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SALW control and transfers legislation

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Foreword

On 08 May 2003 the development of regional micro-disarmament¹ standards and guidelines was discussed during the RACVIAC sponsored seminar on '**SALW - A year after Implementation of the Stability Pact Plan**'. The consensus was that such standards and guidelines were desirable, and SEESAC agreed to develop a framework and then take responsibility for the future development of regional standards. It was agreed RMDS/G would be designed to support the work at the operational level, and would go further than the more generic 'best practice' documents currently available. After a wide-ranging discussion between stakeholders as to the status of RMDS/G it has been agreed that the term 'standards' will refer to the technical issues, whilst 'guidelines' will apply to 'programme' issues.

This RMDS/G² reflects the development of operational procedures, practices and norms, which have occurred over the past four years in the area of Small Arms and Light Weapons (SALW)³ control. Best operational practices have been identified and reviewed from within the region and beyond, and included as appropriate within this RMDS/G.

SEESAC has a mandate under the Stability Pact Regional Implementation Plan to fulfil, among others, operational objectives of 1) sharing information on and enhancing co-operation in the establishment and implementation of SALW control and reduction programmes and approaches among regional actors; and 2) providing linkage and co-ordination with the other relevant regional initiatives. The development of RMDS/G is one means of fulfilling that mandate.

The work of preparing, reviewing and revising these standards and guidelines is conducted by SEESAC, with the support of international, governmental and non-governmental organisations and consultants. The latest version of each standard, together with background information on the development work, can be found at www.seesac.org. RMDS/G will be reviewed at least every three years to reflect developing SALW control norms and practices, and to incorporate changes to international regulations and requirements. The latest review was conducted on 01 March 2006, which has reflected the development of the UN Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS) www.unddr.org, which include RMDS/G as a normative reference in the Disarmament and the SALW Control modules.

¹ Defined as: 'The monitoring, collection, control and final disposal of small arms, related ammunition and explosives and light weapons of combatants and often also of the civilian population. It includes the development of responsible weapons and ammunition management programmes'. Often used interchangeably with SALW control in the past, but SALW Control is now the recognised terminology. The term Micro-Disarmament has only been used here to ensure consistency of the RMDS/G concept, rather than renaming the standards.

² The layout and format of RMDS/G are based on the highly successful International Mine Action Standards (IMAS). The cooperation of the UN Mine Action Service (UNMAS) is acknowledged by SEESAC during the development of RMDS/G.

³ There is no agreed international definition of SALW. For the purposes of RMDS/G the following definition will apply: '**All lethal conventional munitions that can be carried by an individual combatant or a light vehicle, that also do not require a substantial logistic and maintenance capability**'

Introduction

Small arms, light weapons and ammunition are inherently dangerous. In the wrong hands, and in sufficient quantities, they can be politically destabilising and lead to and exacerbate conflict. As such, they can present grave dangers, both to national governments and to international and regional peace-building efforts. The most effective way that they can be kept in check is by interventions and programmes for micro-disarmament and the control of SALW. This RMDS/G establishes best practices and guidelines on the responsibilities of a government or national SALW commission in the establishment of arms control and transfer⁴ legislation. The importance of this subject is endorsed by its inclusion in the UNDP Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW⁵, and other statements of international commitment⁶.

An essential component of any SALW control (or micro-disarmament) intervention is the development and implementation of appropriate arms control and transfer legislation. This should cover legislation for the possession, registration and licensing of personal weapons within a country, together with legislation for the import and export of SALW.

It is for each state to decide on its own national transfer control legislation in accordance with international commitments. There is no single model for an transfer control system, but certain basic features exist without which no transfer legislation and control systems can be effective. These are: a proper legal basis, and transfer policy, a decision-making mechanism and an enforcement mechanism. Elements of these features will be discussed in this RMDS/G.

This RMDS/G applies not only to those nations manufacturing and transferring weapons, but also to nation states, which have stocks of weapons manufactured in other countries, or weapons collected during a weapons surrender programme, which are to be transferred or transferred to another country.

⁴ This includes, when appropriate, the import, export, transit, transshipment, re-export, intangible transfer, licensed production, brokering and transport of SALW.

⁵ UN Document A/CONF/192/15 dated 20 July 2001

⁶ OSCE Best Practice Guide on Export Control of SALW

SALW control and transfer legislation

1 Scope

This RMDS/G establishes the guiding principles for the development and implementation of appropriate arms control and transfer legislation as a component part of SALW control intervention activities.

2 References

A list of normative references is given in Annex A. Normative references are important documents to which reference is made in this standard, and which form part of the provisions of this standard.

3 Terms and definitions

A list of terms and definitions used in this standard is given in Annex B. A complete glossary of all the terms and definitions used in the RMDS/G series of standards is given in RMDS/G 02.10.

In the RMDS/G series of standards, the words 'shall', 'should' and 'may' are used to indicate the intended degree of compliance. This use is consistent with the language used in ISO standards and guidelines.

- a) 'shall' is used to indicate requirements, methods or specifications that are to be adopted in order to satisfy the standard in full.
- b) 'should' is used to indicate the preferred requirements, methods or specifications.
- c) 'may' is used to indicate a possible method or course of action.

The term '**national authority**' refers to the government department(s), organisation(s) or institution(s) in each SALW country charged with the regulation, management and co-ordination of SALW activities.

The term '**transfer**' refers to the import, export, transit, transshipment, re-export, intangible transfer, licensed production, brokering and transport of SALW.

4 Role of arms control and transfer legislation in a national SALW programme

SALW programmes need to be completely transparent in the way they are carried out, and also need to be, and be seen to be, as completely accurate as possible. Part of the accuracy and transparency comes from correct documentation and control procedures, and these include the procedures for the transfer of weapons, including where necessary those illegal weapons transferred for disposal to a country with better facilities for such destruction. In addition, transfer controls and documentation can assist the importing country with its own weapon registration process, a situation which could be further enhanced by adopting harmonised national transfer control policies on a bi-lateral or multi-lateral basis. This could even be extended to become a regional transfer control policy, which could have a major impact on weapons control and disarmament programmes in South Eastern Europe⁷.

⁷ Weapons transfer controls would apply to cross-border co-operation programmes. See 'Resolving Small Arms Proliferation: The Development and Implementation of National Action Plans on Arms Management and Disarmament' ISBN 0-620-30761-7

5 Principles for the regulatory control of SALW

Legislative and regulatory measures for arms and transfer controls shall comply with these principles:

- a) the protection of national safety and security interests is of paramount importance;
- b) respect for national foreign policy shall be maintained;
- c) legitimate end use certification shall be obtained;
- d) proposed transfers shall comply with relevant international law, agreements and understandings⁸;
- e) proposed transfers shall be subject to a risk assessment criteria based system to determine whether it is appropriate or not to issue a license request;
- f) there is an underlying basis that states have a right to the means of self defence including the production, possession and transfer of weapons. However, states also have the responsibility to use weapons in accordance with commitments under international law, relevant political agreements and initiatives, and in accordance with existing national legislation;
- g) the government shall retain a final veto on all production, manufacturing, possession and transfer proposals for weapons, ammunition and explosives.

6 Range of arms control and transfer legislation

Regulatory mechanisms to ensure effective arms control and transfer legislation should be developed to cover the following generic areas in accordance with best practices⁹:

6.1 Arms control (internal)

- a) responsibilities for, and organisation of, arms control and transfer legislation at the national level;
- b) the national SALW authority;
- c) definitions of weapons, ammunition and explosives;
- d) persons covered by arms control legislation;
- e) banned weapons, ammunition and explosives;
- f) the production and manufacture of weapons, ammunition and explosives, including 'licensed production overseas (LPO)';
- g) weapons, ammunition and explosives eligible for civilian possession;
- h) the internal sale of weapons, ammunition and explosives;
- i) acquisition and purchase mechanisms for weapons, ammunition and explosives;
- j) registration and licensing of civilian held weapons, ammunition and explosives;
- k) carriage of weapons, ammunition and explosives;

⁸ For example; 1) UN Security Council Sanctions; 2) EU Code of Conduct; 3) OSCE Document on SALW; 4) Wassenaar Agreement etc.

⁹ Examples of sources of best practice include the OSCE Document on Small Arms, the EU Code Compendium of Agreed Practices and the Waasennar Agreement guiding principles.

- l) legitimate use of weapons, ammunition and explosives, (including training and handling);
- m) the safe and secure storage of weapons, ammunition and explosives;
- n) the safe and secure transportation of weapons, ammunition and explosives;
- o) the repair and modification of weapons;
- p) voluntary surrender mechanisms for civilian held weapons, ammunition and explosives;
- q) confiscation mechanisms for weapons, ammunition and explosives;
- r) national recording system for weapons, ammunition and explosives;
- s) the destruction of weapons, ammunition and explosives;
- t) the control of inert or deactivated weapons, replica weapons, ammunition and explosives;
- u) the control of weapons, ammunition and explosives within the security sector; and
- v) punitive and penal provisions.

6.2 Transfer legislation (external)¹⁰

- a) responsibilities for, and organisation of, arms control and transfer legislation at the national level;
- b) the national SALW authority;
- c) definitions of weapons, ammunition and explosives including the components thereof;
- d) persons covered by transfer control legislation;
- e) restricted or banned weapons, ammunition and explosives for transfer;
- f) weapons, ammunition and explosives eligible for transfer;
- g) end user certification and post export verification;
- h) export licence mechanisms for weapons, ammunition and explosives applicable to manufacturers, vendors and transportation agents which should be criteria based. For example, when considering a license application, states should take into account the risk of diversion to unlicensed end-users, the risk of weapons being used in the commission of human rights violations the risk to regional security or that it will undermine sustainable development;
- i) licensing mechanisms for brokering activities for weapons, ammunition and explosives carried out within the country or by national passport holders wherever they are located [this is the extra-territorial dimension];
- j) reporting of physical arms transfers;
- k) transit, transshipment or re-export of weapons, ammunition and explosives through national territory;
- l) the safe and secure transportation of weapons, ammunition and explosives during transfer; and
- m) controls on intangible transfers of related technology, for instance technical information transferred electronically via fax or email.

¹⁰ It is more appropriate that this legislation is covered under a wider 'dual use goods and technology' export control legislation.

6.3 Specific additional requirements for transit

- a) transit governments shall require export and import certifications and documentation respectively from the country of origin and of destination;
- b) such certifications and documentation shall be subject to appropriate rigor of review and inspection;
- c) where there is reasonable cause to suspect possible irregularities, sealed containers, rail carriages or road transport, bonded warehouses or other such means of insulating transit shipments do not relieve transit governments from the responsibility to confirm that the shipments in question comply with the legal, policy and documentation requirements specified in this RMDS/G; and
- d) where the originating government is unable to satisfy concerns expressed by the transit government with respect to possible irregularities, the transit government at its option may refuse entry and transit, or if already in transit may return or otherwise restrain the shipment.

7 Compliance capabilities

The arms control and transfer legislation shall provide for;

- a) the ability to provide for reporting on licences to parliament, other statutory agencies and the public;
- b) the ability to review government decision making through annual reporting procedures (including through parliamentary debate);
- c) the ability to conduct reviews and checks on certification (e.g. on end use guarantees), licensing and reporting mechanisms;
- d) no re-export without separate permission from the original exporting state. This should apply not only to exports sourced from states in the region but also where these states are considering re-exporting equipment originally sourced from elsewhere;
- e) the ability to impose preventative enforcement measures, (for example; suspension or revocation of licenses or certification where a violation is imminent).
- f) outreach mechanisms to support compliance with the law including:
 - publication of denial orders;
 - publication of additional laws and regulations;
 - publication of procedures and processes;
 - publication of 'red flag' indicators;
 - unannounced visits to industry; and
 - training, education and advocacy of industry and civil society on its responsibilities under the law.
- g) cooperation by government with UN investigations into breaches of international arms embargoes and other relevant sanctions; and
- h) a legal basis for states to meet inter and intra – governmental information exchange mechanisms.

8 Enforcement

The enforcement mechanisms within the arms control and transfer legislation shall:

- a) define violations;
 - engaging in prohibited conduct;
 - causing, aiding or abetting a violation;
 - solicitation or attempt;
 - conspiracy;
 - acting with knowledge of a violation;
 - possession with intent to keep, use or transfer illegally;
 - misrepresentation and concealment of the facts;
 - evasion;
 - failure to comply with administrative, reporting or record keeping requirements;
 - license alterations; and
 - acting contrary to a temporary suspension or denial order.
- b) impose effective punitive measures and penalties as appropriate to punish and deter further violations.

9 Codes and procedures necessary for national import and transfer legislation.

National legislation will need backing with a series of practical codes and procedures to guide the appropriate implementing agencies¹¹. The main operating body controlling national import and export shall be a national licensing authority. Despite the many different types of weapons and munitions that may be involved, there should be only one national licensing authority, which, during a SALW Control programme, should be represented on the national SALW authority. The guidance procedures necessary should include:

- a) the licensing procedure. This should examine the needs for the holding of licences, the legitimacy of the importer or exporter, and the legitimacy of the end-user;
- b) the recording procedure. All weapons imports, exports and transfers should be recorded on a national weapons database;
- c) the requirements of the End-User Certificate;
- d) conditions for 'licensed production overseas (LPO)';
- e) conditions for re-export of weapons, whether imported legally or illegally;
- f) the transit of weapons and munitions for destruction;
- g) the transit of weapon components for scrap or re-cycling;
- h) procedures for the revocation of licences in event of violations of import or export procedures, or fraud;
- i) procedures for investigation in event of violations,
- j) sanctions in event of violations of export or import controls; and

¹¹ See OSCE Best Practice Guide on Export Control of SALW

k) procedures for official informational exchange, reporting and for ensuring public parliamentary oversight.

10 Areas of responsibility

10.1 Regional organizations

In certain areas of the world, regional organizations have been given a mandate by their member states to coordinate and support SALW control programmes within a state national boundaries. (For example EUFOR within Bosnia and Herzegovina).

In these circumstances the regional organization should assume many of the responsibilities and roles of the national SALW authority, and could also act as a conduit for donor resources. The responsibilities and roles of regional organizations for SALW control will vary from state to state and may be subject to specific Memoranda of Understanding, or similar agreements.

10.2 National SALW authority

The national SALW authority should be responsible for ensuring the national conditions that enable the effective management of national SALW intervention projects. The national SALW authority is ultimately responsible for developing and managing the SALW intervention programme within its national boundaries.

The national SALW authority shall be responsible for ensuring the development and implementation of appropriate arms control and transfer legislation in support of the national SALW plan.

10.3 SALW Control organizations

NGOs, commercial companies and other organizations involved in SALW control interventions shall make every effort to liaise and cooperate with the national SALW authority in order to improve the effectiveness, efficiency and safety of SALW control interventions.

Annex A (Normative) References

The following normative documents contain provisions, which, through reference in this text, constitute provisions of this part of the standard. For dated references, subsequent amendments to, or revisions of, any of these publications do not apply. However, parties to agreements based on this part of the standard are encouraged to investigate the possibility of applying the most recent editions of the normative documents indicated below. For undated references, the latest edition of the normative document referred to applies. Members of ISO and IEC maintain registers of currently valid ISO or EN:

- a) OSCE Best Practice Guide on the Export Control of SALW;
- b) RMDS/G 01.10 - Guide to RMDS/G and SALW control measures;
- c) RMDS/G 03.30 - Export Documentation for SALW; and
- d) RMDS/G 04.10 - Management of SALW programmes.

The latest version/edition of these references should be used. SEESAC hold copies of all references used in this standard. A register of the latest version/edition of the RMDS/G standards, guides and references is maintained by SEESAC, and can be read on the RMDS/G website: <http://www.seesac.org/>. National SALW authorities, employers and other interested bodies and organisations should obtain copies before commencing SALW programmes.

Annex B **(Informative)** **Terms and definitions**

B.1.1 **arms control**

the imposition of restrictions of the production, exchange and spread of weapons by an authority vested with legitimate powers to enforce the restriction.

B.1.2 **arms exports**

the trade in weapons, guns and ammunition, usually international and often closely monitored and controlled by governments.

B.1.3 **broker**¹²

the natural person or legal entity that carries out a brokering activity.

anyone who directly performs an activity defined as a brokering activity in the exercise of their own commercial or legal relations. The acts of natural persons, especially employees, are to be ascribed to the legal entity.

B.1.4 **brokering**¹³

activities that serve to facilitate the transfer of arms between persons in different third countries, insofar as such transfer is furthered through the assistance of a so-called **broker**.

Note: Core brokering activities include;

- a) acquisition of SALW located in one third country for the purpose of transfer to another third country;
- b) mediation between sellers and buyers of SALW to facilitate the transfer of these arms from one third country to another; and
- c) the indication of an opportunity for such a transaction to the seller or buyer (in particular the introduction of a seller or buyer in return for a fee or other consideration).

B.1.5 **micro-disarmament**

the collection, control and disposal of small arms, ammunition, explosives, light and heavy weapons of combatants and often also of the civilian population. It includes the development of responsible arms management programmes.

B.1.6 **micro-disarmament organisation**

refers to any organisation (government, military or commercial entity) responsible for implementing SALW Control projects or tasks. The organisation may be a prime contractor, subcontractor, consultant or agent.

B.1.7 **national authority**

the government department(s), organization(s) or institution(s) in a country charged with the regulation, management and coordination of **SALW** activities.

¹² Source: OSCE Best Practices Guide - National Control of Brokering Activities.

¹³ Source: OSCE Best Practices Guide - National Control of Brokering Activities.

B.1.8

Small Arms and Light Weapons (SALW)

all lethal conventional munitions that can be carried by an individual combatant or a light vehicle, that also do not require a substantial logistic and maintenance capability.

Note: There are a variety of definitions for SALW circulating and international consensus on a 'correct' definition has yet to be agreed. For the purposes of RMDS/G the above definition will be used.

B.1.9

standard

a standard is a documented agreement containing technical specifications or other precise criteria to be used consistently as rules, guidelines, or definitions of characteristics to ensure that materials, products, processes and services are fit for their purpose.

Note: RMDS/G aim to improve safety and efficiency in SALW Control by promoting the preferred procedures and practices at both headquarters and field level. To be effective, the standards should be definable, measurable, achievable and verifiable.

B.1.10

transfer

the import, export, transit, transshipment, re-export, intangible transfer, licensed production, brokering and transport of SALW.