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Preventing and mitigating the risk of arms diversion in Africa

Acknowledgements

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Abbreviations and acronyms

ATT	Arms Trade Treaty
DRC	Democratic Republic of the Congo
ECOWAS	Economic Community of West African States
EU	European Union
EUC	End-use(r) certificate
EWG	Expert Working Group
FOCAC	Forum for China–Africa Cooperation
IATG	International Ammunition Technical Guidelines
ITI	International Tracing Instrument
MOSAIC	Modular Small-Arms-Control Implementation Compendium
NGO	Non-governmental organisation
OSCE	Organization for Security and Co-operation in Europe
PSV	Post-shipment verification
SADC	Southern African Development Community
SALW	Small arms and light weapons
SPLA	Sudan People's Liberation Army
UN	United Nations

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Rebel fighters hold up their rifles as they walk in front of a bushfire in a rebel-controlled territory in Upper Nile State, South Sudan, 13 February 2014. © REUTERS/Goran Tomasevic

On 31 July 2019, the Council of the European Union (EU) adopted the Council Decision of the Common Foreign and Security Policy 2019/1298 in support of a project on *'Africa-China-Europe dialogue and cooperation on preventing the diversion of arms and ammunition in Africa'* (see box opposite).

Building on the achievements of a previous EU-funded project on 'EU-China-Africa dialogue and cooperation on conventional arms controls' – which ran between 2012 and 2014¹ – the new project is being implemented by Saferworld² in cooperation with the Beijing-based China Arms Control and Disarmament Association and the Nairobi-based Security Research & Information Centre. This briefing is one in a series of publications that will be produced under this project.

The 2019 EU Council Decision supporting the implementation of the Africa-China-Europe project is anchored in a range of EU and international strategies and commitments, including the EU Strategy against illicit firearms, small arms and light weapons (SALW) and their ammunition, entitled 'Securing Arms, Protecting Citizens'.³ The dual purpose of the strategy is to: guide integrated, collective and coordinated European action to prevent and curb the illicit acquisition of SALW and their ammunition by terrorists, criminals and other unauthorised actors; and promote accountability and responsibility with regards to the legal arms trade, including through the universalisation and implementation of the Arms Trade Treaty and the effective implementation of the United Nations (UN) Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. It also supports the African Union and relevant regional economic communities in their efforts against the illicit trade in SALW and their ammunition – as encapsulated, for example, in the African Union 'Silencing the Guns' initiative.⁴ Also of significance to this project is the EU-wide strategic framework to support security sector reform, which guides security assistance activities by the EU and its member states.⁵

In its 2016 EU Strategy for China, the EU also reasserted its commitments to maintain regular and substantial dialogue with China to seek – in conjunction with member states – greater common ground on disarmament and non-proliferation, as well as on other important security matters.⁶

Project overview

The project aims to promote three-way dialogue and cooperation between people, organisations and institutions in Africa, China and Europe on tackling the illicit trade and diversion of arms – in particular SALW and ammunition – into and within conflict-affected contexts in Africa.

The project raises awareness in Africa, China and the EU on how the illicit flow of arms – particularly SALW and ammunition – to unauthorised actors in Africa exacerbates insecurity and violence and undermines public security, socio-economic development and the effective functioning of state institutions. The project also promotes accountability and responsibility with regard to the legal arms trade, by demonstrating how effective arms export control can contribute to mitigating the risk of arms and ammunition being diverted into the illicit market.

A non-governmental Africa-China-Europe Expert Working Group (EWG) has been set up to: increase awareness and engagement on issues related to the illicit trade and diversion of arms and ammunition into and inside Africa; promote compliance with existing commitments and recommend new policies where necessary; and increase cooperation and action between policymakers in Africa, China and the EU to tackle diversion and reduce arms-related violence. The EWG is made up of nine experts – three each from Africa, China and the EU – who have been drawn from think tanks, research centres and academic institutions.

To read more about the EWG members and keep up to date on their work, visit the official project website: www.a-c-eproject.eu

1. Introduction

The two decades since 2000 have witnessed the establishment of an array of international and regional agreements and mechanisms for tackling the illicit trade in conventional arms. In Africa,⁷ arrangements – primarily focused on controlling SALW⁸ and ammunition flows – have been concluded at both continental⁹ and sub-regional¹⁰ levels. While these initiatives have provided a focus and a framework for the efforts to tackle arms proliferation and for provision of assistance to address it, there is little evidence to suggest that the illicit arms problem will soon be resolved, in part due to its scale: according to research published in a 2019 report by the Small Arms Survey,¹¹ African non-state actors (including civilians, armed groups and business entities) are estimated to hold in excess of 40 million small arms – with fewer than six million officially registered, while state actors (including military and law enforcement) are estimated to possess fewer than 11 million pieces.

The devastating impact of the illicit trade and misuse of conventional arms – by both state and non-state forces – is most keenly felt among communities in regions affected by conflict, where the availability and misuse of such arms perpetuate a vicious cycle of violence and insecurity,¹² fuelling violations of international human rights and humanitarian law, intra-community tensions, gender-based violence¹³ and forced displacement: as of June 2020, 29 million people in Africa were forcibly displaced from their homes.¹⁴ In other contexts, the illicit trade and diversion of SALW and ammunition drives high levels of armed violence, while contributing to crime and terrorism. It is thus in the interests of all states that seek to

promote human security as well as national, regional and international security and stability, to do their utmost to address the problem of illicit arms.

Diversion is often the crucial link between the authorised or ‘legal’ arms trade and the illicit trade. Indeed there is a plethora of evidence, as found in UN Panel reports¹⁵ and provided by non-governmental organisations (NGOs)¹⁶ and investigative journalists,¹⁷ pointing to diversion as one of the principal ways in which legally traded arms find their way from their authorised end-users to unauthorised groups and individuals who use them in the commission and facilitation of violations of international law.¹⁸ It is vital, therefore, that international, regional and national efforts to prevent the illicit trade and diversion of SALW are redoubled, with renewed focus on effective regulation of weapons transfers.

Diversion prevention should be placed above other perceived strategic imperatives, such as the desire to bolster the security of fragile states through SALW transfers to poorly trained and unreliable armed forces.¹⁹ Controls should be further enhanced through more extensive and institutionalised inclusion of women and gender minorities in arms transfer decision-making processes in recognition of the varied impact of arms proliferation and misuse on women and men, girls and boys, as well as the role of violent masculinities driving illicit acquisition and the misuse of SALW.²⁰ With this in mind, the aim of this briefing is to explore the circumstances, mechanisms and processes that fuel and enable the diversion of SALW and ammunition in Africa, and to consider what steps can be taken by states affected and/or concerned by the diversion of SALW and ammunition²¹ – individually and jointly – to identify, track and eliminate this problem.



Weapons and ammunition retrieved from militants are displayed by the Rwandan security forces in the town of Mocimboa da Praia, Mozambique, 22 September 2021. © REUTERS/Baz Ratner



Al-Shabaab militants parade new recruits after arriving in Mogadishu, 21 October 2010, from their training camp south of the capital.
© REUTERS/Feisal Omar

2. The problem of SALW diversion

Diversion can take place at any stage in the life cycle of a weapon or of ammunition.²² The many circumstances that can contribute to such diversion give rise to a complex phenomenon which is not universally recognised or understood. Key factors that may combine in the facilitation of arms diversion include (but are not limited to):

- the existence of armed conflict, instability and/or armed violence
- a lack of effective state control over the ownership and use of arms, in particular SALW
- the potential for diversion of arms during transfer and also from arms stockpiles and holdings
- the extended timeframe during which diversion may take place
- the potential for a range of actors, both government and non-government, to be involved in arms diversion
- the potential for diversion to be a deliberate, premeditated act, or to be the result of loss, theft or neglect
- the different perspectives that exist among supplier and recipient states as to whether recipient states have the right to retransfer or reassign weapons that have been purchased legally.

Diversion points in the arms transfer chain

There are four main junctures in the arms transfer chain at which diversion can occur:²³

1. Before a transfer takes place (for example, at point of manufacture/sale; during domestic movement or storage)

2. During the transfer (for example, en route to, or from, warehouse facilities at the port or land border of the exporting state; in transit through the jurisdiction of third-party states)
3. At or after importation (for example, on arrival at the importing state or from warehouse facilities at the port or land border; en route to, or upon entering possession of, the authorised end-user)
4. Post-delivery (for example, on entering state holdings/stockpiles; during service, destruction, disposal or re-export)

The multiple opportunities for diversion throughout the arms transfer chain place responsibility on all states – whether exporter, importer, or the locus for transit/transshipment or brokering – to play their part in preventing and responding to diversion. Indeed, each stage in the arms transfer chain has its own vulnerabilities and associated diversion risks which in turn shape the types of prevention and mitigation strategies that are most appropriate and most likely to prove effective: different types of actions to prevent diversion are required by arms exporting states, by transit states and by importing states as well as by arms manufacturers, exporters/traders/dealers, intermediaries including brokers, transport/freight forwarding agents, logistics and warehouse managers, and end-users (whether military, security, police or civilian). Furthermore, while action to prevent diversion will often occur at national level, the interconnected nature of the global arms trade means that bilateral, multilateral, and international cooperation and information exchange is also necessary to highlight diversion risks and ensure effective prevention, mitigation and remedial action. It is important, therefore, that all those involved in the transfer of arms are aware of their responsibilities and take timely and appropriate action to prevent and address diversion so that progress in one area is not undermined by carelessness or neglect in another.

3. SALW diversion in Africa

While it varies in nature and severity between different sub-regions, the diversion of conventional arms to unauthorised end-users is a critical issue for Africa as a whole. At the time of writing, at least 20 African countries are affected by conflict and insurgencies, all of which are fuelled by illicit arms.²⁴ Although transfers of arms from the point of manufacture directly to non-state armed groups and embargoed states do occur, the majority of weapons and ammunition in circulation have been legally produced and transferred,²⁵ meaning that those in the hands of illicit end-users have, at some point, been diverted from authorised end-users through a variety of means. Most frequently, this takes the form of theft from insecure stockpiles, corrupt sale, battlefield capture, or re-export by state actors, most

often without the approval, or even the knowledge, of the original exporting state authorities.

It is often considered that arms and ammunition are most vulnerable to diversion during transit, and during the 1990s and early 2000s UN investigations highlighted a range of examples of weapons sourced from poorly secured stockpiles – primarily in the former Soviet Union/Eastern Bloc²⁶ – which were purportedly sold to apparently legitimate end-users in Africa, but which were in fact shipped – directly or indirectly – to embargoed entities and non-state armed groups. More recently, information provided by UN Panels/Groups of Experts tasked with monitoring implementation of UN sanctions points to diversion occurring most commonly once exported arms have reached their intended destination and have entered the stockpiles of the intended recipient.



Munitions, believed to belong to Islamist rebels, are stockpiled in the courtyard of local resident Issa Dembele's house in Diabaly, 23 January 2013. Dembele said the rebels took over his house when they took control of Diabaly to store weapons and munitions. The munitions were abandoned during fighting between the rebels and the French and Malian militaries. © REUTERS/Joe Penney

Re-export of new supplies by state actors

Investigations by Conflict Armament Research have pointed to the re-export of imported arms and ammunition from a number of African states to illicit end-users, notably non-state armed groups. For example, from 2014–2016 researchers documented the possession of arms and ammunition of recent Sudanese provenance among groups active in South Sudan, the Central African Republic, Côte d'Ivoire, Libya, Mali and Niger.²⁷ This included instances of ammunition diversion whereby identifying information had been removed or batches had been re-packed, seemingly to disguise the identity of the original exporter.

For example, substantial amounts of ammunition with Chinese inscription, wrapped in black plastic within wooden boxes – a practice that is common in Sudan – were found by Conflict Armament Research in the Nuba Mountains region of Sudan, in the Central African Republic, in Côte d'Ivoire, in the Democratic Republic of the Congo (DRC) and in Somalia.²⁸

Conflict Armament Research also found that during 2014 and 2015 non-state armed groups allied with the Sudan People's Liberation Army (SPLA), and who were involved in the South Sudanese civil war, were in possession of military equipment including small arms, light weapons and ammunition that had originated in a number of EU member states, including Bulgaria, Romania and Slovakia – although there is nothing to indicate that these countries were aware of the diversion of the exported materiel from Uganda to South Sudan.²⁹ In the case of Romania and Slovakia details of how the diversion occurred remain unclear. However, in the case of the Bulgarian arms, the 2016 EU consolidated arms export report confirms the transfer of USD\$3.1 million (€2.7 million) worth of small arms and ammunition from Bulgaria to Uganda during 2014.³⁰ Conflict Armament Research has indicated that this was part of a contract dated 18 March 2014 between Bulgarian Industrial Engineering and Management (BIEM) and Bosasy Logistics (U) Ltd of Uganda to supply ten thousand AK-pattern assault rifles and almost three million rounds of ammunition, with the Ugandan Ministry of Defence as the purported end-user.³¹ Documentary evidence also found by Conflict Armament Research showed a written request by the South Sudanese Minister of Defence to the Permanent Secretary of the Ministry of Defence in Uganda and another from the Chief of General Staff of the SPLA to the Chief of the Ugandan Defence Forces, again both dated 18 March 2014, for exactly the same volume and type of small arms and ammunition, with the latter requesting that this be provided to 'Bosasy Company'.³² According to further research findings, the transfer of this materiel almost certainly occurred by way of two flights from Burgas to Entebbe in July and August 2014. At the time that this transfer of weapons and ammunition took place there was no UN or EU arms embargo on Uganda; nevertheless the retransfer of arms of EU origin from Uganda to South Sudan would have constituted a violation of the EU arms embargo in place against South Sudan since July 2011.

Weapons diverted from stockpiles

Not all diversion that occurs is of newly supplied arms – much is from existing materiel in state stockpiles or in the possession of state actors. Whether through loss, theft, capture or corrupt sale, whether by omission or commission, weapons and ammunition are commonly acquired by illicit actors in theatres of conflict and regions of instability.

Battlefield capture/looting

UN and NGO reports on arms flows within conflict-affected regions contain many examples of military materiel being captured or looted during or following battles between government and non-government forces; indeed this is considered to be the primary source of materiel in the hands of non-state armed groups in some regions.³³ For example:

- A number of the conflicts and insurgencies that have occurred in the Sahel region since 2010 have been sustained, to a significant extent, by weapons seizures by armed groups as they have gained territory from government forces. In Mali, spikes in insurgent activity during 2012 and 2014 saw significant quantities of arms and ammunition captured from the Mali Armed Forces in the north and east of the country: one assault in 2014 on a military headquarters in Kidal saw the looting of small arms ammunition, rocket propelled grenades (RPGs), mortar and artillery rounds, and at least one armoured personnel carrier.³⁴
- In East Africa, attacks by the insurgent group al-Shabaab have yielded significant quantities of arms and ammunition. For example, on 19 February 2020, an al-Shabaab assault on Somali National Army (SNA) bases in Lower Shabelle region saw the capture of weapons including heavy machine guns, AK-variant assault rifles, anti-aircraft guns and ammunition – as borne out by publicity photographs shared by closely connected media outlets.³⁵
- In the Central African Republic, the Séléka coalition was able to seize power in early 2013 with the help of significant amounts of arms and ammunition captured from government forces and stockpiles as they made their way through the country to the capital city, Bangui. Indeed, such was the severity of the crisis which led to the overthrow of the incumbent President François Bozize, the country 'experienced a near-total breakdown of the physical security and stockpile management systems' which led to the widespread dissemination through the civilian population of weapons formerly held in government stocks.³⁶

Theft and corrupt sale from stockpiles

While large-scale plundering and capture of state-owned weapons stockpiles is a major issue in fuelling and sustaining violence and insurgencies in Africa, smaller scale thefts and corrupt sale from government stockpiles – by state and non-government personnel – and from civilian holdings³⁷ can fuel crime and exacerbate instability at the local level.

For example:

- In December 2015 the Ghanaian authorities interdicted a quantity of firearms and ammunition in the second-largest city, Kumasi. Of the 21 weapons seized, five AK-variant rifles had been marked according to Economic Community of West African States (ECOWAS) standards, allowing the Ghanaian government to quickly determine that the weapons were from the state arsenal of Côte d'Ivoire. There appeared to be no particular intended end-user for the weapons that were seized; instead it was considered likely that the arms were intended for sale on the illicit market.³⁸
- The 2012 Report of the UN Panel of Experts on the DRC highlighted significant problems with the diversion of weapons and ammunition from government forces to rebel groups in Ituri and Kivu areas: 'In August 2012, the North Kivu military prosecutor indicted two Congolese armed forces soldiers for selling rifles for \$200 each to M23 rebels near Rumangabo. Former combatants from Nyatura and Raïa Mutomboki told the group that they purchased ammunition, AK-47 rifles and military uniforms from Congolese soldiers. On 25 August 2012, security officials intercepted Alliance of Patriots for a Free and Sovereign Congo rebels in Minova with 34 boxes of ammunition, each containing 750 rounds, and an AK-47 rifle that they had recently purchased from Congolese armed forces soldiers. Mai Mai groups in the middle plateau of Uvira also regularly purchase ammunition from the Congolese armed forces in local markets, with each box of 750 rounds costing \$10.'³⁹
- In South Africa the theft and loss of police firearms is a major issue. Along with firearms illegally appropriated from civilians and private companies, stolen police weapons are known to enter the illicit sphere to be used in the commission of robberies, homicides and other crimes. Between 2016/17 and 2018/19 a total of 2,167 South African Police Service (SAPS) weapons were either stolen or lost – an ongoing problem which is described as being 'indicative of police negligence, an unsafe and mismanaged policing environment, and poor training'.⁴⁰

Cross-border trafficking

Beyond the capture of SALW and ammunition during active hostilities, armed groups and insurgents often acquire weapons – in both small and large quantities – through cross-border trafficking and even seaborne operations. The sources of such weapons vary: some are circulating and sold via the illicit market; others may be appropriated from state forces or looted from state arsenals after a breakdown of state authority.

For example:

- Following the popular uprising against the Gaddafi regime in Libya in 2011, the NATO-led intervention and the ensuing civil war, weapons from Libya's vast national stockpiles flowed out into, and through, the surrounding countries of the Sahara-Sahel, fuelling organised crime and armed insurgency. Mali was particularly affected by this increase in weapons proliferation, as Tuareg fighters who previously formed a section of Gaddafi's forces returned with huge quantities of weapons, including armoured vehicles, anti-aircraft and anti-tank weapons, mortars and heavy machine guns.⁴¹ Although this movement of arms and ammunition began to slow from 2014, trafficking from (and more recently into) Libya has continued despite the continuing UN arms embargo (in place since February 2011).⁴² Cases of small-scale trafficking have been observed among migrants returning home to the Sahel from working in Libya: for example, in January 2017, the Niger authorities seized 27 handguns from migrants aboard a bus.⁴³
- According to the UN Panel of Experts on Somalia the principal route for illicit arms and ammunition to enter into Somali territory is via the country's northern coast. As many as four shipments every month are brought by dhows across the Gulf of Aden from Yemen and deposited at specified points along the coastline to the north of the country. Either al-Shabaab or the Islamic State in Somalia are considered to be the most probable end-users for these weapons.⁴⁴
- In the Central African Republic, the herder community has been identified as a vehicle for the trafficking of weapons from Sudan. One route observed by the UN Panel of Experts on the Central African Republic began in Tulus – a Sudanese town where a majority of the population are from the Fulani tribe – crossing into CAR via Sam-Ouandja and progressing south and west to Bria, Bambari and Bokolobo. Weapons trafficked by the Fulani herds-people were reportedly hidden among their personal effects and in water containers for livestock.⁴⁵

4. International and regional frameworks for SALW and ammunition control

Many states are party to global and regional treaties, agreements and arrangements that encapsulate and – in some cases establish – international law and norms governing arms transfers. Some of these instruments address the issue of diversion directly; others take an indirect approach by setting parameters for responsible arms transfers in line with international law. Despite the existence of these agreements, it is important to note that national approaches to implementation can diverge to a significant degree, with devastating consequences.⁴⁶

UN member states subscribe to at least two of the global agreements listed above (the UN Programme of Action and the International Tracing Instrument). Many African states – in particular those in sub-Saharan Africa – are members of sub-regional agreements regulating SALW and ammunition transfers, while 36 are Parties and one is Signatory to the UN Firearms Protocol, and 28 are Parties and 12 are Signatories to the Arms Trade Treaty (ATT). In addition, 16 of the top 25 arms exporting states (2016–2020)⁴⁷ are State Parties or Signatories to the UN Firearms Protocol, while 21 out of 25 are State Parties (17) or Signatories (4) to the ATT.

Several of the above-referenced agreements and arrangements address the issue of arms diversion.

For example:

- Article 11 of the UN Firearms Protocol requires states to take ‘appropriate measures’ to ‘detect, prevent and eliminate the theft, loss or diversion’ including requiring the ‘security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory’ and strengthened border controls and enforcement cooperation.
- The UN Programme of Action requires states to put in place ‘adequate laws, regulations and administrative procedures’ to control the production, export, import, transit or retransfer of SALW in order to prevent diversion to unauthorised recipients. It also requires states to take into account, in particular, the risk of diversion in their assessment of export applications.
- Article 11 of the ATT is devoted to the need to prevent and address the diversion of conventional arms, requiring all states involved in international arms transfers to take steps to safeguard against this problem. Specific attention is also given to the need for exporting states to assess the risk of diversion of arms for export and to take steps to mitigate any such likelihood. Article 11 also requires states to cooperate and share information on risks of diversion during transfer, as well as in relation to cases that have been detected or dealt with.

- The International Tracing Instrument (ITI) exists to identify and trace illicit arms. While the Instrument does not specifically use the term ‘diversion’, this is a principal means whereby arms move from the licit to the illicit sphere. Accordingly, this Instrument in reality serves as one of the primary international mechanisms for uncovering and highlighting cases of diversion. Indeed the Instrument defines ‘tracing’ as ‘the systematic tracking of illicit small arms and light weapons found or seized on the territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they became illicit’. The ITI requires marking of all SALW manufactured and encourages the marking of weapons on import; it also establishes minimum record-keeping requirements of 30 years for manufactured SALW and 20 for imported/exported weapons. While states must be capable of undertaking traces and responding to requests, secrecy provisions potentially limit the effectiveness of the Instrument. Requests can be made when an illicit weapon is found within a state’s jurisdiction; however the state to which enquiries are made may refuse to respond for reasons of confidentiality or national security. Despite its limitations, UN and NGO reports (see above) have shown the ITI to be a useful framework for enabling tracing the origins of diverted weapons.
- Article 6 of the ECOWAS Convention, which addresses ‘Cases for Refusal of Exemptions for Arms Transfers’, stipulates that ‘[a] transfer shall not be authorised if it is likely to be diverted, within the transit or importing country or be re-exported, to unauthorized uses or users or into the illicit trade.’
- Article 5 of the Kinshasa Convention requires that ‘transfer authorization shall be denied by the competent national body if . . . There is a possibility that the small arms and light weapons, their ammunition and all parts and components that can be used for their manufacture, repair and assembly might be diverted, in the importing or transit State, to unauthorized use or users or to illicit trade, or even re-exported.’

International and regional frameworks

Global agreements

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (**UN Firearms Protocol**) (2001)⁴⁸

UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001)⁴⁹

International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (**International Tracing Instrument**) (2005)⁵⁰

Arms Trade Treaty (ATT) (2013)⁵¹

Key (sub-) regional agreements

African Union **Silencing the Guns** initiative (2016)⁵²

Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (2004)⁵³ and associated Regional Centre for Small Arms (RECSA)⁵⁴

Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and other related materials (**SADC Firearms Protocol**) (2000)⁵⁵

ECOWAS Convention on Small Arms and Light Weapons, their Ammunition and other related materials (2006)⁵⁶

Central African Convention on Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair or Assembly (**Kinshasa Convention**) (2010)⁵⁷

EU Common Position on Arms Exports (2008)⁵⁸

International arrangements/guidelines

Modular Small-arms-control Implementation Compendium (**MOSAIC**)⁵⁹

International Ammunition Technical Guidelines (**IATG**)⁶⁰

Wassenaar Arrangement⁶¹

Organization for Security and Co-operation in Europe (**OSCE**)⁶²

5. Supplier state responsibilities

Exporting states that supply arms and ammunition bear significant responsibility for ensuring that materiel is only transferred to an authorised and legitimate end-user with a clear track record of responsible use of weapons. This means that arms and ammunition should not be transferred to unauthorised and unaccountable non-state actors; nor should they be provided to state actors with a history of repression and violence against civilian populations at home or abroad or with a track record of facilitating arms diversion.

Essential national measures for international arms transfer control

All states involved in the international transfer of conventional arms should have laws, regulations and administrative procedures in place to enable the effective regulation of arms exports and to facilitate the effective control of the import, transit/transshipment and brokering of conventional arms transfers through or within national

jurisdiction. Whereas many states that manufacture and export conventional arms have in place well-developed systems for arms transfer control, this is not always the case, especially in states with more limited involvement in the international arms trade and who face resource and capacity constraints. Nevertheless, the humanitarian, social and economic costs of the illicit trade and diversion of conventional arms are such that it is in all states' interests to be able to exert effective control over the movement of arms into, from and through their territory by means of a permit-based system involving case-by-case scrutiny and risk assessment of prospective arms transfers.

International legal obligations including mandatory UN arms embargoes

To be rigorous and effective, any arms transfer control system should reflect a state's international obligations under treaties and conventions to which it is a party; it should uphold the object and purpose of treaties and conventions to which the state is a signatory; and it should, as far as possible, fulfil any political commitments entered into with other states or through multilateral organisations, including the UN.



Burundian police officers collect a cache of weapons recovered from suspected fighters after clashes in the capital Bujumbura, Burundi, 12 December 2015. © REUTERS/Jean Pierre Aime Harerimana

One legal obligation that is binding on all UN Member States concerns that of mandatory UN arms embargoes: at the time of writing there are 14 such embargoes in place.⁶³ States should ensure that they are in a position to implement fully all mandatory arms embargoes through their national law by criminalising the transfer of arms to an embargoed destination or end-user by any citizen, resident or legal entity within their jurisdiction. Any applications for a permit to export, transit, tranship or broker the transfer of conventional arms to a state or entity that is subject to a mandatory UN arms embargo should therefore be closely scrutinised, with a presumption of denial unless it is proven that the equipment in question is to be transferred to an end-user that is not under embargo – for example a peacekeeping force – and that there are sufficient safeguards in place to ensure that the arms do not fall into the wrong hands. In addition, all arms transfer permit applications should be scrutinised for any possible indirect link to an embargoed end-user, for example, where the named recipient is situated in close proximity to an embargoed state or entity and/or has a known history of diverting arms to unauthorised government or non-state actors.

Thorough risk assessment including diversion risk assessment and screening of parties

If state authorities do not have concerns that a prospective arms transfer will violate a mandatory UN arms embargo or any other of their international legal obligations, they should then undertake a broader risk assessment which should evaluate the potential for an arms transfer to be used in, or to facilitate: serious violations of international human rights law and/or international humanitarian law; acts of terrorism; organised crime; all types of armed violence; and gender-based violence. In addition state authorities should assess the risk that the arms in question could be diverted to an unauthorised end-user or for unauthorised end-use.

In assessing the risk that an arms transfer may be diverted, the first point to consider is whether the end-user has a legitimate need for the arms (including parts, components and ammunition) that are being transferred. If the equipment specification does not match the general requirements of the end-user, then this should be considered a red flag and should prompt further investigation or, where evidence is clear, refusal of the transfer. Equally, where the quantities of items seem unusually large, or small, questions also need to be asked about their designated end-use(r). If there is anything to suggest that the end-user does not intend to keep the weapons for their own use (for example, if they are known to have recently purchased a significant quantity of the same type of equipment from another source) then this could point to an increased risk of diversion.

Authorities conducting a diversion risk assessment should also consider whether the recipient has the capacity to store and retain control over the items once they have received them. As illustrated in the previous section, theft and loss from state stockpiles is one of the principal means whereby unauthorised groups obtain weapons that are then used

in armed attacks, terrorism and crime. Accordingly, it is important to recognise that states that are suffering conflict and insurgency will almost inevitably experience difficulties in ensuring that their arsenals are secure; even where systems appear comprehensive on paper, they can prove less than effective when faced with formidable non-state armed groups using, for example, overwhelming numbers and the element of surprise to attack state stockpiles.⁶⁴

Another potential scenario where the risks of diversion are elevated is where the customer for the equipment is an intermediary rather than the actual end-user. While diversion risks may be reduced if the intermediary can demonstrate an intention to sell the items to a responsible government end-user, intermediaries – such as arms brokering agents – are notoriously difficult to track and to hold accountable for their actions. It is therefore advisable for states to sell military equipment only to legitimate government end-users.

A rigorous diversion risk assessment will therefore depend upon relevant state authorities building a clear and accurate picture of all parties to the arms transfer. This includes examining, as far as possible, the situation and record of:

- the manufacturing and/or exporting company
- any transportation, customs or freight forwarding agents involved
- the shipping company
- the consignee and any distribution agents
- the recipient and end-user (if different)

Any information obtained that points to a history of diversion or other irresponsible behaviour on the part of any of the parties to the transfer, should also be considered a red flag and should prompt further investigation or, where evidence is clear, refusal of the transfer. Information on illicit actors can often be found online via a basic internet search, or obtained from partner countries, particularly those experienced in arms transfer controls and/or with an embassy or consulate in the recipient state; it can also be found by searching existing sanctions lists, entity lists and denied persons lists published by the UN, the EU, the US and other states.⁶⁵

End-use(r) certificates and undertakings

Every application for an arms export permit should be accompanied by documentation verifying the material facts of the application. Central among these is the end-use(r) certificate (EUC): ‘an official document, issued by a competent authority of the importing state that identifies a government agency of the importing State as the ultimate recipient’⁶⁶ of an international arms transfer and of associated parts, components and ammunition. Some governments provide their own official forms to be completed by the end-user; alternatively, the authorities of a recipient state may provide an EUC on its own official letterhead; they can be provided electronically or in hard-copy. Whatever form they take, EUCs should be difficult to falsify and should incorporate anti-forgery measures.⁶⁷

On receipt of an EUC the competent authorities of the exporting state should take steps to verify the details provided, and to ensure that the individual/agency that has signed the document is authorised to do so.

The information required on an EUC should include the following:

- a reference number, date of issue and date of expiry of the certificate
- the exporting government's details (country name, contact name, address, telephone and email)
- the consignee's details (company name, location, contact name, address, telephone and email)
- the end-user government's details (country name, contact name, address, telephone and email)
- the end-user's details (name, contact name, address, telephone and email)
- details (name, contact name, address, telephone and email) of any brokers or intermediaries and, where known, of freight forwarding and transportation agents
- a description of the goods being exported (type, model, characteristics)
- the quantity and value of the items
- details of the end-use of the items and of the geographical context of this end-use
- a declaration confirming that the specified end-user will be the final destination of the items
- a declaration confirming that the items being exported will not be used for purposes other than the specified end-use or in geographical contexts beyond those specified
- a non-re-export clause prohibiting re-export of the items covered in the end-user certificate or prohibiting re-export without the prior written consent of the exporting authorities
- an undertaking to provide verification of delivery of the items as specified
- an undertaking to allow post-delivery verification of the possession and authorised use of the items by the end-user

Secure transportation

Before allowing the physical export of weapons and ammunition from its territory, the competent authorities of the exporting state should require that relevant transit/transshipment authorisations have been obtained from states in the transfer chain. The existence of such authorisations should be verified by customs authorities at the seaport/airport of departure or land border exit point, necessitating clear channels of communication between licensing and enforcement agencies within exporting states. Consideration should also be given to providing secure internal transportation for consignments of weapons or ammunition between the storage site and the exit point, while facilities for tracking of cargo throughout its journey to the end-user could also help reduce diversion risks.

For their part, transit/transshipment states should ensure that adequate security is provided for shipments of arms and ammunition at transit/transshipment hubs and that there is adequate monitoring of vessels, aircraft and vehicles entering and leaving their jurisdiction. In addition, transit/transshipment states should have laws in place that enable them to interdict and/or impound shipments where there is evidence to suggest that they could be in violation of national or international law. Finally, importing states should also take steps to ensure that weapons shipments arriving into their territory are fully secured during any initial storage period and subsequently during transportation to the ultimate end-user to avoid theft and diversion to unauthorised groups.

6. Importing and transit state responsibilities

With the notable exceptions of Algeria and Egypt, African states do not feature among the world's most significant arms importers, certainly in respect of purchases from the largest arms producing states.⁶⁸ However, despite a general lack of transparency surrounding arms exports and imports across the continent, available data accessed via the UN Register of Conventional Arms⁶⁹ shows that sub-Saharan African states are, from time to time, involved in the importation of conventional arms, including SALW. In addition, some African states also serve as transit or transshipment routes for arms and ammunition within their sub-region, and beyond. Action to prevent and combat the diversion of SALW, in all its manifestations, is therefore a major issue for African states.

It is important to note that virtually all states in sub-Saharan Africa are parties to at least one sub-regional SALW control agreement (see above), while two of these (the ECOWAS and Kinshasa Conventions) specifically address

the issue of SALW diversion. In addition, 39 African countries are State Parties (28) or Signatories (11) to the ATT, of which Article 11 contains detailed provisions for preventing, combating and mitigating diversion. While these instruments provide a crucial legal basis for action to tackle SALW diversion in Africa, the full and effective implementation of existing commitments is yet to be achieved. Reasons for this include: absence of up-to-date legislation regulating the domestic possession and use of SALW and their international transfer; lack of capacity for enforcing existing SALW control laws; limited technical capabilities such as electronic systems for record-keeping; and even lack of political will to address the problem of illicit SALW.

As highlighted in Section 3 above, SALW diversion in Africa occurs primarily in relation to leakage or seizure of arms from state stockpiles and state security forces, as well as from new acquisitions that are re-exported by the purchaser to unauthorised end-users. Action is therefore required to prevent and combat diversion in relation to all of these scenarios.



A fighter loyal to Libya's internationally recognised government carries confiscated weapons after regaining control over Tarhouna city, Libya, 5 June 2020. © REUTERS/Ayman al-Sahili

Tackling diversion from newly acquired SALW and ammunition

Factors driving the diversion of new imports of arms and ammunition by importing state actors to unauthorised third parties are complex and varied. One potential factor underpinning this type of diversion may be a lack of appreciation, on the part of the re-exporting authorities, of the need for effective arms regulation. This may include, for example, a lack of awareness of the obligation upon all UN Member States to adhere to mandatory UN arms embargoes, and/or a lack of legal provisions for enforcement of such embargoes at national level. Coupled with this there may also be a perspective – underpinned by an understanding of sovereignty – whereby state authorities believe that once they have purchased arms and/or ammunition they may do as they wish with these items irrespective of the consequences beyond their own borders, and regardless of any end-use undertakings not to re-export the items in question. Finally, diversion or re-export of new supplies of arms may be undertaken purely for gain – often involving financial or other material reward – or in order to exert influence among protagonists or advance interests in a given geographical or political context.

Tracing the source of illicit arms

While responsibility for the diversion of new weapons lies primarily with the importing state, exporting states are not always exempt from responsibility, particularly if they have not conducted due diligence by way of a thorough pre-licensing risk assessment. Beyond this it can be difficult to identify the specific roles, responsibilities and motivations of the various actors involved in diverting new supplies of arms. For African states that are affected by arms diversion and are keen to see a reduction in the illicit trafficking of weapons in their sub-region, options for addressing this problem are relatively limited. However, it may be possible to obtain information clarifying the sources of illicit arms by enlisting assistance from governments, international organisations (such as Interpol)⁷⁰ and NGOs (see Section 3) that have expertise in uncovering, identifying and tracing illicit SALW in a range of conflict-affected contexts. With the help of such experts African states that are affected by illicit arms flows may be able to identify the source(s) of the problem, and to raise their concerns with relevant authorities within their own sub-region and – in respect of newly manufactured weapons and ammunition – the original supplier state(s). According to the MOSAIC 05.31 guidelines,⁷¹ which provide good practice-based information on a range of small arms control systems and procedures, successfully tracing illicit SALW will involve the following steps:

- unique identification of the weapon based on its markings and physical characteristics
- a domestic tracing operation to establish whether the weapon i) became illicit while under the jurisdiction of the state that recovered it (for example, following its domestic manufacture or import), or ii) possibly entered the country by illicit means

- an international tracing operation, if the weapon is suspected of having entered the country by illicit means
- the tracing operation (domestic or international) identifies the point in time and space at which the weapon became illicit
- action is taken to prosecute those responsible for diverting the weapon and to prevent similar diversions from re-occurring
- data from the tracing operation is included in a biennial national report on tracing illicit SALW

Ensuring all SALW are marked at point of manufacture and import

While identifying the sources of diverted weapons is critical in order to ‘shine a light’ on weaknesses in international arms transfer controls, tracing of illicit arms from their origin to the point at which they are seized or discovered is very difficult if the weapons and ammunition in question have not been marked and recorded. According to the MOSAIC 05.30 guidelines,⁷² appropriate marks should be applied to the frame or receiver, the barrel and the slide, cylinder, bolt or breech block of a weapon; in respect of ammunition, marks should be applied to the smallest packaging units, or on each individual unit. Markings should be applied to complete weapons and parts/components (as appropriate) at point of:

- manufacture
- import (unless an import mark is applied before transfer)
- transfer from government stocks to permanent civilian use
- permanent confiscation by the State (unless disposed of by destruction)
- deactivation

Information contained in the marking should include:

- the country of manufacture
- the name of the manufacturer
- a serial number unique to the i) manufacturer, or to the ii) type/model of weapon produced by the manufacturer
- the year of manufacture
- weapon type/model
- calibre
- proof marks

In addition, if known, information relating to the country to which the weapon is to be exported, the year of export and the identity of the domestic state entity for which the weapon is intended may also be included.

Keeping adequate records of SALW manufactured, exported and imported

In addition to marking, systems and processes for recording the information contained in SALW markings are also crucial in order to facilitate tracing the origins of, and the route taken by, illicit arms, and to assist in identifying the exact point of diversion. According to the MOSAIC 05.30 guidelines certain basic record-keeping provisions should be made for all SALW:

- country of manufacture
- name of manufacturer
- serial number
- year of manufacture
- weapon type/model
- calibre
- location of markings on the weapon (for example, on the frame/receiver, barrel)
- ownership information (names, addresses and licence numbers of owners, as well as dates of ownership, up until the point that the weapon leaves the jurisdiction of the State, for example, through export or destruction)⁷³

Beyond these provisions, additional record-keeping requirements will be necessary for: exported weapons; imported weapons; weapons transferred from government stocks to permanent civilian use; permanently confiscated weapons not destined for destruction; deactivated weapons; weapons not destined for destruction (see MOSAIC 05.30).⁷⁴

Enlisting the support of arms-supplier-states

Where evidence of diversion of weapons has come to light, concerned states could consider raising the matter bilaterally with the authorities of any state implicated in the diversion. However, if such engagement is not possible, or yields no substantive outcome, concerns could also be raised through appropriate channels within the relevant sub-regional organisation. This could pave the way for multilateral discussions among member states concerning cases of arms diversion and their impact within the sub-region and beyond and, in turn, provide the basis for an informal understanding, if not a formal agreement, not to divert or re-export arms. Finally it is also possible for an African sub-regional organisation to make a formal approach to major arms suppliers to ask them to exercise restraint in the supply of arms to countries in their sub-region. Indeed, such an approach was made following the establishment of the ECOWAS SALW Moratorium on 31 October 1998, whereby ECOWAS approached the Wassenaar Arrangement and requested that the Participating States respect the Moratorium and support its implementation by West African states.⁷⁵ Crucially, the intention to continue dialogue with manufacturers and suppliers was subsequently made the focus of Article 12 of the ECOWAS Convention.

Securing state stockpiles to prevent SALW diversion

As has been outlined above, the loss of SALW from states stockpiles – whether through theft, illegal sale or battlefield capture – is very commonly a source of the illicit arms circulating in Africa. The existence of good practice standards for stockpile management and security,⁷⁶ and a range of efforts to put practical measures and suitable infrastructure in place,⁷⁷ demonstrates willingness on the part of several African states, in line with their commitments under the UN Programme of Action⁷⁸ and the UN Firearms Protocol,⁷⁹ to try to stem the tide of diversion from national stockpiles. Nevertheless, such efforts remain ‘a work in progress’⁸⁰ and, accordingly, weapons continue to pass from government arsenals into the hands of unauthorised end-users.

According to MOSAIC 05.20 guidelines, a risk assessment of all SALW storage facilities should be carried out in order to establish stockpile management priorities.⁸¹ This risk assessment should determine:

- any physical threat posed by the weapons to the local population (particularly relevant for weapons that contain explosive components)
- the financial value of the facility and its contents
- active hazards to the security of weapons (for example, the probability of loss, theft, damage or destruction due to sabotage or other forms of attack)
- passive hazards (for example, natural disasters such as floods, earthquakes or fires)
- the likelihood that a facility will be subject to an internal or external attack (due to the types and numbers of weapons stored, and its susceptibility to attack)
- vulnerability to espionage, theft or loss
- vulnerability to sabotage or terrorist attack

While it may appear beneficial to locate weapons stockpiles close to where they are needed, the risk of situating stockpiles close to the front line of any conflict should be carefully assessed. As noted in Section 3, raids by armed insurgents are relatively common and a principal means whereby such actors obtain their weapons. Ammunition should not be stored with weapons, while a separate risk assessment and related provisions for the storage of ammunition should be implemented which takes full account of the potential volatility of such materiel and the dangers posed to civilians who may be in the vicinity.⁸² Particularly destabilising weapons (such as Man Portable Air Defence Systems or MANPADS) should be disassembled and the component parts stored at separate locations.

Other principles of physical security include:

- addressing issues flagged by the stockpile management risk assessment
- incorporating physical security measures into new storage facilities at the design stage
- ensuring an effective perimeter security infrastructure
- controlling access at all times

In addition, training and adequate remuneration of personnel authorised to manage and monitor stockpile management facilities, together with a clear chain of command and responsibility, are crucial to ensuring professionalism, sustaining morale, and reducing risks of corruption, thereby preventing loss, theft or corrupt sale of stored weapons.

For their part, states considering the export of SALW should, as part of their arms export risk assessment, investigate and evaluate the capability of the importing state to securely store, manage and deploy the weapons in question; at the same time, importing states should consider the adequacy of their provisions for stockpile management and security before procurement takes place. Should these evaluations highlight concerns about the adequacy of arrangements in the importing country, the exporting and importing states should explore the potential for the establishment of a cooperative programme that would build the necessary systems and infrastructure so as to assure the security of any weapons subsequently exported (see below for further discussion of diversion risk mitigation). Finally, states looking to embark on a programme of disarmament or demobilisation must ensure their capacity to securely store weapons before operations commence.

Preventing cross-border smuggling

Measures to tackle cross-border smuggling of arms are dependent upon the ability of a state to police its borders. States with lengthy perimeters and multiple crossing-points face particular challenges when trafficking of weapons or ammunition is small in scale and carried out by civilians on foot. Larger consignments are, in theory, easier to spot, but where border crossings are very busy and lack sophisticated infrastructure – such as scanning machines – it may not be possible to undertake as many physical checks as the authorities would wish to in order to disrupt illicit SALW trafficking operations.

Compounding these capacity problems, many states experience problems of institutional friction, poor communication and instances of non-cooperation between national agencies with different priorities, undermining overall effectiveness. Accordingly, in order to tackle the cross-border trade in illicit SALW, affected states seeking to prevent illicit cross-border trade in SALW should work to develop ‘joined-up’ internal control and border management systems. This may involve: tax and trade regulation authorities; border guards and law-enforcement agencies; customs authorities; immigration services; justice systems; local authorities; intelligence agencies; commercial associations; and development ministries and agencies.

Finally, cross-border cooperation and intelligence-sharing among law-enforcement and border officials across Africa, potentially through sub-regional and continental mechanisms, will also be crucial to success in tackling arms smuggling efforts (see below).

7. Mitigation measures

As discussed in Section 4, efforts to prevent diversion of SALW exports begin with a thorough and in-depth assessment of the risks of diversion at each stage in the transfer chain. Where risks are significant – for example if a prospective importer is known to have engaged in weapons diversion in the past – the responsible course of action will be to refuse the export in question. However, in most cases, diversion risks will be less clear-cut, allowing the exporting state authorities to consider possible ways in which identified risks may be mitigated and so reduced to a tolerable level.

Accordingly, in the context of arms transfers, mitigation measures are steps taken to reduce risks and which go beyond the routine requirements of the arms transfer authorisation process, such as obtaining and verifying end-use documentation. Moreover, once the mitigation measures have been agreed between exporter/transit/end-user state authorities, the exporter should repeat the risk assessment process. If they are not certain that the mitigation measures put in place are sufficient to reduce diversion risks to a low level, the only responsible course of action is to refuse authorisation of the export.

The possibility of deploying mitigation measures in the context of international arms transfers is addressed under the ATT. Article 11(2) obliges exporting States Parties to assess the risk of diversion and, together with importing States Parties, they are encouraged to consider the establishment of diversion risk-mitigation measures, including confidence-building measures and joint programmes. Cooperation between exporting states and importing states is crucial to preventing arms diversion at stages 3 or 4 of the arms transfer – at or after importation, or post-delivery. A situation where there is no shared appreciation – between exporter and importer – of the diversion or other risks associated with an arms transfer is unlikely to create the conditions for effective measures to address them. Equally, where the greatest risks of diversion of an arms transfer are considered to be during transit, cooperation and shared understandings that also involve transit states will be vital if successful mitigation measures are to be put in place.

Depending on the specific diversion risks identified, a range of mitigation options could be considered, including:

- placing explicit limitations on the end use or end-users of the arms
- agreeing enhanced delivery verification procedures, for example, through livestreaming delivery or storage of the arms for the benefit of the exporting authorities
- requiring or providing physical security measures for arms in transit
- improving physical security and stockpile management in the recipient country

- providing substantive and impactful human rights or other training to end-users
- agreeing terms to allow for post-delivery inspection/post-shipment verification of the items

Post-shipment verification (PSV)

In recent years, there has been increasing interest on the part of some exporting states in developing and implementing PSV programmes. At one time the preserve of the United States, lately European states have begun to seek ways and means of ensuring that arms they have exported reach their intended destination, remain with their end-user, and are not diverted. At the time of writing, Germany and Switzerland have fully-fledged systems which have been operational since 2013 and 2015 respectively; Czechia is also reported as having a PSV system in place involving around ten inspections per year, although details are not publicly available;⁸³ in Spain a Royal Decree of April 2020 has paved the way for the establishment of a PSV system, although the specific details are not yet clear; while Sweden is exploring the feasibility of adopting its own PSV programmes.

The Swiss PSV Programme⁸⁴

In 2013, in response to the discovery of diversion cases involving Swiss arms exports, the Government of Switzerland launched an initiative that sought to verify post-shipment compliance with EUCs. Resource constraints mean that PSV is not deployed in all cases; instead, the Swiss authorities choose the location for an on-site verification mission based on an assessment of the risks associated with specific arms transfers. This takes into account a number of considerations such as the type of weapons exported, the situation on the ground in the recipient country, the processes and outcomes of previous inspections, and any other relevant incidents. In the first five years of the Swiss PSV programme, 41 in-country onsite inspections of Swiss-exported arms were conducted. Should any country-destination be found in violation of their EUC commitments, Swiss law provides for the application of specific sanctions ranging from the addition of further restrictions on the end-use of the items exported to refusal of further arms exports to the country-destination in question.

Germany's 'new for old' principle and post-shipment verification initiatives⁸⁵

Germany's 'new for old' principle for export of small arms was introduced in 2015 as a way of avoiding contributing to the proliferation of these weapons; since then, when implemented, it has been a useful tool for building trust and confidence between Germany (as an exporter) and recipient countries. It takes the form of an explicit undertaking – which forms part of the EUC – by a prospective recipient state that they will destroy or dispose of the same quantity of the same type of old weapons upon import of new small arms from Germany. Accordingly, this serves as a mitigating measure in order to prevent diversion

of old stocks; it can be required for any transfer of small arms from Germany to a 'third country', that is any country that is not part of the EU or NATO.⁸⁶ The German Government does not expect to be granted routine access to witness the destruction of the weapons; however, on two occasions this has taken place at the invitation of the importing government.⁸⁷

In 2015 Germany also began to implement a post-shipment verification (PSV) system to improve the controls of the end-use of 'war weapons' and other military equipment. The initial pilot phase of this programme, which focused

on the export of small arms only, requires importing states to agree to the in-country post-delivery inspection of the weapons to ensure that they remain in the possession of the end-user. In practice, this means that German export controls extend beyond the granting of an export licence to include on-site inspections of weapons of German origin. Following the adoption of the necessary legislative changes, Germany conducted its first post-shipment inspection of small arms exports in India and the United Arab Emirates – which uncovered no issues of concern and so proved to be a valuable confidence-building exercise.

8. Cooperation and assistance to prevent and combat diversion

International cooperation is crucial to the effectiveness of efforts to tackle diversion of SALW before, during and after their transfer across international borders. All states in the transfer chain have a potential role to play in identifying and mitigating diversion risks, preventing diversion taking place, and responding to diversion if/when it occurs. All states are, to some extent, committed to the principle of international cooperation and for African states, China and the EU this cooperation extends to tackling the illicit trade and diversion of SALW

Instruments and mechanisms for cooperation on SALW

All four of the African sub-regional SALW and firearms control instruments highlight the need for cooperation among member states, across their specific sub-region and internationally, in order to tackle the illicit trade and proliferation of firearms and/or SALW. For example, Article 17 of the Kinshasa Convention commits states parties to ‘establishing a mechanism for cooperation and a system for the exchange of information among the border countries’; while the Southern African Development Community (SADC) Firearms Protocol cites, as an objective of the instrument, that states ‘co-operate closely at the regional level as well as at international fora ... in collaboration with international partners’ in order to tackle the illicit manufacturing of, and trade in, firearms.

The triennial Forum for China–Africa Cooperation (FOCAC)⁸⁸ has, since 2000, provided a mechanism for high-level dialogue and cooperation between China and African countries. Recognising that addressing the many challenges posed by SALW proliferation is essential for advancing economic cooperation and trade agendas, FOCAC has, on occasion, incorporated the issue within the wider China–Africa dialogue on political affairs, peace and security.

Among the objectives of the EU Strategy against illicit firearms, SALW and their ammunition, entitled ‘Securing Arms, Protecting Citizens’⁸⁹ is ‘promoting co-operation and partnership at all levels’ while committing to strengthening cooperation and assistance on a range of issues and in a variety of contexts. For example, the EU commits to ‘assist in strengthening law enforcement capabilities in order to identify, disrupt and interdict trafficking networks’ as well as to working with international institutions, and strengthening cooperation among customs, border controls and enforcement agencies.⁹⁰

The ATT makes several references to the need for cooperation, including in Article 1 (Object and Purpose) and Article 15 (International Cooperation) which encourages States Parties to cooperate on the implementation and application of the Treaty. Information sharing – a key element in international cooperation – is also central to the ATT, in particular in relation to exchanges between exporting and importing states on specific arms transfers, and among all States Parties in the transfer chain in the context of mitigating the risks of diversion.



Arms confiscated from ex-Seleka rebels and ‘antibalaka’ militia by the French military Operation Sangaris are presented at a French military base in Bangui, 28 February 2014. © REUTERS/Sia Kambou/Pool

To ensure that they are capable of following through on these commitments, all states should ensure that the principle of international cooperation on arms transfer control matters is recognised and enabled by national legislation. This should involve the ability of governments to gather and share information with international partners on relevant matters, the lending of mutual legal assistance, and joint efforts to prevent and combat arms transfer diversion in all its manifestations.

Cooperation among states

A number of cooperative measures have been discussed above in the context of diversion risk mitigation. At the most basic level, exchange of information – in real time – between exporting, transit and importing states pointing to an elevated risk of diversion can enable relevant authorities to take timely and appropriate action to prevent the misappropriation of arms transfers, for example, by changing the route being taken by a particular shipment. At a practical level, providing technical assistance to a prospective importing state to strengthen their stockpile management provisions could, for example, prevent leakage or even large-scale theft of weapons from state armouries. Furthermore, multinational seaborne missions to tackle piracy or to pursue traffickers on land across state boundaries may also be effective in preventing diversion of arms. Other possibilities for state-led cooperation to prevent diversion include:

- post-delivery cooperation on verifying compliance with end-use assurances and commitments not to re-export imported weapons
- cross-border cooperation and intelligence-sharing among law enforcement and border officials
- cooperation in timely and substantive responses to tracing requests
- scrupulous adherence to mandatory UN arms embargoes by all states, including conducting due diligence to ensure that arms transfers are not intended for proscribed entities
- cooperation in support of action against serial arms embargo violators, for example by refusing or preventing any arms transfers to guilty parties

Multilateral cooperation

As noted above, cooperation to prevent and combat diversion of SALW can also be pursued through multilateral channels, at (sub-)regional level, as well as globally. At the same time, non-government actors including manufacturers, traders, brokers, freight forwarders and transportation agents as well as international humanitarian, peacebuilding and research organisations – many of whom have access to information relevant to identifying, tracing and tackling diversion – also have a potentially important role to play in sharing information, knowledge and expertise.

In addition, bilateral and multilateral funding mechanisms – such as the China–UN Peace and Development Trust Fund,⁹¹ the UN Trust Facility Supporting Conventional Arms Reduction (UNSCAR),⁹² the ATT Voluntary Trust Fund⁹³ and the European International Partnerships Fund⁹⁴ – can provide critical support to efforts to build the capacity and infrastructure required to prevent diversion in regions affected by the illicit trade and diversion of arms, for example through:

- capacity-building of national arms transfer control systems
- training of officials responsible for implementing national arms transfer controls
- training and capacity-building for customs, law enforcement and border agencies
- developing effective stockpile management infrastructure, systems and procedures
- supporting the development of weapons marking, record-keeping and tracing functions
- supporting the development of illicit arms interdiction capacity

9. Conclusion

Efforts to prevent and combat diversion of SALW begin with all states implementing relevant national laws and regulations, regional agreements, and international obligations faithfully and consistently. Arms-exporting states have their own key responsibilities in this respect, including:

- carrying out thorough short-, medium-, and longer-term risk assessments that explore all potential avenues for diversion and considering whether and how any identified risks may be mitigated
- conducting due diligence in verifying end-user and end-use undertakings
- ensuring security of transportation throughout the transfer chain

For their part, importing and transit states should develop and/or maintain effective arms transfer control systems enabling, in particular, rigorous enforcement of UN arms embargoes, ensuring all SALW and ammunition within their jurisdiction are marked and recorded, and cooperating fully with tracing requests.

Global trade in arms is rooted in cooperation among states for its effective functioning. However, when the transfer chain breaks down and weapons are diverted to unauthorised end-users, international cooperation is required in order to trace the source of the problem and

to take effective action to ensure there is no repeat. It follows, therefore, that the problem of diversion cannot be solved – or significantly curtailed – by states working alone. Trafficking networks can only be successfully disrupted through international cooperation, including: the exchange of information on diversion risks and lessons learnt from actual cases; provision of technical and material assistance to build state capacity, such as for effective stockpile management and border control; and coordinated action to interdict illicit supplies and deploy sanctions against serial violators. It is also increasingly recognised that cooperation between exporters and importers on post-shipment verification initiatives to ensure safe delivery and mitigate risks of diversion is an important step in enhancing the security of the supply chain.

Finally, it is important to recognise that, even if it is assumed that all states involved in SALW transfers undertake due diligence in identifying risks and potential counter-measures, not all diversion risks can be adequately mitigated. In such circumstances, where assessments point to serious diversion risks, exporter states must be prepared to refuse transfer authorisation and to communicate clearly the reasons for this to the aspiring importer. Equally, should evidence of diversion come to light after a SALW/ammunition export has been authorised, states in the transfer chain should take steps to prevent any recurrence by refusing further such transfers from, into, or through their jurisdiction and by sharing information concerning the case with partner countries bilaterally, and in regional and international forums.

Notes

- 1 Council of the European Union (2012), 'Council Decision 2012/121/CFSP', Council of the EU, 28 February (<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:054:0008:0013:EN:PDF>)
- 2 This project is a collaborative effort between Saferworld Europe ASBL (the contract holder with the European Union) and Saferworld (the main implementing partner).
- 3 Council of the European Union (2018), 'Securing arms, protecting citizens: Council adopts new EU strategy against illicit firearms, small arms and light weapons and their ammunition', Council of the EU, 19 November (<https://www.consilium.europa.eu/en/press/press-releases/2018/11/19/securing-arms-protecting-citizens-council-adopts-new-eu-strategy-against-illicit-firearms-small-arms-and-light-weapons-and-their-ammunition/>)
- 4 African Union (2016), 'Silencing the Guns' (https://au.int/sites/default/files/documents/38304-doc-1_au_roadmap_silencing_guns_2020_pdf_en.pdf)
- 5 European Commission (2016), 'Joint Communication to the European Parliament and the Council', 5 July (<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016JC0031&from=EN>); Council of the European Union (2016), 'Council conclusions on EU-wide strategic framework to support Security Sector Reform (SSR)', 14 November (<https://www.consilium.europa.eu/media/24227/sr-st13998en16.pdf>)
- 6 The EU Strategy for China also covers other security matters such as counter-terrorism, migration and cyber-security. See: Council of the European Union (2016), 'EU Strategy on China – Council conclusions (18 July 2016)' (<https://data.consilium.europa.eu/doc/document/ST-11252-2016-INIT/en/pdf>)
- 7 This paper addresses issues relating to the diversion of SALW in all sub-regions of Africa.
- 8 For the purposes of this paper, the definition of SALW will be the same as set out in the International Instrument for Tracing, in a Timely and Reliable Manner as follows: "...small arms and light weapons" will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899: (a) "Small arms" are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns; (b) "Light weapons" are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.' (<https://www.unodc.org/documents/organized-crime/Firearms/ITI.pdf>)
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- 17 See for example Bellingcat: (<https://www.bellingcat.com/>); and the Balkan Investigative Reporting Network (BIRN): (<https://birn.eu.com/>)
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