



Organization for Security and Co-operation in Europe

The Secretariat

The Importance of the Export Control to
Implement the UN Programme of Action to Prevent, Combat and Eradicate the
Illicit Trade in Small Arms and Light Weapons in All Its Aspects
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In the OSCE Document on Small Arms and Light Weapons adopted in 2000, our participating States have committed themselves to establishing and implementing effective criteria governing the export of SALW. The Document sets out a number of norms and principles concerning common export criteria; import, export and transit procedures, as well as import, export and transit documentation. OSCE participating States have agreed to follow the common export criteria in their national systems governing the export of small arms and light weapons.

Let me point out at the outset that the value of this document – and specifically of these provisions – is that it has been adopted by consensus by all OSCE participating States. This means that all countries in the OSCE region, which comprises also a transatlantic and a Eurasian dimension, subscribes fully to these rules – and this includes producer and exporter States, States that are in the process of restructuring their defence and States that have been affected by crises and conflicts, and have thereby been negatively affected by the proliferation of SALW.

Notwithstanding these very profound differences they all have recognized that in order to tackle effectively the problem posed by illegal proliferation of SALW there is a need to develop uniform and advanced standards for export control and ensure that they all adhere to them, so as to avoid any loopholes. On the other hand, they recognised that it is for each State to decide on its own export control national system in accordance with its international commitments. Obviously, there is no single model for export control system, due to the great

diversity of legal and administrative systems. On the other hand, there are certain basic features which any system needs to have to be effective: a legal basis, an export policy, a decision-making mechanisms and an enforcement mechanism.

In order to facilitate and support an adequate and uniformly effective export control regime taking into account these basic requirements, thus assisting in the implementation of the relevant provisions of the OSCE Document, a specific Chapter was developed as a part of the OSCE Handbook of Best Practices on SALW. Indeed, the standards set out in the SALW Document are very high, and this places a heavy burden for many OSCE States in implementation of their respective commitments, including in relation to establishing national export control systems. The Handbook was designed to provide model practices, which could serve as a guide for national policy-making by participating States, and as a means to encourage higher common standards of practice among all the 55 participating States; it provides information for developing national export controls of SALW, lists necessary elements for national legislation, sets out guidelines for the export policy and decision-making and considers effective enforcement of export control legislation.

The Handbook is a unique collective document of the OSCE participating States based on national practices in this area and also takes account of all other existing international initiatives and experiences of other international organizations relating to small arms. It does not constitute a binding commitment on OSCE participating States, but is rather intended as a tool for States to use in reviewing and refining their policy and practice on small arms control. The Handbook has been translated in the six official languages of the OSCE, as well as in Arabic, as a result of our interaction with the Arab League, and can be found on the OSCE website.

According to the Best Practice Guide on Brokering, it is recommended that licences for brokering activities be refused without an authentic document indicating the end-use of the goods. These documents should:

- be written on the original stationery of the authority or, in exceptional cases, of the company.
- be certified with original signatures and authentic stamps.
- be submitted in the original; in cases where a broker has indicated that an opportunity for a transaction exists, a copy can be sufficient.

- conform to the specimen requirements of the licensing State.

The Guide also notes that end-use documents vary in content depending on whether they are import certificates or end-use assurances. As to their contents, it is suggested that they should at least contain:

- Information concerning the identity of the supplier;
- Information concerning the identity of the broker;
- Information concerning other persons involved;
- A precise description of the goods;
- Quantity of goods;
- Value of goods;
- Information concerning end use;
- Information concerning place of end use;
- An assurance affirming the veracity of this information

End-use assurances could also contain re-export restrictions. Finally, private end-use statements would have to be officially authenticated.

A subsequent step was made in 2004, when the OSCE adopted a separate decision in regarding end-user documentation, called "Standard elements of end-user certificates and verification procedures for SALW exports", with a view to complementing the relevant provisions of the Small Arms Document. This decision highlights the importance of verification of the recipient and identified a number of standard elements to be included in an end-user certificate provided prior to approval of an export licence for SALW. These standard elements include, *inter alia*:

- a detailed description of SALW to be exported
- contract number, date and the duration of the EUC
- final destination country
- a description of the end-use of the SALW
- exporter's details
- detailed information on the end-user
- certification by the relevant authority of the authenticity of the end-user.

As a separate but complementary step, the OSCE recognized the threats posed by unauthorized proliferation and use of man-portable air defence systems (MANPADS), especially to civil aviation. Therefore, our participating States agreed on a set of principles (which were drawn from the Wassenaar Arrangement's "Elements for Export Controls of Man-Portable Air Defence Systems") and adopted by consensus a decision on "OSCE Principles for Export Controls of Man-Portable Air Defence Systems" in 2004. OSCE participating States agreed to incorporate these principles into their national practices, policies and/or regulations, and to inform non-OSCE countries of their initiative.

This decision identified conditions to control MANPADS export and criteria for evaluation; it was based on international obligations on export control and transit of SALW. Its provisions specify the conditions for MANPADS exports to take place and indicate the steps needed to carry out the export.

The provisions included in this decision are very similar to those contained in the EUC-decision or in international agreements related to export controls. Detailed information on the items in question, the exporter, the transport and the recipient is required. Furthermore, assurances not to re-export MANPADS, on the secure storage, handling, transport and the proper use of the material are required from the recipient. In addition, disposal or destruction of excess stocks of MANPADS is required. Provisions for assistance on voluntary basis to the recipient government in terms of executing proper control over MANPADS have also been incorporated into the decision.

Appropriate penalties are an essential part of the regime; therefore, participating States agreed to introduce adequate criminal sanctions in order to strengthen the enforcement of the provisions. Concerning transparency, OSCE participating States agreed to report on transfers of MANPADS by using the OSCE SALW Document's information exchange mechanism.

All these measures were developed on the basis of the OSCE region peculiarities, national practices and existing conditions. However, the point I made at the outset on the need to avoid loopholes cannot be addressed from a purely regional perspective. In this respect, I hope that our experience may be regarded as a useful 'case study' in which countries in other regions may find elements of inspiration and lessons learned as they proceed in strengthening their own export control regimes.