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ADDRESSING UNAUTHORIZED RE-EXPORT OR RE-TRANSFER OF ARMS AND AMMUNITION

June 2014



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The South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) has a mandate from the United Nations Development Programme and the Regional Cooperation Council to support all international and national stakeholders by strengthening national and regional capacity to control and reduce the proliferation and misuse of small arms and light weapons, and thus contribute to enhanced stability, security and development in South Eastern and Eastern Europe.

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ACKNOWLEDGEMENTS

This report was researched and written by Mark Bromley and Lawrence Dermody. They would like to thank SIPRI interns Lukas Hafner and Nishel Specht for their background research for sections II and III, respectively. They would also like to thank Dr Paul Holtom for his expert review, SIPRI colleagues Ivana Micic and Peter Wezeman for their comments, and Dr David Cruickshank of the SIPRI Editorial and Publications Department for his sharp editorial assistance.

The report was edited by members of SEESAC team:
Dr. Ivan Zveržhanovski, Slobodan Bošković and Iva Savić.



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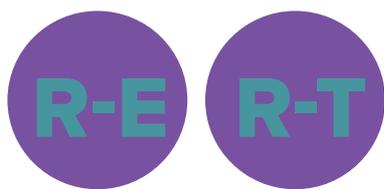
The publication of this report was generously supported by the Ministry of Foreign Affairs of the Kingdom of Norway through the Phase II of SEESAC's Support for an Arms Control Programme in the Western Balkans project.

Printed by DMD
Print run 200

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ISBN: 978-86-7728-213-4

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ADDRESSING UNAUTHORIZED RE-EXPORT OR RE-TRANSFER OF ARMS AND AMMUNITION

ABBREVIATIONS

ATT	Arms Trade Treaty
CASA	Coordinating Action on Small Arms
COARM	Conventional Arms Exports Working Group
DVC	Delivery verification certificate
EU	European Union
EUC	End-user certificate
FARC	Fuerzas Armadas Revolucionarias de Colombia (Revolutionary Armed Forces of Colombia)
GOSS	Government of Southern Sudan
IIC	International import certificate
ISP	Inspektionen för strategiska produkter (Swedish Agency for Non-proliferation and Export Controls)
MANPADS	Man-portable air defence systems
PoA	Programme of Action on Small Arms and Light Weapons
OSCE	Organization for Security and Co-operation in Europe
RIEP	Regional Information Exchange Process
SALW	Small arms and light weapons
SECO	State Secretariat for Economic Affairs
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
UAE	United Arab Emirates
UN	United Nations

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INTRODUCTION

When arms or ammunition are exported, the exporting country often imposes restrictions on their subsequent re-export (i.e. onward export to another destination country) or re-transfer (i.e. onward transfer to another end-user or end-use in the same country).¹ These re-export or re-transfer controls are commitments—usually inserted into the end-user certificate (EUC), the end-user statement or the commercial contract associated with an export—that bind the end-user either to not re-export or re-transfer the arms or to only do so under certain circumstances. In the case of re-export controls, restrictions can consist of a simple ban on subsequent exports to another destination country or a commitment to only export the arms to certain destination countries or under certain conditions. In the case of re-transfer controls, restrictions can consist of a commitment that the imported arms will remain with a particular branch or unit of the armed forces or security services or a commitment that the imported arms will not be deployed to a certain territory or location or used in a certain way. The imposition of such controls is recommended in the best practices and guidelines of the European Union (EU), the Organization for Security and Co-operation in Europe (OSCE), the United Nations and, in particular, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies.

The imposition of re-export and re-transfer controls is not without controversy. In effect, they represent an attempt by the exporting state to place restrictions on what an importing state can do with the arms it has acquired. In certain cases, the importing state may regard the imposition of such controls as a violation of its sovereignty and may be unwilling to apply them or would agree to do so only partially. Certain cases can also prove particularly challenging, such as when arms are being supplied to a private person or company or where components are being supplied to a private company who will incorporate them into a weapon system that will be re-exported to another state. Nonetheless, the use and effective application of re-export and re-transfer controls can be an important tool for preventing illegal or irresponsible arms transfers.

¹ This paper uses a narrower definition of the term 'transfer' than the one used in the Arms Trade Treaty (ATT). In this paper, the term 'transfer' is used to refer to the act of moving arms from one location or end-user to another. In the ATT, the term 'transfer' is used to refer to the various activities of the international trade, comprising 'export, import, transit, trans-shipment and brokering'. Arms Trade Treaty (ATT), adopted 2 Apr. 2013, opened for signature 3 June 2013, not yet in force, <<https://treaties.un.org/Pages/CTCTreaties.aspx?id=26>>, Article 2.

In recent years a lot of attention has been paid to unauthorized re-exports or re-transfers of arms and ammunition—that is, situations in which re-export or re-transfer controls are ignored by the importing state. UN panels of experts on Security Council arms embargoes have described well-documented cases of imported arms being supplied to the targets of UN arms embargoes in contravention of re-export or re-transfer controls imposed by the original exporting state. There have also been numerous cases of unauthorized re-exports or re-transfers that did not violate UN arms embargoes but which nonetheless resulted in arms being exported to destinations in conflict or used in armed conflicts, often in violation of international humanitarian law. Such transfers can be a source of political embarrassment for the state that originally exported the arms. In particular, questions can be asked about why the original export was approved, what measures were taken to prevent the re-export or re-transfer, and what steps will be taken to ensure that such cases do not happen again. This has been clearly demonstrated in recent years with the discovery of arms being used in the conflicts in Libya and Syria that had been originally exported by states in Europe to recipients in the Middle East and then re-exported without the knowledge or approval of the original supplier states.² As these particular cases underline, violations of re-export and re-transfer controls can affect small and large suppliers as well as states that have well-developed export control systems in place. Moreover, they can take place soon after the original recipient has taken delivery of the arms or many years later.

The 2013 Arms Trade Treaty (ATT) pays close attention to the issue of ‘diversion’.³ In particular, Article 11 obliges export, import, transit and trans-shipment states to take a range of measures to ensure that transferred arms are not diverted to ‘the illicit market, or for unauthorized end use and end users’.⁴ The ATT does not explicitly mention re-export or re-transfer controls—such an issue would probably have been too sensitive for a document that was jointly negotiated by exporter and importer states. Nonetheless, the reference to ‘unauthorized end use and end users’ is an implicit acknowledgement that exporting states frequently impose re-export and re-transfer controls and means that the issue will be part of future discussions on ATT implementation. In particular, future meetings of the ATT Conference of States Parties will provide a new venue for cases of violations of re-export or re-transfer controls to be jointly discussed by exporting and importing states.

This report analyses regional and international standards and national policies and practices on re-export and re-transfer controls. Based on this analysis, it presents a comprehensive overview of the different ways in which states can and do (a) impose re-export and re-transfer controls, (b) enforce and monitor those controls, and (c) respond to reported violations. The report also provides a set of guidelines to assist states in South Eastern Europe with the development and implementation of re-export and re-transfer controls—particularly how to respond in an effective and transparent manner to reports and allegations of unauthorized re-exports and re-transfers.

Section II of this report summarizes current guidelines and best practices on conventional arms transfers that refer to re-export and re-transfer controls. The section focuses on relevant EU, OSCE, UN and Wassenaar Arrangement documents (see Box 1) and highlights the main commonalities and differences in their prescriptions and recommendations. Section III presents information on states’ existing policies and practices in relation to re-export and re-transfer controls. Information is presented on the current

2 On these examples see cases 4 and 5 in section IV below.

3 Arms Trade Treaty (note 1).

4 Arms Trade Treaty (note 1), preamble.

policies of 6 states in South Eastern Europe and 11 Wassenaar Arrangement participating states for imposing and enforcing re-export and re-transfer controls and how they respond to reports and allegations of cases of unauthorized re-export and re-transfer. Section IV presents 10 case studies examining actual or alleged unauthorized re-exports or re-transfers. Each case study looks at the types of arms that were-exported, what re-export or re-transfer restrictions were in place, if and how these were violated, how the case came to light, and what steps were taken by the original exporting state to investigate and respond. Section V presents some conclusions.

BOX 1.

GUIDANCE AND BEST PRACTICE DOCUMENTS ON RE-EXPORT AND RE-TRANSFER CONTROL OF ARMS AND AMMUNITION

The following documents of regional or international organizations that are applicable to states in South Eastern Europe contain language on re-export or re-transfer control for arms and ammunition.

EUROPEAN UNION DOCUMENTS

- Council of the European Union, 'User's Guide to Council Common Position 2008/944/CSDP defining common rules governing the control of exports of military technology and equipment', document 9241/09, 29 Apr. 2009, <<http://register.consilium.europa.eu/doc/srv?l=EN&f=ST 9241 2009 INIT>>.

ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE (OSCE) DOCUMENTS

- OSCE, Forum for Security Co-operation, 'OSCE document on small arms and light weapons', 24. Nov. 2000, <<http://www.osce.org/fsc/20783>>.
- OSCE, *Best Practice Guide on Export Control of Small Arms and Light Weapons, Handbook on Best Practices on Small Arms and Light Weapons* (OSCE: Vienna, 2003), <<http://www.osce.org/fsc/13651>>.
- OSCE, Forum for Security Co-operation, 'Principles for export controls of man-portable air defence systems (MANPADS)', Decision no. 3/04, FSC.DEC/3/04, 26 May 2004.
- OSCE, Forum for Security Co-operation, 'Standard elements of end-user certificates and verification procedures for SALW exports', Decision no. 5/04, FSC/DEC/5/04, 17 Nov. 2004.
- OSCE, 'Template for end user certificates for small arms and light weapons', 28 Sep. 2011, <<http://www.osce.org/fsc/83178>>.

WASSENAAR ARRANGEMENT DOCUMENTS

- Wassenaar Arrangement, 'End-user assurances commonly used consolidated indicative list', adopted in 1999, revised in 2005, <<http://www.wassenaar.org/publicdocuments/>>.
- Wassenaar Arrangement, 'Best practice guidelines for exports of small arms and light weapons (SALW)', Agreed at the 2002 Plenary and amended at the 2007 Plenary, <<http://www.wassenaar.org/guidelines/>>.
- Wassenaar Arrangement, 'Elements for export controls of man-portable air defence systems (MANPADS)', Agreed at the 2003 Plenary, <<http://www.wassenaar.org/guidelines/>>.
- Wassenaar Arrangement, 'Best practice guidelines on subsequent transfer (re-export) controls for conventional weapons systems contained in appendix 3 to the WA Initial Elements', Agreed at the 2011 Plenary, <<http://www.wassenaar.org/guidelines/>>.

UNITED NATIONS DOCUMENTS

- 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, adopted 31 May 2001, opened for signature 2 July 2001, entered into force 3 July 2005, <https://treaties.un.org/doc/source/RecentTexts/18-12_c_E.pdf>.
 - United Nations, General Assembly, 'Programme of action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects', A/CONF.192/15, July 2001, <<http://www.poa-iss.org/poa/poahtml.aspx>>.
 - United Nations, Coordinating Action on Small Arms, 'National controls over the international transfer of small arms and light weapons', Draft International Small Arms Control Standard, ISACS/03.20, Version 1.0, June 2014, <<http://www.smallarmsstandards.org>>.
 - United Nations, Coordinating Action on Small Arms, 'National controls over the end-user and end-use of internationally transferred small arms and light weapons', Draft International Small Arms Control Standard, ISACS/03.21, Version 1.0, June 2014, <<http://www.smallarmsstandards.org>>.
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INTERNATIONAL AND REGIONAL GUIDELINES AND BEST PRACTICES ON RE-EXPORT AND RE-TRANSFER CONTROLS

Several guidelines and best practices on transfer control of small arms and light weapons (SALW) and conventional arms contain language on re-export and re-transfer control. For the purposes of this study, relevant guidelines and best practices most applicable to states in South Eastern Europe that have been produced by the EU, the OSCE, the Wassenaar Arrangement and the UN were analysed to determine the content of their prescriptions and recommendations on re-export and re-transfer control. The results of this analysis are presented in Table 1 and in the following subsections.

IMPOSING RE-EXPORT AND RE-TRANSFER CONTROLS

The guidelines and best practice documents recommend that exporting states should impose some form of re-export or re-transfer control on exports of SALW and conventional arms. However, the precise content of these controls and the extent to which they are recommended or required varies from document to document. Six types of re-export and re-transfer control are recommended in the various guidelines and best practice documents:

- ▶ prohibition on re-export to another destination;
- ▶ prohibition on re-export, except to certain destinations;
- ▶ prohibition on re-transfer to another end-user, location or end-use;
- ▶ prior authorization before any re-export or re-transfer;
- ▶ notification of any re-export or re-transfer; and
- ▶ importing state given responsibility for re-export or re-transfer.

However, as the following examples show, the documents vary significantly in terms of the restrictions that they advise exporting states to impose and whether or not their imposition is presented as an option or an obligation (see Table 1):

- ▶ The 2000 OSCE SALW Document encourages the exporting state to require that importing states ‘advise’ it before any re-export of SALW takes place.⁵
- ▶ The Wassenaar Arrangement’s 2005 End-user Assurances Commonly Used list recommends that the exporting state imposes some form of re-export restriction and gives different options for its content.⁶ These options consist of a prohibition on re-export, a commitment that any re-export will be subject to the approval of the original exporting country, a commitment that any re-export will be under the control of the importing state, and a commitment to not move the items to a new location in the importing state.
- ▶ The EU’s 2009 User’s Guide notes that states ‘might’ want to impose re-export restrictions ‘at their discretion’ and also gives a range of options for states to consider.⁷ These options consist of a prohibition on re-export, a commitment that any re-export will be subject to the approval of the original exporting country, and a commitment that re-exports can be made to certain countries identified in the EUC.

The option of giving the importing state responsibility for re-export or re-transfer is included in the majority of the documents, as the following two examples illustrate:

- ▶ The OSCE’s 2004 Standard Elements of End-user Certificates, for example, recommends that the exporting state require the importer to request written permission before any re-export can take place ‘unless the exporting country decides to transfer that authority to the export licensing authorities of the importing country’.⁸
- ▶ The OSCE’s 2011 Template for EUCs for SALW and the 2014 UN Coordinating Action on Small Arms (CASA) Guidelines on national controls over the end-user and end-use of internationally transferred SALW both require the imposition of re-export or re-transfer controls.⁹ However, in both cases one of the options provided is placing controls on re-export under the responsibility of the licensing authority of the importing country.

However, none of the documents provide guidance on when such responsibility should be given to the importing state. The key exception is the Wassenaar Arrangement’s 2011 Best Practice Guidelines on Re-export, which require-exporting states to attach a ban on re-export to any export of conventional arms. The guidelines call on states to

5 OSCE, Forum for Security Co-operation, ‘OSCE document on small arms and light weapons’, 24. Nov. 2000, <<http://www.osce.org/fsc/20783>>, pp. 6–7.

6 Wassenaar Arrangement, ‘End-user assurances commonly used consolidated indicative list’, adopted in 1999, revised in 2005, <http://www.wassenaar.org/publicdocuments/docs/End-user_assurances_as_updated_at_the_December_2005_PLM.pdf>.

7 Council of the European Union, ‘User’s Guide to Council Common Position 2008/944/ CSDP defining common rules governing the control of exports of military technology and equipment’, document 9241/09, 29 Apr. 2009, <http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST_9241_2009_INIT>, p. 19.

8 OSCE, Forum for Security Co-operation, ‘Standard elements of end-user certificates and verification procedures for SALW exports’, Decision No. 5/04, Document FSC/DEC/5/04, 17 Nov. 2004.

9 OSCE, FSC/DEC/5/04 (note 8); and United Nations, Coordinating Action on Small Arms, ‘National controls over the end-user and end-use of internationally transferred small arms and light weapons’, Draft International Small Arms Control Standard, ISACS/03.21, Version 1.0, June 2014, <<http://www.smallarmsstandards.org>>.

include clauses ‘on a case by case basis’ in any end-use or end-user assurance banning re-export ‘without the prior authorization of the original exporting government’ and banning re-transfer to ‘an unauthorized internal end-user’ or for use in purposes ‘other than declared’.¹⁰

The majority of the documents recommend that re-export and re-transfer controls should be imposed through the insertion of end-use assurances in the end-user certificate or end-user statement that accompanies an export.¹¹ One exception is the OSCE’s 2003 Best Practice Guide on Export Control of SALW, which recommends that clauses on re-exports should be included in both the ‘end-user certificate’ and ‘contracts for sale or export’.¹² The majority of best practice documents do not provide precise appropriate language that could be used in an end-use assurance. An exception is the OSCE’s EUC Template, which includes language for four different types of end-use assurance. Each of these specifies that the assurance covers cases where the SALW might be ‘exported, sold, leased or transferred temporarily or permanently with or without compensation to third countries or another legal entity or person in [name of end-user state] other than the stated end-user’.¹³

The Wassenaar Arrangement and UN best practice documents also include commitments relating to re-export controls for importing states.

- ▶ The UN’s 2001 Programme of Action on SALW (PoA), for example, requires importing states to ‘make every effort. . . to notify the original exporting State in accordance with their bilateral agreements before the re-transfer of those weapons’.¹⁴
- ▶ The Wassenaar Arrangement’s 2007 Best Practice Guidelines for Exports of SALW includes similar language under which states ‘agree to ensure, as far as possible, without prejudice to the rights of States to re-exportsALW that they have previously imported, that the original exporting Participating State, in accordance with bilateral agreements, will be notified before re-export /re-transfer of those weapons’.¹⁵
- ▶ In addition, the UN’s 2014 CASA Guidelines on SALW Transfers notes that importing states ‘shall honour all contractually agreed restrictions on the re-export of small arms or light weapons’.¹⁶ It also notes that, where no contractual obli-

10 Wassenaar Arrangement, ‘Best practice guidelines on subsequent transfer (re-export) controls for conventional weapons systems contained in appendix 3 to the WA Initial Elements’, Agreed at the 2011 Plenary, <<http://www.wassenaar.org/guidelines/>>.

11 An end-user certificate is ‘an official document, issued by a competent national authority of the importing State, that identifies a government agency of the importing State as the ultimate recipient of an international transfer’ of conventional arms. An end-user statement is ‘a document, issued by a private end-user, that provides assurances regarding the end user and end-use of internationally transferred’ conventional arms. United Nations, Coordinating Action on Small Arms, ‘Glossary of terms, definitions and abbreviations’, Draft International Small Arms Control Standard, ISACS/01.20, Version 1.0, Aug. 2012, <<http://www.smallarmsstandards.org/>>.

12 OSCE, *Best Practice Guide on Export Control of Small Arms and Light Weapons*, Handbook on Best Practices on Small Arms and Light Weapons (OSCE: Vienna, 2003), <<http://www.osce.org/fsc/13651>>, p. 10

13 OSCE, ‘Template for end user certificates for small arms and light weapons’, 28 Sep. 2011, <<http://www.osce.org/fsc/83178>>.

14 United Nations, General Assembly, ‘Programme of action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects’, A/CONF.192/15, July 2001, <<http://www.poa-iss.org/poa/poahtml.aspx>>.

15 Wassenaar Arrangement, ‘Best practice guidelines for exports of small arms and light weapons (SALW)’, Agreed at the 2002 Plenary and amended at the 2007 Plenary, <<http://www.wassenaar.org/guidelines/>>.

16 United Nations, Coordinating Action on Small Arms, ‘National controls over the international transfer of small arms and light weapons’, Draft International Small Arms Control Standard, ISACS/03.20, Version 1.0, June 2014, <<http://www.smallarmsstandards.org/>>, p. 21.

gations exist, the importing state should ‘notify the original exporting State in writing before re-exporting small arms or light weapons’.¹⁷

The Wassenaar Arrangement and the OSCE have also adopted guidelines that oblige states to place more restrictive re-export and re-transfer controls on exports of man-portable air defence systems (MANPADS).

- ▶ The 2003 Wassenaar Arrangement for Export Controls of Man-Portable Air Defence Systems (MANPADS) and the 2004 OSCE Principles for Export Controls of Man-Portable Air Defence Systems (MANPADS) require that exports of MANPADS are only made to ‘foreign governments or to agents specifically authorized to act on behalf of a government’, and only upon receipt of a valid end-user certificate (EUC).¹⁸ The exporting state is also obliged to obtain a guarantee that the goods will not be re-exported without the prior consent of the exporter and that the importer will inform the exporter of any instance of ‘compromise, unauthorized use, loss, or theft of any MANPADS material’. Finally, prior to any export, the exporting state is obliged to ensure that the importing state is able to implement effective measures ‘for secure storage, handling, transportation, use of MANPADS material, and disposal or destruction of excess stocks’.

The majority of the documents focus on sales of complete weapon systems to government end-users. They do not make reference to cases where arms are being supplied to a private person or company or where components are being supplied to a private company for incorporation and re-export.

- ▶ The OSCE SALW Document notes that in ‘exceptional cases’ an end-user statement issued by a private company can take the place of a government issued EUC.¹⁹ It also notes that deliveries to private individuals are one of a number of situations that carry a ‘potential risk of illegal diversion’.²⁰
- ▶ The 2014 UN CASA Guidelines on SALW Transfers note that licences for the export of SALW to private persons or companies should only be granted if the recipient has received the necessary authorizations from the competent authorities of the importing State, including an import licence and certification of the end-user statement.²¹
- ▶ The 2009 EU’s User’s Guide is the only document to address the issue of incorporation and re-export. The document notes that states shall ‘fully apply the Common Position to licence applications for goods where it is understood that the goods are to be incorporated into products for re-export.’ However, the document also notes that in assessing such licences, states will also take into account a number of other factors, including ‘the export control policies and effectiveness of the export control system of the incorporating country’, ‘the importance of their defence and security relationship with that country’, and ‘the

17 United Nations, ISACS/03.20 (note 16), p. 21.

18 Wassenaar Arrangement, ‘Elements for export controls of man-portable air defence systems (MANPADS)’, Agreed at the 2003 Plenary, <<http://www.wassenaar.org/guidelines/>>.

19 OSCE (note 5), p. 16.

20 OSCE (note 5), p. 12.

21 United Nations, ISACS/03.20 (note 16), p. 10.

materiality and significance of the goods in relation to the goods into which they are to be incorporated.²²

ENFORCING AND MONITORING RE-EXPORT AND RE-TRANSFER CONTROLS

In terms of enforcing and monitoring re-export and re-transfer controls, many of the documents place a strong emphasis on the pre-licensing stage of the process and the need to maintain effective mechanisms of risk assessment.

- ▶ The OSCE SALW Document, for example, calls on each participating state to ‘avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might. . . Be either resold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to the aims of this document’.²³
- ▶ The Wassenaar Arrangement’s Best Practice Guidelines for Exports of SALW requires states to ‘avoid issuing licences for exports of SALW’ if there is a clear risk that the arms might be ‘either resold (or otherwise diverted) within the recipient country, reproduced without licence, or be re-exported’.²⁴
- ▶ The EU’s User’s Guide notes that ‘the emphasis of export controls remains on the prelicensing phase’ and includes guidelines on how to assess potential risks of diversion.²⁵

A number of documents include language on delivery verification certificates (DVCs) and other mechanisms for ensuring that exported items have reached their intended destination.

- ▶ The EU’s User’s Guide notes that exporting states might—at their discretion—include a commitment that the importer will provide a DVC in the EUC.²⁶ The OSCE, UN and Wassenaar Arrangement best practice documents also include relevant commitments for importing states in this area.
- ▶ The OSCE SALW Document requires importing states to notify the exporting state when the goods have arrived.²⁷
- ▶ Meanwhile, the UN’s 2001 Firearms Protocol notes that ‘The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition’.²⁸

Several documents also include language on onsite inspections, either at the point of delivery or point of end-use.

22 Council of the European Union (note 7), p. 20.

23 OSCE (note 5), p. 5.

24 Wassenaar Arrangement (note 15).

25 Council of the European Union (note 7), pp. 21, 87–92.

26 Council of the European Union (note 7), p. 19.

27 OSCE (note 5), p. 6.

28 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, adopted 31 May 2001, opened for signature 2 July 2001, entered into force 3 July 2005, <https://treaties.un.org/doc/source/RecentTexts/18-12_c_E.pdf>.

- ▶ The OSCE SALW Document encourages states to establish appropriate procedures that would allow the exporting state to carry out ‘a physical check of the shipment of small arms at the point of delivery’.²⁹
- ▶ The EU’s User’s Guide notes that ‘onsite inspections. . . are particularly useful tools to help prevent diversion within the buyer country or re-export under undesirable conditions’.³⁰
- ▶ The OSCE Best Practice Guide states that importing states ‘may grant the authorities of the exporting State the right to [conduct] a physical inspection of the shipment at the point of delivery’.³¹

RESPONDING TO VIOLATIONS OF RE-EXPORT OR RE-TRANSFER RESTRICTIONS

None of the guidelines and best practice documents on transfer controls of SALW and conventional arms contain any recommendation or prescription concerning how states should respond if and when re-export or re-transfer controls are ignored or violated.

29 OSCE (note 5), p. 7.

30 Council of the European Union (note 7), p. 21.

31 OSCE (note 12), p. 11.



NATIONAL POLICIES ON RE-EXPORT AND RE-TRANSFER CONTROLS

For the purposes of this study, a survey was conducted to collect information from 6 South East European states (Albania, Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, and Serbia) and 11 states participating in the Wassenaar Arrangement (Austria, Belgium, the Czech Republic, France, the Netherlands, Poland, Portugal, Slovenia, Switzerland, Sweden and the United Kingdom).³² Belgium provided 2 separate entries for the competent export licensing authorities in the Flemish and Walloon Regions. For this reason, even though 11 states were covered by the survey, the remaining text often refers to the 12 *survey respondents* from Wassenaar Arrangement participating states. When selecting which Wassenaar Arrangement states to include in the survey, the intention was to cover a wide geographic scope and include a mix of small and large arms exporters. Russia and the United States were excluded from the survey because the size of their exports and the particularities of their policies on re-export and re-transfer controls meant that their inclusion would be of limited relevance for South East European states. The survey covered states' policies on (a) imposing re-export and re-transfer controls, (b) monitoring and enforcing re-export and re-transfer control, and (c) responding to reports of unauthorized re-exports and re-transfers. The results of this survey are presented in aggregated form in Table 2 and in the following subsections. In addition, information is presented below on states' policies in each of these areas collected from (a) states' national laws and regulations on arms exports, (b) states' submissions to the PoA, and (c) states' submissions to the UN Exchange of National Legislation on Transfer of Arms, Military Equipment and Dual-use Goods and Technology.³³

³² Although Croatia has been a member of the Wassenaar Arrangement since 2005, for the purposes of this report it is included only in the group of South East European states.

³³ These are available at—respectively—<http://www.sipri.org/research/armaments/transfers/transparency/national_reports/sipri-national-reports-database>, <<http://www.poa-iss.org/NationalReport/NationalReports.aspx>> and <<http://www.un.org/disarmament/convarms/NLDU/>>.

IMPOSING RE-EXPORT AND RE-TRANSFER CONTROLS

Of the 6 survey respondents among South East European states, 5 impose restrictions on re-exports or re-transfers, as do 10 of the 12 survey respondents in Wassenaar Arrangement participating states. For this reason, even though there were 6 survey respondents among South East European states and 12 survey respondents in Wassenaar Arrangement participating states, the remaining text often refers to the 5 survey respondents in South East European states *that impose restrictions on re-export or re-transfer* and the 10 survey respondents in Wassenaar Arrangement participating states *that impose restrictions on re-export or re-transfer*. The survey respondents use 5 types of re-export and re-transfer control:

- ▶ prohibition on re-export to another destination;
- ▶ prohibition on re-export, except to certain destinations;
- ▶ prior authorization before any re-export or re-transfer;
- ▶ notification of any re-export or re-transfer; and
- ▶ importing state given responsibility for re-export or re-transfer.

In one state surveyed, end-users are required to provide statements of end-use. However, these declarations are neither legally binding nor enforceable and are not seen by the exporting state as an attempt to impose ‘re-export controls’.

- ▶ Of the 5 survey respondents in South East European states that impose restrictions on re-export or re-transfer, 1 requires notification of any re-export, 3 require prior authorization before any re-export, and 1 does so in certain cases. In cases where restrictions do not apply, the importing state is given responsibility for re-export or re-transfer.
- ▶ Of the 10 survey respondents in Wassenaar Arrangement participating states that impose restrictions on re-export or re-transfer, 3 impose prohibition on re-export in certain cases, 4 require prior authorization before any re-export or re-transfer and 6 do so in certain cases. In cases where restrictions do not apply, the importing state is given responsibility for re-export or re-transfer.

Of the 10 survey respondents in Wassenaar Arrangement participating states that impose restrictions on re-export or re-transfer, many did so only for certain destinations and certain end-users.

- ▶ In one state surveyed, for example, a prohibition on re-export is imposed for export to certain ‘sensitive’ destinations. In another state surveyed, a prohibition on re-export is imposed on a ‘case-by-case basis’ and only for end-users outside the EU. In a third surveyed state, a prohibition on re-export is imposed for exports ‘to non-government entities such as companies’ in countries that are not considered to be allies. In certain cases, a prohibition on re-export is imposed, except to certain destinations.
- ▶ In one state surveyed, the importing state is given responsibility for re-export or re-transfer when the importing state is an EU member state, Switzerland, the USA or Australia. In another state, the importing state is given responsibility for re-export or re-transfer when the importing state is an EU member state. In yet another state, the importing state is given responsibility for re-export or re-transfer except if the export is deemed particularly sensitive because of the nature of the goods and the end-use or end-user. In one state surveyed, the importing

state is given responsibility for re-export or re-transfer for exports of ‘parts and components to system integrators in countries [the exporting state] consider[s] as allies’.

A number of states emphasized that they impose stronger re-export and re-transfer controls for exports of SALW and MANPADS in line with the 2003 Wassenaar Arrangement guidelines and the 2004 OSCE guidelines (see above).

- ▶ Austria imposes restrictions on all exports of SALW, regardless of the destination.³⁴
- ▶ One state noted that—in contrast to other military goods, to which such restrictions were not applied—exports of MANPADS were only permitted upon receipt of ‘an assurance from the government of the recipient state that they will not authorize the re-export without consulting the originating government’. This was a direct response to the 2003 Wassenaar Arrangement guidelines.

The majority of states surveyed impose re-export and re-transfer controls through the insertion of end-use assurances in the end-user certificate or end-user statement that accompanies a transfer.

- ▶ All of the 5 survey respondents among South East European states that impose restrictions on re-export or re-transfer do so via the inclusion of language in EUCs. One of these states also uses the inclusion of language in commercial contracts and international import certificates (IICs).³⁵
- ▶ Of the 10 survey respondents in Wassenaar Arrangement participating states that impose restrictions on re-exports or re-transfers, 9 do so via the inclusion of language in EUCs. Of these, 2 also include language in commercial contracts.
- ▶ One state surveyed uses a mixture of IICs (‘For the supply of parts and components to system integrators in countries we consider as allies’), end-user statements (‘For the supply of systems to non-government entities such as companies’) and the inclusion of language in commercial contracts (‘For the supply of systems or components directly to armed forces or [defence ministries]’).
- ▶ Another state requires the end-users to provide end-user statements, indicating that they ‘will not re-export or re-transfer the item if (i) they know that the item would be used for the development, production or use of weapons of mass destruction or missiles for delivering such weapons; and (ii) the re-export /re-transfer would be in breach of a UN, EU or OSCE arms embargo’. However, this state does not see this as an attempt to impose ‘re-export controls’ (see above).

34 United Nations, Programme of Action Implementation Support System, National Reports on the Programme of Action, Austria, 2012, <<http://www.poa-iss.org/PoA/NationalReportList.aspx>>.

35 The state indicated that for all exports of military equipment the export licence applicant must submit an EUC that states that ‘the goods are not going to be re-exported without our permission’ or an IIC that states that ‘the goods are not going to be re-exported without the permission of the authorities of the importing country’. IICs are a form of import certificate that are used by certain states. IICs were established in the 1950s by the Coordinating Committee for Multilateral Export Controls (CoCom). Although CoCom was dissolved in 1994, many states continue to issue IICs. See Berkol, I. and Moreau, V., *Post-Export Controls on Arms Transfers: Delivery Verification and End-Use Monitoring* (Group for Research and Information on Peace and Security: Brussels, 2009).

One state provided information on their policies for dealing with cases in which arms are being exported to a private person or company and where components are being supplied for incorporation and re-export.

- ▶ The state noted that for sales of arms and ammunition to a private person, the primary concern is determining whether the recipient is allowed to own the goods in the importing state. If that is assured, ‘it is up to the local authorities to supervise the ownership, use and possible re-sale according to national legislation.’
- ▶ The same state noted that ‘(f)or the supply of parts and components to system integrators in countries we consider as allies we will very often accept international import certificates as adequate end use assurances.’ In such cases, the importing company will commit to apply for an export licence from their own licensing authority should any exports occur. As such, responsibility for controlling future re-exports will be in the hands of the licensing authority of the importing state.

ENFORCING AND MONITORING RE-EXPORT AND RE-TRANSFER CONTROLS

A number of respondents among South East European states and Wassenaar Arrangement participating states emphasized the extent to which pre-export risk assessments are as important as—or more important than—any attempt to impose re-export or re-transfer controls.

- ▶ One state noted that its approach to export licensing is based on ‘a thorough risk assessment before the goods are authorized for export’. This process involves a ‘full consideration that the items might subsequently be re-exported or re-transfer red to an undesirable end-use or end-user’.
- ▶ Another state emphasized that, while it seeks to monitor cases where there is a chance that re-export or re-transfer restrictions might be violated, where such concerns exist it is very likely that it ‘would deny licence applications for export of a broad range of military goods’ due to concerns that the goods might be diverted to an unauthorized end-use or end-user.

A number of respondents among South East European states and Wassenaar Arrangement participating states use DVCs to help to ensure that exported items have reached their intended destination.

- ▶ Of the 6 survey respondents in South East European states, 3 always request a DVC when exporting goods covered by their national control list, 1 does not and 2 do so in certain cases.
- ▶ Of the 12 survey respondents in Wassenaar Arrangement participating states, 1 always requests a DVC when exporting goods covered by their national control list, 2 do not and 9 do so in certain cases.
- ▶ Of the states that require DVCs in certain cases, many indicated that they confined their use to sensitive end-users and end-uses. For example, one state only requires DVCs for exports to ‘unstable destinations’, while another only requires DVCs where there is a suspicion that ‘the products may not be properly delivered to legitimate end-user’ or if there are questions about ‘The reliability of the import control system of the country of destination of the end-user’. Yet another

state surveyed 'requests DVCs on the basis of a risk analysis of the countries of destination'.

A number of states took steps to ensure the authenticity of DVCs received.

- ▶ Of the 5 survey respondents in South East European states that require DVCs, 3 take steps to verify their authenticity. In one of these, DVCs are shared with the Ministry of Foreign Affairs and the intelligence agencies. One state checks DVCs via diplomatic channels. In Albania, the DVC must be notarized in cases where the country issuing the DVC is part of the 1961 Hague Convention Abolishing the Requirement for Legalisation for Foreign Public Documents (the Apostille Convention). 'When the country that had issued the DVC is not a member of this Convention or has expressed reservations to Albania the document must have the apostille seal'.³⁶
- ▶ Of the 10 survey respondents in Wassenaar Arrangement participating states that require DVCs, 8 take steps to verify their authenticity. One of these states takes steps to verify the authenticity of the actual signature on the DVC. In another, DVCs are verified 'with the support of its foreign representations'.

A number of states take a variety of additional measures to ensure that re-export or re-transfer controls are applied, beyond those that are recommended in the various guidelines and best practice documents.

- ▶ Of the 5 survey respondents in South East European states that impose re-export or re-transfer controls, 4 take additional measures to confirm that they are being applied. All use information collected by national embassies, 1 monitors other sources of information and none carry out on-site inspections in certain cases.
- ▶ Of the 10 survey respondents in Wassenaar Arrangement states that impose re-export or re-transfer controls, all take additional measures to confirm that they are being applied. Of these, 8 use information collected by national embassies, 9 monitor other sources of information and 3 carry out onsite inspections in certain cases.
- ▶ One state informs its embassy in the importing county, which will follow the situation 'and report to capital if they have doubts or knowledge of unauthorized re-exports'. Another state consults a variety of open-source reports, including UN sanctions monitoring groups, the Small Arms Survey, Conflict Armament Research and others. Switzerland requests the right to carry out post-shipment verifications (PSV) when there is an increased risk that the export 'will be passed on to an undesirable end recipient'.³⁷

Questionnaire respondents highlighted a number of other mechanisms for confirming that re-export or re-transfer restrictions are being applied. These included collecting information from the exporting company.

³⁶ United Nations, Programme of Action Implementation Support System, National Reports on the Programme of Action, Albania, 2012, <<http://www.poa-iss.org/PoA/NationalReportList.aspx>>.

³⁷ Swiss Ordinance on War Material of 25 February 1998 (Status as of 1 November 2012).

- ▶ In one state, a company that obtains information about any unauthorized re-export while the export licence is valid is legally obliged to provide information to the export licensing authority.
- ▶ In another state, companies that are involved in the maintenance of exported military goods might be required to report any concerns about the importer's compliance with re-export restrictions.
- ▶ In yet another state, legislation requires the exporting company to report any information relating to the re-export of exported goods. Elsewhere, a company exporting goods under global and general licences must not export the goods if it is aware that they are 'destined for re-export' to an unauthorized destination.

Another mechanism for confirming that re-export or re-transfer restrictions are being applied is sharing information with other states.

- ▶ One state uses information gathered during information exchanges between government officials in the context of meetings of the EU's Conventional Arms Exports Working Group (COARM) and the Wassenaar Arrangement. Other sources of information include national customs authorities, the recipient country and national intelligence services.

RESPONDING TO VIOLATIONS OF RE-EXPORT OR RE-TRANSFER RESTRICTIONS

Of the 5 survey respondents in South East European states that impose re-export or re-transfer restrictions, 2 have legislation or guidelines in place that outline the response to any alleged violations of re-export and re-transfer controls, as do 7 of the 10 survey respondents in Wassenaar Arrangement states that impose re-export or re-transfer controls. Where such legislation or guidelines exist, the main focus is on (a) prosecuting any companies or individuals involved that fall under the exporting states' jurisdiction, (b) suspending any existing licences for exports to the end-user in question, (c) having a strong presumption of denial for any future-export licences to the end-user in question, and (d) sharing relevant information with partner states.

- ▶ In one state, subsequent exports to the country or end-user in question 'will be thoroughly assessed on a case-by-case basis with a strong presumption of denial. Moreover, the violations of re-export /re-transfer restrictions might lead to the reassessment and suspension/annulment of ongoing export authorizations. If appropriate, information about the end-user/country of destination may be shared in the relevant EU working groups (COARM)'.
- ▶ In another state, legislation will apply 'if the violator is within our legal jurisdiction'. 'If the violator is outside our legal jurisdiction we will consider other options, but at the very least there will be consequences for possible subsequent deliveries.'
- ▶ In yet another state, the guidelines to the legislation state that 'the fact that a recipient has re-transferred/re-exported without a permission will negatively affect future license applications and may be the basis for a decision to halt all deliveries'.

A number of states that do not have actual legislation or guidelines in place indicated that they have established practices that cover most of these same steps.

- ▶ In one exporting state, no legislation or guidelines are currently in place, but under current practices, if any violation takes place, then ‘the destination will be blacklisted and the information shared within COARM’.
- ▶ In another state, there is no ‘legislation or guidelines’ in place but there are established practices in place concerning how to respond to violations of re-export or re-transfer restrictions based on the steps taken in recent cases.
- ▶ In yet another state, ‘if there are credible reports that a statement of end-use has been ignored this will be factored in to subsequent export licensing risk assessments’.

While none of the 5 survey respondents in South East European states that impose re-export or re-transfer restrictions have identified cases of violations, 3 of the 10 survey respondents in Wassenaar Arrangement states that impose re-export or re-transfer controls have identified cases. In all cases, information was requested from the end-user, the export licence was suspended or annulled, and restrictions were placed on future-exports to the end-user or destination. In the case of another country, information was also sought from the exporting company. In 2 states, information on the case was shared with other states, via COARM or the Wassenaar Arrangement.



CASE STUDIES OF UNAUTHORIZED RE-EXPORT AND RE-TRANSFER

The following 10 case studies examine actual or alleged unauthorized re-exports or re-transfers to highlight challenges and opportunities facing exporting states. In all cases, the original exporting state was a European state outside South Eastern Europe and, with the exception of Belarus, participates in the Wassenaar Arrangement. The cases have been selected to illustrate the widest range of responses by exporting states and the types of challenge that these responses faced, rather than the amount or value of the goods transferred. Each case study looks at the types of arms that were-exported, what re-export or re-transfer restrictions were in place, if and how these were violated, how the case came to light, and what steps were taken by the original exporting state to investigate and respond.

CASE 1.

RUSSIAN ANTI-TANK GUIDED MISSILES IDENTIFIED IN THE 2006 CONFLICT IN LEBANON

Between 1998 and 2006 Russia exported an estimated 2000 AT14E and 9K1152 anti-tank guided missile systems to Syria under a 1997 contract reported to be valued at \$138 million.³⁸ The re-export or re-transfer restrictions that were placed on these exports to Syria are unknown. However, Russian regulations state that exports of SALW can only take place if assurances are provided stating that the arms ‘will not be re-exported or transferred to third countries without the consent of the Russian Federation’.³⁹ KBP Instrument Design Bureau in Tula, Russia, manufactures both weapon systems.

In 2006 there were media reports of various Russian-made AT14E and 9K1152 anti-tank guided missile systems being used extensively by Hezbollah in its conflict with Israel in

38 SIPRI Arms Transfers Database. 7 April 2014, <<http://www.sipri.org/databases/armstransfers/>>; and ‘Hezbollah’stic examination’, *Kommersant*, 23 Aug. 2006, <http://www.kommersant.com/p698954/Hezbollah's_Examination/>.

39 United Nations, Programme of Action Implementation Support System, National Reports on the Programme of Action, Russian Federation, 2010, <<http://www.poa-iss.org/PoA/NationalReportList.aspx>>.

Lebanon.⁴⁰ No such systems were thought to have been directly exported from Russia to either Lebanon or Hezbollah. The casings of the AT14E were stamped with the name of the Syrian Ministry of Defence, suggesting that they had been re-transferred from the Syrian Ministry of Defence after being imported from Russia.⁴¹

In response to the finding, Israel provided evidence to Russia of the possible re-transfer and requested that an investigation into the case be established.⁴² The Russian Ministry of Foreign Affairs stated that adequate Russian oversight of arms transfers made delivery to unintended destinations unlikely.⁴³ Russia's response to the report indicates that a significant amount of evidence is required before Russia is willing to carry out an investigation into alleged violations of re-export and re-transfer controls and that it is unwilling to admit that they may have taken place.

CASE 2.

SWEDISH RECOILLESS RIFLES IDENTIFIED IN COLOMBIA

In the mid-1980s Sweden exported an undisclosed number of Saab Bofors AT4 portable recoilless rifles to Venezuela.⁴⁴ A prohibition on re-exports was attached to the transfer.⁴⁵

In July 2009 media reports identified AT4s in a cache of arms seized by the Colombian armed forces from the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia, FARC).⁴⁶ FARC has been criticized for human rights abuses during and in support of its military offensive.⁴⁷ AT4s have been manufactured in Sweden and under license in the United States. Colombian officials initially claimed that the weapons had entered the country from Venezuela.⁴⁸

In response to the report, the Swedish Agency for Non-proliferation and Export Controls (Inspektionen för strategiska produkter, ISP) launched an investigation. As part of the investigation, Saab Bofors was requested to provide serial numbers for the AT4s exported to Venezuela. This assisted ISP in concluding that the arms discovered in Colombia had originally been delivered to Venezuela before reaching FARC forces.⁴⁹

40 Marcus, Jonathan, 'Tough lessons for Israeli armour', BBC News, 15 Aug. 2006, <http://news.bbc.co.uk/2/hi/middle_east/4794829.stm>; and Ze'ev Schiff, 'Hezbollah anti-tank fire causing most IDF casualties in Lebanon', *Haaretz*, 6 Aug. 2006, <<http://www.haaretz.com/news/hezbollah-anti-tank-fire-causing-most-idf-casualties-in-lebanon-1.194528>>.

41 Blomfield, Adrian, 'Israel humbled by arms from Iran', *Daily Telegraph*, 15 Aug. 2006, <<http://www.telegraph.co.uk/news/1526407/Israel-humbled-by-arms-from-Iran.html>>.

42 Marcus, Jonathan, 'Tough lessons for Israeli armour', BBC News, 15 Aug. 2006, <http://news.bbc.co.uk/2/hi/middle_east/4794829.stm>.

43 'Israel slams Russian arms sales', *St Petersburg Times*, 22 Aug. 2006, <http://www.sptimes.ru/index.php?action_id=100&story_id=18598>.

44 Sveriges Radio, 'ISP: "Detta är ytterst allvarligt" [ISP: 'This is extremely serious'], 27 July 2009, <<https://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=2994139>>.

45 Sveriges Radio (note 44).

46 'Colombia seizes rocket launchers from the FARC', *Janes' Defense Weekly*, 20 July 2009, <https://web.archive.org/web/20110310111928/http://www.janes.com/news/security/jiww/jiww090720_1_n.shtml>.

47 United Nations, Office of the High Commissioner of Human Rights, Report of the High Commissioner for Human Rights on the situation of human rights in Colombia, 28 Feb. 2005, <http://www.hchr.org.co/documentos/informes/informes/altocomisionado/Informe2004_eng.pdf>.

48 'Gobierno tilda de "show mediático" que armas de Venezuela estén en las FARC', Caracol Radio, 27 July 2009, <<http://www.caracol.com.co/noticias/internacional/gobierno-tilda-de-show-mediatico-que-armas-de-venezuela-esten-en-las-farc/20090727/nota/851773.aspx>>.

49 ISP official, Interview with author, Stockholm, 27 Mar. 2014.

During the investigation, Sweden halted the issuance of new export licences and exports to Venezuela under existing contracts.⁵⁰ No subsequent exports from Sweden to Venezuela have taken place and, at the conclusion of the investigation, ISP stated that closer coordination between the states would be required before new exports would be permitted.⁵¹ Details of the case were subsequently shared by Sweden with partner states via COARM and the Wassenaar Arrangement.⁵²

CASE 3.

SWEDISH RECOILLESS RIFLES IDENTIFIED IN MYANMAR

In 2003 India imported a number of M3 Carl Gustav recoilless rifles from the Swedish manufacturer Saab Bofors.⁵³ The EUC attached to the transfer included a prohibition on re-exports.⁵⁴

In December 2012 media reported the possession of six recoilless rifles by members of the Myanmar Army in an offensive against non-government forces in northern Myanmar. The weapons were identified as the M3 variant manufactured in Sweden by Saab Bofors. At the time Sweden had only exported the M3 system to two Asian countries, Thailand and India.⁵⁵ Moreover, an EU arms embargo on arms exports to Myanmar had been in place since 1991 due to violations of human rights.⁵⁶ Sweden had previously exported the M2, an earlier model of the Carl Gustav, to Myanmar as well as its ammunition. The ammunition discovered with the M3s in 2012 was originally exported from Sweden in 1982.⁵⁷

Subsequent to the report, ISP undertook an investigation with cooperation from Indian authorities requested through diplomatic channels.⁵⁸ The investigation was assisted by the provision of serial numbers by the Swedish manufacturer as well as cooperation with Indian authorities, even though neither party was obliged to provide such cooperation.⁵⁹ The investigation confirmed that the arms had been re-exported from India having first been imported from Sweden in 2003.⁶⁰ It is unclear if the licensing of Swedish exports to India was affected during or after the investigation.

50 ISP, *Annual Report 2009* (ISP: Stockholm, [n.d.]), <http://www.isp.se/documents/_English/Publications/AR/ISP_AnnualReport2009_web.pdf>, p. 2.

51 Sveriges Radio (note 44). ISP official (note 49).

52 ISP (note 50).

53 Björnling, Ewa, 'Angående svenskt vapen påträffat i Burma' [On Swedish weapons discovered in Myanmar], Swedish Parliament, 13 Dec. 2012, <<http://www.regeringen.se/sb/d/16759>>.

54 Sveriges Television, 'Indien avkrävs svar om granatgevär' [India is requested to reply on bazookas], 13 Dec. 2012, <<http://www.svt.se/nyheter/varlden/indien-avkravs-svar-om-granatgevar>>.

55 'Svenska vapen hos Burmas armé' [Swedish weapons with the Myanmar army], *Svenska Dagbladet*, 10 Dec. 2012.

56 Council of the European Union, Common Position of 28 October 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Burma/Myanmar (96/635/CFSP), *Official Journal of the European Communities*, 8 Nov. 1996.

57 'Svenskt granatgevär i Burma kom från Indien' [Swedish bazookas in Myanmar came from India], *Dagens Industri*, 13 Dec. 2012, <<http://www.di.se/artiklar/2012/12/13/svenskt-granatgevar-i-burma-kom-fran-indien/>>.

58 Björnling (note 53).

59 ISP official (note 49).

60 Björnling (note 53).

CASE 4.**SWISS HAND GRENADES IDENTIFIED IN SYRIA**

Between 2003 and 2004 Switzerland licensed the export of OHG92 hand grenades manufactured by the Swiss state-owned company Ruag to the United Arab Emirates (UAE). The end-user agreement accompanying the transfer included a prohibition on re-export.⁶¹

In July 2012 there were media reports that journalists travelling in northern Syria had documented the same model of grenade in use by opposition forces in the Syrian civil war.⁶² It was not immediately clear how the fighters obtained the arms. No known exports of the same grenades had been made to the Syrian armed forces, suggesting that the arms had been acquired from a state other than Switzerland.

Three days after the case was first reported, the Swiss State Secretariat for Economic Affairs (SECO) announced that an investigation was underway.⁶³ During the investigation SECO temporarily froze pending licence applications for exports to the UAE and revoked licences from companies that had only partially delivered goods for the remainder of the investigation.⁶⁴ The investigation established that the grenades were included in a transfer to the UAE between 2003 and 2004. Although subject to a non-re-export agreement between the two states, the investigation—with cooperation from the UAE authorities—concluded that part of the consignment had been re-exported to Jordan in 2004 on the assumption that they would be used for domestic counterterrorism purposes.⁶⁵

It is unclear whether the 2004 re-export to Jordan contravened the non-re-export agreement between Switzerland and the UAE because of the language used in the non-re-export clause. At the time of the initial export, Swiss EUCs neither defined re-export nor differentiated it from loan or donation.⁶⁶ This language was tightened by reforms made in 2006 that introduced a clause explicitly preventing importing states from re-exporting, selling, leasing out, lending or donating equipment subject to Swiss EUCs.⁶⁷ This change in language was in part a response to another case of re-export from the UAE, when 40 Swiss Howitzer M109 artillery units were re-exported by the UAE to Morocco as a gift despite the UAE having signed a non-re-export agreement with Swiss authorities.⁶⁸

Following the investigation of the origin of the OHG92 hand grenades identified in Syria, the Swiss licensing authority stated that a number of steps would be taken to prevent similar re-exports. These included a requirement that all future-exports to the UAE include a clause allowing onsite post-export inspection by Swiss authorities; a review

61 Swiss State Secretariat for Economic Affairs, 'Swiss hand grenades in Syria: conclusion of investigation and measures', 21 Sep. 2012, <<http://www.seco.admin.ch/aktuell/00277/01164/01980/index.html?lang=en&msg-id=46075>>.

62 'Schweizer Granaten im syrischen Konflikt' [Swiss grenades in the Syrian conflict], *Sonntags Zeitung*, 1 July 2012.

63 Swiss State Secretariat for Economic Affairs, 'Federal Council acknowledges inquiries concerning Swiss hand grenades allegedly used in Syria', 4 July 2012, <<http://www.news.admin.ch/message/index.html?lang=en&msg-id=45298>>.

64 Swiss State Secretariat for Economic Affairs (note 61).

65 Swiss State Secretariat for Economic Affairs (note 61).

66 Swiss Federal Law of 13 Dec. 1996 on War Material, §18.1.

67 Swiss State Secretariat for Economic Affairs, 'EUC War Material applicable to countries of Annex 2' and 'EUC War Material application to countries not listed in Annex 2', 30 May 2013, <<http://www.seco.admin.ch/themen/00513/00600/00614/00617/?lang=en>>.

68 Swiss State Secretariat for Economic Affairs, 'Aufhebung der Sistierung der Ausfuhr von Kriegsmaterial in die Vereinigten Arabischen Emirate (VAE) [Lifting of suspension of the export of war materials in the United Arab Emirates (UAE)]', 3 July 2006.

of post-shipment verifications attached to past arms exports to various states; and a review of Swiss non-re-export declarations.⁶⁹ In particular, future EUCs must be signed by a high-level government representative and, in certain cases, should be endorsed by a diplomatic note.⁷⁰

CASE 5.

SWISS AMMUNITION IDENTIFIED IN LIBYA

In 2009 Ruag of Switzerland exported 7.62-millimetre M80 ball ammunition to Qatar.⁷¹ The transfer of M80 ammunition was subject to a prohibition on re-exports which was included in the EUC and signed by Qatari authorities.⁷²

In July 2011 media reported the same model of ammunition being used by opposition forces in the civil war in Libya. The report suggested that the ammunition had first been exported from Switzerland to Qatar and then re-exported, in contravention of the terms of the EUC.⁷³

In response to the report, Swiss authorities opened an investigation and temporarily halted the issuance of new licences for export to Qatar. This freeze on licences continued for the following five months, during which period the investigators conducted visits to Qatar to determine the circumstances of the re-export. In December 2011 SECO concluded that Qatar's re-export had been caused by a logistics error and lifted the temporary embargo on export licences to the country. SECO stated that on-site inspections would be considered for inclusion in future end-user agreements with Qatar.⁷⁴

CASE 6.

BRITISH ARMS IDENTIFIED IN THE 2008–2009 CONFLICT IN THE GAZA STRIP

Between 2001 and 2009 Israel procured a number of weapon systems that were manufactured in the UK. These exports included components of 76mm guns for corvette navy vessels.⁷⁵ The UK places no re-export restrictions on recipients of British arms exports. However, British policy on granting export licences to Israel was based on an understanding that the equipment would not be used in the Palestinian territories. This relied on an agreement between the Israeli Defense Force and the British Government signed in 2000, rather than the inclusion of a clause in end-user agreements accompanying exports.⁷⁶

69 Swiss State Secretariat for Economic Affairs (note 61).

70 SECO official, Correspondence with author, 28 Jan. 2014.

71 'Libysche Rebellen schießen mit Schweizer Munition' [Libyan rebels shoot with Swiss ammunition], *Tages Anzeiger*, 21 July 2012, <<http://www.tagesanzeiger.ch/schweiz/standard/Libysche-Rebellen-schiessen-mit-Schweizer-Munition/story/30122107>>.

72 'Schweiz liefert wieder Waffen nach Katar' [Switzerland again provides weapons to Qatar], *Tages Anzeiger*, 28 Dec. 2011, <<http://www.tagesanzeiger.ch/schweiz/standard/Schweiz-liefert-wieder-Waffen-nach-Katar/25064511/print.html>>

73 Schweizer Radio und Fernsehen, 'Schweizer Munition in Libyen aufgetaucht' [Swiss munitions surfaced in Libya], 21 July 2011, <<http://drs.srf.ch/www/de/drs/tagesthema/252042/285281.schweizer-munition-in-libyen-aufgetaucht.html>>, accessed via Google Webcache, 20 Jan. 2014.

74 'Schweiz liefert wieder Waffen nach Katar' (note 72).

75 Watt, Nicholas, 'Military exports to Israel reviewed following Gaza conflict', *The Guardian*, 22 Apr. 2009.

76 British Parliament, *Strategic Export Control: Her Majesty's Government's Annual Report for 2009, Quarterly Reports for 2010, Licensing Policy and Parliamentary Scrutiny—Response of the Secretaries of State for Defence, Foreign and Commonwealth Affairs, International Development and Business, Innovation and Skills*, Cm 8079 (Stationery Office: London, July 2011).

In January 2009 concern was raised that British military equipment had been used in the military offensive in the Gaza Strip that started in December 2008.⁷⁷ The 22-day conflict had involved extensive use of heavy artillery and air strikes causing extensive loss of life.⁷⁸

After its official noted that British exports, including the 76mm guns, were likely to have been used in the Israeli offensive, the British Government launched a review of British exports to Israel.⁷⁹ During the investigation, five export licences for navy vessels to Israel were revoked.⁸⁰ The investigation reported that, while British exports were most likely used in the conflict, it was not in technical violation of end-user understandings.⁸¹

CASE 7.

BRITISH ARMS IDENTIFIED IN THE 2003 ACEH CONFLICT

In 1996 the UK issued export licences for the transfer of 50 FV101 Scorpion 90 tanks from the British manufacturer Alvis to Indonesia. The equipment was transferred on the basis of an understanding between the two governments that it would not be used in the province of Aceh, which had experienced a prolonged insurgency by the Free Aceh Movement (Gerakin Aceh Merdeka, GAM). Citing non-disclosed information provided by the British Government, a 2001 parliamentary committee stated that it had no reason to be concerned about the export of the vehicles to Indonesia.⁸²

In August 2002 the Indonesian Government notified the British Government that it intended to deploy the weapons in Aceh. In September the Indonesian Government assured the British Government that the equipment would not be used offensively or in violation of human rights. In response, the British Government informed Indonesia that there was no need to provide such deployment notices in future.⁸³

In July 2003 Indonesian media documented the use of UK-manufactured Scorpion 90s in a Indonesian military offensive against GAM.⁸⁴ Two months previously, martial law had been declared and the conflict is estimated to have caused 1600 fatalities.⁸⁵

In 2004 the head of the UK's Foreign and Commonwealth Office's Counter-Proliferation Department claimed that the department had seen no evidence that the vehicles

77 Clegg, Nick, 'We must stop arming Israel', *The Guardian*, 7 Jan. 2009, <<http://www.theguardian.com/commentisfree/2009/jan/07/nick-clegg-israel-gaza-war>>.

78 Cordesman, Anthony H., *The "Gaza War": A Strategic Analysis* (CSIS: Washington, DC, 2009).

79 Watt (note 75). For an analysis of British arms used in the conflict see Amnesty International (AI), *Israel-Opt Fuelling Conflict: Foreign Arms Supplies To Israel/Gaza* (AI: London, Feb. 2009), p. 30

80 British Parliament, Foreign Affairs Committee, *Global Security: Israel and the Occupied Palestinian Territories*, Response of the Secretary of State for Foreign and Commonwealth Affairs (Stationery Office: London, Oct. 2009).

81 British Parliament, Committees on Arms Export Controls, *Scrutiny of Arms Export Controls (2010): UK Strategic Export Controls Annual Report 2008, Quarterly Reports for 2009, Licensing Policy and Review of Export Control Legislation* (Stationery Office: London, Mar. 2010).

82 British House of Commons, Defence, Foreign Affairs, International Development and Trade and Industry Committees, *Strategic Export Controls Annual Report for 2001, Licensing Policy and Parliamentary Scrutiny*, HC 474 (Stationery Office, London, 6 May 2003), p. 12.

83 British Parliament, Select Committee on Foreign Affairs, 'End-use assurances: Indonesia', 18 May 2004.

84 Barnet, Antony, 'UK tanks roll on Indonesian rebels', *The Guardian*, 13 July 2003.

85 Bowring, Philip, 'Indonesia: the forgotten war in Aceh', *New York Times*, 20 Dec. 2003.

had been used in contravention of the assurances by the Indonesian Government regarding their deployment or use.⁸⁶

CASE 8.

BELGIAN RIFLES TRANSFERRED TO LEBANON IN 2012

In 1979 Belgium licensed the export of FN FAL rifles to Qatar.⁸⁷ It is not known whether the transfers were subject to a non-re-export clause.⁸⁸

In April 2012 Lebanese authorities intercepted a transfer of military equipment on-board a vessel ostensibly sailing from Libya to deliver arms to opposition forces in the Syrian civil war.⁸⁹ The transfer consisted of three shipping containers containing mixed military hardware, including a number of Belgian-manufactured FN FAL rifles. Exports from Libya were at the time prohibited under UN Security Council Resolution 1970 of 2011. The Libyan Government neither knew of nor endorsed the transfer when it was uncovered.⁹⁰ Subsequent tracing identified at least one of the rifles as originating in Qatar, indicating that it had been re-exported to Libya.⁹¹

Other reports substantiate claims of re-exports of FN FALs from Qatar to Libya. In April 2011 Qatari authorities reported that arms were being transferred to opposition forces in Libya for self-defence.⁹² Fighters and airport staff in Libya claimed that these transfers included FN FAL rifles.⁹³ However, Belgian authorities were reported to have received no re-export requests from Qatar.⁹⁴

The Belgian response to the discovery of FN FALs among the equipment seized by Lebanese authorities in 2012 appears to have been limited to cooperation with the UN investigation into the incident. Belgian authorities undertook efforts to trace serial numbers of the rifles in 2012. These efforts established that the arms had indeed been included in consignments originally exported to Qatar and the UAE. However since the transfers had occurred prior to export control reforms in 1993, they pre-dated the mandatory inclusion of non-re-export clauses in EUCs accepted by Belgian authorities.⁹⁵

CASE 9.

BELARUSIAN COMBAT AIRCRAFT AND ROCKETS EXPORTED TO SUDAN

Between 2008 and 2010 Belarus delivered 15 Sukhoi25 combat aircraft to Sudan pursuant to a contract signed in 2006. A letter of guarantee was signed in April 2008 by the Sudanese Government before the first delivery of the aircraft, which stated that they would not be used in contravention of UN Security Council resolutions, one of

86 British Parliament, Select Committee on Foreign Affairs, Quadripartite Committee, 'Examination of witnesses', 25 Feb. 2004.

87 United Nations, Security Council, Final report of the panel of experts established pursuant to Resolution 1973 (2011) concerning Libya, S/2014/106, 19 Feb. 2014, p. 57.

88 Belgium introduced mandatory non-re-export clauses in 1993. See Spleeters, Damien, 'Le Golfe détourne des armes belges' [The Gulf diverts Belgian arms], *La Libre*, 8 Feb. 2013, <<http://www.lalibre.be/actu/international/le-golfe-detourne-des-armes-belges-51b8f8c1e4b0de6db9c992c9>>.

89 'Lebanon impounds ship carrying Libyan weapons', Reuters, 28 Apr. 2012.

90 United Nations, Security Council, Final report of the panel of experts established pursuant to Resolution 1973 (2011) concerning Libya, S/2013/99, 19 Mar. 2012, p. 192.

91 United Nations, S/2014/106 (note 87), p. 57.

92 Black, Ian, 'Libyan rebels receiving anti-tank weapons from Qatar', *The Guardian*, 14 Apr. 2011, <<http://www.theguardian.com/world/2011/apr/14/libya-rebels-weapons-qatar>>.

93 Spleeters, Damien, 'Profit and proliferation, part 2: will Belgian arms end up in Syria?', At War Blog, *New York Times*, 6 Apr. 2012.

94 Spleeters (note 93).

95 Belgian Senate, Record, 24 Jan. 2013, Afternoon session, <<http://www.senate.be/www/?Mlval=/publications/viewTBlok&DATUM='01/24/2013'&TYP=handeen>> (in French).

which explicitly prohibited the supply of arms to groups operating in Sudan's Darfur region.⁹⁶ The EUC accompanying the transfer did not refer to Darfur but did include a clause necessitating prior approval from Belarus before any future re-export.⁹⁷ A similar guarantee was attached to the transfer of 3998 S8DM and S8KO air-to-ground rockets for use with the Su25s delivered between November 2010 and April 2011.⁹⁸ The EUC associated with this transfer also prevented the rockets from being used in contravention of the UN Security Council by specifically mentioning resolutions concerning Darfur.⁹⁹ The re-transfer of the equipment to the Darfur region therefore contradicted the associated end-user guarantees.

In 2010, 10 Su25s were observed at the aprons of El Fasher and Nyala airports as well as in flight in Darfur.¹⁰⁰ The Belarusian Government subsequently confirmed that these aircraft were some of those transferred to Sudan between 2008 and 2010.¹⁰¹ The presence of these aircraft in use by forces operating in the Darfur region and therein contravention of UN Security Council Resolution 1591 of 2011 was therefore a breach of the non-re-transfer guarantee signed by the two governments in 2008.

Belarusian authorities reported to the UN Panel of Experts on the embargo on Darfur that, while its national legislation does allow the formation of a verification commission in certain cases of reported contravention of end-user agreements, the particular case involving Su25s in Sudan was not sufficiently documented to warrant an investigation.¹⁰² The quality or quantity of evidence required by Belarusian authorities to prompt an investigation into possible violations of end-user agreements has not been publicly documented.

CASE 10.

UKRAINIAN TANKS EXPORTED TO KENYA AND ON TO SOUTHERN SUDAN

Between September 2007 and February 2009 Ukraine transferred three shipments of battle tanks, munitions and light weapons to Kenya under three separate contracts. These exports included ZU232 and ZPU4 anti-aircraft guns, BM21 truck-mounted multiple-launch rocket systems, RPG7 rocket-propelled grenade launchers, AKM assault rifles, T72 tanks and 125mm ammunition.¹⁰³ Kenya had signed at least one end-user certificate relating to the transfers, which under Ukrainian law must have included a prohibition on re-exports.¹⁰⁴

96 Gramizzi, Claudio, Lewis, Michael and Tubiana, Jerome, Letter dated 24 January 2011 from former members of the Panel of Experts on the Sudan established pursuant to Resolution 1591 (2005) and renewed pursuant to Resolution 1945 (2010) addressed to the Chairman of the Security Council Committee established pursuant to Resolution 1591 (2005) concerning the Sudan, <<http://www.icc-cpi.int/iccdocs/doc/doc1443319.pdf>>, paras 67–75, Annex XVI; and United Nations, Security Council, Report of the Panel of Experts on the Sudan established pursuant to resolution 1591 (2005), S/2011/111, 8 Mar. 2011, para. 81.

97 Gramizzi et al. (note 96), paras 67–75, Annex XVI; and United Nations, S/2011/111 (note 96), para. 70.

98 United Nations, Security Council, Report of the panel of experts on the Sudan established pursuant to Resolution 1591 (2005), S/2013/79, 12 Feb. 2013, para. 50.

99 Gramizzi et al. (note 96), paras 67–75, Annex XVI; and United Nations, S/2011/111 (note 96), para. 63.

100 United Nations, S/2011/111 (note 96), para. 81.

101 Gramizzi et al. (note 96), para. 68.

102 Gramizzi et al. (note 96), para. 73.

103 Lewis, Michael, *Skirting the Law: Sudan's Post-CPA Arms Flows* (Small Arms Survey: Geneva, Sep. 2009), pp. 39–44.

104 An EUC was shown to a US official in Kiev in Apr. 2008. US Embassy in Nairobi, 'Kenya's conventional arms end-user certificate violation', Cable no. 09STATE122115, 27 Nov. 2009, <<http://wikileaks.org/cable/2008/10/08NAIROBI2290.html>>. EUCs are defined in Ukrainian law as including non-re-export guarantees. Presidential Decree on State Control of International Transfers of Military and Dual-use Goods (BVR), 2003, N 23, Article 148.

In 2008 a cargo vessel, the MV *Faina*, carrying 33 T72 tanks and light weapons as part of these contracts was hijacked by pirates off the coast of Somalia en route to Kenya.¹⁰⁵ While documents attached to the delivery indicated that the equipment was being delivered to the Kenyan Ministry of Defence—along with two previous shipments in 2007 and 2008—the hijacking revealed that the real intended end-user was the Government of Southern Sudan (GOSS). At the time, the Sudan People’s Liberation Movement, the GOSS’s military wing, was party to the Comprehensive Peace Agreement with the Sudanese Government, which required consent from the Sudanese Government prior to large-scale military procurement. The tanks were to be re-exported from Kenya to Southern Sudan through Uganda via rail and road.¹⁰⁶

In response to the incident, the Ukrainian state arms exporter, Ukrspetsexport, conducted an onsite inspection in Kenya that confirmed the material on board the *Faina* had been delivered to Kenya as the official end-user.¹⁰⁷ It’s unclear whether this inspection also investigated previous shipments of T72. According to the US government, satellite imagery presented to Ukrainian officials in September 2009 showed that these tanks had been re-exported from Kenya to Southern Sudan.¹⁰⁸ Further details of the Ukrainian response to the incident have not been documented. However, Ukrainian authorities insisted the tanks had been sold to the Kenyan Government rather than Southern Sudan.¹⁰⁹

105 Holtom, P., ‘Ukrainian arms supplies to sub-Saharan Africa’, SIPRI Background Paper, Feb. 2011, <http://books.sipri.org/product_info?c_product_id=420>, pp. 10–12.

106 US Embassy in Nairobi, ‘Whither M/V *Faina*’s tanks?’, Cable no. 08NAI-ROBI2290, 2 Oct. 2008, <<http://wikileaks.org/cable/2008/10/08NAI-ROBI2290.html>>; and Lewis (note 103), pp. 39–44.

107 Holtom (note 105), p. 11.

108 US Embassy in Kiev, ‘U.S.–Ukraine nonproliferation meetings September 23–24, 2009’, Cable no. 09STATE128635, 9 Nov. 2009. <<http://wikileaks.org/cable/2009/11/09KYIV1942.html>>.

109 ‘Kenya dismisses tanks “evidence”’, BBC News, 8 Oct. 2008, <<http://news.bbc.co.uk/2/hi/7658598.stm>>.



CONCLUSIONS

This survey of guidelines and best practice documents highlights that the majority of their attention is paid to the issue of imposing re-export and re-transfer controls, particularly the form these restrictions should take and how they should be implemented. Comparatively little attention is paid to how these controls should be monitored and enforced by the exporting state and none is paid to the question of how exporting states should respond in cases where controls are violated or ignored. While these guidelines are broadly similar in terms of what they contain and recommend, there are also important differences in certain key areas. These differences relate to the form these re-export and re-transfer controls should take and the extent to which their imposition is a requirement or an option. Most documents present a range of options for states to consider when imposing re-export and re-transfer controls, but the exact content of these options varies from document to document. With the exception of the Wassenaar Arrangement's Best Practices on Re-export, all documents make clear that in certain cases states are able to transfer responsibility for enforcing re-export and re-transfer controls to the importing state. However, beyond general principles they provide little information on when this control should be transferred and when it should be withheld.

The survey of national policies and practices underlines the fact that—despite what is required in the Wassenaar Arrangement's Best Practices on Re-export—very few states apply re-export or re-transfer restrictions to all exports. For exports to less sensitive destinations, many states are content to give responsibility for controlling subsequent re-exports and re-transfers to the importing state. When exactly states choose to give responsibility for re-export and re-transfer controls to the importing state varies from state to state, and many appear keen to retain a certain level of flexibility so that they can make determinations on a case-by-case basis. One state emphasized that 'Export controls are customized to specific circumstances so there are no general answers available'. The survey also revealed a significant amount of good practice in terms of the steps that can be taken to enforce and monitor re-export and re-transfer controls and to respond to suspected violations. This includes the use of different sources of information to assess whether controls are being implemented, obliging exporting companies to assist with the monitoring of re-export and re-transfer controls, factoring past violations into future licensing decisions and informing other states about the outcome of any investigations. The survey also underlined the importance of export licensing

risk assessments as an essential tool for guarding against unauthorized re-exports and re-transfers. As several states pointed out, it is far better to have not licensed the export at all than to try and respond after the event when arms have turned up in an embargoed destination or a country in conflict.

The cases of reported violations suggest few commonalities in how states respond to reports and allegations of violations of re-export and re-transfer controls. In particular, many states appear to have individual and possibly ad hoc methods of assessing whether to publicly respond to a report. Some investigations have been launched on the basis of individual media reports while other cases appear to have been ignored despite a significant body of evidence indicating that re-export or re-transfer controls have been violated. In the latter cases, there may be an unwillingness to acknowledge that unauthorized re-export or re-transfer has taken place, either because of the political sensitivity of the case in question or an unwillingness to acknowledge any failings in a states' export control system. In particular, there may be an unwillingness to confront the original importing state and hold it accountable for the unauthorized re-export or re-transfer, either because of the risk of diplomatic tensions or a fear of losing future arms export deals. It may also reflect a genuine belief that it is up to the importing state to decide if and how it should abide by re-export and re-transfer controls. This may, in turn, be based on an unwillingness to interfere in the importing states' sovereign affairs or a recognition that even though re-export or re-transfer controls have been imposed, there may be little that can be done to ensure that importing states fulfil their obligations.

The case studies also highlight the importance of the choice of language in re-export and re-transfer controls. In particular, the 2004 donations of equipment from the UAE to Jordan and Morocco appear to have been made on the assumption that gifts were not covered by the re-export restrictions that Switzerland attached to the original sales. Both these transfers underscore the need for clarity in any prohibition on re-exports to prevent misinterpretation by signatories. Many states have made efforts in recent years to incorporate more precise language on re-export and re-transfer controls and this can be of benefit in ensuring that importing states understand the commitments to which they have agreed and in creating a clear platform for investigating any reports of violations. A number of the case studies also highlight the importance of cooperation with the original importing state when responding to reports of unauthorized re-exports or re-transfers. Such cases may result from a genuine lack of awareness of the obligations it has agreed to or limitations in its national arms export controls. Developing a dialogue on such issues can help to clear up such confusions while potentially highlighting areas where export controls could be developed and improved. Record-keeping by both the exporting state and exporting companies also emerges as an essential tool for effectively investigating and responding to reports of unauthorized re-export and re-transfer. In the case of the Swedish exports to Venezuela, such records were essential for establishing the original source of the exported weapons, while in the Belgian case they helped to demonstrate that the arms were not subject to re-export or re-transfer controls. Such records also need to be kept for a substantial length of time since unauthorized re-exports and re-transfers may take place many years after the original delivery.



TABLES



TABLE 1.

INTERNATIONAL AND REGIONAL GUIDELINES AND BEST PRACTICES ON RE-EXPORT AND RE-TRANSFER CONTROLS

'M' indicates a mandatory element and 'O' indicates an optional element.

	EU	OSCE				Wassenaar Arrangement			United Nations		
	User's Guide	SALW Document	Best Practice on Export Control of SALW	Decision No. 5/04	Template EUC for SALW Weapons	End-user Assurance Commonly Used Consolidated Indicative List	Best Practice Guidelines for Exports of SALW	Best Practice Guidelines on Subsequent Transfer (Re-export) Controls for Conventional Weapon Systems	Programme of Action on SALW	CASA National controls over the international transfer of SALW	CASA National controls over the end-user and end-use of internationally transferred SALW
Material coverage	Conventional arms	SALW	SALW	SALW	SALW	Conventional arms	SALW	Conventional arms	SALW	SALW	SALW
Imposing re-export and re-transfer controls: inclusion of end-use assurances in the end-user certificate, end-user statement or commercial contract											
Prohibition on re-export to another destination	O	-	O	-	O ^a	O	-	-	-	O	O ^a
Prohibition on re-export, except for certain destinations	O	-	-	-	O ^a	-	-	-	-	O	-
Prohibition on re-transfer to another end-user in the importing country	-	-	-	-	-	-	-	M	-	-	-
Prohibition on re-transfer to another location in the importing country	-	-	-	-	-	O	-	-	-	-	O
Prohibition on re-transfer to another end-use	M	-	O	O	M	O	-	M	-	-	O
Prior authorization before any re-export or re-transfer	O	-	O	O	O ^a	O	-	M	-	O	O ^a
Notification of any re-export or re-transfer	-	O	-	-	-	-	-	-	-	O	O ^a
Importing state given responsibility for re-export or re-transfer	-	-	O	O	O ^a	O	-	-	-	O	O ^a
Enforcing re-export and re-transfer controls: post-shipment controls											
Include clause on post-shipment control in EUC or contract	-	-	O	O	-	O	-	-	-	-	-
Require DVC or other confirmation of delivery	O	O	O	O	O	O	-	-	-	-	O
Carry out onsite inspection (either at point of end-use or point of delivery)	O	O	O	-	O	O	-	-	-	-	O
The importing country will notify the OEC prior to any re-export or re-transfer	-	-	-	-	-	-	O ^b	-	O ^c	O	O

CASA = Coordinating Action on Small Arms, DVC = delivery verification certificate, EUC = end-user certificate, OEC = original exporting country, SALW = small arms and light weapons.

^a One of four mandatory options—at least one of these options must be adopted.

^b 'Participating States agree to ensure, as far as possible, without prejudice to the rights of States to re-export SALW that they have previously imported, that the original exporting Participating State, in accordance with bilateral agreements, will be notified before re-export /re-transfer of those weapons.'

^c 'To make every effort, in accordance with national laws and practices, without prejudice to the right of States to re-export small arms and light weapons that they have previously imported, to notify the original exporting State in accordance with their bilateral agreements before the re-transfer of those weapons.'

TABLE 2.

NATIONAL POLICIES AND PRACTICES ON RE-EXPORT AND RE-TRANSFER CONTROLS

Figures are numbers of countries with the respective policy. Figures in parentheses, ‘()’, are the number countries that apply the policy only in certain cases.

	South East European states ^a	Wassenaar Arrangement participating states ^b
Section 1. Re-export and re-transfer restrictions		
Restriction on re-export or re-transfer ?		
Yes	5	10
No	1	2
Type of restriction		
Prohibition on re-export to another destination	–	3 (3)
Prior authorization before any re-export or re-transfer	3 (1)	10 (6)
Notification of any re-export or re-transfer	1	–
Means of applying restrictions		
Inclusion of language in EUCs	5	9
Inclusion of language in contracts	1	3
Other	1	1
Section 2. Re-export and re-transfer control measures		
DVC requested		
Yes	5 (2)	10 (9)
Steps to verify the authenticity of DVCs		
Yes	3	8
Additional measures to confirm that re-export or re-transfer restrictions are being applied		
Information collected by national embassies	4	8
Monitoring of other sources of information	1	9
On-site inspections in destination	–	3
Sections 3. Contravention and enforcement of re-export or re-transfer restrictions		
Legislation or guidelines in place that outline the response to violations of re-export or re-transfer restrictions		
Yes	2	7
Cases of violations of re-export or re-transfer restrictions identified		
Yes	–	3
Steps taken in response to these violations		
Information requested from the end-user	–	3
Suspension or annulment of the export licence	–	3
Restrictions placed on future-exports to the end-user or destination	–	3
Information shared via multilateral export control regimes	–	2
Information requested from exporting company	–	2

DVC = delivery verification certificate, EUC = end-user certificate.

^a The surveyed states in South Eastern Europe were Bosnia and Herzegovina, Croatia, the former Yugoslav Republic of Macedonia, Montenegro, and Serbia.

^b The surveyed Wassenaar Arrangement participating states were Austria, Belgium (which provided separate entries for the competent export licensing authorities in the Flemish and Walloon Region), the Czech Republic, France, the Netherlands, Poland, Portugal, Slovenia, Switzerland, Sweden and the United Kingdom.

CIP - Каталогизација у публикацији -
Народна библиотека Србије, Београд

339.564:623.44(4-12)(0.034.2)

BROMLEY, Mark, 1977-

Addressing Unauthorized Re-export or Re-transfer of Arms and Ammunition [Elektronski izvor] / [Mark Bromley, Lawrence Dermody]. - Belgrade : SEESAC, 2015 (Beograd : DMD). - 1 elektronski optički disk (CD-ROM) ; 30 cm

Nasl. sa naslovnog ekrana. - Tiraž 200. - Napomene i bibliografske reference uz tekst.

ISBN 978-86-7728-213-4

1. Dermody, Lawrence, 1983- [аутор]

а) Оружје - Извоз - Југоисточна Европа

COBISS.SR-ID 212744716

