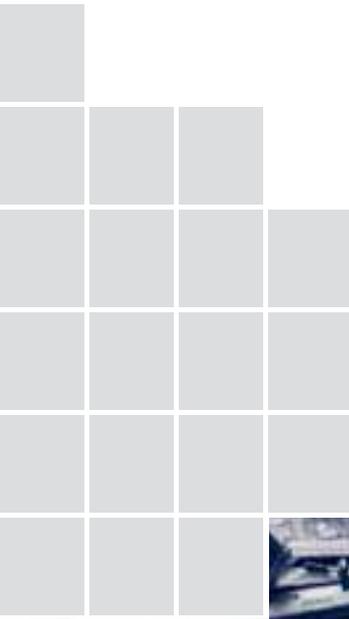




Handbook of Best Practices
on Small Arms and Light Weapons

Best Practice Guide on Export Control of Small Arms and Light Weapons



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I. Introduction

A national export control system governing the export of Small Arms and Light Weapons (SALW) and technology related to their design, production, testing and upgrading is an essential instrument in preventing the destabilising accumulation and uncontrolled spread of SALW.

It is for each State to decide on its own national export control system in accordance with international commitments. There is no single model for an export control system, due to the great diversity in the legal and administrative systems in different countries. However, there are certain features which any export control system needs to have to be effective: a legal basis, an export policy, a decision-making mechanism, and an enforcement mechanism.

It is for each State to decide on the appropriate national procedures for the control over SALW and associated technology in transit through its territory to a final destination outside its territory.

This guide provides information for developing a national export control system of SALW. The guide introduces relevant international commitments, lists necessary elements for national legislation, sets out guidelines for the export policy and decision-making, and considers effective enforcement of the export control. The import and transit SALW are discussed where appropriate.¹

For the purpose of this guide SALW are man-portable weapons made or modified to military specifications for use as lethal instruments of war. The categorization used is the same as in the OSCE Document on Small Arms and Light Weapons (OSCE, 2000).²

¹ References used in this guide will be listed in Annex A.

² According to the OSCE Document on Small Arms and Light Weapons, small arms are weapons intended for use by individual members of armed or security forces. They include revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns. Light weapons are weapons intended for use by several members of armed or security forces serving as crew. They include heavy machine guns; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems; and mortars or calibres less than 100mm.

II. International Commitments

The most important international obligations for the control over the export and transit of SALW are set out in the resolutions on sanctions by the United Nations Security Council adopted under the Chapter VII of the Charter.³ As a rule, UN decisions on sanctions include an embargo on export of arms to a particular destination or party. Arms embargoes can also be agreed by the OSCE and the European Union. Commitments to enforce these arms embargoes are implemented in the context of national export controls.

The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition supplementing the United Nations Convention against Transnational Organised Crime (UNGA, 2001a),⁴ known henceforth as the Firearms Protocol, is the only legally binding international convention setting out general requirements for national export, import and transit authorisation or licensing systems with regard to firearms.⁵

³ According to Article 41 of the Chapter VII, “The Security Council may decide what measures involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations of rail, sea, air, postal, telegraphic, radio, and other means of communication, and severance of diplomatic relations.”

⁴ The Protocol enters into force ninety days after the fortieth ratification, acceptance, approval or accession, but it shall not enter into force before the entry into force of the Convention (Art. 18). At the time of going to print, 52 States had signed the Protocol and five had ratified.

⁵ According to Article 10 of the Firearms protocol: “1) Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

2) Before issuing export licenses or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:

a) That the importing States have issued import licenses or authorizations; and

b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States, have, at a minimum, given notice in writing prior to shipment, that they have no objection to the transit.

3) The export and import license or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is a transit, the countries of transit. The information contained in the import license must be provided in advance to the Transit States.

4) The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched of the firearms, their parts and components or ammunition.

5) Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorizing procedures are secure and that the authenticity of licensing or authorization document can be verified and validated.

6) State Parties may adopt simplified procedures for the temporary import, export and the transit of the firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.”

In the United Nations Programme of Action (PoA) to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNGA, 2001b), member States have committed themselves to put in place and implement adequate laws, regulations and administrative procedures in order to ensure the effective control over the export, import and transit of SALW. In the PoA, States undertake to establish or maintain an effective national system of export and import authorization and transit measures so as to combat the illicit trade in SALW.

In the OSCE Document on Small Arms and Light Weapons, the participating States have committed themselves to the establishment and implementation of effective criteria governing the export of SALW (OSCE, 2000, Section III). The Document sets out a number of norms and principles concerning common export criteria; import, export and transit procedures, as well as import, export and transit documentation. OSCE participating States have agreed to follow the common export criteria in their national systems governing the export of SALW.

The European Union Code of Conduct on Arms Export (EU, 1998) sets minimum standards for the export of conventional arms covering also SALW. The Code includes eight criteria which the EU Member States must take into account when considering an export authorization, and 12 operative provisions which mandate various procedures for its administration.⁶

The Organization of American States (OAS) has developed the CICAD Model Regulations for the Control of the International Movements of Firearms, their Parts and Components and Ammunition (OAS, 1997), which sets out harmonized measures for the import and export control over the international movements of commercially-traded firearms.

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies has drawn up a set of Best Practice Guidelines for Exports of Small Arms and Light Weapons, Best Practices for Effective Enforcement, and an Indicative List of End-Use Assurances Commonly Used. These documents synthesize the export control practices followed by the participating States.

A full list of references can be found in the Annex.

⁶ In addition to the EU Member States, the associated countries of Central and Eastern Europe, Cyprus, Malta, Turkey, the EFTA countries' members of the European Economic Area and Canada have aligned themselves with the principles of the Code.

III. National Legislation

National export control legislation should take into account all relevant existing international obligations. The control over the export and transit of SALW are commonly regulated in the context of the export control of military equipment and dual-use items. Legislation on the control over the export and transit of SALW and associated technology should define, where applicable:⁷

- (i) when a licence is needed;
- (ii) possible exemptions from the licence requirement;
- (iii) the circumstances under which the licence may be granted;
- (iv) the licensing procedure;
- (v) the rights and responsibilities of the State authority and the exporter;
- (vi) the relations between the authorities involved in the licensing procedure;
- (vii) the product lists;
- (viii) effective sanctions sufficient to punish and deter violations of export controls.

In addition, political guidelines governing the export of SALW and associated technology should be included or reflected in national export control legislation and/or national policy documents.

In this regard, the following export criteria should be taken into account in considering a licence application for a SALW export.⁸ The same criteria should apply, as appropriate, when granting licences for the transit of SALW.

- (i) The respect for human rights and fundamental freedoms in the recipient country;
- (ii) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts;
- (iii) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the respect for international law governing the conduct of armed conflict;
- (iv) 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;
- (v) The requirements of the recipient country to enable it to exercise its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;

⁷ These principles can also be reflected, as appropriate, in published national policy documents and administrative procedures governing the export of small arms and light weapons.

⁸ The criteria are outlined in the OSCE Document on Small Arms and Light Weapons.

- (vi) Whether the transfers would contribute to an appropriate and proportionate response by the recipient country to the military and security threats confronting it;
- (vii) The legitimate domestic security needs of the recipient country;
- (viii) The requirements of the recipient country to enable it to participate in peacekeeping or other measures in accordance with the UN or the OSCE decisions.

- (vii) Be either re-sold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to aims of the OSCE document on SALW;
- (viii) Be used for the purpose of repression;
- (ix) Support or encourage terrorism;
- (x) Facilitate organized crime;
- (xi) Be used other than for the legitimate defence and security needs of the recipient country.

The issuance of licences should be avoided where it is deemed that there is a clear risk that the small arms, light weapons or associated technology in question might:

- (i) Be used for the violation or suppression of human rights and fundamental freedoms;
- (ii) Threaten the national security of other States;
- (iii) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State;
- (iv) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, decisions taken by the OSCE, agreements of non-proliferation, small arms, or other arms control and disarmament agreements;
- (v) Prolong or aggravate existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict;
- (vi) Endanger peace, create an excessive and destabilising accumulation of small arms, or otherwise contribute to regional instability;

These requirements should also be taken into account when granting licences for licensed production.

National export control legislation may include a prior enquiry procedure concerning the intended export. Preliminary information provided by the licensing authority may be a non-binding but authoritative indication of the prospects of being granted an export licence.

National arms export licensing processes should aim towards maximum transparency. In this regard, information from licences for the export of SALW could be made public. For instance, annual reports on arms exports may be published including information on quantities and types of weapons exported; countries of destination; number of licences granted and not granted; and appropriate information on individual licences where possible.

A further way to enhance transparency would be to afford national parliaments and/or civil society opportunities to influence government policy towards arms transfers.

IV. Procedure

1. Licence Requirement

The export and transit of SALW and technology related to their design, production, testing and upgrading should be allowed only with a licence granted by the State authority.

A licence may be required:

- (i) to enter into negotiations and to provide an offer;
- (ii) to carry out export and/or import;
- (iii) to carry out transit.

There may be exemptions from the licence requirement, which should be kept to a minimum. A list of possible exceptions should be exhaustive and included in the legislation. A licence may not be needed for:

- (i) transfers of small and light weapons used by forces deployed for peacekeeping and/or crisis management operations.

A simplified licensing procedure should be preferred to exceptions from the licence requirement. A simplified procedure may apply, for instance, with respect to:

- (i) temporary exports;
- (ii) equipment needed for training exercises;
- (iii) equipment needed for repairs and the delivery of spare parts.

2. Licence Application

The exporters are responsible for acquiring a licence for their exports. They are also required to give adequate and comprehensive information to the licensing authority. The exporters must submit the necessary documents to the licensing authority.

Such documents may include:

- (i) a written application;
- (ii) an original end-user certificate;
- (iii) an appropriate import licence or some other official authorization;
- (iv) an appropriate transit authorization;
- (v) other documents requested.

Only original documents and certified copies should be accepted.

3. Licensing Authority

In the interest of facilitating and simplifying procedures, the exporter should only be required to conduct transactions with a single SALW licensing authority.

All competent State authorities should participate in considering the licence applications as part of an inter-agency process. It is commonly accepted that the ministry responsible for foreign policy examines the foreign and security policy aspects of the licence applications.

There should be appropriate national mechanisms to ensure the co-ordination of policy, decision-making and co-operation between the authorities involved in the export and transit procedures. There should exist a co-ordinating body which either takes decisions on individual licence applications or renders its opinion on these applications to the responsible licensing authority. For instance:

- (i) an inter-agency working group consisting of competent State agencies;
- (ii) a parliamentary committee consisting of representatives of the parliament, which might play an advisory role either prior to or subsequent to the decision-making process;
- (iii) an advisory group consisting of competent authorities, including other relevant parties, such as industry representatives.

4. Licensing Procedure

Licence applications should be handled impartially, fairly and within a reasonable period of time. The applicant should be given a written decision and the possibility to appeal.

Licence applications should be based on the export criteria reflected in national legislation. In ambiguous or problematic cases a restrictive approach should be preferred.

Relevant background information concerning the exporter and proposed end-user should be examined carefully before granting an export licence. In particular, it should be established that the exporter is a legally recognized company and that there is no reason to question its liability and

intention to follow the export control legislation.

Prior to permitting shipments of small arms and associated technology, the exporting State should ensure that it has received from the importing State the appropriate import licence or some other official authorization.

If the State of transit requires a shipment of small arms and associated technology to be authorized, the exporter, or the authorities of the exporting State, should ensure that the appropriate authorization has been issued. If not, the transit State should still be informed.

Upon request of either party, the exporting or importing States should inform each other in writing when the shipment of small arms has been dispatched from the exporting State and when it has been received by the importing State.

A previously issued licence may be revoked under certain circumstances. A decision to revoke a licence should be explained in writing. The licence may be revoked, for instance, for the following reasons:

- (i) the entry into force of an arms embargo concerning the recipient country;
- (ii) a significant change in the situation of the recipient country resulting in a situation where SALW exported under the licence may be used for unacceptable purposes;
- (iii) a significant change in the terms of export, which the exporter neglects to report;
- (iv) the decision to grant a licence was taken on incomplete, misleading, or false information.

5. Licence

A licence should contain the following information:

- (i) the place and the date of issuance;
- (ii) the date of expiration of the licence;
- (iii) the country of export and the country of import;
- (iv) the final recipient;
- (v) a description and the quantity of the small arms, light weapons or associated technology;
- (vi) the value of the goods; and
- (vii) the countries of transit, when possible.

The period of validity of the authorization should be sufficiently long to enable the export to be conducted before the licence expires. An extension of the authorization should be dependent on a new application.

6. End-user Certificate

An export authorization should not be issued without an authenticated end-user certificate (EUC), an official authorization that may take a number of different forms, or some other official authorization issued by the receiving country, such as an international import certificate (IIC).

In order to prevent abuse and fraud, an EUC should take the format of, for example, an official form printed on banknote paper. Only the original end-user certificate should be accepted by the licensing authorities of the exporting State.

Authorities should examine critically the information in the end-user certificate, *inter alia*, whether the end-user was a realistic destination for the type and quantity of goods listed. They should be given sufficient resources and training in the analysis and recognition of false documentation.

The type of EUCs required may differ according to whether the recipient is a government end-user or a private end-user.

The consignee and/or the end-user should verify the EUC by a signature or stamp, and the number of officials and institutions authorized to stamp or sign certificates should be kept to minimum. Where an export is made to a non-governmental end-user, the government in the receiving State is required to validate the EUC and/or the exporter is required to present the licensing authority some other form of official authorization, such as an import licence or a copy of the concession of the consignee.

The end-user certificate should contain the following information:

- (i) a detailed description of the goods;
- (ii) quantity of the goods;
- (iii) value of the goods;
- (iv) names and addresses of all parties involved in the transaction;
- (v) a description of the end-use;
- (vi) the location where the goods will be used; and
- (vii) assurances that the goods will only be used by the end-user and for the stated end-use.

The end-user certificate should include a clause on re-export (See section IV.7: Re-export.).

The end-use of the goods should be verified, when possible. For example, this may be done by requiring the final consignee to provide the exporter with a delivery verification certificate once the export has reached the final destination or by conducting on-site inspections. A clause on post-shipment control may be included in the end-user certificate (See section V.2: Post Shipment Control).

7. Re-export

States should require a clause(s) on re-export of SALW and associated technology to be included in the following documentation:

- (i) in contracts for sale or export;
- (ii) in the end-use certificate.

A clause on re-export may:

- (i) prohibit any diversion, export or re-export of the goods;
- (ii) prohibit diversion, export or re-export of the goods without previous approval from the original exporting country; or
- (iii) include assurances that diversion, export or re-export can take place only after an authorization given by the export licensing authorities of the exporting country.

8. Information and Training for Exporters

The exporters should be aware of the national export system including the export legislation, the government's general export policy and the licensing procedure.

It is advisable to provide training for the exporters and representatives of industry in order to improve their understanding of the objectives and scope of export control. The authorities can, for instance, arrange seminars or workshops on export controls of SALW in order to provide information on the latest developments in this field.

The exporters should be able to find without difficulty and compiled in one place all relevant information, including national and international legislation, embargoes in force, control lists, licensing authorities, application forms, customs information, instructions, etc. A regularly updated handbook or website containing necessary information on the export of SALW is one way to arrange this.

V. Enforcement of Export Control

1. Customs Supervision

Customs authorities play an essential role in the enforcement of export and transit control. They are responsible for the concrete supervision and enforcement of export rules, and are required to determine at the point of exit that:

- (i) the exporter has a valid licence and all other required documentation;
- (ii) the goods and the quantity are in accordance with the licence;
- (iii) the export documentation is consistent with the licence.

There should exist appropriate mechanisms for co-operation and information exchange between licensing authorities and customs authorities, as well as among customs authorities themselves.

Customs authorities should be given sufficient resources and regular training in the export control of SALW and associated technology.

2. Post-Shipment Control

Post-shipment control is important in order to ensure that exports are conducted in accordance with the export control legislation.

Post-shipment control may be ensured by requiring the final consignee to provide the exporter with a delivery verification certificate

once the export has reached the final destination or by on-site inspections. A clause on post-shipment control may be included in the end-user certificate (See also section IV.6: End-user Certificate).

The importing State may grant the authorities of the exporting State the right to use appropriate measures to ensure the secure delivery of exported SALW and associated technology, for instance by conducting a physical inspection of the shipment at the point of delivery.

In this regard, the importing and exporting State may co-operate on a mutually agreed basis and consistent with national laws and relevant international agreements.

3. Investigation in the Event of Violations

National laws and regulations should include provisions which enable the investigation, prosecution and punishment of export control violations.

Enforcement authorities should be provided with sufficient resources and regular training in the export of SALW and associated technology.

There should exist appropriate mechanisms for information exchange and co-operation between licensing and enforcement authorities.

States (enforcement authorities) may exchange information and co-operate in the investigation and prosecution of export control violations, consistent with national laws and international agreements, by:

- (i) providing relevant information concerning violations;
- (ii) facilitating the availability of witnesses; and
- (iii) providing for the extradition of suspected perpetrators of violations.

4. Sanctions

Effective sanctions sufficient to punish and deter violations of export controls should be established. The penalties may range from civil fines to criminal sanctions. For instance, the following type of offences can be punished through fines or imprisonment:

- (i) Export or attempted export of small arms, light weapons or associated technology or services in violation of the export control legislation;
- (ii) Violation or attempted violation of specific conditions included in the licence;
- (iii) Submission of false information in connection with a licence application;
- (iv) Any other violation or attempted violation of the export control legislation.

Annex A

References

- EU (European Union) (1998). *The European Union Code of Conduct on Arms Exports* (adopted by the European Council on 25 May 1998).
- OAS (Organization of American States) (1997). *CICAD Model Regulations for the Control of the International Movements of Firearms, Their Parts and Components and Ammunition*. 15 September.
- OSCE. Forum for Security Co-operation (2000). *OSCE Document on Small Arms and Light Weapons*. FSC.DOC/1/00 of 24 November.
- OSCE. Conflict Prevention Centre (2002a). *Overview of the first Information Exchange on SALW of 30 June 2001*. FSC.GAL/9/02 of 23 January.
- (2002b). *Model Answer for the OSCE Information Exchange on SALW of 30 June 2001*. FSC.GAL/39/02 of 27 January.
- SIPRI (Stockholm Peace Research Institute). SIPRI Export Control Project
<<http://projects.sipri.se/expcon/expcon.htm>>.
- Small Arms Survey (2002). *Small Arms Survey 2002: Counting the Human Cost*. Oxford: Oxford University Press.
- United Nations (1945). *Charter of the United Nations*. Signed 26 June.
- UNGA (United Nations General Assembly) (2001a). *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Conference against Transnational Organized Crime*. Adopted 31 May. Reproduced in UN Document A/RES/55/255 of 8 June.
- (2001b). *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. Adopted 20 July. Reproduced in UN Document A/CONF.192/15.
- Wassenaar Arrangement (Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies), *Best Practices for Effective Export Control Enforcement, Indicative List of End-Use Assurances Commonly Used*, and *Best Practice Guidelines for Exports of Small Arms and Light Weapons*, all available at <<http://www.wassenaar.org>>.

