

ANNEX

THE WASSENAAR ARRANGEMENT
AND
SMALL ARMS AND LIGHT WEAPONS

July 2005

For further information please consult also the website of the WA at www.wassenaar.org

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Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW)

(Agreed at the WA Plenary, December 2002)

I. Participating States of the Wassenaar Arrangement,

Having regard to the Initial Elements of the Wassenaar Arrangement; and in particular the objectives of:

- (i) greater responsibility in transfers of conventional arms;
- (ii) the prevention of destabilising accumulations of such arms; and
- (iii) the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists;

Bearing in mind the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects (UNPOA), and, where appropriate, the relevant provisions of the 2000 OSCE Document and other regional initiatives that Participating States are party to,

Affirm that they apply strict national controls on the export of SALW, as well as on transfers of technology related to their design, production, testing and upgrading,

And agree that:

SALW exports will be evaluated carefully against the Wassenaar Arrangement Initial Elements and the Wassenaar document 'Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons' and any subsequent amendments thereto. In particular:

1. Each Participating State will, in considering proposed exports of SALW, take into account:
 - (a) The need to avoid destabilising accumulations of arms, bearing in mind the particular circumstances of the recipient country and its region;
 - (b) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts and details of the recipient within that country;
 - (c) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the suppression of terrorism, and 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;

- (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;
- (e) The requirements of the recipient country to enable it to exercise its right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
- (f) Whether the transfers would contribute to an appropriate and proportionate response by the recipient country to the military and security threats confronting it;
- (g) The legitimate domestic security needs of the recipient country;
- (h) The requirements of the recipient country to enable it to participate in peacekeeping or other measures in accordance with decisions of the United Nations, OSCE or other relevant regional organisations with a peacekeeping mandate;
- (i) The respect for human rights and fundamental freedoms in the recipient country;
- (j) The risk of diversion or re-export in conditions incompatible with these Guidelines, particularly to terrorists.

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:

- (a) Support or encourage terrorism;
- (b) Threaten the national security of other States;
- (c) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State;
- (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;
- (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 destabilising accumulation of small arms, or otherwise contribute to regional instability;

- (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;
- (h) Be used for the purpose of repression;
- (i) Be used for the violation or suppression of human rights and fundamental freedoms;
- (j) Facilitate organised crime;
- (k) Be used other than for the legitimate defence and security needs of the recipient country.

Furthermore,

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

4. Participating States agree that unlicensed manufacture of foreign-origin SALW is inconsistent with these Best Practice Guidelines.

5. Participating States will take especial care when considering exports of SALW other than to governments or their authorised agents.

II. In addition, The Participating States of the Wassenaar Arrangement,

Recognising that uncontrolled flows of illicit SALW pose a serious threat to peace and security, especially in areas beset by conflicts and tensions;

And noting that poorly managed stocks of SALW, which are particularly liable to loss through theft, corruption or negligence, pose a similar threat;

Agree that:

1. Participating States will take into account, as far as possible, the stockpile management and security procedures of a potential recipient, including the recipient's ability and willingness to protect against unauthorised re-transfers, loss, theft and diversion.

2. Participating States will support the following provisions concerning small arms marking, record keeping and co-operation:

- (a) While it is for each Participating State to determine the exact nature of the marking system for SALW manufactured in or in use in its territory, Participating States agree to ensure that all small arms manufactured on their territory are marked in such a way as to enable individual small arms to traced.
The marking should contain information which would allow, at a minimum, identification of the year and country of manufacture, the manufacturer and the small arm's serial number which is unique to each weapon. All such marks should be permanent and placed on the small arms at the point of manufacture. Participating States will also ensure, as far as possible and within their competence, that all small arms manufactured under their authority outside their territory are marked to the same standard.
 - (b) Should any unmarked small arms be discovered in the course of the routine management of their current stockpiles, they will destroy them, or, if those small arms are brought into service or exported, that they will mark them beforehand with an identifying mark unique to each small arm.
 - (c) Each Participating State will ensure that comprehensive and accurate records of their own holdings of small arms, as well as those held by manufacturers, exporters and importers of small arms within their territory, are maintained and held as long as possible with a view to improving the traceability of small arms.
 - (d) Participating States resolve to assist each other, on request, in their efforts to identify and trace SALW and ammunition, which have been determined as illicit by the requesting State. Such co-operation will occur on a confidential basis.
3. Further, each Participating State will:
- (a) Ensure that these principles are reflected, as appropriate, in their national legislation and/or in their national policy documents governing the export of conventional arms and related technology.
 - (b) Consider assisting other Participating States in the establishment of effective national mechanisms for controlling the export of SALW.
 - (c) Put in place and implement adequate laws or administrative procedures to control strictly the activities of those that engage in the brokering of SALW and ensure appropriate penalties for those who deal illegally in SALW.

PUBLIC STATEMENT
2003 PLENARY MEETING
OF
THE WASSENAAR ARRANGEMENT
ON EXPORT CONTROLS FOR CONVENTIONAL ARMS AND
DUAL-USE GOODS AND TECHNOLOGIES

Excerpt

"The 2003 Plenary approved a number of major initiatives, which break important new ground for the Wassenaar Arrangement and make significant contributions to the fight against terrorism by means of WA export controls. These included tightening controls over Man Portable Air Defence Systems (MANPADS), agreeing to enhance transparency of small arms and light weapons (SALW) transfers, establishing elements for national legislation on arms brokering, and adopting end-use oriented controls encouraging member governments to impose export controls on certain unlisted items when necessary to support United Nations arms embargoes.

The agreement on small arms and light weapons (SALW) reflected concerns that these items can exacerbate regional conflicts and are among the weapons of choice for terrorists. Participating States agreed to expand the scope of mandatory reporting of arms transfers by adding a new category on SALW to Appendix 3 of the Initial Elements."^{*}

^{*} See page 6 of this compilation for the new Category on SALW.

Additions to Appendix 3
of the *Guidelines & Procedures, including the Initial Elements*
(agreed at the WA Plenary, December 2003)

Excerpt

"Specific Information Exchange on Arms
Content by Category

...

8. Small Arms and Light Weapons – Man-Portable Weapons made or modified to military specification for use as lethal instruments of war
 - 8.1 Small Arms – broadly categorised for reporting purposes as: those weapons intended for use by individual members of armed forces or security forces, including revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns.
 - 8.2 Light Weapons – broadly categorised for reporting purposes as: those weapons intended for use by individual or several members of armed or security forces serving as a crew and delivering primarily direct fire. They include heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; and mortars of calibre less than 75 mm.
 - 8.3 Man-Portable Air-Defence Systems – broadly categorised for reporting purposes as: surface-to-air missile systems intended for use by an individual or several members of armed forces serving as a crew.^{1*}

* WA Participating States exchange information every six months on deliveries of conventional arms set forth in eight categories of Appendix 3.

Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)⁽¹⁾

(Agreed at the WA Plenary, December 2003)

Recognising the threats posed by unauthorised proliferation and use of Man-Portable Air Defence Systems, especially to civil aviation, peace-keeping, crisis management and anti-terrorist operations, Participating States affirm that they apply strict national controls on the export of MANPADS.

1. Scope.

1.1 These Elements cover:

- a) surface-to-air missile systems designed to be man-portable and carried and fired by a single individual; and
- b) other surface-to-air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals.

1.2 National export controls apply to the international transfer or retransfer of MANPADS, including complete systems, components, spare parts, models, training systems, and simulators, for any purpose, by any means, including licensed export, sale, grant, loan, lease, co-production or licensing arrangement for production (hereafter "export"). The scope of export regulation and associated controls includes research, design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, servicing, modification, upgrade, modernisation, operation, use, replacement or refurbishment, demilitarisation, and destruction of MANPADS; technical data, software, technical assistance, demonstration, and training associated with these functions; and secure transportation, storage. This scope according to national legislation may also refer to investment, marketing, advertising and other related activity.

1.3 Any activity related to MANPADS within the territory of the producing country is subject to national laws and regulations.

2. Control Conditions and Evaluation Criteria.

2.1 Decisions to permit MANPADS exports will be made by the exporting government by competent authorities at senior policy level and only to foreign governments or to agents specifically authorised to act on behalf of a government after presentation of an official EUC certified by the Government of the receiving country.

⁽¹⁾ This document is a revision of "Elements for Export Controls of MANPADS" adopted in December 2000. To see the previous version, visit the WA website: www.wassenaar.org

- 2.2 General licences are inapplicable for exports of MANPADS; each transfer is subject to an individual licensing decision.
- 2.3 Exporting governments will not make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorised to on behalf of the government.
- 2.4 In order to prevent unauthorised use, producer countries will implement technical performance and/or launch control features for newly designed MANPADS as such technologies become available to them. Such features should not adversely affect the operational effectiveness of MANPADS for the legal user.
- 2.5 Exporting governments in the Wassenaar Arrangement will report transfers of MANPADS as part of the Arrangement's Specific Information Exchange reporting requirements.
- 2.6 MANPADS exports will be evaluated in the light of the Wassenaar Arrangement Initial Elements and the Wassenaar document "Elements for Objective Analysis and Advice Concerning Potentially Destabilising Accumulations of Conventional Weapons" and any subsequent amendments thereto.
- 2.7 Decisions to authorise MANPADS exports will take into account:
- Potential for diversion or misuse in the recipient country;
 - The recipient government's ability and willingness to protect against unauthorised re-transfers, loss, theft and diversion; and
 - The adequacy and effectiveness of the physical security arrangements of the recipient government for the protection of military property, facilities, holdings, and inventories.
- 2.8 Prior to authorising MANPADS exports, the exporting government will assure itself of the recipient government's guarantees:
- not to re-export MANPADS except with the prior consent of the exporting government;
 - to afford requisite security to classified material and information in accordance with applicable bilateral agreements, to prevent unauthorised access or compromise;
 - to inform promptly the exporting government of any instance of compromise, unauthorised use, loss, or theft of any MANPADS material.

2.9 In addition, the exporting government will satisfy itself of the recipient government's willingness and ability to implement effective measures for secure storage, handling, transportation, use of MANPADS material, and disposal or destruction of excess stocks to prevent unauthorised access and use. The recipient government's national procedure designed to attain the requisite security include, but are not limited to, the following set of practices, or others that will achieve comparable levels of protection and accountability:

- Written verification of receipt of MANPADS shipments.
- Inventory by serial number of the initial shipments of all transferred firing mechanisms and missiles, if physically possible; and maintenance of written records of inventories.
- Physical inventory of all MANPADS subject to transfer, at least once a month; account by serial number for MANPADS components expended or damaged during peacetime.
- Ensure storage conditions are sufficient to provide for the highest standards of security and access control. These may include:
 - Where the design of MANPADS permits, storing missiles and firing mechanisms in locations sufficiently separate so that a penetration of the security at one site will not place the second site at risk.
 - Ensuring continuous (24-hour per day) surveillance.
 - Establishing safeguards under which entry to storage sites requires the presence of at least two authorised persons.
- Transport MANPADS in a manner that provides for the highest standards and practices for safeguarding sensitive munitions in transit. When possible, transport missiles and firing mechanisms in separate containers.
- Where applicable, bring together and assemble the principal components - typically the gripstock and the missile in a launch tube - only in the event of hostilities or imminent hostilities; for firing as part of regularly scheduled training, or for lot testing, for which only those rounds intended to be fired will be withdrawn from storage and assembled; when systems are deployed as part of the point defences of high priority installations or sites; and in any other circumstances which might be agreed between the receiving and transferring governments.
- Access to hardware and any related classified information will be limited to military and civilian personnel of the receiving government who have the proper security clearance and who have an established need to know the information in order to perform their duties. Any information released will be limited to that necessary to perform assigned responsibilities and, where possible, will be oral and visual only.
- Adopt prudent stockpile management practices that include effective and secure disposal or destruction of MANPADS stocks that are or become excess to national requirements.

- 2.10 Participating States will, when and as appropriate, assist recipient governments not capable of executing prudent control over MANPADS to dispose of excess stockpiles, including buying back previously exported weapons. Such measures are subject to a voluntary consent of the exporting government and the recipient state.
 - 2.11 Exporting governments will share information regarding potential receiving governments that are proven to fail to meet the above export control guarantees and practices outlined in paragraphs 2.8 and 2.9 above.
 - 2.12 To enhance efforts to prevent diversion, exporting governments will share information regarding non-state entities that are or may be attempting to acquire MANPADS.
3. Participating States will ensure that any infringement of export control legislation, related to MANPADS, is subject to adequate penalty provisions, i.e. involving criminal sanctions.
 4. The Participating States will exchange information and review progress related to the implementation of these steps regularly.
 5. Participating States agree to promote the application of the principles defined in these Elements to non-Wassenaar members.

Elements for Effective Legislation on Arms Brokering

(Agreed at the WA Plenary, December 2003)

The Participating States of the Wassenaar Arrangement,

with reference to the Initial Elements and Participating States' fulfilment of the objectives and intentions of the Wassenaar Arrangement, in particular the objectives of:

- greater responsibility in transfers of conventional arms;
- the prevention of destabilising accumulations of conventional arms;
- the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists;

Bearing in mind the "Statement of Understanding on Arms Brokerage", the "Best Practice Guidelines for Exports of Small Arms and Light Weapons" as adopted by the 2002 Wassenaar Plenary Meeting and the "Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)" as adopted by the 2003 Wassenaar Plenary Meeting;

Recognising international commitments such as the 2001 "UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in SALW in All its Aspects", and the relevant provisions of the 2000 OSCE Document and other regional initiatives that Participating States are party to, **and**

the statement of the President of the UN Security Council of 31 October, 2002 (on behalf of the Council) stressing the importance of further steps to enhance co-operation on the regulation of brokering activities;

Affirming that the purpose of these efforts is to avoid circumvention of the objectives of the Wassenaar Arrangement and UNSC arms embargoes by creating a clear framework for lawful brokering activities, and to enhance co-operation and transparency between Participating States;

Affirming also that they apply strict and comprehensive national controls on the transfer of conventional arms in order to contribute to regional and international security and stability,

agree to

strictly control the activities of those who engage in the brokering of conventional arms by introducing and implementing adequate laws and regulations. Applications for licences or authorisations should be carefully assessed in accordance with the principles and objectives of the Wassenaar Arrangement Initial Elements, the Wassenaar document "Elements for Objective Analysis and Advice concerning Potentially Destabilising Accumulations of Conventional Weapons" and any subsequent amendments thereto and, where applicable, the "Best Practice Guidelines for Exports of Small Arms and Light Weapons" and the "Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)". In order to ensure a common WA policy on arms brokering, each Participating State should include, consistent with its national legislation and practices, the following measures in its national legislation on arms brokering:

1. For activities of negotiating or arranging contracts, selling, trading or arranging the transfer of arms and related military equipment controlled by Wassenaar Participating States from one third country to another third country, a licence or written approval should be obtained from the competent authorities of the Participating State where these activities take place whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the Participating State.

Similarly, a licence may also be required regardless of where the brokering activities take place.

Participating States may also define brokering activities to include cases where the arms and military equipment are exported from their own territory.

Participating States may also seek to limit the number of brokers.

2. Records should be kept of individuals and companies which have obtained a licence in accordance with paragraph 1. Participating States may in addition establish a register of brokers.
3. Adequate penalty provisions and administrative measures, i.e. involving criminal sanctions, should be established in order to ensure that controls of arms brokering are effectively enforced.
4. In addition, Participating States will enhance co-operation and transparency through:
 - (a) exchanging relevant information on arms brokering activities within the framework of the General Information exchange;
 - (b) assisting other Participating States on request in the establishment of effective national mechanisms for controlling arms brokering activities.
5. Where brokering provisions do not currently exist, Participating States will work without delay to introduce appropriate provisions to control arms brokering activities.
6. Participating States will report to the Plenary Meetings (first time in 2004) on the progress made in meeting the objectives of the Elements.