0+DOC+XML+V0//EN&language=EN#BKMD-17

- monitoring and auditing of licenses held and restriction of the number of firearms that may be owned by individuals;
- prohibitions on pawning or pledging of small arms;
- registration to ensure accountability and effective control of all firearms owned by private security companies.

'Best Practice Guidelines' assist the parties in its implementation and are available at: www.recsasec.org/pub.htm

Many of the provisions found within the *Nairobi Protocol* are also found and expanded upon in the *Nadi Framework*, and the draft Pacific Islands Forum Weapons Control Bill; the model law that elaborates the measures set forth in the Nadi Framework.[33] The draft Bill establishes a principle that has developed globally in the last decade, and is a core objective of many government's efforts to strengthen their national legislation: "the possession and use of weapons is a privilege that is conditional on the overriding need to ensure public safety."[34]

The table below provides reference information on the provisions of regional and international SALW instruments relevant to controls on civilian possession and use of SALW. More detailed information on all regional and international SALW instruments can be found in ANNEX 1.

white on blue = legally-binding;	blue on light blue = politically binding	black on blue = recommendatory

Name of instrument	Parties	Relevant provisions
UN Programme of Action	UN Members States	Section II (3) and (8)
Arab Model Law	Arab League States	Art. 2, 6 – 12, 15, 18, 23 – 25, 29, 31 – 35 & 38 – 40
Bamako Declaration	African Union Member States	Section 3(iii)
SADC Declaration	SADC Member States	Main text (no paragraph numbering)
SADC Firearms Protocol	SADC Member States	Art. 5 (1), (3(a)), (3(b)), (3(e)), (3(i)), (3(j)), (3(k)), (3(l)); & 7
Nairobi Declaration	12 east African States	Section (iv)
Nairobi Protocol	12 east African States	Art. 3 (a), ((c) i, ii, iii, viii, ix, x & xi); and 5
Nairobi Protocol Best Practice Guideline	12 east African States	Guidelines for Regional Harmonisation, Section D, Part 2
ECOWAS Convention	ECOWAS Member States	Art. 14 & 15
Andean Plan	Bolivia, Columbia, Ecuador, Peru and Venezuela	Guidelines for Action, Part A, Para. 3 & 4(e); Co-ordinated Agenda for Action, Para. 3, 3.1.1, 3.2 & 5.6
SICA Code of Conduct	Central American States	Art. II (5)

33 Pacific Islands Forum Secretariat. 2003. Draft Model Weapons Control Bill and Explanatory Notes. Suva, June.
34 'Pacific Islands Forum Weapons Control Bill', Art. 1.3

Name of instrument	Parties	Relevant provisions
Nadi Framework	Pacific Islands Forum Member States	Para. 1.2, 2, 3, 4(c), 8, 10 & 11; Annexes C & D
Council Directive 91/477/EEC on control of the acquisition and possession of weapons	All EU member states	Entire document1
PIF Weapons Control Bill	Pacific Islands Forum Member States	Art. 1.8 – 1.17; 2.1; 2.2; 2.5 – 2.8; 2.10; 2.12; 3.1; 3.3; 3.7 – 3.26; 4.1; 4.6; 4.8 – 4.10; 5.1; 5.2; 8.1 – 8.16; 8.18; 8.21; 10.1 – 10.3; 11.1; 11.2; & 11.4
SEESAC RMDS/G	South Eastern and Eastern Europe	RMDS/G 03.20 (SALW Control and Transfers Legislation), Section 6.1
UN Firearms Protocol	All UN members states	Entire document as it seeks to tackle illegal firearms movement which has relevance for regulating weapons in civilian hands
UN Commission on Crime Prevention and Criminal Justice, May 1997	33 countries sponsored the resolution2	Emphasised the importance of state responsibility for effective regulation of civilian possession of small arms, including licensing owners, record keeping of guns, safe storage requirements, and appropriate penalties for illegal possession.

3.4 Legislative measures

There are three essential principles for regulating small arms in the hand of civilians:

- Regulating the firearm itself;
- Regulating the user of the firearm;
- Regulating the use of the firearm.

Principle 1: Regulating the firearm itself

Policies targeting specific SALW typically do so because of certain features – such as lethality or easily concealable firearms – that make them particularly dangerous for civilian use. Specific SALW may also be prohibited because they are not only extremely deadly, but appear to serve no legitimate civilian function.

Content of legislation

A) Regulating the sale and possession of certain types of SALW by civilians.

There is increasing recognition that weapons for military use and of military capacity have no place in the hands of civilians. However in some nations weapons get classified according to their use, which creates loopholes. Lawmakers need to carefully consider the type, as well as the impacts of

weapons. A 2004 survey of 115 countries showed that of the 81 respondents, 79 banned civilian possession of military assault rifles, although the definitions varied.[35] Some of the nations prohibiting civilian possession of automatic weapons include China, Colombia, Guatemala, Hungary, India, Indonesia, Laos, Malaysia, Peru, as well as all EU member states. Some countries prohibit civilian possession of selective-fire military assault rifles, which can be converted from semi-automatic to fully automatic fire.[36] Many also ban civilian possession of semi-automatic variants of fully automatic firearms because of their lethality and limited utility for civilian purposes. For example, Argentina, Australia, Bangladesh, Canada, the Czech Republic, France, Guyana, Lithuania, New Zealand, and the UK prohibit selective-fire and some semi-automatic military assault rifles, although definitions vary.

Also, access to handguns is frequently banned or severely restricted, given their concealable nature and prevalence in criminal violence. Some countries, such as Botswana and the UK, have completely banned civilian handgun ownership.[37] Others, such as Australia and Canada, allow handguns only for professional security guards and for target shooters who can prove that they are regularly involved in pistol sports.

B) Regulating the sale and possession of ammunition.

Ammunition controls are an integral part of comprehensive control measures and play an important role in reducing the misuse of small arms. A valid firearms license should be shown every time ammunition is purchased, and the dealer should keep a record of the quantity and the purchaser. A maximum limit can be placed on the amount of ammunition that can be purchased in a month, as well as a limit to the amount of ammunition that can be stored. These limits could be different for each category of firearm license. It should be clear that ammunition for proscribed SALW use should also be prohibited for civilian purchase.

Most countries regulate the sale of ammunition and many require that it be securely stored, defining the conditions under which ammunition may be held, and often making its purchase conditional on possession of the appropriate license. Some nations, such as South Africa and the Philippines, limit the amount and type of ammunition that an individual may purchase or possess.

C) Safety devices

Some legislators insist on safety devices. For example, as of January 2006, all new semi-automatic handguns sold in California must have either a magazine disconnect feature or a loaded chamber indicator – two important safety features.

35 Cukier, Wendy (2005), The Feasibility of a Global Ban on Civilian Possession of Military Assault Weapons, Report prepared for the Small Arms Working Group of the Peacebuilding and Human Security: Development of Policy Capacity of the Voluntary Sector Project for the Canadian Peacebuilding Co-ordinating Committee. Only Yemen and Kenya did not report specifically banning some or all military weapons. As of April 2008 Kenya is in the process of amending this to comply with its obligations under the Nairobi Protocol.

36 From a public safety perspective, there is little difference between fully automatic and semi-automatic military assault. A fully automatic AK-47 fires 20 rounds in 2.4 seconds, a semi-automatic Norinco AK-47 takes 4.6 seconds. Cukier, Wendy et al. (2003), Emerging Global Norms in the Regulation of Civilian Possession of Small Arms, SAFER-Net, Toronto

37 UN (1998), International Study on Firearm Regulation, p. 33. Available at: www.uncjin.org/Statistics/firearms

D) Registering firearms

Firearm registration is the system by which each firearm legally owned by an individual is registered in an official database (ideally linked to that individual's licensing information). This allows law enforcement officials to trace guns that are recovered from crime scenes, investigate crimes, support criminal prosecution, and identify firearms of individuals who become ineligible for ownership (through the commission of a serious crime, for example).

Registration provides a powerful disincentive for licensed firearm owners to sell, give or lend their firearms to someone who is not licensed. If the transfer is not registered, the original possessor remains accountable for the firearm – and will be associated with any subsequent incidents involving it. Registration also means that an owner who gives or sells a small arm to an unqualified person cannot claim they did not know that the transaction was illegal.

Most countries have some method of registering firearms. The level of information required and the tools used vary considerably. For example, Mexico requires that owners are licensed and all guns registered.[38] Thailand provides a good standard by requiring that the firearm itself should be marked to indicate the province of registration and a number.[39] Yet inconsistencies exist; for example, New Zealand requires the registration of handguns, but not rifles and shotguns.[40] Some jurisdictions have ballistics testing as part of the record-keeping process. For example, Maryland and New York State in the USA have laws requiring all new firearms to have ballistics tests before they can be sold.[41]

E) Keeping records

To enable the state to effectively monitor and trace all firearms in circulation, the law may require designated state authorities to maintain records of all licensed firearms, including details of corresponding licensee. A central firearms bureau or register is the ideal location to maintain both firearm owner license and firearm registration details. These two systems work far more effectively when conceptualised, instituted, and enforced together.

For more information on that element, refer to principle 3 under chapter 6 Marking and Record Keeping below.

38 SAFER-Net last updated 22 May, 2003 accessed 10 April 2008. Available at: www.ryerson.ca/SAFER-Net
39 SAFER-Net last updated 2001 accessed 10 March 2004
40 SAFER-Net country profiles. Austria profile last updated 10 September, 2001 accessed 10 April, 2008. New Zealand information last updated 9 October, 2001 accessed 10 April, 2008. Available at: www.ryerson.ca/SAFER-Net
41 Boesman, William and William Krouse (2001), National Integrated Ballistics Information Network. Available at: www.boozman.house.gov/UploadedFiles/SECOND%20AMEND%20-%20Ballastic%20Fingerprinting.pdf

Box 6: *Issue:* Gender aspects of civilian possession and use

Improving national SALW laws can have important consequences from a gender perspective: for men, women, boys and girls. Although women are not the majority of homicide victims, when they are killed – and it is overwhelmingly men who kill them – guns are often a preferred weapon. In South Africa, one out of five murdered women is killed with a legally owned gun.[42] Some 50 percent of women murdered each year are killed by men known intimately to them – four women a day, or one every six hours.[43]

Men are also more likely to commit gun violence – and in almost every country, a disproportionate percentage of gun owners and users are men. Data indicates that:

- Over 90 percent of gun-related homicides occur among men and boys particularly between the ages of 14 and 44 years old;[44]

- Boys are involved in 80 percent of the accidental shootings that kill about 400 children and injure another 3,000 in the US each year;[45]

- Of those who commit suicide with a gun, 88 percent are men and 12 percent are women.[46]

Key issues for lawmakers to consider when linking partner and family violence laws with national SALW laws include:

- Spousal notification can be an efficient mechanism to prevent gun acquisition by men with a history of family violence, whether or not it resulted in a criminal conviction. For example, Canada requires current and former spouses to be notified before a gun license may be issued.[47]

- *Background and criminal record* checks must include verifying an applicant's past record related to family or partner violence. In the US, federal law makes it a criminal offence to possess a gun while subject to an intimate partner violence restraining order[48] and eleven US states have laws that prevent individuals with a history of intimate partner violence from purchasing or possessing an arm.[49]

- *Prohibition for past partner and family violence offences* is a standard in for example Australia, where a five-year minimum prohibition against owning guns exists for those who are subject to restraining orders or have been convicted of any violent offence. In some of the states this has been increased to up to ten years. South Africa has similar legislation.

- *Seizure* ensures that when a person becomes subject to a restraining order for the first time and owns a gun, police must seize the firearm, as is the case in Australia.[50] Similarly, police in the US are invested with the authority to remove guns from the home of an individual under a restraining order or the home of someone convicted of a domestic violence misdemeanour.

- *Safe storage* should apply in all circumstances but is particularly critical in situations where family or partner violence is occurring. Guns that are securely under lock and key – with ammunition stored separately – can reduce misuse.

- *Registration* of firearms is essential for police to be able to effectively remove guns in situations of intimate partner violence and enforce prohibition orders. Computerisation can often make the difference between law enforcement's ability to access domestic violence records and missing an opportunity to intervene before violence takes place.

Examples of UNDP work on domestic violence and SALW laws see *Firearms Possession and Domestic Violence in the Western Balkans: A comparative study of legislation and implementation measures.* Available at: http://seesac.org/reports/Domestic%20Violence.pdf

42 Mathews, S. et al. (2004), 'Every six hours a woman is killed by her intimate partner': A National Study of Female Homicide in South Africa, Medical Research Council Policy Brief, Medical Research Council, Cape Town, pp. 1–4
43 Ibid.
44 World Health Organization (2002), World Report on Violence and Health, Geneva, pp. 274-275
45 Jackman, Geoffrey et al. (2001), 'Seeing is believing: What do boys do when they find a real gun?', Pediatrics, Vol. 107, June, pp. 1247–1250
46 Small Arms Survey 2004: Rights at Risk, Oxford University Press, Oxford, p. 178
47 Canada, 'Firearms Act (1995, c.39)', Art. 55(2)
48 United States, 'Gun Control Act of 1968, Public Law 90–618'
49 Richardson, Vigdor, Elizabeth and James Mercy (2002), 'Disarming batterers: the impact of domestic violence firearm laws', in Jens, L. and P. Cook (Eds), Evaluating gun policy: Effects on crime and violence, Brookings Institution, Washington DC. However, the commission of a violence misdemeanour does not always result in the abuser's guns being surrendered.
50 Australia, 'Firearms Act 1996', Art. 73

Principle 2: Regulating the use of the firearm

In general, this principle includes policies designed to set the terms and minimum competencies for the legitimate use of guns and/or proscribe particular behaviours or actions that are deemed particularly dangerous to individuals using small arms or those around them. Many of the elements listed below may also be contained in secondary legislation, (i.e. regulations, directives, etc.), depending of the legal system of the country.

Content of legislation

A) Good reason for possession / genuine need[51]

Licence applicants may be required to provide a good reason, justifying why they need to possess a firearm. Legislation may prescribe the circumstances under which possession of a firearm may be justified.

If 'personal protection' is permitted as a good reason, applicants should prove to the police that they are in genuine danger that could be avoided by being armed. Research from UNDP in El Salvador indicated that when firearms were used in self-defence, the person was four times more likely to be killed than when firearms were not used in self-defence.[52] It should not be sufficient to merely state a reason (for example professional hunting) for owning firearms, but for the interests of public safety, and whenever possible, a proof should be submitted along with the license request (so for example, proof of employment as a professional hunter).

Box 7: *Issue:* Demonstrating genuine need for ownership – Pacific Island Forum Weapons Control Bill

The draft PIF Weapons Control Bill is detailed in its requirements for applicants for a licence to demonstrate 'genuine need'. It asserts that a "persons' personal protection" and "the general protection of property" do not constitute genuine reasons for possessing or using a weapon. Instead it lists a range of reasons that could justify genuine need, including: recreational or sporting; business or employment; film, theatre etc; collectors; public museums; heirloom; animal management; and farm management. If genuine need can be established, an applicant has to meet a range of other conditions and requirements to obtain a licence to possess.

B) Restrictions / prohibitions of the possession of firearms in specified locations

The carrying of firearms in public by civilians should be restricted and it is important that this is explicitly stated that a license does not itself authorise the public carriage of a small arm (an exception can be introduced for 'on duty' employees of private security companies, but in this case such employees should be required to possess a special carrying permit). Some countries prohibit the carrying of firearms in certain locations, such as government premises, in and around schools

51 See 'Australia Firearms Act 1996' for an example of well developed conditions relating to 'genuine need'. See also box below for an overview of provisions of Pacific Islands Forum – Weapons Control Bill'.

52 United Nations Development Programme (2003), Programa Hacia la construcción de una Sociedad sin Violencia: Armas de fuego y violencia, San Salvador

Box 8: *National example:* Reducing armed violence in San Martin, El Salvador

During the first half of 2006, homicide rates almost halved in the municipality of San Martin in the metropolitan area of San Salvador, El Salvador. This was a clear sign that creating 'gun free zones' in the municipalities of San Martin and Ilopango had made a difference in tackling the problems of armed violence at the local level.

Launched in 2005, the National Public Security Council with the support of the UNDP El Salvador's "Towards a Society without Violence" programme developed a pilot project prohibiting the carrying of weapons in public places. Official data from the municipality of San Martin shows a decrease in the homicide rate by 40.74 percent, comparing the period November 2005 to March 2006, to the same period of the previous year. In addition, armed violence decreased by 27.27 percent and crimes in general (murder, attempted murder, injuries, robbing, car theft, firearms shootings, threats and violations) decreased from 68 to 48 percent. 1,200 firearms were verified, of which 75 firearms were decommissioned.

The tangible impact of the project can be found beyond significantly reducing the homicide and crime rates and decommissioning firearms. The project also contributed to the adoption of municipal decrees prohibiting firearms carrying in public spaces, strengthened police capacity for weapons control and encourages community coexistence through an active participation of youth in public events, contributing to the reclaiming of public spaces.

The project also raised awareness about the risks of firearms and aims to enhance social cohesion and coexistence in high-risk areas. The campaign slogan, "San Martin lives, Free of arms", was broadcast via national and local radio, as well as magazine and news articles. More than 30 events were organized in places within the municipality wracked by armed violence or insecurity, contributing to the recovery of public spaces.

Some of the factors contributing to the positive results include:

- The political will of the mayor to support the initiative;
- Conducting a comprehensive study which identified high-risk areas and populations to focus on;
- The preventive-and control approach taken by the National Civil Police focussing on enforcing existing gun laws more effectively;
- Local management of the initiative by the community;
- Strong partnerships between the mayor's office, the National Civil Police, the National Public Security Council, the Municipal Metropolitan Police and other municipal institutions and organizations to implement the project.

For more information: www.violenciaelsalvador.org.sv

– for example, South Africa's 'Firearm Free Zones' which are part of the law.[53] The cities of Bogotá and Cali in Colombia have both experimented bans on the carrying of handguns on holidays and weekends with some success.[54] Brazil's arms control law prohibits all civilians from carrying firearms in public (an exception is made for civilians who need to carry a firearm to perform their jobs, e.g. security officers or hunters).

C) Safe storage

Safe storage requirements, such as unloading the firearm, separating it from its ammunition, and the use of locked containers and trigger locks, are designed to reduce the risk that firearms will be stolen or misused. In Indonesia for instance, all arms licensed for shooting and hunting should be stored and used at a shooting club. In Belarus, firearms should be kept in strong wooden or metal boxes with reliable locks, with firearms disassembled and unloaded and ammunition stored separately from the firearm.

Box 9: *National example:* Sporting shooters – Australia

Many laws contain specific requirements for sporting shooters. This population of civilian users of arms is also required to adhere to the same laws and policies, and specific measures can be introduced to ensure that this reason for owning and holding guns is legitimate. In Australia sporting shooters are required:

- to be members of a registered sports shooting club;
- to submit to the same reference and police record checks as other civilians pursuing the licensing process;
- to graduate access to handguns for new sporting shooters through a 12-month probationary period supervised by the shooting club;
- to participate in firearms safety training;
- to participate in a minimum number of shooting events per year to justify this reason.

53 South Africa, Firearms Control Act (No.60 of 2000), Section 140.

54 Villaveces, Andres et al. (2000), 'Effect of a ban on carrying firearms on homicide rates in two Colombian cities', Journal of the American Medical Association, Vol. 283, pp. 1205–1209

Principle 3: Regulating the user of the firearm

This set of policies is designed to formalise who may or may not own and use small arms, and the procedures and administrative requirements necessary for keeping guns out of the hands of those who are prohibited.

Content of legislation

Any person wishing to possess a firearm should be required to obtain a licence.

A licence to possess a firearm should be issued by a competent authority, as stipulated in law. This may be a Central Firearms Bureau, Chief Licensing Officer or other institution which is designated responsibility for the issuing of SALW licences (see principle 1 above).

A) *Licensing criteria*

Legislation may establish the criteria against which to assess the suitability and competence of applicants for licences to possess SALW. Applicants may be required to meet a set of criteria and fulfil a set of requirements. Such a process may assess the suitability and competence of an applicant, and may include the procedures to be followed in submitting an application.

Applicants may be required to comply with the following criteria:[55]

- *Age limit:* Most countries prohibit the acquisition and ownership of firearms by young people. For example Brazil specifically set the age of 25 based on evidence that it was young people – mostly young men – who were the primary victims and perpetrators of armed violence. This is now the highest age limit in the world. Many countries prohibit ownership of firearms until the age of 18. In South Africa, firearm owners must be 21 years of age. However, a license can be issued if there are compelling reasons, such as the youth being a dedicated sportsperson.[56]
- *Criminal record*: In most countries, being found guilty of a serious crime, such as murder, drug trafficking, or acts of terrorism, disqualifies an individual from acquiring firearms in the future. In Canada, the law provides broad grounds for refusal: 'A person is not eligible to hold a license if it is desirable, in the interests of the safety of that or any other person, that the person not possess a firearm, ammunition or prohibited ammunition'.57
- Partner and family violence: Given the particular role of legally owned firearms in the murder, injury, and intimidation of women and children in the home, several countries have instituted screening mechanisms to prevent firearm acquisition by those with a history of family violence, whether or not it resulted in a criminal conviction.[58] For suggestions on content for laws, see the box below: Gender aspects of civilian possession.

55 For extensive list of criteria to be met by applicants for a licence to possess firearms, see South Africa, 'Firearms Control Act 2000', Art.5
56 South Africa, Firearms Control Act, chap. 5: Competency Certificate, sec. 9 (5) (a) and (b)
57 Canada, Firearms Act (1995), chap. 39. Available at: http://laws.justice.gc.ca/en/F-11.6/
58 Hemenway, David et al. (2002), 'Firearm availability and female homicide victimization rates across 25 populous high-income countries', Journal of the American Medical Women's Association, Vol. 57, pp. 100–104

Box 10 : *National example:* Owner licensing – South Africa[59]

The Firearms Control Act (FCA) of 2000 replaced earlier apartheid-era regulations covering civilians and state arms holders. The parliamentary committee was directed to 'produce progressive policy proposals which will contribute to a drastic reduction in the number of legal firearms in circulation in South Africa.' Under the new law, civilian owners must be, among other things:

- a South African citizen or a permanent resident;
- be 21 years or older (previously the minimum age had been 16);
- a 'fit and proper person';
- of a stable mental condition and not inclined towards violence;
- not addicted to drugs or alcohol;
- not convicted of a violent crime within the past five years;
- in possession of an appropriate firearm safe; and
- in possession of a competency certificate.

To obtain the competency certificate, applicants must demonstrate knowledge of the gun laws and demonstrate safe handling. The process also includes a background check and may include interviews with intimate partners and/or neighbours. An individual may possess a maximum of four licenses, with only one designed for self-defence. Licenses must be renewed on a regular basis (every five years for self-defence guns, ten years for sports shooting, ten years for a private collection, two years for a business license and ten years for hunting licenses). The law also prohibits owners from lending his or her firearm to another person unless the borrower is 'under his/her immediate supervision where it is safe to use the firearm and for a lawful purpose'. All of these regulations apply to civilians, private security officers, police and security force users.[60]

- *Mental health*: Because of the potential risks, particularly for suicide, many countries will refuse access to a firearms license to individuals with a history of serious mental illness. However, given privacy and doctor–patient confidentiality, information about mental illness is often difficult to obtain. In Australia, health practitioners who have reason to believe that a patient should not be allowed to have an arm license are required to report their concerns to police. In Austria, a psychological test is required before a handgun license is issued.[61] In the United States, federal background checks can identify if an individual has been formally committed to a mental institution by a court, board, commission, or other lawful authority, but states are not obliged to provide this information to the federal office conducting the background checks.

59 Based on Mthembu-Salter, Gregory and Guy Lamb, 'The Meaning of Loss: Firearm Diversion in South Africa', in *Small Arms Survey 2008: Risks and Resilience*. Cambridge University Press, pp. 183-201.

60 With the exception that in the case of state forces (police and security), the issuance and conditions of licenses is determined by the internal agency heads.

61 SAFER-Net last updated 10 September, 2001 accessed 10 April 2008

Box 11 : *National example:* Checking the mental health of licence applicants – Canada

"In determining whether a person is eligible to hold a licence (...), a chief firearms officer or, (...)a provincial court judge shall have regard to whether the person, within the previous five years (...), has been treated for a mental illness, whether in a hospital, mental institute, psychiatric clinic or otherwise and whether or not the person was confined to such a hospital, institute or clinic, that was associated with violence or threatened or attempted violence on the part of the person against any person"[62]

- Competency or safety training: Competency training is an important opportunity for personal contact with the applicant. The trainer – preferably an independent entity – can observe the applicant and the police should reject the application if the trainer has any concerns that the applicant should not be given the responsibility of possessing a firearm. This should also entail a thorough knowledge of the arms laws tested in an exam.

Box 12: *National example:* Competency testing[63] – Macedonia

Competency tests assess practical and theoretical knowledge related to weapons use, storage, laws and obligations of ownership. Macedonia's 2005 Law on Weapons, outlines extensive provisions in this area, under Article 14, which states:

"The assessment of technical knowledge for the proper use, storage and maintenance of the weapon and the knowledge of regulation in this area (Article 9, paragraph 1, point 6) shall be done through taking a technical exam in front of a commission formed by the Minister of Interior."

The technical exam shall consist of theoretical and practical parts.

With the theoretical part of the exam, the following knowledge shall be assessed:

- Regulation in the area of possession, carrying and storing weapon, ammunition and regulation related to the proper handling of the weapon;
- Weapon and ammunition; and
- Giving first aid.

The practical part of the exam shall assess:

- Knowledge for safe handling of the weapon and its ammunition; and
- Targeting and measuring the results.

An authorised legal entity shall perform the practical training for the handling of the weapon for the physical entity requesting an authorisation for acquiring a weapon, for which the authorised entity shall be obliged to issue a special certificate."

62 Canada, Firearms Act (1995), art 5. Available at: http://laws.justice.gc.ca/en/F-11.6/

63 For further examples of competency testing, see also Canada, 'Firearms Act (1995, c.39)', Art. 7; and, South Africa, 'Firearms Control Act 2000', Art. 9(2) (q) & (r)

B) Content of the licence

The licence application may require the following information relating to the applicant to be recorded:

- Name
- Physical address
- Recent photograph
- Copy of identity document
- Competency certificate (see below)
- Certificate of good conduct
- Criminal record check
- Evidence of spousal or former partner consent/notification
- Certificate of mental and physical well-being
- Fees for application
- Copies of fingerprints

The following information may be included on licences to possess a firearm:

- Name of licence holder
- Date of issue of licence
- Expiry date of licence
- Physical address of licensee
- Recent photograph
- Details of the firearm to which the licence applies, including make, model and calibre of weapon and details of the unique marking
- Name of the licensing authority
- Conditions of the licence

C) License and competency certificate renewal

Frequently overlooked is the necessity to ensure periodic renewal of licenses and competency certificates to keep track of any changes in individual circumstances such as location or ongoing suitability to possess a small arm. In the case of death of a license holder, conditions should be stipulated that the arm(s) be surrendered to the state within a designated time-period, and if so desired, that the beneficiaries of the deceased estate apply for a new license to possess the firearm and re-register it.

A license should not be permanent, and neither should a competency certificate. The competency displayed at the initial test may deteriorate later, as circumstances change. This applies even more strongly for arms licenses, which as described above under Principle 2 should be issued only on the basis of the applicant possessing a genuine need and after a background check. The genuine need

for a firearm can change over time, or can become invalid. Similarly a license holder can become dangerous or otherwise unsuitable for possessing a firearm. A license renewal process:

- verifies that the holder is still a responsible firearms user;
- places responsibility on license holder to maintain 'fit and proper' behaviour, since there is a risk that the license will be revoked;
- provides a disincentive to sell the firearm privately, since in that case the weapon cannot be produced at the time of license renewal and the holder will be prosecuted for breaking the law.

In South Africa, licenses vary in duration from 2 to 10 years, depending on the type of firearms and the genuine reason for possessing it. The duration of a competency certificate in South Africa is fixed at five years. This ensures face-to-face contact with a firearm owner at least once every five years, which provides an opportunity for the trainer to inform the police if the license holder behaves in a way that might raise concern about public or personal safety.

D) Waiting periods

A waiting or 'cooling off period' is a useful measure to establish a distance of time between application submission, review of the request and the granting of a license. 'Cooling off' periods may also be established between the date of purchase and the date of delivery of a firearm. For example, a 28-day minimum 'cooling off' period between the sale of a specific firearm and the delivery of this arm to the license holder could prevent 'impulse purchases' by license holders.

E) Number of firearms allowed

Good reason should be required for every small arm possessed under a license (see principle 2 above). Someone may have a good reason to possess a single firearm, but the law should not assume that this same reason automatically justifies a second one, or a third. Each time good reasons should be proven, taking into account the firearms already possessed. In addition, there should be an upper limit for the number of firearms possessed. This limit should depend on the category of arms license. For example, professional hunting associations or private security companies will likely have higher limits than a private citizen.

F) Controlling retransfer

While licensing provides an essential means of controlling who may purchase firearms from authorised dealers, it is important that laws are in place to prevent purchasers from re-selling or otherwise transferring their firearms to other citizens who may or may not be legally eligible. This is typically done by matching individual owner licenses with specific firearm registration data.

Box 13: *Issue:* Regulating Private Security Companies

The possession and use of firearms by Private Security Companies (PSC) is a rapidly increasing phenomenon. Individuals working for such companies and those that own such enterprises should be subject to specific regulation in order to ensure that the weapons used are strictly controlled. Private military companies are *not* covered in this box, however much of the information will also be relevant.

Security companies should have an obligation to ensure that their employees are qualified to possess and use weapons, and this obligation is being clarified in developing international standards as well as national legislative regimes. This is important as many states have no laws governing the work of PSCs, while others have only partial and/or ineffective ones. Within the European Union, for instance, some states, such as Denmark, Finland, France, Portugal and Spain, have strict and comprehensive controls regulating PSC services, while others, such as Germany, Austria and Italy, have only narrowly defined regulations.[64] With the growth of the industry in recent years, there has been a move to strengthen controls in some countries. For example in the UK, licensing procedures are now published and licensing is conditional on criteria such as training; registration and insurance; the manner in which activities are to be carried out; the production and display of the licence; and information that the licensee has to provide.

Including provisions in regional agreements on regulating private security and ensuring harmonised regulation across national borders is essential and should be taken into account when negotiating or refining such agreements. Examples of regional instruments focusing predominantly on small arms control that do make minor, but explicit, mention of regulating PSCs include the *Nairobi Protocol* and its Best Practice Guidelines, the *ECOWAS Convention*, the *Andean Plan*[65] and the SICA *Code of Conduct*.[66]

For more information:
UNDP-SEESAC, with Saferworld and CSS (2006), *The Sarajevo Code of Conduct for Private Security Companies*. Available at: www.seesac.org

Schreier, F. and Caparini, M (2005), *Privatising Security: Law, Practice and Governance of Private Military and Security Companies*, Geneva Centre for the Democratic Control of Armed Forces, Occasional Paper no. 6. Available at: www.dcaf.ch/_docs/op06_privatising-security.pdf

United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Available at: www.unhchr.ch/html/menu3/b/h_comp43.htm

United Nations Code of Conduct for Law Enforcement Officials, United Nations General Assembly Resolution 34/169, 1979. Available at: http://www.un.org/documents/ga/res/34/a34res169.pdf

64 A comparative study by the European Confederation of Security Services and the Union Network International, Weber T, 'Eine vergleichende Übersicht der Rechtsvorschriften für die private Sicherheitsindustrie in der Europäischen Union,' Arbeitspapier für die gemeinsame Konferenz von CoESS und UNI-Europa, Dritte Europäische Konferenz für private Sicherheitsdienste, Brussels, 12/13 December 2001.

65 Decision 552, The Andean Plan for the Prevention, Combat and Eradication of Illegal Trafficking of Small Arms and Light Weapons in all their aspects (2003). Available in English and Spanish at: www.comunidadandina.org/INGLES/normativa/D552e.htm

66 The 2005 Central American Integration System Code of Conduct. on the Transfer of Arms, Ammunition, Explosives and Other Related Materials

3.5 Implementation and enforcement

Clear assessment of the factors required to ensure efficient implementation – training, increased personnel numbers, outreach and awareness raising, modernisation of record keeping systems, more effective relations between relevant agencies – will need to be undertaken, including what issues may enhance or undermine compliance from citizens. Some issues to consider include:

A) Powers of enforcement

Legislation needs to specify powers for officers of the state to ensure the effective compliance with and enforcement of arms laws. Police or other officers of the state can undertake:

- Inspection:
  - Requesting those known to be or suspected of being in possession of a firearm, to present the firearm and license for inspection;
  - Entering premises / vehicles to carry out inspections (to check for instance the safe storage of the firearm); and
  - Summonsing license holders to present relevant licenses and documentation for inspection.
  - Inspecting the permits of those carrying of weapons in public (if this is permitted).
- Seizure or confiscation:
  - Removing weapons in certain circumstances such when as the provisions of the law are being contravened or are suspected of being contravened; For instance if an individual is convicted of a crime relevant to possession of a firearm; if an individual has perpetrated partner or family violence and is convicted of that crime or placed under a restraining order; if an individual is deemed unfit for firearm possession by a medical practitioner; if an individual is deemed unfit for firearm possession by the police upon other reasonable grounds; if an individual dies, and the weapon is inherited by someone else (who must then go through the licensing procedure for that weapon).
  - When a firearm is not registered or marked;
  - When a firearm is required for ballistic testing. It is vital that all guns possessed by the individual are seized, even if they are not the weapons that were misused.
- Surrender – provisions may be established for licence holders to surrender their licence and SALW on request by a designated state authority.
- Forfeiture and disposal – provisions may be established for seized SALW to be forfeited to the state. Where SALW have been confiscated provisions may be established to stipulate when (if not evidence in a criminal investigation, provision may be made for the sale of the weapon within a designated period, for instance) and how weapons need to be disposed off.

B) Licensing and registration fees

Ensuring that taxes and fees associated with firearms ownership and use are high enough – although not punitive in order not to deter people from registering their firearms – is one way to indicate the seriousness of the responsibility involved. Revenue from these taxes and fees can go into General Revenue, to pay some of the administrative costs of the firearms registry or into the health budget, not necessarily into the police budget. International experience has shown that linking firearm license fees to police department budgets can be counterproductive because it creates an incentive for the police to grant more licenses. In El Salvador for example, a tax on firearms purchases goes directly into the health budget.[67]

C) Communicating changes

For legislation to be effective it is important that those affected by its provisions are aware of their responsibilities. As such providing accessible information to the public and across government agencies on the content and implications of new or revised laws is vital. Identifying and preparing key messages, popular spokespeople, multilingual information through mediums such as radio, television, websites, print media advertisements can start well in advance of laws coming into force.

Also, where a new, tighter system of control on the civilian possession of firearms may criminalise some who were previously able to legally possess certain weapons, consideration will have to be given to the manner in which new controls will be implemented. For instance, a number of states in introducing new controls on the civilian possession of firearms have established a period of amnesty in which civilians may surrender SALW that are illegal under the new legislation or who have decided that they no longer wish to possess a SALW.

67 Buchanan, Cate and Mireille Widmer (2007), Surviving gun violence in El Salvador: a tax on firearms for health, Background paper No. 2 on Survivors of Armed Violence, Centre for Humanitarian Dialogue, Geneva

3.6 Checklist of elements

Regulating small arms in the hands of civilians		
Regulating the firearms itself	Restrictions and prohibitions of certain types of weapons and of ammunition that can be held by civilians	No military style weapons should be possessed by civilian. Further restrictions and prohibitions can focus on: • Types and quantities of guns; • Types and quantities of ammunition.
	Record-keeping and registration	Accurate and where possible computerised records should be maintained to clearly track the life span of a weapon, as well as those who use it or own it. A central firearms bureau typically maintains records on: • Licence holders; • Registered firearms; • Seized or recovered firearms. And should also maintain records on: • Private security companies; • Gun dealers; • Gun clubs.
	Ammunition	• A valid firearms license should be shown every time ammunition is purchased, and dealers should record the quantity and information on the purchaser; • Limits can be placed on the amount that can be purchased in a month, as well as a limit to the amount of ammunition that can be stored; • Limits could be different for each category of firearm license. Ammunition for proscribed firearms use should also be prohibited for civilian purchase.
	Safety devices	As and if available technology permits, imposing safety devices on guns can be included in the legislation.
Regulating the use of firearms	Good reason for possession / genuine need	Acceptable reasons for possessing a firearm should be stipulated in the law.
	Public space and the carrying of guns	Restriction should be placed on the possession of firearms in public places. A licence to carry a firearm for an exceptional and limited period can be granted under the law.
	Storage	• Safe storage requirements typically include unloading the gun, separating it from its ammunition, and the use of locked containers and trigger locks; • Inspections of storage facilities can be built into the process of registering a firearm.

Regulating the user of firearms	Licence criteria	Licenses or permits must be granted after a process of verifying individual's background, reasons for wanting to own or use a gun, competency and knowledge of laws, firearms use, and storage facilities. Is typically based on meeting requirements related to: • Age limits; • Criminal record check; • Mental health; • Domestic violence; • Certification in safety or competency training; • Proven knowledge of the gun laws.
	License and competency certificate renewal	A firearms licence should not be permanent, and neither should a competency certificate. A licence renewal process: • verifies that the holder is still a responsible firearms user; • places responsibility on licence holder to maintain 'fit and proper' behaviour, since there is a risk that the licence will be revoked; • provides a disincentive to sell the firearm privately, since in that case the firearm cannot be produced at the time of licence renewal and the holder will be prosecuted for breaking the law. Licences or permits should: • be subject to periodic renewal to keep pace with changing circumstances and competencies; • are not transferable to another person or organization; • be revoked if they expire without being renewed.
	Keeping track of firearms and users	Licenses or permits should: • not be permanent; • be subject to periodic renewal to keep pace with changing circumstances and competencies; • are not transferable to another person or organization; • be revoked if they expire without being renewed; or if necessary for reasons of public safety or national defence.
	Waiting period	• A waiting or 'cooling off period' is a useful measure to establish a distance of time between application submission, review of the request and the granting of a licence; • 'Cooling off' periods may also be established between the date of purchase and the date of delivery of a firearm.

	Number of firearms permitted	Limits on the number of firearms an individual can possess are typical. • Good reason should be required for every gun possessed under a firearms licence. • Good reason to possess a single firearm should not automatically justify a second firearm, or a third. Separate reason is needed for each firearm.
	Controlling retransfer	• Need to match individual owner licenses with specific firearm registration data.
	Gender aspects	Specific measures are required for perpetrators of domestic violence including: Spousal notification requiring current and former spouses to be notified before a gun licence may be issued; • Background and criminal record checks should include verifying an applicant's past record related to family or partner violence. • Making it a criminal offence to possess a gun while subject to an domestic violence restraining order; • Prohibition on gun ownership for a period of time for past domestic violence offences; • Police should seize firearms when a person becomes subject to a restraining order for the first time and owns a gun(s); • Safe storage should apply in all circumstances but is critical in situations where family or partner violence is occurring.
Implementation and enforcement	Power of enforcement	There are numerous actions to be established as an offence in the law, some key items include: • Possession without licence • Holding an unregistered firearm • Withholding information or misrepresentation in order to obtain a gun licence and to register a firearm • Negligent discharge or use • Breaching the criteria established for holding a licence such as not using a firearm under the influence of drugs or alcohol • Carrying a firearm in a public place if deemed illegal under the law or in particular places specified gun free (e.g. schools, churches, hospitals) • Poor or illegal storage of guns and ammunition
		• Police need to be empowered by the law to seize firearms of those deemed unfit to use firearms in some cases. • This power needs to be made mandatory and not discretionary to ensure maximum effect. • Capacity to safely store seized firearms also needs to be considered.

	Circumstances warranting seizure of a firearm	Circumstances warranting seizure of a firearm(s) include: • If an individual is convicted of a crime relevant to possession of a firearm; • If an individual has perpetrated partner or family violence, and is convicted of that crime or placed under a restraining order; • If an individual is deemed unfit for firearm possession by a medical practitioner; • If an individual is deemed unfit for firearm possession by the police upon reasonable grounds; • If an individual dies, and the firearm is inherited by someone else (who should then go through the licensing procedure for that firearm).
	Licensing and registration fees	• Need for a balanced registration fee
	Communicating changes	Need to communicate changes in aspects of the legislation governing possession of firearm by civilian through awareness raising activities
Regulating the private industry	Private security companies	Private security companies require regulation premised on: • the accountability of the employer and employees to acquire store and use weapons with at least the same criteria and process as other civilians; • a detailed appreciation of the use of the force.

3.7 Further information and resources

Buchanan, Cate and Mireille Widmer (2006), *Civilians, guns and peacebuilding: Approaches, norms and possibilities,* Centre for Humanitarian Dialogue, Negotiating Disarmament briefing paper No. 1, October. Available at: www.hdcentre.org

Centre for Humanitarian Dialogue with the Inter-Parliamentary Union (2007), *Missing Pieces: A Guide for Reducing Gun Violence Through Parliamentary Action.*

Available in French, Spanish, Catalan and English at www.hdcentre.org. The 2005 version is available in Arabic.

Cukier, Wendy (2005), *The Feasibility of Increased Restrictions on the Civilian Possession of Military Assault Weapons at the Global Level*, Project Ploughshares, Waterloo, Canada

International Action Network on Small Arms www.iansa.org

Kirsten, Adèle, et al. (2006), *Islands of Safety in a Sea of Guns: Gun-free Zones in South Africa's Fothane, Diepkloof, and Khayelitsha*, Small Arms Survey, Working Paper No. 3.
Available at: www.smallarmssurvey.org

United Nations Commission on Crime Prevention and Criminal Justice, *United Nations International Study on Firearm Regulation*, New York, 1998 (study updated in 1999).
Available at: www.uncjin.org/Statistics/firearms/index.htm

Small Arms Survey Yearbooks, particularly 2004, chapter 6: 'A common tool: Firearms, violence, and crime', and Yearbook 2007, chapter 2: 'Completing the count: Civilian firearms'.
Available at: www.smallarmssurvey.org

Chapter 4

Controls on the International Transfer of Small Arms and Light Weapons

Chapter 4: Controls on the International Transfer of Small Arms and Light Weapons

Chapter 4 deals with the legislative measures that may be put in place to control the international transfer of SALW, including their import, export, brokering, transit, transhipment and foreign licensed production.

This chapter covers the range of elements that may be included within a broad international transfer controls regime. As such it addresses the issues of import, export, transit, transhipment, brokering and foreign licensed production. In so doing, it looks at the range of measures that may be instituted to control these activities but also touches upon the issue of transparency and accountability. In this regard, transparency and accountability relate to how legislation can ensure that effective public oversight is allowed of international transfers of SALW so that the state is held to account against the provisions of the law.

This Chapter also has direct links with legislative provisions in:

- **Chapter 5 on Manufacturers, Dealers and Gunsmiths** – where controlling the foreign licensed production of SALW may involve the application of domestic provisions controlling the activities of domestically registered / licensed manufacturers operating on foreign soil and where manufacturers may be bound by the international transfer control criteria contained within this Chapter when selling their products internationally.
- **Chapter 6 on Marking and Record Keeping** – which covers the marking of SALW and the maintenance of records on all registered importers, exporters and brokers and where conditions may be placed on importers, exporters and brokers to submit certain paperwork in relation to every international transfer of SALW and where the state may be required to maintain records on all international transfers of SALW.

4.1 Definitions and scope

This chapter focuses upon the regulation of transfers of SALW that occur internationally – i.e. those that take place across more than one national jurisdiction – in contradistinction to the regulation of transfers between individuals and entities within a national jurisdiction.[68] International transfer controls on SALW include a number of different elements. Few of the regional and international instruments on SALW control provide an inclusive definition of international transfer controls or of what constitutes an 'international transfer'. According to the 1996 UN Guidelines for International Arms Transfers (endorsed by the General Assembly in A/RES/51/47 B, 10. December 1996), *"limitations on arms transfers can be found in international treaties, binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations and the principles and*

68 Controls on transfers occurring within one national jurisdiction consequently relate to a range of different measures regulating the possession, use, sale, acquisition and transfer of SALW domestically, that may occur between a number of different individuals or entities: private individuals, private entities (i.e. companies, dealers, manufacturers, clubs etc), and state institutions. For more information on these areas of control see Chapters 3, 5 and 7.

purposes of the Charter."[69] Moreover, the activity of "*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*"[70] To give effect to such international obligations, "*States should establish and maintain an effective system of export and import licences for international arms transfers with requirements for full supporting documentation*"[71] and that "*in order to help combat illicit arms trafficking, States should make efforts to develop and enhance the application of compatible standards in their legislative and administrative procedures for regulating the export and import of arms.*"[72]

The United Nations Group of Governmental Experts analysing the operation of the UN Register on Conventional Arms, while not attempting to produce a 'definition' of an arms transfer, did consider some of the activities that may or may not constitute a transfer.[73]

Most international instruments pertaining directly to the control of international transfers of SALW only define what constitutes 'illicit trafficking'. The definition most commonly used and replicated in most of the regional SALW instruments is that contained in the UN Firearms Protocol, which states that illicit trafficking:

> *"…shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it…."*[74]

Most subsequent definitions contained within international instruments derive from the above definition, though with slight variations and greater consideration given to defining specific aspects of international arms transfers.[75] Crucially, within the scope of controls on the international transfers of SALW issues relating to the activities of arms brokers, as well as those relating to the licensing of SALW production facilities in other countries and the transfer of technology and know-how for the production of SALW, should be included.

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69 United Nations, 'United Nations Guidelines for International Arms Transfers (endorsed by the General Assembly in A/RES/51/47 B, 10 December 1996)', Paragraph 8

70 Ibid, Paragraph 7

71 Ibid, Paragraph 26

72 Ibid, Paragraph 36

73 See, Report of the Group of Governmental Experts established pursuant to Resolution 46/32 L on the Register of Conventional Arm, Document A/47/342, 14 August 1992, paragraphs 9-12, which include consideration of arms transfers involving transfer of title and control of equipment, as well as the physical movement of arms across national boundaries and where such transfer of title and control may occur without the physical movement of equipment.

74 United Nations, 'United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Trans-national Organized Crime', Article 1(2).

75 For a broad definition of transfers see ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material', Art. 1 (9); for definitions of import' and 'export' see OAS, 'Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for the Control of the Movement of Firearms, Their Parts, Components and Ammunition', 1997, Art. 3.1; for definitions of brokering and brokering activities see United Nations, 'Report of the UN Group of Governmental Experts on the prevention of illicit brokering (1997)'; and OAS, 'OAS CICAD Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition. Amendments to the Model Regulation for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition, 2003', Art. 1

4.2 Purpose of controls

All States should take responsibility for and exercise effective control over all SALW within their jurisdiction. Effectively controlling the international transfer of SALW helps the state to prevent SALW from falling into the hands of unauthorised and/or undesirable end-users. Where such controls are absent or ineffective, SALW can end up fuelling conflict, violent crime and instability, undermining sustainable development and being used in the grave abuse of human rights or in serious violations of international humanitarian law.

Consequently, the effective control of international SALW transfers should be a high priority for all States and practical considerations arise for several reasons.

Firstly, all States will occasionally wish to allow the import of SALW into their jurisdiction – whether for police, military or private end-use – thereby necessitating clear and enforceable import controls, rooted in national legislation and including administrative provisions such as delivery verification and import certification backed by effective customs and other controls.

Secondly, even States that do not manufacture SALW may still export surplus SALW (although the preferred method for disposal of these surplus stocks is destruction); for instance, those weapons or munitions that are no longer required by police or armed forces. Accordingly, all States require clear legislation providing for the regulation of SALW exports and imports.

Thirdly, the territory of any state may conceivably be used as a transit route for the movement of SALW between third countries. Where transit controls are ineffective or inadequate there is a significant risk of shipments of SALW being diverted en route from their authorised recipient to illicit end-users, and of the national territory being used for the shipment of SALW to recipients that, under other export control provisions, would be deemed illegal.

In addition to such elements of an international transfer control regime commonly reflected in regional and international instruments, the increased globalisation of the trade in SALW in recent years is presenting new challenges to which states need to respond. For example, controls on the activities of brokers of SALW can enable States to ensure that nationals and/or residents wherever they operate and foreigners registered or operating on national territory, that engage in arms brokering do so only in conformity with the established provisions. That is to say, that the provisions relating to the export, import, transit and transhipment of arms, that would otherwise apply to transfers into, from or through national territory, should be applied to arms brokering activities regardless of whether the broker or shipment itself are at any time within national territory. This is necessary because arms brokers can play a significant role in directing the modern global arms trade.

Another such challenge arising from increased globalisation of the arms industry is the growing trend for Foreign Licensed Production (FLP) of SALW (see box 13 for more information). Related to the problems associated with FLP is the phenomenon of multinational production of weapons, where components for a weapon system are sourced in a number of different countries and then incorporated into the final weapon system. Problems arise in this respect from the tendency of

States only to consider the intermediate destination for components – where they are incorporated into a complete weapon system – as opposed to the ultimate destination of the finished product. Potential challenges here are greatest with larger conventional arms, though the issue may be of relevance to the production of certain types of SALW. Establishing controls over both the foreign licensed production of SALW and multinational production enterprises is therefore also something that States should legislate for.

Box 14: *Issue:* Foreign Licensed Production (FLP)[76]

The ongoing breakdown of national barriers to the defence industry has seen a proliferation of producers. One consequence of this has been the growth of foreign licensed production of SALW (FLP). Many producers establish foreign arms production facilities to utilize economic or technical resources. The challenge for regulators is to ensure that such arrangements do not take advantage of countries with less well-developed controls in order to circumvent restrictions in their own country. FLP has significant implications for States' ability to control the re-export of SALW produced under licence and reverse engineering, as well as other risks of relating to downstream production.

Debate around the control of FLP often focuses on the risks to commercial competitiveness of instituting stricter controls. However, there are examples of governments that have successfully placed controls on FLP agreements without damaging national industry. For example, Russia now places stricter controls over FLP agreements for SALW. In May 2005, a $54 million deal between Russia and Venezuela was agreed to produce 100,000 Russian designed AK-103 assault rifles under licence by the Russian company Izhmash which has established a Venezuelan plant, and provides technology and training.[77] This deal has been supplemented by two additional contracts for licences to manufacture 25,000 AK-103 rifles a year, and an unspecified amount of ammunition.[78] Under the licensed production deal, Grodetsky, the President of Izhmash, stated that the conditions of the contract stipulates that Venezuela will not be able to re-export these weapons without Russia's consent.[79]

Current regulatory practices:

Controlling the physical transfer of components or technology – UK system[80]

The UK Government seeks to control FLP by requiring licences to be obtained for the materials and parts (physical components) as well as the technology and know-how (intangible transfers) to be used in a licensed production agreement. This approach considers the elements of licensed production in isolation and does not enable UK control of foreign exports from UK licensed production, since it merely establishes a control system over the initial transfer of individual

76 For an introduction and more detailed discussion of foreign licensed production of SALW see, Small Arms Survey, Small Arms Survey 2002: Counting the Cost, Batchelor, P. and K. Krause (Eds), Oxford University Press, Oxford, 2002, pages 40-56; and Small Arms Survey, Small Arms Survey 2007: Guns and the City, Berman, E. (Ed), Cambridge University Press, Cambridge, 2007, pages 7-32.

77 'Venezuela formalizes Russian arms deal', ISN Security Watch, 20 May 2005, Available at: http://www.isn.ethz.ch

78 Nunez Rivero E, 'Venezuela could make 25,000 AK-103 rifles a year', El Nacional Website, 1 June 2006.

79 Interview by Grodetsky in El Nacional, English translation available at www.xignite.com/xWorldNews.aspx?articleid=LAP20060617062005 17 June 2006.

80 Controls on foreign licensed production in the UK are contained within The Trade in Goods (Control) Order 2003 and the Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003.

components and intangible items but not over the whole licensed production agreement or the products manufactured once all the component parts, machine tools, and blueprints have been combined.

Controlling licensed production agreements – United States system[81]

In addition to the licensing of the export of individual component parts for weapons and munitions, the United States, also places controls on all manufacturing agreements to foreign persons, whether in the US or abroad. This includes providing services such as design, development, engineering, manufacturing, production, assembly, testing, repair, maintenance, modification, operation or process.[82] As such, the US State Department oversees the scope and context of production and manufacturing agreements and can exercise control over foreign exports from US licensed arms production in foreign countries. A non-transfer and use certificate must be obtained before a licence for all defence articles, including manufacturing licences and technical data, will be granted. This certificate is binding on the foreign end-user. If the foreign end-user is not a government agency (for example, if the transfer is to a foreign manufacturer), US authorities may also insist on a guarantee from the government of the end-user that the end-use of the licensed article will be verified. If the value of the contract exceeds $50 million, the US State Department must notify Congress before the agreement is approved. Violations of these provisions can lead to the original license being revoked and/or imposition of sanctions. Simplified procedures apply to US transfers to NATO countries, Australia and Japan, where re-export or re-transfer may be undertaken under certain circumstances without the prior written approval of the US Office of Defence Trade Controls.

Finally, the purpose of legislation on international SALW transfers should, in addition to establishing an effective control regime in the above mentioned areas, also be to provide for effective oversight and scrutiny of the operation of a SALW control regime. As such, provisions in legislation may need to establish mechanisms and processes that provide information and opportunity through which the public can hold the state accountable to its domestic and international legal commitments.

4.3 Emerging international standards and norms

This section provides a narrative overview of emerging standards and norms for good practice to control the international transfer of SALW, as seen through international and regional discussions and national practice. In so doing, a more detailed overview is given of selected regional and international instruments that contain particularly notable or far-reaching, commitments or guidelines. Reference is then provided to all the regional and international instruments concluded that contain explicit commitments in the form of standards and/or guidelines for the control of international transfers of SALW.

81 "Manufacturing license agreements" may not enter into force without the prior written approval of the US Directorate of Defense Trade Controls, § 124.1, US International Traffic in Arms Regulations (ITAR).
82 United States, 'International Traffic in Arms Regulations (ITAR)'. § 120.9

4.3.1 Emerging standards and norms

Emerging international consensus on need to control international transfers

Over the past decade, significant progresses have been achieved at the sub-regional, regional and multilateral level to develop common standards for the regulation of international arms transfers. In particular, regional, sub-regional and multilateral organizations mainly in the Americas, Europe and sub-Saharan Africa have adopted a number of instruments to address the control of international transfers of arms, and particularly of SALW. Crucially, through their participation in regional, sub-regional and multilateral arms transfer control agreements, 118 States have already explicitly recognised that international transfers of conventional arms (including SALW) should be subject to specific controls based on States' existing obligations under international law and standards.

In 2003, 191 States Parties to the Geneva Conventions identified respect for international humanitarian law, as one of the fundamental criteria against which international arms transfer decisions are assessed and to incorporate such criteria into national laws or policies and into regional and global norms on international arms transfers.[83]

Furthermore, on 6 December 2006, in the UN General Assembly, 153 States voted in favour of taking the first steps towards a legally-binding Arms Trade Treaty (ATT) to establish "common international standards for the import, export and transfer of conventional arms".[84] Moreover, the recent conclusion of a legally-binding agreement on arms transfers by ECOWAS, the movement in the EU towards revising the EU Code of Conduct on Arms Exports into a legally- binding instrument, together with the commitments contained in Section II, Paragraph 11 of the UN Small Arms Programme of Action[85] are a clear indication of the increasing recognition among States that the international transfers of SALW should be legally-binding and rooted in existing principles of relevant international law.

There is now a significant degree of international consensus on both the broad parameters of international transfer controls (i.e. the foundations of an international transfer control regime) and on some of the specific details of control on particular issues (e.g. brokering and export criteria). Among the regional and international instruments that have been concluded, nearly all address the issue of international transfer controls, indeed, some doing so with a notable degree of detail and sophistication. Finally, it is important to note that states have resolved to prohibit the international transfer of landmines under the Ottawa Convention.[86]

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83 Section 2.3.1, Agenda for humanitarian Action, adopted by the 28th International Conference of the Red Cross and Red Crescent, Geneva, 2-6 December 2003.

84 United Nations General Assembly Resolution 61/89, 6 December 2006.

85 United Nations, 'United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, 2001', UN Document A/CONF.192/15, Section II, Paragraph 11: "[States undertake] to assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons.", available at http://disarmament.un.org/cab/poa.html

86 United Nations, 'Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction', 18 September 1997. As of 15 August 2007 there were 155 State Parties to the Convention.

Standards and norms – authorisation of international transfers

There is common agreement on the need for international transfers of SALW to be authorised by the State, usually through some form of case-by-case licensing procedure, in accordance with agreed guidelines and standards. In many cases the regional and international instruments call for the adoption of common criteria against which to assess applications for licences to export SALW[87], often recognising that these criteria should in part be based upon States existing responsibilities under international law.[88]

The Best Practice Guidelines for the Implementation of the Nairobi Protocol[89] and the ECOWAS Convention contains perhaps the most far-reaching provisions relating to the international transfer of SALW, where transfer is defined as **"**import, export, transit, transhipment and transport or any other movement whatsoever of small arms and light weapons, ammunition and other related materials from or through the territory of a State".[90]

The ECOWAS Convention most notably seeks to ban the transfer of SALW into the national territory or from/through the national territory of the Member States, except in specifically defined circumstances.[91]

87 For instance, such criteria are established in the European Union, 'Code of Conduct on Arms Exports'; OSCE, 'Best Practice Guide on Export Control of Small Arms and Light Weapons', in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003; and the Wassenaar Arrangement, 'Best Practices Guidelines for the Export of Small Arms and Light Weapons'.

88 See ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials'; Central American Integration System (SICA), 'Code of Conduct of the Central American States Regarding the Transfer of Arms, Ammunition, Explosives and Other Related Materials'.

89 RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol', RECSA, Nairobi, 2005, Chapter 2.

90 ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials', Paragraph 9, Article 1.

91 Exemptions include the legitimate need to national defence and security needs, or to participate in peace support or other operations in accordance with the decisions of the United Nations, African Union, ECOWAS, or other regional or sub-regional body of which it is a member (Article 4, ECOWAS Convention).

Box 15: *Key instruments:* International transfer controls

The **Best Practice Guidelines for the Nairobi Protocol** sets out a wide-ranging set of conditions for the control of international transfers of SALW. States have agreed that international transfers of SALW shall not be authorised to States which act in contravention of a range of international legal obligations and norms, and establish a set of common criteria by which to assess applications for licences to transfer SALW.[92] Under these criteria, transfers shall not be authorised when violating States' direct obligations under international law, and where SALW might be used to facilitate certain acts – such as *inter alia* terrorism or violation of human rights, or facilitating acts of genocide or in the commission of violent crimes.

The Best Practice Guidelines also stipulate that licences should be assessed on case-by-case basis and that the same conditions should apply to transit licence applications as to those for licences to import and export. In addition, the guidelines cover the issue of end-user certification including ensuring that consideration is given during the licensing process to the recipient's compliance with previous end-use undertakings.

The **ECOWAS Convention**, which was agreed in 2006, will be legally-binding on those States that ratify the convention, upon its entry into force. The Convention establishes criteria against which decisions on the transfer of SALW should be assessed. However, what is significant about the ECOWAS Convention is that it establishes a ban on all international SALW transfers[93] except those required for legitimate self-defence and security needs, or for peace support operations.[94] As such, the export criteria only apply where an exemption is requested from the ECOWAS Executive Secretary, which will be adjudged against a stringent set of procedures to determine whether a transfer shall or shall not be authorized.[95]

92 RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol', RECSA, Nairobi, 2005, Section 2.2
93 ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials', Art. 3.
94 Ibid Art. 4.
95 Ibid Art. 5 & 6.

Standards and norms – transit and transhipment

The development of transit and transhipment controls, despite their importance, has yet to become a major subject for international debate and action. Nonetheless, references are to be found in some of the regional and international instruments concluded on SALW. The UN Firearms Protocol requires that prior notice be sought before a licence is issued from any transit States indicating that they have no objection to the transit taking place and that any export and import licences issued should contain information on the countries that any shipment is to transit.[96] The 2003 OSCE Best Practice Guidelines on the Export of SALW also refer to the commitments of the UN Firearms Protocol regarding transit but importantly, also recommend that the common OSCE criteria used to make decisions regarding SALW export authorisations should also be used in assessing transit licences.[97] In 2007, the Wassenaar Arrangement of arms producing states agreed best practice guidelines to **"**Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport", this including cases of transit or transhipment by air.

Standards and norms – arms brokering

The issue of international arms brokering has received perhaps more attention recently than any other aspect of international transfer controls, with nearly all of the regional and international instruments making some reference to that specific issue. At the regional level, some firm and elaborated commitments have been developed, with some degree of convergence of opinion centring on a minimal definition of arms brokering – as the mediation between buyers and sellers of SALW and other military goods – and the need for national licensing systems. At the global level, a UN Group of Governmental Experts (GGE)[98] reported in August 2007 on the issue of preventing the illicit brokering of SALW – the second of such a Group of Governmental Experts to address the issue[99] – examining "further steps to enhance cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons". The report recommends a range of specific measures which may be undertaken at the national, regional and global levels. These include implementing national legislation and administrative procedures to control SALW brokering activities; encouraging international cooperation on information sharing in both terms of facilitating national decision-making and law enforcement; encouraging international assistance and capacity building; and promoting effective national reporting. Finally, the report

96 United Nations, 'United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Trans-national Organized Crime', Art. 10. Similar provisions are also found in the 'Inter- American Convention Against the Illicit Manufacturing and Trafficking of Firearms, Ammunition, Explosives and Other Related Materials' Art. 16; and 'Nairobi Protocol on the Prevention, Control and Reduction of SALW in the Great Lakes Region and Horn of Africa'.

97 This provision is also incorporated in the 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol', RECSA, Nairobi, 2005, Chapter 2, which specify that a series of objective criteria be applied in the case of export and transit applications.

98 United Nations, 'Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 of 2007 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons', Document A/62/163, 30 August 2007, <http://www.un.org/ga/search/view_doc.asp?symbol=A%2F62%2F163&Lang=E>.

99 United Nations, 'Report of the Group of Governmental Experts, established pursuant to General Assembly resolution 54/54 V of 15 December 1999', entitled "small arms", UN Document A/CONF.192/2, 11 May 2001. The report did not make recommendations but instead explored options and issues, including in relation to: definitions of brokering activities; means of regulation; scope of application; extra-territorial jurisdiction, licensing and options around control of financing and transportation. http://www.un.org/ga/search/view_doc.asp?symbol=A%2FCONF.192%2F2&Lang=E

of the GGE also recommends that States should take immediate steps to effectively implement and enforce all arms embargoes and to prevent brokers of SALW from contributing to violations of such embargoes. While the report of the GGE may only set out voluntary recommendations, it goes some way further than previous international agreements by agreeing a more precise description of brokering (which could be used in a legal definition in national laws) and by setting out optional "elements" in national legislation and regulations that could be adopted by States for the purpose of preventing, combating and eradicating illicit brokering in SALW.

Box 16: *Key instruments:* Brokering controls

A number of regional and international instruments and processes have sought to develop consensus around the issue of arms brokering, for instance, under the auspices of the **EU**,[100] **OSCE**,[101] **Wassenaar Arrangement**,[102] and **OAS CICAD**,[103] (see Annex 1 for more detailed overview of all regional and international instruments).

The CICAD Model Regulations for the Control of Brokering are notable for the broad definition of brokering activities that they provide (see section 1, Definitions and Scope for more details). Beyond the issue of definitions and consequent scope of controls, the provisions of the OAS CICAD, EU, Wassenaar Arrangement and OSCE documents on brokering are in many ways quite similar. Taking the OSCE Handbook of Best Practices as an example, some of the key issues relating to arms brokering that these instruments seek to address include:

- requiring the licensing of brokering activities and establishment of licensing criteria and procedures;
- calling for the registration of brokers;
- recognising the need for end-use documentation; and
- highlighting the issue of jurisdiction and the potential for controls to be applied extra-territorially.

100 European Union, 'Council Common Position 2003/468/CFSP on the Control of Arms Brokering'
101 OSCE, 'Best Practice Guide on National Control of Brokering Activities', in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003
102 Wassenaar Arrangement, 'Elements for Effective Legislation on Arms Brokering'.
103 OAS, 'OAS CICAD Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition. Amendments to the Model Regulation for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition, 2003'.

"Activities closely associated with brokering" that might be undertaken by brokers to facilitate international transfers of SALW have recently been defined by the 2007 GGE report. The report refers to activities which may include, for example, "acting as dealers or agents in SALW, providing for technical assistance, training, transport, freight forwarding, storage, finance, insurance, maintenance, security and other services."[104] In this respect it is useful to differentiate between the need to control physical consignments of SALW and the interrelated need to control transactions that facilitate international transfers of SALW, and therefore to regulate all the actors in the supply chain.

National practice

At the national level, the scope and detail of controls on international transfers of SALW varies greatly. Research conducted in 2006[105] indicated that:

- 135 States (and entities) have laws and procedures in place for controlling the import of SALW;
- 111 States (and entities) have laws and procedures in place for controlling the export of SALW. While the scope and stringency of these controls varies hugely and information is limited, 41 States appear to conduct some assessment of the risk of diversion of the weapons into illicit circulation; 58 require an authenticated end-user certificate; and 28 notify the original exporting state when transferring previously imported SALW;
- 79 States (and entities) have laws and procedures in place for controlling the transit of SALW; and
- In 2006, 37 States (and entities) have specific controls over SALW brokering activities. While only illustrative information is available, it seems that at least 25 States register brokers, 30 require a licence for individual deals and at least 15 have some level of extraterritorial controls.

Some States have developed detailed and sophisticated systems of controlling international transfers and transactions, including detailed criteria for assessing export or import control applications and means of assessing and registering different operators who want to engage in the international transfer of SALW. Brokering controls are beginning to be applied by an increasing number of States, and in 2007 around 40 states had laws and/or regulations covering arms brokering. It is notable for instance that since the adoption of an EU Common Position on Arms Brokering in 2003, at least 15 EU countries have revised existing legislation or adopted new laws on brokering.[106] However, while a number of the regional, sub-regional and multilateral instruments on SALW do contain wide-ranging provisions on international SALW transfers, the adoption of transfer

104 United Nations, 'Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, Document A/62/163, 30', August 2007, Paragraph 10.

105 Biting the Bullet and IANSA, Reviewing Action on Small Arms 2006: Assessing the first five years of the UN Programme of Action, Biting the Bullet and IANSA, London, 2006, page 32

106 See Table C "Table showing Member States' national legislation implementing Council Common Position 2003/468/CFSP (AS AT SEPTEMBER 2007)", from the Ninth annual report according to Operative Provision 8 of the EU Code of Conduct on Arms Exports, (2007/C 253/01).

control regimes with detailed and stringent provisions across the full range of issues covered in this Chapter, remains the exception rather than the rule.

4.3.2 Regional and international instruments

The table below provides reference information on the provisions of regional, sub-regional, multilateral and United Nations instruments that explicitly address the international transfer of SALW. More detailed information on all regional and international SALW instruments can be found in Annex 1. The table notes where an instrument is intended to be legally binding upon states, but this does not automatically mean that all Member States of the regional, sub-regional, multilateral body or UN will have ratified the instrument or incorporated it into national law, and nor does it mean that such states have fully implemented the provisions of that international legally binding instrument.

white on blue = legally-binding;	blue on light blue = politically binding	black on blue = recommendatory

Name of instrument	Parties	Relevant provisions
UN Firearms Protocol	52 signatories; 73 parties	Art. 5, 8, 10 & 15
UN Programme of Action	UN Members States	Section II, Para. 2, 8, 9, 11, 12, 14 & 15
International Tracing Instrument	UN Member States	Section III, Art. 8(b) & 12(b)
UN Guidelines on International Arms Transfers	UN Member States	Para. 7, 8, 14, 26, 33 & 36
Convention on Prohibitions/ Restrictions on Use Certain Conventional Weapons	105 parties	Protocol II
International Mine Ban Treaty[3]	155 State Parties	Art. 1
Wassenaar Arrangement Initial Element	40 Participating States – global/multilateral	Part II, Art. 7
Wassenaar Arrangement Export Best Practice Guidelines	40 Participating States – global/multilateral	Part I, Art. 1 – 4; Part II, Art. 1 – 3
Wassenaar Arrangement MANPADS Controls	40 Participating States – global/multilateral	Art. 1.2, 1.3, 2.1, 2.2, 2.3, 2.7, 2.8, 2.9 & 3
Wassenaar Arrangement Brokering Legislation	40 Participating States – global/multilateral	Art. 1 – 5
Wassenaar Arrangement SALW Air Transport Controls	40 Participating States – global/multilateral	Art. 2
OSCE Document	56 States – Europe, Central Asia, Caucasus and North America.	Section II (C); and Section III (A).
OSCE Best Practice Handbook	56 States – Europe, Central Asia, Caucasus and North America.	Best Practice Guide IV (Brokering) Sections II, IV & V; Best Practice Guide V (Export Control) Sections III & IV

Name of instrument	Parties	Relevant provisions
OSCE Brokering Principles	56 States – Europe, Central Asia, Caucasus and North America.	Section I, Part 2; Section II, Parts 1 – 4; Section III, parts 1 – 2; and Section IV, Parts 1 – 2
Arab Model Law	22 Arab League States	Art. 2, 4, 9, 13, 15, 22 – 25, 30 – 34, 37 & 40
Bamako Declaration	53 African Union States	Section 3 (iii), (vi) & (vii)
SADC Declaration	SADC Member States	Main text (no paragraph numbering)
SADC Firearms Protocol	SADC Member States[4]	Art. 5 (1), (2), (3 (c), (g), (l) & (m)); 8; & 9
Nairobi Declaration	12 East African States	Section (iv)
Nairobi Protocol	12 East African States	Art. 3 (a), (b), (c) xi & xiii); 7 (c) & (d); 10; & 11
Nairobi Protocol Best Practice Guideline	12 East African States	Best Practice Guidelines Chapter 2; & Chapter 3. Guidelines for Regional Harmonisation Section D, Para. 1.4
ECOWAS Convention	15 ECOWAS States	Art. 3; 4; 5; & 6
OAS CIFTA	35 OAS Member States	Art. IV (1); VI (1(b)); and IX
OAS CICAD Model Regulations for Movement of Firearms	35 OAS Member States	Chapter 1, Para. 1.2, 1.3, 2.1, 2.2, 3 & 4; Chapter 2, Para. 5 – 7, & 9
OAS CICAD Model Regulations for Brokers	35 OAS Member States	Art. 1 – 9
Andean Plan	Bolivia, Columbia, Ecuador, Peru and Venezuela	Guidelines for Action Section A, Para. 3 & 4(f); Co-ordinated Agenda for Action, Para. 3.1.2, 3.1.3, 3.2, & 5.6
SICA Code of Conduct	7 Central American States	Art. I, II (2, 3, 5 – 7, 10 & 17)
Nadi Framework	16 Pacific Islands Forum Member States	Para. 2, 3, 4(b), & 6
PIF Weapons Control Bill	16 Pacific Islands Forum Member States	Art. 2.3; 7.1 – 7.7
EU Code of Conduct	27 EU Member States	Criteria 1 – 8; Operative Provision 1
EU Code of Conduct User's Guide	27 EU Member States	Chapters 1 – 3
EU Common Position on Brokering	27 EU Member States	Art. 1(2), 2, 3, 4 & 6
EU Joint Action on SALW	27 EU Member States	Art. 3(b)
EU SALW Strategy	27 EU Member States	Para. 20(a)
SEESAC Regional Micro-Disarmament Standard and Guidelines (RMDS/G)	South Eastern Europe	RMDS 03.20 (SALW Control and Transfers Legislation); Sections 6.1, 6.2, 6.3, 7 – 9. RMDS 03.30 (Transfer Documentation for SALW) 5.1.1, & 5.1.2.

4.4 Legislative measures

This section sets out a comprehensive range of measures that may be enacted within national legislation to control the international transfer of SALW. The rationale for why specific types of control over different types of transfer of SALW may be established by States is outlined and then detailed provisions of these specific areas of control, drawn from international and regional instruments and existing national practice are then set out. Thus the measures detailed below provide suggestions for elements to be enacted in national legislation. It is for practitioners to decide, taking cognisance of any regional or international instruments which they may be aligned to or bound by, the specific objectives of their legislative review and available material and human capacity, whether to translate these measures in full or in part into national legislation.

It should be noted that relevant national laws, regulations and administrative procedures to address the different aspects of international transfers and transactions, where they do exist, usually cover SALW as part of the regulation of all conventional weapons and munitions. Thus, the comments below regarding SALW can in most instances apply equally to international transfers and transactions in all conventional arms.

Key principles of legal controls on international transfers of SALW:

Principle 1: Licensing or registering individuals / entities involved in the international transfer of SALW

Licensing of valid operators, or providing a registration system for, individuals / entities involved in the international transfer of SALW enables the state to monitor and restrict those people who carry out transactions that contribute to the international transfer of SALW, ammunition, components, related technology and know-how, including the brokering, transport, financing and other related activities[107] of their nationals and permanent residents who operate on foreign territory.

A) Licensing of operators or registration criteria

Establishing a set of detailed criteria to enable the state to determine which individuals or entities are suitable for and justified to operate in transferring SALW internationally and in transactions for this purpose.

B) Renewal of operating licences or re-registration

Establishing a limit on the validity of an operating licence or period of registration to transfer SALW internationally and allowing for periodic renewal, enables the state to ensure that: any changes in the circumstances of individuals or entities licensed or registered to transfer SALW internationally are considered in relation to their suitability to engage in the international transfer of SALW; that the suitability of individuals to transfer SALW internationally is periodically reviewed.

107 See United Nations, 'Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, Document A/62/163, 30', August 2007, Paragraph 10.

C) Revocation of operating licences / striking from register

Establishing conditions under which licences or registration to operate in the transfer of SALW internationally may be revoked, or whereby an individual can be struck off a register, enables the state to respond to changes in circumstance relating to the national interest; and removes the individual or company's ability to continue to transfer SALW internationally.

Content of legislation

Any individual or company wishing to operate as an importer, exporter, broker, transporter or to provide transit[108] and transhipment[109] services for international transfers of SALW may be required to register with the State or obtain a permit or operating licence.

The registration authorisation, permit or operating licence, may be issued by a single competent authority, as stipulated by the law. This may be carried out by a Central Firearms Bureau, Chief Licensing Officer or other institution which has a designated responsibility for the issuing of such authorisations and maintaining a registry of legitimate operators.

A) Registration criteria for operators

To obtain a permit or operating licence, or to register as a legitimate operator to import, export, broker, transport, finance, transit or tranship SALW internationally, individuals or entities can be required to first demonstrate that they are suitable and competent persons.

Legislation may establish the criteria against which to assess the suitability and competence of those applying for an operating licence, or to be registered. Applicants may be required to meet a set of criteria and fulfil a set of requirements. Such a process may assess the suitability and competence of an applicant and may include the procedures to be followed in submitting an application. This process may be split formally into two-stages or may form one continuous process.

Applicants may be required to comply with the following criteria:

- Age limit – applicants should be above an established minimum age;
- Criminal record – applicants should not have been convicted of certain serious offences involving violence, arms misuse (including domestic violence), illicit trafficking, fraud or corruption or that in any other way makes them unsuitable to operate as an importer, exporter, broker, or to transit or tranship SALW;
- Sound mind and body – applicants should demonstrate that they do not have any mental or physical condition that makes them unsuitable to operate as an importer, exporter, broker, or to transit or tranship SALW. This may involve a verified medical and/or psychological assessment.

108 Hungary appears to apply extensive controls to the transit of arms, applying the Criteria of the EU Code of Conduct on Arms Exports to all licence applications, including transit licences. See 'Hungary Government Decree No. 16/2004(No.6) on the licensing of the export, import, transfer and transit of military equipment and technical assistance', Available at: http://www.sipri.org/contents/expcon/decree16-2004.html

109 In Hong Kong transhipments of restricted items are subject to the same controls as imports and exports, and as such require import and export licences. See, 'Hong Kong CAP 60 Import and Export Ordinance', Available at: http://www.stc.tid.gov.hk/english/circular_pub/2002_stc4.html

- Not alcohol or drug dependent – applicant has no proven record of drug or alcohol misuse;
- Certificate of good conduct – applicant should acquire a certificate of good conduct from the designated authority (this may be a Police Officer). To obtain a certificate of good conduct a background check may be undertaken involving interviews with those who know the applicant; and
- Corporate eligibility – applicant(s) should demonstrate that they have not been declared ineligible to operate commercially. Information on corporate lineage may be requested.

Applicants may be required to fulfil the following requirements:

- Competency test – complete a competency test to demonstrate detailed knowledge of the relevant legislation and regulations relating to the international transfer of SALW, and health and safety regulations;
- Premises – comply with regulations that detail the specifications of premises used for the import, export, brokering, transit and transhipment of SALW. This may include – as appropriate to the activity – having correct equipment, secure room, suitable locking and access controls, restrictions on who can access the building, suitable testing grounds and measuring apparatus, fulfilling minimum safety and security provisions and being situated in an appropriate location;
- Vehicles – comply with regulations that detail the specifications of vehicles to be used for the transport of SALW. These may include having radio contact, secure locks and sealed containers. Provisions may also be made for the guarding and/or escorting of vehicles;
- Financial status – demonstrate that sufficient financial resources are available to sustain the business;
- Submit an application in the prescribed form to the designated licensing authority. The operating licence/permit or registration application could require the following information relating to the applicant to be submitted and subsequently recorded:
  - Name of individual / entity
  - Physical address and proof of address
  - Recent photograph
  - Copy of identity document
  - Competency certificate

Certificate of good conduct

- Certificates of mental and physical well-being;
- Fees for application;
- Company's founding documents or other proof of licensing of business;

- Company's accounts, bank and board of directors or partners;
- Copies of finger prints; and
- Character references, given under oath and anonymity, by two respectable persons who have known the applicant for no less than three years.

The following information could be required on operating licences or permits to operate as an importer, exporter, broker, or to transit or tranship:

- Name and photograph of licence holder;
- Date of issue of licence;
- Expiry date of licence;
- Physical address of business premises;
- Licensed activity, including any restrictions on the types or quantities of SALW that may be transferred by that individual or company;
- Name of the licensing authority;
- Conditions of the licence – i.e. restrictions on the type or quantity of SALW that maybe imported / exported / brokered or transported by the individual or company.

An application to operate as importer, exporter, or broker, or to transit or tranship, could be refused on the following grounds:[110]

- The applicant has failed to meet the licensing criteria or principles and the licensing requirements;
- Information submitted in support of the application is false, inaccurate or incomplete;
- The intended activity is deemed to be contrary to public or national security; or
- The applicant has been refused a licence or barred from registering as such an operator in another State.

B) Renewal of operating licences / re-registration

Operating licences or registration should be valid for a specified period of time, after which they may be required to be renewed.

C) Revocation of operating licences / striking from register

Failure to comply with the restrictions and conditions applied to operating licences or a registration system may result in the revocation of a licence to transfer SALW, or to be struck from the register of legitimate operators. The State may reserve the right to revoke an operating licence or to bar or strike off an individual or entity from the register, as deemed appropriate by the designated state authority.

An appeals process may be established to enable those whose licences have been revoked, or who have been struck or barred from a register, to contest the decision.

110 Refusal criteria taken directly from OSCE, 'Best Practice Guide on National Controls over Manufacturing of Small Arms and Light Weapons', in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003, page 6.

Box 17: *National example:* United States' brokering registration system[111]

In the USA, as part of the comprehensive legislation on arms brokering, the requirements for and effects of registration are far-reaching. Any person or entity wishing to engage in providing defence services, including manufacturing, exporting or brokering of weapons (including SALW) is required to register with the Department of State and pay a registration fee. As part of the registration process, applicants are required to demonstrate that none of the named individuals have been indicted or convicted of a federal crime, been admitted to psychiatric hospital, or declared ineligible to be directors, partners or owners of a company. Information on corporate lineage (where relevant) and the nature of the activities to be undertaken is also required. Registration, which is valid for a maximum of two years, does not automatically confer the right to conduct specific arms brokering activities, but is a prerequisite for any application for a licence to undertake specific brokering activities. The requirements of registration demand that those registering submit an annual report listing all activities for the previous twelve months to the Office of Defense Trade Controls. The Department of State conducts a detailed review of each registration application, while any material changes to the initial registration must be reported to the Department of State. If a broker is indicted or convicted of violating the Arms Export Control Act the broker would become ineligible to engage with or benefit from any regulated activity and a debarment would be published in the Federal Register.

The US registration system is extra-territorial in scope. It applies to US and non-US citizens within the USA, and US passport holder's resident elsewhere. Information regarding companies on the register is shared with the appropriate agencies (federal, state, local and foreign), as necessary. There have been several successful prosecutions and convictions for illicit arms brokering. Where a conviction is made, arms brokers are blacklisted and information on the convicted individual, the nature of their crime and their punishment is publicly available on the web.

111 Saferworld, Interview with Mr David Trimble, Director of Defense Trade Controls Compliance, US State Department (8 May 2007).

Principle 2: Licensing of international transactions and transfers of particular consignments

Case-by-case licensing of consignments of individual international transfers and transactions of SALW is an emerging norm among states. For example, the licensing of brokering transactions of SALW and of foreign SALW production agreements, enables the state to control the type and amount of SALW, ammunition, components, related technology and know-how transferred into, out of or across national territory and also to control the destinations from which goods are received and the destinations to which they are exported, transported, transited or brokered. This is separate to, and in addition of, the requirement to licence or register individual operators or entities who may be involved in an international transfer of SALW, as discussed under Principle 1.

A) Licensing requirements

Establishing the key licensing application conditions, including the minimum level of information and documentation which should be provided for each proposed transfer, to enable the designated authority to effectively assess licence applications.

B) Criteria for the issuing of transfer licence

Establishing criteria or principles consistent with international law, standards and government policies against which licensing decisions can be made provides the state with an objective and fair means to determine which SALW should be transferred. The authorities can thus more easily take into account the nature, route, destination and likely impact of the international transfer, and the circumstances in which transfers may be abused, thereby deeming whether the transfer is appropriate or inappropriate.

C) Validity

Establishing a time-period during which a licence is valid enables the state to reduce the risk of circumstances materially changing and consequently altering the desirability, legitimacy or impact of an international SALW transfer.

D) Revocation of licences

Establishing conditions under which a licence for an international transfer of SALW may be revoked enables the state to elaborate those circumstances under which a change in a particular external situation may give cause for the revocation of authority to transfer a particular shipment of SALW. Establishing an appeals process provides a mechanism to ensure the just application of powers to revoke licences.

E) End-user certification

Ensuring that end-user certification is obtained and appended to the licence application, enables the state to ensure that the other parties (including States parties) involved in the international transfer of SALW have also licensed the transfer and to make a judgement as

to whether the potential recipient is operating in accordance with international law and standards.

F) Products list

Establishing a defined list of all SALW, ammunition, components, related technology and know-how to show which items are prohibited from transfer and which items are subject to transfer regulations enables the State to maintain stringent control over SALW legally transferred into or out of the country.

G) Simplified procedures and exemptions

States may wish to include provisions within legislation which provide for simplified procedures to be followed in some instances relating to the international transfer of SALW, such as the temporary import by people entering the country for holiday or sporting purposes, or the transfer of arms to peacekeeping forces.

Content of legislation

In addition to the licensing or registration of individuals to operate as importers, exporters, or brokers, or to provide transit or transhipment services, of SALW, a requirement can also be established to licence international transfers of SALW, ammunition, components, technology or know-how in each case.

Licences to transfer SALW internationally may be issued by a single competent authority, as stipulated by the law. This may be a Central Firearms Bureau, Chief Licensing Officer or other institution or government ministry which has such a designated responsibility. A requirement may be established that such licence applications be considered by all relevant authorities across Government, such as the foreign, defence, trade and development ministries as well as customs and other enforcement agencies. Licence applications should be assessed on a case-by-case basis against a set of criteria or principles.

A) Licensing requirements

Applicants for licences to transfer SALW internationally could be required to fulfil the following requirements:

- Each applicant for a licence to transfer SALW internationally should be in possession of a valid operating licence or be registered to operate as an importer, exporter, broker or to transit or tranship SALW internationally;
- Supply a declaration giving the specific details of the items of SALW to be transported across the country's border, identifying the type, quantity, value and any other relevant information;
- Supply details of the transfer, including the full details of the route to be taken by the SALW, destination, end use(r), transit countries, ports of entry and exit and any other relevant information; and

- Obtain a certified end-user certificate (see below) stipulating the end use and destination of the SALW;
- Provide the following documentation, as applicable:
  - Consignment note
  - Copy of export licence
  - Copy of import licence
  - Copy of transit or transhipment licence
  - Copy of end-user certificate or international import certificate
  - Banking and insurance details for the transaction

The following information could be required in writing on the licence to transfer SALW internationally:

- Name and physical address of the applicant and all other parties involved in the transaction and details of their operating licence or registration to operate as an importer, exporter, broker or to transit or tranship;
- Physical address of the individual or registered company address;
- Place and date of issuance of licence;
- Expiry date of licence;
- Serial number of licence;
- Description of the SALW items to be transferred under licence, including:
  - Serial numbers
  - Other unique markings
  - Description of make, calibre and mechanism
  - Name of manufacturer
  - Country of origin
  - Quantity of goods
  - Value of goods
- Conditions of issue of the licence i.e. whether it is an individual or an open or general type of licence;
- Country of import, and country of export;
- Name and physical address of end-user;
- Details of the transport route, including countries of transit, transhipment and ports of entry or exit (where applicable);

- A clause on the licence to transfer SALW, which may:[112]
  - Prohibit any diversion, export or re-export of the goods; or
  - Prohibit diversion, export or re-export of the goods without previous approval from the original exporting country;
  - Include assurances that diversion, export or re-export take place only after an authorisation given by the export licensing authorities of the original exporting country; and
  - Provide the original exporting state with the ability to physically carry out on-sight inspections and verifications to monitor end-use.

Licensing or registration controls over brokers, transporters and financiers of international transfers of SALW could be extra-territorial – i.e. apply to persons whose nationality or permanent residence is that of the country to whom the legislation applies, but who are operating overseas, as well as applying to all persons operating on national territory, regardless of whether the SALW in the transaction are at any point physically present or owned within national territory.

Box 18: *National example:* South Africa – application and scope

South African legislation provides for the broad application of controls on brokers and brokering activities. Under the National Conventional Arms Control Act (NCACA), 2002,[113] all citizens and permanent residents, as well as persons legally incorporated or registered to conduct business in South Africa, must comply with the provisions of the Act. The provisions of the Act are applicable regardless of whether the activities take place within South Africa or on foreign soil. Furthermore, foreign citizens may also be tried under the act if they conduct activities in breach of the provisions of the Act on South African soil. The NCACA establishes one of the most comprehensive range of controls on brokering issues, including the following definition of "brokering services":

- Acting as an agent in negotiating or arranging a contract, purchase, sale or transfer of conventional arms for a commission, advantage or cause, whether financially or otherwise;
- Acting as an agent in negotiating or arranging a contract for the provision of services for a commission, advantage or cause, whether financially or otherwise;
- Facilitating the transfer of documentation, payment, transportation or freight forwarding, or any combination of the aforementioned, in respect of any transaction relating to buying, selling or transfer of conventional arms; and
- Acting as an intermediary between any manufacturers or supplied of conventional arms, or provider of services, and buyer or recipient thereof. [114]

112 Clause on re-export drawn directly from: OSCE, 'Best Practice Guide on Export Control of Small Arms and Light Weapons', page 10, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

113 South Africa, 'National Conventional Arms Control Act, 2002, Act no. 41, 2002 (Government Gazette, Vol. 452, No. 24575, 20 February 2003)' Available at: http://www.info.gov.za/gazette/acts/2002/a41-02.pdf

114 South Africa, 'National Conventional Arms Control Act, 2002, Act no. 41, 2002 (Government Gazette, Vol. 452, No. 24575, 20 February 2003)', Art. 1 (i). Available at: http://www.info.gov.za/gazette/acts/2002/a41-02.pdf

B) Criteria or Principles for the issuing of transfer licences[115]

Decisions to authorise the issuance of licences to transfer SALW internationally may be taken on the basis of a set of criteria, principles or guidance[116] stipulated in national legislation.

A condition may be established in legislation that these criteria, principles or guidelines are applied equally on a case-by-case basis for all SALW to be transferred internationally, regardless of whether:

- the SALW have been manufactured domestically, by any company, state-owned or otherwise, whether under a licensed production agreement or otherwise;
- the SALW are being re-exported;
- the SALW are undergoing transit or trans-shipment;
- the SALW have been identified as 'surplus arms';
- the SALW are gifted, part of a military aid package, or other government-to-government deal;
- the transfer has been arranged through a broker;
- the transfer involves components to be incorporated into a SALW system.

The criteria may be elaborated as follows in national law to be consistent with existing principles of relevant international law:

International transfers should not be authorised which would violate direct obligations under international law, including obligations under the Charter of the United Nations including:

- decisions of the Security Council such as those imposing arms embargoes;
- the prohibition on the use or threat of force required by the UN Charter;
- the prohibition on intervention in the internal affairs of another State;
- any other treaty or legal obligations to which a State is bound, including binding decisions, including arms embargoes, adopted by relevant international, regional and sub-regional bodies;
- prohibitions on arms transfers that arise in particular treaties which the State is party to, such as: 1980 Convention on the Use of Certain Conventional Weapons Which May Be Considered Excessively Injurious, including its protocols[117]; and
- universally accepted principles of international humanitarian law, such as: Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering; and Prohibition of weapons that are incapable of distinguishing between combatants and civilians.

115 Criteria drawn directly from: RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol', RECSA, Nairobi, 2005, Guideline 2.3.3.

116 In the UK the criteria are formulated as 'guidance' that should be considered in assessing export licence applications. See, UK, 'Export Control Act 2002', Available at: http://www.opsi.gov.uk/acts/acts2002/20080028

117 The CCW currently has 5 protocols, covering I non-detectable fragments, II mines, booby traps and other devices, III incendiary weapons, IV blinding laser weapons, and V explosive remnants of war, with a strong emphasis on the protection of civilians from these weapons. The CCW is a 'live instrument' and further protocols may be added over time.

Box 19: *National examples:* EU Member States – Criteria for export licensing

The member states of the European Union have committed to adhere to the EU Code of Conduct on Arms Export. This sets out a series of criteria against which to adjudge applications for licences to export arms. Since the agreement of the Code of Conduct in 1998, a number of states have translated the Code's criteria into their national legislation.

- Austria – Trade Act 2005 – The act, under Article 4, contains criteria that should be considered when evaluating export licence applications, covering issues relating to: international non-proliferation and arms controls commitments, including arms embargoes; the respect for human rights demonstrated by the recipient country; the internal situation of the recipient state and risk of exports exacerbating conflict; national security considerations; the attitude of the recipient state to terrorism and international law relating to conflict. [Austria Trade Act 2005 attached]
- Sweden – Criteria for the export of arms are expressed in the form of guidelines[118] contained within Government Bill 1991/92:174 the Military Equipment Act, the committee report of the Standing Committee on Foreign Policy 1992/93:UU1, and the parliamentary communication 1992/93:61. These guidelines state that the following issues should be considered when evaluating and export licence application: track record relating to the re-export of arms; human rights situation of the recipient country; potential for export to violate international agreements to which Sweden is party; whether the recipient state is involved in armed conflict, internal armed disturbances or complex international conflicts.
- Germany – has adopted a series of Political Principles Governing the Export of War Weapons and Other Military Equipment. Agreed by the Federal Government in January 2000 these Political Principles "provide the licensing agencies with guidelines for the scope of and limits to the discretion open to them" [reference – National Report on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects – Federal Republic of Germany – attached] and support the Act Implementing Article 26(2) of the Basic Law (War Weapons Control Act), (iii) the Foreign Trade and Payments Act in conjunction with the Foreign Trade and Payments Ordinance. The political principles include consideration of the following issues, among others, when deciding on the issuance of an export licence: respect for human rights and end-use in the recipient country; risk that weapons will be used for internal repression or systematic human rights abuses; Germany's foreign policy interests; whether armed conflict is taking place or imminent in the recipient country, and the risk of exports fuelling, exacerbating or perpetuating armed conflict; the impact on sustainable development in the recipient country; considerations relating to terrorism, international obligations (including in relation to humanitarian law and non-proliferation); and specification of end-use.

118 Available at: http://www.isp.se/sa/node.asp?node=548

Other criteria that may be used to determine SALW authorisation including whether they will be used, or are likely to be used:

- for the violation or suppression of human and peoples' rights and freedoms, or for the purpose of oppression;
- for or to facilitate the commission of serious violations of international humanitarian law applicable in international or non-international armed conflict;
- for, or to facilitate, acts of aggression against another state or population, threatening the national security or territorial integrity of another state;
- to worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts or aggravating existing tensions;
- to carry out terrorist acts or attacks;
- other than for the legitimate defence and security needs of the recipient country;
- for, or to, facilitate the commission of violent crimes;
- for, or to, facilitate the commission of genocide or crimes against humanity;
- in acts of aggression against another State or population, or to threaten the national security or territorial integrity of another State;
- to adversely affect regional security; to endanger peace, introduce destabilizing accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability;
- to adversely affect sustainable development through the excessive or unjustifiable diversion of resources from social expenditure to military expenditure; and
- to contravene other international, regional or sub-regional commitments or decisions made, or agreements on non proliferation, arms control and disarmament.

Box 20: *Key instrument:* Criteria on regulating brokering controls

The OAS/CICAD Model Regulations on Brokering[119] sets out criteria for Member States to consider when licensing arms brokering activities. This includes refusing to grant a licence if the brokering activities will, or may seriously threaten to result in, acts of genocide or crimes against humanity; violate human rights; lead to the perpetuation of war crimes contrary to international law; violate UN Security Councils embargoes; support acts of terrorism; result in a diversion of arms to illegal activities, such as organized crime; or breach a bilateral or multilateral arms control or non-proliferation agreement.[120]

119 OAS, 'Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for the Control of the Movement of Firearms, Their Parts, Components and Ammunition', 1997.
120 Ibid. Art. 5

In addition, a requirement could be established when assessing licence applications, the recipient's:

- Record of compliance with end-use undertakings and diversion;
- Stockpile management and security procedures;
- Ability and willingness to protect against unauthorized transfers, loss, theft and diversion;
- Record of compliance with commitments and transparency in the field of non-proliferation, arms control and disarmament; and
- Likely involvement in corrupt practices at any stage, with the supplier, brokers, other intermediaries or the recipient.

C) Validity of licence

A time limit should be placed on the validity of the licence – i.e. stipulating that the licence is only valid if the transfer to which it relates occurs within one year of the licence being issued.

D) Revocation of licences[121]

A licence for the international transfer of SALW, ammunition, components, related technology and know-how could be revoked, suspended or withdrawn if:

- False information has been supplied in order to obtain the licence;
- The details contained in the licence have changed;
- The conditions of the licence or registration to operate as an importer, exporter, broker, or to transit or tranship SALW are not fully complied with;
- An arms embargo has entered into force which affects the conditions of the licence;
- The situation in the recipient country has changed significantly;
- If one of the parties included in the transaction has been charged with an offence which impacts on their suitability to conduct such a transaction;
- If one of the parties has been declared bankrupt or insolvent;
- If there becomes an increased risk of divergence from the stated end-user; or
- If the stated end-use(r) changes.

121 Revocation criteria drawn directly from: OSCE, 'Best Practice Guide on Export Control of Small Arms and Light Weapons', Part IV, Section 4, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.; and RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol', RECSA, Nairobi, 2005, 2.1 (d)

Box 21: *Key instruments:* Regional approaches to arms export controls – Codes of Conduct on arms transfers (EU and SICA)

To strengthen controls on arms exports and ensure that international arms transfers do not have a negative impact, the European Union (EU) and Central American Integration System (SICA) have adopted politically binding codes of conduct. These codes of conduct establish criteria against which to assess arms export decisions. In the EU, the Code of Conduct has had a major influence on the development of national laws, policy and regulations across Europe.

The **European Union (EU) Code of Conduct on Arms Exports**, agreed in 1998, seeks to create "high common standards" for all EU members to use when making arms export decisions and to increase transparency among EU States on all conventional arms exports. EU States pledge not to approve arms exports (including of SALW) in certain instances, with the Code establishing eight criteria against which to assess export applications. The criteria cover instances including where the export would violate the exporting State's commitments under the UN Charter or specific arms control agreements. Export licences should also be denied where there is a clear risk that the weapons will be used for internal repression, to provoke or prolong armed conflict or used aggressively against another country, amongst other criteria. The EU Code of Conduct also incorporates a set of detailed **"Operative Provisions"** which facilitate the implementation of the Code and encourage a level of consistency in the interpretation of the Code's criteria. Two of the most significant elements of the Operative Provisions are the denial notification mechanism, whereby any Member State denying a licence must notify all EU Member States of this decision, and the consultation mechanism which is invoked when another Member State wishes to consider approving a transaction which is "essentially identical" to one already the subject of an export licence denial. To increase transparency, the EU Code's Operative Provisions also provide for the compilation of an Annual Report on Member States arms exports.

In December 2005, the States belonging to the **Central American Integration System (SICA)** concluded an agreement on the regulation of international arms transfers with the adoption of the **Code of Conduct on the Transfer of Arms, Ammunition, Explosives and Other Related Materiel**. Similar to the EU Code, state parties to the SICA Code of Conduct agree that transfers of conventional, non-conventional, small and light weapons, ammunition, explosives and other related material shall not be carried out in certain circumstances. The SICA Code calls for exports not to be made to States which act in contravention of a range of international legal obligations and norms. These obligations include, *inter alia*: committing or sponsoring crimes against humanity; preventing free and fair elections; restricting freedom of expression, assembly and association; non-compliance with arms embargoes; contributing the displacement of persons or refugees; and promoting nationalist, racial or religious hatred.

E) End-user certification

Legislation could also provide for and require a standardised system of end-user certification.

Legislation and regulations could ensure that:[122]

- End-user certificates are a prerequisite for the approval of all transfer licences;
- A standardised format for end-user certificates is developed, containing security features to prevent abuse or fraud;
- Processes and procedures are in put in place to enable officials to verify the authenticity of the end-user certificates; and
- Processes and procedures are in place to implement sanctions in the event of abuse or fraud of end-user certificates.

End-user certificates could include the following information:[123]

- Date of issue of the end-user certificate;
- A detailed description of the SALW, including type and characteristics;
- Quantity of the SALW to be transferred;
- Value of the SALW to be transferred;
- Names and physical addresses of all parties involved in the transaction (including end-user);
- A description or indication of the end-use of the SALW;
- The location where the SALW will be used;
- Assurances that the SALW will only be used by the end-user and for the stated end-use; and
- The procedures to be followed in the event of re-export including:
  - A prohibition on transfer, diversion, export, re-export of the SALW without previous approval from the original exporting country;
  - Notification to the original exporting state before the re-export or re-transfer of the SALW.

122 Drawn directly from RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol', 2.1 (e).

123 Drawn directly from: OSCE, 'Best Practice Guide on Export Control of Small Arms and Light Weapons', page 9, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

Box 22: *National example:* Sweden – End-use certification[124]

In Sweden a different type of end-user certificate (EUC) is used depending on the nature of the transaction. The Swedish government itself produces an EUC on bank-note-quality paper with an individual reference number and this is sent to the end-user for signature and the provision of an official seal. Once the EUC is complete the end-user transmits it to the Swedish embassy in the country where the end-user is located. The embassy must verify that the request and the signature are legitimate before the transfer is authorised.

The Swedish export authorities may also require the inclusion of a clause on EUCs under which the recipient commits to making facilities available to on-site inspections by Swedish authorities to allow for verification of compliance with restrictions that were imposed.[125] In addition, in certain circumstances, for example when transferring particularly sensitive types of equipment, such as Man-Portable Air Defense Systems (MANPADS), Sweden reserves the right to request that the recipient must commit to providing a delivery verification certificate as proof that shipment has reached its authorised destination and end-user.

F) Products control list

National legislation should contain a detailed listing of all prohibited, restricted or controlled SALW, and related ammunition, components, and technology. This controlled list may specify which products are prohibited or restricted from being transferred and include other conditions and restrictions that relate to specific types of SALW. Most states include items of SALW in a more comprehensive control list covering all conventional arms.

G) Simplified procedures for authorising the international transfer of SALW

Provision can be made within national legislation for simplified procedures which can be followed for the international transfer of SALW in carefully defined and stipulated cases. Exceptions could include the international transfer of SALW for sporting or hunting purposes, peacekeeping forces and national forces overseas.

124 See Greene, O. and E. Kirkham, Small arms and light weapons transfer controls to prevent diversion: developing and implementing key programme of action commitments, Biting the Bullet, UK, August 2007 –Available at: http://www.saferworld.org.uk/publications.php?id=275 and UN Office of Disarmament Affairs, 'States that have submitted reports to the Department of Disarmament Affairs in 2005: Sweden', UN Office of Disarmament Affairs, 2005.

125 See UN Office of Disarmament Affairs: small arms and light weapons, 'States that have submitted reports to the Department of Disarmament Affairs in 2005: Sweden', Available at: http://disarmament.un.org/cab/nationalreports/2005/Swedish%20National%20report%20PoA%202005.pdf

Principle 3: Duty of the state to maintain records

A) Records on business of authorised persons and activities

The maintenance of records on the international transfer of SALW enables the state to monitor and trace SALW in circulation and which are transferred into, across and out of the country (as well as those brokered by their nationals and permanent residents operating out of the country). An effective law would therefore require designated state authorities to maintain records of all licensed entities and individuals and of transactions relating to the international transfer of SALW / ammunition / components / related technology and know-how.

B) Marking

Ensuring that all SALW to be transferred have the appropriate markings enables the identification of individual SALW and attribution of ownership, thus providing a means to check the legitimacy of consignments and to trace SALW that are diverted or used in unlawful activities.

Content of legislation

A) Records on business and authorised persons / entities

A requirement could be established for records to be maintained in one central register / database, which is managed by the Central Firearms Bureau, Chief Licensing Officer or other official body which has a designated responsibility for the issuing of SALW transfer operating licences.

A requirement could be established that records be maintained on all international transfers (including import, export, transit, re-export and brokering), on the issuing of operating and transfer licences and all of the information contained in the application procedure, as well as on the date that the actual transfers take place. A further requirement may be established for records to been maintained on all transfer licence applications which are refused, including documenting the reason for refusal.

Records may be maintained in a uniform manner for a designated minimum period i.e. not less than 20 years (See Chapter 6 on Marking and Record Keeping).

B) Marking[126]

All imported weapons should be stamped at the time of import. Markings may identify the country of import and the year of import. An individual serial number should also be marked, if the SALW does not bear one at the time of import (See Chapter 6 on Marking and Record Keeping).

126 Drawn directly from OSCE, 'Best Practice Guide on Marking, Record-keeping and Traceability Part 3, Section 2 (a), in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003; and RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol', Section 1.3

Principle 4: Powers of enforcement

Carrying out regular inspections and compliance visits by an authorised body enables the State to ensure that all licence-holders comply with their obligations under the conditions and procedures of the licence.

Content of legislation

Legislation can make provision for regular inspections and visits by an authorised body to verify that individuals and entities holding operating and transfer licences are acting in compliance with national laws and regulations.

Inspections and spot checks maybe carried out either at the pre-licensing or post-shipment stage and, *inter alia*, verify the:

- operator's compliance with the law and regulations regarding international transfers of SALW by cross-checking an individual's or company's licensed activity in SALW with activities shown in letters of credit, receipts, waybills, cargo manifests, banking and insurance records.
- accurate and systematic maintenance of records, and the consistency of records with stocks held by individual and entities; and
- suitability of premises, stockpile security and safety standards of individual and entities.

Where contraventions of the law or regulations take place, or are suspected of taking place, the state can provide powers to carry out full formal investigations, suspend or revoke licences, seize stocks, stop shipments and institute criminal or civil proceedings depending on the severity of the contravention. Provision may also be established for the forfeiture of shipments to the state.

Principle 5: End-use monitoring and verification

Carrying out post-shipment monitoring and verification checks to ensure that international transfers of SALW are conducted in accordance with national legislation and regulations enables the State to check that SALW are not being diverted to destinations or uses other than those specified in the transfer licence and end-user certificate. Data collected can inform subsequent licensing assessments, thus helping to prevent future diversion and misuse.

Content of legislation

Legislation can make provision for carrying out post-shipment monitoring and verification procedures to ensure that international transfers of SALW are conducted in accordance with transfer control legislation and conditions set-out in transfer licences.

Legislation could establish a special body, or convey authority on an existing body, such as an overseas mission or a defence attaché, to conduct inspections. Inspections may examine and verify, *inter alia,* that the transferred SALW are not being diverted to destinations or for uses other than those specified in the transfer licence and end-user certificate.

Box 23: *National example:* United States Blue Lantern Programme – End-use verification,

The United States' Blue Lantern Programme[127] is managed within the Directorate of Defence Trade Controls by the Office of Defence Trade Controls Compliance's (DTCC) Research and Analysis Division (RAD). According to the US State Department, the Blue Lantern **end-use monitoring** project entails both pre-licence and post-shipment checks. Before an export licence is granted information provided on end user certificates is checked by US Government officials, often using open source information such as telephone directories and the internet. US personnel (either from the embassy in a recipient country or personnel from the DDTC) may also be required to conduct end-use checks overseas to verify the *bona fides* of unfamiliar foreign companies. In post-export situations, US Government officials may also be required to ensure delivery of licensed United States Munitions List commodities to proper end-users and confirm proper end-use, as well as to determine compliance with DDTC licensed agreements.

The US Government believes that the Blue Lantern programme has strengthened the effectiveness of US export controls and has proven to be a useful instrument in: 1) deterring diversions to unauthorised end-users; 2) aiding the disruption of illicit supply networks and international criminal organizations; and 3) informing subsequent licensing assessments, thereby helping to prevent future diversion and misuse.

127 US Department of State: Directorate of Defence Trade Controls, 'End-Use monitoring of defense articles and defence services commercial exports FY 2006', Available at: http://www.pmddtc.state.gov/docs/End_Use_FY2006.pdf

Principle 6: Transparency and accountability

Adhering to the principle of transparency and accountability with regard to the licensing of all international transfers of SALW enables the state to demonstrate, and the public to scrutinize, its adherence to national and international law, standards and best practices. Regular reporting on international transfers of SALW to a democratically accountable body and to other States also helps to dissuade those other States from licensing international transfers which have been refused by the state in question (thus preventing the risk of being under-cut) provided those other States adhere to the same standards of control and transparency.

Content of legislation

Legislation and regulations governing the export licensing process can include provisions that enable scrutiny of international SALW transfer policy and practice to take place. The OSCE Handbook of Best Practices calls for states to "aim for maximum transparency".[128] Transparency does not mean that a state should compromise legitimate commercial confidentiality of particular individuals or companies. In this regard, generic information on transfer licences (including those that are refused) could be made publicly available, for instance in the form of a published annual, or more frequent, report which provides:

- generic data on the number, value of licences issued and actual exports, end-use(r), country of destination and type and quantity of SALW equipment for all authorised transfers, including gifted and government-to-government transfers; and
- generic data on licence refusals, including the number, value of proposed goods, country of destination, reason for denial, end-use(r) and type and quantity of equipment.

Procedures could be established for the formal scrutiny of international transfer licensing decisions, for instance, through the establishment of a parliamentary committee to examine government practice on international transfer controls against the State's legal and other commitments.

128 OSCE, 'Best Practice Guide on Export Control of Small Arms and Light Weapons', page 6, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

Box 24: *National example:* United Kingdom – Transparency and accountability

The UK Government publishes annual and quarterly reports on exports of all military (including SALW) and dual-use goods. The information on UK arms exports provided in these reports has undergone many improvements over the last ten years in the access to and quality of data. The annual report provides an overview of domestic and international export control policy; as well as information regarding exporting licensing decisions and generic statistics on exports of military equipment during the reporting year.

The quarterly reports provide detailed generic information on export licence decisions organized by country of destination. This includes information on the type and value of goods transferred, including identifying those transferred for incorporation weapons systems; advice as to whether a transfer was temporary or permanent; information on denied licences, including the clause invoked as grounds for denying the licence; information on brokering licences approved and denied; and select information of the specific end-use(r) may be identified for NATO, the UN, international forces or for a humanitarian use. This statistical information is subsequently annexed to the annual report.

The UK Government also has a system of parliamentary oversight that allows for retrospective scrutiny[129] of arms export practice. Parliamentarians routinely use parliamentary questions to hold Government accountable to both the Government's decisions regarding individual exports as well as their export policy. In addition, the Committee on Arms Export Controls (made up of Members of Parliament from the International Development, Foreign Affairs, Trade and Industry and Defence select committees) annually question the Government, including the Foreign Secretary, confidentially and publicly on licensing decisions and developments in arms export policy that have occurred over the course of the year. Civil society representatives and members of the defence industry are also routinely requested to submit oral and written evidence to the Committee. The evidence provided by these various sources are an important means of finding out the latest thinking and arguments in the UK on arms export issues and allowing members of the public to provide input to the Committee.

129 A number of other states also allow for retrospective scrutiny to take place, however, Sweden is one of the very few countries in which parliamentary scrutiny of arms export decisions takes place prior to the granting of licences. For more information, see 'Strategic Export Controls in 2006 – Military Equipment and Dual-Use Products', Government Communication 2006/07:114, 15 March 2007, Available at: http://www.isp.se/documents/public/se/pdf/skr0607eng.pdf

Principle 7: Offences and sanctions

Establishing criminal offences and sanctions enables the state to punish and discourage breaches of the law.

Content of legislation

The state could establish, *inter alia*, the following as offences:

- Illicit trafficking of SALW;
- Engaging in the international transfer of SALW without authorisation;
- Withholding information or misrepresentation in order to obtain licence; and
- Facilitating, organizing or aiding illicit trade

The state may also establish conditions applicable to non-compliance with:

- End-use(r) undertakings

A range of proportionate and dissuasive criminal sanctions should be made available in law to address offences, including administrative and civil sanctions for more minor misdemeanours and criminal penalties for more serious violations of the law.

States should use their discretionary powers under domestic legislation, as well as their international obligations, to ensure the criminal prosecution of those who do not comply with national laws and regulations governing the international transfer of SALW.

4.5 Enforcement and implementation

A wide range of issues need to be addressed to effectively implement and enforce a comprehensive national system to control international transfers of SALW. Obviously, those States with a large manufacturing and export industry will face administrative and enforcement challenges on a different scale from those faced by States without a domestic SALW industry. Nonetheless, for all States, regardless of the scale of SALW transfers, it will be important to consider a number issues relating to the implementation of new or expanded international SALW transfer controls. Perhaps the foremost of these challenges will be the administration of the transfer control system and the financial and personnel requirements for establishing, running and maintaining the system. For instance, one issue to consider is the number and location of verified points of entry and how and by whom information relating to international transfers of SALW is to be recorded. Limiting the number of designated points of entry may both reduce the administrative burden and enable a greater degree of control to be exercised.

The following considerations, drawn from the OSCE Best Practice Guide on Arms Export Controls, may also be relevant to the enforcement of legislation on international transfers of SALW:[130]

- *Inspection and compliance* – the regular inspection of premises and vetting of compliance with operating and transfer licences. (see Principle 4 above)
- *Customs supervision* – inspecting import and export licences to ensure their validity and to verify that the import and export licences correspond to the specifications (types and quantities) of the SALW being transferred under the licence.
- *End-use monitoring and verification* – checking on the end-uses of SALW transfers to another country and verification of the delivery of specified SALW items to a designated end-user in another country. End-use monitoring could involve on-site inspections and interviews by embassy personnel. Verification could involve the issuance of a certificate verified by the importing state of delivery and/or the importing state allowing inspection of delivery by the authorities of the exporting state. Given the potentially huge burden of undertaking inspections to verify delivery and subsequent use, it may not be possible or desirable for such inspections to be carried out on all international transfers of SALW. Instead a more targeted end-use monitoring system could be more suitable. Such a system could prioritise those transfers of SALW where a particular risk of diversion or misuse is identified, or where there are specific concerns that the SALW items in question are not being used according to the terms of the licence.
- *Investigation in the event of violations* – the capacity of the designated law enforcement authorities to investigate violations of the law and regulations concerning international transfers of SALW items. This can involve ensuring that relevant law enforcement officials are provided with the investigation skills, knowledge of trafficking techniques, material capacity and equipment to collect evidence and to communicate with authorities internationally. In this regard, the establishment of effective information mechanisms and co-operation procedures with counterparts from law enforcement agencies and licensing authorities in other countries is an important consideration. It is possible for police and customs to cooperate internationally through Interpol and the World Customs Organization.
- *Prosecution of violations* – effective enforcement procedures which secure successful prosecutions with stiffly imposed penalties sends a strong deterrent that the state is determined to act against offenders of the controls.
- *Outreach* – an extensive transfer control regime is likely to include a range of potentially detailed provisions and may include complex technical specifications. Developments in technology also mean that the challenges faced in enforcing effective international transfer controls are constantly shifting. Ensuring effective compliance with transfer control laws is not solely about provisions of enforcement. Informing those involved in SALW business and the arms industry of changes in legislation and of the regulations that they should comply with is

130 Considerations for the enforcement of transfer control legislation drawn from OSCE, 'Best Practice Guide on Export Control of Small Arms and Light Weapons', page 11, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

also important. Given the potentially significant commercial interests sometimes involved in transferring SALW internationally, it is also important to engage in dialogue with the defence industry companies to gauge their experiences of operating within the established legal parameters – and any challenges this may pose – and to identify weaknesses and loopholes in the existing control regime.

4.6 Checklist

Transfer Controls		
Licensing of individuals or entities	Licence to import / export / transport/ broker	Requirement to obtain a licence to operate as an importer / exporter / transporter / broker
		Description of licensing process and authority
		Scope of brokering controls – extra-territorial application
	Operating Licence criteria	Establishing personal suitability to operate as importer / exporter / transporter / broker • Age restrictions; • Criminal record; • Sound mind and body; • Alcohol/drug dependence; • Certificate of good conduct..
		Operating Licence requirements: • Competency testing; • Premises and safe storage conditions; • Vehicles – transportation conditions; • Financial status; • Submission of application form.
		Grounds for refusal
	Renewal of operating licence	Duration of operating licence and renewal procedure
	Revocation of operating licence	Establishing conditions under which operating licences may be revoked

Transfer and Transaction Licensing	Transfer Licence requirement	Establishing requirement to obtain a licence for individual international transfers or transactions and particular international consignments
		Description of transfer licensing process and authority
	Transfer Licensing requirements	• Possession of licence to operate as importer / exporter etc.; • Declaration with details of the SALW to be transferred; • Details of shipment; destination, transit points, ports of entry and exit etc.; • End-user certificate; • Copy of documentation.
		Details of information to be included on a transfer or transaction licence
	Transfer and Transaction Licensing criteria	Establish principle of equal application of criteria regardless of 'status' of SALW (surplus, domestically manufactured, re-export, transit or transhipment etc)
		Elaboration of detailed criteria or principles for making authorisations: • Prohibitions under existing international law; • Assessments of impact and intended use with respect to international law, including human rights and humanitarian law; • Assessment of recipient.
	Validity of transfer or transaction licence	Determining the period for which transfer and transaction licences should be valid.
	Revocation of transfer and transaction licences	Establishing conditions under which transfer and transaction licences may be revoked
	End-user certification	• Establishing requirement for end-user certificates for all international transfers of SALW; • Standardised format of certificates; • Establishing procedures to verify the authenticity and validity of end-user certificates.
	Products Control list	List of SALW products to be controlled or prohibited – definitions, prohibitions, specific restrictions
	Simplified procedures	Determining circumstances for simplified authorisation of international transfers or transactions

Record-keeping on SALW operators, transfers and transactions	Duty of state to maintain records	Central firearms bureau to maintain records, including on: • Details of all operators, transfers and transactions; • Licences issued – for operators, transfers and transactions; • Licence refusals – for operators, transfers and transactions; Establish minimum period for maintenance of records.
	Marking	Establish requirement to mark all SALW at time of import
Inspection of licence holders	Provisions for verification and monitoring	• Routine / standardised inspections; • Provision for extraordinary inspections; • Establishment of 'special body'.
Transparency of licensed transfers	Transparency and accountability	• Public availability of SALW transfer information – annual report; • Establish formal scrutiny mechanism / body.
Offences and violations of international SALW transfer control laws and regulations	Offences relating to violations of transfer controls requiring Criminal, Civil and Administrative Penalties	Defining in law specific actions that constitute a criminal offence: • Illicit trafficking of SALW; • Engaging in the transfer of SALW without authorisation; • Withholding information or misrepresentation in order to obtain licence; and • Facilitating, organizing or aiding illicit trade. Defining in regulations specific actions that constitute a civil or administrative offence: • Late submission of annual report by operators, etc. Establish conditions applicable to non-compliance of recipients with: • End-use(r) undertakings
Sanctions	Penalties relating to offences under international transfer control laws	Establishing dissuasive and proportionate administrative and custodial sanctions

4.7 Further information and resources

Publications:

Africa's missing billions: International arms flows and the cost of conflict, Control Arms, October 2007,

Available at: www.controlarms.co.uk

Arms Transfer Decisions: applying international humanitarian law criteria, International Committee of the Red Cross, Geneva, June 2007,

Available at: http://www.icrc.org/Web/Eng/siteeng0.nsf/html/p0916

Arms without borders: why globalised trade needs global controls, Amnesty International, 2 October 2006,

Available at: http://web.amnesty.org/library/Index/ENGPOL340062006?open&of=ENG-390

Assessing the feasibility, scope and parameters of an Arms Trade Treaty (ATT): An NGO perspective, Arms Trade Treaty Steering Committee, 2007,
Available at: http://www.controlarms.org/peoples-consultation/documents/ATT%20Position%20Paper%20Final.pdf

Dead on time: arms transportation, brokering and the threat to human rights, Amnesty International, 10 May 2006, Available at: http://web.amnesty.org/library/Index/ENGACT300082006?open&of=ENG-390

Developing international guidelines for national controls on SALW transfers, Biting the Bullet, March 2006,

Available at: http://www.saferworld.org.uk/publications.php?id=180

Developing international norms to restrict SALW transfers to non-state actors, Biting the Bullet, January 2006,

Available at: http://www.saferworld.org.uk/publications.php?id=181

Guns or Growth? Assessing the impact of arms sales on sustainable development, Control Arms, June 2004,

Available at: http://www.controlarms.org/documents/guns_or_growth.pdf

Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 of to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons, Document A/62/163, 30 August 2007,

Available at: http://www.un.org/ga/search/view_doc.asp?symbol=A%2F62%2F163&Lang=E

Report on the Conference *Corruption in the Official Arms Trade*, Transparency International (UK), Cambridge, 5-7 April 2001, Available at: http://www.armstradetreaty.org/docs/transparency.alert.report.pdf

Reviewing action on small arms: assessing the first five years of the UN Programme of Action, Biting the Bullet, June 2006, Available at: http://www.saferworld.org.uk/publications.php?id=191

The G8: global arms exporters failing to prevent irresponsible arms transfers, Control Arms, June 2005,

Available at: http://www.iansa.org/control_arms/documents/g8report/g8-control-arms-paper-en.pdf

Sudan: arming the perpetrators of grave abuses in Darfur, Amnesty International, 16 November 2004,
Available at: http://web.amnesty.org/library/Index/ENGAFR541392004?open&of=ENG-SDN

Shattered Lives: the case for tough international arms control, Control Arms, 2003,
Available at: http://www.controlarms.org/downloads/shattered_lives.htm

Small arms and light weapons transfer controls to prevent diversion: developing and implementing key programme of action commitments, Biting the Bullet, August 2007,
Available at: http://www.saferworld.org.uk/publications.php?id=275

The Arms Fixers – controlling the brokers and shipping agents, by Brian Wood and Johan Peleman, International Peace Research Institute, Oslo (PRIO), 1999,
Available at: http://www.nisat.org/publications/armsfixers/default.htm

Online resources:

UN Office for Disarmament Affairs: http://disarmament.un.org/

Biting the Bullet Project (publications): http://www.saferworld.org And: http://www.international-alert.org/publications/subjectb.php?sub=arms

European Union –http://consilium.europa.eu/cms3_fo/showPage.asp?id=408&lang=en

Norwegian Initiative on Small Arms Transfers (NISAT): http://www.nisat.org

Small Arms Survey – Transfers page: http://www.smallarmssurvey.org/files/portal/isssueareas/transfers/transfers.html

Stockholm International Peace Research Institute (SIPRI): http://www.sipri.org/

Wassenaar Arrangement – http://www.wassenaar.org Wassenaar Arrangement – http://www.wassenaar.org

Chapter 5

Manufacturers, Dealers and Gunsmiths

Chapter 5: Manufacturers, Dealers and Gunsmiths

Chapter 5 deals with the legislative measures that may be put in place to control the manufacture, dealing and repair and maintenance of SALW by manufacturers, dealers and gunsmiths.

This Chapter has direct links with legislative provisions in:

- **Chapter 3 on Civilian Possession** – where specific conditions may be placed upon those in possession of licensed SALW in relation to the acquisition and relinquishing of SALW from registered dealers.
- **Chapter 4 on Transfer Controls** – where there may be a responsibility placed upon manufacturers, dealers and gunsmiths to comply with any international transfer control criteria for SALW that are transferred internationally. In this regard, Chapter 4 contains specific provisions relating to the transfer of technology and manufacturing capabilities abroad, through arrangements for licensed production overseas.
- **Chapter 6 on Recordkeeping and Marking** – which covers the provisions, put in place to mark manufactured SALW and the responsibility of manufacturers, dealers and gunsmiths to maintain records of their activities, as well as of the state to maintain databases of manufactured, and traded SALW.

5.1 Definitions and scope

The Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts Components, Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, in Article 3 (d) establishes the following definition of illicit manufacturing:

> *"Illicit manufacturing" shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:*
>
> *(i) From parts and components illicitly trafficked;*
>
> *(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or*
>
> *(iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of this Protocol;*
>
> *Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;*

The definition establishes the circumstances in which 'manufacturing' can constitute an illegal activity. However, it is important that the parameters of what constitutes manufacturing of SALW are established. The principle underpinning the control of the manufacturing of SALW is to restrict the supply of SALW, both to the illicit market and to the legal market, where it is deemed that high numbers

of SALW may risk increasing insecurity and undermining safety. As such, when instituting controls on the manufacturing of SALW consideration should be given to covering not only the production of new SALW but also activities commensurate with the production of SALW – that is where the outcome of certain activities is the creation of another functioning SALW. To this end, it may also be desirable to cover the refurbishment, re-activation, repair, reverse engineering and conversion (of replica firearms into active firearms, or one type of firearm into another) of SALW, among other activities, within the scope of manufacturing controls. As some states outlaw any manufacturing of SALW, so certain of these activities may be undesirable under any circumstances. For instance, the Nairobi Protocol Best Practice Guideline prohibits the re-activation of de-activated firearms.

Few of the regional and international instruments contain explicit definitions of either dealing or gunsmithing. National legislation may, however, more clearly define what activities may be conducted by a dealer or gunsmith. For the purposes of this guide, a dealer is referred to as an individual who trades, buys or sells SALW domestically. While a gunsmith is referred to as an individual who services and / or repairs SALW.

5.2 Purpose of controls

Controlling manufacturers, dealers and gunsmiths

It is estimated that at least 92 countries have the capacity to produce SALW involving at least 1,249 companies.[131] In addition, there is a growing recognition among SALW practitioners and governments that small-scale, illicit craft production can present a significant challenge.

The uncontrolled manufacture of SALW, their ammunition, parts and components[132] is one of the main sources of SALW entering the illicit market and fuelling the proliferation of SALW. Illicit manufacturing can be carried out both on a large, industrial scale by commercial manufacturers or state-owned enterprises and by small-scale, craft or cottage industries (see box 1: Small-scale Craft Production). The illicit manufacture of weapons, parts, components *and* ammunition are cause for concern. Applying similar controls to both non-state and state-owned industries (for instance marking and recordkeeping provisions) may also be important in ensuring effective control over manufactured SALW.

Production agreements are also adopted to enable the transfer of SALW production capabilities abroad, through arrangements for licensed production overseas. In this regard maintaining effective controls on SALW that are produced under licence overseas and ensuring that domestic manufacturing restrictions are also applied through these arrangements can also be an important element of control[133] (see Chapter 4 on Controls on the International Transfer of SALW).

131 Omega Foundation, 2002. 'Global Survey of Small Arms and Light Weapons Companies. Background Paper', Small Arms Survey, Geneva, 2002.

132 In this Chapter, unless explicitly stated otherwise, the acronym SALW is used to refer to small arms and light weapons, and their ammunition, parts and components.

133 The issue of licensed production overseas, while directly relevant to controlling production of SALW, relates more to the controls and restrictions that are put in place on the transfer of goods and technology, rather than to the domestic control of manufacturing. As such, this issue is dealt with in detail in Chapter 5 on Transfer Controls.

Box 25: *Issue:* Small-scale Craft Production

While the vast majority of SALW are produced through formal industrial production processes, the informal, craft production of SALW also takes place in a number of countries. While relatively small in scale, it nonetheless can present significant challenges to those seeking to control illicit SALW trafficking. Craft production is often a "source of low-cost weapons for geographically isolated, economically impoverished, or legally prohibited buyers…is characterised…by the desperation of its buyers and increased likelihood that its products will be used to kill"[134]. In Pakistan's Northwest Frontier Province it is estimated that up to 20,000 small arms are being produced every year through craft production.[135] As research by the Small Arms Survey[136] highlights this local manufacturing industry is providing arms for Afghan fighters, Kashmiri separatists and Islamic militants, as well as locals. While Pakistan does have a formal manufacturing sector, craft production is also taking place in other countries, such as Ghana[137], which does not have formally established arms production facilities. From a legislative perspective this is notable because it means that legal controls on manufacturing (creating an offence of illicit manufacturing) will be required in states where industrial production is not taking place. It is crucial that legislation effectively addresses not only formal industrial production but also informal, craft production. In this regard, ensuring that definitions cover simple, single-shot, replica and converted SALW is important.

Also, those who trade in and repair SALW can also feed the illicit market, by selling prohibited categories of SALW or selling SALW to unauthorised individuals or entities. Gunsmiths, who engage in the repair, maintenance and servicing of SALW may as well, enable unauthorised individuals or entities to acquire or use SALW illegally, by providing services to unauthorised SALW users or working on prohibited categories of SALW.

5.3 Emerging international standards and norms

This section provides an overview of emerging best practice on the issue of manufacturers, dealers and gunsmiths, as seen through international and regional discussions and national practice. Reference is then provided to key regional and international instruments that have been concluded that contain relevant commitments and/or guidelines.

5.3.1 Emerging standards and norms

In nearly all countries, laws and regulations to control the manufacture of SALW are part of a wider system for controlling the manufacture of all categories of military goods and sensitive technologies. In practice, most governments have laws and procedures enabling them to exert some control over facilities that produce SALW, their parts, components and ammunition on an industrial scale, while,

134 Small Arms Survey, Small Arms Survey 2003: Development Denied, Batchelor, P. and K. Krause (Eds), Oxford University Press, Oxford, 2002, page 26.
135 Ibid. page 32-33
136 Ibid. page 32-33
137 Ibid. page 29-30

it is less common to have extensive provisions relating to the monitoring, reporting requirements and oversight of such facilities and the goods that they produce. However, while laws are in place they are often old and lack adequate regulations and administrative procedures that allow them to be implemented effectively in practice.[138]

Similarly, many states make some provision for controlling the activities of dealers. In many cases the activities of gunsmiths are not differentiated from those of a dealer (that is a 'dealer' may undertake activities commonly performed by a gunsmith), and as such separate provisions may not be explicitly in place to control the activities of gunsmiths.

Many of the regional and international instruments reflect the general consensus, evident in the provisions of national legal frameworks, of the need to control the activities of SALW manufacturers, though in most cases there is little elaboration of the substance of controls. Less attention is, however, paid within regional and international instruments to the controls to be put in place on dealers and gunsmiths. Examples of more elaborated and far-reaching provisions relating to manufacturers, dealers and gunsmiths can be found within the OSCE Handbook of Best Practices on SALW and the Best Practice Guidelines for the implementation of the Nairobi Protocol (see box below).

Box 26: *Key instruments:* OSCE Handbook of Best Practices[139] and Nairobi Protocol Best Practice Guidelines[140]

The OSCE and Nairobi Protocol best practice guidelines that the most elaborated provisions on manufacturing are set forth. Within these instruments, the following elements for inclusion within national legislation are highlighted:

- that all manufacturers, dealers and gunsmiths are vetted and authorised to conduct their business, obtaining a **licence** to operate;
- applicants for a licence to operate must meet established **criteria** including: being appropriately qualified (passing competency test); providing information on the company and its intended business; conditions relating to age and criminal record etc.
- that they abide by a set of **restrictions** (for instance, in relation to the types of arms produced, sold or serviced and the procedures for transferring finished products);
- that detailed **records** are maintained and that manufactured, traded or serviced items are suitably marked; and
- that **premises** meet a set of physical safety security standards and sufficient provisions for verification and inspection of the activities of manufacturers, dealers and gunsmiths are put in place.

138 For information on efforts to strengthen manufacturing controls see, Biting the Bullet & IANSA, Reviewing action on small arms: assessing the first five years of the UN Programme of Action, Biting the Bullet, London, 2006, page 187-189.

139 'Best Practice Guide on National Controls over Manufacturing of Small Arms and Light Weapons', in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

140 RECSA, 'Guidelines for Harmonisation of Legislation', RECSA, Nairobi, 2005, Part D, Section 1

5.3.2 Regional and International Instruments

The table below provides reference information on the provisions of regional and international SALW instruments relevant to controls on manufacturers, dealers and gunsmiths. More information on all regional and international SALW instruments can be found in Annex 1.

white on blue = legally-binding;	blue on light blue = politically binding	black on blue = recommendatory

Name of instrument	Parties	Relevant provisions
UN Firearms Protocol	52 signatories; 73 parties	Art. 3(d), 5, 7, 8(a), 9 & 11
UN Programme of Action	UN Members States	Section II, Para. 2, 3, 7, 8 & 9
International Tracing Instrument	UN Member States	Section III, Art. 8(a) & 12(a)
Wassenaar Arrangement Export Best Practice Guidelines	40 Participating States – global/multilateral	Part I, Art. 4; Part II, Art. 2(a)
OSCE Document	56 States – Europe, Central Asia, Caucasus and North America.	Section II, A, B(1), & C
OSCE Best Practice Handbook	56 States – Europe, Central Asia, Caucasus and North America.	Best Practice Guide I (Manufacture), Sections III, IV & V; Best Practice Guide II (Marking, Record-keeping and Traceability), Sections III & IV
Arab Model Law	Arab League States	Art. 2 – 5, 9, 14, 23 – 26, 28, 30 – 34, 37, 40, 42 & 43
Bamako Declaration	African Union Member States	Section 3 (iii) & (vii)
SADC Declaration	SADC Member States	Main text (no paragraph numbering)
SADC Firearms Protocol	SADC Member States[5]	Art. 5 (1), (3(e)), (3(g)), (3(k)), (3(l)); & 9
Nairobi Declaration	12 east African States	Section (iv)
Nairobi Protocol	12 east African States	Art. 1; 3 (a), (iv), (x) & (xi); 7 (a); & 11
Nairobi Protocol Best Practice Guideline	12 east African States	Guidelines for Harmonisation, Section D, Part 1
ECOWAS Convention	ECOWAS Member States	Art. 7; 8; & 18
OAS CIFTA	OAS Member States	Art. IV (1), & VI (1(a))
Andean Plan	Bolivia, Columbia, Ecuador, Peru and Venezuela	Guidelines for Action, Section A (3); Co-ordinated Agenda for Action, Para. 3.1.2, 3.1.3, 3.2, & 5.6
Nadi Framework	Pacific Islands Forum Member States	Para. 2, 3, 4(a), 8. Annexure C, Part II. Annexure D
PIF Weapons Control Bill	Pacific Islands Forum Member States	Art. 2.2; 2.9; 2.11; 3.2; 3.7 – 3.26; 5.1; 5.3; 6.1 – 6.12; 8.1 – 8.3; 8.12; 8.17 – 8.19; 9.6; & 10.1 – 10.3
SEESAC RMDS/G	South Eastern Europe	RMDS/G 03.20 (SALW Control and Transfers Legislation), Section 6.1

5.4 Legislative Measures

This section sets out a comprehensive range of measures that may be enacted within national legislation to control the activities of SALW manufacturers, dealers and gunsmiths. The rationale for why specific areas of controls may be enacted is given and the detailed provisions of these specific areas of control, drawn from international and regional instruments and existing national practice, are then set out. The measures detailed below provide suggestions for measures to include in national legislation. It is for practitioners to decide; taking cognisance of any regional or international instruments which they may be aligned to or bound by and the specific objectives of their legislative review, whether to incorporate these measures in full or in part into their national legislation.

Key principles of legal controls on manufacturers, dealers and gunsmiths

Principle 1: Requirement to obtain a licence to manufacture, deal or service SALW

Licensing individuals or entities that are to operate as manufacturers, dealers and gunsmiths enable the state to monitor and restrict who manufactures, deals or services SALW.

A) Licensing criteria

Establishing a set of detailed criteria enables the state to determine which individuals or entities are suitable to conduct these activities.

B) Renewal

Establishing a limit on the validity of a manufacturer's, dealer's or gunsmith's licence, and requiring the periodic renewal of licences, enables the state to ensure continued compliance with the provisions of the law and to ensure that any changes in the circumstances or practices of manufacturers, dealers and gunsmiths are considered in relation to their suitability to continue operating.

C) Revocation of licences

Establishing the power to revoke licences enables the state to respond to changes in circumstance relating to the national interest and the country's international commitments and to determine circumstances under which continuing to operate as a manufacturer, dealer of gunsmith is no longer desirable.

Content of legislation

Any person or entity wishing to operate as a manufacturer, dealer or gunsmith may be required to obtain a licence. Operating as a manufacturer, dealer or gunsmith without a proper and valid licence should be deemed an offence.

A licence to operate as a manufacturer, dealer or gunsmith may be issued by a competent authority, as stipulated in law. This may be a Central Firearms Bureau, Chief Licensing Officer or other institution which is designated responsibility for the issuing of SALW licences.

A) Licensing criteria[141]

To obtain a licence to operate as a manufacturer, dealer or gunsmith, individuals or institutions may be required to first demonstrate that they are suitable and competent persons to operate as a manufacturer, dealer or gunsmith.

Legislation may establish the criteria against which to assess the suitability and competence of applicants for licences to operate as a manufacturer, dealer or gunsmith. Applicants may be required to meet a set of criteria and fulfil a set of requirements. Such a process may assess the suitability and competence of an applicant, and may include the procedures to be followed in submitting an application. This process may be split formally into two-stages or form one continuous process.

A requirement may be established for applicants to comply with the following criteria:

- Age limit – applicants should be above an established minimum age
- Criminal record – applicants should not have been convicted of certain serious offences involving violence (including domestic violence), arms misuse, fraud or corruption or that in any other way makes them unsuitable to operate as a manufacturer, dealer or gunsmith.
- Sound mind and body – applicants should demonstrate that they do not have any mental or physical condition that makes them unsuitable to operate as a manufacturer, dealer or gunsmith. This may involve a verified medical and / or psychological assessment.
- Not alcohol or drug dependent – applicant has no proven record of drug or alcohol misuse.
- Certificate of good conduct – applicant should acquire a certificate of good conduct from the designated authority (this may be a Police Officer). To obtain a certificate of good conduct a background check may be undertaken involving interviews with those who know the applicant.

Applicants may have to fulfil the following requirements:

- Competency test – complete a competency test, including: a theoretical test to demonstrate detailed knowledge of the relevant legislation and regulations relating to the manufacture of, or dealing in, or servicing of SALW, and health and safety regulations; and a practical test demonstrating necessary technical skill to operate as a manufacturer, dealer or gunsmith. Instead of a practical test applicants may have to provide evidence that they are appropriately qualified to operate as a manufacturer, dealer or gunsmith
- Premises[142] – meet conditions specified in regulations that detail the specifications of premises on which the operations of a manufacturer, dealer or gunsmith are to take place. Conditions will vary for manufacturers, dealers and gunsmiths but may

141 For an example of extensive provisions relating to the licensing of manufacturers, dealers and gunsmiths see, South Africa, 'Firearms Control Act 2000', Art 31 – 72.

142 For example of conditions pertaining to safekeeping and premises of a dealer, see Pacific Islands Forum, Weapons Control Bill, Art. 5.3

include having certain equipment, suitable testing grounds and measuring apparatus, fulfilling minimum safety and security provisions and being situated in an appropriate location[143].

- Financial status – demonstrate that sufficient financial resources are available to sustain the business
- Submit an application in the prescribed form to the designated licensing authority. The licence application should require the following information relating to the applicant to be recorded:
  - Name
  - Physical address
  - Recent photograph
  - Copy of identity document
  - Competency certificate
  - Certificate of good conduct
  - Certificates of mental and physical well-being
  - Fees for application
  - Company's founding documents or other proof of licensing of business
  - Copies of finger prints

The following information may be included on licences to operate as a manufacturer, dealer or gunsmith:

- Name of licence holder
- Date of issue of licence
- Expiry date of licence
- Physical address of business premises
- Licensed activity, including any restrictions on the types or quantities of SALW that may be manufactured, traded or serviced
- Name of the licensing authority
- Conditions of the licence

An application to operate as a manufacturer, dealer or gunsmith may be refused on the following grounds:[144]

- The applicant has failed to meet the above licensing criteria and licensing requirements;

143 Conditions relating to an 'appropriate location' may be determined by safety and security.

144 Drawn directly from: 'Best Practice Guide on National Controls over Manufacturing of Small Arms and Light Weapons', page 6, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

- Information submitted in support of the application is false, inaccurate or incomplete;
- The intended activity is deemed to be contrary to public or national security

B) Renewal of licences

Licences may be valid for a specified period of time after which licence holders may be required to apply to renew their licences

C) Revocation of licences

Failure to comply with the restrictions and conditions applicable to manufacturers, dealers and gunsmiths, may result in the revocation of a licence to operate as a manufacturer, dealer or gunsmith. The state may reserve the right to revoke licences to operate as a manufacturer, dealer or gunsmith in other circumstances, as deemed necessary by the designated state authority.

Principle 2: Conditions and restrictions of licensed individuals and entities

Once licensed, detailing a set of conditions and restrictions by which manufacturers, dealers and gunsmiths should abide, enables the state to determine how individuals and entities operate and to prohibit undesirable activities.

B) Record keeping

Requiring that manufacturers, dealers and gunsmiths maintain records of their business, enables the state to monitor the production, domestic sale and servicing of SALW.

A) Marking

Ensuring that manufactured SALW, and that those handled by dealers and gunsmiths, have the appropriate markings enables the state to trace and monitor the movement of SALW and to account for them.[145]

Content of legislation

The following restrictions may be applied to the operations of manufacturers, dealers and gunsmiths:

- Restrictions on types and/or quantities of SALW manufactured[146] – restrictions may be placed upon the types and / or quantities of SALW that may be manufactured, as designated by the competent authority.
- Restrictions on types of SALW traded and / or serviced – dealers and gunsmiths may be allowed to only trade in and / or service SALW that can be legally possessed, in

145 For more detailed provisions on marking at the time of manufacture, see Chapter 6, 'Marking and record keeping'

146 For example, China establishes an annual quota for the number of firearms for civil use that may be produced. People's Republic of China, 'Law of the People's Republic of China on the Control of Firearms – Order No. 72', 1996, Art. 16 & 17.

accordance with the provisions of legislation.

- Restrictions on sale of SALW – manufacturers and dealers may be allowed to only sell SALW to licensed individuals or dealers, or for export. Where weapons are to be sold for export they may only be transferred in accordance with the provisions governing the transfer of SALW, as set out in legislation.[147]
- Restrictions and / prohibitions may be placed upon the pawning and pledging of SALW.
- Restrictions / prohibitions may be established in relation to the reactivation, reverse engineering, conversion and refurbishment of SALW.
- Transportation provisions – SALW may only be transported in accordance with the transportation provisions set out in legislation. A licence to operate as a manufacturer or dealer may stipulate certain conditions under which SALW may be transported. If not, or in all other incidents a permit to transport SALW may be acquired.
- Manner and circumstances in which SALW are displayed (relating to dealers)
  - The following conditions may be applied to licences to operate as a manufacturer, dealer or gunsmith:
  - Safety and security procedures – licence holders may be required to comply with:
  - specific, safety and security standards and procedures, as established in laws and regulations;
  - quality control standards and testing requirements;
- Inform authorities of loss, theft or destruction;

A Record-keeping[148]

Conditions may be applied in relation to keeping records of SALW by manufacturers, dealers and gunsmiths. Licence holders may be required to record the following information, in hard and / or electronic databases[149], for manufacturers:

- Date of manufacture
- Make, model and calibre
- Serial number
- Date of sale of goods
- Details of recipient of SALW
- Information should be recorded at the time of manufacture and at the time of sale.

147 For more details of provisions governing the international transfer of SALW see, Chapter 4, 'Controls on the international transfer of small arms and light weapons'

148 See also, Chapter 6 'Marking and Record Keeping', where provisions are set out for a comprehensive system of marking and record keeping.

149 By preference manufacturers, dealers and gunsmiths should maintain electronic databases where feasible. The cost of establishing, operating and maintaining such databases to both the licence holders and the state should be considered when determining the requirements set forth in legislation.

For dealers:

- Details of all SALW in stock, updated regularly; i.e. at least once every 24 hours
- Details of all transactions of SALW (including details of customers, licences, details of the SALW, dates of receipt, sale or transfer etc)

For gunsmiths, in relation to each service carried out:

- Details of the licence holder and licence
- Details of the SALW
- Details of the work carried out
- Dates on which SALW was received and collected

Box 27: *National example:* Australia – Dealers, Conditions and Record Keeping

Effectively controlling the activities of dealers can be a key means of controlling the supply of SALW. Australia's Firearms Act 1996, contains detailed requirements for the maintenance of records and submission of returns, as well as other provisions restricting the operations of dealers.[150]

Key provisions include:[151]

- Record keeping
- Responsibility to record all transactions and dealings;
- Record for each transaction: personal details of person; number of licence authorising
- Possession; number of permit to acquire firearm; details relating to firearm (date of purchase and sale by dealer, details of person dealer acquired firearm from and details of make, serial number, calibre, type, action and magazine capacity).
- Each entry to be made within 24 hours
- Powers of inspection of records
- Requirement to submit quarterly returns to Commissioner of Police
- Report loss, theft or destruction of firearms within 25 hours
- Ensure records kept in safe place
- Dealer to take possession of firearms for maintenance / repair only if licence to possess and notice of registration for the firearm are presented
- Provision to ensure the security of displayed firearms

150 NB some of the activities relating to dealers covered within Australia's Firearms Act, for instance the repair of firearms, might in other jurisdictions be covered under provisions for gunsmiths.

151 Australia, 'Firearms Act 1996', Art. 45 – 48.

A requirement may be established that records, whether maintained in hard (paper) form or electronically, are updated regularly (for instance, daily), and where in hard form, or electronic but not directly linked to the central firearms database, that records are submitted to the licensing authority for verification at regular, specified intervals (for instance, monthly).[152]

Another requirement may be stipulated that all records are safely and securely maintained for a specified minimum period (for instance, not less than 10 years).

B) Marking[153]

The following conditions may be applied in relation to the marking of SALW;

- Manufacturers may be required to mark SALW at the time of manufacture, with a unique marking, providing the name of the manufacturer, the country or place of manufacture and the serial number. The marking may be stamped on the barrel, frame and, where applicable, the slide.
- Dealers and gunsmiths may only be permitted to trade in or service SALW bearing an authentic and appropriate marking, as specified in legislation

Principle 3: Duty of the state to maintain records

To enable the state to effectively monitor and trace all SALW in circulation and to monitor and control the activities of all manufacturers, dealers and gunsmiths, the law may require designated state authorities to maintain records of licensed manufacturers, dealers and gunsmiths and records of their transactions and business.

Content of legislation

The central firearms bureau (or other designated competent authority established in legislation) may be required to maintain a database of all manufacturers, dealers and gunsmiths. This database may contain:

- The details of all licensed manufacturers, dealers and gunsmiths
- The details of the business of all manufacturers, dealers and gunsmiths.

152 Legislation should stipulate the frequency with which records are updated. Where electronic databases are required these can be linked to a central firearms database and information shared instantly. As such, all records maintained by manufacturers, dealers and gunsmiths should be updated daily.

153 See also, Chapter 6 'Marking and Record Keeping', where provisions are set out for a comprehensive system of marking and record keeping.

Principle 4: Powers of enforcement

Establishing the powers by which the state may inspect and verify the activities and premises of manufacturers, dealers and gunsmiths enables the state to ensure continued compliance with the law.

Content of legislation

A requirement may be established for routine inspections to be carried out to ensure adherence to the legal requirements. Inspections may examine and verify, *inter alia,* that records are being accurately and systematically maintained and that they are consistent with quantities of stock held, that the premises conform to established safety and security standards and that the appropriate authorisation for activities (licences/permits) has been acquired

Extraordinary inspections may also be conducted under specified circumstances.

Legislation may establish a special body or convey authority on an existing law enforcement body to conduct inspections.

Where the provisions of the law have been or are suspected of being contravened the State may stipulate measures to seize licences and stocks, and for stocks to be forfeited to the state.

Principle 5: Offences and sanctions

Establishing criminal offences and sanctions enables the State to punish and discourage breaches of the law.

Content of legislation

The state may establish the following as offences:

- Illicit manufacturing, repair or assembly;
- Illicit trade in SALW;
- Withholding information or misrepresentation in order to obtain licence; and
- Facilitating, organizing or aiding illicit trade

A range of proportionate and dissuasive criminal sanctions should be made available in law to address offences, including administrative and civil sanctions for more minor misdemeanours and criminal penalties for more serious violations of the law.

States should use their discretionary powers under domestic legislation, as well as their international obligations, to ensure the criminal prosecution of those who do not comply with national laws and regulations governing the activities of SALW manufacturers, dealers and gunsmiths.

5.5 Enforcement and implementation

Enforcement of legislation relating to manufacturers, dealers and gunsmiths relates primarily to the inspection of premises and stock, the verification and monitoring of licences and records, and the prosecution and sanctioning of offenders. A special body or institution may be established to conduct inspections, particularly of manufacturing premises where detailed technical knowledge of the production process may be required. The number of licensed manufacturers, dealers and gunsmiths will have obvious implications for the administrative burden that inspections will entail. To ensure that inspections are effective, designated staff may also have to undergo specialised training.

5.6 Checklist

Controls on SALW manufacturers, dealers and gunsmiths		
Licensing	Licence to operate as manufacturer, dealer, gunsmith	Licensing requirement or prohibitions on operating as manufacturer, dealer or gunsmith
		Description of licensing process and authority
	Licensing criteria	Establishing personal suitability to operate • Age restrictions • Criminal record • Sound mind and body • Alcohol/drug dependence • Certificate of good conduct
		Licensing requirements: • Competency testing • Premises – specifications for operation • Financial status • Submission of application form
		Grounds for refusal
	Renewal of licences	Duration of licence and renewal procedure
	Revocation of licences	Establishing conditions under which licences may be revoked
Restrictions and conditions	Restrictions on operations of manufacturers, dealers and gunsmiths	Establishing restrictions / prohibitions that may apply to manufacturers, dealers or gunsmiths, including on: • Types and quantities of SALW manufactured • Types of SALW traded / serviced • To whom SALW are sold / transferred • Pawning and pledging of SALW • Reactivation, reverse engineering, conversion, refurbishment • Transportation

	Conditions of licence	Establishing conditions that may apply to licences to operate: • Safety and security procedures (inc. testing) • Submission of records to authorities
	Record keeping and marking	Establishing conditions requiring: • Maintenance of records by manufacturers / dealers / gunsmiths • Manufacturers to mark SALW • Dealers and gunsmiths trade in / service SALW with authorised markings
Record keeping	Duty of state to maintain records	Central firearms bureau to maintain records, including on: • Details of licensed manufacturers / dealers / gunsmiths • Details of business of manufacturers / dealers / gunsmiths
Inspection	Provisions for verification and monitoring	• Routine / standardised inspections • Provision for extraordinary inspections • Establishment of 'special body'
Offences	Offences relating to manufacturers / dealers / gunsmiths	Establishing specific actions that constitute an offence: • Illicit manufacturing, repair or assembly • Illicit trade in SALW • Withholding information or misrepresentation in order to obtain licence • Facilitating, organizing or aiding illicit trade
Sanctions	Penalties relating to offences by manufacturers / dealers / gunsmiths	Establishing dissuasive and proportionate administrative and custodial sanctions

5.7 Further information and resources

Small Arms Survey – http://www.smallarmssurvey.org in particular:

- Small Arms Survey yearbooks
- Small Arms Survey, *Targeting Ammunition: A Primer*, Anders, H. and S. Pezard (Eds), Small Arms Survey, Geneva, 2006.

Biting the Bullet & IANSA, *Reviewing action on small arms: assessing the first five years of the UN Programme of Action*, Biting the Bullet, London, 2006 Available at: http://www.saferworld.org.uk/publications.php?id=191.

Crowley, M., R. Isbister & S. Meek, *Building Comprehensive Controls on Manufacturing, Transfer and End Use*, Biting the Bullet, London, 2001

Lumpe, L. (ed), *Running Guns: The Global Black Market in Small Arms*, PRIO/NISAT, Oslo, 2000

Chapter 6

Marking and Record Keeping

Chapter 6: Marking and Record Keeping

Chapter 6 primarily focuses on the provisions that may be included in national legislation on the marking of SALW and on record keeping in relation to SALW, as the central elements of an effective SALW tracing mechanism. The Chapter covers legislative provisions that may be enacted that relate to both state and civilian owned SALW, and to marking and record keeping provisions across all areas of SALW control. As such this Chapter covers marking and record keeping provisions relating to civilian possession and private security companies, international transfers of SALW, brokering and licensed production overseas, manufacturers, dealers and brokers, and State-owned SALW.

This Chapter draws together all provisions relating to marking and record keeping of SALW.[154] By their nature, marking and record keeping provisions relate directly to other areas of control. As such, specific measures relating to record keeping of SALW transfers are found both in this chapter and in Chapter 4 on Transfer Controls.

This Chapter should be read in conjunction Chapters 3, 4, 5 and 7, where direct links will be found to the following issues:

- **Chapter 3 on Civilian Possession** – where the possession and use of unmarked or inappropriately marked SALW may be prohibited. Where there may be responsibility placed upon the state to maintain records of all civilian owned SALW and on all Private Security Companies. Private Security Companies may also be required to maintain records of all SALW under their control.
- **Chapter 4 on Transfer Controls** – where the transfer, brokering or licensed production overseas of unmarked or inappropriately marked SALW may be prohibited. Where a requirement may be put in place to mark all SALW at the time of import and export. Where there may be a responsibility placed upon the state to maintain records of all persons licensed to transfer or broker the transfer of SALW, and of all individual transfers of SALW. Those involved in the transfer or brokering of SALW may also be required to maintain and submit to the state records of their business.
- **Chapter 5 on Manufacturers, Dealers and Gunsmith**s – where manufacturers, dealers and gunsmiths may be prohibited from working with unmarked or inappropriately marked SALW. Where a requirement may be placed on manufacturers to mark all SALW at the time of manufacture. Where manufacturers, dealers and gunsmiths may be required to maintain and submit to the state records of their business. Where the state may be required to maintain records of all licensed manufacturers, dealers and gunsmiths and of the business of manufacturers, dealers and gunsmiths.
- **Chapter 7** on **State-Owned SALW** – where the state may be required to maintain records of all SALW in its possession and to ensure that all state-owned SALW are uniquely marked and identifiable as state, as opposed to civilian, owned SALW. Where the state may be required to mark (if necessary) and record the details of all SALW disposed of; including those SALW destroyed.

154 For practitioners wishing to address only marking and record keeping issues this Chapter is intended as a comprehensive reference point. Different approaches may be taken to the structure of legislative measures on marking and record keeping, making reference to provisions in relation to specific issues – i.e. the requirement to mark all SALW at the time of import – within sections relating to that issue, or collectively setting forth all marking and record keeping provisions within one section.

6.1 Definitions and scope

There are few references to formal definitions of 'marking' in national legislation or in regional and international SALW instruments, with the ECOWAS Convention being a notable exception.[155] For the purposes of this Guide marking shall be understood as the inscription of an identifying mark on SALW and ammunition. There are many different methods of marking SALW, from stamping and engraving to laser marking, that States may consider using.[156]

Similarly, record keeping does not tend to be formally defined by national legislation or in many regional and international SALW instruments. The Organization for Security and Co-operation in Europe (OSCE), Handbook of Best Practices on Small Arms and Light Weapons, states that "record-keeping involves the collection and maintenance of data in order to facilitate the identification of any weapon, its legal status and the location of its storage, at a given stage of its life".[157] Beyond this, record keeping may also refer to the collection and maintenance of information on persons, entities or institutions authorised to carry out certain activities, for instance to operate as a manufacturer or broker. Within this guide reference is made to the collection and maintenance of information on all SALW and ammunition, including those owned by the state. The responsibility to maintain records of such information may rest with the state, or private individuals or entities, and such information may be kept in hard and / or soft copies.

Finally, tracing is a term for which definitions have been elaborated in regional and international instruments. Here the International Instrument to Enable States to identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons provides the most widely accepted definition of tracing.[158] It defines tracing as:

> *"the systematic tracking of illicit small arms and light weapons found or seized on the territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they became illicit"*

6.2 Purpose of controls

6.2.1 Marking and record keeping

Central to an effective SALW control regime is the ability to know who is legally entitled to act in a certain manner with SALW and ammunition (possess, manufacture, transfer etc) and to connect those persons to specific SALW and ammunition. Ensuring the effective marking of all SALW and ammunition, and the maintenance of records, are therefore the keystones of an effective small arms tracing mechanism.

155 ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material', Art. 1, defines marking as "inscriptions permitting the identification of arms…."

156 For more information on methods of marking, see, OSCE, 'Best Practice Guide on Marking, Record-keeping and Traceability of SALW', page 6 – 7, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

157 Ibid, page 8.

158 United Nations, 'International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons', Part II, Definitions. Available at: http://disarmament.un.org/cab/docs/International%20instrument%20English.pdf

The purpose of tracing SALW is to identify the point at which legally held SALW were diverted into the illicit sphere. For such tracing to occur there needs to be clear information about the last actor who was known to hold legal authority over the SALW. This, in turn, can help in identify the actor who was responsible for the diversion. Identifying points of diversions can help in holding the responsible actors to account and in preventing future diversions by the same sources.

Where any diversion or form of misuse is identified it should be possible to identify both the weapons and the individual with (the last known) legal responsibility for those SALW and ammunition. Measures to licence individuals to perform certain activities or to act in a certain way provide the mechanisms to control individual persons or entities. To accompany these measures it is therefore crucial that all SALW and ammunition can be identified. Ensuring that all SALW have a unique marking enables this to be done. It is here important to distinct between the marking of SALW and ammunition. Ammunition is produced in vast numbers, relative to the SALW with which they are designed to be used, and because of its size (at least for small arms ammunition) also presents practical challenges in terms of the location of markings (on individual cartridges themselves or on the packaging (boxes for instance) in which ammunition is stored and transported) and the type of information that is marked.

In addition to the marking of SALW and ammunition, for effective tracing to occur, it is vital that records are kept of the production, transfer, and stockpiling of SALW that identify the small arm or light weapon on the basis of its unique marking. It is also vital that records are kept of the persons and entities licensed to conduct certain activities, and of the SALW that relate to those persons and entities, and their licensed activities (e.g. possessing SALW for personal use or manufacturing, trading in, transferring etc).

The technical and administrative processes of marking SALW and maintaining records are processes on which states may develop provisions within national legislation, regulations and administrative procedures. However, an effective tracing mechanism also needs to include a range of procedures relating to law enforcement co-operation and information exchange, both nationally and internationally. Establishing such a tracing mechanism may have some additional implications for national legislation, for instance, potentially, in relation to restrictions on the release of information. However, predominantly these additional measures relate more to procedures and implementation than to legal controls themselves. Further discussion of some of these issues is covered in sub-section 5 on Enforcement and Implementation.

6.3 Emerging international standards and norms

This section provides an overview of emerging best practice on the issues of marking and record keeping, as seen through international and regional discussions and national practice. Reference is provided to the regional and international instruments that have been concluded that contain relevant commitments and/or guidelines.

Emerging standards and norms

At the international level considerable progress has been made in achieving a degree of consensus on the need to mark SALW and maintain records, and on the manner in which this should be done. Indeed, there is perhaps a greater degree of consensus in this area of SALW control than in any other. Most notably two international instruments have been agreed that set forth relatively detailed provisions for the marking of SALW and that call for the maintenance of records on SALW. The legally-binding Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Components and Ammunition, supplementing the United National Convention against Transnational Organized Crime, elaborates measures State Parties should include within national legislation in relation to the marking of SALW and the maintenance of records. More recently, in December 2005, the United Nations General Assembly agreed the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (for more detail see Box 27). This international instrument, while only politically binding, builds upon the provisions of the United Nations Firearms Protocol, detailing measures that states should adopt in relation to marking, record keeping and tracing.

The consensus achieved on the provisions of the International Instrument is notable and represents an important first step in the move towards establishing a harmonised international tracing system. At the regional level, further progress has been made in this regard with particular regional groupings agreeing more far-reaching marking and record keeping provisions. The ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material sets forth some of the most far reaching provisions in this area (see box 1), while the Best Practice Guidelines for the Implementation of the Nairobi Protocol[159] also contain extensive provisions on marking and the establishment of national databases.

Box 28: *Key instruments:* International Tracing Instrument and ECOWAS Convention

The **International Tracing Instrument** was agreed following years of international discussions which culminated in 2005 with the establishment of an Open Ended Working Group. The Open Ended Working Group presented a report that contained the draft of the later adopted International Tracing Instrument.[160] The International Tracing Instrument states that:

SALW should be marked with easily recognisable, readable and recoverable marks[161]

SALW should be marked at the time of manufacture, import and transfer from government stocks to permanent civilian use (if not already sufficiently marked) and details are provided of the information that should be marked at such moments in the SALW life[162]

159 RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol', RECSA, Nairobi, 2005, Sections 1.2 & 1.3

160 United Nations, Report of the Open-Ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, UN document A/60/88, New York, 27 June 2005. See also, Batchelor, P. and G. McDonald, 'Too Close for Comfort: An Analysis of the UN Tracing Negotiations', in Disarmament Forum, 2005/4-2006/1, Geneva, 2006.

161 United Nations, 'International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons', Art. 7

162 Ibid, Art. 8

Marks should be applied to an essential structural part of the weapon, and States are encouraged to also apply marks to other parts of the weapon[163]

Accurate and comprehensive records should be maintained of all marked SALW, with records of manufacturing held for at least 30 years, and all other records for at least 20 years[164]

The **ECOWAS Convention** presents the most detailed provisions relating to marking and record keeping of any of the existing regional and international instruments. Among other measures, it calls for the:

- establishment of computerised national databases and registers;[165]
- permanent maintenance of records on SALW;[166]
- establishment of a sub-regional register;[167]
- marking of SALW with 'classic' and 'security' markings on as many parts of the weapon as possible;[168] and
- marking of ammunition with unique mark, to identify lot, manufacturer, and country and year of manufacture.[169]

In most cases the provisions of international and regional instruments on SALW, and indeed of national legislation, refer to the marking of arms but do not set out specific measures relating to the marking of ammunition for SALW. The ECOWAS Convention on Small Arms and Light Weapons is, however, a notable exception in this regard. It commits State Parties to ensure that each individual cartridge is marked with a unique lot number that enables the identification of manufacturer, and year and country of manufacture.[170] While exceptional, the ECOWAS Convention does reflect an increasing recognition of the importance of marking, and indeed more broadly controlling, the manufacture, transfer and use, of ammunition evident in recent literature on SALW control.[171]

Internationally, and at regional level, significant progress has been made towards elaborating and agreeing on provisions that states should implement within their national legislation. Naturally, with the agreement of these international and regional instruments in only the relatively recent past, the translation of these commitments into national legislation will take time. Only a minority of states have as yet established comprehensive marking and record keeping provisions within their national legislation.

Regional and International Instruments

The table below provides reference information on the provisions of regional and international SALW instruments relevant to marking and record keeping. More detailed information on all regional and international SALW instruments can be found in Annex 1.

163 Ibid, Art. 10
164 Ibid, Art. 11 & 12
165 ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material', Art. 9
166 Ibid, Art. 9
167 Ibid, Art. 10
168 Ibid, Art. 18
169 Ibid, Art. 18
170 ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material', Art. 18
171 See, Targeting Ammunition: A primer, Anders, H. and S. Pezard (Eds), Small Arms Survey, Geneva, 2006.

white on blue = legally-binding;	blue on light blue = politically binding	black on blue = recommendatory

Name of instrument	Parties	Relevant provisions
UN Firearms Protocol	52 signatories; 73 parties	Art. 7 & 8
UN Programme of Action	UN Members States	Section II, Para. 7, 8 & 9
International Tracing Instrument	UN Member States	Part III, Art. 7 – 13
Convention on Prohibitions/Restrictions on Use Certain Conventional Weapons	105 parties	Protocols V
Wassenaar Arrangement Export Best Practice Guidelines	40 Participating States – global/multilateral	Part II, Art. 2(a) & (c)
Wassenaar Arrangement Brokering Legislation	40 Participating States – global/multilateral	Art. 2
OSCE Document	56 States – Europe, Central Asia, Caucasus and North America.	Section II; B(1) & (2); C. Section III; B(7); & C(2)
OSCE Best Practice Handbook	56 States – Europe, Central Asia, Caucasus and North America.	Best Practice Guide I (Manufacture), Sections IV & V. Best Practice Guide II (Marking, Record-keeping and Traceability), Sections III, IV & V. Best Practice Guide IV (Brokering), Section IV
OSCE Brokering Principles	56 States – Europe, Central Asia, Caucasus and North America.	Section III, Para. 2. Section IV, Paragraph 1
Arab Model Law	Arab League States	Art. 30
SADC Declaration	SADC Member States	Main text (no paragraph numbering)
SADC Firearms Protocol	SADC Member States[6]	Art. 5 (3(d)), (3(g)); 6(b); 7; & 9
Nairobi Protocol	12 East African States	Art. 3 (c(iii)), (c(vi)); 4(c); 6, 7; & 11(ii)
Nairobi Protocol Best Practice Guideline	12 East African States	Best Practice Guidelines: Chapter 1, Para. 1.2; Chapter 2, Para. 2.1; Chapter 3, Para. 3.2.4. Guidelines for Harmonisation, Section D, Para. 1.4, & 2.2
ECOWAS Convention	ECOWAS Member States	Art. 8, 9, 11, 14(6), 18, & 19
OAS CIFTA	OAS Member States	Art. IV & XI
OAS CICAD Model Regulations for Movement of Firearms	OAS Member States	Chapter IV, Para. 9
OAS CICAD Model Regulations for Brokers	OAS Member States	Art. 9
Andean Plan	Bolivia, Columbia, Ecuador, Peru and Venezuela	Co-ordinated Agenda for Action, Para. 5.2, 5.6 & 5.11
SICA Code of Conduct	Central American States	Art. II (3, 5 & 10)
Nadi Framework	Pacific Islands Forum Member States	Para. 4 & 8
PIF Weapons Control Bill	Pacific Islands Forum Member States	Art. 3.26; 4.1 – 4.7; 4.11; 4.12; 6.1 – 6.3; 6.8; 6.10; 8.16; & 8.17
EU Common Position on Brokering	EU Member States	Art. 3(2)
EU Joint Action on SALW	EU Member States	Art. 3(d)
EU SALW Strategy	EU Member States	Para. 20(b)
SEESAC RMDS/G	South Eastern Europe	RMDS 03.20 (SALW Control and Transfers Legislation); Sections 6.1, 6.2, 6.3, 7 – 9. RMDS 03.30 (Transfer Documentation for SALW) 5.1.1, & 5.1.2.

6.4 Legislative measures

This section sets out a range of measures that may be enacted within national legislation to require the effective marking of SALW and their ammunition, and the maintenance of records on SALW and SALW related activities. The rationale for the enactment of specific areas of controls is given and the detailed provisions of these specific areas of control, drawn from international and regional instruments and existing national practice, are then set out.

The measures detailed below provide suggestions for measures to include in national legislation. It is for practitioners to decide, taking cognisance of any regional or international instruments which they may be aligned to or bound by, resource and capacity considerations, and the specific objectives of their legislative review, whether to translate these measures in full or in part into their national legislation.

Key principles of legal controls on marking and record keeping

This section is divided into the following sub-sections, each outlining a key principle in the areas of marking SALW and record-keeping relating to SALW:

Principle 1: Requirement to mark SALW

Establishing that every SALW should be uniquely marked

A) Timing of marking and information to be included in the marking of SALW

Prescribing the points in the life cycle of a SALW at which it should be marked and specifying the information that should be included in the marking of each SALW enables the state to collect information and consequently monitor the possession and use of all SALW. Prescribing the marking of SALW at key points in the life cycle of a SALW provides the state with the information to enable effective tracing of SALW.

B) Method of marking SALW

Establishing a method of marking enables the state to ensure that SALW are marked in a uniform manner and one that enables easy, reliable and permanent access to information about each SALW.

C) Authority to mark

Establishing which state and / or private persons, entities or institutions may mark SALW and their ammunition enables the state to control the marking process and limit the possibility of fraudulent or corrupt practices.

Content of legislation

National legislation may establish some or all of the following provisions to mark SALW and ensure their identification throughout the life cycle of each SALW.

A) Timing of marking and information to be included in the marking

SALW may be marked at the following points and with the following information:

- At the time of manufacture each SALW may be marked in the following manner:
  - with a unique marking indicating name of manufacturer, country of manufacture, year of manufacture, serial number and type/model/calibre[172]
- At the time of testing each SALW may be marked in the following manner:
  - with a proof mark attesting to the weapons functionality
- At the time of import each SALW may be marked in the following manner:
  - with a simple marking indicating country of import and year of import[173]
  - with a unique marking should the SALW not already bear such a marking[174]
  - such provisions need not apply if the SALW is to be temporarily imported or is a museum artefact
- At the time of acquisition by the state each SALW may be marked in the following manner:
  - with a mark indicating that the weapon is owned by the state
  - such marking or additional markings of each state owned SALW may also indicate that the weapon is owned or to be used by a particular element of the state (for instance, armed forces, security forces etc)[175]
  - where such provisions are implemented the state may conduct a retroactive marking of SALW within its stocks to ensure that all SALW bear the appropriate markings
- At the time of transfer from government stocks to permanent civilian use each SALW that is not marked in a manner that allows its tracing may be marked in the following manner:
  - with a mark indicating the country from whose stocks the transfer has been made[176]
- At the time of seizure each SALW that does not bear a unique mark may be marked in the following manner:
  - with a unique mark
- At the time of disposal (including permanent destruction) each SALW that is not marked in a manner that allows its identification (and thereby enables its disposal to be recorded and verified) may be marked in the following manner:
  - with a unique mark

B) Method of marking

The marks borne by each SALW may be applied by a variety of methods but should be on an

172 United Nations, 'International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons', Art. 8(a)
173 Ibid, Art. 8(b)
174 Ibid, Art. 8(b)
175 OSCE, 'Best Practice Guide on Export Control of Marking, Record-keeping and Traceability of SALW', page 6, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.
176 United Nations, 'International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons', Art. 8(c)

exposed surface, conspicuous without technical aids or tools, easily recognisable, readable, durable and as far as technically possible, recoverable.[177]

Unique markings may be expressed by a combination of[178] geometric and numeric and alphanumeric codes.[179] Markings should be applied to as many of the main constituent parts of the weapon as possible, normally the frame, barrel, receiver or slide.

C) Authority to mark

The State may designate in regulations which state and / or private persons, entities or institutions should have the authority to mark SALW. This may include dealers and gunsmiths, as well as manufacturers.

Box 29: *National example:* Argentina – Marking requirements [180]

Authorized manufacturers are required to place appropriate and reliable markings on each weapon as an integral part of the country's manufacturing process. In addition to the trademark, military weapons must bear consecutive numbering (a serial number) indicating the weapon category, located on the most prominent parts (barrels, frames, slides, bolts, magazines, etc.).

Weapons intended for civilian use must bear a trademark and consecutive numbering on a main component so that the latter can be seen without disassembling part of the weapon. (Decree No. 395/75, annex I, article 11.) The markings must be on an exposed surface, conspicuous without technical aids or tools, easily recognizable, readable, durable and, as far as technically possible, recoverable. It is essential that the markings be placed on the main pieces, namely the support components to which the other weapon parts and accessories and the structural components for locking and blocking the firing and projectile guidance mechanisms are attached. Such components include frames, trigger circuits, locking and blocking systems, mechanism boxes, barrels, bolts, slides and drums; the destruction of these parts would render the arms permanently inoperable and prevent their reactivation. The markings include the following information: the name of the manufacturer, the country of manufacture, the alphanumeric serial number, and the weapon type/ model and calibre.

Principle 2: Requirement to mark ammunition

Establishing that ammunition should be marked to enable its provenance and current ownership.

A) Timing of marking and information to be included in the marking of ammunition

Establishing provisions for the marking of ammunition as well as SALW enables the state to monitor the possession and use of ammunition for SALW.

177 For information on different methods of marking see, OSCE, 'Best Practice Guide on Marking, Record-keeping and Traceability of SALW', pages 6 – 7, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

178

179 United Nations, 'International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons', Art. 8(a)

180 Text drawn from: Report of the Argentine Republic on the implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects 2008, p.6 http://disarmament.un.org/cab/bms3/Argentina%20(E).doc

Content of legislation

National legislation may establish some or all of the following provisions to mark ammunition for SALW.[181]

A) Timing of marking and information to be included in the marking

Ammunition may be marked at the following points and with the following information[182]:

- at the time of manufacture with a unique lot number, the manufacturer's identity, as well as the country and year of manufacture;
- information should be marked on the packaging of the ammunition and on the jacket (i.e. cartridge) containing the powder or liquid used in the ammunition or explosive;
- where ammunition is to be transferred to a state body or actor, each individual lot should only be transferred to a single state body or actor.[183]

B) Marking offences and sanctions

The following practices relating to the marking of SALW and their ammunition may be established as offences:

- Manufacturing, dealing, repairing, transferring or possessing unmarked SALW and / or ammunition for SALW
- Falsifying, altering, removing or otherwise tampering with marks
- The marking of SALW by unauthorised persons or entities

A range of proportionate and dissuasive criminal sanctions should be made available in law to address offences, including administrative and civil sanctions for more minor misdemeanours and criminal penalties for more serious violations of the law.

States should use their discretionary powers under domestic legislation, as well as their international obligations, to ensure the criminal prosecution of those who do not comply with national laws and regulations relating to the marking of SALW and the keeping of records.

Principle 3: Duty of the state to maintain records

A) Records on SALW

Establishing and maintaining records on SALW, both those in the possession of civilians and those in possession of the state, enables the state to be able to effectively identify, monitor and verify the ownership and location of SALW at all key points in the life of SALW: manufacture, import, possession, transfer, import, export, seizure and destruction.

181 For discussion of issues relating to the marking and tracing of ammunition, see, Anders, H., 'Chapter 7 – Following the Lethal Trail: Identifying Sources of Illicit Ammunition', in Targeting Ammunition: A primer, H. and S. Pezard (Eds),Small Arms Survey, Geneva, 2006, pages 207-223.

182 Provisions drawn directly from: ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material', Art. 18

183 Anders, H., 'Chapter 7 – Following the Lethal Trail: Identifying Sources of Illicit Ammunition', in Targeting Ammunition: A primer, Small Arms Survey, Geneva, 2006, pages 207-223.

B) Records may be kept in relation to persons or entities authorised to perform specified activities in relation to SALW

In addition to maintaining records on SALW themselves keeping registers with information on those persons and entities authorised to perform certain SALW related activities enables the state to monitor and control the behaviour of these persons and entities. In this regard, such provisions may be applicable to dealers, manufacturers, gunsmiths, importers and exporters, brokers and Private Security Companies (see Chapters 4, 5 and 6)

C) Establishment of a national database

A number of different methods may be used to collect and store information on SALW and SALW related activities. Establishing a national database can enable the state to have a unified and easily accessible source of information on SALW. It can facilitate the sharing of information between relevant agencies and the easy cross referencing and tracing of information.

Content of legislation

National legislation may establish some or all of the following provisions to ensure the maintenance of records on SALW and SALW related activities.

A) Records on SALW and ammunition

A requirement may be established for records to be kept by the state of the following information relating to each individual SALW:

SALW in non-state possession:

- Personal information of the licensed holder of the SALW: name, address, gender, date of birth, photograph, finger print etc
- Details of the licence or permit relating to the SALW including date of issuance and expiry, renewal dates, cancellation, suspension, revocation or surrender of the licence or permit
- Details of type, make and calibre of SALW
- Details of the unique marking
- Information on declarations of loss, theft, legal transfer of ownership (through sale or other permitted means), disposal or destruction of the licensed SALW

SALW in state possession:[184]

- The state institution under whose legal control the SALW is
- Details of type, make, country of manufacture and calibre of SALW
- Details of ammunition held
- Details of the unique marking
- Information on declarations of loss, theft, legal transfer of ownership (through sale or other permitted means), disposal or destruction of the SALW
- Information of any permits (where applicable) relating to the possession of a SALW

184 For example of conditions relating to registers of state-owned SALW, see Pacific Islands Forum, 'Weapons Control Bill', Art. 4.11 – 4.12

- Details relating to the issuance from and return to armoury of SALW and ammunition including reason for issuance, quantity and types of ammunition
- Information on storage
- Information on acquisition of SALW

Records may also be kept of ammunition possessed by the state detailing the quantity, state institution under whose legal control the ammunition is, the lot number and details of markings.

Records may be kept in relation to:

- The manufacture of SALW including information on quantity, type, calibre, unique marking, sale or other legal transfer, date of production
- The import and export of SALW including information on[185]:
  - the name and address of the shipper, the intermediary (where
  - applicable), the consignee and the user indicated on the end-user certificate;
  - the point of departure, transit and destination, as well as the customs references and the dates of departure, transit and delivery to the end-user.
  - the export, transit and import licence (quantities and batches corresponding to the same licence as well as the validity of the licence);
  - full details concerning the method of transport and transporter(s);
  - the controlling agency or agencies (at point of departure, transit and entry);
  - the nature of the transaction (commercial, non-commercial, private or public, conversion, repair);
  - where applicable, the insurer and/or the financial institution intervening in the transaction.
- The seizure of SALW including information on the type, calibre, make, unique marking and owner (if available)
- The destruction of SALW including information on type, calibre, make, unique marking and details of previous owner (if available).

B) Records relating to authorised persons and entities

Records may be kept in relation to persons or entities authorised to possess, or perform specified activities in relation to, SALW. In this regard information may be kept on the following types of licensed persons or entities:

- Private individuals
- Dealers[186]
- Manufacturers
- Gunsmiths[187]
- Importers and exporters
- Brokers
- Private Security Companies

185 Provisions drawn directly from ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material', Art. 9

186 For the purposes of this guide, a dealer is referred to as an individual who trades, buys or sells SALW domestically.

187 For the purposes of this guide, a gunsmith is referred to as an individual who services and / or repairs SALW.

The following information may be kept in relation to the above licensed persons and entities:

- Personal information of the licensed person or entity including: name, address, gender, date of birth, photograph, finger print, articles of incorporation, relevant financial information etc
- Details of the licence or permit relating to the SALW including activities authorised by the licence or permit, date of issuance and expiry, renewal dates, cancellation, suspension, revocation or surrender of the licence or permit
- Specific restrictions applying to the licence or permit detailing the activities that may be performed under the authority of the licence or permit

C) Establishment of a national database

The above information may be stored in a national database (see box for discussion of types of database and approaches to record keeping).

A person or body may be designated responsibility to administer record keeping by the state and manage the national database.

Box 30: *Issue:* Establishing a national database

Establishing national databases and registers is recognised as being a key element of an effective tracing system. There are, however, a number of factors that will influence the kind of register and database(s) that are established. A number of different arrangements can fulfil the key objectives for the establishment of a national database or databases, that is, to ensure: that all firearms can be identified and tied to a particular responsible individual, or private or state entity; that information is up to date and accurate; and that data can be readily accessed by those investigating diversions or misuse. Obviously, the database will only be as good as the information that is recorded within it but there are other considerations. Key questions that need be considered include:

- Will there be a single centralised national database for all SALW? Separate databases for civilian and state-owned SALW? One or more databases for different state institutions? In this regard, the challenge is most likely to relate to information held on SALW possessed by different state institutions. It is often the case that different state agencies will have separate registers.
- Who will have authority over a database or databases? There may be sensitivities between different institutions about allowing others access to their records.
- If separate databases are established, how easy will it be to trace firearms within the system, and to cross-check between databases? Will the databases be compatible?
- Key to the above question will be whether the database(s) will be computerised.

More practical issues relate to: the costs of establishing and maintaining a new database (including staffing, training and software costs); inputting information, particularly initially, as this may involve transferring vast amounts of data from hard copy to electronic files; and frequency of re-licensing and the implications of this for updating the database.

D) Designated point of contact for international tracing

A person or body may be designated as the primary point of contact to facilitate the international tracing of SALW, handling tracing requests and requesting information from other states.

Box 31: *Regional example:* Sub-regional tracing mechanism – ECOWAS Convention

The provisions of Art. 18 of the ECOWAS Convention commit parties to the Convention to provide assistance in pursuing tracing requests. The Convention designates the ECOWAS Executive Secretary as the co-ordination point for receiving tracing requests and Member States commit to providing all available information when providing responses. In addition, to these ad hoc tracing requests, the Convention also establishes a system whereby Member States will exchange information on regular basis on manufacturing, transfers and stockpiles.

Principle 4: Duty of authorised persons and entities to maintain records

Establishing requirements for those persons or entities authorised to carry out certain SALW related activities – such as dealers, manufacturers, gunsmiths, importers and exporters, brokers and Private Security Companies – to maintain records and submit records to the state, enables the state to ensure that it receives and is able to keep sufficient information to trace SALW and to monitor and verify the activities of these authorised persons and entities.

Content of legislation

Persons and entities licensed to perform specified activities relating to SALW may be required to keep and periodically submit to the state information on their activities. Such provisions may be applied to the following categories of licensed persons and entities:

- Dealers
- Manufacturers
- Gunsmiths
- Importers and exporters
- Brokers
- Private Security Companies

The above named licensed persons and entities may be required to update their records and to submit information for inclusion in the national database periodically. Such licensed persons and entities may also be required to maintain their records in a specified manner and form, which may include the maintenance of electronic registers that are electronically linked to the national database. This may be in addition to or instead of the maintenance of hard copies (paper registers).

Principle 5: Duty of state and authorised persons and entities to maintain records for minimum periods of time

Establishing minimum periods of time for the maintenance of records can ensure that information is stored for a sufficient amount of time, commensurate with the life cycle of a SALW.

Content of legislation

Records pertaining to marked SALW may be kept indefinitely,[188] where possible. A minimum time may be established for the maintenance of records, for instance, for at least 30 years in relation to manufactured SALW and for all other SALW for at least 20 years.[189]

Principle 6: Powers of enforcement

Establishing the power to inspect records both periodically and extraordinarily enables the state to ensure that authorised persons and entities are complying with national legislation, regulations and administrative procedures relating to marking and record keeping so that the effective tracing of SALW be carried out.

Content of legislation

The state may designate authority to specified state institutions to inspect and verify records periodically and to carry out extraordinary inspections of records maintained by dealers, manufacturers, gunsmiths, importers, exporters, brokers and PSCs.

Principle 7: Offences and sanctions

Establishing criminal offences and sanctions enables the state to punish and discourage breaches of the law.

Content of legislation

It may be established as an offence to knowingly provide false information in any of the records relating to SALW established in national legislation.

A range of proportionate and dissuasive criminal sanctions should be made available in law to address offences, including administrative and civil sanctions for more minor misdemeanours and criminal penalties for more serious violations of the law.

States should use their discretionary powers under domestic legislation, as well as their international obligations, to ensure the criminal prosecution of those who do not comply with national laws and regulations relating to the keeping of records relating to SALW.

188 ECOWAS states have committed to the permanent maintenance of records within their national databases. See, ECOWAS, 'ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Material', Art. 9(3)

189 United Nations, 'International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons', Art. 11

6.5 Enforcement and implementation

In the drafting of legal controls relating to the marking of and record keeping on SALW and SALW related activities, there are a range of practical considerations that should inform both the content of legal controls and the manner in which they are implemented. These include the financial implications of establishing new marking and record keeping procedures; if a new database or databases are to be established, how much will the initial creation of the database or databases cost and how much will it/they cost to maintain? A key consideration here may be whether to establish an electronic database. The establishment of new administrative procedures for maintaining records may also require additional staff and for staff to be trained to use new technology and in new administrative procedures. This will involve initial start up costs but continual training will be needed as staff move on or new elements are added to the database. Furthermore, electronic databases will also require periodic maintenance and upgrading.

The establishment of new or expanded record keeping provisions may also create a significant one-off administrative burden. For instance, when establishing a new database it may be necessary to transfer of all existing records into the new database – potentially transferring information previously held in hard copy onto an electronic database. The implementation of provisions in other areas of control may also be relevant in this regard. For instance, the implementation of a new system of civilian licensing may mean that all civilian owned SALW have to be re-licensed, with the attendant administrative burden this may place on record keeping functions.

Similarly new marking provisions may require large stocks of SALW to be marked with financial and administrative implications. While these measures are vital planning should take place during the drafting of new legal controls to ensure that these measures can be effectively implemented.

New or expanded systems of marking and record keeping may also present a financial and administrative burden on private persons or entities that should be considered during the drafting of legislation. For instance, the establishment of electronic registers by all dealers that link to the national database may require a significant outlay by dealers.

Finally, marking and record keeping should form central elements of an effective tracing mechanism. The transnational nature of the illicit trafficking in SALW, however, means that international co-operation and the exchange of information between states is vital for the effective tracing of SALW. As such a range of measures can be taken to enable such tracing.[190] Predominantly, these measures do not relate to legal controls but rather to practices to be followed in the exchange of information. For instance, they cover the type of information that should be exchanged and how states should handle and make requests for information.

190 For examples of tracing measures see, OSCE, 'Best Practice Guide on Export Control of Marking, Record-keeping and Traceability of SALW', page 12, in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003. And, United Nations, 'International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons', Art. 15 – 23

Box 32: *Issue:* International tracing – Interpol Weapon Electronic Tracing System (IWeTS)[191]

Interpol – the International Criminal Police Organization – is an intergovernmental organization of 184 countries that that seeks to support its members to tackle crime by providing secure communication between police services, data and database services, and operational support. IWeTS has been designed to fulfil the responsibility designated to Interpol in the International Tracing Instrument to facilitate tracing operations and assist in identifying illicit SALW. IWeTS is being established with the ultimate intention of linking the national SALW databases of members together and in time providing a comprehensive library of information on firearms in existence. As such, IWeTS has the potential to play a key role in facilitating international tracing. IWeTS, builds upon the Interpol Weapons and Explosives Tracing System, rather confusingly, also known by its acronym IWETS, which Interpol maintains and is a database of information on stolen, trafficked and recovered firearms established in 1990.

6.6 Checklist

Marking and Record Keeping		
Marking SALW	Requirement to mark	Establish requirement for every SALW to be uniquely marked
	Timing and information of marking	Establish: • the points in the life cycle of SALW that marking is required; • the information to be marked at each point.
	Method of marking	• How SALW are to be marked; • Location of markings; • Content/information of markings (geometric/ numeric/alphanumeric).
	Authority to mark	Designating which institutions / entities / individuals may mark SALW and ammunition
Marking ammunition	Requirement to mark	Establish requirement for ammunition to marked
	Timing and information of marking	• Mark ammunition at manufacture; • Location of marking; • Lot marking for transfers to state actors.

191 Office of the Special Representative of Interpol to the United Nations, 'Interpol's position regarding the Implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons', United Nations Conference to Review Progress made in the Implementation of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, 2006.

Marking offences	Offences relating to marking SALW and ammunition	• Manufacturing, dealing, repairing, transferring or possessing unmarked SALW; • Falsifying, altering, removing, tampering with markings; • Unauthorised marking.
Sanctions	Penalties relating to marking	Establishing dissuasive and proportionate administrative and penal sanctions
Record keeping by state	Duty to maintain records on SALW and ammunition	Requirement for records to be kept on: • SALW in non-state possession; • SALW in state possession; • Ammunition in state possession; • Manufactured SALW; • Imports and exports of SALW; • Seized SALW; • Destruction of SALW.
	Duty to maintain records on authorised persons and entities	• Requirement for records to be kept on licensed persons and entities (private individuals, dealers, manufacturers etc) Information to be recorded
	National database	• Establishment of national database / register • Designate authority to maintain database / register
Record keeping by authorised persons / entities	Duty to maintain records on activities and stocks	• Information to be recorded; • Frequency of updating of records; • Provisions for submission to authorities; • Specifications of records (electronic / hard copy etc).
Maintenance of records	Minimum time period for maintenance of records	Establish requirements for length of time that records should be maintained for
Inspection	Provisions for verification and monitoring	• Periodic inspections of records; • Extraordinary inspections; • Designate authority to inspect.
Tracing	Designate point of contact	Establish primary point of contact for international tracing
Record keeping offences	Offences relating to record keeping	Knowingly provide false information in records
Sanctions	Penalties relating to record keeping	Establishing dissuasive and proportionate administrative and custodial sanctions

6.7 Further information and resources

Publications:

Batchelor, P. and G. McDonald, 'Too Close for Comfort: An Analysis of the UN Tracing Negotiations', in Disarmament Forum, 2005/4-2006/1, Geneva, 2006.

Berkol, I., *Evaluating the Cost of Small Arms Marking Systems*, GRIP, Brussels, 2004.

Berkol, I., *Marking and Tracing Small Arms and Light Weapons: Improving Transparency and Control*, GRIP, Brussels, 2002.

Biting the Bullet & IANSA, *Reviewing action on small arms: assessing the first five years of the UN Programme of Action*, Biting the Bullet, London, 2006
Available at: http://www.saferworld.org.uk/publications.php?id=191

Greene, O., *Enhancing Traceability of Small Arms and Light Weapons Flows: Developing an International Marking and Tracing Regime*, Biting the Bullet, London, 2000.

Small Arms Survey, *Small Arms Survey 2002: Counting the Cost*, Batchelor, P. and K. Krause (Eds), Oxford University Press, Oxford, 2002
Available at: http://www.smallarmssurvey.org/files/sas/publications/yearb2002.html

Small Arms Survey, *Small Arms Survey 2006: Unfinished Business*, Berman, E (Ed), Oxford University Press, Oxford, 2006.
Available at: http://www.smallarmssurvey.org/files/sas/publications/yearb2006.html

United Nations, *Report of the Open-Ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons,* UN document A/60/88, New York, 27 June 2005.

Online resources:

Groupe de recherché et d'information sur la paix et la securite (GRIP) –

http://grip.org/research/trace.html

International Action Network on Small Arms (IANSA) – http://www.iansa.org/issues/marking_tracing.htm

United Nations Department for Disarmament Affairs – http://disarmament.un.org/cab/salw-legislation.htm

Chapter 7

State-owned Small Arms and Light Weapons

Chapter 7: State-owned Small Arms and Light Weapons

Chapter 7 deals with the legislative measures that may be put in place to control SALW in the possession of the State, including controls on the management of government-held stocks of SALW and on the possession of SALW by employees of the State.

This Chapter has direct links with legislative provisions in:

- **Chapter 4 on Transfer Controls** – where conditions are set forth relating to the assessment of international transfers of SALW against a range of criteria that the State may be required to abide by, when disposing of stocks.
- **Chapter 6 on Recordkeeping and Marking** – where conditions are set out relating to the record keeping responsibilities of the State for SALW within its possession. Where the marking of all SALW and ammunition in State possession may be required.

7.1 Definitions and scope

The focus of this Chapter is on the legal provisions that may be enacted to ensure the effective control of all SALW held by, or possessed and used on behalf of, the State. It therefore addresses the management and control of stocks of SALW – as this relates to issues of safety and security of stocks and to the management of stocks through considerations of planning, acquisition and disposal – as well as the individual possession and use of SALW by State employees. As such, it addresses some of the legal considerations that underpin the implementation of an effective system of stockpile management.

There is no internationally agreed definition of stockpile management. The South Eastern and Eastern Europe Clearing House for the Control of Small Arms and Light Weapons (SEESAC), provides the following definition of a stockpile, stating that "[i]n the context of SALW, the term refers to…'a large accumulated stock of weapons and explosive ordnance"[192], while stockpile management relates to "those procedures and activities regarding SALW safety and security in accounting, storage, transportation and handling"[193].

Stockpile management also often refers to the processes of planning and forecasting, and acquisition, as well as to disposal and destruction. Indeed, the Best Practice Guidelines for the Implementation of the Nairobi Protocol provides a broader definition, stating that:

"For the purposes of the Nairobi Declaration and the Nairobi Protocol, stockpile management is defined as: the control and management, in all its aspects, of small arms and light weapons in state and non-state possession".

192 SEESAC, 'RMDS/G 02.10 (Guideline), Glossary of SALW Terms and Abbreviations' (4th Edition), UNDP, Belgrade, 2006, Section 3.147
193 Ibid, 3.149

This catch-all definition adds the elements of record keeping and marking as well as controls relating to the possession and use of SALW.

For the purposes of this How to Guide it is notable that the establishment of effective systems of stockpile management rests in great part on putting in place operational procedures and standards on a range of sometimes complex and technical issues. This How to Guide will not therefore consider the practical detail of stockpile management[194] but will focus on some of the legislative measures that may be necessary to support the implementation of such operational procedures and standards. It is important to note that stockpile management relates not just to weapons but also to ammunition. In this regard, it is also important to recognise that the technical requirements for managing ammunition stockpiles will be distinctly different from those for weapons.[195]

7.2 Purpose of controls

Ensuring control over legally held SALW forms a fundamental part of limiting the supply of SALW to the illicit market. Indeed, in all likelihood, the State will manage the single largest accumulation of SALW in the country, with all the attendant challenges of control and risks of leakages that is implied in managing thousands of SALW and millions of rounds of ammunition. Given the quantities of SALW in the hands of the State, leakages on some scale may remain a possibility. Even a perfect system of stockpile management is at the mercy of the human failings of those who use it. "Employees of government agencies lose small arms from time to time, just as they lose cars, laptop computers, and other valuable items through negligence or theft."[196] However, if this were not justification enough for ensuring that as rigorous a system of stockpile management as possible is in place, there are enough documented cases of one-off large scale losses from stockpiles (sometimes hundreds, sometimes thousands of arms) and of the continuous draining of state-owned SALW into the illicit market, to highlight the potentially serious negative impacts of ineffective stockpile management. The imperative to ensure that the necessary legislative foundations are in place to institute and guide stockpile management is therefore clear. Moreover, the dangers that are inherent in storing large quantities of explosive material – as is the case with stocks of ammunition – emphasises the importance of stockpile practices and procedures that also reduce the risks of accidents.[197]

194 For an introduction to stockpile management procedures see, OSCE, 'Best Practice Guide on National Procedures for Stockpile Management and Security', in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

195 For more information on managing stockpiles of ammunition, see, Wilkinson, A, 'Stockpile Management of Ammunition', in Small Arms Survey, Targeting Ammunition: A Primer, Anders, H. and S. Pezard (Eds), Small Arms Survey, Geneva, 2006. And, OSCE, 'Document on Stockpiles of Conventional Ammunition', OSCE, Vienna, 2003.

196 Small Arms Survey, Small Arms Survey 2004: Rights at risk, Batchelor, P. and K. Krause, Oxford University Press, Oxford, 2004, page 57

197 For example, on 22nd March 2007 explosions at an arms depot in Maputo, Mozambique, reportedly killed 93 people, while in March 2008 explosions at an arms dump in Albania, killed at least 5 people, injured over 200 and resulted in the evacuation of over 4,000 from their homes.

Box 33: *Issue:* Losses of state-owned SALW

The Small Arms Survey yearbook of 2004 focused on the issue of losses from state stockpiles highlighting some of the following cases:[198]

- In 1997, Albania lost 643,000 SALW
- Between 1991-3 neglect and official complicity contributed to the loss of 260,000 SALW from Russian stocks
- Government weapons were used in Fiji to overthrow the government
- Germany has reported losing about 1,000 SALW a year through loss and theft

While of obvious importance, ensuring the safety and security of state-owned stocks of SALW is not the only issue that SALW legislation may need to address in relation to state-owned SALW.

SALW in the hands of state employees can also be misused, just as they can in the hands of civilians. While in many countries the number of SALW held by the State may be significantly less than the number in the possession of civilians, the risk of misuse by state employees exists nonetheless. Such misuse can occur through the direct commission of offences such as robbery or murder, the sale of government arms and ammunition, loss through negligence or the loaning of arms to criminals to commit crime. Low levels of professionalism, poor training and corruption may contribute to this misuse. Such scenarios can, however, also be exacerbated by the absence of effective legal controls on the possession and use of state-owned SALW. As such, legislation should set the boundaries for the acceptable use of and establish effective controls over SALW in the possession of state employees.

7.3 Emerging international standards and norms

This section provides a narrative overview of emerging standards and norms on the issue of state-owned SALW, as seen through international and regional discussions and national practice. Reference is then provided to the regional and international instruments that have been concluded that contain relevant commitments and/or guidelines. A more detailed overview is given of selected regional and international instruments that contain particularly notable or far-reaching commitments or guidelines.

Emerging standards and norms

At the regional and international level, there is broad recognition of the importance of ensuring the safety and security of stocks of state-owned SALW, though the issue remains one on which, substantively, relatively less attention has been paid when compared with civilian possession, transfer controls or marking and tracing. A number of the regional and international agreements do make reference to issues relating to stockpile management. Although the specific detail varies, where attention is paid to stockpile management, a similar range of issues can be discerned covering

198 Ibid, page 54-56

the maintenance of safe and secure stocks and the procedures for ensuring these, the establishment of inventories, record keeping, transportation, and issues relating to the management and disposal of surpluses and collected, seized and forfeited weapons.

The OSCE Document on SALW[199] and the OSCE Best Practice Handbook[200] provide perhaps the most detailed coverage of stockpile management issues of the politically or legally binding instruments that have been concluded on SALW. The predominant focus, however, tends to be upon the standards and procedures for stockpile safety and security with little overt mention of the legislative implications of strengthening controls in this area. There is also very little acknowledgement of the need for legislative controls on the possession and use of SALW by state employees. The issue is not wholly overlooked, however, as both the legislative implications of stockpile management and controls on possession and use of state-owned SALW are addressed within the Nairobi Protocol Best Practice Guidelines and the Pacific Islands Forum Weapons Control Bill (see box below).

Box 34: *Key instruments:* Nairobi Protocol Best Practice Guidelines and PIF Weapons Control Bill

The Nairobi Protocol Best Practice Guidelines outline a range of requirements, standards and procedures relating to stockpile management in the broadest sense (encompassing also possession and use). The Guidelines highlight the importance of legislating for the key principles of stockpile management, including:

- Joint planning through formalising the institutional framework for arms management.
- Establishing a body that determines the national needs, capacities and surpluses and how to deal with them.
- Establishing the principle issues on which such decisions are based and mapping out the feedback loop and governance oversight required.
- Regulations and administrative procedures accompanying legislation to regulate the practical implementation of such an activity.[201]

The Nairobi Protocol Best Practice Guidelines and the PIF Weapons Control Bill both outline provisions on **registration and record keeping**[202] requirements relating to state-owned SALW and the details of **storage security measures**[203]. In addition, the PIF Weapons Control Bill requires the police and defence forces to obtain a permit from the Commissioner to possess prohibited weapons, while the Nairobi Protocol Best Practice Guidelines calls for the issuing of **permits** to every government employee authorising possession and use of a specific State-owned SALW.[204]

199 OSCE, 'OSCE Document on Small Arms and Light Weapons', OSCE, Vienna, 2000, Section IV
200 OSCE, 'Best Practice Guide on National Procedures for Stockpile Management and Security', in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.
201 RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons', Section 1.1.3
202 Ibid. Section 1.2.3. And, Pacific Islands Forum, 'Weapons Control Bill', 2003, Art. 4.11 & 4.12
203 RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons', Section 1.1.3 (c). And, Pacific Islands Forum, 'Weapons Control Bill', 2003, Art. 1.7
204 RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons', Section 1.2.3(c). And, Pacific Islands Forum, 'Weapons Control Bill', 2003, Art. 2.4

At the national level, while virtually all states will have procedures and standards of some sort, however rudimentary, legislative measures relating to controls over state-owned SALW do not appear to be given great attention.[205] Reference is often made to state officials within the primary piece of legislation on SALW, though usually to exempt officials from the provisions controlling possession and use applicable to civilians. This is not to say that the issue is always overlooked, as some States have elaborated controls in this area. In South Africa, for instance, the Firearms Control Act 2000, while exempting employees of 'Official Institutions' from most of the provisions of the Act, establishes that state employees should have a permit in order to possess SALW in an official capacity and stipulates a range of conditions that apply to the possession of SALW under these circumstances (see box below in Section 4).

Regional and International Instruments

The table provides reference information on the provisions of regional and international SALW instruments relevant to controls on state-owned SALW. More detailed information on all regional and international SALW instruments can be found in Annex 1.

white on blue = legally-binding;	blue on light blue = politically binding	black on blue = recommendatory

Name of instrument	Parties	Relevant provisions
UN Programme of Action	UN Members States	Section II, Para 9, 10 & 17 – 19
International Tracing Instrument	UN Member States	Part III, Art. 8(c), & 9 – 12
UN Principles Use Force / Firearms by Law Enforcement Officials	UN Member States	Principles 4, 5, 9, 10, 11, 13, 14 & 19
International Mine Ban Treaty[7]	155 State Parties	Art. 1, 4 & 5
Wassenaar Arrangement Export Best Practice Guidelines	40 Participating States – global/multilateral	Part II, Art 2(b)
OSCE Document	56 States – Europe, Central Asia, Caucasus and North America.	Section II, B(2); Section IV, C(1) & (2)
OSCE Best Practice Handbook	56 States – Europe, Central Asia, Caucasus and North America.	Best Practice Guide II (Marking, Record-keeping and Traceability), Section IV. Best Practice Guide VI (Definitions and Indicators of a Surplus), Section III.
Arab Model Law	Arab League States	Art. 6, 16, 17 & 36
SADC Declaration	SADC Member States	Main text (no paragraph numbering)
SADC Firearms Protocol	SADC Member States[8]	Art. 8, 10 & 11
Nairobi Protocol	12 east African States	Art. 6, 8 & 9(d)
Nairobi Protocol Best Practice Guideline	12 east African States	Best Practice Guidelines: Chapter 1, Para 1.1.2, & 1.2 – 1.4.
ECOWAS Convention	ECOWAS Member States	Art. 9, 11, 16 & 17

205 In a survey conducted of the primary pieces of legislation on SALW control in southern and eastern Africa, only three States had some provisions, however minimal, beyond references to exemptions from the provisions of the main act. Flew, C. and A. Urquhart, Strengthening small arms controls: An audit of small arms control legislation in the Great Lakes region and Horn of Africa, SaferAfrica and Saferworld, London, 2004. And, Cross, P. et al, The law of the gun: An audit of firearms control legislation in the SADC region, SaferAfrica and Saferworld, London, 2003.

Name of instrument	Parties	Relevant provisions
Andean Plan	Bolivia, Columbia, Ecuador, Peru and Venezuela	Co-ordinated Agenda for Action, Para. 3.2, & 5.2 – 5.5
SICA Code of Conduct	Central American States	Article II (10)
PIF Weapons Control Bill	Pacific Islands Forum Member States	Art. 1.6; 1.7; 2.4; 4.11; & 4.12

7.4 Legislative measures

This section looks at the legal controls on state-owned SALW. The rationale for the enactment of specific areas of controls is given and then detailed provisions of these specific areas of control, drawn from international and regional instruments and existing national practice are set out.

The measures detailed below provide suggestions for measures to include in national legislation. It is for practitioners to decide, taking cognisance of any regional or international instruments which they may be aligned to or bound by, resource and capacity considerations, and the specific objectives of their legislative review, whether to translate these measures in full or in part into their national legislation.

Key principles for legal controls on state-owned SALW

This section is divided into the following sub-sections, each outlining a key principle in the control of state-owned SALW:

Principle 1: Requirement to authorise possession of SALW

Requiring State employees to obtain a permit or other formal authorisation to possess a SALW enables the state to monitor and restrict the possession of SALW by State employees and to determine the conditions under which such possession may occur. Authorisation provisions may include:

A) Application and exemptions

Establishing the terms under which the provisions of SALW legislation may or may not apply, in part or in full and the categories of person to whom provisions may apply, and the circumstances in which these will be applied, can enable the State to ensure that effective control of possession is maintained while balancing the operational needs of State departments and their employees.

B) Establishing suitability and need

Establishing a set of detailed criteria enables the state to determine which individuals are suitable for, and justified in, possessing a SALW

C) *Restrictions and conditions on possession of SALW by State employees*

Detailing a set of conditions and restrictions by which state employees should abide enables the State to control under what circumstances SALW may be used and to prohibit undesirable activities.

Content of legislation[206]

Legislation may require that State employees requiring to possess a SALW, should first be issued with a permit authorising possession of a specific SALW.

A permit issued for the possession of SALW by State employees may indicate the specific conditions under which the permit was issued and the SALW may be legitimately possessed and used.

Legislation may establish the person or institution vested with the authority to grant permits.

A) *Application and exemptions*

Provisions may be established to exempt State employees (or certain defined categories of State employees) from some or all of the other elements of legislation relating to SALW.

Provisions may be established to exempt certain categories of person from sections of legislation and indicate the circumstances in which provisions should be applied. For instance, legislation may stipulate that the requirement to hold a permit will not apply to members of the Armed Forces when on active duty.

B) *Establishing suitability and competence*

A requirement may be established for State employees to meet conditions ensuring that they are competent and suitable persons to possess a SALW. State employees may be required to fulfil similar conditions, such as competency testing, as may be established for the licensing of civilians (see Chapter 4 – Content of legislation: Licensing Criteria).

Legislation may establish exemptions to the above conditions for certain categories of State employees, for instance members of the armed forces or police, where suitability and competence are assured by other means.

C) *Restrictions and conditions on possession and use of state-owned SALW*

The following restrictions and conditions may be applied to permits for the possession and use of SALW by State employees:

- Restrictions on the carriage of SALW, such as carrying handguns in holsters;
- Condition to always carry permit while in possession of SALW;
- Prohibit / restrict possession of SALW when off duty – special authorisation may be required for possession of SALW while off-duty along with the conditions for possession in such circumstances; and
- Requirement to return SALW to armouries at end of period of duty.

206 See, RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons', Section 1.2.3 (c). And, South Africa, 'Firearms Control Act 2000', Art. 98, online: http://www.capegateway.gov.za/Text/2003/firearms_control_act_60_of_2000.pdf

Box 35: *National example:* South Africa – Authorisation and conditions for possession

South Africa's Firearms Control Act 2000, includes a set of detailed provisions relating to the control of the possession and use of firearms by State employees.[207] Article 98 establishes that:

- Employees must have a permit to possess a firearm (National Defence Force exempted when on official duty);
- Permits will be issued by Head of an Official Institution (Army, Police, Prisons etc) who may also impose particular conditions on possession, use, disposal, transport, acquisition and storage;
- Conditions of permits include: carrying handgun in holster; returning firearm to place of storage at end of duty period; keeping firearm under direct control when travelling; carrying permit when in possession of firearm;
- Special conditions may allow for firearms to be possessed when off-duty;
- Permits may only be issued to persons deemed fit and proper and who have passed training and tests on safe use of firearms;
- Any loss or theft must be immediately reported.

Principle 2: Duty of the state to maintain records and registers

To enable the State to effectively monitor and trace all SALW in circulation, the law may require the maintenance of records on all state-owned SALW within a national database.

A) Registers and accounting procedures

All State departments authorised to possess SALW may be required to maintain registers detailing the SALW in their possession and recording the details of SALW and ammunition allocated and returned to the armoury.

B) Marking of State-owned SALW

Requirement may be established to ensure that all SALW in possession of the state are uniquely marked and identifiable as state-owned SALW, and that ammunition is marked.

Content of legislation[208]

A requirement may be established to maintain a national inventory or database of all State-owned SALW. Information to be stored on such an inventory or database may include specified information about the State institution / department and details of stocks of SALW and ammunition (see Chapter 6 – Content of legislation; Records on SALW and ammunition).

207 South Africa, 'Firearms Control Act 2000', Art. 98, online: http://www.capegateway.gov.za/Text/2003/firearms_control_act_60_of_2000.pdf

208 See ibid, Art. 99. And, Pacific Islands Forum, 'Weapons Control Bill', 2003, Art. 4.11 & 4.12. And, RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons', Section 1.2.3 (c)(x – xii).

A) Register and accounting procedures

A requirement may be established for each State department / institution to maintain a register. Such registers may record the following information;

- Details of permits issued and their conditions
- Details of all SALW (and where appropriate their parts) including make, model, serial number, country of manufacture and calibre
- Details of ammunition and explosives including quantity and type
- Details of all employees authorised to possess SALW
- Details of storage, acquisition, disposal, loss and theft
- Details of the movement of SALW and ammunition in and out of storage.

A requirement may be established to ensure that every movement into and out of storage is recorded.

B) Marking of state-owned SALW and ammunition (see Chapter 6 – Content of legislation; marking provisions for SALW and ammunition)

A requirement may be established that all SALW in State possession have a unique marking and that they are marked in such a way that identifies them as being owned by the State.

A requirement may be established that all ammunition in the possession of the State is marked to identify the ammunition as belonging to the state.

Box 36: Regional example: Pacific Islands Forum Weapons Control Bill

The Pacific Islands Forum includes provisions in Articles 4.11 and 4.12 for the maintenance of electronic registers by the Police Force and the Defence Force. These registers should contain detailed information relating to all firearms in the possession of each institution (for the Police this includes the firearms that they own and those handed in or seized). The Registers should contain the following information:[209]

- the make, model, country of manufacture, serial number, and calibre of the firearm;
- the quantity and kind of ammunition in the possession of the defence/police force;
- where the firearm is stored (defence force only);
- when the firearm was acquired by the defence/police force;
- when the firearm is issued to a member of the defence/police force;
- the purpose for which it was issued;
- when it was returned to the armoury;
- details of the quantity and type of ammunition issued with and returned with the firearm;
- when the firearm is moved to another place of storage and why (defence force only); and
- if the firearm is disposed of: when; how; and why.

209 Pacific Islands Forum, 'Weapons Control Bill', 2003, Art. 4.11 & 4.12.

Principle 3: Establishment of stockpile management framework

To ensure the operation of an effective system of stockpile management, legislation may create an institutional framework and stipulate the guiding principles that will inform its operation.

A) Disposal

Conditions may be established to determine how SALW and ammunition are to be disposed to limit leakages and accidents

B) Oversight

Provisions may set out how adherence to stockpile management procedures and controls on the possession of SALW by state employees is to be scrutinised

Content of legislation

Legislation may establish a body, or designate authority to an existing body, with overall responsibility for stockpile management. This body may be constituted to reflect and ensure participation of all the relevant agencies involved in the management of State stocks.

Authority may be designated to the body named above, to:

- lead joint planning and forecasting;
- determine acquisition needs of new stocks;
- oversee the management and security of stocks.

Legislation may also establish principles from which to derive procedures and operational guidelines for the management of stocks including on:[210] [211]

- Stockpile locations;
- Transportation;
- Access control;
- Emergency situations;
- Lock and key and other physical security measures;
- Training needs;
- Accounting controls;
- Loss and theft.
- Handling & safety procedures

A) Disposal[212]

Legislation may establish requirements and/or principles relating to the disposal of stocks of SALW.

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210 Drawn directly from: RECSA, 'Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons', Section 1.1.3 (c)(x-ix). And, OSCE, 'Best Practice Guide on National Procedures for Stockpile Management and Security', in OSCE, Handbook of Best Practices on Small Arms and Light Weapons, OSCE, Vienna, 2003.

211 For example of elaborated storage conditions for state-owned SALW, see, Pacific Islands Forum, 'Weapons Control Bill', 2003, Art. 1.7

212 Specific standards for the destruction of land mines are established under the International Mine Action Standards. See, IMAS 11.10 Guide for Stockpile Destruction (Ed. 2) Amendments 1, 2 & 3; IMAS 11.20 Open Burning and Open Detonation (OBOD) Operations (Ed. 2) Amendments 1, 2 & 3; IMAS 11.30 National Planning Guidelines for Stockpile Destruction (Ed. 2) Amendments 1, 2 & 3 http://www.mineactionstandards.org/imas.htm

Such requirements or principles may relate to seized, surrendered, forfeited and surplus SALW.

Methods of disposal such as destruction, deactivation and sale/transfer may be detailed and conditions established for the conduct of these activities. The circumstances under which particular methods of disposal may take place may be established.

Specific principles may be established relating to different methods of disposal including;

- Destruction/demilitarization – that particular forms of destruction will be undertaken; that all / or certain categories of SALW (seized, surplus etc) will be destroyed; that destruction will be cost-effective; that destruction methods will consider environmental impact; that destruction should not endanger persons or property; that SALW collected through weapons collection programmes or surrendered to the State will be destroyed close to the locations in which they were collected; that the public awareness potential of destruction activities will be considered.
- Deactivation – that it should render SALW permanently inoperable and incapable of being reactivated; that deactivation will only be applied to certain categories of SALW (seized, surplus etc).
- Sale / transfer – that State-owned SALW and / or previously illicit SALW will not be transferred for civilian use; that SALW transferred internationally should be transferred in accordance with the normal transfer control provisions.

B) Oversight

Provisions may also be established to allow for oversight and scrutiny of the management of stocks of SALW, for instance, through parliament.

Principle 4: Offences and sanctions

Establishing criminal offences and sanctions enables the State to punish and discourage breaches of the law.

Content of legislation

The state may establish offences relating to the possession and use of SALW by state employees.

A range of proportionate and dissuasive criminal sanctions should be made available in law to address offences, including administrative and civil sanctions for more minor misdemeanours and criminal penalties for more serious violations of the law.

States should use their discretionary powers under domestic legislation, as well as their international obligations, to ensure the criminal prosecution of those who do not comply with national laws and regulations relating to controls on state-owned SALW.

7.5 Enforcement and implementation

The enactment of effective controls over state-owned SALW through the management of stockpiles and control of possession and use presents a range of potential challenges. In the development of legal controls it will be important to consider the specific priorities and the financial and human resource implications of the establishment of particular stockpile management systems. The procedures established need to be commensurate with the physical infrastructure that is realistically available. In relation to controls on the possession and use of SALW, the effectiveness of legal provisions will be dependent on a number of factors including the suitability of measures to a particular context (balancing control with operational needs), levels of awareness and buy-in for controls (awareness raising and training for officials on their responsibilities may be necessary for instance) and the effectiveness of measures to monitor and enforce controls. More broadly, effectively implementing strengthened provisions on stockpile management and on possession and use of state-owned SALW may be dependent upon broader processes of reform and professionalisation within the security sector.

7.6 Checklist

Controls on state-owned SALW		
Possession and use	Permit / authorisation for possession and use	• Require permit / authorisation for possession by State employees; • Designate authority for issuing of permits.
	Application and exemptions	Provisions for exemption – particular categories of person and / or circumstances
	Suitability and competence	Establish requirements to determine suitability and competence to possess: • Conform to criteria and competency testing as for civilian possession; • Exemptions.
	Restrictions and conditions	Establish restrictions/conditions on possession and use including: • Carriage of SALW; • Carry permit while in possession; • Off-duty prohibition and special conditions; • Return of SALW to armoury at end of period of duty.
Records	Maintain records and register	Requirement to maintain national inventory/database
	Registration and accounting	• Each State department to maintain register; • Information to be recorded in registers; • Every movement of SALW to be accounted for.
	Marking	• All SALW to have unique mark and mark identifying arm as state-owned; • All ammunition to be marked.

Stockpile management framework	Authority and principles	• Designate authority for management of stockpiles; • Responsibilities of designate body; • Principles of stockpile management.

	Disposal	• Establish requirements/principles related to disposal of stocks held by State;
		• Requirements/principles on methods of disposal;
		• Principles on:
		  • Destruction
		  • Deactivation
		  • Sale/transfer

	Oversight	Establish oversight and scrutiny mechanisms
Offences and sanctions	Offences and penalties relating to state-owned SALW	Establishing specific actions that constitute an offence Establishing dissuasive and proportionate administrative and custodial sanctions

7.7 Further information and resources

Publications:

Greene, O., *Stockpile Security and Reducing Surplus Weapons*, Biting the Bullet, London, 2000.

OSCE, 'Best Practice Guide on National Procedures for Stockpile Management and Security', in OSCE, *Handbook of Best Practices on Small Arms and Light Weapons*, OSCE, Vienna, 2003.

Small Arms Survey, *Small Arms Survey 2004: Rights at risk*, Batchelor, P. and K. Krause, Oxford University Press, Oxford, 2004, Chapter 2.

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Annexes

Annex 1 Regional and international instruments

This chapter provides an overview of regional and international instruments on SALW control. Each of these instruments contains some reference, or implies or compels, that states institute some form of control within their legislation on SALW. A range of different instruments are covered within this section. These instruments range from legally-binding global protocols, regional political agreements, to agreed regional standards of best practice and recommendatory guides for action.

1 Introduction

Using the Guide: Structure, Content and Links

This annex contains reference to a range of global, multilateral and regional instruments with some relevance to the review of national SALW legislation.

The regional and international instruments have been divided into the following three categories:

- Global instruments
- Multilateral instruments
- Regional instruments, here further sub-divided into:
  - Africa
  - Americas
  - Asia-Pacific
  - Europe

For each instrument referenced the following information has been provided:

- *Name of Instrument* – the formal title of the instrument

- *Status* – an indication of the nature of the instrument and its force. The instruments covered within this Guide have been grouped into one of three categories:

  - *Legally binding instruments* – formally concluded agreements which states may become party to. Ratification of such instruments indicates a legal commitment to implement the instrument's provisions within national legislation. Includes conventions and protocols, such as UN 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.
  - *Politically binding instruments* – formally concluded instruments that states sign up to and that states align themselves with. Such instruments indicate a political / rhetorical commitment but are not binding upon signatories. Includes agreements and declarations, such as the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, 2001.
  - *Recommendatory instruments* – instruments that set forth recommendations for action that states may formally align themselves with or commit to implementing. Although recommendatory, and therefore non-binding, many of these instruments represent a consensus, or emerging consensus, on how states may act. Recommendatory instruments are often connected to and elaborate on the commitments of legally or politically binding instruments. Such instruments include best practice guidelines, standards and handbooks, for example, the OSCE Handbook of Best Practices on Small Arms and Light Weapons.

- *Parties* – an indication of the states party to, signatory to, aligned with, committed to or covered by the provisions of the instrument
- *Purpose and provenance* – an outline of the rationale for the development of the instrument, its

connection to other treaties, conventions, protocols or agreements and its relationship to global, multilateral, regional or other institutions.

- *Scope* – an overview of the issues covered by the instrument
- *Key provisions relating to SALW legislation* – reference to specific articles/annex/paragraphs that relate to SALW legislation and a brief outline of the instruments key provisions
- *Implementation* – brief information on any measures or frameworks relevant to the implementation of the instrument
- *Reference* – a reference indicating where the full text of the agreement can be found

In using this guide practitioners should be able to identify those instruments which relate to individual states and therefore the commitments, provisions and guidance that should inform the review of national SALW legislation. It is also intended, however, that this overview will provide information on how particular legislative issues on small arms, or indeed the broader approach to small arms, have been addressed by other groupings of states. As such practitioners should be able to draw upon the experience of other regions or groupings of states in addressing particular issues relating to SALW legislation.

This sub-section should be read in conjunction with Chapter 1 and with each of the individual issue chapters (Chapters 3 to 7). In Chapters 3 to 7, which cover specific areas of SALW legislation, such as civilian possession, transfer controls and marking, reference is made to the provisions contained within relevant regional and international instruments that relate to the issue covered by that chapter. For instance, the provisions of the United Nations Programme of Action that relate to transfer controls will be referenced in Chapter 4 on Transfer Controls. In Chapters 2 to 7, any instrument with relevant provisions has been highlighted and the specific articles/chapters/paragraphs have been listed. A more detailed explanation has also been given of any instruments that provide particularly far-reaching or otherwise notable provisions.

A list of abbreviated titles that are used in this guide where the title is not provided is included in Annex 2.

A list of legally binding international instruments requiring States to adopt criteria and principles for assessing the transfer and use of SALW that are consistent with international law is included in Annex 3 (and should be cross-referenced with Chapter 4 on Controls on the International Transfer of SALW).

2 Instruments

2.1 Global instruments

***Name of instrument:* UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Trans-national Organized Crime**

Status: Legally-binding. Entered into force on 3rd July 2005.

Parties / coverage: 52 states are signatories of the Protocol. 73 states are parties to the treaty.[1]

Purpose and provenance:

- The Firearms Protocol promotes, facilitates and strengthens cooperation between States Parties to prevent, combat and eradicate the illicit manufacture and trafficking of firearms.
- The Firearms Protocol is the first small arms treaty of global application.
- The Protocol supplements the United Nations Convention against Trans-national Organized Crime.

1 Full list of signatories and parties is accessible at; http://www.unodc.org/unodc/en/treaties/CTOC/countrylist-firearmsprotocol.html

Scope of instrument:

- States are bound to promote the development of uniform, joint standards to regulate the international movement of firearms for import, export and transit.
- The Firearms Protocol contains measures to control the trans-national movement of firearms across borders including; marking, record-keeping, licensing or authorization system, confiscation, deactivation and brokering.
- Definition of 'firearms' excludes explosives and explosive devices and the Protocol does not apply to state-to-state transactions or to state transfers.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Art. 5, 8, 10 & 15
- **Manufacturers, dealers and gunsmiths** – Art. 3(d), 5, 7, 8(a), 9 & 11
- **Marking and record keeping** – Art. 7 & 8
- **State-owned SALW** – none

The Firearms Protocol contains provisions relating to manufacturing, trafficking, marking, record-keeping, deactivation, licensing and authorisation and brokering, setting out a range of measures for legislative control by signatory states.

- Each state is required to develop national legislation to criminalise the illicit manufacture, trafficking of firearms and removal and/ or alteration of marking on firearms.
- Signatories are required to develop measures to enable the confiscation, seizure and disposal of firearms that have been illicitly manufactured or trafficked into the state.
- States are obliged to establish and maintain records on the number of firearms that are illicitly manufactured and trafficked into the country.
- All firearms must be marked at time of manufacture or upon import.
- Each state party must establish a system of import and export licensing or authorisation and must introduce measures on international transit for the transfer of firearms.

Implementation:

- The United Nations Office on Drugs and Crime (UNODC) is the key UN agency responsible for monitoring the implementation of provisions of the Firearms Protocol.

Full text accessible from: http://www.unodc.org/pdf/crime/a_res_55/255e.pdf

Name of instrument: **United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, 2001**. *Status:* Politically-binding. Agreed in July 2001.

Parties / Coverage: All United Nations Member States.

Purpose and provenance:

- The Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Programme of Action) is the central global agreement on preventing and reducing the trafficking and proliferation of SALW[2].
- The UN Programme of Action represents the first and only global agreement on small arms control.

2 See Redbook 2006, p. 23.

Scope of instrument:

The UN Programme of Action:

- Sets out a range of comprehensive measures at the national, regional and international level to prevent, combat and eradicate the illicit trade of SALW.
- Establishes a framework for states to take action on the following areas; preventing and combating illicit SALW production and trafficking; controls on production, holding and transfer of SALW; weapons collection and destruction; management and security of official and authorised SALW stocks; information exchange and confidence building measures and specific recommendations for the control of SALW in post-conflict settings.[3]
- Does *not* address civilian possession of SALW.
- Includes provisions relating to: the establishment of co-ordination bodies and points of contract; international and regional co-operation and information exchange; and the involvement of civil society.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – Section II (3) and (8)
- **Transfers** – Section II, Para. 2, 8, 9, 11, 12, 14 & 15
- **Manufacturers, dealers and gunsmiths** – Section II, Para. 2, 3, 7, 8 & 9
- **Marking and record keeping** – Section II, Para. 7, 8 & 9
- **State-owned SALW** – Section II, Para 9, & 17 – 19

The UN Programme of Action calls for states to:

- Develop national legislative controls on; illicit SALW production and trafficking, production, transfers, weapons collection and destruction and stockpile management.
- Develop comprehensive legislation and administrative procedures to facilitate marking, record-keeping and tracing of illicit SALW and cooperate fully in the tracing of SALW
- Act in full compliance with UN Security Council arms embargoes

Implementation:

- States should provide information on the implementation of the UN Programme of Action to the UN Department for Disarmament Affairs (DDA).
- Biennial Meetings of States have taken place in 2003 and 2005 to monitor implementation of the UN Programme of Action. Further Biennial Meetings of States are scheduled for 2008 and 2010.
- A Review Conference on the UN Programme of Action was held in 2006.

Full text accessible from: http://disarmament.un.org/cab/poa.html

Name of instrument: International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons

Status: Politically-binding. Adopted by the UN General Assembly on 12th October 2005.

Parties / Coverage: All Member States of the United Nations.

Purpose and provenance:

- The purpose of this Instrument is to enable UN Member States to identify and trace illicit SALW and to promote and facilitate international cooperation on marking and tracing of SALW.
- The Instrument is based on the findings of the Open-Ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and

3 See Red Book 2006 p. 25.

Light Weapons.

- The Instrument supports the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Trans-national Organized Crime, by reinforcing and elaborating the requirements to mark and record information on SALW.

Scope of instrument:

- Sets out detailed provisions relating to control and legislative procedures to enable states to effectively mark and trace illicit SALW.
- All UN Member States are politically bound to develop joint coordination and cooperation of efforts to mark and trace illicit SALW.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Section III, Art. 8(b) & 12(b)
- **Manufacturers, dealers and gunsmiths** – Section III, Art. 8(a) & 12(a)
- **Marking and record keeping** – Part III, Art. 7 – 13
- **State-owned SALW** – Part III, Art. 8(c), & 9 – 12

The Instrument stipulates that all UN Member States are politically bound to develop and enact national legislation that covers marking, record-keeping and tracing of SALW. The Instrument includes the following provisions:

- States are required to develop systems to mark all SALW during the manufacture phase.
- States are allowed to develop their own set of markings but must notify the UN Secretary General and other UN Member States of these markings.
- States are required to apply the UN Firearms Protocol requirement relating to the marking of SALW at the point of import.
- The Instrument applies to both civilian and state-owned SALW and states are obliged to ensure that all state-owned SALW bear appropriate markings.
- States are required to develop a national system of record-keeping. Records relating to manufacture of SALW must be kept for a minimum of 30 years. All other records including those relating to import of SALW must be kept for a minimum of 20 years.
- States must develop legislation and administrative procedures to support the implementation of the Instrument on Marking and Tracing.

Implementation:

- States must ensure that both marking systems and record-keeping procedures at the national level are clearly communicated to other UN Member States to promote information sharing where appropriate.
- All states must appoint a National Point of Contact to liaise between nation states and all UN Member States to facilitate the support implementation of the Instrument on Marking and Tracing at the international level.
- All states must submit a report on a biennial basis to the UN Secretary General outlining the progress made on implementation of the Instrument on Marking and Tracing.

Full text accessible from:
http://disarmament.un.org/cab/docs/International%20instrument%20English.pdf

***Name of instrument:* 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**

- Protocol I on Non-Detectable Fragments, 10 October, 1980
- Protocol II on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices, 10 October, 1980, as amended in May 1996
- Protocol III on Prohibitions or Restrictions on the Use of Incendiary Weapons, 10 October 1980

- Protocol IV on Blinding Laser Weapons, 13 October 1995
- Protocol V on Protocol on Explosive Remnants of War, November 2003

Status: Legally-binding. Entered into force 10 October 1980, amendment to Article 1, 21 December 2001.

Parties / coverage: 105 states are Party to the Treaty.[4]

Purpose and provenance:

- The CCW Convention and its annexed Protocols prohibits or restricts the use of certain types of conventional weapons (including SALW) which may be deemed to be excessively injurious or to have indiscriminate effects.

Scope of Instrument:

- Protocol I prohibits the use of any weapons where the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.
- Protocol II prohibits the indiscriminate use of landmines, booby-traps and other devices.
- Protocol III prohibits the use if any incendiary weapon[5] which is primarily designed to set fire to objects or to cause burn injury to persons.
- Protocol IV prohibits the use of laser weapons that are specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness.
- Protocol V addresses the threat posed by explosive remnants of war to civilians and civilian economies after conflicts end. It sets out obligations on State Parties to mark, record, clear and destroy explosive remnants of war.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Where there are express prohibitions or restrictions on the use of certain types of weapons this necessarily implies a prohibition or restriction on the transfer of that particular weapon – Protocols I-IV
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Protocol V
- **State-owned SALW** – Protocols I-IV

Implementation:

- The convention and its annexed Protocols are subject to ratification, acceptance and approval by the Signatories. Any state which has not signed this Convention may accede to it.
- State Parties can be bound by any of the annexed Protocols.
- Implementation of the treaty is monitored by the International Committee of the Red Cross.

Full text available at: http://www.icrc.org/ihl.nsf/INTRO?OpenView

Name of instrument: The UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Status: Politically binding. Adopted September 1990.

Parties / coverage: All United Nations Member States.

Purpose and provenance:

- The purpose of the Basic Principles is to articulate fundamental considerations that apply to the use of force and firearms by police or other law enforcement officials.

4 Figures correct as of 25 march 2008, <http://www.icrc.org/IHL.nsf/(SPF)/party_main_treaties/$File/IHL_and_other_related_Treaties.pdf>.

5 Incendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances.

- Although this instrument is not legally binding, many of the Basic Principles reflect states' existing obligations under international human rights law and in the law enforcement context.

Scope of instrument:

- Sets out that use of firearms by police must be a last resort, and only if other means remain ineffective or without any promise of achieving the intended result.
- Any use of force or firearms must be restrained and proportionate to the seriousness of the offence and the objective being pursued by the police or law enforcement officer.
- The principles of necessity and proportionality are further articulated, specifying that law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury; to prevent the perpetration of a particularly serious crime involving a grave threat to life; or to arrest a person presenting such a danger and resisting the police officer's authority, or to prevent his or her escape. In any event, firearms should only be used when less extreme means are insufficient to achieve these objectives.
- Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.
- In the event of using a firearm, law enforcement officials must identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless the particular circumstances dictate otherwise.
- The Guidelines underpin the requirement for national rules and regulations to govern the use of firearms by law enforcement officials.
- It establishes standards for special training of use of firearms for all law enforcement officials who are required to carry firearms.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – none
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – none
- **State-owned SALW** – Principles 4, 5, 9, 10, 11, 13, 14 and 19

Implementation:

- The Basic Principles are monitored by the UN Office of the High Commissioner for Human Rights.

Full text available at: http://www.unhchr.ch/html/menu3/b/h_comp43.htm

Name of instrument: United Nations Guidelines for International Arms Transfers

Status: Politically binding, endorsed by the General Assembly in A/RES/51/47 B, 10 December 1996

Parties / Coverage: All United Nations Member States

Purpose and provenance:

- The UN Guidelines for International Arms Transfers sets out guidance for states when considering international transfers of conventional arms, including small arms and light weapons.
- The Guidelines affirm that limitations on arms transfers can be found in international treaties, binding decisions adopted by the Security Council under Chapter 6 of the Charter of the United Nations and the principles and purposes of the Charter. Moreover, it defines illicit arms trafficking to be understood as covering international trade in conventional arms, which is contrary to the laws of States and/or international law.
- The Guidelines also stress the need for transparency in international arms transfers.

Scope of instrument:

- To give effect to such international obligations, States should establish and maintain an effective system of export and import licences for international arms transfers with requirements for full supporting documentation.
- In order to help combat illicit arms trafficking, States should also make efforts to develop and enhance the application of compatible standards in their legislative and administrative procedures for regulating the export and import of arms.
- Includes reference to reducing the possibility of diversion of arms to unauthorized destinations and persons, for example by requiring import licences or verifiable end-use/end-user certificates.
- Establishes a set of criteria that States should bear in mind when controlling their international arms transfers. This includes the principles and purposes of the UN Charter; sovereignty of all Members; non-interference in the internal affairs of States; obligation of Members to refrain from the threat or use of force; the settlement of disputes by peaceful means; respect for human rights; and the reaffirmation of the right of self determination of all peoples in accordance with the UN Charter.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – none
- **Transfers** – Para. 7, 8, 14, 26, 33 and 36
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – none
- **State-owned SALW** – none

Implementation:
- States must implement and maintain a national system to control the international transfer of all conventional arms (including SALW) in accordance with international law as set out in international treaties, binding decisions adopted by the Security Council under Chapter 6 of the UN Charter and the principles and purposes of the Charter.

2.2 Multi-lateral Instruments

Name of instrument: **Initial Element of the Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies**

Status: Politically-binding. Entered into force 12 July 1996, amended December 2006.

Parties/Coverage: 40 participating states from Europe, the Americas, Asia, Australia, New Zealand and South Africa.[6]

Purpose and provenance:
- The Wassenaar Arrangement (WA)[7] was the first global multilateral arrangement on export controls for conventional weapons and sensitive dual-use goods and technologies, and was designed to promote transparency, exchange of views and information and greater responsibility in transfers of conventional arms and dual-use goods and technologies, thus preventing destabilising accumulations.
- The WA provides a mechanism through which states share information on arms exports and dual-use goods and agree common standards and procedures by which to conduct exports of arms dual-use goods. The Initial Elements establish the basis for the functioning of the WA including guidelines and procedures for its operation.

Scope of instrument: Participating States of the WA will seek, through their national policies and legislation,

6 Participating States of the Wassenaar Arrangement are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom, and United States

7 For further information on the Wassenaar Arrangement visit: http://www.wasssenaar.org

to ensure that transfers of all conventional weapons and sensitive dual-use goods and technologies do not contribute to the development or enhancement of military capabilities which undermine the goals of the WA, and are not diverted to support such capabilities. The WA has created Lists of Dual-Use Goods and Technologies and a Munitions List which set out the weapons and goods covered by the WA. As the WA covers conventional weapons it therefore includes SALW.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Part II, Art. 7
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – none
- **State-owned SALW** – none

The Initial Elements require that Participating States have in place national legislation and policies, which are implemented on the basis of national discretion, to ensure that transfers of conventional weapons and sensitive dual-use goods and technologies are consistent with the goals of the WA.

The Initial Elements require Participating States through the application of their own national legislation and policies to follow guidelines and procedures established by the WA as a basis for decision-making on exports. These guidelines and procedures (see below for more information) are elaborated in:

- *Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons*;
- *Statement of Understanding on Intangible Transfers of Software and Technology*;
- *Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)*;
- *Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)*;
- *Elements for Effective Legislation on Arms Brokering*;
- *Statement of Understanding on Control of Non-Listed Dual-Use Items*.

Implementation:
The above listed guidelines and procedures elaborate the detail of how the WA functions. The WA's specific information exchange requirements involve semi-annual notifications of arms transfers, currently covering seven categories derived from the UN Register of Conventional Arms. Members are also required to report transfers or denials of transfers of certain controlled dual-use items. Denial reporting helps to bring to the attention of members the transfers that may undermine the objectives of the Arrangement.

Participating States are also required to meet on a regular basis in Vienna at the WA Secretariat to ensure that transfers are carried out responsibly and in furtherance of international and regional peace and security. Decisions are made by consensus.

Full text available at: http://www.wassenaar.org/guidelines/GuidelinesDocs/Initial%20Elements.doc

Name of instrument: Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

Status: Politically-binding. Entered into force December 2002.

Parties/Coverage: 40 participating states from Europe, the Americas, Asia, Australia, New Zealand and South Africa.[8]

Purpose and provenance:
The aim of the Guidelines on SALW is to control the flows of illicit SALW which pose a threat to peace and security, especially in areas beset by conflicts and tensions. Having regard to the UN Programme of Action on SALW, the OSCE Document on Small Arms and Light Weapons and other regional initiatives, the WA through these Guidelines on SALW affirm that Participating States will apply strict national controls on the export of SALW,

8 See footnote 6 above for list of Participating States of the Wassenaar Arrangement.

as well as transfers of technology related to their design, production, testing and upgrading. The Guidelines on SALW are in line with the WA Initial Elements and the Wassenaar document Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons.

Scope of instrument: This instrument covers the export, re-export and licensed manufacture of SALW, taking into account a number of criteria. In addition to the export criteria (as discussed below), the instrument requires participating states to take into account the stockpile management and security procedures of a potential state; and the provisions concerning small arms marking, record keeping and co-operation.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Part I, Art. 1 – 4; Part II, Art. 1 – 3
- **Manufacturers, dealers and gunsmiths** – Part I, Art. 4; Part II, Art. 2(a)
- **Marking and record keeping** – Part II, Art. 2(a) & (c)
- **State-owned SALW** – Part II, Art 2(b)

The Guidelines on SALW require that Participating States:

- Ensure that the principles enumerated in the Guidelines on SALW are reflected in their national legislation and/or their national policy governing export controls;
- Put in place and implement adequate laws or administrative procedures to control strictly the activities of those engaging in the brokering of SALW and ensure appropriate penalties for those who deal illegally in SALW.

The Guidelines on SALW call for each Participating State, in considering proposed exports of SALW, to take into account the following issues:

- the need to avoid destabilising accumulations of arms;
- the internal and regional situations in and around the recipient country, in the light of existing tensions or arms conflicts;
- the record of compliance of the recipient country with regard to international obligations and commitments;
- the nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments;
- the requirements of the recipient country to enable it to exercise its right to individual or collective self-defence;
- the legitimate domestic security needs of the recipient country;
- the requirements of the recipient country to enable it to participate in peacekeeping measures;
- the respect for human rights and fundamental freedoms; and
- the risk of diversion or re-export.

In addition, the Guidelines on SALW call for each Participating State to avoid issuing licences for exports of SALW where it is deemed that there is a clear risk that the small arms in question might:

- support or encourage terrorism;
- threaten the national security of other states;
- be diverted;
- contravene its international commitments;
- prolong or aggravate an existing armed conflict;
- endanger peace, create an excessive and destabilising accumulation of small arms, or otherwise contribute to regional instability;
- be contrary to the aims of the Guidelines, be re-sold, re-produced without licence, or be re-exported;
- be used for the purposes of repression;
- be used for the violation of human rights and fundamental freedoms;
- facilitate organized crime; and

- be used other than for the legitimate defence and security needs of the recipient country.

Implementation: Guidelines on SALW are implemented through the same structures and procedures as the WA. See above for implementation provisions of Initial Elements of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Full text available at: http://www.wassenaar.org/guidelines/GuidelinesDocs/SALW.doc

Name of instrument: Wassenaar Arrangement Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)

Status: Politically-binding. Entered into force December 2003.

Parties/Coverage: 40 participating states from Europe, the Americas, Asia, Australia, New Zealand and South Africa.[9]

Purpose and provenance: In response to the recognition that the misuse of MANPADS (a specific subcategory of SALW) can have potentially devastating and indiscriminate effects, particularly in the hands of non-state actors (NSA) and terrorist groups, the WA developed this instrument to tighten controls in this area.

Scope of instrument:

The WA instrument on MANPADS relates to exports of:

- Surface-to-air missile systems designed to be made man-portable and carried and fired by a single individual; and
- Other surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

This includes complete systems, components, spare parts, models, training systems, and simulators, for any purpose, by any means, including licensed export, sale, grant, loan, lease, co-production or licensing arrangement for production.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Art. 1.2, 1.3, 2.1, 2.2, 2.3, 2.7, 2.8, 2.9 & 3
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – none
- **State-owned SALW** – none

The WA instrument on MANPADS requires that Participating States must apply strict national controls to the export of MANPADS, including setting in place control conditions and evaluation criteria, and establishing a case-by-case licensing system. Furthermore, Member States must ensure that adequate penalty provisions are in place.

The instrument on MANPADS sets out conditions requiring that:

- transfers of MANPADS will only be made to foreign governments;
- exporting governments in the WA will report transfer of MANPADS; and
- MANPADS exports will be evaluated in the light of the WA Initial Elements.

Decisions to authorise MANPADS exports will take into account the risk of diversion; the risk against unauthorised transfer, loss, theft or misuse; and the adequacy and effectiveness of the recipient government's stockpile security.

Implementation:

9 See footnote 6 above for list of Participating States of the Wassenaar Arrangement.

This instrument on MANPADS is implemented through the same structures and procedures as the WA. See above for implementation provisions of Initial Elements of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Full text available at: http://www.wassenaar.org/guidelines/GuidelinesDocs/MANPADS.doc

Name of instrument: Wassenaar Arrangement Elements for Effective Legislation on Arms Brokering

Status: Politically-binding. Entered into force 2003.

Parties/Coverage: 40 participating states from Europe, the Americas, Asia, Australia, New Zealand and South Africa.[10]

Purpose and provenance:
Similar to Elements for Export Controls on MANPADS, the Wassenaar Arrangement Elements for Effective Legislation on Arms Brokering focuses on a specific area of export controls identified as requiring specialised controls. As such, the WA agreed the Elements for Arms Brokering in order to avoid circumvention of the objectives of the WA and UN Security Council arms embargoes. The Elements on Arms Brokering are intended to create a clear framework for lawful brokering activities and to enhance co-operation and transparency on arms brokering activities between participating states.

Scope of instrument:
The instrument aims to apply strict and comprehensive national controls on the activities of those who engage in the brokering of conventional arms (therefore including SALW) by introducing and implementing adequate laws and regulations. As such licence applications for brokering activities should be assessed on a case-by-case basis in accordance with the principles and objectives of the WA Initial Elements, and other Wassenaar documents.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – none
- **Transfers** – Art. 1 – 5
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Art. 2
- **State-owned SALW** – none

The Elements for Arms Brokering requires that Participating States must ensure that the common WA policy on arms brokering is consistent with the participating states' national legislation and practices. As such, Participating States shall:
- Implement a national licensing system for activities of negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment from one third country to another third country;
- Keep records of individuals or companies which have obtained a licence; and
- Establish adequate penalty provisions and administrative measures

Participating States may also:
- Implement extra-territorial controls on brokering activities;
- Define brokering activities to include those cases where the arms and military equipment are exported from their own territory;
- Seek to limit the number of brokers; and
- Establish a register of brokers.

10 See footnote 6 above for list of Participating States of the Wassenaar Arrangement.

Implementation:
Participating States will report to the Plenary Meetings of the WA on the progress made in meeting the objectives of the Elements. This instrument is implemented through the same structures and procedures as the WA. See above for implementation provisions of Initial Elements of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.

Full text available at: http://www.wassenaar.org/publicdocuments/2003_effectivelegislation.html

Name of instrument: Best Practices to Prevent Destabilising Transfers of Small Arms and Light Weapons (SALW) through Air Transport

Status: Politically binding. Entered into force December 2007.

Parties / coverage: 40 participating states from Europe, the Americas, Asia, Australia, New Zealand and South Africa.[11]

Purpose and provenance:

- The WA instrument recognises that air transport is one of the main channels for the illicit spread of SALW, particularly to destinations subject to a United Nations arms embargo or involved in armed conflict.
- The instrument sets out current best practice guidelines among participating states on the transportation of SALW.

Scope of instrument:
The Best Practices cover air transport of SALW, excluding those that are transported by government, military or Government-chartered aircraft. The instrument requires Participating States to assume full responsibility for transport by their government, military, or Government-chartered aircraft and that they encourage other States to assume the same responsibility.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Art. 2
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – none
- **State-owned SALW** – none

The Best Practices include:

- Requiring additional information on air transport to be provided when issuing an export licence for SALW, which may include information on the air carrier and freight forwarding agent involved in the transportation; the aircraft registration and flag; the flight route to be used and planned stopovers; records of previous similar transfers by air; and compliance with existing national legislation or international agreements relating to air transport of weapons.

- Requiring exporters to provide information on certificates of unloading or other documentation that can verify the delivery of SALW

The Best Practices also include provisions for the sharing of information on the air transportation of SALW with other Participating States.

Implementation:

- This instrument is implemented through the same structures and procedures as the WA.

Full text available at: http://www.wassenaar.org/publicdocuments/2007/Best%20Practices%20to%20Prevent%20Destabilising%20Transfers%20of.doc

11 See Footnote 6 above for the list of Participating States of the Wassenaar Arrangement.

Name of instrument: Organization for Security and Co-operation in Europe (OSCE) Document on Small Arms and Light Weapons

Status: Politically-binding. Entered into force 24 November 2000.

Parties/Coverage: 56 participating states from Europe, Central Asia, Caucasus and North America.[12]

Purpose and provenance:
The OSCE Document on Small Arms and Light Weapons (OSCE Document) was developed by Participating States of the OSCE in recognition that the excessive and destabilizing accumulation and uncontrolled spread of small arms have contributed to the intensity and duration of the majority of recent armed conflicts, pose a threat and a challenge to peace, and undermine efforts to ensure an indivisible and comprehensive security. The OSCE Document sets out a broad range of measures on SALW control that Participating States commit to implement. The OSCE Document links SALW control to the OSCE's wider efforts in the field of early warning, conflict prevention, crisis management and post conflict rehabilitation.

Scope of instrument:
Participating States agree to develop norms, principles and measures covering: manufacture, marking and record keeping; export control criteria; management of stockpiles, reduction of surpluses and destruction; and transparency.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Section II (C); and Section III (A).
- **Manufacturers, dealers and gunsmiths** – Section II, A, B(1), & C
- **Marking and record keeping** – Section II, B(1) & (2), C. Section III, B(7); & C(2)
- **State-owned SALW** – Section II, B(2); Section IV, C(1) & (2)

Specifically, the OSCE Document sets out norms, principles and measures covering:

- manufacturing, marking and record-keeping;
- common export criteria and export controls, which includes;
  - setting common import, export and transit procedures;
  - setting common import, export and transit documentation, such as issuing authenticated end-user certificates;
  - setting common controls over arms-brokering;
  - improving co-operation in law enforcement; and
  - exchanging information on transparency measures.
- management of stockpiles, reduction of surpluses and destruction, which includes:
  - establishing indicators for surplus;
  - setting standards for improving national stockpile management and security;
  - setting standards for destruction and deactivation;
  - providing financial and technical assistance;
  - establishing transparency measures.

12 Participating States of the Organization For Security and Co-operation in Europe are: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, The former, Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, United Kingdom, United States of America and Uzbekistan.

Implementation:
To guide implementation, and elaborate the provisions, of the OSCE Document, a Handbook of Best Practices on Small Arms and Light Weapons has been developed (see below). An OSCE Document on Stockpiles of Conventional Ammunition, setting out model standards for OSCE states to apply when assessing whether stockpiles are identified as surplus, and whether stockpiles are fully secure, has been developed.[13] Furthermore an OSCE Decision on the Standards Elements of End-User Certificates and Verification Procedures for SALW Exports has been agreed.[14] This seeks elaborate and guide the implementation of the OSCE Document on SALW's provision to ensure that export licences for SALW are only issued following receipt of a valid end-user certificate. As such, the OSCE Decision on End-User Certificates sets out the detailed information that should be included on an End-User Certificate and the procedures that should be followed to verify the End-User Certificate.

In addition, as part of the OSCE Document, Participating States agree to:

- establish a list of small arms contact points in delegations to the OSCE and in capital;
- regularly review the implementation of the norms, principles and measures in the Document, and may convene meetings of national experts on small arms; and
- keep the scope and content of this document under regular review.

Full text available at: http://www.osce.org/documents/fsc/2000/11/1873_en.pdf

Name of instrument: Organization for Security and Co-operation in Europe (OSCE) Handbook of Best Practices on Small Arms and Light Weapons

Status: Recommendatory guidelines. Agreed in September 2003.

Parties/Coverage: 56 participating states from Europe, Central Asia, Caucasus and North America.[15]

Purpose and provenance:
The OSCE Handbook was developed to assist participating states in implementing the OSCE Document on SALW.

Scope of instrument:
The Handbook covers best practice guidance for SALW as set out in the OSCE Document on SALW. The Handbook contains 8 separate Guides:

- Guide I on National Controls over Manufacture;
- Guide II on Marking, Record-keeping and Traceability;
- Guide III on National Procedures for Stockpile Management and Security
- Guide IV on National Control of Brokering Activities
- Guide V on Export Control
- Guide VI on the Definition and Indicators of a Surplus
- Guide VII on National Procedures for the Destruction
- Guide VIII on SALW in Disarmament, Demobilization & Reintegration (DD&R) Processes

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Best Practice Guide IV (Brokering) Sections II, IV & V; Best Practice Guide V (Export Control)

13 The OSCE Document on Stockpiles of Conventional Ammunition relates directly to the control of SALW. Its direct relevance to the development of legislation on SALW is, however, limited as its focus is on the practical procedures for assessing and managing stockpiles of ammunition and not on the regulatory framework. For further information and a full version of the Document: http://www.osce.org/documents/fsc/2003/11/1379_en.pdf

14 The full text of the OSCE Decision on the Standard Elements of End-User Certificates and Verification Procedures for SALW Exports can be found at: http://www.osce.org/documents/fsc/2004/11/3809_en.pdf
The OSCE Decision on End-User Certificates contains detailed information on End-User Certificates. This detail, in most circumstances is likely to be captured in the subsequent regulations and administrative procedures of legislation, rather than in the act itself.

15 For list of Participating States in the Organization for Security and Co-operation in Europe see footnote 12 above.

Sections III & IV

- **Manufacturers, dealers and gunsmiths** – Best Practice Guide I (Manufacture), Sections III, IV & V; Best Practice Guide II (Marking, Record-keeping and Traceability), Sections III & IV
- **Marking and record keeping** – Best Practice Guide I (Manufacture), Sections IV & V. Best Practice Guide II (Marking, Record-keeping and Traceability), Sections III, IV & V. Best Practice Guide IV (Brokering), Section IV
- **State-owned SALW** – Best Practice Guide II (Marking, Record-keeping and Traceability), Section IV. Best Practice Guide VI (Definitions and Indicators of a Surplus), Section III.

The Handbook covers the wide range of issues captured within the OSCE Document. This relates in places, as highlighted above, to issues of legislation but also covers a wide range of institutional and procedural issues. As a recommendatory instrument the Handbook is intended to serve as a guide for national policy-making by Participating States and to encourage higher common standards of practice among all Participating States.

Specifically, the Handbook covers:

- Guide I on manufacture includes provisions on: licensing requirements and conditions; authorisation bodies; licensing process (including validity, renewal, revocation and refusal of licences); and controls relating to the manufacturing process.
- Guide II on marking and record-keeping includes provisions on: types and timing of marking (manufacture, import, assignment and proofing); timing of record keeping and content of recorded information; establishment of registers; and sample registration data.
- Guide IV on brokering includes provisions on: definitions of brokers and brokering activities; licensing of brokering activities, licensing criteria and procedures; area of application of brokering controls (territorial and extra-territorial jurisdiction); the registration of brokers; and the need for End-Use documentation.
- Guide V on export controls includes provisions on: the scope of controls (exports *and* transit); licensing process and conditions; establishment of detailed licensing criteria; requirement for an End-User Certificate; and conditions of re-export.
- Guide VI on definition and identification of surpluses includes provisions on: the establishment of a body/agency to identify surpluses.

Implementation:
As an element of the OSCE Document the same implementation provisions apply to the Handbook (see above). In addition, much of the Handbook itself, focuses on issues of structures, institutions and procedures for implementation. Guidance, procedures and glossaries are outlined in the Handbook to assist participating states in implementing their obligations under the relevant OSCE documents.

Full text available at: http://www.osce.org/fsc/item_11_13550.html

Name of instrument: Organization for Security and Co-operation in Europe (OSCE) Principles on the Control of Brokering in Small Arms and Light Weapons

Status: Politically-binding. Entered into force 24 November 2004.

Parties/Coverage: 56 participating states from Europe, Central Asia, Caucasus and North America.[16]

Purpose and provenance:
As with the OSCE Handbook of Best Practices on SALW, the Principles on the Control of Brokering in SALW (OSCE Principles on Brokering) elaborate a specific commitment of the OSCE Document on SALW. The purpose of the OSCE Principles on Brokering is to control arms brokering in order to avoid circumvention of sanctions adopted by the UN or the OSCE – or other agreements on small arms control or non-proliferation agreements – to minimize the risk of diversion of SALW into illegal markets and to re-enforce export controls on SALW.

16 For list of Participating States in the Organization for Security and Co-operation in Europe see footnote 224 above

Scope of instrument:
Participating States endeavour to ensure that their existing or future national legislation on arms brokering is in conformity with the provisions and principles enunciated in the instrument. This covers the brokering activities including negotiating or arranging transactions of any items referred to in the OSCE Document on SALW from any other country to another country.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Section I, Part 2; Section II, Parts 1 – 4; Section III, parts 1 – 2; and Section IV, Parts 1 – 2
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Section III, Para. 2. Section IV, Paragraph 1
- **State-owned SALW** – none

The OSCE Principles on Brokering require participating states to abide by its norms, principles and measures. As such Participating States will:

- take all necessary measures to control brokering activities taking place within their territory;
- establish a clear legal framework for lawful brokering activities;
- require a licence or written obligation to be authorised by the competent authorities of the participating state for all brokering activities;
- keep records for a minimum of 10 years of all licence or written authorisations issued; and
- establish adequate sanctions, including criminal sanctions, in order to ensure that the controls are effectively enforced.

Participating States may also:

- consider controlling brokering activities outside of their territory carried out by brokers of their nationality resident or brokers who are established in their territory;
- extend national legislation to include cases where SALW are exported from its own territory or from exempting from its own licensing obligations brokering activities related to the transfer of such items to or from another participating state;
- require brokers to obtain a written authorisation to act as a broker; and
- establish a register of arms brokers.

Implementation:
As an element of the OSCE Document the same implementation provisions apply to the Handbook (see above). In addition, the OSCE Principles on Brokering state that Participating States will consider establishing, in accordance with national legislation, a system for exchange of information on brokering activities among themselves, as appropriate. Information that may be considered could include, *inter alia*, the following areas: legislation; registered brokers and records of brokers (if applicable); and denials of registering applications and licensing applications (as appropriate).

Full text available at: http://www.osce.org/documents/fsc/2004/11/3833_en.pdf

Name of instrument: Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Materials[17]

Status: Recommendatory. Agreed in 2002.

Parties/Coverage: Member States of the League of Arab States

Purpose and provenance:
Developed under the auspices of the League of Arab States, the Model Law provides a template for Arab States to use in reviewing and developing new laws on SALW control.

17 The information provided here is based upon an unofficial translation from the original Arabic version. As such, this section provides an indicative overview of its content but readers should refer to the original Arabic text to verify the information provided herewith.

Scope of instrument:
The Model Law relates broadly to SALW, providing a primary regulatory distinction between military and single weapons (definitions are also provided of hunting, relic and practice weapons. The Model Law also covers explosives and within this the control of fireworks and firecrackers. The issues covered in most detail within the Model Law relate to civilian possession, transfers, manufacturers, dealers and gunsmiths. The Model Law does not refer to the marking of SALW and refers only to record keeping in regard to the maintenance of logs by those licensed to transfer, manufacture and deal in SALW.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – Art. 2, 6 – 12, 15, 18, 23 – 25, 29, 31 – 35 & 38 – 40
- **Transfers** – Art. 2, 4, 9, 13, 15, 22 – 25, 30 – 34, 37 & 40
- **Manufacturers, dealers and gunsmiths** – Art. 2 – 5, 9, 14, 23 – 26, 28, 30 – 34, 37, 40, 42 & 43
- **Marking and record keeping** – Art. 30
- **State-owned SALW** – Art. 6, 16, 17 & 36

The Model Law sets out measures including:

- A system of licensing for the manufacture, possession, import, export, transport, repair and trade in SALW;
- Manufacture, possession, import, export, transport, repair and trade of military weapons by non government authorities is prohibited;
- Provisions relating to the control of explosives, fireworks and firecrackers;
- Licensing requirements including: being a national or resident, over 21 and of sounds mind/body; not having specific criminal convictions; being homeless; not having been denied residency; and providing evidence of professional qualifications;
- Conditions relating: to duration of licence (2 years); quantities of arms (1 rifle, 1 gun, 2 hunting weapons) and ammunition allowed;
- Restrictions on the manufacture, transport and trade in SALW; and
- Penalties and powers of enforcement.

Implementation: –

Full text available at: http://www.international.gc.ca/informalmeetinggeneva2007/arab-model-law-en.asp (Unofficial English translation)

2.3 Regional Instruments

2.3.1 Africa

***Name of Instrument:* Organization of African Unity Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, 2000.**

Status: Politically-binding. Agreed on 1st December 2000.

Parties / Coverage: All Member States of the Organization of African Unity and the African Union.[18]

Purpose and provenance:
The Bamako Declaration was concluded ahead of the UN Conference on SALW in July 2001 and sought to

18 The members of the Organization of African Unity (now the Africa Union) are: Algeria, Angola, Arab Saharan Republic, Benin, Botswana, Burkino Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo (Republic of), Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea Bissau, Guinea, Kenya, Ivory Coast, Lesotho, Liberia, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

present a unified voice on the challenges facing Africa and Africa's priorities for action on SALW control. As such, it establishes an African Common Position on the proliferation, circulation and trafficking of SALW, building on the regional agreements already concluded in East and West Africa, respectively the Nairobi Declaration and the ECOWAS Moratorium (see below for more details on these initiatives).

Scope of instrument:
The Bamako Declaration presents a broad statement of the challenges posed by the uncontrolled proliferation of SALW in Africa, identifies key issues that need to addressed in this regard, calls upon Member States to coordinate efforts to address the SALW problem and urges the international community to support these efforts.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – Section 3(iii)
- **Transfers** – Section 3 (iii), (vi) & (vii)
- **Manufacturers, dealers and gunsmiths** – Section 3 (iii) & (vii)
- **Marking and record keeping** – none
- **State-owned SALW** – none

As a broad statement of the SALW problem and a call for action, the Bamako Declaration, by its very nature, does not include detailed provisions relating to SALW legislation. Relevant reference is however made to legislation in the following areas:

- Adopting legislation to address and establishing as criminal offences the illicit manufacturing of, trafficking in, and illegal possession of SALW;
- Adopting national legislation to prevent the breaching of United Nations arms embargoes; and
- Controlling arms transfers.

Implementation:
The provisions of the Bamako Declaration have been reflected and elaborated upon in a number of subsequent regional declarations, protocols and conventions, most notably the SADC Protocol, Nairobi Protocol and ECOWAS Convention (see below for more details). Continental meetings on SALW have been held to discuss SALW control issues since the agreement of the Bamako Declaration, while the African Union has a dedicated small arms unit.

Full text accessible from: http://www.globalpolicy.org/security/smallarms/regional/bamako.htm

Name of Instrument: Southern Africa Development Community (SADC) Declaration concerning Firearms, Ammunition and Other Related Materials

Status: Politically-binding. Agreed on 9th May 2001.

Parties / Coverage: Member States of the Southern African Development Community.[19]

Purpose and provenance:
The SADC Declaration identifies the specific challenges posed by the uncontrolled proliferation of SALW in southern Africa and commits the SADC Member States to take a range of measures at the national and regional levels to address these challenges. The Declaration commits the signatories to develop and agree a legally binding regional protocol on the control of firearms and ammunition and other related material, laying the ground for the conclusion of the SADC Firearms Protocol (for more information see below).

Scope of instrument: The SADC Declaration covers a comprehensive range of SALW control measures relating to operational capacity, awareness raising and information sharing, as well as to legislation.

19 The members States of the Southern African Development Community are; Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – Main text (no paragraph numbering)
- **Transfers** – Main text (no paragraph numbering)
- **Manufacturers, dealers and gunsmiths** – Main text (no paragraph numbering)
- **Marking and record keeping** – Main text (no paragraph numbering)
- **State-owned SALW** – Main text (no paragraph numbering)

The SADC Declaration commits signatories to review national legislation in order to strengthen controls in a number of areas including:

- Prohibiting the unrestricted civilian possession of small arms and the possession of light weapons by civilians;
- Centrally registering all civilian firearms;
- Controlling the manufacture, import, export, transfer, possession and use of SALW;
- Ensuring the standardised marking of SALW at the time of manufacture, import and export;
- Regulating firearms brokering;
- Sanctioning the violation of UN arms embargoes;
- Improving the control over firearms owned by the State; and
- Adopting coordinated national policies to ensure that confiscated or unlicensed firearms that come into the possession of State authorities are destroyed;

Implementation:
The SADC Secretariat is charged with co-ordinating the implementation of the SADC Declaration. The SADC Declaration contains provisions that focus on information sharing and co-operation as a means to take forward its implementation.

Full text accessible from:
http://www.smallarmssurvey.org/source_documents/Regional%20fora/Africa/SADCdecl090301.pdf

Name of instrument: Southern Africa Development Community (SADC) Protocol on the control of firearms, ammunition and other related materials.

Status: Legally-binding. Signed in August 2001 and entered into force in November 2004.

Parties / Coverage: Member States of the Southern Africa Development Community.[20]

Purpose and provenance:
The SADC Protocol elaborates the commitments made by signatories of the SADC Declaration concerning Firearms, Ammunition and Other Related Materials in March 2001, in the form of a legally binding regional protocol. The Protocol itself was drafted by the Southern African Regional Police Chiefs Co-operation Organization (SARPCCO). The SADC Protocol thus forms a central element of an established regional process on small arms control. The SADC Protocol commits signatories to undertake a common set of measures to address the uncontrolled proliferation of small arms in the sub-region that must be codified in national legislation.

Scope of instrument:
The SADC Protocol covers a range of measures to address the proliferation of SALW in the sub-region. It outlines legislative controls on SALW to be included in national legislation as well as addressing issues of operational capacity, practical SALW control measures, including awareness raising and weapons collection, and information sharing. Signatories also encouraged to become party to other international instruments on SALW control.

20 The members States of the Southern African Development Community are; Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, South Africa, Swaziland, Tanzania, Zambia, Zimbabwe. 12 Member States have thus far ratified the Protocol

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – Art. 5 (1), (3(a)), (3(b)), (3(e)), (3(i)), (3(j)), (3(k)), (3(l)); & 7
- **Transfers** – Art. 5 (1), (2), (3 (c), (g), (l) & (m)); 8; & 9
- **Manufacturers, dealers and gunsmiths** – Art. 5 (1), (3(e)), (3(g)), (3(k)), (3(l)); & 9
- **Marking and record keeping** – Art. 5 (3(d)), (3(g)); 6(b); 7; & 9
- **State-owned SALW** – Art. 8, 10 & 11

Specifically, the SADC Protocol calls for the regional harmonisation of legislation as well as including provisions relating to national legislation, calling for States to:

- Review existing controls of national procedures and criteria for civilian possession of firearms, including restricting the number of firearms held by an individual, prohibiting the possession of light weapons by civilians, establishing conditions of safe storage, ensuring competency testing and restricting owner's rights to relinquish and use licensed small arms;
- Properly control manufacturing of, possession and use of SALW;
- Ensure the standardised marking and identification of firearms at the time of manufacture, import or export;
- Introduce provisions providing for the seizure, confiscation, and forfeiture to the State of all illegally held SALW;
- Establish provisions that prohibit the pawning and pledging of firearms;
- Establish provisions that regulate firearm brokering in the territories of State Parties;
- Develop and maintain national electronic databases of licensed firearms, firearms owners and commercial traders and state-owned SALW; and
- Co-operate to promote the development of commonly agreed systems for marking and tracing of firearms at time of manufacture and/or import.

Implementation:
The SADC Protocol foresees the establishment of a committee to oversee its implementation. Overall responsibility for the implementation of the SADC Protocol rests with the SADC Secretariat, with the Southern African Regional Police Chiefs Co-operation Organization (SARPCCO) mandated to operationalise the Protocol.
Full text accessible from: http://www.smallarmsnet.org/docs/saaf09.pdf

Name of instrument: Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lake Region and the Horn of Africa.

Status: Politically-binding. Agreed on 15th March 2000.

Parties / Coverage: 12 states of the Great Lakes Region and the Horn of Africa.[21]

Purpose and provenance:
The Nairobi Declaration identifies the challenges posed by the uncontrolled proliferation of SALW in East Africa, as well as a political statement of commitment from signatories to take action on a number of priority issues. The Nairobi Declaration was agreed as a compliment to discussions at the continental and global levels, through the Organization of African Unity and the United Nations, that resulted in the conclusion of the Bamako Declaration (see above) and the UN Programme of Action (see above). The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, a legally binding protocol, stems directly from the Nairobi Declaration.

21 Signatories to the Nairobi Declaration are: Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, the Seychelles, Sudan, Uganda and United Republic of Tanzania. Transitional National Government of Somalia has also signed up to the Declaration.

Scope of instrument: The Nairobi Declaration outlines a broad approach to tackling the proliferation of illicit small arms. Parties to the Declaration committed to strengthening domestic firearms legislation and promoting coordinated responses across the region. It relates to issues of information sharing, operational capacity, establishment of co-ordination structures, the provision of international assistance and public awareness raising, as well as legislation.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – Section (iv)
- **Transfers** – Section (iv)
- **Manufacturers, dealers and gunsmiths** – Section (iv)
- **Marking and record keeping** – none
- **State-owned SALW** – none

The Nairobi Declaration calls for signatories to have in place adequate laws, regulations and administrative procedures to effectively control the possession and transfer of SALW. It highlights:

- Governing civilian the civilian possession of SALW;
- Licensing manufacturers, traders, brokers, financiers and transporters of SALW; and
- Monitoring and controlling transactions of SALW.

Implementation:
The Regional Centre on Small Arms (RECSA) – formally known as the Nairobi Secretariat – was set up to co-ordinate the implementation of the Nairobi Declaration and to create an institutional mechanism for sharing of information across the region. In addition, A Co-ordinated Agenda for Action and an Implementation Plan were agreed at the First Ministerial Review Conference of the Nairobi Declaration in August 2002. These documents elaborated the specific action that needed to be taken to implement the Nairobi Declaration. To monitor and review implementation and to set priorities, annual Ministerial Review Conferences are held. At the national level, every signatory to the Nairobi Declaration has formed a National Focal Point to co-ordinate the implementation of activities and to share information with RECSA and other National Focal Points.

Full text accessible from: http://www.globalpolicy.org/security/smallarms/regional/nairobi.htm

Name of instrument: Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa

Status: Legally-binding. Signed in April 2004. Entered into force in May 2006.

Parties / Coverage: 12 states of the Great Lakes Region and Horn of Africa.[22]

Purpose and provenance:
Nairobi Protocol stems from the agreement of the Nairobi Declaration (see above), elaborating the commitments of the Declaration into a more detailed set of legally-binding measures. As such, the Nairobi Protocol forms a central element of the regional small arms process in East Africa.

Scope of instrument:
Nairobi Protocol covers a broad range of measures to address the proliferation of SALW. It contains a range of detailed measures relating to controls that must be enacted in national legislation as well as to administrative, institutional and enforcement provisions. The Nairobi Protocol presents a reasonably comprehensive set of SALW measures covering, as it does, issues including civilian possession, stockpile management, record keeping, transfer controls, mutual legal assistance, law enforcement, operational capacity, disposal, awareness raising, and information exchange.

22 Signatories to the Nairobi Protocol are: Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, the Seychelles, Sudan, Uganda and United Republic of Tanzania. Transitional National Government of Somalia has also signed up to the Protocol.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – Art. 3 (a), ((c) i, ii, iii, viii, ix, x & xi); and 5
- **Transfers** – Art. 3 (a), (b), (c) xi & xiii); 7 (c) & (d); 10; & 11
- **Manufacturers, dealers and gunsmiths** – Art. 1; 3 (a), (iv), (x) & (xi); 7 (a); & 11
- **Marking and record keeping** – Art. 3 (c(iii)), (c(vi)); 4(c); 6, 7; & 11(ii)
- **State-owned SALW** – Art. 6, 8 & 9(d)

Nairobi Protocol calls for the regional harmonisation of legislation as well as containing detailed provisions relating to the strengthening of national small arms control legislation across a broad range of issues, including:

- Prohibiting civilian possession of light weapons and automatic and semi-automatic rifles and machine guns;
- Detailed provisions for control of civilian possession including licensing and competency testing;
- Regulation of brokers, including licensing of each individual transaction and registration of all brokers;
- Establishment of national databases for civilian and state-owned SALW;
- Detailed provisions for the marking and recordkeeping of SALW;
- Provisions for the seizure and confiscation of illegally held SALW;
- Regulating the manufacture of SALW;
- Detailed provisions to regulate the transfer of SALW; and
- Provisions covering the disposal of state-owned and confiscated and unlicensed SALW.

Implementation:
As the Nairobi Protocol stems from the Nairobi Declaration and forms part of the same regional SALW control process, the implementation mechanisms for the Nairobi Protocol are also the same. As such, the Regional Centre on Small Arms (RECSA) – formally known as the Nairobi Secretariat – was set up to co-ordinate the implementation of the Nairobi Declaration and to create an institutional mechanism for sharing of information across the region. In addition, A Co-ordinated Agenda for Action and an Implementation Plan were agreed at the First Ministerial Review Conference of the Nairobi Declaration in August 2002. These documents elaborated the specific action that needed to be taken to implement the Nairobi Declaration. To monitor and review implementation and to set priorities, annual Ministerial Review Conferences are held. At the national level, every signatory to the Nairobi Declaration has formed a National Focal Point to co-ordinate the implementation of activities and to share information with RECSA and other National Focal Points.

In addition, a series of Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons have also been developed. These elaborate the commitments of the Nairobi Protocol across a range of issues, the majority relating to the review, strengthening and regional harmonisation of SALW legislation (see below for more information).

Full text accessible from: http://www.smallarmsnet.org/docs/saaf12.pdf

Name of instrument: Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons

Status: Recommendatory.[23] Agreed in 2005.

Parties / Coverage: 12 states of the Great Lakes Region and Horn of Africa.[24]

23 The Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons were developed through a series of workshops during 2005, in two phases. The Best Practice Guidelines, although recommendatory, have been endorsed by the Ministers of the State Parties to the Nairobi Protocol.

24 Signatories to the Nairobi Protocol are: Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, the Seychelles, Sudan, Uganda and United Republic of Tanzania. Transitional National Government of Somalia has also signed up to the Protocol.

Purpose and provenance:
The Best Practice Guidelines for the Nairobi Protocol were developed during the course of 2005 to elaborate the provisions of the Nairobi Protocol. The Best Practice Guidelines are intended to aid states in implementing the Nairobi Protocol and to provide a common set of minimum standards. As such, one of the primary objectives of the Best Practice Guidelines is to inform the national processes of legislative review – as called for in the Nairobi Declaration and Nairobi Protocol – and in so doing promote the regional harmonisation of small arms legislation across the Great Lakes Region and Horn of Africa; that is, ensure that all states criminalise the same core set of activities and ensure that common minimum standards are adopted.

The Best Practice Guidelines were developed in two phases during 2005 and are consequently contained in two documents entitled: 1) The Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons; 2) Guidelines for Harmonisation of Legislation.

Scope of instrument:
The Best Practice Guidelines elaborate the central provisions of the Nairobi Protocol. Best Practice Guidelines have been developed in the following areas:

- Stockpile Management
- Import, Export and Transfer Control
- Marking, Tracing and Brokering
- Public Awareness and Destruction
- Mutual Legal Assistance and Operational Capacity, Public Education and Disposal
- Manufacture
- Possession
- Transport
- Legal Uniformity in Sentencing

Key provisions relating to SALW legislation include:[25]

- **Civilian possession and PSCs** – Guidelines for Regional Harmonisation, Section D, Part 2
- **Transfers** – Best Practice Guidelines Chapter 2; & Chapter 3. Guidelines for Regional Harmonisation Section D, para. 1.4
- **Manufacturers, dealers and gunsmiths** – Guidelines for Harmonisation, Section D, Part 1
- **Marking and record keeping** – Best Practice Guidelines: Chapter 1, Para. 1.2; Chapter 2, Para. 2.1; Chapter 3, Para. 3.2.4. Guidelines for Harmonisation, Section D, Para. 1.4, & 2.2
- **State-owned SALW** – Best Practice Guidelines: Chapter 1, Para 1.1.2, & 1.2 – 1.4.

The Best Practice Guidelines contain detailed information on each of the thematic areas they address. Some of the notable elements of the guidelines include:

- Stockpile Management – contains detail on procedures for joint planning and forecasting, acquisition management and stockpile management and security. For legislation, notable elements include; an elaborated a definition of 'possession'; provisions relating to institutional bodies to manage stockpiles; record-keeping provisions, including establishment of a national database; provisions governing the possession of small arms by state employees; and provisions on the marking of SALW.
- Import, Export, Transfer and Transit – key legal requirements established and elaborated include: licensing of all import, export and transit transactions; procedures for licensing; requirement for and detail of end-user certification; record-keeping provisions; and establishment of detailed arms transfer criteria against which to adjudge licence applications.
- Tracing and Brokering – contains detail on the procedures to be followed to enable the tracing of SALW. The predominant provisions relating to legislation in the section are those on brokering, which include:

25 Reference to sections of the Best Practice Guidelines relevant to SALW legislation is made to the two separate documents in which the guidelines are contained (see explanation in Purpose and Provenance section).

requirement to register all brokers; the licensing of every individual brokering transaction; licensing individuals and companies involved in the brokering transaction; requirement to disclose on licences names and locations of all brokers involved in the transaction; and requirement that all brokers and brokered transaction comply with import, export, transfer and transit guidelines.

- Manufacture – notable provisions relating to legislation include: conditions to be met by applicants for a licence to manufacture; details of the licensing process; controls on premises for manufacturing; record-keeping requirements; and powers of inspection.
- Civilian possession – notable provisions relating to legislation include: conditions to be met by applicants for a licence to possess small arms by civilian; details of the licensing process; and restrictions on possession and use.
- Transportation – notable provisions relating to legislation include: conditions to be met by applicants for a licence to transport SALW; details of the licensing process; and restrictions on the transportation of SALW.
- Legal uniformity in sentencing – relating directly to the process of harmonisation of legislation and the requirement of the Nairobi Protocol to promote legal uniformity in the sphere of sentencing. These guidelines provide broad guidance on the determination of penalties for particular offences.

Implementation:
As part of the process to implement the Nairobi Protocol, the implementation of the Best Practice Guidelines is being co-ordinated and monitored through the same structures and institutions as the Nairobi Protocol itself (for more information see above). To promote the implementation of the Best Practice Guidelines and support the process of national review and regional harmonisation of SALW legislation, RECSA has held a series of workshops in each of the Nairobi Protocol State Parties, to take forward the review of legislation.

Full text accessible from:

- Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol: http://www.recsasec.org/pdf/Best%20Practice%20Guidelines%20Book.pdf
- Guidelines for Harmonisation, RECSA, 2005.

Name of instrument: ECOWAS Convention on Small Arms and Light Weapons 2006

Status: Legally-binding. Agreed on 14 June 2006.

Parties / Coverage: Member States of the Economic Community of West African States (ECOWAS).[26]

Purpose and provenance:
ECOWAS was one of the first sub-regional groupings to develop an instrument to control the proliferation of small arms and light weapons. In 1998, a Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons was introduced, which sought to prohibit the transfers of any SALW into or within the West African sub-region. The ECOWAS Convention seeks to build upon the Moratorium, which is no longer in place, and establish a more comprehensive regional approach to the control of SALW. The ECOWAS Convention, like the SADC and Nairobi Protocols, establishes a legally binding regional agreement, covering a broad range issues and goes beyond the more narrow focus of the Moratorium on SALW, covering these issues as well as ones such as marking and record-keeping and civilian possession, among others.

Scope of instrument:
The ECOWAS Convention contains a range of detailed measures relating to controls that must be enacted in national legislation as well as to administrative, institutional and enforcement provisions. The ECOWAS Convention presents a reasonably comprehensive set of SALW measures covering, as it does, issues including civilian possession, stockpile management, record keeping, transfer controls, border controls, operational

26 The ECOWAS Member States are: Benin, Burkino Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

capacity, disposal, awareness raising, and information exchange.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – Art. 14 & 15
- **Transfers** – Art. 3; 4; 5; & 6
- **Manufacturers, dealers and gunsmiths** – Art. 7; 8; & 18
- **Marking and record keeping** – Art. 8, 9, 11, 14(6), 18, & 19
- **State-owned SALW** – Art. 9, 11, 16 & 17

ECOWAS Convention calls for the regional harmonisation of legislation as well as containing detailed provisions relating to the strengthening of national small arms control legislation across a broad range of issues, including:

- Establishing the principal of a ban on SALW transfers into and through the territory of state parties. Exemptions maybe permitted in certain circumstances and should be adjudged against a detailed set of criteria.
- Allowing manufacture of SALW only where details of arms to be produced are provided. Manufactured SALW must be marked according to detailed provisions of the Convention.
- Establishing national computerised registers and databases, as well as a sub-regional register.
- Establishing systems of licensing for the civilian possession of SALW. Applicants must undergo a competency test, provide a legitimate reason of possession, ensure adequate safe storage and have no criminal record. Limits should also be imposed on the number of SALW to be possessed by an individual.
- Establishing far-reaching provisions for the marking of SALW, including ensuring a unique and specific marking at the time of manufacture and calling for the marking of ammunition.
- Establishing conditions for the control of brokers and brokering, including registering all brokers, requiring an authorisation of each individual brokered transaction and requiring the full disclosure on licences of the details of brokers.
- Establishing provisions for the regional harmonisation of legislation.

Implementation:
The Convention calls for the implementation of National Commissions to co-ordinate and lead implementation of the Convention at the national level and to elaborate the commitments of the Convention in national action plans. At the regional level, the ECOWAS Executive Secretary is responsible for co-ordinating application of the Convention's provisions and is tasked with developing a plan of action for its implementation.

Full text accessible from:
http://www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.PDF

2.3.2 Americas

Name of instrument: **Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Explosives and other related materials**

Status: Legally-binding. Agreed in 1998, and subsequently ratified by 26 signatories.[27]

Parties / Coverage: Member States of the Organization of American States (OAS).[28]

Purpose and provenance:
The CIFTA was the first legally binding regional or international instrument to be concluded specifically focusing on the control of SALW. The CIFTA is born of a recognition of the need to develop a co-ordinated regional response to illicit SALW trafficking and manufacturing. It seeks to co-ordinated regional responses and enhance national capacity, with a predominant focus of the international movement of SALW and crime prevention.

Scope of instrument:
CIFTA contains a series of provisions relating to manufacture, import and export of SALW that must be enacted in national legislation as well as provisions designed to improve cooperation between OAS member-states focusing on the exchange of information, technical assistance, co-operation and exchange of experience and training.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Art. IV (1); VI (1(b)); and IX
- **Manufacturers, dealers and gunsmiths** – Art. IV (1), & VI (1(a))
- **Marking and record keeping** – Art. IV & XI
- **State-owned SALW** – none

Specifically, the CIFTA calls for State Parties to:

- Establish illicit manufacturing and trafficking as criminal offences;
- Mark firearms at the time of manufacture and import;
- Confiscate or forfeit illicitly manufactured or trafficked firearms;
- Establish effective systems of import, export and transit licensing or authorisation, and ensure that authorisation is sought from the receiving state before permitting transit of firearms; and
- Maintain records for a reasonable period of time to trace illicitly manufactured or trafficked firearms.

Implementation:

- Calls on states to establish a national body or identify a single point of contact to act as liaison among signatory states in the region.
- All states to establish a Consultative Committee responsible for ensuring the effective implementation of provisions of the agreement.

A Consultative Committee is to be established to ensure the effective implementation of the provisions of the CIFTA. The Consultative Committee is to have one representative from each member state. In addition, each state is required to establish a national body or nominate a representative to monitor the implementation of the CIFTA and to respond to requests for information from OAS member-states.

27 For information on signatories and ratifications visit:http://www.oas.org/juridico/English/sigs/a-63.html
28 Member States of the Organization of American States are: Antigua and Bermuda, Argentina, The Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Columbia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay, Venezuela.

The Inter-American Drug Abuse Control Commission (CICAD) is the chief OAS body charged with the responsibility of overseeing the implementation of the CIFTA. The CIFTA stipulates that a follow-up conference must be held five years after OAS Member States sign the Convention. The UN Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) is responsible for facilitating regional dialogue to encourage development of databases, training and comprehensive study of existing national SALW legislation.

The Inter-American Drug Abuse Control Commission (CICAD) of the OAS Secretariat has developed a set of recommendations for Model Regulations for the Control of the International Movement of Firearms, Their Parts, Components and Ammunition (see below).

A number of subsequent declarations have been made by groupings of states within the OAS membership including:

- The Declaration of Bogota on the Functioning and Application of the Inter-American Convention Against the Illicit Manufacturing of And Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, in 2004. This sets out practical sets to be taken to take forward the implementation of the CIFTA and the development of some of its legislative provisions.[29]

- The Lima Commitment, Andean Charter for Peace and Security and the limitation and Control of the Expenditure on Foreign Defence. Commonly referred to as the Lima Declaration and the Andean Security Policy, agreed in 2002 by Bolivia, Columbia, Ecuador, Peru and Venezuela, formulates a common security policy for the Andean Community, and in so doing in Section VIII, recognises the need to include SALW control within scope of a common security policy for the region.[30] More detailed provisions to address SALW control under the Lima Commitment are then elaborated in Andean Community Decision 552 Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects (see below for more information).

- Antigua Declaration on the Proliferation of Light Weapons in the Central American Region was signed in 2000 and urges states to strengthen legislation on control, registration, import and export and civilian possession of weapons and munitions.[31] The Declaration was signed by state representatives from Central America acting in a personal capacity, along with civil society representatives.

Full text accessible from:
http://www.oas.org/juridico/english/treaties/a-63.html

***Name of instrument*: Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for the Control of the International Movement of Firearms, Their Parts, Components and Ammunition, 1997.**

Status: Recommendatory.

Parties / Coverage: Member States of the Organization of American States.[32]

Purpose and provenance:
These Model Regulations were developed by a group of experts under the auspices of the Inter-American Drug Abuse Control Commission (CICAD), to provide states party to the Inter-American Convention Against

29 For full text of the Bogota Declaration visit: http://www.fas.org/asmp/campaigns/smallarms/OASdecl_bogota.pdf
30 For full text of the Lima Commitment visit: http://www.comunidadandina.org/INGLES/documentos/documents/compromiso_lima.htm
31 For full text of the Antigua Declaration visit: http://www.smallarmssurvey.org/files/portal/issueareas/measures/Measur_pdf/r_%20measur_pdf/Americas/20000629_antigua%20declaration.pdf
32 Member States of the Organization of American States are: Antigua and Bermuda, Argentina, The Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Columbia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay, Venezuela.

the Illicit Manufacturing of and Trafficking in Firearms, Explosives and other related materials (CIFTA), with a set of guidelines for developing domestic legislation on import, export and movement of firearms. As such they build upon and elaborate the provisions of the CIFTA.

Scope of instrument:
These Model Regulations apply to commercially-traded firearms, their parts and components and commercially traded ammunition. The Model Regulations do not apply to state-to-state transfers or to transfers for purposes of national security. The CICAD Model Regulations provide states with guidelines on how to monitor and control the illicit movement of firearms through development of comprehensive licensing system. As such, they elaborate specific provisions of legislation as well as more detailed information relating to procedures and the operation of legal controls, including examples of transfer documentation. The Model Regulations establish separate guidance for firearms, their parts and components, and for ammunition.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – none
- **Transfers** – Chapter 1, Para. 1.2, 1.3, 2.1, 2.2, 3 & 4; Chapter 2, Para. 5 – 7, & 9
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Chapter IV, Para. 9
- **State-owned SALW** – none

The Model Regulations offer states party to the legally-binding CIFTA a comprehensive guide to developing procedures and licensing systems to control the import, export and transit of SALW and ammunition. Specifically, the Model Regulations contain the following provisions:

- Sets out steps that States should follow when exporting and importing firearms and ammunition to other countries.
- Each shipment of exported arms and ammunition should be accompanied by an export certificate stating the following information; domestic export certificate identifier, country of issuance, date of issuance, authorizing agency identification, exporter identification, certificate expiry date, importing country information, importer, final recipient (if different from importer) source of firearms and ammunition, and parts and components and certificate cancellation information.
- Each shipment must be accompanied by an Export Attachment to include information relating to the serial numbers and transit details of firearms and ammunitions, full contact details of shipper and full details of prior shipments.
- Each country should issue import certificate including following information; domestic import certificate number, country and date of issuance, contact details of authorizing agency, importer and final recipient, total quantity of imported firearms and ammunition should be listed by classification-description, certificate expiry date, name of country of export and certificate cancellation information.
- Each country should issue an In-Transit Shipment Authorization containing information on; individual country information, identification of the applicant (commercial and government) and country-specific requirements for in-transit shipments.
- States are responsible for record-keeping and must maintain records of import, export, in-transit shipments of firearms and ammunitions. Where possible, states should transfer record-keeping system to computerised system to promote information-sharing and regional cooperation.

Implementation:
As these Model Regulations provide guidelines of the implementation of the CIFTA, the implementation provisions relating to the CIFTA apply also to these Model Regulations. In addition, the Model Regulations call for each country to establish a Central Information Office to facilitate exchange of information between states and state that States should provide technical assistance to neighbouring states to ensure implementation of model regulations.

Full text accessible from: http://www.state.gov/documents/organization/61643.pdf

***Name of instrument:* OAS CICAD Draft Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition. Amendments to the Model Regulation for the Control of the International Movement of Firearms, their Parts and Components and Ammunition, 2003.**

Status: Recommendatory. Agreed in 2003.

Parties / Coverage: Member-states of the Organization of American States.[33]

Purpose and provenance:
These Model Regulations were developed by a group of experts under the auspices of the Inter-American Drug Abuse Control Commission (CICAD), to provide states party to the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Explosives and other related materials (CIFTA), with a set of guidelines for developing domestic legislation to more effectively control the operations of brokering agents. As such they build upon and elaborate the provisions of the CIFTA.

Scope of instrument:
The Model Regulations on Brokering apply specifically to the brokering of SALW. The regulations are detailed information on the provisions of legislation that should be applied by state parties to the CIFTA as well as providing model documentation.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Art. 1 – 9
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Art. 9
- **State-owned SALW** – none

The Model Regulations on Brokering sets out a number of provisions relating to brokering for states to include in national legislation covering; registration, licensing criteria, prohibitions and scope of application. Specifically, the Model Regulations state that:

- Each person engaged in brokering activities must register with National Authority for registration and/or be licensed as a broker;
- Each person who seeks to engage in brokering activities must obtain a licence issues by the National Authority;
- Licensed brokers are obliged to submit reports detailing the extent of brokering activities by quantity, type, classification-description, value in national currency;
- National Authorities reserve the right to refuse brokering license to individuals who fail to meet licensing criteria;
- Each applicant for a brokering licence must inform authorities if he/she also registered as a manufacturer, exporter or importer of firearms and/or ammunition;
- The relevant National Authority has the power to prohibit brokering and refuse to grant brokering licences if it suspects that such activities will; result in acts of genocide or crimes against humanity, violate human rights enshrined in international law, support acts of terrorism, violate UN Security Council Arms Embargo, lead to war crimes or risk being diverted for use in criminal activities, or result in a breach of an arms control or non-proliferation agreement; and
- Each state should adopt measures that criminalise illicit brokering activities.

33 Member States of the Organization of American States are: Antigua and Bermuda, Argentina, The Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Columbia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, United States, Uruguay, Venezuela.

Implementation:
As these Model Regulations provide guidelines of the implementation of the CIFTA, the implementation provisions relating to the CIFTA apply also to these Model Regulations. In addition, the Model Regulations state that each State should set up a National Authority to oversee the licensing of brokers and that these National Authorities should share information on registered brokers and cooperate to facilitate the implementation of regulations on brokering.

Full text available from: http://www.oas.org/juridico/english/cicad_brokers.pdf

Name of instrument: Andean Community Decision 552 Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects also known as 'Andean Decision 552'.

Status: Legally binding. Agreed in March 2003.

Parties / Coverage: Bolivia, Columbia, Ecuador, Peru and Venezuela.

Purpose and provenance:
The Andean Plan emanates from section VIII of the Lima Commitment to establish an Andean Charter for Peace and Security and the limitation and Control of the Expenditure on Foreign Defence. Section VIII of the Lima Commitment highlights the importance of tackling the proliferation of SALW and implementing the provisions of the UN Programme of Action on SALW. The Member States of the Andean Community are also all signatories to the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Explosives and other related materials (CIFTA). Community Decision 552 establishes the Andean Plan with the details of the plan itself, its Co-ordinated Agenda for Action and its Implementation Plan annexed to the Decision.

Scope of instrument:
The Andean Plan sets out a comprehensive plan to address the illicit manufacture and trafficking of SALW in the sub-region. Notably it goes beyond the scope of the CIFTA by also addressing the illicit possession of SALW. The Andean Plan has a Co-ordinated Agenda for Action and an Implementation Plan.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – Guidelines for Action, Part A, Para. 3 & 4(e); Co-ordinated Agenda for Action, Para. 3, 3.1.1, 3.2 & 5.6
- **Transfers** – Guidelines for Action Section A, Para. 3 & 4(f); Co-ordinated Agenda for Action, Para. 3.1.2, 3.1.3, 3.2, & 5.6
- **Manufacturers, dealers and gunsmiths** – Guidelines for Action, Section A (3); Co-ordinated Agenda for Action, Para. 3.1.2, 3.1.3, 3.2, & 5.6
- **Marking and record keeping** – Co-ordinated Agenda for Action, Para. 5.2, 5.6 & 5.11
- **State-owned SALW** – Co-ordinated Agenda for Action, Para. 3.2, & 5.2 – 5.5

The Andean Plan calls on states to develop national legislation that includes regulatory provisions on; possession, manufacture, import and export, brokering, transport, and marking and tracing, as well as calling for the harmonisation of legislation in the region. Specifically, it:

- Urges states to develop legislative controls on possession, concealment and carrying of SALW.
- Calls on states to implement regulatory controls on manufacture, import and export of SALW.
- Recommends that States should develop and maintain systems and procedures for the marking, registration and tracing of SALW.
- Calls for states to control and regulate the activities of manufactures, brokers, financiers, sellers and transporters of SALW.
- Calls for states to criminalise of illicit possession, manufacture and trafficking of SALW.
- Promotes the harmonisation of legislation on SALW possession, manufacture and trafficking.

Implementation:

The Andean Council of Foreign Ministers has overall responsibility for co-ordinating implementation of the Andean Plan, while the High-Level Group on Security and Confidence-Building shall be the executor of the Plan. An Operating Committee shall be created to coordinate, harmonize and carry out efforts relating to SALW and may set up specialized working groups as it deems fit. The General Secretariat of the Andean Community shall act as the Technical Secretariat for this Plan.

Within the framework of the Andean Plan the General Secretariat is to conduct a comparative study of all national legislation on SALW and establish a set of minimum sub-regional standards. The General Secretariat and National Focal Points are also to plan the development of a sub-regional mechanism to control the problem of SALW. Paragraph 4 of the Co-ordinated Agenda for Action then includes detailed provisions relating to the development of Operational and Institutional Strengthening Measures.

Full text accessible from: http://www.comunidadandina.org/INGLES/normativa/D552e.htm

Name of instrument: Code of Conduct of the Central American States Regarding the Transfer of Arms, Ammunition, Explosives and Other Related Materials

Status: Politically binding. Agreed in 2005.

Parties / Coverage: Member States of the Central American Integration System (SICA)[34]

Purpose and provenance:
The SICA Code of Conduct stems from the Program of Control and Limitation of Armaments in Central America and seeks to establish a preventative mechanism through the establishment of common principles regarding the transfer of arms.

Scope of instrument:
The Code of Conduct covers all conventional and non-conventional including SALW, ammunition, explosives and other related materials. Its primary focus is on strengthening transfer control systems and transparency. As such, is elaborates a set of principles relating to the transfer of arms and includes a range of measures to promote the functioning of effective transfer controls, covering issues relating to the establishment of national, electronic databases, and harmonising transfer documentation and transfer licence verification within the region, among other issues. While predominantly focused on international transfers, some measures relate to domestic controls, for instance, the commitment to establish a national inventory of arms held by security companies and other licensed entities.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Art. I, II (2, 3, 5 – 7, 10 & 17)
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Art. II (3, 5 & 10)
- **State-owned SALW** – Article II (10)

The central component of the SICA Code of Conduct is the list of guidelines / criteria against which to assess licence applications in Article 1. The Code states that transfers shall be carried out shall not be carried out to States which act in contravention of a range of international legal obligations and norms including:

- Committing or sponsoring crimes against humanity or human rights violations or committing serious violations of the laws and customs of war;
- Preventing their citizens from choosing their representatives through free, fair and periodic elections by secret ballot;
- Restricting the right of their citizens to express their political views through freedom of expression,

34 As of January 2006, participating states are Belize, the Dominican Republic, El Salvador, Guatemala, Honduras, Nicaragua and Panama

the dissemination of ideas and information, and the right of assembly, association and organization, including the establishment of political parties;
- Failing to comply with relevant regional or international agreements on arms embargoes or other sanctions;
- Failing to report the totality of their arms transfers to the United Nations Register of Conventional Arms;
- Being involved in an armed conflict, unless that conflict is recognized to be an act of self-defence;
- Promoting nationalist, racial or religious hatred that incites to discrimination, hostility or violence, or that incites individuals to overthrow their Government or the Government of another country;
- Being involved in actions or practices that might lead to a significant number of displaced persons or refugees;
- Failing to comply with international agreements and instruments on terrorism and related acts.

The Code calls for legislation and regulations to be harmonised and for national procedures to be strengthened, in addition, to calls for the establishment of national electronic databases.

Implementation:
Articles II and III of the SICA Code of Conduct detail the implementation and monitoring provisions. These include a range of measures relating to strengthening border and custom controls, training law enforcement officials, establishing inter-institutional working groups, undertaking public education campaigns and the collection and destruction of arms. Oversight of the Code's implementation is designated to the Security Commission body of Central America, to whom participating states are to report.

2.3.3 Asia-Pacific

***Name of instrument:* Legal Framework for a Common Approach to Weapons Control Measures**

Status: Politically binding. Agreed on 10th March 2000.

Parties / Coverage: Member States of the Pacific Islands Forum.[35]

Purpose and provenance:
The Nadi Framework was developed to provide a legal framework that could guide states in the adoption of effective controls over SALW within the Member States domestic legislation and to promote a common approach to legal controls on weapons in the region.

Scope of instrument:
The Nadi Framework focuses specifically on legal controls relating to SALW and seeks to address issues of illicit manufacturing, trafficking, sale and possession of SALW.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – Para. 1.2, 2, 3, 4(c), 8, 10 & 11; Annexes C & D
- **Transfers** – Para. 2, 3, 4(b), & 6
- **Manufacturers, dealers and gunsmiths** – Para. 2, 3, 4(a), 8. Annexure C, Part II. Annexure D
- **Marking and record keeping** – Para. 4 & 8
- **State-owned SALW** – none

Specifically the Nadi Framework requires that states:
- Require permits for the possession of firearms and establish strict requirements in order to obtain a permit, including demonstrating 'genuine need' (personal protection and protection of the persons not constituting 'genuine need');

35 Signatories to the Nadi Framework are: American Samoa, Australia, Fiji, New Zealand, Tonga and Vanuatu.

- Establish illicit manufacturing, trafficking, sale and possession of firearms as criminal offences;
- Mark weapons at the time of manufacture and import;
- Confiscate or forfeit illicitly manufactured or trafficked firearms;
- Establish an effective system of export, import and transhipment controls on firearms; and
- Establish a licensing system and maintain records relating to possession of firearms.

Implementation:
A model weapons control bill (see below) has been drafted to guide the review and amendment of existing legislation in line with the provisions of the Nadi Framework.

Full text accessible from: http://www.globalpolicy.org/smallarms/regional/nadi.rtf

Name of instrument: Pacific Islands Forum – Weapons Control Bill

Status: Recommendatory. Finalised in 2003.

Parties / Coverage: Member States of the Pacific Islands Forum.[36]

Purpose and provenance:
The Weapons Control Bill, like the Arab League Model Law, is intended as a template law to inform the review and amendment of national legislation. The Weapons Control Bill forms part of efforts by the Pacific Island States to better control SALW. As such, the Bill builds elaborates upon the provisions of the Nadi Framework (see above) which sought to develop a common approach to weapons control in the region. The Weapons Control Bill forms part of other legal measures being developed by the Pacific Islands Forum on issues including Mutual Assistance in Criminal Matters, Extradition and Money Laundering.[37]

Scope of instrument:
The Weapons Control Bill contains fully drafted legal provisions and as such covers key SALW control issues in specific detail. The Bill focuses exclusively on SALW.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – Art. 1.8 – 1.17; 2.1; 2.2; 2.5 – 2.8; 2.10; 2.12; 3.1; 3.3; 3.7 – 3.26; 4.1; 4.6; 4.8 – 4.10; 5.1; 5.2; 8.1 – 8.16; 8.18; 8.21; 10.1 – 10.3; 11.1; 11.2; & 11.4
- **Transfers** – Art. 2.3; 7.1 – 7.7
- **Manufacturers, dealers and gunsmiths** – Art. 2.2; 2.9; 2.11; 3.2; 3.7 – 3.26; 5.1; 5.3; 6.1 – 6.12; 8.1 – 8.3; 8.12; 8.17 – 8.19; 9.6; & 10.1 – 10.3
- **Marking and record keeping** – Art. 3.26; 4.1 – 4.7; 4.11; 4.12; 6.1 – 6.3; 6.8; 6.10; 8.16; & 8.17
- **State-owned SALW** – Art. 1.6; 1.7; 2.4; 4.11; & 4.12

The Weapons Control Bill covers the range of issues set forth in the Nadi Framework (see above) elaborating these issues into specific legal provisions and regulations. As such it elaborates:
- the principle of genuine need for the possession of SALW, explicitly excluding personal protection as a legitimate need;
- the system of licensing for possession and as a dealer, and the conditions and responsibilities of licence holders;
- the system of registration and the maintenance of records by the state on civilian possession, and possession and use by the Armed Forces and Police;
- provisions relating to the import and export of SALW;
- specific offences; and
- powers of enforcement.

36 Signatories to the Nadi Framework are: American Samoa, Australia, Fiji, New Zealand, Tonga and Vanuatu.
37 Pacific Islands Forum, Explanatory Notes to Weapons Control Bill

Implementation: –

Full text accessible from: -

2.3.4 Europe

***Name of instrument:* EU Code of Conduct on Arms Exports**

Status: Politically-binding. Entered into force 8 June 1998.

Parties/Coverage: 27 Member States of the European Union.[38] Other potential EU candidates and near neighbourhood states have publicly stated alignment to the principles of the EU Code.

Purpose and provenance:
The European Union became the first group of states to accept a regional Code of Conduct on Arms Exports. The EU Code seeks to establish high common standards to be applied to arms export decisions and in so doing prevent the export of equipment which might be used for internal repression, international aggression or contribute to regional instability. The EU Code also seeks to reinforce cooperation and to promote convergence in the field of conventional arms exports among the EU Member States and to strengthen the exchange of relevant information with a view to achieving greater transparency among EU states on arms exports.

Scope of instrument:
The EU Code sets out eight criteria which are to be considered when making any decision to export strategic goods. The EU Code is applied to an agreed common list of military goods, as well as to dual-use goods as specified in Annex 1 of Council Decision 94/942/CFSP. The EU Code, thus, applies to conventional arms, including SALW.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – none
- **Transfers** – Criteria 1 – 8; Operative Provision 1
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – none
- **State-owned SALW** – none

The EU Code requires that states have in place a national licensing system whereby export licences are assessed on a case-by-case basis. The substance of the Code then focuses on the detail of eight criteria against which arms export decisions should be adjudged. These criteria include:

- respect for the international commitments of Member States, in particular the exporting state's commitments under the UN Charter, OSCE and EU embargoes and non-proliferation agreements;
- respect of human rights in the country of final destination, with specific reference to internal repression;
- the internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts;
- the preservation of regional peace, security and stability;
- the national security of the member state, as well as that of friendly and allied countries, taking into account the risk of reverse engineering or unintended technology transfers;

38 The EU Code of Conduct had 15 original signatories: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the UK. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia subsequently became parties to the agreement upon joining the EU in 2004, and Bulgaria and Romania in 2007.

- the behaviour of the buyer country with regards its attitude to terrorism, international organized crime and respect for international law, in particular the intended recipient's attitude to international humanitarian law and its commitments to non-proliferation agreements;
- the existence of a risk the equipment will be diverted within the buyer country or re-exported under undesirable conditions; and
- the compatibility of the arms exports with the technical and economic capacity of the recipient country.

Implementation:
The EU Code contains a series of Operative Provisions which call for, among other things, that states circulate through diplomatic channels details of denied licences, and consult with one another in the event that a member state is considering a licence application for a transfer that is "essentially identical" to one already refused a licence by another member state. In addition, States should establish a common list of military equipment, circulate an annual report on its defence exports and implementation of the EU Code and encourage other arms exporting states to subscribe to the principles of the EU Code.

A Working Party on Conventional Arms Exports (COARM), with representatives drawn from each of the EU Member States, evaluate and discuss the implementation and evolution of the EU Code. In addition to the Operative Provisions, in 2003, COARM agreed to create a 'User's Guide' to clarify Member States' responsibilities in this area, and promote enhanced exchange of information. The User's Guide is not intended to replace the EU Code, but elaborates existing practice of the eight criteria and gives guidance on interpreting the Operative Provisions with regard to the definition of a denial, the notification procedure and the information it should contain, the revocation of a denial notification, and procedures for consultations (for more information, see below).

Full text available at: http://ec.europa.eu/comm/external_relations/cfsp/sanctions/codeofconduct.pdf

Name of instrument: User's Guide to the EU Code of Conduct on Arms Exports

Status: Recommendatory. Updated 29 February 2008.

Parties/Coverage: 27 Member States of the European Union.[39] Other potential EU candidates and near neighbourhood States have publicly stated alignment to the principles of the EU Code.

Purpose and provenance:
In 2003, the Working Party on Conventional Arms Exports (COARM) agreed to create a 'User's Guide' intended to clarify Member States' responsibilities as established in the EU Code of Conduct on Arms Exports and to enhance the exchange of information. The User's Guide is not intended to replace the EU Code, but elaborates existing practice of the eight criteria and gives guidance on interpreting the Operative Provisions of the EU Code. It is intended for use primarily by licensing officials, and is updated by COARM on a regular basis to take into account existing practice and to reflect changing circumstances and adapt to those situations.

Scope of instrument:
Specifically, the User's Guide elaborates the Operative Provisions of the EU Code in relation to the definition of a denial, the notification procedure and the information it should contain, the revocation of a denial notification, and procedures for consultations. While the User's Guide currently elaborates existing practice in the application of criteria 2, 3, 4, 7 and 8[40]of the EU Code's eight criteria. In addition, the User's Guide seeks to clarify Member States' responsibilities in the areas of: the denial notifications and consultation procedures; licensing practices; transparency; and adherents to the EU Code.

39 The EU Code of Conduct had 15 original signatories: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the UK. Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia subsequently became parties to the agreement upon joining the EU in 2004, and Bulgaria and Romania in 2007.

40 The final three criteria, 1, 5 and 6, are currently being elaborated by COARM, and are aimed to be completed by July 2007. These elaborations will then be incorporated into a newly updated User's Guide.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Chapters 1 – 3
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – none
- **State-owned SALW** – none

The User's Guide is intended to serve as a guide for national licensing officials in all Member States, seeking to identify best practice in the interpretation of the criteria of the EU Code. It contains a great deal of detail on the functioning of a transfer control system much of which relates to regulations and procedures, but which may also have relevance for the shaping of legislation in relation to transfers of SALW. As well as focusing on the interpretation of the EU Code's export criteria, it also seeks to clarify the following responsibilities:

- when a denial notification should be issued;
- the operation of the denial notification system and consultation process;
- best practice in the area of end-user certificates;
- assessment of applications for incorporation and re-export;
- the export of controlled equipment for humanitarian purposes; and
- requirements for submissions by Member States to the EU Annual Report.

Implementation framework:

As a central element of the functioning of the EU Code itself, the development and elaboration of the User's Guide is overseen by COARM. The EU Code User's Guide contains guidance, templates and forms which outline how Member States should implement their responsibilities under the EU Code, including:

- a list of the elements a Member States shall include when issuing a denial notification, including an annexed template form;
- information which an end-user certificate should at a minimum set out;
- relevant information sources;
- definitions;
- indicators to evaluate the level of development of a proposed recipient state;
- a list of what information Member States shall provide to the Council Secretariat to prepare the EU Annual Report; and
- a common template for information to be included in national reports.

Full text available at: http://register.consilium.europa.eu/pdf/en/06/st16/st16440.en06.pdf

Name of instrument: Council Common Position 2003/468/CFSP on the Control of Arms Brokering

Status: Legally-binding. Entered into force 23 June 2003.

Parties/Coverage: 27 Member States of the European Union.[41]

Purpose and provenance:
The objective of the Common Position is to control arms brokering in order to avoid circumventing UN, EU or OSCE embargoes on arms exports, as well as the Criteria as set out in the EU Code.

Scope of instrument:
The Common Position sets out legally-binding obligations which Member States must ensure are incorporated into their existing or future national legislation on arms brokering.

41 The current Member States of the European Union are: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – none
- **Transfers** – Art. 1(2), 2, 3, 4 & 6
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Art. 3(2)
- **State-owned SALW** – none

For the purposes of this instrument, brokering activities are activities of persons and entities:

- negotiating or arranging transactions that may involve the transfer of items on the EU Common List of military equipment from a third country to any other third country; or
- who buy, sell or arrange the transfer of such items that are in their ownership from a third country to any other third country.

Member States are required to take all necessary measures to control brokering activities taking place within their territory, including:

- establishing a clear legal framework for brokering activities, within their territory;
- requiring all brokering activities to obtain a licence or written authorisation from the competent authorities of the member state, where required by national legislation. A licence or written authorisation must be assessed against the provisions of the EU Code;
- keeping records for a minimum of 10 years for all persons/entities who have obtained a licence; and
- establishing adequate sanctions including criminal sanctions, to ensure that the controls on arms brokering are effectively enforced.

Participating states may also:

- consider controlling brokering activities extraterritorially; and
- putting in place a registration system or requiring brokers to obtain written authorisation to act as a broker.

Implementation framework:
The Working Party on Conventional Arms Exports (COARM), which contains representatives from each of the EU Member States, oversees the implementation and evolution of the Common Position. To facilitate its effective implementation, the Common Position requires Member States to establish a system for information exchange. The information which will be exchanged should include: legislation; registered brokers (if applicable); records of brokers; denials and registering applications (if applicable) and licensing applications. Furthermore, the User's Guide to the EU Code complements the Common Position by elaborating denial notification procedures for brokering licenses and registration.

Full text available at: http://ec.europa.eu/comm/external_relations/cfsp/sanctions/468.pdf

Name of instrument: Council Joint Action on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons

Status: Politically-binding. Entered into force 12 July 2002.

Parties /Coverage: Member States of the European Union.[42]

Purpose and provenance:
The Joint Action main purpose is to enable the provision of financial and technical assistance to combat and contribute to ending the destabilising accumulation and spread of small arms and to contribute to the reduction of existing accumulations of these weapons and their ammunition to levels consistent with countries' legitimate security needs. This Joint Action replaces Joint Action 1999/34/CFSP.

42 The current Member States of the European Union are: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

Scope of instrument:
The Joint Action requires the EU to provide financial and technical assistance to programmes and projects which make a direct and identifiable contribution to the principles and measures referred to in the Joint Action. This includes relevant programmes or projects conducted by the UN, the International Committee of the Red Cross (ICRC), other international and regional organizations and NGOs. Such projects might include, *inter alia*, weapons collections, security sector reform, demobilisation and reintegration programmes, as well as specific victim assistance.

The Joint Action seeks to build consensus in relevant regional and international fora, around some of the following principles: importing SALW at levels commensurate with their legitimate self-defence and security requirements; promoting increased transparency; strengthening efficient border and customs mechanisms; reversing 'cultures of violence' through public education and awareness programmes; eliminating surplus small arms and their ammunition; and including provisions for demobilisation, re-integration and disarmament of ex-combatants in peace agreements.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – none
- **Transfers** – Art. 3(b)
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Art. 3(d)
- **State-owned SALW** – none

The Joint Action presents a broad set of provisions focused on enhancing efforts to build consensus for controls on SALW in the regional and international forums among affected states, and is geared towards the provision of financial and technical support from the EU. As such, it's focus on legislation, either in calling for the adoption of legal controls or in setting out measures to be contained in legislation, is limited. Where relevant reference is made to legislative issues this constitutes building consensus around the need for:
- restrictive arms export criteria and the effective monitoring of end-use; and
- national inventories of state-owned weapons and restrictive small arms legislation.

Implementation:
The Council of the EU shall implement the Joint Action on the basis of concrete properly-costed project proposals and on a case-by-case basis, and decide on:
- the allocation of the financial and technical assistance;
- the priorities for the use of those funds; and
- the conditions for implementing specific actions of the Union.

The Presidency of the EU shall ensure liaison with the UN and any other relevant organization involved, and establish, with regional arrangements and third countries, the contacts needed to implement the EU's specific actions.

Full text available at: http://europa.eu.int/eur-lex/pri/en/oj/dat/2002/l_191/l_19120020719en00010004.pdf

Name of instrument: EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition

Status: Politically binding. Entered into force 13 January 2006.

Parties /Coverage: Member States of the European Union.[43]

Purpose and provenance:
Born out of the need to implement the UN Programme of Action on SALW, and the EU's desire to combat

43 The current Member States of the European Union are: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the UK.

the destabilising accumulation and spread of SALW and illicit trade in SALW and their ammunition which constitutes a growing threat to peace, security and development, the SALW Strategy by combining together in one document all the tools available to allow the EU to work on SALW issues in a comprehensive and meaningful way.

Scope of instrument:
The EU Strategy on SALW is outward-looking as it sets forth the EU's approach to supporting the fight against SALW globally. The EU Strategy sets out the EU's perception of the nature of the SALW problem and the range of approaches appropriate to addressing the problem and the measures that the EU has at its disposal. In so doing it seeks to build upon and broaden the objectives of the Council Joint Action on the EU's Contribution to Combating the Destabilising Accumulation and Spread of SALW. The EU Strategy sets out a range of practical initiatives that the EU should seeks to support utilising its available resources, such as promoting ratification of the UN Firearms Protocol, supporting the monitoring and implementation of sanctions, supporting regional SALW initiatives, and raising key issues in dialogue, among many others.

Key provisions relating to SALW legislation include:
- **Civilian possession and PSCs** – none
- **Transfers** – Para. 20(a)
- **Manufacturers, dealers and gunsmiths** – none
- **Marking and record keeping** – Para. 20(b)
- **State-owned SALW** – none

The focus of the EU Strategy on setting out a broad encapsulation of the problem and appropriate responses that the EU can promote and support mean that it has little direct relevance to the review of SALW legislation either in calling for the adoption of legal controls or in setting out measures to be contained in legislation. Where relevant reference exists to the adoption of particular legislative measures or to the promotion of standards / principles that should be reflected in legislation, this is found in calls to :

- Promote the establishment of national inventories;
- Promote the institution of restrictive national legislation; and
- Support the strengthening of export controls and the promotion of the criteria of the EU Code of Conduct on Arms Exports by, inter alia, helping third countries in drafting national legislation on arms exports.

Implementation:
The focus of the EU SALW Strategy is to enable Member States to support and promote efforts to tackle the proliferation of SALW. As such, it seeks to enable Member States to have at their disposal the full spectrum of civilian and military instruments and capabilities, and assistance programmes, as well as the European Development Fund and other instruments for managing crises and post-conflict situations.

The EU SALW Strategy will be reviewed every six months in order to reflect the constantly changing problems of illicit traffic in SALW.[44]

Full text available at: http://register.consilium.eu.int/pdf/en/06/st05/st05319.en06.pdf

44 Implementation of the SALW Strategy has unfortunately been stalled by recent disagreements between the European Commission and the Council of the European Union on competences over SALW support in Africa (ECOWAS). This has resulted in the Commission bringing a case before the European Court of Justice against the Council seeking the annulment of a Joint Action on small arms to support ECOWAS, contesting the Council's legitimacy to deal with SALW and peace and security issues. Until the court case has been resolved, implementation of the SALW Strategy will only be able to be accomplished by Member States. The court action was brought on 21 February 2005 by the European Commission against the Council of the European Union, Case C-91/05, 2005/C115/19, Official Journal of the EU, 14 May 2005, C 115/10.

Name of instrument: South Eastern and Eastern Europe Clearing House for the Control of Small Arms and Light Weapons (SEESAC), Regional Micro-Disarmament Standards/Guidelines (RMDS/G)

Status: Recommendatory. Updated June 2007.

Parties /Coverage: South Eastern Europe.[45]

Purpose and provenance:
SEESAC was established in 2002 to take forward efforts to tackle the proliferation of SALW in South Eastern and Eastern Europe within the framework of the Stability Pact. As part of its mandate SEESAC[46] has developed a series of 19 Regional Micro-Disarmament Standards / Guidelines (RMDS/G) to inform the implementation of SALW programmes in South Eastern and Eastern Europe. These RMDS/G are designed to be practically applicable and cover a wide range of issue areas relating to SALW reduction and control, covering programmatic issues such as the conduct of SALW surveys and the management of SALW programmes, and more technical issues such as stockpile management, weapons storage and destruction, and the destruction of SALW.[47]

Scope of instrument:
As mentioned, the RMDS/Gs cover a wide range of programmatic and technical issues. Two[48] of these RMDS/Gs have direct relevance to the development of SALW legislation: RMDS/G SALW 03.20 Control and Transfer Legislation; and RMDS/G 03.30 Transfer Documentation for SALW.

Key provisions relating to SALW legislation include:

- **Civilian possession and PSCs** – RMDS/G 03.20 (SALW Control and Transfers Legislation), Section 6.1
- **Transfers** – RMDS 03.20 (SALW Control and Transfers Legislation); Sections 6.1, 6.2, 6.3, 7 – 9. RMDS 03.30 (Transfer Documentation for SALW) 5.1.1, & 5.1.2
- **Manufacturers, dealers and gunsmiths** – RMDS/G 03.20 (SALW Control and Transfers Legislation), Section 6.1
- **Marking and record keeping** – RMDS 03.20 (SALW Control and Transfers Legislation); Sections 6.1, 6.2, 6.3, 7 – 9. RMDS 03.30 (Transfer Documentation for SALW) 5.1.1, & 5.1.2.
- **State-owned SALW** – none

RMDS/G 03.20 sets out a range of principles that should be reflected in SALW legislation before elaborating a generic set of issues that should be covered in legislation divided into internal (section 6.1) and external arms control (section 6.2). It also covers compliance capabilities (section 7) and enforcement mechanisms that should be enshrined in legislation.

RMDS/G 03.30 focuses specifically on the documentation needed to enable the operation of an effective transfer control regime. In so doing it elaborate the responsibilities for drafting legislation and documentation (section 5.2.1) and lays out the detailed information that should be included in transfer documentation (section 5.1.2).

Implementation:
The RMDS/G are designed as practical guides for the implementation of SALW programmes that can be used and adapted by governments in South Eastern and Eastern Europe. The RMDS/G both those that touch on legislation and those that look at broader programmatic and technical issues contain a great deal of specific

45 SEESAC's mandate is to support efforts to effectively control SALW in South Eastern and Eastern Europe. As such, these Regional Micro-Disarmament Standards / Guidelines have been developed to inform the implementation of SALW programmes in South Eastern and Eastern Europe. They are, however, based not only on regional experiences but also international best practices and as such have resonance and value in informing the development of SALW programmes elsewhere.

46 For more information on SEESAC visit: http://www.seesac.org

47 For a full list of RMDS/G visit: http://www.seesac.org/index.php?content=&page=crse&section=3

48 RMDS/G 03.40 Marking and Tracing of SALW, outlines the development and content of a marking and tracing system. Predominantly these guidelines refer to institutional and procedural matters, however, parts of these guidelines may be relevant to the regulatory requirements and statutory bodies that need to be captured in legislation. RMDS/G Marking and Tracing of SALW can be found at: http://www.seeesac.org/RMDS%2003.40%20Marking%20and%Tracing%20(Edition204).pdf

guidance on how programmes should be implemented and developed. In addition, SEESAC actively supports the development and implementation of SALW reduction and control programmes.

Full text available at:

RMDS/G SALW 03.20 Control and Transfer Legislation can be found at:
http://www.seesac.org/RMDS%2003.20%20SALW%20Legislation%20(Edition%204).pdf

RMDS/G 03.30 Transfer Documentation for SALW can be found at;
http://www.seesac.org/RMDS%2003.30%20Export%20Documentation%20for%20SALW%20(Edition%204).pdf

Annex 2 List of abbreviated titles

UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Trans-national Organized Crime = UN Firearms Protocol

United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, 2001. = UN Programme of Action

International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons = International Tracing Instrument

United Nations Guidelines for International Arms Transfers = UN Guidelines for International Arms Transfers

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 = Convention on Prohibitions/ Restrictions on Use Certain Conventional Weapons

United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials = UN Principles Use Force / Firearms by Law Enforcement Officials

Multi-lateral Instruments

Initial Element of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies = Wassenaar Arrangement Initial Element

Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) = Wassenaar Arrangement Export Best Practice Guidelines

Wassenaar Arrangement Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS) = Wassenaar Arrangement MANPADS Controls

Wassenaar Arrangement Elements for Effective Legislation on Arms Brokering = Wassenaar Arrangement Brokering Legislation

Organization for Security and Co-operation in Europe (OSCE) Document on Small Arms and Light Weapons = OSCE Document on SALW

Organization for Security and Co-operation in Europe (OSCE) Handbook of Best Practices on Small Arms and Light Weapons = OSCE Best Practice Handbook

Organization for Security and Co-operation in Europe (OSCE) Principles on the Control of Brokering in Small Arms and Light Weapons = OSCE Brokering Principles

Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material = Arab Model Law

Regional Instruments

Africa

Organization of African Unity Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, 2000. = Bamako Declaration

Southern Africa Development Community (SADC) Declaration concerning Firearms, Ammunition and Other Related Materials = SADC Declaration

Southern Africa Development Community (SADC) Protocol on the control of firearms, ammunition and other related materials. = SADC Firearms Protocol

Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lake Region and the Horn of Africa. = Nairobi Declaration

Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa. = Nairobi Protocol

Best Practice Guidelines for the Implementation of the Nairobi Declaration and Nairobi Protocol on Small Arms and Light Weapons = Nairobi Protocol Best Practice Guidelines

ECOWAS Convention on Small Arms and Light Weapons 2006 = ECOWAS Convention

Americas

Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Explosives and other related materials (CIFTA). = OAS CIFTA

Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for the Control of the International Movement of Firearms, Their Parts, Components and Ammunition, 1997. = OAS CICAD Model Regulations for Movement of Firearms

OAS Draft Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition. Amendments to the Model Regulation for the Control of the International Movement of Firearms, their Parts and Components and Ammunition, 2003. = OAS CICAD Model Regulations for Brokers

Andean Community Decision 552 Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects also known as 'Andean Decision 552'. = Andean Plan

Code of Conduct of the Central American States Regarding the Transfer of Arms, Ammunition, Explosives and Other Related Materials = SICA Code of Conduct

Asia-Pacific

Legal Framework for a Common Approach to Weapons Control Measures = Nadi Framework

Pacific Islands Forum – Weapons Control Bill – PIF Weapons Control Bill

Europe

EU Code of Conduct on Arms Exports = EU Code of Conduct

User's Guide to the EU Code of Conduct on Arms Exports = EU Code of Conduct User's Guide

Council Common Position 2003/468/CFSP on the Control of Arms Brokering = EU Common Position on Brokering

Council Joint Action on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons = EU Joint Action on SALW

EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition = EU SALW Strategy

South Eastern and Eastern Europe Clearing House for the Control of Small Arms and Light Weapons (SEESAC), Regional Micro-Disarmament Standards/Guidelines (RMDS/G) = SEESAC RMDS/G

Annex 3 List of international instruments requiring limitations of SALW based on use

The following legally binding international instruments require states to adopt criteria and principles for assessing the transfer and use of SALW that are consistent with international law:

- Articles on Responsibility of States for Internationally Wrongful Acts, A/RES/56/83, 12 December 2001 and Commentary (Art. 16 and 17 and possible other articles e.g. Art. 41(2))
- Charter of the United Nations, 1945
- Declaration on the Inadmissibility of Intervention, A/RES/2131, 1965
- Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, A/RES/2625 (XXV), 1970
- Definition of Aggression, A/RES/3314, 1974
- Hague Regulations concerning the Laws and Customs of War on Land 1907
- Geneva Convention I, II, III and IV of 1949
- Protocol I and II of 1977 to the Geneva Conventions 1949
- Statute of the International Criminal Court for the Former Yugoslavia 1993
- Statute of the International Criminal Tribunal for Rwanda 1994
- Statute of the International Criminal Court 1998
- Statute of the Special Court of Sierra Leone
- Convention on the Prevention and Punishment of the Crime of Genocide, 1948
- International Covenant on Civil and Political Rights, 1966
- Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment 1984
- The Convention on the Rights of the Child
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of
- Children in Armed Conflict (entered into force 12 February 2002)
- Universal Declaration of Human Rights, 1948
- Declaration on the Right to Development
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- African Charter on Human and Peoples' Rights, 1980
- American Convention on Human Rights, 1969
- European Convention for the Protection of Fundamental Rights and Freedoms 1950