

Bullets Without Borders

Improving control and oversight over Norwegian arms production, exports and investments



KIRKENS NØDHJELP



Amnesty International Norge

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List of Acronyms

ATT	Arms Trade Treaty
COARM	EU Working Group on Conventional Arms
ECOWAS	Economic Community of West African States
EU	European Union
EUC	End User Certificate
IDF	Israeli Defence Forces
LPA	Licensed Production Agreement
LPO	Licensed Production Overseas
MFA	Ministry of Foreign Affairs (Norway)
NAT	North Atlantic Treaty
NATO	North Atlantic Treaty Organisation
NISAT	Norwegian Initiative on Small Arms Transfers
NOK	Norwegian Kroner
OSCE	Organization for Security and Co-operation in Europe
SALW	Small Arms and Light Weapons
SIPRI	Stockholm International Peace Research Institute
UN	United Nations
UN PoA	UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects
USD	US Dollars
WA	Wassenaar Arrangement

Foreword

The uncontrolled proliferation of small arms and light weapons fuels human rights violations, escalates conflicts and intensifies poverty. Controlling the international arms trade is essential if efforts to protect human rights and secure international development are to succeed.

Amnesty International Norway and Norwegian Church Aid have been calling for stricter controls of the international arms trade and engaging in projects to curb small arms violence. These international efforts led both our organisations to look more closely at the Norwegian arms trade. We needed to know whether Norwegian arms could be sabotaging efforts to protect individuals worldwide.

This report demonstrates that Norwegian export controls contain several loopholes, affording no guarantees that Norwegian arms, ammunition or components are not used in areas of war or conflict, or to commit serious human rights violations.

Amnesty International Norway and Norwegian Church Aid challenge Norwegian authorities to implement the recommendations as set out in this report. In particular, Amnesty International Norway and Norwegian Church Aid encourage Norwegian authorities to review export control legislation in order to explicitly include international human rights law and international humanitarian law. In addition, the Norwegian government must implement measures to ascertain and monitor end users of all arms transfers from Norwegian territory.

Amnesty International Norway and Norwegian Church Aid welcome the support pledged by the Norwegian government for an international Arms Trade Treaty. It is specifically in this context we recommend that the government implements nationally what they are advocating internationally.

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Introduction

This report is concerned with Norwegian involvement in the arms trade, and specifically the trade in small arms and light weapons. Norway is a significant exporter of military equipment; arms manufacturing companies are located there; and the Petroleum Fund has invested in arms producing companies. Producing, exporting and investing in arms is not the same as any other economic activity. Weapons are essential tools for those who mean to murder, to make war, or to commit serious violations of human rights. Certainly, there are also many legitimate uses for arms, such as for self-defence, peacekeeping, or law enforcement. Involvement in the arms trade therefore requires many (sometimes difficult) ethical decisions, and most importantly the strictest possible control and oversight. Above all, it is necessary to ensure that Norway is not complicit – as an exporter, producer or investor – in wars of aggression, criminality or serious violations of human rights.

The most important task for the Norwegian government is to ensure that Norwegian arms cannot be sent to people that would use them to commit serious human rights abuses or violations of international humanitarian law.

Unfortunately, the risks of Norway being complicit in such atrocities are widespread and manifest. In 2003 alone, there were 29 armed conflicts; 208 acts of international terrorism killed 625 people; serious violations of human rights (such as the widespread use of torture and killings) took place in 34 countries (ranging from Algeria to Zimbabwe); and an estimated 200 000 people were killed by firearms alone through criminal violence outside of war zones¹. The most important task for the Norwegian government is to ensure that Norwegian arms cannot be sent to people that would use them to commit serious human rights abuses or violations of international humanitarian law. Instead, they should only be exported if the government can be sure that they would be used legitimately.

As the arms trade becomes increasingly globalised, it becomes more and more difficult to exercise the necessary control and monitor production, exports and investments. Akin to many other industries, military equipment is now rarely manufactured wholly in one country and then exported to another. Instead, components are sourced from across the globe, production facilities are set up in developing countries, brokers and dealers flourish, technology is traded, and multinationals may carry out the production of a weapon system in several locations. The globalisation of the arms trade presents Norway, along with all arms exporters, with many problems. This report argues that globalisation requires that several additions to Norwegian laws and policies be made to ensure that the Norwegian government has proper control over who receives its arms exports.

Norway has for many years been at the forefront of international initiatives to control the arms trade, and in particular the trade in small arms and light weapons (see Section 2.3 and Appendix 2). For example, the 2004 Norwegian Ministry of Foreign Affairs strategy document, *Peacebuilding – A Development Perspective*, stated that:

“Norway will continue its role as a prime mover in the effort to gain control over the international trade in small arms and light weapons.

Norway supports the efforts to develop norms and rules [...] primarily with respect to the falsifying or altering of the marking on firearms, the regulation of arms brokering, and the development of export criteria for small arms transfers².”

Most importantly, in July 2005 at the United Nations, Norway officially declared its support for ongoing international efforts aiming towards a legally binding Arms Trade Treaty covering all trade in conventional weapons (see box 0.1).³

Box 0.1: Control Arms Campaign

In October 2003 Amnesty International, Oxfam and IANSA launched the Control Arms campaign in over 50 countries around the world. Control Arms focuses on the international trade in small arms, and seeks to build support among governments for an Arms Trade Treaty, a legal instrument that would prohibit arms from being exported to destinations where they are likely to be used to commit grave human rights violations. An Arms Trade Treaty would require countries to comply with international human rights and humanitarian law standards when authorizing weapons transfers. See Appendix 3.

At present the Norwegian law does not make explicit reference to the elements of international humanitarian law, or to international human rights law, which are relevant to the export of weapons.

An Arms Trade Treaty based upon international law would require changes to be made to Norwegian legislation and regulations. At present the Norwegian law does not make explicit reference to the elements of international humanitarian law, or to international human rights law, which are relevant to the export of weapons (human rights and humanitarian concerns are, however, taken into account when the MFA considers an export license). This report argues that Norway should not wait for an international treaty to be negotiated and signed. Instead, Norway should develop its own legislation and ensure that it explicitly includes reference to relevant international law. Norway has already pledged, at the Red Cross, to conduct a review of its arms export law with a view to including international humanitarian law as a criteria to be used when assessing arms export license applications. Explicit reference to international law could, and should, be included in Norwegian arms export legislation. Doing so would not only strengthen the Norwegian system, but also help to improve international standards and be the best way of supporting the campaign for an Arms Trade Treaty. Norway would make it very clear that it would not expect other countries to do anything that it was not prepared to do itself.

The foundation for the Norwegian export control system is a 1959 parliamentary decision not to supply arms to areas involved in war (including civil war), or where war may be imminent. This principle was later updated in 1997 to include human rights concerns. In general, the principle has been followed, and it remains one of the most important strengths of the Norwegian system. The overwhelming majority of exports of small arms and light weapons have been sent from Norway to members of NATO, the EU, and other peaceful democratic countries.

Norwegian authorities have not, in general, sought guarantees concerning the ultimate use, or end-users, of Norwegian weapons before they are exported to NATO members, as such exports are 'taken on trust'.

However, the 1959 decision is actually much more narrow in scope, or has been interpreted more narrowly by successive governments, than is first apparent. In practice, it has not required that Norway take all possible measures to prevent Norwegian arms being acquired by parties involved in war or committing serious violations of human rights. In particular, Norway's view of its commitments to NATO allies has meant that it has not, in general, sought guarantees concerning the ultimate use, or end-users, of Norwegian weapons before they are exported to NATO members.

The general policy is that exports of arms from Norway to NATO members are 'taken on trust'. In addition to being Norway's allies and close partners,

countries such as the USA, the UK, France, Germany or Italy are some of the world's largest arms exporters. Unfortunately, numerous reports, by Amnesty International and others, indicate that NATO countries have been involved in supplying arms to war zones or parties that have been involved in serious violations of human rights. This report argues that Norway should, where necessary, seek explicit guarantees from those that purchase weapons that they will not be subsequently transferred to governments or other parties that are involved in wars not explicitly sanctioned by the United Nations, or committing serious violations of human rights or international humanitarian law.

Unfortunately, NATO countries have been involved in supplying arms to war zones or parties involved in serious human rights violations.

In addition to the problem of re-export by NATO members and other partners, the Norwegian export control system also contains several loopholes that if closed would help prevent Norwegian weapons being acquired by those involved in war or serious human rights violations. In particular, they concern:

The Norwegian export control system contains several loopholes.

- Licensing by Norwegian companies of production of their weapons in factories abroad.
- The lack of control over foreign-based wholly owned subsidiaries of Norwegian companies operating as arms brokers.

In addition, the report identifies two further problems:

- The lack of sufficient information to enable parliament and civil society to properly scrutinise the Norwegian government's arms export decisions.
- Investment by the Norwegian Petroleum Fund in companies that are involved in supplying military equipment to governments involved in committing human rights abuses.

Many of the weaknesses noted above are a consequence of the increasing globalisation of the arms trade. It is perhaps unsurprising that an export control system whose guiding principle dates back to 1959 may be not best equipped with the legislative and regulatory tools required to control the proliferation of arms in a new millennium. This report recommends that a review of Norwegian export control laws and policies be undertaken, and to this end it recommends several improvements.

The global problem of small arms proliferation

Several sections of this report focus upon exports of small arms and light weapons. This focus is due to small arms and light weapons being involved to a far greater extent than larger and more sophisticated weapons in contemporary wars (which tend to be civil wars) and in abuses of human rights. Accordingly, Norway has made a number of specific commitments concerning the export of small arms and light weapons (see Chapter 2.3).

Small arms proliferation exacerbates violence worldwide, and it disproportionately affects developing countries. While the weapons do not cause violence or conflict, the proliferation of small arms, especially into communities in the developing world, dramatically increases the lethality of violence. Leading non-governmental human rights organisations have repeatedly highlighted the damaging relationship between small arms proliferation and gross violations of human rights. For example, a Control Arms Campaign (see box 0.1) report published in 2003 explains that small arms and light weapons:

*"[...] play a key role in perpetrating abuses of international human rights and humanitarian law – through their direct use or through the threat of use. More injuries, deaths, displacements, rapes, kidnappings and acts of torture are inflicted or perpetrated with small arms than with any other type of weapon."*⁴

In addition, many development organisations have identified pervasive small arms violence as one of their most pressing challenges. The detrimental effect of armed violence on development was recently highlighted by Norwegian Church Aid in the 2005 report, *Who Takes the Bullet? The Impact of Small Arms Violence*.⁵ Governments have also recognised that small arms proliferation and violence should no longer be understood as merely a security issue, but rather as a threat to human development. For example, in 2004 The Norwegian Ministry of Foreign Affairs stated in its strategy document *Peacebuilding – a Development Perspective* that:

*"[...] in many regions of the world small arms and light weapons constitute a serious threat to peace, reconciliation, safety, security and sustainable development. [...] Small arms measures should be part of a broader local, regional and global strategy, and should be integrated into development policy measures at country level."*⁶

Unfortunately, the overwhelming majority of the small arms and light weapons that are used to kill, wound or terrorise were originally manufactured and traded under government control. Indeed, the life cycle of a trafficked weapon generally begins with its legal manufacture and transfer, before being diverted through illicit routes to grey and black markets. This legal-illegal connection is particularly important when one considers the scope of the international trade in small arms.

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Box 0.2: Small Arms and Light Weapons

The 1997 report of the UN Panel of Governmental Experts on Small Arms⁷ defines 'Small Arms and Light Weapons' (SALW) as a category of weapons (and associated ammunition or components) light and small enough to be easily portable by one or two people (included in the definition were mines and explosives). 'Small arms' includes firearms such as pistols or rifles; 'light weapons' refers to heavier equipment such as mortars.

The Norwegian Initiative on Small Arms Transfers (NISAT) project at the International Peace Research Institute, Oslo (PRIO) has identified some USD 2 billion worth of licensed international transfers of firearms, components and ammunition per year (and perhaps as much again is traded by countries that do not report their exports and imports).⁸ There is also a significant black market. Many internationally traded weapons are used lawfully by governments and civilians. However, a small, but important, proportion of the millions of firearms traded each year are sold or given to people that use them to commit atrocities



Chapter 1

Norwegian small arms transfers; trends and destinations 1999-2004





Norwegian small arms transfers; trends and destinations 1999-2004

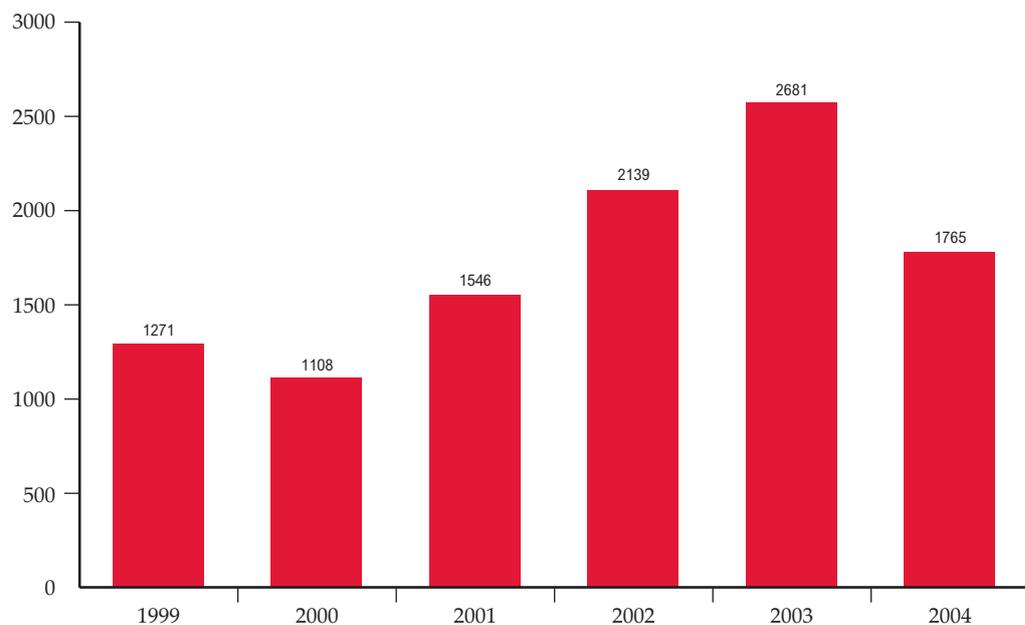


Norway is a major exporter of conventional arms, including small arms and light weapons. This section examines the main recipients of Norwegian arms exports. It uses information provided by Statistics Norway (the government statistics agency) and the Norwegian Ministry of Foreign Affairs (MFA).

1.1. Norwegian arms exports: value and trends

Norway's exports of all defence materials (as defined by the Norwegian MFA⁹) increased steadily from 2000, culminating in the record year of 2003. There was a significant downturn in 2004, largely due to decreased procurement by several NATO allies. It should be noted that some of the exports in the years 2002-2004 concerned anti-aircraft systems which were sent to Spain to be added to frigates that are being built there for the Norwegian Navy.

Figure 1: Total Value of Exports of Defence Materials from Norway¹⁰
NOK Millions



It should be noted that export figures do not include the value of licensed production overseas (see Chapter 3.2), and that no reliable figures for the value of such agreements are publicly available. Thus the extent of the proliferation of Norwegian-designed defence material is not fully accounted for by the actual export figures quoted in this report. This report will predominantly rely on Statistics Norway figures based on customs data as these allow for a degree of disaggregation of small arms and light weapons from defence materials as a whole that is not possible using information provided by the MFA in its annual report to parliament (*stortingsmelding*) on Norwegian arms exports. While the quality of information provided in the *stortingsmelding* improved significantly in 2004, it still lacks sufficient detail to fully disaggregate small arms and light weapons². Moreover, the considerable lack of detail in previous years means that it is not possible to calculate multi-year trends. Furthermore, as most of the data provided in the *stortingsmelding* is incomparable with that given by Statistics Norway (as the weapons categories differ) it is not possible to rely on both sources to corroborate data (see Chapter 1.7).¹²

In the *stortingsmelding* the MFA divides defence materials into categories 'A' (all weapons and ammunition) and 'B' (all other equipment with defence implications). The value of exports of both these categories provides a useful overview of the general trends in Norwegian arms exports.

Box 1.2: Category 'A' and 'B' weapons

The distinction between category 'A' and 'B' defence material is, at first glance, straightforward. Category 'A' contains actual weapons, as well as material that may 'significantly affect the military balance in the region [of the recipient country]'¹³ while category 'B' contains military equipment that is not classed as weapons by category 'A'. Category 'B' equipment should not be confused with 'dual use' materials that have both civilian and military uses. For example, the 2005 *stortingsmelding* describes the following equipment as being in category 'A': anti-tank missiles; rifles; explosives; and ammunition. Equipment included in Category 'B' was described as being: parts of rifles; cryptographic equipment; infra-red cameras; parts of submarine batteries; parts of fighter aircraft; computer components; parts of tanks; and parts of armoured vehicles.

The MFA's annual report to parliament still lacks sufficient detail to fully disaggregate small arms and light weapons.



The distinction between category 'A' and 'B' weapons (see Box 1.2) underlies a policy of stricter export control over category 'A' material exports – which are only allowed to governments (or their authorised representatives), and only to states on the MFA's 'Group 1' of safe countries (see Box 1.3). Category 'B' military equipment can be sold to a wider range of countries – groups 1 and 3.

All categories of small arms and light weapons and their ammunition (including shotguns and hunting rifles) would be included in category 'A'. However, some components may be either category 'A' or category 'B'. For example, an export to Canada of 'parts of military weapons' (defined in the report with the code 17.1 which indicates that they are parts of small arms) is described as being of both 'A' and 'B' material.¹⁴ The distinction concerns the sensitivity of the component in question. To take a hypothetical example, a rifle barrel would be classified as category 'A', the shoulder strap category 'B'.

The MFA does not keep an extensive and detailed list of all possible equipment that could be classified as being in categories 'A' and 'B'. Instead, decisions are taken on a case-by-case basis and the classification of the equipment in question is decided upon when a license application is evaluated. The MFA does however keep a record of previous decisions so that it can follow precedents concerning transfers of identical pieces of equipment.

It is therefore difficult for the MFA to publish an extensive and detailed list of what equipment is covered by categories 'A' and 'B'. Indeed, when Amnesty International Norway requested clarification from the MFA on what equipment falls under categories 'A' and 'B', it did not receive any more information than was already in the *stortingsmelding*¹⁵.

Readers of the *stortingsmelding* are therefore faced with a quandary. The report on Norwegian arms exports divides all equipment into categories 'A' and 'B'. This division is natural given the very tight restrictions placed upon category 'A' equipment. However, readers are not furnished with a detailed list of exactly what equipment is covered by the categories. Moreover, the descriptions provided in the *stortingsmelding* can be quite vague – such as 'parts of armoured vehicles'. This problem might best be addressed by following the example of other countries (see Chapter 1.7) and providing much more detailed descriptions of the equipment exported in the *stortingsmelding*.

Recommendation: To increase openness and transparency, the MFA should publish much more detailed descriptions in the *stortingsmelding* of equipment exported under categories 'A' and 'B'.



Box 1.3: The Norwegian MFA's Country Group System

The MFA uses a system of country groups to expedite the treatment of license applications. The three groups are described as follows:

- 'Group 1' comprises NATO allies and other close partners, to which Norway may, after 'careful consideration'¹⁶ license arms exports from both categories 'A' and 'B' (see Box 1.2).
- 'Group 2' to which Norway will not export any defence material to (such as areas involved in war).
- 'Group 3' to which exports of category 'B' material (see Box 1.2) may, after careful consideration, be licensed.



The Norwegian MFA also has a Country Group System (see Box 1.3) based on the desire to exert tight control on defence material exports to potentially problematic destinations while not unduly hampering exports to allies and other 'safe' countries.

However, just as with weapons categories 'A' and 'B', the MFA does not keep a detailed list of each country group. Instead, potential export destinations are evaluated on a case-by-case basis when license applications are evaluated. However, as with weapons categories 'A' and 'B', records of previous decisions could be referred to in order to guide future decisions. In practice the population of the country groups is built up on the basis of ad hoc judgements when a license application is assessed and informed by previous licensing decisions, rather than regular systematic surveys of conditions in all likely export destinations.

Based upon the recipients of category 'A' defence material (which can only be sent to Group 1 countries) in the *stortingsmelding* for the years 1999-2004, some tentative guesses can be made as to which countries are included in each

Group 1: can receive category 'A' and 'B' defence material.

group. Group 1 appears to include NATO members, Nordic countries, and other 'western' countries such as **Australia, New Zealand, Japan, and Switzerland. In addition, Chile, Kuwait, Malaysia, Serbia, Singapore, South Africa, South Korea, Tanzania, and Thailand** also received category 'A' material, which presumably places them (at least at the time of the export) in Group 1.

Several of the countries presumably placed in Group 1 are problematic. Certainly, Malaysia, Kuwait, and Singapore are less than fully democratic. Moreover, The Brazilian police have a very bad record of committing human rights abuses – including the murder of street children. The *stortingsmelding* concerning exports in 2004 and 2003 indicate that explosives were exported to Brazil. It is not known whether or not the explosives were to be incorporated into ammunition or other weapon systems upon arrival in Brazil.

The inclusion of a country in Group 1 in one year does not, however, imply a green light to export any equipment from Norway in the future. Norway would be within its rights to deny license applications to countries that had previously been included in Group 1. It is nonetheless to be assumed that very serious concerns would have to arise before NATO members or Nordic countries were denied exports.

Group 3: can only receive category "B" defence material.

As far as Group 3 countries are concerned – those countries are only permitted to receive category 'B' defence material – the *stortingsmelding* for the years 1999-2004 listed several countries as only receiving 'B' material. These countries must therefore either belong to Group 3, or be eligible for Group 1 status (such as Bulgaria due to its NATO membership) without actually having tried to import any category 'A' material. The recipients of only category 'B' military material were: **Argentina, Bahrain, Brunei, Bulgaria, Croatia, Cyprus, Ecuador, Egypt, Hong Kong, Oman, Macao, Macedonia, Romania, Saudi Arabia, Slovenia, Taiwan, and the United Arab Emirates.**

Group 2: can receive no military material at all.

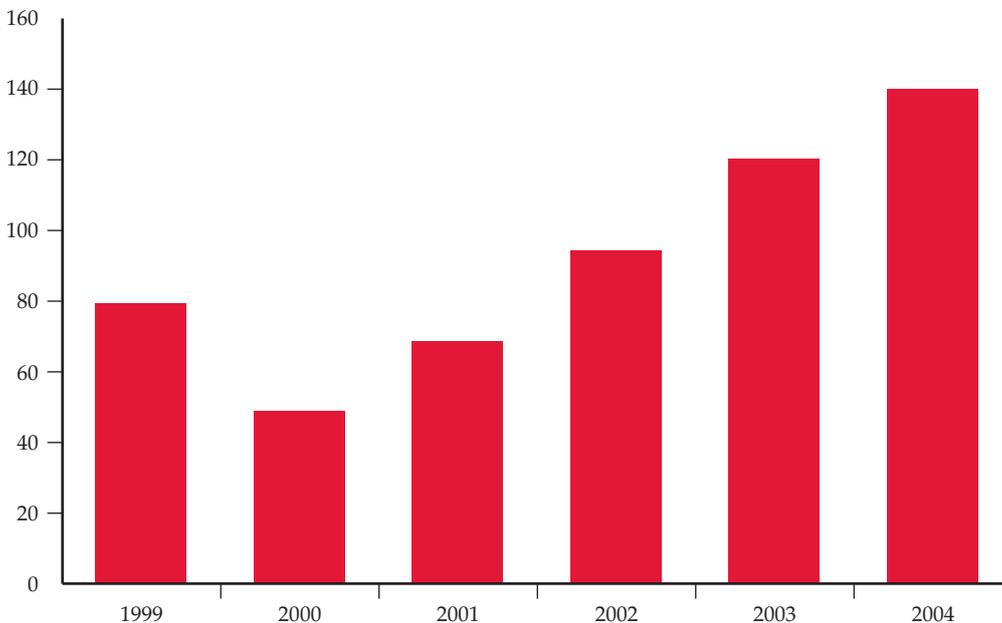
It is much more difficult to assess the population of Group 2 – those countries to which no military material may be exported at all. The *stortingsmelding* for the years 2003 and 2004 have published lists of countries to which export licenses have been refused. These countries are: **Algeria, Belize, China, Colombia, India, Indonesia, Iran, Israel, Kazakhstan, Lebanon, Libya, Macedonia, Morocco, Nepal, Nigeria, Moldova, Pakistan, Sri Lanka, Syria, Taiwan and Turkmenistan.** However, it is not possible to discern whether the licenses were

denied because the countries were included in Group 2 (though countries suffering civil war such as Nepal or Colombia would be likely candidates), or whether the licenses were denied for other reasons (such as human rights concerns), while licenses for other equipment (without such specific concerns) may be granted.

Small arms and light weapons constitute a relatively minor part of Norway's arms exports by value. However, since 2000 the total value of exports of small arms and light weapons has increased at a faster rate than general exports of defence materials. Furthermore, despite a general downturn in the total value of defence material exports in 2004 noted in the *stortingsmelding*, the total value of small arms exports identified in trade data produced by Statistics Norway continued to increase (see Figure 2 below).

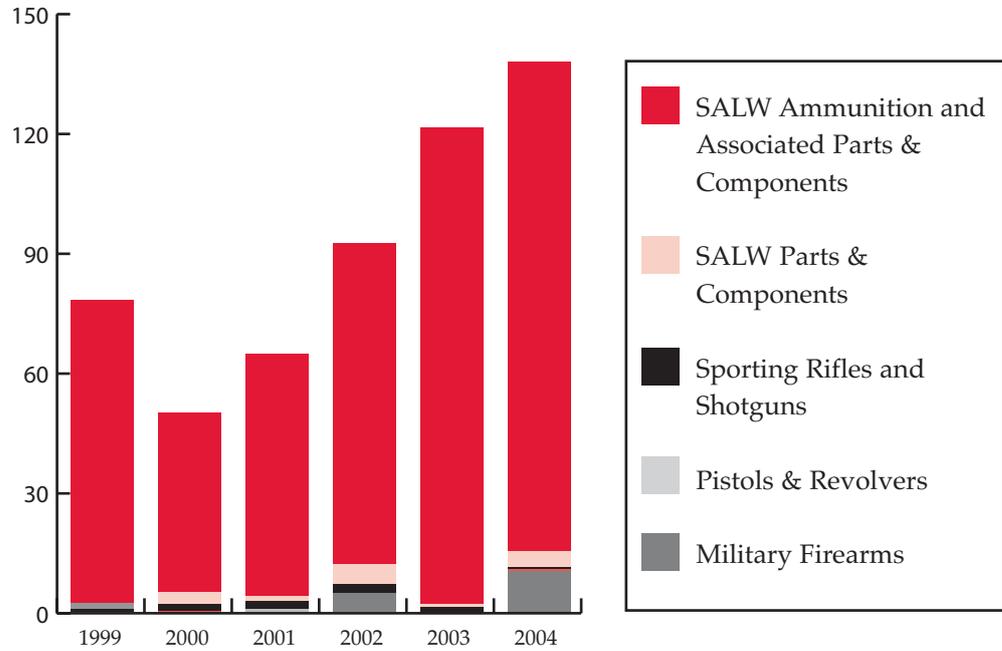
Figure 2: Transfers from Norway of Small Arms and Light Weapons¹⁷

NOK Millions



As is shown in Figure 3, the overwhelming majority of SALW exports concerns small calibre ammunition.

Figure 3: Total Transfers from Norway of Small Arms and Light Weapons Exports by Type¹⁸
NOK Millions



In addition, Statistics Norway report transfers from Norway of NOK 6 938 154 for the category 'Military Weapons' over the period 1999 to 2001. This category includes both military firearms and artillery. In 2002 the 'Military Weapons' category was replaced and it is possible to identify exports of military firearms in subsequent years (see Chapter 1.4 for more information).

Readers should note that the Statistics Norway figures include transfers that would not usually be defined as 'exports'. These could include transfers of small numbers of personal weapons, with their owners, to other countries (such as hunters going on safari), transfers of equipment for testing or repair, or transfers of equipment by military forces exercising in Norway.

1.2 Norway's world ranking

Norway is a significant arms exporter. According to the Stockholm International Peace Research Institute (SIPRI) Norway ranks 18th out of 67

exporters of major conventional weapons¹⁹ over the five-year period 2000-2004. Disaggregating the rankings published by SIPRI shows a dramatic rise in Norway's position from 30th largest exporter in 1998 to 15th largest in 2002. There then followed a downward trend in 2003 and 2004, consistent with the dip in exports for 2004 seen in the Norwegian MFA figures published in the *stortingsmelding* (see Table 1).

Norway ranks 18th out of 67 exporters of major conventional weapons.

Table 1: Norway's ranking among exporters of major conventional weapons²⁰

<u>Year</u>	<u>Ranking</u>
1998	30
1999	29
2000	21
2001	19
2002	15
2003	18
2004	21

Concerning exports of small arms and light weapons, the Geneva-based research centre Small Arms Survey, in their 2005 yearbook, ranked Norway 16th among the world's small arms exporters in 2002 (the latest year for which data was available).²¹

Norway ranked 16th among the world's small arms exporters in 2002.

Furthermore, it should be noted that Norway is a relatively small country in terms of population. Regarding the value of small arms exports per capita, Norway is (after Austria and Belgium) the third largest included in the Small Arms Survey's rankings. In 2002 Norway exported small arms and light weapons to an approximate value of USD 9.8 per person. By way of comparison, the world's largest small arms exporter, the USA, has a ratio of around USD 1.8 per person. One should bear in mind, however, that several significant small arms exporters with comparatively low populations, such as Bulgaria and Israel, do not report sufficiently on their arms exports to determine the total value of their small arms exports.²²

1.3 Norwegian arms export destinations

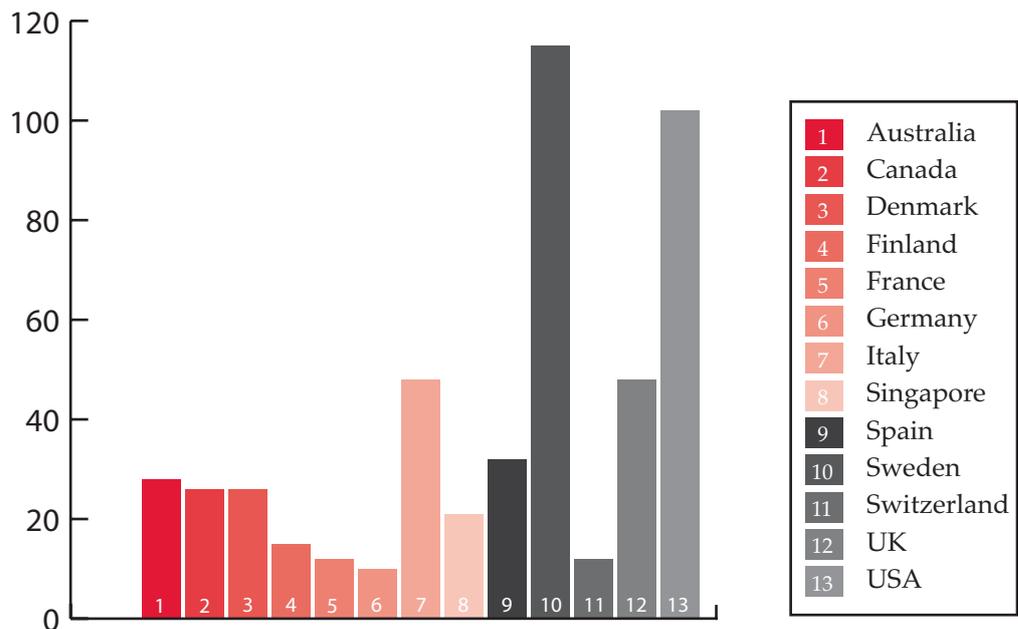
The vast majority of Norwegian exports of general military equipment by value go to NATO members²³ or Nordic countries. As noted in the *stortings-*

melding, in 2004, by proportion of export value, 84 per cent of category 'A' military material (see Box 1.2) went to NATO members ; 15 per cent went to non-NATO Europe, Australia and New Zealand; and only one per cent of total export value was destined for all other countries (which were located in Asia, Africa, and Latin America).²⁴ The latter figure fluctuated between 1999 and 2004, but has not exceeded 2 per cent in any given year. However, regarding the export of category 'B' military material (which may also include components for small arms and light weapons), the 2004 *stortingsmelding* reported that 61 per cent went to NATO members; 13 per cent went to non-NATO European countries; 24 per cent went to countries located in Asia; and two per cent to all others (see Box 1.3).

Trade data produced by Statistics Norway concerning exports of small arms and light weapons presents a similar picture. The most significant destinations for Norwegian SALW exports by value are located in Western Europe or North America – the sole exception being Singapore.

Figure 4: Major Recipients of transfers of Small Arms and Light Weapons from Norway 1999-2004 (above NOK 10 million)²⁵

NOK Millions



The above chart shows the countries receiving over NOK 10 million worth of Norwegian small arms and light weapons over the period 1999 - 2004. Over the five years studied, exports to NATO and/or EU members accounted for over 90 per cent of Norwegian SALW exports (the relevance of the NATO expansions in 1999 and 2004 is considered in Chapter 3.1).

Exports to NATO and/or EU members accounted for over 90 per cent of Norwegian SALW exports.

The only non-NATO/EU countries to receive a total of more than NOK 1 million worth of small arms and light weapons over the years 1999 to 2004 were Australia, Israel, Kuwait, Malaysia, Switzerland, Singapore and Thailand. The figures for Israel refer to the return of ammunition purchased from Israel for testing by the Norwegian military. Therefore the transfers (all in 2002) are not found in the relevant *stortingsmelding*.²⁶

1.4 Transfers of small arms and light weapons from Norway by type

Statistics Norway trade data is based upon international standard customs categories known as the Harmonised System (HS), and each category is identified with a unique code. Norway's small arms and light weapons exports are dominated by the customs category 930630 concerning small calibre ammunition and parts. Its value, compared to other categories, demonstrates the dominant role of ammunition and associated components in Norwegian production and exports.

Table 2: Total transfers of small arms and light weapons from Norway 1999-2004, by weapon category²⁷

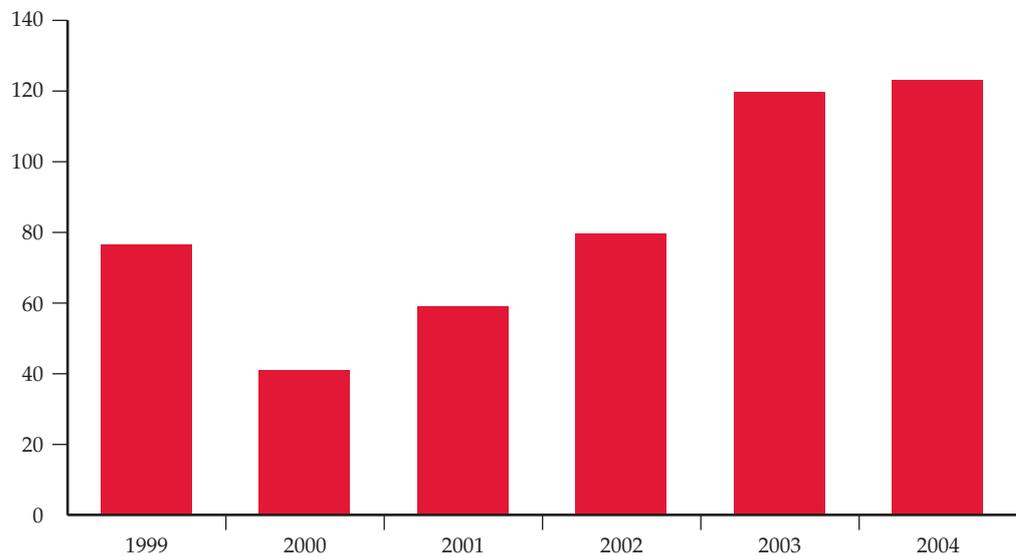
Weapon Category²⁸ (customs code)	Value NOK
Military Firearms (HS 930190) years 2002 – 2004	15 012 283
Pistols & Revolvers (HS 9302)	1 364 767
Muzzle-Loading Guns (HS 93031)	861 970
Sporting & Hunting Shotguns (HS 930320)	4 009 676
Sporting & Hunting Rifles (HS 930330)	3 233 629
Parts and Accessories of Revolvers and Pistols (HS 930510)	4 086 660
Shotgun Barrels (HS 930521)	36 862
Parts and Accessories of Shotguns and Rifles (HS 930529)	11 583 826
Shotgun Cartridges (HS 930621)	351 625
Parts for Shotgun Cartridges and Air-Gun Pellets (HS 930629)	619 814
Small Arms Ammunition and Parts Thereof (HS 930630)	503 070 495
Total	544 231 607

1.5 Norwegian exports of small arms ammunition

As shown in Figure 5, exports of SALW ammunition and associated components have increased since 2000.

Figure 5: Norway's Export of SALW Ammunition and Ammunition Components²⁹

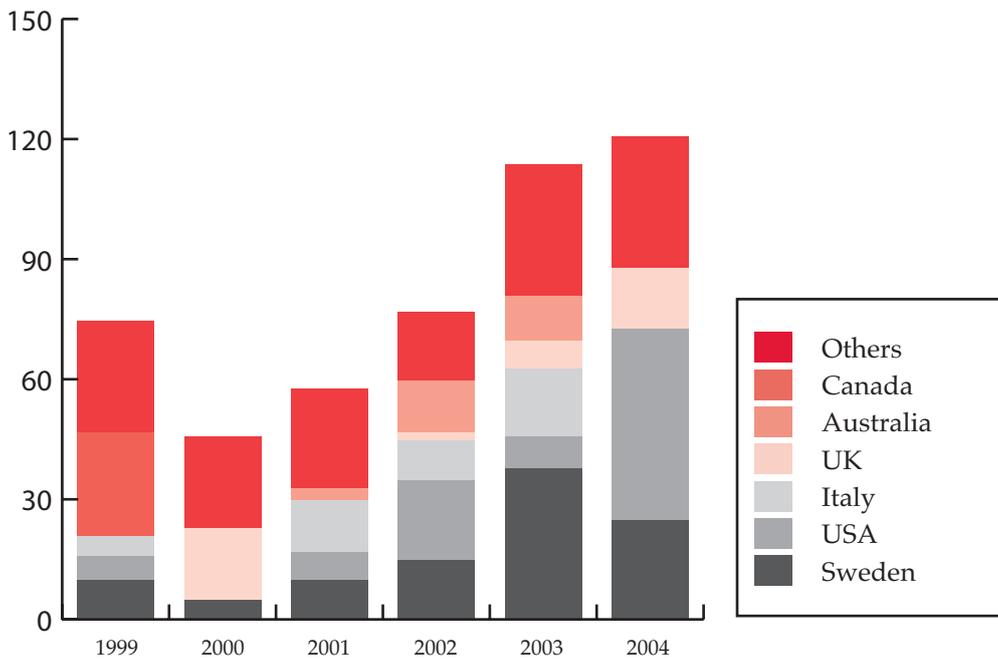
NOK Millions



As demonstrated in Figure 6 (below) the main recipients of Norwegian small arms ammunition and associated components are NATO members, Sweden and Australia.

Figure 6: Transfers of SALW Ammunition and Associated Components Exports from Norway by Recipient ³⁰

NOK Millions



In addition, Austria, Finland, Malaysia, Singapore and Switzerland all received over NOK 5 million of SALW ammunition over the six-year period 1999-2004. The publicly available information (either from the *stortingsmelding* or from Statistics Norway) does not state to whom this ammunition was provided after it reached these countries, or in what type of weapon it would be used.

1.6 Norwegian small arms exporting companies

According to Norway’s 2005 national report to the UN on the implementation of the United Nations Programme of Action on the illicit trade in small arms, there is “no national production of small arms and light weapons”.³¹ This statement employed a restrictive definition of SALW used by the OSCE that excludes ammunition and only covers weapons designed to military specifications. Even in that context the Norwegian statement included one omission

According to Norway’s 2005 national report to the UN on the implementation of the United Nations Programme of Action on the illicit trade in small arms, there is “no national production of small arms and light weapons”.

– the Norwegian company Nammo manufactures one light weapon on Norwegian soil: the M72 Light Anti-tank Weapon (LAW).³²

Another Norwegian SALW producer is Kongsberg Small Arms, which produces and exports hunting and sporting weapons³³ (arms which are not covered by the OSCE definition used by the MFA in its report to the UN). However, akin to exports, the majority of Norwegian small arms and light weapons production concerns ammunition. The principal small arms ammunition manufacturer, Nammo Raufoss AS (a subsidiary of Nammo AS), produces SALW ammunition ranging from small-calibre pistol ammunition to 12.7mm and 40mm explosive rounds.

Recommendation: When reporting to the UN Norway should use the 1997 UN Panel of Experts, definition of small arms and light weapons which includes all types of small arms, light weapons, ammunition, and components.

Table 3: Selected Companies Listed as Exporters in Reports to Parliament on Norway's Arms Exports³⁴

<u>Norwegian exporting companies</u>	<u>Type exported</u>
Bakelittfabrikken A/S	Training and blank-firing ammunition
Dyno Nobel ASA Forsvarsprodukter	Military explosives
Erik Nyhuus Våpenforretning	Hunting weapons
Intersport Bogstadveien A/S	Hunting weapons
Jaktdepotet A/S	Hunting weapons
Kongsberg Small Arms A/S	Hunting weapons
Krico Norway A/S	Hunting weapons
Landrø, Magne A/S	Hunting weapons
Nammo Raufoss A/S	Military SALW ammunition, light anti-tank weapons and components
Norma A/S	SALW Ammunition
Våpenhuset A/S	Hunting weapons
Våpensmia A/S	Hunting weapons, ammunition and military sights

The above list is drawn from the companies listed as having reported an export to the MFA. The *stortingsmelding* does not provide information on exactly what

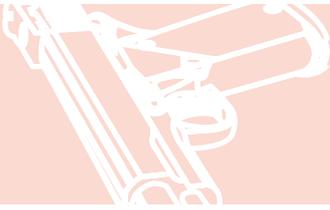
arms are exported by each company, nor on whether or not the arms exported are domestically produced, or simply re-exported after import into Norway. Neither does the list include companies that may have licensed production of weapons outside Norway (but do not produce them in Norway – see Chapter 3.2). Moreover, it does not include companies that engage in brokering activities abroad (see Boxes 2.2 and 2.3).

Recommendation: Future reports to parliament should include information on technology transfer and production or assembly arrangements licensed by Norwegian companies to companies located abroad.



Readers should note that all firearms (including pistols and sporting weapons) are defined as category ‘A’ equipment and can therefore only be transferred to governments (or their authorised representatives). The only exception is ‘insignificant’ quantities that could be exported to private individuals or dealers once their legal right to purchase and/or own such weapons has been ascertained. The transfers of hunting rifles, pistols, sporting shotguns and associated components noted in Table 2 were worth a combined total of NOK 24 315 420 (over a five-year period). While at first glance this figure does not appear to be ‘insignificant’, several factors should be taken into consideration. Firstly, this figure includes components that may be classified under category ‘B’ and are therefore subject to less strict control. Secondly, it may include ‘non-commercial’ transfers (such as the personal possessions of people going abroad). Finally, multiple transfers of small (or ‘insignificant’) quantities could amount to a large total.

The Statistics Norway data identifies some NOK 15 million worth of transfers of military firearms over the six-year period studied (see Table 2), but the specific type of these weapons is not known, nor is it certain if they were produced in Norway or had been first imported into Norway before being sold on. All such firearms were exported to NATO or Nordic countries. It is possible that the return of equipment used by armed forces engaging in military exercises in Norway is included here (such transfers do not require an export license), or the transfer abroad of Norwegian equipment for testing or repair.



Recommendation: Information collected from the Ministry of Defence and the Ministry of Justice on 'non-commercial' arms transfers from Norway should be included in future reports to parliament. Reports to parliament should present information on all transfers of arms from Norway.

The most prominent Norwegian ammunition-exporting company is Nammo, in which the Norwegian government maintains a 50 per cent stake.

The most prominent Norwegian ammunition-exporting company is Nammo. Nammo AS is a limited company in which the Norwegian Ministry of Trade and Industry maintains a 50 per cent stake (the remaining shares are owned by Patria Industries Oyj of Finland). Nammo AS maintains three wholly owned subsidiaries in Sweden, Finland and Norway. Previously, shares in Nammo were also owned by SAAB AB of Sweden, however it sold its stake to the other partners, leaving the Norwegian government with a 50 per cent ownership of the company.³⁵ Nammo was created through a Norwegian government buy-out of the arms-producing branch of Raufoss AS (Raufoss AS no longer produces arms) and the consolidation of this and sections of Finland's and Sweden's state-owned ammunition production. The Norwegian subsidiary of Nammo, Nammo Raufoss AS, produces various ammunition types for export. Best known amongst its SALW ammunition types is the 12.7mm (.50 calibre) multi-purpose ammunition,³⁶ which is discussed further in Chapter 3.4. It also produces light anti-tank weapons and associated components.³⁷ Finally, it produces a wide range of pyrotechnic and tracer ammunition.³⁸

The continued Norwegian state ownership of Nammo is the subject of some debate; in 2002 the Ministry of Trade and Industry proposed the sale of some or all assets in several state-owned enterprises.³⁹ Amongst these were the two most prominent Norwegian arms producers, Kongsberg⁴⁰ and Nammo. The Ministry suggested a reduction of its shareholdings in Nammo, with the possibility of a full sale in the future. However, unlike several other state-owned enterprises, no further proposal was submitted to the Norwegian parliament for permission to reduce ownership in Nammo. It is plausible that the negative opinion given by most then opposition parties in the parliamentary committee⁴¹ to a sale of shares in either company was a consideration in this regard. After the change of government in October 2005, the sale was abandoned, and the government has actually increased its ownership of Nammo to 50 per cent (see above).⁴²

Although it would be beyond the scope of this report to discuss the general issue of public ownership in private enterprises at length, it is important to

briefly note that the previous Bondevik government, in its proposal on “smaller and better state ownership”, argued that:

“The government has many tasks and roles. Therefore it is important that the government divides its differing roles so it has the necessary legitimacy whether acting as owner, policy-maker, or supervising authority. [...] There should be no grounds for concern that the government, in its role as an owner of enterprises in competition with others, favours its own enterprises through its role as policy-maker or regulatory and supervisory authority.”⁴³

Such concerns did not appear to be shared in November 2005 by the new Minister of Trade and Industry, Odd Eriksen, who defended increasing the government ownership in Nammo as a means of protecting industry jobs.⁴⁴ Certainly, there is no evidence to indicate that export control decisions have been influenced by the Norwegian government ownership of Nammo. However, the existence of potential conflicts of interest between the two governmental roles of owner and regulator is a matter of concern.

1.7 Norway’s reporting practices and record of transparency

Since 1997 the Norwegian Ministry of Foreign Affairs has produced a report to parliament (known as the *stortingsmelding*) on Norway’s arms exports. In 1997, Norway was one of the few countries to produce such a report, but it has now become the norm for most Western European countries to do this and international standards of transparency have risen dramatically as a result. In 2004 the amount of information provided by the Norwegian report improved notably. However, the *stortingsmelding* is still less transparent than reports provided by some of Norway’s NATO allies and Nordic neighbours, and it fails to provide enough information to allow the Norwegian parliament to fully scrutinise government licensing decisions.

The *stortingsmelding* produced in 2005 mainly contains financial information on the value of defence equipment delivered to each recipient. It also contains a table giving the value of defence services (such as conducting repairs) provided to foreign clients. Many other countries do not include such information – Norway should be commended for providing it. The information on deliveries of weapons is presented in two tables. The first table presents an

The *stortingsmelding* fails to provide enough information to allow the Norwegian parliament to fully scrutinise government licensing decisions.

overview of the total value of category 'A' and 'B' equipment (see Box 1.2) sent to each country. The next table (numbered 7.2 in the 2005 report) provides the bulk of the data found in the report.

'Table 7.2' in the *stortingsmelding* contains information on the total value in NOK of defence equipment delivered to each country. It is then disaggregated by components and complete weapon systems, and category 'A' and 'B' equipment. In addition, a broad description of the equipment is provided, along with its classification on the list of controlled goods (which is also found in the *stortingsmelding*). Table 4 (below) provides a reproduction of 'Table 7.2' from the 2005 *stortingsmelding* concerning exports to Poland:

Table 4: Reproduction of a table from the Norwegian arms export report to parliament concerning trade with Poland⁴⁵

NOK Thousands

Weapon classification	Complete Products		Components		Sum	Description
	Category A	Category B	Category A	Category B		
17,3			141	50	190	Components for rocket motors
6	10640		2164		12804	Cartridges, Components, Explosives
7		8157			8157	Night equipment, Cryptography equipment
Total:	10640	8517	2305	50	21152	

Readers of the report are therefore able to obtain accurate information about the financial value of military equipment sent to each country, and gain a broad impression of what type of equipment was sent. Financial information is useful in assessing the capacity of Poland to pay for this equipment, and whether its arms imports may have a damaging effect upon government expenditure on health, education, etc. While of less relevance to Poland, such considerations are important concerning arms exports to developing countries.

Unfortunately, the information provided is not extensive enough to allow full parliamentary oversight over Norwegian arms exports (surely the main purpose

The *stortingsmelding* tells us little about the quantity exported, exactly what was exported, the identity of the end-user, or what license requests were refused.

of producing a report to parliament). In short, information is vague, or absent, in a number of key areas – it tells us little about the quantity exported, exactly what was exported, the identity of the end-user, or on what grounds license requests were refused.

The above table indicates that “cartridges, components, explosives” were exported to Poland. As they were classified as being in section 6 of the list of controlled goods, we can infer that the components and explosives were for ammunition. However, the *stortingsmelding* does not show the type of cartridges, components or explosives that have been exported. This can be a very important distinction – such information is crucial in determining the risk of the equipment being used to commit serious violations of human rights or international humanitarian law. As noted in Chapter 3.4, Poland produces controversial 12.7mm multi-purpose ammunition under license from the Norwegian company Nammo. If the components and explosives exported to Poland were destined for the production of this ammunition, then the sensitivity of the transfer might be much greater than for other types of ammunition.

Similarly, the end-user of the equipment has not been defined. If the components and explosives are to be assembled in Poland for re-export, then the nature of the Norwegian exports may well be much more sensitive than if these components are destined to be used exclusively by Polish end-users. Furthermore, the quantity of components, explosives or cartridges remains unknown. The price of different types of ammunition can vary considerably – providing information on the value of the transaction alone gives a very vague indication of the actual quantities exported.

Finally, one of the most crucial pieces of information concerning government accountability concerns export licence decisions. The *stortingsmelding* only reports detailed information on arms deliveries (this information is supplied by the exporting companies). However, it is possible that the MFA may have made a decision to license an export that was not actually delivered. More likely, the export licence may concern a much greater quantity or variety of equipment than was actually delivered (purchasers may cancel contracts or reduce the quantity ordered). Therefore, by providing information on deliveries alone, the *stortingsmelding* restricts parliament from properly assessing the MFA’s decisions. Moreover, concerning licence refusals, the 2005 report listed only those countries that had been refused export licences. No information was

The *stortingsmelding* does not show the type of cartridges, components or explosives that have been exported.

The end-user of the equipment has not been defined.

The *stortingsmelding* only reports on arms deliveries, not the actual license.

provided about the type or equipment denied a licence or the reason why the license was refused. Yet it is precisely this type of information that is crucial for those wishing to hold the government to account for its decisions.

Norway is less transparent than other NATO countries.

In its report to parliament, Norway provides much less information than some of its NATO allies. As mentioned the *stortingsmelding* does not detail an export's end-user, the exact nature of the export, or the quantity of weapons exported. By way of contrast we find in similar reports produced for other countries' legislatures that the following arms were exported to Norway during 2004:

- The USA licensed the export of 1 591 units of 'Small Arms Spare Parts (Rifle & Carbine)' to the value of USD 595 475.⁴⁶
- The UK, between April and June, licensed the export of five revolvers.⁴⁷
- On 23rd November a licence to export periscopes from the Netherlands to the value of EUR 76 155 was issued, but the final destination was to be Canada.⁴⁸

Other countries also publish extensive information on licence refusals. For example, the 2003 German report to parliament stated that Germany had refused an export of small arms to Guatemala due to the risk that the weapons could be used to commit serious human rights violations.

As many of the main export customers for Norwegian arms already provide detailed information about their exports (and indeed often publish extensive information on their military procurement), it is very unlikely that the customers of Norwegian arms exports would be offended if Norway were to publish more detailed information about the nature of these exports.

Providing much more detailed information in its arms export report would be the fastest and most inexpensive means of working toward fulfilling Norwegian commitments to encourage greater control over the international trade in small arms and light weapons. Within Norway, providing such information would engender a more informed discussion on arms export policies.

Just as importantly, this would help strengthen international standards concerning transparency – and so encourage a lively debate among other arms exporters. Too often, governments are able to hide their more questionable decisions behind a veil of secrecy. Perhaps the strongest means by which irresponsible exports can be controlled is through the democratic scrutiny of what is being exported to whom. Transparency is a fundamental foundation of all international efforts to control the arms trade.

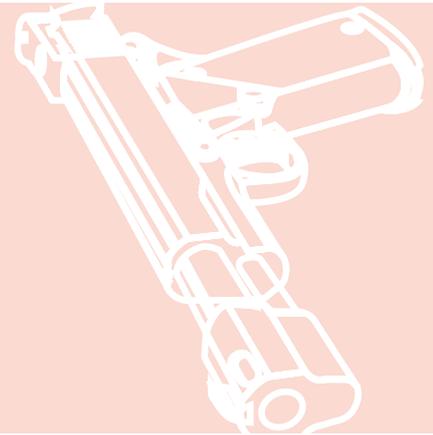
Norway should therefore ensure that it follows, and indeed tries to exceed, the best practices used by its allies and partners in NATO and Western Europe.

Recommendation: In its report to parliament the MFA should publish (in addition to the information already available):

- A detailed description of each type of equipment exported.
- The exact quantity of each type exported.
- The end-user of the equipment.

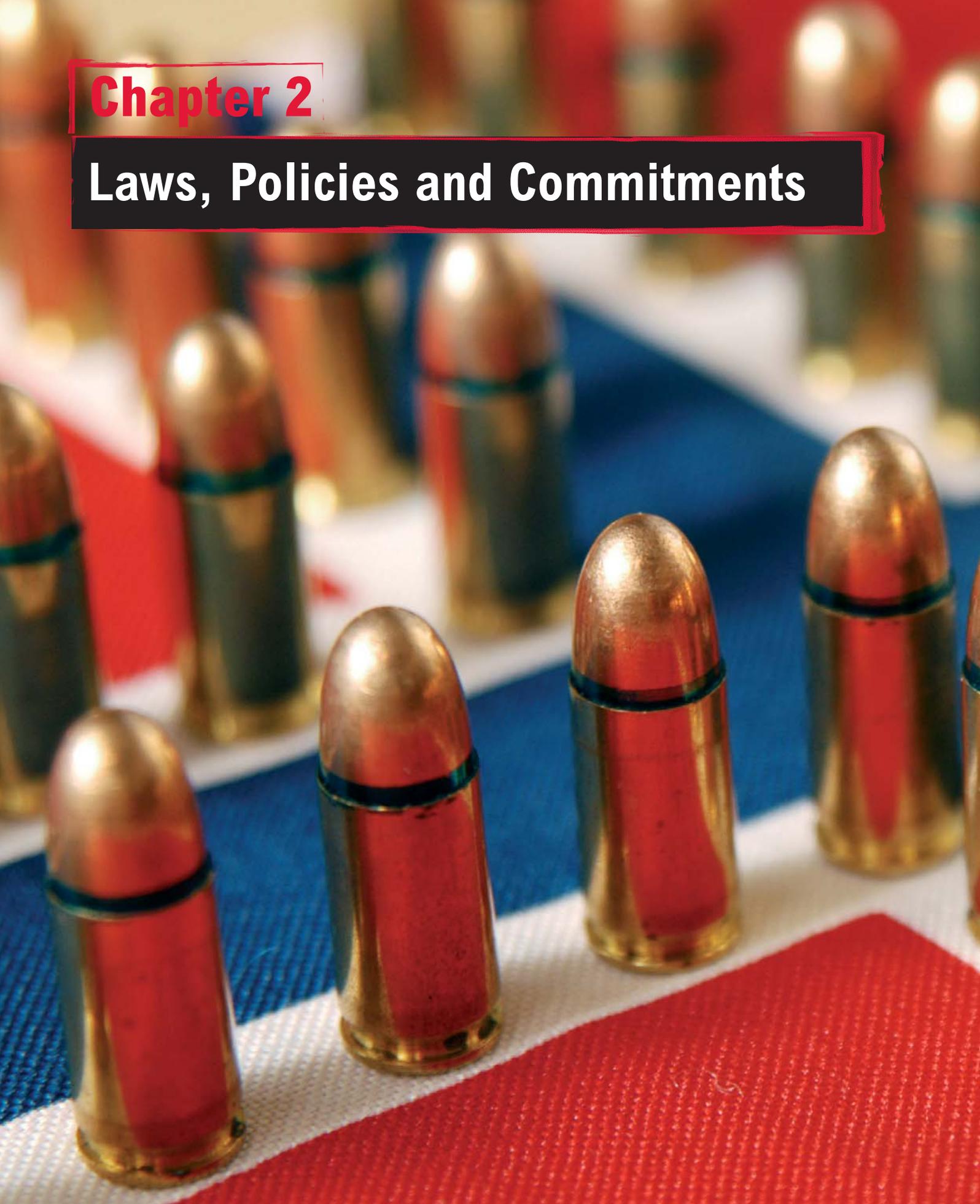
This information should concern both export licenses and deliveries. Similar information should also be provided covering license refusals.⁴⁹ The MFA should also consider following the example of other countries and produce information more regularly.

Too often, governments are able to hide their more questionable decisions behind a veil of secrecy.

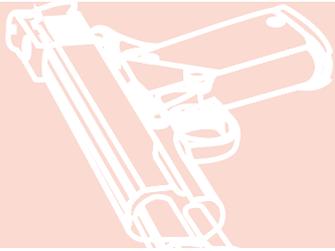


Chapter 2

Laws, Policies and Commitments







This section analyses Norwegian export laws and regulations, and Norway's international commitments. It identifies several areas in which Norwegian laws and regulations could be strengthened. In particular, it recommends that Norway should include explicit reference in its arms export legislation to relevant articles of international human rights law and international humanitarian law.

The Norwegian parliamentary decision does not actually ban exports to countries involved in war, but only to the affected areas.

2.1 Norwegian arms export laws and regulations

The normative basis for Norwegian arms export practice is found first and foremost in a parliamentary decision (*stortingsvedtak*) of 1959 establishing the guiding principle that “Norway will not allow the sale of weapons or ammunition to areas at war, or where there is threat of war, or to countries engaged in civil war”.⁵⁰ The *stortingsvedtak* also underlines that “export of weapons and ammunition can only take place after an extensive consideration of the foreign and domestic consequences”. In 1997, the Norwegian parliament unanimously agreed to a government clarification of the *stortingsvedtak* to include consideration of “aspects connected to democratic rights and fundamental human rights” – but this addition was not elaborated further.

The 1992 MFA arms export guidelines (see Chapter 2.1) state that the government views the *stortingsvedtak* to be mandatory. However, the legal status of the *stortingsvedtak* is unclear (as such a parliamentary declaration is not, in itself, a law). It could though be viewed as a piece of customary law (something implied by the 1992 regulations). However, existence of exceptions (see box 2.1), and inconsistent practices concerning exports to allies and non-allies (see Chapter 3.1), may challenge whether the 1959 *stortingsvedtak* could genuinely be described as being customary law. Moreover, the *stortingsvedtak* is not referred to in Act 73 of 1987 on Control of Export of Strategic Goods, Services and Technology, nor in the 1989 implementing regulations.

While these points place strong and wide-ranging restrictions on destinations for arms exports, their application is more limited than it may at first seem. Unlike, for instance, the Italian law of 1990 on arms exports that prohibits

exports to countries involved in wars contrary to the UN charter or committing serious abuses of human rights, the Norwegian parliamentary decision does not actually ban exports to countries involved in war, but only to the affected areas (see box 2.1).

Box 2.1: The 1959 Parliamentary Decision

The *stortingsvedtak* of 1959 is the normative basis for Norwegian strategic export control. It lays down the guiding principle that weapons or ammunition should not be sold to areas at war (including civil war), or where there is the threat of war. It therefore provides an apparently unequivocal restriction on Norwegian export practice. However, actual export practice seems to indicate that a fairly narrow definition of “areas at war” is used. Following a debate in the Norwegian parliament, anti-ship Penguin missiles were exported to Turkey – despite the long-running civil war in Turkey’s Kurdish areas.⁵¹ Similarly, arms were exported to the US and UK during and after the 2003 invasion of Iraq. In this case it is likely that the exports were not in contravention of the 1959 *stortingsvedtak* because the exports were initially destined for British and American territory, not Iraq directly. Therefore they may not have been viewed as transfers to an “area of war” or indeed an area in which war threatened.

The principal piece of Norwegian legislation defining licensing and export practice is Act 73 of 1987 on Control of Export of Strategic Goods, Services and Technology. In 1989, the MFA put in place an ordinance clarifying and detailing the implications of the 1987 act, and in 1992 internal guidelines for licensing procedures were presented to parliament.⁵² The 1987 law (and associated implementing legislation) grants the MFA exclusive authority to issue licences for the export of all goods with defence implications from Norway as well as controlling the activity of arranging arms deals (see Box 2.2). The 1987 law also covers the activities of Norwegian companies and licensed arms brokers when operating abroad (but not wholly owned subsidiaries of Norwegian companies, see Box 2.3). The customs authorities are charged with ensuring that exports of defence materials from Norway are properly licensed when they leave Norwegian territory.



Box 2.2: Brokering

Brokering concerns the facilitation of the sale of arms between two or more parties. The broker does not need to actually take possession of the weapons involved; they merely act as an intermediary. Norwegian law tightly controls brokering activities, whether or not the transactions occur on Norwegian soil. However, Norway has not followed the practice of other countries (such as the UK), which have published information on the activities of registered arms brokers.

An example of a Norwegian broker is the military and security force supplier, Lilltech AS, which advertises that it can supply security equipment (including machine guns and grenade launchers)⁵³ “mainly into the markets of the Nordic countries.”⁵⁴ The equipment supplied is produced by other companies such as Singapore Technologies Engineering (which was recently excluded from the Norwegian Petroleum Fund’s investment portfolio due to its production of landmines). Lilltech is not included in the list of companies provided in the *stortingsmelding* (see Chapter 1.5), most likely because it does not actually export arms from Norway.



Recommendation: Future reports to parliament should include information on Norwegian arms brokers.

Following the terrorist attacks in the USA on 11th September 2001, the MFA outlined new export controls intended to address the risk of arms exports being diverted to terrorists. This law, though perhaps not much directly affected by the UN Programme of Action on the illicit trade in small arms (PoA) discussed in Chapter 2.3 (the 2005 *stortingsmelding* discusses the proposed new law, with reference to 11th September but not the UN PoA), appears broadly to be in line with the commitments agreed in the PoA. At the time of writing (December 2005), the controls have not yet been finally codified in law; however the proposal was approved in 2005 by the principal chamber of parliament (the *odelsting*) and will be enacted after approval by the upper chamber (*lagting*). The new law will extend considerations of the military implications of arms exports (as found in the law of 1987 and associated legislation) to include the potential for use of exported materials by terrorist groups.

Box 2.3: Foreign Subsidiaries

Brokering licenses are required for Norwegian residents or companies. However, foreign companies owned by Norwegian residents (wholly owned subsidiaries) or companies do not require them. It is therefore possible that subsidiary companies could be located in countries with weak, or non-existent, export control regimes.



Norwegian law does not require a licence for the brokering activities of wholly owned subsidiary companies located abroad.⁵⁵ An example of a Norwegian company that has a foreign subsidiary is the broker Liltech (see Box 2.2). Liltech AS' parent company Liltech Holding AS (both companies are based in Jessheim, Norway) has established several wholly owned subsidiary companies in Bulgaria.⁵⁶ One of these, Liltech Balkan JSC, is, according to the company's website, engaged in the following business:

*"The main activity is foreign trade in the defence, police and security market, medical equipment and computer engineering. The company has a full licence for export, import and re-export of munitions, weapons and other military equipment, as well as engineering and training."*⁵⁷

As Liltech Balkan JSC is a Bulgarian company it is not covered by the Norwegian arms export law. It is important to note that Liltech Balkan JSC is being used here to illustrate the limits of Norwegian jurisdiction, and there is no evidence to suggest that Liltech Balkan JSC has acted in any way that would not be fully legal in Norway.

Nevertheless, a parent company could be prosecuted if its foreign subsidiary were to violate Norwegian criminal law. Concerning arms exports, this would most likely occur if a subsidiary were to violate a UN arms embargo (a criminal offence in Norway) and the parent company could be proven to have had knowledge of the subsidiary's actions.

Recommendation: Subsidiaries of Norwegian companies located abroad (in which the Norwegian company has a controlling interest) should be covered by Norwegian export control laws concerning arms brokering.



There are important weaknesses in Norwegian arms export control law. The most notable example concerns the *stortingsvedtak* of 1959 (see above). Norway therefore lacks an explicit legal requirement concerning the criteria that should be used when determining whether a country is a suitable recipient of Norwegian weapons. This is in contrast to the legal framework in place in other major arms-exporting countries such as Italy and Germany. German law states that an export licence shall not be granted if there is any "danger of the war weapons being used for an act detrimental to peace".⁵⁸

The campaign for an Arms Trade Treaty (ATT) endorsed by Norway calls for legally binding restrictions on arms exports, based on international law (see Box 0.1). If Norway wishes to encourage other states to support the work for an ATT it would no doubt be beneficial to lead by example, by adopting legally binding normative criteria incorporating, *inter alia*, legal restrictions that would prevent Norwegian arms being used to commit gross violations of human rights or international humanitarian law. Moreover, as Norway has signed and ratified numerous international conventions that have relevance to arms exports (see Appendix 3) it would be efficacious to actually codify these commitments into its arms export laws and regulations. As Norway has committed itself to conduct a review of its export law concerning international humanitarian law, such a codification could be undertaken within this process.

Norwegian export law includes no explicit reference to the need for a proposed export to be consistent with international humanitarian law and international human rights law.

At present, Norwegian export law includes no explicit reference to the need for a proposed export to be consistent with international humanitarian law and international human rights law. The 1997 government clarification of the 1959 *stortingsvedtak* added a commitment to take into account human rights concerns, and democratic rights, when evaluating arms export licenses. However, this similarly falls short of a legal requirement to ensure licensing decisions are taken in accordance with international human rights law or international humanitarian law. Moreover, the term "human rights concerns", while a worthy concept, does not provide specific criteria stemming from a legalistic interpretation that would be called for in an Arms Trade Treaty. It is unfortunate that these shortcomings were apparently not considered when the current legislation was in the process of being reviewed after 2001.



Recommendation: A review of Norwegian export control legislation should be conducted with the aim of explicitly including international human rights law and international humanitarian law in the export licensing procedure.

2.2 Decision making process and institutional aspects

Decisions pertaining to the export of strategic goods are taken exclusively by the Norwegian MFA. While other bodies may be consulted, notably the Ministry of Finance, the Ministry of Defence, customs authorities and the police, the decision making process is internal to the Ministry of Foreign Affairs. In most cases, a decision on granting a licence for export is considered ‘unproblematic’ and approved as a matter of ‘routine’ internally in the MFA’s section for export control (the vast majority of Norwegian arms go to NATO allies and other close partners, see Chapter 1.3).⁵⁹

In cases where a proposed export is considered sensitive, regional desks may be asked to provide an analysis of the situation in the proposed destination country with reference to the criteria set out in the *stortingsvedtak* (see Box 2.1) and international obligations, particularly the EU Code of Conduct (see Chapter 2.3). The MFA’s interpretation of such normative criteria includes reference to: the existence of civil war in the recipient country; the presence or threat of war in the region; the country’s human rights situation; the country’s regime type; political stability in the recipient country; the country’s relationship to neighbouring countries and the region; and Norwegian security interests.⁶⁰ On the basis of the advice of MFA regional desks, the export control section will consider the nature of the proposed export, particularly whether the goods exported are likely to be employed in an ‘offensive’ or ‘defensive’ capacity,⁶¹ before making a recommendation that is processed at a senior level. In particularly sensitive cases, the final decision may be taken at a political level (by a secretary of state or minister).

Unlike in Sweden or the USA, there is no means by which parliament can routinely scrutinise arms exports before they have been licensed. Indeed, the reports to parliament produced by the MFA only report weapons that have actually been delivered. Providing a parliamentary committee with advance knowledge of arms exports, and inviting it to express an opinion, would dramatically

Unlike in Sweden or the USA, there is no means by which the Norwegian parliament can routinely scrutinise arms exports before they have been licensed.

improve the level of parliamentary oversight. Opposition to such parliamentary oversight often concerns the lack of capacity by a committee to examine all export license applications. This is not necessarily an insurmountable problem, and many methods could be employed to provide an efficient system – for example a committee could choose to voluntarily limit activities to the most sensitive equipment or likely end-users.



Recommendation: A parliamentary committee should be allowed to examine arms export licenses before they are granted and submit a recommendation to the government.

2.3 Norway's international commitments

Norway has aligned itself with several international documents concerning arms export practice, the most high profile amongst these being the European Union Code of Conduct on Arms Exports. Norway also follows international agreements made at the Organisation for Security and Cooperation in Europe (OSCE) and United Nations.

EU Code of Conduct on Arms Exports and Joint Action on Small Arms.

Although Norway is not a member of the EU it has nevertheless voluntarily agreed to abide by the EU Code of Conduct on Arms Exports.⁶² The MFA section for export control is committed to considering the compatibility of all proposed exports with the Code of Conduct.⁶³ The Code of Conduct contains eight criteria that include references to human rights; armed conflict; terrorism; regional security and economic development. Moreover, Norway has aligned itself with the aims of the EU Joint Action on Small Arms, which notes the undesirability of exporting military small arms to non-state actors. Norwegian law prohibits the export of lethal weapons comprised of category 'A' material to non-governmental end-users (see Box 1.2).

OSCE Criteria on Conventional Arms Transfers and Document on Small Arms and Light Weapons.

As a member of the OSCE, Norway should abide by the Criteria on Conventional Arms Transfers agreed in 1993. The criteria are not dissimilar to those included in the EU Code of Conduct, reaffirming the member states' commitments to observe "transparency and restraint" in arms exports and to "take into account", amongst other things, the human rights situation in a

recipient country and the potential impact on internal and regional stability. In 2000 the OSCE also agreed upon a “Document on Small Arms and Light Weapons”, which contained criteria similar to those contained in the Criteria on Conventional Arms Transfers, and provided the backdrop for the later UN Programme of Action (see below).

Norway is a founding member of the North Atlantic Treaty Organisation (NATO), and its membership has been a cornerstone of Norway’s foreign policy in the post-Second World War era. Since the end of the Cold War NATO has not concerned itself with conventional arms export control. However, the MFA’s 1992 guidelines for export licensing explicitly provide stricter end-user controls for countries outside ‘Group 1’, the core of whose members are NATO countries.⁶⁴ It should be noted in this regard that several NATO countries, amongst them major arms exporters such as Germany, Italy and the US, offer no such formal preferential treatment within export control (see Chapter 3.1).

Norway is committed to implementing the measures described in the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA). The terms of the PoA require signatories to “put in place [...] laws, regulations and administrative procedures”, to prevent the “illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients.’ The problems associated with illicit brokering are an important theme of the PoA. Together with the Netherlands, and in co-operation with regional organisations such as ECOWAS and the OSCE, Norway has undertaken regional awareness-raising campaigns on the problem of arms brokering.

Norway is a leading supporter of disarmament initiatives in countries affected by high levels of armed violence, and international efforts to control the trade in small arms and light weapons. The 2003 and 2005 Norwegian reports on the implementation of the UN Programme of Action list a series of Norwegian small arms initiatives. Through major donations to the relevant OSCE and United Nations Development Programme (UNDP) projects, as well as bilateral projects with developing countries, the Norwegian government has taken a leading role in assisting developing countries in destroying surplus small arms. In 2005 two operations aimed at destroying surplus- and confiscated arms and ammunition were underway in South Africa, as well as in several Balkan countries. Norway was the initiator of and has been the most significant contri-

NATO

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

Norwegian Small Arms Initiatives.

butor to the UNDP Trust Fund for Small Arms, set up in 1998. The Fund has financed projects across the world to address problems associated with small arms proliferation. Perhaps the most high profile of Norwegian SALW-related initiatives is its support for the creation of a moratorium on the small arms trade in the Economic Community of West African States. See Appendix 2 for a list of initiatives supported by Norway.

2.4 The Nordic Pledge 105 on arms exports

In Geneva, during 2003, Norway attended the 28th International Conference of Red Cross and Red Crescent Societies, which brought together 181 National Societies, the International Federation, the ICRC and 191 State Parties to the Geneva Conventions. In addition to the many resolutions and the Agenda for Humanitarian Action, specific humanitarian commitments for the period 2004-2007 were undertaken voluntarily by the participants in the form of pledges. Pledge 105 was made by the governments and the Red Cross societies of Finland, Iceland, Norway and Sweden. It was made under the aegis of General Objective 2 of the Agenda for Humanitarian Action, which includes a commitment to “strengthen the protection of civilians in all situations from the indiscriminate use and effects of weapons and the protection of combatants from unnecessary suffering and prohibited weapons through controls on weapons development, proliferation and use.”

The parties to Pledge 105 resolved:

“[...] to undertake a review of national legislation and policies on arms transfers, in order to explore the possibilities to take international humanitarian law into consideration as one of the criteria on which arms transfer decisions are made and to examine appropriate ways of assessing an arms recipient’s likely respect for international humanitarian law.”⁶⁵

They further committed to:

*"[...] use the result of the review as a basis in order to explore the possibilities to develop a model for the incorporation of international humanitarian law criteria in national arms transfer decision-making, including recommendations for the assessment of an arms recipient's likely respect for international humanitarian law."*⁶⁶

The Government signatories are expected to report on the implementation of the pledge in December 2007 at to the 29th International Conference of the Red Cross and Red Crescent Societies.

Recommendation: The review promised in Pledge 105 should be undertaken openly and published prior to Norway's report, in 2007, on the implementation of the Pledge.

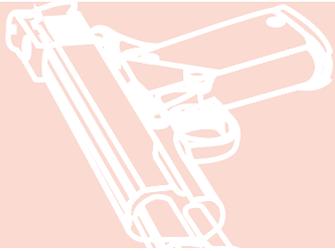


Chapter 3

Causes for Concern







This section ties together findings of the previous sections to explore current causes for concern. It identifies several ways by which weaknesses in the law could allow Norwegian weapons to be transferred to parties involved in war or serious violations of human rights. In particular, it recommends that Norway should rigorously enforce end-user controls concerning exports to NATO members.

As a general rule, Norway has not required end-user certificates from members of the NATO alliance.

3.1 Transfers and re-transfers of arms to NATO allies

As a general rule, Norway has not required end-user certificates (EUCs, see Box 3.1) from members of the NATO alliance. The 2004 *stortingsmelding* stated:

“Concerning exports of weapons and other military material between NATO members defence authorities, it is a longstanding practice that the guiding principle is that end-user declarations with re-export clauses are not required. The reason for this is that one takes on trust a commitment by allies not to re-export imported arms.”⁶⁷

However, parliamentary discussion has focused upon perceived commitments drawing from the North Atlantic Treaty (NAT) encompassing a blanket exemption on end-user control for all arms exports to NATO members. For example, then Prime Minister Kjell Magne Bondevik reinforced this assertion when he stated that “we did not ask – and we never will ask our allies – for an end-user declaration. [...] I agree with those who have said that this will, in practice, amount to withdrawing Norway from NATO.”⁶⁸

As noted in Box 1.3, the 1992 guidelines place NATO members in country Group 1, while a requirement to secure an end-user statement including a re-export clause is limited to members of the two other country groups. The guidelines therefore allow the MFA not to require end-user certificates for exports to NATO member countries. However, it should be noted that neither the 1992 guidelines, nor the 1987 Act (see Chapter 2.1, and above) explicitly state that NATO members are exempted from end-user controls.

It should not be thought that when end-user certificates are not required, the arms in question are exported without any knowledge or consideration. Norway still requires an import certificate demonstrating the receipt of its exports, and export license applications require an exporting company to state the end-user of the arms in question. The MFA may also seek additional documentation from exporting companies, such as orders from foreign customers, which may also state the nature of the end-user.

More importantly, as noted above, the 1992 guidelines do not prevent Norway from seeking end-user controls in special cases – the guidelines only require that Norway seek end-user documentation when exporting to countries outside country Group 1 (see Box 1.3). The MFA handles all license applications on a case-by-case basis and therefore could request additional controls in the case of a particularly sensitive export license. Such a situation may have taken place concerning the licensed production of Nammo ammunition by a company in Poland. A statement by Nammo indicates that end-user documentation would be required before ammunition produced in Poland (using Norwegian components) could be exported to another country.⁶⁹

Box 3.1: End-user Control

End-user control is an essential aspect of effective export control. An end-user certificate (EUC) is a guarantee issued by the importing state of the identity of the final recipient of arms transfers. Without EUCs, even the most stringent export control system could be undermined if weapons were re-exported to another recipient. EUCs are filled out by the initial importing country, and constitute a legal document preventing further transfer from the declared end-user without the initial exporter's approval. Norwegian regulations state that a re-export by a government that has signed an EUC requires the consent of Norwegian authorities.⁷⁰

While such EUCs are an important first step, unless they are monitored and enforced they cannot effectively address the problem of unintended weapons proliferation. The US, through its 'Blue Lantern' programme, has done more than other states in this regard. Through conducting hundreds of routine inspections of shipments and EUCs in foreign countries, including NATO members, the Blue Lantern programme has "significantly encouraged compliance with legal and regulatory requirements and [has] proven particularly effective in addressing the growing problem of gray arms trade – the use of



fraudulent export documentation to acquire defense articles through legitimate channels for endusers [sic] inimical to U.S. interests.”⁷¹ If EUCs are found to have been intentionally violated, the US may engage in a range of measures, including ceasing all arms exports to the relevant country.⁷²

German and Italian legislation also require end-use certificates from these countries’ allies. The Policy Principles of the Government of the Federal Republic of Germany state that “end-use of war weapons and other military equipment must be definitively determined” (making no exceptions for NATO allies) and that if weapons are produced in co-operation with, and exported from, NATO allies, the German federal government will “seek legally binding arrangements on end-use”.⁷³ The Italian export control law of 1990 explicitly states the need for an end-user certificate from all recipients other than companies with which Italy has reciprocal agreements on export control⁷⁴ (this is a reference to cooperative production projects between Italian and foreign companies, such as in the case of the Eurofighter project). However, in both countries the practice, in many cases, is much weaker than the law would suggest. In particular, the 2000 ‘Framework Agreement’ between France, Germany, Italy, Spain, Sweden and the United Kingdom allows for unrestricted trade between the six countries in military components associated with joint defence projects.

The privileged position given to NATO allies by Norwegian practices could appear to be in conflict with the Norwegian *stortingsvedtak* of 1959 and Norway’s international commitments.

The privileged position given to NATO allies by Norwegian practices could, in certain cases, appear to be in conflict with the Norwegian *stortingsvedtak* of 1959 and Norway’s international commitments. For example the 2003 invasion of Iraq by the USA, UK and Australia without the explicit support of a UN Security Council Resolution was viewed by the Norwegian government as being “without the support of the UN Charter”.⁷⁵ The year 2003 saw record sales of defence material, including small arms, to countries involved in the invasion of Iraq. While the text of the 1959 Norwegian parliamentary decision is not legally binding (see above), several parliamentary representatives, amongst them Kristin Halvorsen, the current Minister of Finance (when she was in opposition), have pointed out that the export of arms to countries involved in a war Norway did not consider fully legal seems questionable.⁷⁶

Amnesty International and other human rights organisations have criticised the conduct of US and UK forces in particular in Iraq. These criticisms have included the killing of civilians (particularly by cluster munitions) during the

invasion, and the unlawful torture and killing of civilians by both coalition forces and those of the Iraqi Government.⁷⁷ There is therefore a risk that weapons supplied to the USA or to the UK by Norway could have been used to kill civilians during the invasion of Iraq in 2003, or that they could have been used by coalition forces to commit serious human rights violations.

This practise seriously impairs Norway's ability to determine the final recipients of its arms exports.

Potential Re-exports via NATO Countries

Perhaps even more concerning is the risk of re-export of Norwegian arms from other NATO countries. As noted above, Norway does not generally request the same end-user certification from its NATO allies (and other close partners⁷⁸) as it does from other recipients of Norwegian arms exports. This is concerning as it seriously impairs Norway's ability to determine the final recipients of its arms exports.

Many NATO allies have weaker standards than Norway when determining who may receive their arms exports. Indeed, between 2003 and 2005 the US alone has supplied small arms and light weapons to numerous countries involved in war – such as Israel, Colombia and Nepal – which would not be acceptable destinations for Norwegian exports (see Box 1.3).

Between 2003 and 2005 the US alone has supplied small arms and light weapons to numerous countries involved in war – such as Israel, Colombia and Nepal.

Implementing effective export control when basing all exports to NATO countries “on trust” is evidently very problematic: NATO allies may either re-export Norwegian weapons systems in their entirety, or assemble components exported from Norway into complete systems for export to third countries. This concern is exacerbated by the recent expansion of NATO to include new members such as Poland, Bulgaria, Romania and the Czech Republic. All these countries have shown that in the past they had less strict arms export policies than Norway. For example, the Czech Republic has exported arms to Sri Lanka (see Box 3.3). Romania has exported much of its post-Cold War excess arms to developing nations – in 2001 Romanian authorities licensed the export of 20 000 Kalashnikov rifles to Uganda (a country enduring civil war). These rifles were later found in the hands of armed guerrillas in the Democratic Republic of Congo.⁷⁹ The International Rescue Committee estimated that up to 3.9 million people have been killed as a consequence of the war in DR Congo since fighting broke out there in 1998.⁸⁰

There can be no guarantee that Norwegian arms are not knowingly re-exported to war zones or to countries that commit serious violations of human rights.

As Norway does not generally require any end-user certification from its NATO partners there can be no guarantee that Norwegian arms are not knowingly re-exported to war zones or to countries that commit serious violations of human rights.

Box 3.3: NATO exports to Sri Lanka

Sri Lanka has been in a state of civil war since 1983 and has been the subject of a high profile Norwegian peace initiative. A ceasefire, signed in 2002, has provided the backdrop for peace talks, and in spite of numerous setbacks this ceasefire has held. At time of writing (December 2005), Norway was actively working to resume negotiations.⁸¹ This notwithstanding, several NATO countries continue to export weapons to Sri Lanka.

Over the years 1999-2004 the US authorised the export of USD 41 642 254 worth of military equipment to Sri Lanka. This included some 600 000 cartridges, rifles, pistols and carbines.⁸² The UK, over the same period, authorised arms exports to Sri Lanka worth at least GBP 30 100 000, which included ammunition, machine guns, and sniper rifles.⁸³ Another major supplier to Sri Lanka during that period was the Czech Republic (a member of NATO since 1999), which exported at least USD 20 062 399 worth of arms to Sri Lanka, including small calibre ammunition to the value of USD 8 799 346.⁸⁴ Other NATO members including France, Germany, and Italy have also made significant transfers to Sri Lanka over the same period.⁸⁵

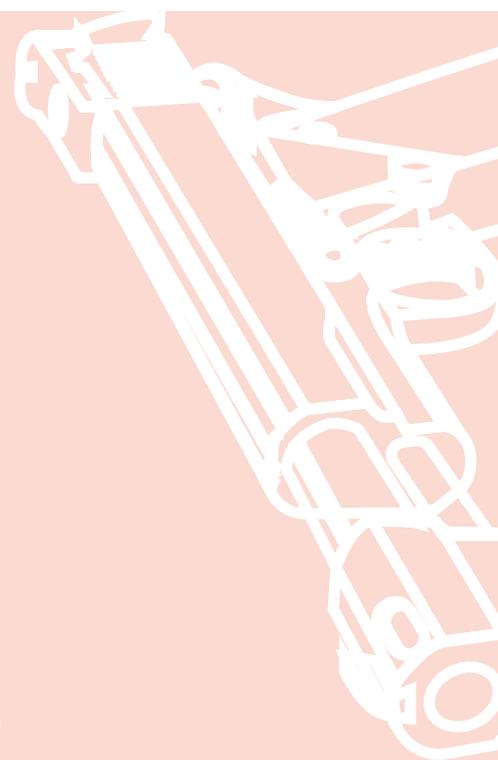
These transfers serve to demonstrate two points. Firstly that NATO member states have a much more relaxed policy concerning arms exports than Norway. Secondly that without end-user guarantees, there is a risk that Norwegian arms, and particularly ammunition, may be re-exported to countries involved in war – even those in which Norway is conducting a peace initiative.

Recommendation: When exporting weapons to NATO countries, Norway should:

- a) Evaluate the risk that the equipment concerned could be used by the importer to commit serious violations of international human rights law or international humanitarian law.
- b) Evaluate the risk that the equipment concerned could be re-exported to a party that might use it to commit serious violations of international human rights law or international humanitarian law.
- c) Where necessary request end-user guarantees from the importers, including commitments concerning how the equipment could be employed, and/or requirements that Norway's consent be given before the equipment is re-exported.

Such commitments by importers would also need to be checked and evaluated. While it may not be possible to monitor all applicable licenses, a proportion could, and should, be monitored on a regular basis.

It is important to reiterate that introducing these controls would not restrict NATO members' ability to buy arms from Norway for their own defence. It would only place restrictions on re-exports to third countries, or the usage of weapons that contravenes international law.



3.2 Licensed production of Norwegian arms overseas

Licensed production overseas (LPO) of SALW is a practice that has existed for well over a century. A licensed production agreement (LPA) allows a holder of certain intellectual property (a licensor) to conditionally transfer some rights to that property (such as the right to produce a good of patented design) to another company (the licensee). As early as 1889 this practice was applied to small arms, through an agreement between the Belgian government and the German firm Mauser to produce Mauser rifles in the new Fabrique Nationale in Belgium.⁸⁶ Norway, for its part, has produced standard-issue assault rifles used by the Norwegian military under license from the German firm Heckler & Koch since the 1960s. Licensed production can be mutually beneficial to licensor and licensee, providing the former with royalty payments and the latter with access to weapons technology often unavailable domestically.



Box 3.4: Licensed Production Overseas

Licensed production is a contentious practice for several reasons:

- Licensed production overseas serves as an alternative to direct export,⁸⁷ thus allowing for the possibility that a licensed production agreement may be entered into where an export licence would not be granted. This concern is explicitly addressed in the MFA's 1992 guidelines on arms exports, in which paragraph 6, point 2, states that it should be ensured that the purpose of the transfer of production is not to circumvent Norwegian export controls.
- It is difficult for the licensor to ensure that the arms produced under license reach solely their intended recipients in that country. For instance, an LPO intended to supply legitimate national defence needs in the licensee country might end up supplying other customers.
- The licensing country may not be able to prevent the licensee from producing more units than the initial contract provided for, or modifying the product without permission. For example, in the late 1980s South Korea produced far more M16s than their license agreement allowed; furthermore the rifle was modified to such an extent that American authorities could not enforce re-export provisions of the license agreement.⁸⁸
- Finally, authorities in the country where the licensed production is located may allow the export of weapons produced there to destinations that authorities in the licensor country would not allow.

LPOs present many difficulties for governments interested in maintaining strong control over arms proliferation.

As described in Box 3.4, LPOs present many difficulties for governments interested in maintaining strong control over arms proliferation. Examples of the unintended proliferation of weapons systems produced under licence abound. In the mid-1960s the West German government arranged for the licensed production of G3 assault rifles in Iran. Production continued after the Islamic revolution in 1979, and despite Heckler & Koch (the German producing company) statements declaring previous license agreements invalid, Iranian companies continue to produce and export versions of Heckler & Koch products to, amongst others, Sudan.⁸⁹

The Norwegian ammunition producer Nammo has engaged in several LPAs with different foreign licensees. As noted in Chapter 3.4, there are serious concerns regarding the proliferation of Nammo 12.7mm multi-purpose ammuni-

on, and the production of this ammunition through LPAs may risk intensifying these concerns. Although precise information as to the extent of such deals is protected by commercial confidentiality and is therefore not publicly available either from Nammo or the Norwegian government, the existence of such deals has been confirmed and they are occasionally announced by Nammo.

The 1992 arms export guidelines state that the transfer of technology and production rights must be licensed and can only concern countries contained in Group 1 (see Box 1.3). This point has been reiterated by a Nammo spokesperson who stated that such LPAs have only been concluded with NATO countries.⁹¹ One such agreement concerns the production of Nammo-designed ammunition (including 12.7 multi-purpose ammunition) by a company based in Poland.⁹² A feature of this agreement, according to a Nammo press release, is that production in Poland would also be sold to other markets.⁹³ Amnesty International Norway raised this issue in a letter to the Norwegian Ministry of Foreign Affairs, but did not receive any assurances concerning where Poland might be permitted to export the ammunition to. However, Nammo has stated that such exports from Poland would require the prior permission of Norwegian authorities (see Chapter 3.1).

Nammo has also signed a contract with SME Ordinance of Malaysia that, according to a Nammo press release, concerns “cooperation on production” of ammunition.⁹⁴ This cooperation may not involve the transfer of production technology (instead components produced in Norway could be assembled in Malaysia). Amnesty International Norway raised its concerns about this deal with the Norwegian MFA after evidence came to light in a 2004 Amnesty International report that Malaysia had been involved in arming the government of Sudan.⁹⁵ The MFA responded and assured Amnesty International that Nammo’s agreement in Malaysia is restricted to supplying the Malaysian military⁹⁶ and that the equipment in question is not bound for re-export. However, it did not respond to a question by Amnesty International Norway concerning how the agreement was being monitored.

Readers may question whether this arrangement with Malaysia is in accordance with the 1992 arms export guidelines which state that a production agreement can only be concluded with a country in Group 1 (see Box 1.3) and cannot be used to circumvent Norwegian export controls. In this light it should be noted that in 2003 Malaysia received an export from Norway of cartridges,

components, and diverse materials for ammunition to the value of NOK 33 171 000. One assumes that the components and materials are to be assembled to create a finished product in Malaysia. This export was made up almost exclusively of category 'A' material (see Box 1.2), which may only be sent to countries in Group 1 (see Box 1.3). Therefore, Malaysia has been determined to be a suitable recipient of Norwegian exports of lethal equipment.

It is unclear exactly how stringently production arrangements with foreign companies are being monitored, and exactly what controls have been implemented concerning the export of arms by licensees in foreign countries (especially if they are located in NATO member states).

Recommendation: Norway should:

- a) Strictly control the nature of all recipients of military equipment made under agreements to produce or assemble of Norwegian arms in foreign countries (including those in NATO member states).
- b) Monitor compliance by the foreign licensees.

3.3 Petroleum fund investments

Norway is the world's third largest oil exporter⁹⁷ and fourth largest exporter of gas,⁹⁸ and it invests a majority of the considerable revenues of its petroleum sales in shares and bonds through the Petroleum Fund⁹⁹. The Fund is owned by the Ministry of Finance and its portfolio is managed by the Norwegian Central Bank. By the end of the second quarter of 2005, the Fund had assets amounting to a total value of NOK 1184 billion. A royal commission appointed in 2002 to consider the future investments of the Fund recommended the establishment of ethical guidelines for the management of the Fund's investment portfolio. These were established by law in 2004; practically, the ethical guidelines provided both *ex-ante* and *ex-post* control, respectively through incorporation of the guidelines into the internal corporate governance principles of the Central Bank, and through an independent advisory Council on Ethics (etikkråd). The principal goal of the Fund's corporate governance is to secure the interests of its owners, in other words the long-term profitability of the Fund. While this may be perceived as being in opposition to the ethical guidelines, the Bank's

Head of Corporate Governance, Dr. Henrik Syse, stresses that this is often a false contradiction and that in practice long-term profitability often coincides with, or even requires, ethical investment practice.¹⁰⁰ As Dr. Syse argues, the long-term profitability of the fund may best be served by avoiding investments in firms that are engaged in supplying weapons to regions involved in warfare (as warfare may damage the long-term profitability of many of the fund's investments).¹⁰¹ The Bank exercises its ethical responsibilities through its ownership rights, informing companies' management of – and holding them to account for – potentially unethical business practices.

The Council on Ethics is charged with recommending companies for exclusion from the Fund's portfolio to the Ministry of Finance (which has so far approved its recommendations in full). The regulations therefore require that the Petroleum Fund withdraw from certain companies rather than try to exert influence as shareholders.

The ethical guidelines emphasise that investments should be made in accordance with the UN Global Compact and the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, both of which prioritise companies' commitments to human rights. Furthermore, the guidelines concerning the exclusion of companies make specific mention of arms-producing companies, though only to the extent that the "normal use" of weapons produced contravene fundamental humanitarian principles – such as nuclear weapons, cluster munitions, or land mines. The most pertinent section of the Ethical Guidelines from a small arms perspective is point 4.4:

"The Council shall issue recommendations on the exclusion of one or more companies from the investment universe because of acts or omissions that constitute an unacceptable risk of contributing to:

- *Serious or systematic human rights violations, such as murder, torture, deprivation of liberty, forced labour, the worst forms of child labour and other forms of child exploitation*
- *Grave breeches of individual rights in situations of war or conflict*
- *Severe environmental degradation*
- *Gross corruption*
- *Other particularly serious violations of fundamental ethical norms"*¹⁰²

Most interesting from the perspective of this report are the investments made by the Petroleum Fund in companies involved in producing conventional arms that may be supplied to users in violation of the above principles. In line with the prohibition on investments in companies complicit in “grave or systematic breaches of human rights”, it is likely that the Petroleum Fund should cease investment in companies that wilfully allow the export, re-export, or licensed production of their weapons to contribute to parties involved in war or the violation of human rights.

The Council on Ethics recommended that the Petroleum Fund should not invest in EADS. But the fund held shares in DaimlerChrysler, a company that owned 30,2 per cent of EADS.

The Council on Ethics began operations in 2005 (according to the criteria laid down by parliament in November 2005), and its company screening systems were being developed at the time this report was being written (December 2005). It is therefore interesting to highlight instances that may be examined by the Council on Ethics.

The Council on Ethics has, for example, recommended that the fund should not invest in the European Aeronautics Defence and Space Company (EADS)¹⁰³ as this company was involved in the manufacture of cluster munitions. However, in 2004, the fund held shares in DaimlerChrysler, a company that owned 30.2 per cent of EADS.¹⁰⁴ The extent to which a company is complicit in the activities of the firms in which it is a partial owner will doubtless pose a vexed question for the Council on Ethics. It should be noted that the Ethical Guidelines for the Petroleum Fund establish the precedent that an investor may be complicit in the activities of the companies in which it invests. Indeed, the complicity of investors in the activities of such companies is a fundamental part of the rationale for having Ethical Guidelines in the first place.¹⁰⁵

Other activities of DaimlerChrysler might also warrant investigation by the Council on Ethics. Jane’s Defence Weekly, a leading defence industry journal, reported in 2005 that DaimlerChrysler were producing engines for the Daewoo Barracuda Armoured Personal Carrier, a number of which have been supplied to the Indonesian armed forces. In 2005 Human Rights Watch reported on the continued ‘routine’ human rights abuses perpetrated by the Indonesian armed forces.¹⁰⁷ A DaimlerChrysler subsidiary, MTU Friedrichshafen, also produces engines for the General Dynamics produced Merkava tanks used by the Israeli Defence Forces (IDF).¹⁰⁸

The IDF also uses the Apache attack helicopter,¹⁰⁹ produced by the Boeing Corporation. During 2004 the Petroleum Fund held shares in Boeing to the approximate value of NOK 115 million. In January 2006 the Council on Ethics recommended that Boeing be excluded from the Petroleum Fund due to its involvement in the production of nuclear weapons.¹¹⁰ The Council on Ethics might also have considered excluding Boeing due to its production of Apache Helicopters. For example, Amnesty International reported that in 2002 raids on Palestinian refugee camps in Gaza the IDF has used:

"[...] hellfire missiles from Apache helicopters, tank rounds and bullets from heavy machine guns mounted on Merkava tanks. This represents a disproportionate use of lethal force and endangers the lives of ordinary people in the camps. In addition, the IDF [...] has frequently targeted ambulances".¹¹¹

The complicity of companies that supply military equipment, or essential components such as engines, which are used to commit violations of human rights may similarly concern the Council on Ethics.

An example of more direct investment in the production of complete weapon systems is found in the 2004 Petroleum Fund ownership of shares in BAE Systems and Finmeccanica, who together jointly own the company Augusta Westland. It was reported that both these companies were excluded from the Petroleum Fund in January 2006 due to their involvement in the production of nuclear weapons.¹¹² However, there may have been other justifications for removing them from the fund. Augusta Westland has, according to *Jane's Defence Weekly*, been instrumental in the Chinese government's Z-10 Combat Helicopter programme.¹¹³ China's armed forces have a notorious human rights record and China continues to assert its territorial claim on Taiwan, with a commitment to use force if necessary. For these reasons the US and the EU have maintained an embargo on arms sales to China (which Norway follows) since the Tiananmen Square massacre took place in 1989. An investment in a company that actively contributes to China's offensive capability and capacity for internal repression may well have constituted a breach of points one, two and five of section 4.4 in the Ethical Guidelines (see above).

A final example of something that the Council on Ethics may need to consider concerns Western Sahara. In 2005 the Council on Ethics excluded the Kerr-McGee Corporation from investment by the Petroleum Fund because it had

engaged in oil exploration off the coast of Western Sahara. Western Sahara is controversial because it has been the location of a long running civil war following the illegal invasion of the country by Morocco in 1975. However, Royal Ordnance, a BAE Systems (then British Aerospace) subsidiary, received in 1999 a UK government license to refurbish 30 artillery guns that had been used by the Moroccan armed forces in Western Sahara (the contract was reported to be worth GBP 3 500 000).¹¹⁴ At the time, as in 2004, the Petroleum Fund held shares in BAE Systems/British Aerospace.¹¹⁵ Similarly, investment in a company that has supported an army engaged in an illegal occupation may well have been an additional reason to exclude BAE Systems.



Recommendation: The Council on Ethics should ensure that it is able to systematically monitor the involvement of companies in serious violations of human rights.

3.4 Production of Nammo 12.7mm multi-purpose ammunition

The 12.7mm multi-purpose ammunition is widely employed in sniper rifles that are likely to be used to specifically target personnel.

The Norwegian ammunition factory *Raufoss ammunisjonsfabrikk* originally developed its multi-purpose ammunition for use by fighter aircraft (the company has since been incorporated into Nammo AS, see Chapter 1.6). The ammunition is unique in that it contains a tungsten armour-piercing core, and an explosive charge that detonates shortly after the round strikes a target. When fired at a soft skinned vehicle (such as an aircraft) this ammunition has a devastating effect as the explosive charge detonates inside. The use of this against aircrafts, vehicles, and other machines is uncontroversial. However, over the past two decades, a change in the ammunition's role has become apparent. The 12.7mm multi-purpose ammunition is widely employed in sniper rifles that are likely to be used to specifically target personnel.

One of the core building blocks of international humanitarian law, much of which has subsequently been reaffirmed in other conventions, was the 1876 St. Petersburg Declaration. This groundbreaking document was the first to declare that specific types of weapons should be outlawed due to the principle that no weapons should cause superfluous injury or unnecessary suffering. The aim of the St. Petersburg Declaration, which was endorsed by 20 of the leading states of the day including Sweden-Norway, was to prohibit exploding bullets (any

round weighing less than 400 grams). The International Committee of the Red Cross has expressed its concern that the Nammo ammunition might undermine international respect for the St. Petersburg Declaration.

The 1991 Gulf War saw the use of 12.7mm multi-purpose rounds in sniper rifles, and a media report described how (on at least one occasion) they were used to shoot personnel.¹¹⁶ In addition, a new sniper rifle, designed in the 1980s by Barrett Firearms Manufacturing, Inc. to fire 12.7mm rounds, became popular amongst military and civilian gun users (especially in the USA). The procurement specifications for a US military 12.7mm sniper rifle (designated XM 107) stated that the 12.7mm multi-purpose ammunition “cartridge will be used as the primary tactical round”.¹¹⁷ The US contract was awarded to Barrett Firearms Manufacturing, Inc., and by the end of the 1990s this company had sold similar 12.7mm sniper rifles to many countries across the globe, including Bahrain, Bhutan, Botswana, Chile, Kuwait, Jordan, Mexico, Oman, Philippines, Qatar, Saudi Arabia, Turkey and the UAE.¹¹⁸

Box 3.5: Tests of Multi-purpose Ammunition

Nammo’s 12.7mm multi-purpose ammunition has been tested several times since 1998 at the Swiss ballistic range in Thun, reinforcing the International Committee of the Red Cross’ (ICRC) concerns. The 1998 tests, in which the bullets were fired under controlled conditions into glycerine blocks that simulated human flesh, indicated that half of the bullets fired exploded inside the glycerine blocks (the others passed through without exploding). Further tests in 2001 were carried out against targets fitted with bullet proof vests – all four bullets that were fired, exploded. A report was circulated to governments by the ICRC. It should be noted that the results of these tests are disputed; the Norwegian Defence Research Establishment claims the devastating effect noted on the glycerine blocks was the result of the bullet tumbling.

However, in spite of ICRC warnings that use of this ammunition against personnel “undermine[s] respect for the 1868 St. Petersburg Declaration”, the government of Norway has consistently refused to introduce extra specific controls upon who is authorised to purchase or produce it. This opposition has been based upon two arguments. Firstly, that the ammunition would pass through the human body without exploding, and secondly that in any case the

The government of Norway has consistently refused to introduce extra specific controls upon who is authorised to purchase or produce Nammo's 12,7 mm multi-purpose ammunition.

ammunition would never be used against human targets. To this end, in February 2003, then Norwegian Prime Minister Kjell Magne Bondevik stated that if new evidence came to light that the ammunition had been used against people, or was intended to be used against people, the government would reconsider its position.¹¹⁹

Bondevik's position was interesting as such evidence was already available. On 29th January 2003, the Norwegian television channel TV2 broadcast an interview with an anonymous Norwegian soldier who had witnessed US soldiers in Somalia using the ammunition to target and kill a Somali. Documentary evidence also indicates an intention to use the ammunition against personnel. For example, a 2001 US Department of the Army procurement document stated that the 12.7mm multi-purpose ammunition would be procured because "The cartridge provides improved penetration performance against light armour vehicles and personnel."¹²⁰ Most importantly, in 2004 the Norwegian Newspaper *Nationen* reported that it had received confirmation from the US government that the 12.7mm multi-purpose ammunition had been used by US forces in Iraq against both objects and personnel.¹²¹ However, despite the then Prime Minister's assurances, a review of the ammunition's legality and suitable uses has not taken place.

Any future Norwegian review of the ammunition's use may well be too late. It has been purchased in very large quantities – the US army alone planned to purchase a total of 3 632 000 rounds by the end of 2006.¹²² Unfortunately, Norwegian Ministry of Foreign Affairs reports on Norwegian arms exports do not allow a reader to find out to which countries the 12.7mm multi-purpose ammunition has been exported (it is impossible to disaggregate this type from other types of ammunition). Concerns about the proliferation of this ammunition were raised in 2003 when Norwatch revealed that a Czech company was advertising the Nammo 12.7mm multi-purpose ammunition for sale at a Latin American arms fair.¹²³ It has also been advertised for sale on US-based websites. Moreover, as mentioned in Chapter 3.2, Nammo has licensed other companies to manufacture this ammunition abroad.

It is therefore likely that even if Norway were to introduce stronger controls over the use or export of the ammunition, it would be too late to prevent its use in many potential violations of international humanitarian law.

Recommendation: Norway should conduct an open review of the compliance of 12.7mm multi-purpose ammunition with international humanitarian law.



Concluding

Remarks & Recommendations

This report identifies numerous instances in which the Norwegian government's and parliament's insight into and control of arms exports, production, and investments could be improved. Many of these improvements are necessary in order to deal with an increasingly globalised arms industry. In particular, the 1959 parliamentary decision not to export to areas involved in war should be updated to include specific reference to international law, and to extend its jurisdiction to cover indirect means by which Norwegian arms exports may reach illegitimate end-users.

It would therefore be high time for the Norwegian parliament to instruct the government to conduct an open review of its export control legislation. In particular, this report makes a series of recommendations that might be considered in such a review, namely:

- To increase openness and transparency the MFA should publish much more detailed descriptions in the stortingsmelding of equipment exported under categories 'A' and 'B'.
- When reporting to the UN Norway should use the 1997 UN Panel of Experts' definition of small arms and light weapons which includes all types of small arms, light weapons, ammunition, and components.
- Future reports to parliament should include information on technology transfer and production or assembly arrangements licensed by Norwegian companies to companies located abroad.
- Information collected from the Ministry of Defence and the Ministry of Justice on 'non-commercial' arms transfers from Norway should be included in future reports to parliament. Reports to parliament should present information on all transfers of arms from Norway.

- ⌞ In its report to parliament the MFA should publish (in addition to the information already available):
 - A detailed description of each type of equipment exported.
 - The exact quantity of each type exported.
 - The end-user of the equipment.

This information should concern both export licenses and deliveries. Similar information should also be provided to cover license refusals. The MFA should also consider following the example of other countries and produce information more regularly.

- ⌞ Future reports to parliament should include information on Norwegian arms brokers.
- ⌞ Subsidiaries of Norwegian companies located abroad (in which the Norwegian company has a controlling interest) should be covered by Norwegian export control laws concerning arms brokering.
- ⌞ A review of Norwegian export control legislation should be conducted, with the aim of explicitly including international human rights law and international humanitarian law in the export licensing procedure.
- ⌞ A parliamentary committee should be allowed to examine arms export licenses before they are granted and submit a recommendation to the government.
- ⌞ The review promised in Pledge 105 should be undertaken openly and published prior to Norway's report, in 2007, on the implementation of the Pledge.

- ✚ When exporting weapons to NATO countries, Norway should:
 - a) Evaluate the risk that the equipment concerned could be used by the importer to commit serious violations of international human rights law or international humanitarian law.
 - b) Evaluate the risk that the equipment concerned could be re-exported to a party that might use it to commit serious violations of international human rights law or international humanitarian law.
 - c) Where necessary request end-user guarantees from the importers, including commitments concerning how the equipment could be employed, and/or requirements that Norway's consent be given before the equipment be re-exported.

Such commitments by importers would also need to be checked and evaluated. While it may not be possible to monitor all applicable licenses, a proportion could, and should, be monitored on a regular basis.

- ✚ Norway should:
 - a) Strictly control the nature of all recipients of military equipment made under agreements to produce or assemble Norwegian arms in foreign countries (including those in NATO member states).
 - b) Monitor compliance by the foreign licensees.
- ✚ The Council on Ethics should ensure that it is able to systematically monitor the involvement of companies in serious violations of human rights..
- ✚ Norway should conduct an open review of the compliance of 12.7mm multi-purpose ammunition with international humanitarian law.

Appendix 1

Methodology

This report relies mainly on Statistics Norway data, based on customs receipts, for the value of SALW exports and imports. Where foreign figures are referred to, these are mainly drawn from the NISAT database of UN Comtrade figures, also based on customs receipts. Statistics Norway and UN Comtrade rely on the same weapons categories, found in the 'Harmonised System' (HS) codes given. The following customs codes were used throughout, encompassing our definition of SALW (some codes' descriptions have been simplified):

Code	Description
930190 (after 2002)	Military firearms (assault rifles, machine guns, military shotguns, etc.)
930200	Revolvers and pistols
930310; 930320; 930330	Hunting/sporting rifles and shotguns
930510	Parts and accessories for revolvers or pistols
930521; 930529	Parts and accessories for hunting/sporting shotguns & rifles
930590 (up to 2002); 930591 & 930599 (after 2002)	Parts and accessories for military weapons
930621	Shotgun cartridges
930629	Air gun pellets, parts of shotgun cartridges
930630	Cartridges and parts (small arms ammunition)

All NOK and USD figures quoted in this report are adjusted according to official Norwegian price deflator figures, and US GDP deflator figures.

Appendix 2

Norwegian policy initiatives

Norway's most high profile policy initiative has been organising and funding the work on the Moratorium on the Manufacture, Import, and Export of Small Arms in West Africa. In 1997, the Norwegian Initiative on Small Arms Transfers (NISAT), supported by the UNDP, began arranging consultations between the Economic Community of West African States (ECOWAS) and The Wassenaar Arrangement (WA), representing most of Europe and North America, including all main western arms exporters, as well as Japan, South Korea, Australia, New Zealand and Argentina. The following Oslo conference resulted in a Platform for a Moratorium on Small Arms in West Africa, which was supported by all representatives of ECOWAS and the WA. In 1998, all 15 member states of ECOWAS committed themselves to the Moratorium. After the plan's announcement by the President of Mali, Norway donated USD 2.5 million to supporting Mali's domestic Disarmament, Demobilisation and Reintegration programme, and later USD 1 million to the development of the ECOWAS Moratorium. Norway has continued to support the Moratorium at the UN and encourages other countries to contribute. The Moratorium is widely seen as an example to other regions negatively affected by the proliferation of small arms. Several UN General Assembly resolutions have since been passed in support of the moratorium.

Norwegian Initiatives/Contributions Until 2005

Country/Region	Year	Description
South Africa	2000	Destruction of surplus weapons
	2001	Destruction of surplus weapons
Malawi	1999-2001	Project on community safety, policing and firearms control
Southern Africa	1996-2005	Institute for Security Studies, Pretoria
	-2002	Safer Africa programme for promoting human security
Western Africa	1998-	ECOWAS Moratorium/PCASED
Eastern Africa	-2002	Security Research and Information Centre, Nairobi
Albania	1998-	Destruction of surplus weapons
Kosovo	2000/2001	Destruction of surplus weapons
Tajikistan	2005	OSCE SALW destruction
Ukraine	2005	Partnership for Peace SALW destruction
Romania, Bulgaria, Macedonia	2000/2002	Stockpile management
Frm. Yugoslavia	-	Weapons Collection Campaign
Brazil	-2005	Gun violence prevention project
International	-	International Programme Council of Small Arms Survey
International	-	Bonn International Centre for Conversion (BICC) study on OSCE surplus disposal policies
International	-	UNDP Trust Fund for Small Arms
Norway	-	Norwegian Initiative on Small Arms Transfers (NISAT)

Source: Norway, Ministry of Foreign Affairs. 2005. *Norwegian National report on the implementation of The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.*; and Norway, Ministry of Foreign Affairs. 2003. *Norwegian National report on the implementation of The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.* Both are available at: <<http://disarmament2.un.org/cab/salw-national-reports.html>> accessed 7 February 2006.

Appendix 3

Compilation of Global Principles for Arms Transfers

NOTE: This section and corresponding notes are written and proposed by Africa Peace Forum, Amnesty International, Arias Foundation, Caritas International, Friends Committee on National Legislation, Non-Violence International, IANSA, Oxfam International, Project Ploughshares, Saferworld, Schweitzer Institute, Sou da Paz, Viva Rio, and WINAD, with the assistance of the Federation of American Scientists and the Lauterpacht Centre, Cambridge University.

The following Principles bring together States' existing obligations under international law and standards in respect of the international transfer of arms and are proposed by a diverse group of non-governmental organisations¹. The Principles reflect many international instruments of a different nature: universal treaties, regional treaties, declarations of the United Nations, multi-lateral or regional organizations, and regulations intended to be a model for national legislation, etc. Some of the Principles reflect customary and treaty law, while others reflect developing law or best practices gaining wide acceptance. The compilation indicates to states the best general rules to adopt in order to establish effective control of international transfers of all conventional arms according to the rule of law.

Principle 1: Responsibilities of states

All international transfers of arms shall be authorised by a recognized state and carried out in accordance with national laws and procedures that reflect, as a minimum, states' obligations under international law². Authorisation of each transfer shall be granted by designated state officials in writing only if the transfer in question first conforms to the Principles set out below in this instrument and shall not be granted if it is likely that the arms will be diverted from their intended legal recipient or re-exported contrary to the aims of these Principles³.

Principle 2: Express limitations⁴

States shall not authorize international transfers of arms that violate their expressed obligations under international law.

These obligations include:

- A. Obligations under the Charter of the United Nations – including:
 - binding resolutions of the Security Council, such as those imposing arms embargoes⁵;
 - the prohibition on the use or threat of force⁶;
 - the prohibition on intervention in the internal affairs of another state⁷.
- B. Any other treaty or decision by which that state is bound, including:
 - Binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional organizations to which a state is party⁸;
 - Prohibitions on arms transfers that arise in particular treaties which a state is party to, such as the 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its three protocols, and the 1997 Anti-personnel Mines Convention⁹.
- C. Universally accepted principles of international humanitarian law – including:
 - The Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering¹⁰;
 - The Prohibition on weapons that are incapable of distinguishing between combatants and civilians¹¹.

Principle 3: Limitations based on use or likely use¹²

States shall not authorize international transfers of arms where they will be used or are likely to be used for violations of international law, including:

- A. breaches of the UN Charter and customary law rules relating to the use of force¹³;
- B. gross violations of international human rights law¹⁴;
- C. serious violations of international humanitarian law, genocide, and crimes against humanity¹⁵;

Principle 4: Factors to be taken into account¹⁶

States shall take into account other factors, including the likely use of the arms, before authorizing an arms transfer, including the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control, and disarmament¹⁷.

States should not authorize the transfer if it is likely to:

- A. be used for or to facilitate the commission of violent or organised crime¹⁸;
- B. adversely affect regional security or stability¹⁹;
- C. adversely affect sustainable development²⁰;
- D. involve corrupt practices²¹;
- E. contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non- proliferation, arms control, and disarmament to which the exporting, importing, or transit states are party²²;

Principle 5: Transparency²³

States shall submit comprehensive national annual reports on international arms transfers to an international registry, which shall publish a compiled, comprehensive, international annual report. Such reports should cover the international transfer of all conventional arms including small arms and light weapons.

Principle 6: Comprehensive Controls²⁴

States shall establish common standards for specific mechanisms to control:

- 1. all import and export of arms²⁵;
- 2. arms brokering activities²⁶;
- 3. transfers of licensed arms production²⁷; and
- 4. the transit and trans-shipment of arms.²⁸

States shall establish operative provisions to monitor enforcement and review procedures to strengthen the full implementation of the Principles.

¹⁾ This group of non-governmental organisations includes: Africa Peace Forum, Amnesty International, Arias Foundation, Caritas International, Friends Committee on National Legislation, Non-Violence International, IANSA, Oxfam International, Project Ploughshares, Saferworld, Schweitzer Institute, Sou da Paz, Viva Rio, and WINAD. Advisors to SC are the Federation of American Scientists and the Lauterpacht Centre, Cambridge University. The group has agreed the Global Principles as a collective proposal. The annotated notes below have been drafted by legal and policy advisors to the group but have not been collectively agreed by the group as such. The notes are included here as an aid to discussion of the validity and relevance of the Principles.

²⁾ This principle reflects the responsibility of states to regulate all international arms transfers within their jurisdiction and the requirement of all states to effectively licence, monitor and prevent the diversion of such arms transfers according to national laws, mechanisms and procedures in conformity with international law and standards.

The United Nations, in keeping with its overall purposes and principles, has a legitimate interest in the field of arms transfers, recognized by the UN Charter, which refers specifically to the importance of the regulation of armaments for the maintenance of international peace and security. In its

resolution 46/36 H, the General Assembly called upon all States to give high priority to eradicating illicit arms trafficking in all kinds of weapons and military equipment; urged Member States to exercise effective control over their weapons and military equipment and their arms imports and exports to prevent them from getting into the hands of parties engaged in illicit arms trafficking; and also urged Member States to ensure that they had in place an adequate body of laws and administrative machinery for regulating and monitoring effectively their transfer of arms, to strengthen or adopt strict measures for their enforcement, and to cooperate at the international, regional and sub-regional levels to harmonize, where appropriate, relevant laws, regulations and administrative procedures as well as their enforcement measures, with the goal of eradicating illicit arms trafficking. According to the United Nations "Guidelines for International Arms Transfers in the context of General Assembly resolution 46/36 H of 6 December 1991", adopted by the Disarmament Commission in May 1996, and commended by the General Assembly in Resolution A/RES/51/47 of 10 December 1996, "Limitations on arms transfers can be found in international treaties, binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations and the principles and purposes of the Charter." [Paragraph 8] Moreover "Illicit arms" trafficking is understood to cover that international trade in conventional arms, which is contrary to the laws of States and/or international law." [Paragraph 7] To

give effect to such international obligations, the UN Guidelines state that: "States should establish and maintain an effective system of export and import licences for international arms transfers with requirements for full supporting documentation." [Paragraph 26] and that "In order to help combat illicit arms trafficking, States should make efforts to develop and enhance the application of compatible standards in their legislative and administrative procedures for regulating the export and import of arms." [Paragraph 36]

In the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Programme of Action), UN Document A/CONF.192/15, 20 July 2001 (UN Programme of Action on small arms and light weapons) (Section II, Paragraph 11) states agreed: "To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade." In addition, states agreed (Article II, Section 2) "To put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients." And moreover in Article II, Section 11: "... to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons."

Article 10, Section 1 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (UN Firearms Protocol) states: "Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as measures on international transit, for the transfer of firearms, their parts and components and ammunition."

It is also incorporated into all regional arms control measures, for example, the OAS Model Regulation for the Control of the International Movement of Firearms, their Parts, Components and Ammunition (OAS Model Regulations for the Control of Firearms), endorsed by the OAS General Assembly in June 1998, provides detailed requirements about procedure to export, import and transit arms, and specifies the information required to make a licensing decision; the Nairobi protocol for the prevention, control and reduction of small arms and light weapons in the Great Lakes Region and the Horn of Africa (Article 10 (a)) states that "Each State Party shall establish and maintain an effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons"; and article 5(3)(c) of Protocol on the control of firearms, ammunition and other related materials in the Southern African Development Community (SADC) region (SADC Protocol), 2001, states: "States Parties further undertake to incorporate [in their national law]... the co-ordination of procedures for the import, export and transit of firearms shipments".

3) In some circumstances, arms transfers from one State to another or to persons in the territory of another State without the latter State's consent will amount to a breach of existing obligations under customary international law relating, for example, to the threat or use of force. Transfers to persons other than those exercising governmental authority may also amount to a breach of the principle of non-intervention in the internal affairs of the State. The duty to prevent diversion of arms in international transfers is stressed in the above mentioned United Nations Guidelines for international arms transfers agreed by the disarmament Commission in 1996. UN Guideline 33 states that: "All arms-transfer agreements and arrangements, in particular between Governments, should be designed so as to reduce the possibility of diversion of arms to unauthorized destinations and persons. In this context, a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers is an important measure to prevent unauthorized diversion.

The need to prevent diversion is underlined several times in the UN Programme of Action including Article II Section 2 ("To put in place, where they do not exist, adequate laws, regulations and administrative procedures ...in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients") and Section 11 ("To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade.")

Article 11 of the UN Firearms Protocol: "In an effort to detect, prevent and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, each State Party shall take appropriate measures a) To require the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through its territory; and b) To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation."

Regional and multilateral standards include:

OAS Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition (OAS Model Regulations on Arms Brokers) OAS document 1271/03, November 2003, articles 5 states: "The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to: ... (f) result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime." Guidelines, Annex A to the Ministerial Declaration on Practical Implementation of Small Arms Action in the Great Lakes Region and the Horn of Africa, adopted at the Third Ministerial Review Conference of the Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa (Guidelines for Implementation of the Nairobi Protocol), 21 June 2005: "States Parties shall not authorize transfers that are likely to be diverted, within the recipient country or be re-exported, to any other user than the stated final end-user. States should take into account the recipient's: Record on compliance with end-use undertakings and diversion; Stockpile management and security procedures; Ability and willingness to protect against unauthorized transfers, loss, theft and diversion."

EU Code of Conduct on Arms Exports (EU Code of Conduct), agreed by the Council of the European Union, May 1998, Criterion seven states: The existence of a risk that the equipment will be diverted within the buyer country or reexported under undesirable conditions); "In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered: a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity; b) the technical capability of the recipient country to use the equipment; c) the capability of the recipient country to exert effective export controls; d) the risk of the arms being re-exported or diverted to terrorist organisations (antiterrorist equipment would need particularly careful consideration in this context)."

The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) (Wassenaar arrangement best practice guidelines for export of SALW), 11-12 December 2002 (Wassenaar Arrangement best practice guidelines for exports of SALW), Article I, paragraph 1: "Each Participating State will, in considering proposed exports of SALW, take into account: ...) The risk of diversion or re-export in conditions incompatible with these Guidelines, particularly to terrorists."

Paragraph 2: "Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ... (c) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State; ... (g) Contrary to the aims of this document, be either re-sold (or otherwise diverted) within the recipient country, re-produced without licence, or be re-exported;".

OSCE Document on small arms and light weapons, adopted at the 308th Plenary Meeting of the OSCE Forum for Security Co-operation, 24 November 2000, Section III (Combating illicit trafficking in all its aspects: Common export criteria and export controls), Common export criteria 2(b): "Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: ... (iii) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State; ... (vii) Be either re-sold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to the aims of this document;".

4) Principle 2 encapsulates existing express limitations under international law on states' freedom to transfer and to authorize transfers of arms. It focuses on circumstances in which a state is already bound not to transfer arms, as set out in expressed limitations in international law. The language is clear: "states shall not ...". When new binding international instruments are agreed, new criteria should be added to the above principles, for example, if there is a new binding instrument on marking and tracing or illicit brokering.

The UN Programme of Action requires states "To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law..." (Article II, Section 11)

Principle 2 is exactly reflected in the Guidelines for implementation of the Nairobi Protocol.

5) Security Council decisions to impose arms embargoes are taken under Chapter VII of the UN Charter and thus are binding on all members of the UN. Security Council Resolution 1196 (1998) of 16 September 1998 encouraged States to adopt legislation making the violation of arms embargoes a criminal offence.

This was underlined in the UN Programme of Action - Article II, Section 15: "To take appropriate measures, including all legal or administrative means, against any activity that violates a United Nations Security Council arms embargo in accordance with the Charter of the United Nations."

It has also been underlined in several regional instruments, including the SADC Protocol - "States Parties shall enact the necessary legislation and other measures to sanction criminally, civilly or administratively under their national law the violation of arms embargoes mandated by the Security Council of the United Nations" (Article 5(2)). Under the Guidelines for implementing the Nairobi Protocol, "State Parties shall not authorise trans-

fers which would violate their direct obligations under international law, including, (i) Obligations under the Charter of the United Nations – including, inter alia, decisions of the Security Council such as those imposing arms embargoes.” The OSCE Document on small arms and light weapons commits 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...Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, decisions taken by the OSCE, agreements on non-proliferation, small arms, or other arms control and disarmament agreements.” [paragraph 2(b) (iv)] The Wassenaar Arrangement is committed to similar provision to the one above agreed by the OSCE. The EU Code of Conduct states, in Criterion One, that “An export licence should be refused if approval would be inconsistent with, inter alia, the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes...”;

6) One of the cornerstones of the UN Charter is the prohibition on the use or the threat of force enshrined in Article 2(4) – “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” If it is apparent that an arms-receiving state will use the weapons in violation of the prohibition of the use of force, the transfer will be prohibited even in the absence of a specific embargo.

7) This principle is expressed in Article 2(7) of the UN Charter: “Nothing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state...”. This principle is expanded in the “Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and Protection of their Independence and Sovereignty” (General Assembly Resolution 2131 (XX), 21 December 1965.) These principles were reiterated in the Declaration on Principles of International Law concerning Friendly Relations among States in Accordance with the Charter of the United Nations (adopted by the General Assembly in resolution 2625 (XXV), 24 October 1970) and also in the ‘Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States’ (General Assembly resolution 36/103 of 9 December 1981). The prohibition of intervention in the internal affairs of another state is reflected in other regional Charters. For example, Article 19 of the OAS Charter states “No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.”

8) States have a legal obligation to comply strictly with sanctions and arms embargoes imposed by the Security Council under the authority of Chapter VII of the Charter of the United Nations. The Security Council will determine the scope and terms of each arms embargo according to its understanding of the particular conditions that give rise to threats to international peace and security. Such UN arms embargoes have been imposed on states as well as armed opposition groups.

In addition, states participating in regional and multilateral inter-governmental bodies may agree to impose arms embargoes according to the principles and procedures set out in their founding agreements. Regional and multilateral organisations have also established rules for member or participating states to respect UN and other multilateral arms embargoes. For instance Article 5 of the OAS Model Regulations on Arms Brokers provides: “The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to: ... (d) violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies.”

9) Numerous international instruments prohibit the use of specific weapons (“weapon-specific” prohibitions), including the 1868 St Petersburg Declaration on Explosive Projectiles, the 1899 Hague Declaration concerning Expanding Bullets, the 1980 Convention on Certain Conventional Weapons and most recently, the 1997 Anti-Personnel Mines Convention. The more recent conventions expressly prohibit not only the use of weapons but also their transfer – they reflect a development in this area of law and this prohibition on transfers should be read into the other earlier treaties. This conclusion is supported by the fact that it would be difficult to reconcile a state’s freedom to transfer a weapon whose use is prohibited with the overarching duty on states to respect and ensure respect for international humanitarian law (enshrined in Article 1 of the Geneva Conventions).

10) The prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering is expressed in Article 35(2) of the Protocol I to the Geneva Conventions. It is also part of international customary law and therefore is universally applicable. The prohibition on transfers follows from the appreciation that the transfer of such arms would be irreconcilable with the prohibition of their use under international humanitarian law. This prohibition on transfers would also cover arms the use of which is prohibited by a specific convention where the convention does not explicitly address the question of transfers.

11) The principle of distinction between civilians and combatants is expressed in Article 51(4) of the Protocol I to the Geneva Conventions. The prohibition on weapons that are incapable of distinguishing between civilian and military targets is also part of international customary law and therefore is universally applicable (International Court of Justice, Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996, par. 78). The prohibition on transfers follows from the appreciation that the transfer of such arms would be irreconcilable with the prohibition of their use under international humanitarian law.

12) In Principle 3, the limitations are based on the use or likely use of the weapons to be transferred. The responsibility of exporting States to prohibit arms transfers under this heading flows from the obligation not to participate in the internationally wrongful acts of another State. The principle is stated in Article 16 of the International Law Commission’s Articles on Responsibility of States for Internationally Wrongful Acts, adopted in 2001 (see General Assembly Resolution 56/83 of 12 December 2001, UN Doc. A/RES/56/83), in terms which reflect customary international law, binding on all States, as follows: “A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: (a) that State does so with knowledge of the circumstances of the internationally wrongful act; and (b) the act would be internationally wrongful if committed by that State.” Principle 3 is reflected almost word for word in the Guidelines for implementation of the Nairobi Protocol.

13) This would include breaches of the prohibition of the threat or use of force in international relations in Article 2(4) of the UN Charter, in General Assembly Declaration of Principles of International Law of 1970 (General Assembly Resolution 2625 (XXV) of 1970) and in other standard-setting United Nations resolutions. Corresponding rules apply at the level of customary international law.

14) There is a positive obligation of all States to cooperate in the protection and fulfilment of human rights within and beyond their borders. Under Articles 1, 55 and other articles of the UN Charter all Member States have an obligation to encourage and promote universal respect for, and observance of, human rights and fundamental freedoms. Article 1.3 of the UN Charter requires all Member States “To achieve international cooperation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

General international law prohibits conduct that involves patterns of blatant abuse. The expression “gross” or “serious” violation of human rights” is commonly used to convey a sense of scale, evoking both the number of violations and the gravity of their consequences for the victims. It also suggests a measure of intent.

The commission of serious violations of human rights would include violations of the non-derogable provisions of the 1966 International Covenant on Civil and Political Rights, the 1984 Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and other international human rights treaties. The most prominent example of such a right – and one which is most likely to be breached using arms, including small arms and light weapons – is the right to life. It involves both a positive duty on States to enact laws that aim at protecting the right to life and a negative duty not to arbitrarily deprive anyone of their right to life. When committed as part of a widespread or systematic attack against the civilian population, a violation of the right to life or a violation of the prohibition of torture may amount to a crime against humanity. The crime of genocide, prohibited by the Convention on the Prevention and Punishment of the Crime of Genocide, 1948, is also a crime against humanity. According to the Rome Statute of the International Criminal Court, 17 July 1998, article 7(1), the following acts can form the basis of a crime against humanity: murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe, deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender grounds, in connection with any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

Other non-derogable rights have been set out for Member States by the Human Rights Committee in its General Comment on States of Emergency, the Human Rights Committee broadens the list of non-derogable rights contained in article 4 ICCPR: the prohibition against arbitrary detention; the prohibition against taking of hostages, abductions or unacknowledged detention; the protection of the rights of persons belonging to minorities; the deportation or forcible transfer of population without grounds permitted under international law; and the prohibition against engaging in propaganda for war, or in advocacy of national, racial or religious hatred that would constitute incitement to discrimination, hostility or violence (General Comment 29, States of Emergency (Article 4), Human Rights Committee, UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001).

Under international human rights law, States are not only responsible for the actions of their agents. They also have a duty to prevent patterns of abuse committed by private persons, whether or not they are acting under the control of the State. Failure to exercise “due diligence” by omitting to

take the necessary steps to protect individuals from organised crime such as kidnapping and killing for ransom can amount to a violation of human rights law. In some cases, the obligation to protect individuals from violations perpetrated by private actors is part and parcel of the State's obligation not to commit the violation itself. For example, failing to adopt the necessary measures to prevent acts of torture from being carried out on one's territory may amount to more than a violation of the "due diligence" standard and be treated as a breach of the international norm prohibiting torture.

The International Criminal Court Statute, in Article 25.3.C, establishes criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted commission of a crime, including by providing the means for its commission. Providing the weapons used to commit or attempt to commit one of the crimes for which the ICC has jurisdiction is sufficient to give rise to responsibility as an accomplice.

Regional human rights instruments include the 1950 European Convention for the Protection of Fundamental Rights and Freedoms, the 1969 American Convention on Human Rights and the 1980 African Charter on Human and Peoples' Rights. The obligations of states regarding the observance of fundamental human rights when considering the authorisation of international arms transfers include the following regional and multilateral instruments: OAS Model Regulations on Arms Brokers (Article 5): "The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to ... (b) violate humans rights contrary to international law."

The Guidelines for implementation of the Nairobi Protocol says that "State Parties shall not authorize transfers which are likely to be used: ... for the violation or suppression of human and peoples' rights and freedoms, or for the purpose of oppression".

EU Code of Conduct (Criterion two): The respect of human rights in the country of final destination) – "Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will: a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression and b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU. For these purposes, ... Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights."

Wassenaar Arrangement best practice guidelines for exports of SALW, Article I, paragraph 2: "Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ... (h) Be used for the purpose of repression; (i) Be used for the violation or suppression of human rights and fundamental freedoms"

OSCE Document on small arms and light weapons, Section III (Combating illicit trafficking in all its aspects: Common export criteria and export controls), Common export criteria 2(a): "Each participating State will, in considering proposed exports of small arms, take into account: (i) The respect for human rights and fundamental freedoms in the recipient country."

Common export criterion 2(b): "Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: (i) Be used for the violation or suppression of human rights and fundamental freedoms; ... (viii) Be used for the purpose of repression."

15) Serious violations of international humanitarian law include the 'grave breaches' identified in all four of the 1949 Geneva Conventions applicable in international armed conflict, which include "wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer of a protected person and extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly" (Articles 50, 51, 130 and 147 respectively of the four Geneva Conventions of 1949) and those identified in common article 3 to the conventions, applicable in internal conflicts. These violations include: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; the taking of hostages; outrages of personal dignity, in particular humiliating and degrading treatment, and the passing of sentences and carrying out of executions without previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognised as indispensable by civilised peoples". The term is also capable of a more expansive interpretation, covering all violations of IHL for which there is individual criminal responsibility.

The most recent codification of such violations, collectively referred to as "war crimes" is to be found in the Statute of the International Criminal Court adopted in 1998 (Rome Statute of the International Criminal Court, adopted at Rome on 17 July 1988, Article 8, UN Doc. PCNICC/1999/INF/3) This provision is consistent with the existing obligation to respect and ensure respect for international humanitarian law. In Article 25.3.C, the Statute establishes criminal responsibility if a person aids, abets or otherwise assists in the commission or the attempted commission of a crime, including by providing the means for its commission. Providing the weapons used to commit or attempt to commit one of the crimes for which the ICC has jurisdiction, including war crimes, is sufficient to give rise to responsibility as an accomplice.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide defines genocide inter alia as "acts committed with intent to destroy in whole or in part, a national, ethnical, racial, or religious group, as such". Acts punishable under this heading include genocide, the conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide and complicity in genocide. Crimes against humanity are similarly defined in a number of international agreements. In both cases, the definitions are largely uncontroversial.

Common article 1 to the four 1949 Geneva Conventions, which codify customary rules of IHL, obliges states to "respect and ensure respect" for the rules of international humanitarian law. A state which transfers weapons in circumstances where it is likely they will be used to commit serious violations of international humanitarian law would clearly be failing its obligation to ensure respect for international humanitarian law (see also the International Committee of the Red Cross – ICRC Agenda for Humanitarian Action, December 2003).

Regional and multilateral instruments include:

OAS Model Regulations on Arms Brokers article 5: "The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to: (a) result in acts of genocide or crimes against humanity; ... (c) lead to the perpetration of war crimes contrary to international law."

The Guidelines for implementation of the Nairobi Protocol state that "State Parties shall not authorize transfers which are likely to be used: ... for the commission of serious violations of international humanitarian law"

Further: "States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ... be used in the commission of serious violations of international humanitarian law applicable in international or non-international armed conflict; or be used in the commission of genocide or crimes against humanity."

16) Principle 4 identifies possible consequences that states are required to take into account before authorizing an arms transfer; it imposes a positive duty on states to address these issues, and establishes a presumption against authorization where these consequences are deemed likely. These factors are included in Section I of the Programme of Action as well as in regional instruments concerned with arms transfers.

17) Regional instruments include:

The Guidelines for implementation of the Nairobi Protocol that require: "States shall take into account the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control and disarmament."

EU Code of Conduct (Criterion six): The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law) "Member States will take into account inter alia the record of the buyer country with regard to: ... (b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts; c) its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions..."

OSCE Document on small arms and light weapons, Section III (Combating illicit trafficking in all its aspects: Common export criteria and export controls), Common export criteria 2(a): "Each participating State will, in considering proposed exports of small arms, take into account: ... (iii) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict."

Other multilateral instruments include the Wassenaar Arrangement best practice guidelines for exports of SALW, Article I, paragraph 2: "Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ... (d) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, agreements on non-proliferation, small arms, or other arms control and disarmament agreements."

18) By its resolution 46/36 H in December 1991, the General Assembly, inter alia, called upon all States to give high priority to eradicating illicit arms trafficking in all kinds of weapons and military equipment, a most disturbing and dangerous phenomenon often associated with terrorism, drug trafficking, organized crime and mercenary and other destabilizing activities, and to take urgent action towards that end, as recommended in the study submitted by the Secretary-General. According to the UN Guidelines on international arms transfers, one of the measures necessary to prevent illicit arms trafficking associated with such criminal activity is that "States should define, in accordance with their national laws and regulations, which arms are permitted for civilian use and which may be used or possessed by the military and police forces" [Paragraph 30]

Regional and multilateral instruments include:

The Guidelines for implementation of the Nairobi Protocol require: "States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ... be used for or to facilitate the commission of violent crimes"

EU Code of Conduct (Criterion six): The behaviour of the buyer country

with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law") Member States will take into account inter alia the record of the buyer country with regard to: a) its support or encouragement of terrorism and international organised crime...

Wassenaar Arrangement best practice guidelines for exports of SALW, Article 1, paragraph 2: "Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ... (f) Facilitate organised crime."

OSCE Document on small arms and light weapons, Section III (Combating illicit trafficking in all its aspects: Common export criteria and export controls), Common export criteria 2 (b): "Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: ... (x) Facilitate organized crime."

19) Regional instruments include:

The Guidelines for the Nairobi Protocol require that: "States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ... adversely affect regional security; to endanger peace, introduce destabilizing accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability"

EU Code of conduct (Criterion three: The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts) "Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination." And (Criterion four: Preservation of regional peace, security and stability) "Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim. When considering these risks, EU Member States will take into account inter alia: a) the existence or likelihood of armed conflict between the recipient and another country; b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force; c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient; d) the need not to affect adversely regional stability in any significant way."

OSCE Document on small arms and light weapons, Section III (Combating illicit trafficking in all its aspects: Common export criteria and export controls), Common export criteria 2(a): "Each participating State will, in considering proposed exports of small arms, take into account: ... (ii) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts." Common export criterion 2(b): "Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: ... (v) Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict; (vi) Endanger peace, create an excessive and destabilizing accumulation of small arms, or otherwise contribute to regional instability."

United Nations and multilateral instruments reinforce these regional instruments. In the Wassenaar Arrangement best practice guidelines for exports of SALW, Article 1, paragraph 2: "Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might: ... (e) Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict; (f) Endanger peace, create an excessive and destabilizing accumulation of small arms, or otherwise contribute to regional instability."

20) Article 26 of the UN Charter formulates the objective of 'the establishment and maintenance of international peace and security with the least diversion for armaments of the world's human and economic resources'.

Regional instruments include:

Article 2 (h) of the OAS Charter proclaims as an essential purpose of the organization "To achieve an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the Member States."

Declaration on Security in the Americas (OEA/Ser.K/XXXVIII, CES/DEC. 1/03 rev.1, 28 October 2003), Paragraph 4(w). "We reaffirm the objective of achieving an effective limitation of conventional weapons that will make it possible to devote the largest amount of resources to the economic and social development of the member states."

The Guidelines for implementation of the Nairobi Protocol require: "States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ... adversely affect sustainable development through the excessive or unjustifiable diversion of resources from social expenditure to military expenditure"

EU Code of Conduct (Criterion eight: The compatibility of the arms exports with the technical and economic capacity of the recipient country, taking into account the desirability that states should achieve their legitimate needs of security and defence with the least diversion for armaments of human and economic resources) "Member States will take into account, in the light of information from relevant sources such as UNDP, World Bank, IMF and OECD reports, whether the proposed export would seriously hamper the sustainable development of the recipient country..."

Wassenaar Arrangement best practice guidelines for exports of SALW, Article 1, paragraph 1: "Each Participating State will, in considering propo-

sed exports of SALW, take into account: ... d) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments." OSCE Document on small arms and light weapons, Section III (Combating illicit trafficking in all its aspects: Common export criteria and export controls), Common export criteria 2(a): "Each participating State will, in considering proposed exports of small arms, take into account: ... (iv) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments."

21) The United Nations Guidelines for international arms transfers agreed by the Disarmament Commission in 1996 requires that: "States should intensify their efforts to prevent corruption and bribery in connection with the transfer of arms. States should make all efforts to identify, apprehend and bring to justice all those involved in illicit arms trafficking." [paragraph 25]

The UN Convention against Corruption was approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003, and came into force on 14 December 2005 with 40 ratifications and 138 signatures by states. Article 9 of the 2003 UN Convention against Corruption requires that state parties "in accordance with the fundamental principles of its legal system, take the necessary steps to establish appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making, that are effective, inter alia, in preventing corruption."

Regional instruments also address the issue of corruption. The Guidelines for implementation of the Nairobi Protocol require: "States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ... involve corrupt practices at any stage – from the supplier, through any middlemen or brokers, to the recipient" See also The Inter-American Convention against Corruption, adopted by the Organization of American States on 29 March 1996, the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union, adopted by the Council of the European Union on 26 May 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Organisation for Economic Cooperation and Development on 21 November 1997, the Criminal Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 27 January 1999, the Civil Law Convention on Corruption, adopted by the Committee of Ministers of the Council of Europe on 4 November 1999 and the African Union Convention on Preventing and Combating Corruption, adopted by the Heads of State and Government of the African Union on 12 July 2003.

22) Regional instruments include:

OAS Model Regulations on Arms Brokers article 5: "The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to: ... (g) result in a breach of a bilateral or multilateral arms control or non-proliferation agreement."

OSCE Document on small arms and light weapons Section III (Combating illicit trafficking in all its aspects: Common export criteria and export controls), Common export criteria 2(b):

"Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might: ... (iv) Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, decisions taken by the OSCE, agreements on non-proliferation, small arms, or other arms control and disarmament agreements."

The Guidelines for implementation of the Nairobi Protocol require: "States Parties shall take into account other factors before authorizing an arms transfer. States should not authorize the transfer if it is likely to ... contravene other international, regional or sub-regional commitments or decisions made, or agreements on non proliferation, arms control and disarmament"

23) Principle 5 is a minimum requirement to increase transparency so as to help ensure compliance with Principles 1-4 above. States should report each international arms transfer from or through their territory or subject to their authorization. Reporting should be standardized and tied to the implementation of the normative standards set out in the Principles. These reports should be sent to an independent and impartial Registry of International Arms Transfers, which should issue a comprehensive annual report.

On 6 December 1991, General Assembly Resolution 46/36 entitled 'General and complete disarmament' was adopted to set up a universal and non-discriminatory Register of Conventional Arms, to include data on international arms transfers as well as information provided by Member States on military holdings, procurement through national production and relevant policies. Regional instruments include:

The EU Code of Conduct contains operative provisions aimed at harmonising its application by Member States and increasing the transparency of the process. The EU Code of Conduct imposes an annual reporting obligation on states. Although intended to be confidential, recognising Member States' desire to increase transparency in this area, in 1999 the Council decided to render the report public (Annual Report in conformity with Operative Provision 8 of the European Union Code of Conduct on Arms Exports, 3 November 1999, 1999/C315/01). In addition, transparency is strengthened

by obligating Member States to consult before granting a licence which has been denied by another Member State for an essentially identical transaction in the preceding three years.

The Inter-American Convention on Transparency in Conventional Weapons Acquisitions states in Article II: "the objective of this Convention is to contribute more fully to regional openness and transparency in the acquisition of conventional weapons by exchanging information regarding such acquisitions, for the purpose of promoting confidence among States in the Americas." Article III requires States to report annually to the depositary on their imports and exports of major conventional weapons providing information, with respect to exports, on the importing State, and the quantity and type of conventional weapons exported.

Article 16 of the SADC Protocol commits states to: "a) develop and improve transparency in firearms accumulations, flows and policies relating to civilian owned firearms and; b) establish national firearms databases to facilitate the exchange of information on firearms imports, exports and transfers."

24) Principle 6 will help ensure that states enact national laws and regulations according to common standards, and ensure that all the principles are implemented consistently.

25) The establishment of a state licensing system is an elementary requirement of all United Nations and other multilateral and regional standards for the control of international transfers of conventional arms including small arms and light weapons. Article 10 of the UN Firearms Protocol requires state parties to establish a licensing system for the export, import and transit of firearms and their parts, components and ammunition. For example, in Article 10.5 "Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated." The UN Guidelines on international arms transfers require that: "States should establish and maintain an effective system of export and import licences for international arms transfers with requirements for full supporting documentation. [Paragraph 26] and that "The exporting State should seek to obtain an import certificate from the receiving State covering the exported arms. The receiving State should seek to ensure that imported arms are covered by a certified licence of the authorities in the supplying State." [Paragraph 27]

26) An emerging body of international standards addresses the state responsibility to strictly regulate international arms dealers and brokers. According to the United Nations Guidelines on international arms transfers, "States should maintain strict regulations on the activities of private international arms dealers and cooperate to prevent such dealers from engaging in illicit arms trafficking." [Paragraph 39] The prevention of illicit brokering of small arms is a requirement in the United Nations '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' (2001). Under Article 15.1 "With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:

- (a) Requiring registration of brokers operating within their territory;
- (b) Requiring licensing or authorization of brokering; or
- (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction

Discussions in the United Nations are proceeding concerning the development of standards and measures by states to prevent the illicit brokering of small arms and light weapons as required by the 'UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects' (2001) and subsequent UN Biennial Meetings of States (2003, 2005).

Regional and multi-lateral initiatives to promote the regulation of arms brokering activities include the development of an elaborate text by the OAS Inter-American Drug Abuse Control Commission's "Model Regulations for the Control of the International Movement of Firearms, their Parts and Components and Ammunition" and "Draft Study on Small Arms Brokering" (1997 and 2003, Amendments); following the mention of brokering in the AU "Bamako Declaration on an African Common Position on the illicit Proliferation, Circulation, and Trafficking of Illicit Small Arms and Light weapons" (2000) and the SADC "Protocol on the control of Firearms, Ammunition and Other Related Material in the SADC Region" (2001), more elaborate text was developed by the states of East Africa, the Great Lakes and the Horn of Africa from their "Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons" (2000) to their '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); and the agreements of the European Union in its 'Council Common Position on the Control of Arms Brokering' (2003); of the OSCE in its 'Best Practice Guide on National Control of Brokering Activities' (2003) and the OSCE 'Principles on the Control of Brokering in Small Arms and Light Weapons' (2004), and the Wassenaar Arrangement in its 'Elements for Effective Legislation on Arms Brokering' (2003). Lesser known security-related initiatives that mention brokering include the UN Economic

Commission for Europe 'Proposal for Standard Development in support of Trade Facilitation and Security' (2003).

27) According to the United Nations Guidelines on international arms transfers, "States have responsibilities in exercising restraint over the production and procurement of arms as well as transfers." [Paragraph 18] Moreover, "Arms-producing or supplier States have a responsibility to seek to ensure that the quantity and level of sophistication of their arms exports do not contribute to instability and conflict in their regions or in other countries and regions or to illicit trafficking in arms." [Paragraph 20] and "States receiving arms have an equivalent responsibility to seek to ensure that the quantity and the level of sophistication of their arms imports are commensurate with their legitimate self-defence and security requirements and that they do not contribute to instability and conflict in their regions or in other countries and regions or to illicit trafficking in arms." [Paragraph 21] Thus, "States should scrutinize their national arms-control legislation and procedures and, where necessary, strengthen them in order to increase their effectiveness in preventing the illegal production, trade in and possession of arms in their territory that can lead to illicit arms trafficking." [Paragraph 24] Also that: "All arms-transfer agreements and arrangements, in particular between Governments, should be designed so as to reduce the possibility of diversion of arms to unauthorized destinations and persons. In this context, a requirement by the exporter for import licences or verifiable end-use/end-user certificates for international arms transfers is an important measure to prevent unauthorized diversion." [Paragraph 33]

28) The international transfer of arms includes instances where the arms are transhipped or are in transit between an exporting and importing state. The UN Firearms Protocol in Article 7 requires state parties to maintain records for ten years on the international transfer of firearms, their parts, components and ammunition including for countries of transit. In Article 10.1 "Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition. In Article 10.2 "Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify: (a) That the importing States have issued import licences or authorizations; and (b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit."

In the UN Program of Action on small arms and light weapons, Member States included as one of their aims "promoting responsible action by States with a view to preventing the illicit export, import, transit and retransfer of small arms and light weapons." [pre-amble paragraph e] States agreed to act at the national level to "put in place, where they do not exist, adequate laws, regulations and administrative procedures to exercise effective control over the production of small arms and light weapons within their areas of jurisdiction and over the export, import, transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in small arms and light weapons, or their diversion to unauthorized recipients." [Section II, paragraph 2] "To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons." [section II paragraph 11] "To put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures. [section II paragraph 12] "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 retransfer of those weapons." [section II paragraph 13]

The Guidelines for the Nairobi Protocol define "international arms transfers" to include "export, transit and brokered transactions" of small arms and light weapons [Chapter 2] Provisions of the international standards cited above that refer to the states' obligations to prevent the diversion, resale and re-export of arms contrary to international law and standards are directly relevant to states obligations to control the transhipment of arms and arms in transit.

Notes

- ¹ Figures from: The PRIO/Uppsala Armed Conflict Dataset Version 3-2005b available via <http://www.prio.no/page/CSCW_research_detail/Programme_detail_CSCW/9649/45925.html>; US Department of State. 2004. Patterns of Global Terrorism 2003. Downloaded from <<http://www.state.gov/s/ct/rls/pgtrpt/2003/>> accessed 7 February 2006; Gibney, Mark. 2005. Political Terror Scale 1980-2004. <<http://www.unca.edu/politicalscience/images/Colloquium/faculty-staff/gibney.html>> accessed 7 February 2006; Florquin, N. and C. Wille. 2004. 'A common tool: Firearms, violence and crime.' In Batchelor, P. and K. Krause (eds.). Small Arms Survey 2004. Oxford: OUP. p. 193.
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- ¹⁷ Source: Statistics Norway online Statistics Bank <<http://statbank.ssb.no/statistikkbanken/>> accessed 06.10.2005; excludes an export to Spain in 2003 to the value of NOK 330 million, likely connected to the export of anti-aircraft systems for frigates assembled for supply to the Norwegian navy. See Appendix 1 for information on customs codes included.
- ¹⁸ Source: *ibid*; excludes export to Spain in 2003 to the value of NOK 330 million
- ¹⁹ 'Major conventional weapons' comprises complete weapon systems – such as tanks or aircraft. This does not include ammunition, components, small arms and the majority of light weapons (the exception being man-portable missile systems).

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