

# Import and Transit Considerations in an Arms Trade Treaty

Findings Based on Case Studies of Barbados, Estonia, and Namibia



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# Introduction

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## RATIONALE FOR PROJECT

The United Nations Arms Trade Treaty (ATT) process to negotiate a legally binding instrument to “establish the highest possible common international standards for the import, export and transfer of conventional arms”<sup>1</sup> is an opportunity to establish universal regulatory provisions for the multiple dimensions of international weapons transfers. The ATT process has given substantial attention to conventional arms export standards. Less consideration has been given to the standards needed to responsibly regulate the import or transit of conventional weapons.

All states import conventional weapons and many allow the transit of arms across their territory. Indeed, most states in the Global South are primarily or even exclusively arms importers. For these states, the provisions of an Arms Trade Treaty related to weapons imports will be a significant focus of national implementation of the treaty. Regarding transit, as the Stockholm International Peace Research Institute (SIPRI) has noted, “none of the existing instruments for controlling international transfers of all conventional weapons includes an explicit requirement for states to establish transit controls.”<sup>2</sup> ATT negotiations are an important opportunity to address the lack of common standards for controlling transit, and trans-shipment, of conventional weapons.

This report is intended to provide food for thought on how countries can efficiently control the import and transit of conventional arms. The primary objective is to describe and provide practical examples of how these controls can be applied. Three states were selected representing different regions of the world and different geographical, institutional and economical contexts. The three states are located near major trade routes and thus familiar with the transit trade, while at the same time they are not major arms producers, exporters or importers. In addition the three states are dependent on importing conventional weapons for their sovereign defense needs. The three states selected were Barbados, Estonia and Namibia and the authors would like to thank governmental officials and other experts in the three states for their valuable input to the reports.

For each case study the author has used a common questionnaire to guide the research process. The questionnaire is annexed to the report (see Annex 1) and covers five major areas of interest: transfer data; laws and regulations; institutions and their responsibilities; proof of implementation; and finally special attention to non-state actors. Each report was constructed to provide a brief explanation of the kind of regulatory framework the state operates in, who carries out the legal requirements, and if there have been cases of either licenses denials or seizing of goods on the border. In addition the researchers have reviewed the state’s transparency record with respect to international fora. Each case study could merit its own report based on the way each state has chosen to tackle the common challenge of controlling import and transit of conventional weapons. No system is identical to the other. However common trends are identifiable and all three states provide ample examples of solutions. The final section of recommendations should be read as general conclusions that can be extracted as the lessons learned from reviewing the three different case studies. The recommendations are tailored as general suggestions for any country to implement efficient import and transit controls for conventional weapons.

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1 United Nations General Assembly resolution A/RES/64/48, 12 January 2010, available at <http://www.worldlii.org/int/other/UNGARsn/2009/109.pdf>

2 SIPRI Background Paper July 2011, “Transit and Trans-shipment Controls in an Arms Trade Treaty,” p.3.

## SUMMARY OF INDIVIDUAL FINDINGS

**Barbados** is a Caribbean island state situated northeast of Trinidad and Tobago. Like other members of Caribbean Community CARICOM, Barbados faces the challenge of monitoring and protecting a coastline prone to drug and illicit firearms trafficking. Barbados is not a weapons manufacturer, but trades in conventional arms as an importer state, and as an exporter and transit/transshipment state to neighbouring island states. Barbados' primary legislative instrument is the Firearms Act that governs the import and export of firearms, ammunition and explosives. The Act provides for a system of licensing and under the Act it is unlawful to use, possess, import, export, carry, manufacture or supply firearms or ammunition without a licence. Other important legal tools are the Customs Act, Defence Act and Miscellaneous Controls Act. As defined by national legislation, authorized import and transit of conventional arms into and through Barbados is the shared responsibility of the Barbados Defence Board, the Commissioner of Police, the Customs and Excise Department, and the Civil Aviation Department. The Prime Minister or another member of the Barbados Defence Board has the authority to import military equipment for the Barbados Defence Force. According to public data Barbados engages in a limited import and transit of conventional arms, primarily in firearms. At the same time several authorities are collectively responsible for regulating the import, export and transit of military goods. Increased transparency in reporting, further adoption of regional legal standards and better communication and cohesion between government institutions are three areas of possible improvements.

**Estonia** is a Northern European Union Member State located on the eastern coastline of the Baltic Sea. Since it regained its independence in 1991 it has pursued a free market and pro-business approach and has a growth potential with regards to high-tech and strategically sensitive equipment. Estonia is not a major producer or trader of conventional arms, but production and transfers exist and have the possibility to expand. Estonia has a well developed, long-standing strategic trade control systems and the updated version of its cornerstone legislation – the Strategic Goods Act – entered into force on January 1, 2012. The revision provides updates related to recent changes in the European Union System, but also further clarifications of the relationship between the Act and other relevant legislation such as the Weapons Act. (This new law has yet to be officially translated into English, and therefore most findings are based on pre-2012 law and interviews with Estonia officials.) The Strategic Goods Act is a comprehensive law that covers the transfer, including import and transit, controls of military goods, defence related products, goods that can be used to commit human rights violations, and dual-use items. In addition Estonia controls brokering. Estonia has established a government interagency group called the Strategic Goods Commission to discuss and resolve all issues related to strategic goods. Estonia has also established communication channels to the enforcement authorities. With regards to transparency Estonia fulfills its international obligations under the UN and other fora, but chooses to disclose more detailed information in its national reporting. This level of transparency could be pursued also on an international level. In addition it remains to be seen if the recent update of the Strategic Goods Act will achieve the intended goal of a more streamlined system with less overlap with other regulatory instruments.

**Namibia** is a Southern African state and does not have significant arms manufacturing capabilities apart from one defence sector company – Windhoek Maschienfabrik – that assembles demining vehicles for the domestic and international markets. The Namibian government relies on imports to equip its military and security forces. The bulk of the Namibian arms control provisions have been established to regulate the transfer, trade, licensing and use of arms and ammunition for hunting purposes. Arms and ammunition comprise less than 1% of total imports. The specific legislation that governs arms transfers in Namibia is the Arms and Ammunition Act (1996) and the Defence Act (2002). The control of the import and re-export of major conventional arms for the Namibia Defence Force (NDF) is the responsibility of the Ministry of Defence. Internal systems

and processes have been established within this Ministry for such purposes, with ultimate responsibility residing with the Minister of Defence. The Procurement, Research and Development Division within the MOD is also involved in the procurement of arms, ammunition and military equipment for the Namibian armed forces. As part of its international commitments Namibia is a signatory to the legally binding Southern African Development Community (SADC) Protocol on the Control of Firearms, Ammunition and Other Related Materials. Only licensed arms and ammunition dealers and appropriate government agencies, such as the NDF and the Namibian Police Force, are permitted to import and export commercial consignments of arms and ammunition. In those cases an import permit, issued by Namibian Police Force, is mandatory. Namibia is contemplating control of arms brokering and has some capacity, albeit not clearly defined, to control transit of conventional weapons. Namibia has yet to adopt a comprehensive conventional arms control system and can also improve its level of transparency in international reporting.

## SUMMARY OF RECOMMENDATIONS

General recommendations can be made from the case studies. First, as a necessary precursor to effective implementation of an ATT, states should establish, as necessary, national legal and regulatory frameworks to govern the movement of all conventional arms into, through, and out of their jurisdiction.

Second, states should ensure consistency in these regulatory frameworks. Consistency would reduce the operational risks of transfer controls that may be distributed across several national laws and regulations and where the concomitant authority may be divided among government ministries and departments. Moreover, states can draw on regional standards and model legislation in developing more consistent and comprehensive national laws and regulations.

Third, the case studies suggest recommendations for particular regulatory areas. In keeping with UN General Assembly Resolution 63/67 states would benefit from legislation that regulates brokering activities. The ATT should contain provisions to support robust weapons import standards including coordinated and comprehensive import authorization systems, import authorization as a precondition to export authorization, and delivery verification certificates. Similarly, the ATT should contain strong transit and transshipment provisions to provide universal standards against the current patchwork of controls.

Fourth, and finally, effective implementation of an ATT will rest upon a transparent system of information, experience and data exchange. The treaty should establish minimum standards for regular reporting on arms importing, exporting and transiting by all states parties.

The case studies also suggest general measures that may be undertaken by states to strengthen national legal and regulatory frameworks. States could begin by conducting an audit to assess the efficacy of the national regulatory system. Where the audit reveals the need for additional legislation or other measures, external assistance may be available through international cooperation and assistance mechanisms. States should also consider establishing a national entity to oversee and coordinate controls on the cross-border movements of conventional arms. The national entity would be an obvious focal or contact point for relevant multilateral instruments as well as the body responsible for reporting requirements.

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None of the views expressed in the report should be taken, however, as expressing the views of Barbados, Estonia or Namibia as well as Trinidad and Tobago or the United Kingdom. In addition the authors claim responsibility for the data referred to in the individual case studies. Each case study is primarily reliant on open source data.

# Case Study: Barbados

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## INTRODUCTION

The following case study provides an overview and analysis of Barbados regulations and practices regarding the import and transit of conventional weapons. The study was conducted to examine the current experience of a state that is dependent on importing weapons to meet its security needs and that also is a transit state for weapons transferred to neighboring states.

Barbados is a Caribbean island state situated northeast of Trinidad and Tobago about 400 kilometers from the South American continent. With a population close to 300,000, Barbados is a parliamentary democracy and member of the Commonwealth of Nations. It has been a member of United Nations since shortly after its independence in 1966.

The government of Barbados faces the challenge of monitoring and protecting a coastline prone to drug and firearms trafficking that have grown in tandem in the region. According to the Chairman of the Association of Caribbean Commissioners of Police, in 2009 there may have been up to 1.6 million illegal firearms present in the Caribbean Community (CARICOM).<sup>4</sup> Like other members of CARICOM, Barbados suffers the dire social and economic impact of illicit arms trafficking.<sup>5</sup> CARICOM states have consistently called for a strong and effective international Arms Trade Treaty to assist them in responding in particular to the proliferation and misuse of small arms and light weapons (SALW) and associated ammunition.<sup>6</sup>

Barbados does not manufacture weapons. It trades in conventional arms as an importer, exporter, and transit and transshipment state. It acts as a sub-regional hub for the movement of firearms from supplier states, primarily the US, to other states in the sub-region, especially those that with Barbados make up the Regional Security System (RSS) in the Eastern Caribbean.

## ARMS IMPORTS

From public sources it is possible to assemble an incomplete, but revealing picture of recent arms imports by Barbados. In recent years, a large majority of reported weapons transfers to Barbados have been small

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3 The author would like to thank Derek Alleyne for his invaluable assistance with the research for this case study.

4 "Top Caribbean cop pins rise in violent crime on gun trafficking," *South Florida Caribbean News*, April 6, 2009 available at <http://sflcn.com/story.php?id=6039>

5 In June 2009, Antoinette Williams, Permanent Secretary in the Office of the Attorney General of Barbados, told a regional workshop that "within the last 15 to 20 years there has been a proliferation of gun related crimes, many of which have been connected to the trafficking in illegal drugs and firearms. Many of the human and limited economic resources of countries in our region have had to be diverted from areas of production into fighting crime," cited in "Barbados Host Caribbean Meeting on Implementation of UN Firearms Protocol," *Island Journal*, June 11, 2009.

6 Barbados participated in the 32<sup>nd</sup> meeting of the CARICOM Heads of Government held in St. Kitts and Nevis in July 2011. The meeting issued the "*CARICOM Declaration on Small Arms and Light Weapons*" which noted deep concern "with the prevalence of illegal firearms and ammunition in perpetrating acts of crime and violence in the region." The declaration committed CARICOM states to "implement all necessary actions at the national and regional level to fully combat the illicit trade in small arms and light weapons and their ammunition" and, in particular, to "intensify and sustain engagement in the United Nations effort for the conclusion of a legally binding Arms Trade Treaty."

arms and light weapons. Since 2006 (and in a few cases earlier) data on SALW exports has been voluntarily submitted by some supplier states to the United Nations Register of Conventional Arms (UN Register). The UN Register reports that Barbados has imported at least 235 weapons in the recommended small arms categories of the Register between 2003 and 2009, including more than 100 revolvers and self-loading pistols and 76 submachine guns (see Annex 2).

Other reports add to the picture of Barbados arms imports. The United States does not report small arms and light weapons transfers to the UN Register, but it publishes data on US exports in small arms and ammunition categories elsewhere. According to US national reports<sup>7</sup> the US shipped \$1,215,000 in direct commercial sales of military (USML) goods to Barbados in 2008 and \$182,114 in 2010. The figures represent shipments rather than authorizations. No US shipments were reported for 2009. Most of the military goods shipped were Category I (firearms) and Category III (ammunition) goods.

In addition to direct commercial sales, the Foreign Military Sales program of the US Department of Defense reports that Barbados received a total of \$1,079,000 in shipments of US military equipment for the 10-year period 1999 to 2008. Virtually all of this equipment was transferred to Barbados in the first six years of the decade -- from 2005 to 2008 Barbados received a total value of \$16,000 in goods under the FMS program.

The database of international small arms transfers assembled by the Norwegian Initiative on Small Arms Transfers (NISAT) largely from UN Commodities Trade (UN Comtrade) data offers the most comprehensive picture of firearms imports by Barbados.<sup>8</sup> From the NISAT database we can derive the following table of small arms imports by Barbados during the period 2002-2009, converted to 2009 US constant dollars.

#### BARBADOS SA IMPORTS 2002-2009 IN 2009 US CONSTANT DOLLARS

Year	US	US military	UK	UK military	Italy	Austria	Other	Other military	Total
2002	388,186		61,672		44,341	65,288	27,766		587,253
2003	445,488	262,824	119,508		113,358	46,001	92,145		1,079,324
2004	266,190		114,211		79,999	58,293	15,740		534,433
2005	219,473	33,702	189,039		158,385	64,896	205,787	2,702	873,984
2006	388,797	79,684	81,606		76,363	63,092	247,387	98,366	1,035,295
2007	265,351		74,055		2,733	21,330	28,974	30,674	423,117
2008	235,346	6,050	37,582	48,215	157,918	23,801	54,559		563,471
2009	561,742		44,667		74,225	103,606	55,430		839,670
Total	2,770,573	382,260	722,340	48,215	707,322	446,307	727,788	131,742	5,936,547

The table suggests that the volume of small arms imports by Barbados has fluctuated in recent years around an average annual volume of about \$750,000. The minority of the imported weapons are in categories that are considered military by UN Comtrade definitions. Most of the imports consist of revolvers and pistols, rifles and shotguns and accompanying ammunition that would typically be available for civilian use.

There are recent reports that Barbados has imported military goods other than small arms. In 2008 the US State Department, for example, authorized the shipment of six items worth \$19,770 under the "fire control, range finder, optical and guidance and control equipment" category of the US Munitions List. The SIPRI

7 US and other national reports on arms exports are available from the SIPRI National Reports Database [http://www.sipri.org/research/armaments/transfers/transparency/national\\_reports/research/armaments/transfers/transparency/national\\_reports/sipri-national-reports-database](http://www.sipri.org/research/armaments/transfers/transparency/national_reports/research/armaments/transfers/transparency/national_reports/sipri-national-reports-database)

8 See <http://www.prio.no/NISAT/Small-Arms-Trade-Database/>

reports that Barbados imported three Stan Patrol-4207 patrol craft from the Netherlands during the period 2007-2009. According to SIPRI, the deal was worth \$18 million US. The Barbados designation of the patrol craft was Banfield.

The full extent of Barbados' importation of military goods is not apparent from open sources. Although the UN Register provides some insight into imports of small arms and light weapons by Barbados, it provides no import data in other weapons categories. In the past decade, Barbados has reported to the UN Register only once, in 2003, when it indicated "nil" exports and imports in the seven major weapons categories of the Register.<sup>9</sup>

## SMALL ARMS EXPORTS AND TRANSIT

From NISAT data it is apparent that the United States was the dominant reported small arms supplier to Barbados from 2002 to 2009, as it was to all other CARICOM member states during the period. In the case of three CARICOM states – Antigua and Barbuda, Dominica and Grenada – NISAT data on small arms imports indicates that Barbados was the second largest firearms supplier after the US. In three additional CARICOM member cases – St. Kitts, St. Lucia and St. Vincent – Barbados was the third largest supplier, following second-largest suppliers Bosnia, Austria and Austria respectively.

Barbados and the six CARICOM states that import small arms shipments from Barbados comprise the seven members of the Regional Security System. The RSS is a treaty arrangement for a collective response to security threats in the Eastern Caribbean. It allows for collaboration of military and police forces of the seven states while each state retains command over its forces. Barbados provides the headquarters and a large part of the funding for the RSS.

Figure 1 (overleaf) illustrates the value reported by NISAT of imports of small arms by Barbados and the value of its exports of small arms to RSS states during the 2002-2009 period. The NISAT data confirms that Barbados shipped small arms to all RSS-allied states during the 2002-2009 period. Significantly, since Barbados possesses no small arms manufacturing capacity, the weapons must effectively transit through Barbados from weapons suppliers outside the country.

Compared to the sporadic nature of the reported value of small arms imported by Barbados, the figure illustrates a relatively stable value for small arms re-exported by Barbados during the period. The available data may not be comprehensive and it is likely that both graph lines in the figure represent minimum values. Nevertheless, the figure suggests that the value of weapons re-exported by Barbados is significantly smaller than that of weapons imports. It also underlines the ongoing nature of Barbados' effective transit of small arms.

## LAWS AND REGULATIONS

The import into and transit through Barbados of conventional weapons are regulated by the Barbados Firearms Act, Customs Act, Defence Act, Miscellaneous Controls Act and Civil Aviation Regulations.

### Firearms Act

The Barbados Firearms Act<sup>10</sup> governs the import and export of firearms, ammunition and explosives. The Act provides for a system of licensing and under the Act it is unlawful to use, possess, import, export,

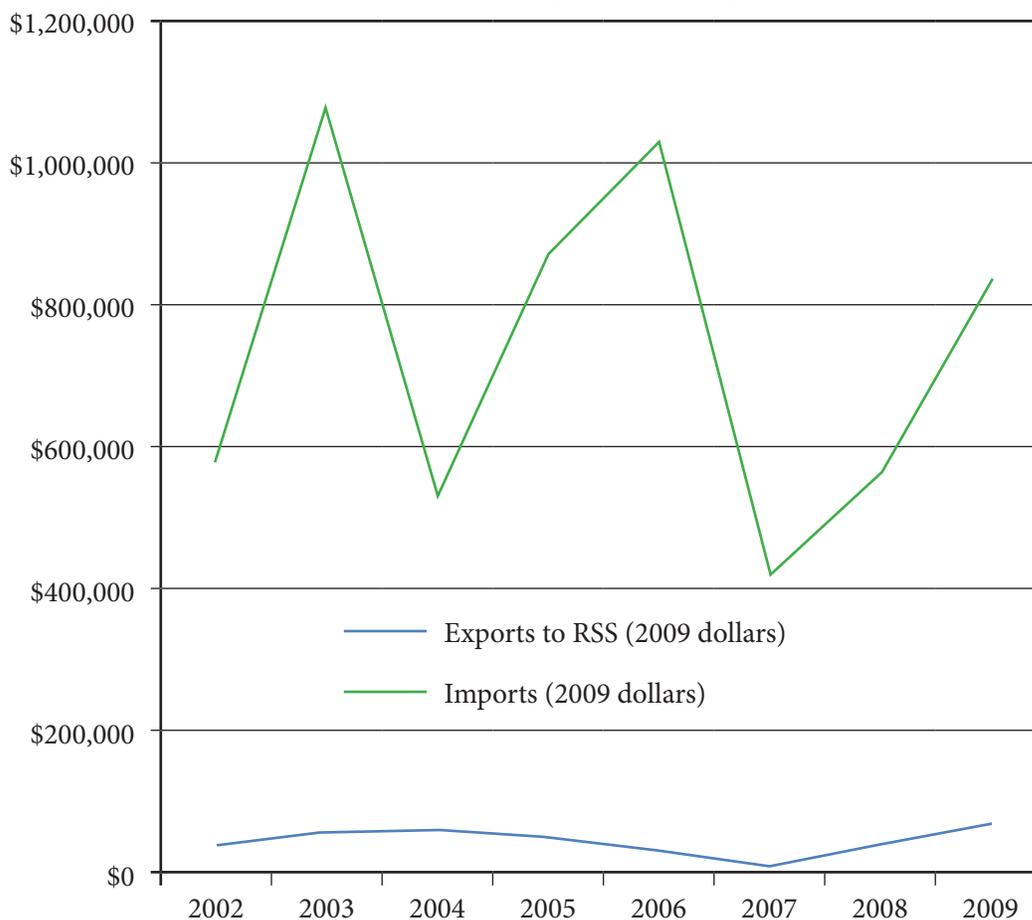
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9 The recently-launched "Global Reported Arms Trade" database of the UN Office of Disarmament Affairs (see <http://www.un-register.org/HeavyWeapons/index.aspx?Col=BB&year=0&Cat=0>) indicates that for Barbados there are:

- No reported transfers of conventional arms in the major categories of the UN Register.
- No reported transfers of small arms and light weapons in the recommended categories of the UN Register.
- No domestic purchases, national holdings or national policies reported to the UN Register.

10 Firearms Act, 1 L.R.O. 2003, cap.179, available at <http://www.unlirec.org/Upload/Documents/68@Firearms.pdf>

Figure 1: Reported Barbados Small Arms Imports and Exports to RSS States



Source: NISAT small arms trade database

carry, manufacture or supply firearms or ammunition without a licence. Authorization of all firearms licences are made by the Commissioner of Police, based on an application process, and in the case of denials, subject to appeal to the Minister (Attorney General). The Act defines the licence types to be firearms licence (for possession and use), import and export licence, dealer's licence, gunsmith's licence, collector's licence and shooting club licence. The maximum period of each licence is one year.

The Firearms Act requires that any acquisition, sale or transfer of firearms or ammunition be conducted by a person who is licensed as a dealer or as a gunsmith. A dealer's licence allows the holder to import and export firearms and ammunition. To do so, a dealer must apply to the Commissioner of Police for an import or export licence which, among other details, requires the applicant to supply the calibre, maker's name, type and serial number of each firearm transferred and the calibre and quantity of ammunition transfers. The import/export licence application also requires the dealer to list the type and number of firearms in his or her possession.<sup>11</sup>

The dealer must notify the Police Commissioner in advance of transactions among domestic dealers including a sale or transfer to another dealer. The dealer also must keep a comprehensive register of all stock and transactions, including the names and addresses of individuals with whom the dealer has entered into a transaction along with the dates of the transactions. The dealer must report an update on the register to the Commissioner each month. The Commissioner may order the dealer to make his or her register and stock available for inspection and counting by a police officer.

11 Application for import and export licence available at <http://www.barbadospolice.gov.bb/>

A firearms dealer may not deal in prohibited weapons or ammunition. The Firearms Act defines these as “any weapon or ammunition, the possession, use, importation or exportation of which is prohibited by any enactment.”<sup>12</sup>

The Firearms Act provides for penalties for offences under the Act. With respect to licences, the penalties include:

- Fines of up to \$5000 and imprisonment up to 2 years for false statements, altering a licence without permission, or failure to comply with the terms of the licence.
- Fines of up to \$50,000 and imprisonment up to 5 years for failure to produce, account for, or allow inspection of firearms stock when required by the Commissioner to do so.

The Firearms Act does not apply to:

- Firearms or ammunition on board any naval vessel or military aircraft of another nation.
- Firearms or ammunition that are “bona fide cargo” in transit for another destination outside Barbados.
- Arms or ammunition in the possession of the master or owner of a vessel from outside Barbados provided the arms or ammunition is declared to Customs.

### Customs Act

The Customs Act establishes requirements for the transfer of goods into and out of Barbados, including weapons. The Act contains definitions pertaining to the import and transit of weapons, including:

*Importer* -- which is defined as the owner or any other person possessing “or beneficially interested in” goods from the time of importation until they are “duly delivered” out of customs charge and any person who signs importing documentation required by customs.

*Transit goods* -- which “means imported goods entered on importation for transit or transshipment”

*Transit or transshipment* – which, “in relation to the entry of goods, means transit through the Island or transshipment with a view to the re-exportation of the goods in question.”<sup>13</sup>

The act does not include precise or distinct definitions of transit and transshipment.

A Customs Order attached to the Customs Act contains a list of prohibited and restricted imports and exports. The prohibited items include “toy guns that are capable of discharging any matter whatsoever accompanied by an explosion or a gun like sound.”<sup>14</sup> Restricted imports include “arms and ammunition except under licence issued by the Minister under the Ammunition Act or the Firearms Act.”<sup>15</sup>

The Act includes provisions intended to prevent bribery and corruption (Part II: 11). Offences include illicit payments to customs officials and actions that defraud the government and are punishable by fines or up to three years imprisonment.

The provisions of the customs laws apply to goods in transit to a destination beyond Barbados. The laws provide the authority to issue licences for goods in transit.<sup>16</sup>

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12 Firearms Act, p.7.

13 Customs Act, 1 L.R.O. 1998, cap.66, p.19.

14 Customs (List of Prohibited and Restricted Imports and Exports) Order, 1962, L.R.O. 1996, cap.66, Part I.

15 Ibid., Part II.

16 Ibid., Part III, 98.

The Customs Act also requires the senior officers of military aircraft and naval vessels to submit a written report of “any goods other than stores” that are removed from the aircraft or vessel. The report must include the quantity, markings and names of “respective consignors and consignees” of such goods. The act allows customs officials the right of search of military aircraft and vessels as they would with non-military aircraft and vessels.<sup>17</sup>

Penalties under the Act include a fine of \$500 or, if greater, “three times the value” of the prohibited or restricted goods that are imported or exported contrary to the Act. This fine also applies to bonded goods that are not delivered to the declared destination.<sup>18</sup>

The Act does not apply to the Barbados Defence Force. In particular, it exempts:

the importation or exportation, by or on behalf of the Barbados Defence Force, of arms, ammunition, vessels, vehicles, aircraft, uniforms and other military stores certified as such by the Prime Minister or a member of the Defence Board authorised in writing by the Prime Minister.<sup>19</sup>

### **Defence Act**

In Barbados defence and national security are overseen by the Prime Minister who exercises authority via the chairmanship of the Defence Board, which is the high-level command and administrative body of the Barbados Defence Force (BDF). The Defence Act provides for the Prime Minister to direct the Chief of Staff of the BDF “for the purposes of maintaining and securing public order and public safety, as the Prime Minister thinks fit.”<sup>20</sup> As noted above, the decision by the Prime Minister or a member of the Defence Board to authorize the import or export of any military materiel for the BDF is not subject to the Customs Act.

### **The Miscellaneous Controls Act**

The Miscellaneous Controls Act provides the authority to implement UN Security Council sanctions including arms embargoes. Under the Act the government (in particular, the Department of Commerce and Consumer Affairs) may “prohibit absolutely the importation or exportation of goods or of any class or description of goods from or to any country.”<sup>21</sup> A contravention of the regulations under this section of the Act is subject to penalties of \$100,000 in fines and imprisonment for two years. The case study research was unable to establish if or when this legislation has been used by Barbados to implement international sanctions.

### **Other regulations**

Civil Aviation Regulations (2007) attached to the Civil Aviation Act prohibit the air transport of “weapons of war and munitions of war” through Barbados unless prior approval to do so has been granted by the Barbados Civil Aviation Department (BCAD). According to a Department advisory circular, the regulations apply to aircraft registered in Barbados no matter where they are operating as well as to foreign registered aircraft operating in Barbados.

### **Multilateral commitments**

Three multilateral agreements pertain to Barbados’ regulation of firearms transfers. As a UN member state Barbados has since 2001 been politically bound by the United Nations *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. Barbados is a

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17 Ibid., Part XI, 260.

18 Ibid., Part III, 50, 69 and 72.

19 Ibid., Part XI, 261.

20 Barbados Defence Act (1979), Laws of Barbados, Chapter 159, II,9(2), cited in *Country Case Studies, Barbados, Latin American and Caribbean Security Sector Report 2006*, FLACSO, available at [http://www.ssrnetwork.net/uploaded\\_files/4140.pdf](http://www.ssrnetwork.net/uploaded_files/4140.pdf)

21 Barbados Miscellaneous Controls Act (1985), Laws of Barbados, Chapter 329, available at [http://cits.uga.edu/programs/legislation/barbados/bb\\_misc.pdf](http://cits.uga.edu/programs/legislation/barbados/bb_misc.pdf)

signatory (2001) to the *Firearms Protocol of the UN Convention against Transnational Crime* although it has yet to ratify the Protocol. Most pertinent to the majority of its arms transfers, Barbados has signed (2001) and acceded (2004) to the *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials*, commonly known by its Spanish acronym, CIFTA.

## THE REGIONAL CONTEXT

### CIFTA

As a member of the Organization of American States (OAS), Barbados acceded to CIFTA, the first regional firearms treaty, in 2004. The 1997 OAS convention was designed to prevent illicit manufacture and trafficking in firearms and ammunition while promoting cooperation and exchange of information and experience among States Parties. The scope of CIFTA includes firearms, firearms ammunition, explosives, and “other related materials.” The convention regulates commercial firearms transfers -- state to state transfers are not included within its scope.

The convention calls for effective national systems of export, import, and international transit licenses or transfer authorizations. It requires a collaborative approach to transfers among states parties and each state involved in the transfer – exporter, importer, or transit state – must authorize the transfer and share authorization information with the other states. States Parties may not permit shipments until the importing and in-transit countries have issued the necessary licenses or authorizations. Moreover, the importing State Party must inform the exporting State Party, upon request, of the receipt of dispatched shipments.

### OAS model regulations and legislation related to CIFTA

In an effort to assist national implementation of the provisions of CIFTA, the Inter-American Drug Abuse Control Commission (CICAD) and other OAS bodies have developed model regulations and legislation. The process began after CIFTA entered into force in 1998 when CICAD developed model regulations for the control of commercial firearms transfers followed by model regulations for firearms brokering. The process continues with a CIFTA-CICAD group of experts that have developed model legislation for implementation of several other CIFTA provisions. The OAS provides assistance for member states to draw on the model regulations and legislation to improve national systems as necessary.

The initial *Model Regulations for the Control of the International Commercial Movement of Firearms, Components and Ammunition*, were prepared by CICAD and updated in 2003.<sup>22</sup> This first set of model regulations contain provisions for firearms and their components and distinct provisions for ammunition, underlining the fact that ammunition production and transfers are central to CIFTA. According to these regulations, export and import certificates should include information on the authorization, exporter, importer, broker, and the source of the firearms or ammunition. In cases where shipments pass through interim states, the in-transit country may issue an in-transit shipment authorization.

Similarly, 2003 model brokering regulations call for the registration and licencing of firearms brokers. Because Barbados has a dealer licensing system many brokering-equivalent regulations are in place. Other model regional regulations available for adoption by Barbados include:

» *A: Marking and recordkeeping*

Article VI of CIFTA addresses marking of firearms and Article XI, recordkeeping. The 2007 *Model Legislation on the Marking and Tracing of Firearms* provides detail on the firearms markings required at the point of manufacture and at the point of import. For imported firearms, in addition to manufacture markings the firearm should contain markings to identify the country of import, the importer’s name and, whenever possible, the year of import. The marking and tracing model legislation includes detailed recordkeeping

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22 “Model Regulations for the Control of the International Movement of Firearms, their Parts And Components and Ammunition – Updated,” CICAD/doc1281/03, 13 November 2003. Available at [http://www.oas.org/dsp/English/cpo\\_armas\\_claves.asp](http://www.oas.org/dsp/English/cpo_armas_claves.asp)

provisions to gather the “information necessary to trace and identify manufactured, exported, imported, re-exported, in-transit, or marketed in the internal market and/or confiscated or forfeited firearms.” This information includes descriptions of goods and relevant dates, routes, and all transaction actors, including brokers. Import and export records should be kept for at least 20 years.<sup>23</sup>

» *B: Strengthening export controls*

The *Proposed Model Legislation and Commentaries for Strengthening Controls at Export Points for Firearms, Ammunition, Explosives and Other Related Materials* of 2008 were published under OAS members conviction that “promotion of strengthened controls at export points will assist in preventing [firearms, their parts and components and ammunition] diversion to unlawful ends.”<sup>24</sup> The model legislation contains national measures to strengthen implementation of CIFTA including:

(i) *Designated export points*

The CIFTA-CICAD expert group commentary on the model legislation underlines the benefit, especially for smaller countries that do not produce firearms, of designated export points for firearms. Efforts to detect trafficking would be strengthened by “a comprehensive list of approved or reviewed exporters, brokers and freight forwarders”<sup>25</sup>

(ii) *Office of export controls*

The commentary also notes that criminal activity and corruption tends to flourish when government departmental mandates lack clarity, and when government agencies with shared oversight responsibilities are not well coordinated. It calls for a central supervisory authority – an Office of Export Control (OEC) -- to be made responsible for the export of firearms, ammunition and related materials.

(iii) *Export licences*

The model legislation details what is required for export licence applications and export licences issued. Applicants should provide standard information on exporters, importers, manufacturers, and the quantities and descriptions of the shipped goods. The application also should include details of the final recipient, any brokers involved, end-use certificates and import or in-transit authorizations. The model legislation stipulates that a permanent data base be maintained by the export licencing authority, preferably in electronic form so that relevant data may be shared with customs officials at the point of export.

(iv) *End-use certification and monitoring*

Acknowledging that some countries pose higher than normal risks that exports of firearms, ammunition or explosives will be diverted, the model legislation calls for the importing country to issue an end-use certificate. The certificate should provide information that includes, inter alia, whether the end-user is a government or private end-user, whether the number and type of goods are appropriate, and warrants that the goods shall not be diverted, or re-exported without permission.

» *C: Criminal offenses and sanctions*

Article IV (Legislative Measures) of CIFTA deals with criminal offences. The model legislation on criminal offenses provides detailed text on criminal penalties related to CIFTA provisions on jurisdiction, marking of firearms, confiscation or forfeiture, licensing or authorization, and extradition. Among other recommendations, the model legislation on criminal offences calls for penalties for government officials who

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23 “Model Legislation on the Marking and Tracing of Firearms,” GE/CIFTA-CICAD/doc.3/06 rev.3, 23 April 2007. Available at [http://www.oas.org/dsp/English/cpo\\_armas\\_claves.asp](http://www.oas.org/dsp/English/cpo_armas_claves.asp)

24 “Proposed Model Legislation and Commentaries for Strengthening Controls at Export Points for Firearms, Ammunition, Explosives and Other Related Materials,” GE/CIFTA-CICAD/doc.2/06 rev.4, 9 May 2008. Available at [http://www.oas.org/dsp/English/cpo\\_armas\\_claves.asp](http://www.oas.org/dsp/English/cpo_armas_claves.asp).

25 Ibid., p4.

fraudulently issue or use an authorization of an export, import or transit of firearms and related materials.<sup>26</sup>

In addition to the model text, the OAS secretariat offers assistance to member states to undertake legislative and regulatory improvements. As a recent example, in June 2011 Barbados (together with Grenada and St. Lucia) signed the OAS agreement “Promoting Firearms Marking in Latin America and the Caribbean”. Four months later the OAS delivered a firearms marking machine, related computer and training to the Barbados Ministry of National Security and the Royal Barbados Police Force.<sup>27</sup> The RBPF have committed to marking 300 police firearms per year.<sup>28</sup>

To take greater advantage of OAS assistance member states must provide the initiative by expressing interest. In the case of Barbados, the CIFTA assistance process would be made easier by the appointment of a national point of contact as required under CIFTA provisions.

## BARBADOS INSTITUTIONS AND THEIR IMPORT AND TRANSIT RESPONSIBILITIES

As defined by national legislation, authorized import and transit of conventional arms into and through Barbados is the shared responsibility of the Barbados Defence Board, the Commissioner of Police, the Customs and Excise Department, and the Civil Aviation Department. The Prime Minister or another member of the Barbados Defence Board has the authority to import military equipment for the Barbados Defence Force. The majority of conventional arms imported into, re-exported from and transited through Barbados are firearms and the Commissioner of Police has responsibility for authorizing all forms of firearms licences, including import and export licences. The procedures for authorized arms importation and transit are supported by the Barbados Customs and Excise Department and the Barbados Civil Aviation Department.

### Firearms dealers

The Commissioner of Police licenses firearms dealers to import and export firearms and ammunition on behalf of licensed individuals and organizations. Dealers are involved in vetting of individuals related to requirements of the Firearms Act (for example, the individual must be 25 years or older).<sup>29</sup> Dealers also import and export firearms and ammunition on behalf of the Royal Barbados Police Force and the Barbados Defence Force<sup>30</sup>, particularly in the case of firearms purchased from foreign commercial suppliers. This system does not apply to government to government transfers of firearms and other military weapons systems. These are arranged by the Barbados Defence Board.

To qualify for a domestic firearms dealers permit, dealers must demonstrate to the Commissioner that he or she has a place of business with secure surroundings for stockpiles. This includes maintaining an alarm system that is monitored and linked to local police facilities. The dealer must make monthly detailed reports to the Commissioner on transactions and stockpiles. These reports provide the necessary data to track firearms and ammunition from importation to end-user.<sup>31</sup>

Firearms dealers in Barbados also act as agents on behalf of foreign commercial firearms manufacturers and other suppliers. Typically producing a range of weapons, the foreign manufacturer may supply fire-

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26 “Draft Model Legislation and Commentaries on Legislative Measures to Establish Criminal Offenses in Relation to the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials,” GE/CIFTA/doc.2/07 rev. 3, 9 May 2008. Available at [http://www.oas.org/dsp/English/cpo\\_armas\\_claves.asp](http://www.oas.org/dsp/English/cpo_armas_claves.asp)

27 “OAS donates firearms marking machine to Barbados,” Caribbean News Now!, October 5, 2011, available at [www.caribbeannewsnow.com/news/newspublish/home.print.php?news\\_id=8163](http://www.caribbeannewsnow.com/news/newspublish/home.print.php?news_id=8163)

28 Interview with Alison August Treppel, Department of Public Security, OAS, 6 December 2011.

29 Interview with senior official, The Barbados Central Bank, 6 Dec 2011.

30 Interview with senior police official, 13 January 2012.

31 Presentation by licensed firearms dealer to regional workshop on harmonization of firearms legislation, Barbados, 19 April 2011.

arms and ammunition to the dealer for both private use (sports shooting for example) and for security forces. The firearms dealer is responsible for obtaining the necessary export authorization from the state authorities of foreign manufacturers. For example, in the case of US suppliers, Barbados firearms dealers must receive US State Department authorization to export firearms (using a DSP-83 form), arranged in conjunction with the supplier.<sup>32</sup>

The dealer may also arrange firearms transit shipments to firearms dealers in other Caribbean destinations such as the neighbouring state members of the Regional Security System. Dealer to dealer transfers must be licenced both by the Barbados Commissioner of Police and by the Commissioner of the recipient state.<sup>33</sup> The Barbados dealer must supply a copy of import permission to obtain an export licence.

### **Customs and Excise**

As part of the importation process, firearms dealers must provide a copy of the relevant documentation authorizing imports of firearms and ammunition to Customs officials. With the exception of imports by the Barbados Defence Force, the Customs and Excise Department exercises authority over imports and has the power to return shipments that have inadequate documentation. Customs is an autonomous department whose rulings may be overturned only by the Prime Minister.<sup>34</sup> The firearms dealer is responsible for bonding the imported weapons and storing them in a secure area under the control of the Customs service. The stock inventory reported to the Commissioner of Police includes the weapons stored under bond. The firearms and ammunition remain duty-free in the storage area until a sale is made to an end-user with the appropriate firearms licence.

In the case of at least one Barbados firearms dealer, two secure storage areas controlled by the Customs service are used to store firearms imports for Barbados and firearms for onward shipment to other states respectively. Customs duty is paid on the weapons in the second area when deliveries are made to the destination state.<sup>35</sup>

Government agencies other than the BDF and police may import controlled items with the authorization of the Customs and Excise Department. For example, a recent delivery of a US-manufactured product on the US munitions list to the Barbados Central Bank required export authorization by the US State Department under International Traffic in Arms Regulations as well as authorization by Barbados Customs and Excise. The Commissioner of Police was informed about the import as a courtesy.<sup>36</sup>

Imports by sea of firearms and other conventional weapons occur at the Bridgetown Port. The port authority, Barbados Port Inc., operates a mobile container scanner to screen containers for risks that could impair “national border security.”<sup>37</sup> As noted above, the Barbados Civil Aviation Department exercises authority over import and transit by air of munitions of war and firearms at the Grantley Adams International Airport.

### **The Barbados Civil Aviation Department**

The BCAD is responsible for authorizing the air transit of weapons and munitions of war through Barbados.

The BCAD defines munitions of war as including:

- Weapons and ammunition carried for personal protection from attack by other persons, except where the calibre of the weapon is such that it is only effective at close range, e.g. .22 hand gun;

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32 Senior bank official, 6 Dec 2011.

33 Ibid.

34 Ibid.

35 Ibid.

36 Senior bank official, e-mail correspondence, 7 Dec 2011.

37 Port News, Series II, 2009, available at [http://www.barbadosport.com/index.php?option=com\\_rokdownload&view=folder&Itemid=109&id=17:port-page](http://www.barbadosport.com/index.php?option=com_rokdownload&view=folder&Itemid=109&id=17:port-page)

- Weapons and ammunition carried by someone giving official protection from attack to another person;
- Weapons and ammunition used by police forces, para-military, military or armed forces; and
- Weapons and ammunition includes component parts and accessories.<sup>38</sup>
- For the purposes of the regulations, “if a firearm is not ammunition of war, it should be treated as a sporting weapon for the purposes of its carriage on an aircraft.”

The BCAD is also responsible for ruling on cases when there is doubt about whether goods fall into the definition of munitions of war. An aircraft operator wishing to transport munitions of war must receive the approval of all States involved in the transfer, including “States of origin, transit, overflight and destination of the consignment and that of the operator.”<sup>39</sup> In Barbados the operator must complete an BCAD approval form that requires details of the quantity, calibre and make and type of the weapons or munitions. Approval is provided in the form of a BCAD Import/Export licence number and expiry date.

No approval is required from BCAD for the transport of sporting weapons provided certain conditions that are intended to provide safe transport are met, including stowage in a place that is inaccessible to passengers during flight. Sporting weapons include hunting knives, bows and firearms designed for shooting game or for target shooting. A BCAD advisory circular also lists firearms calibres that “are known to be found only on sporting weapons,” and where “in almost all instances the weapon is likely to be a sporting weapon.”<sup>40</sup> Again, where there is doubt, the Department should be consulted.

## Observations

In Barbados several authorities are collectively responsible for regulating the import, export and transit of military goods. The Commissioner of Police licenses the import and export of firearms, ammunition and explosives, including commercial sales and transfers to Barbados security forces. Police authorization does not extend to firearms that are “consigned to some other place outside Barbados and in transit as *bona fide* cargo and entered on the manifest.”<sup>41</sup> The Barbados Defence Board authorizes imports and exports of military equipment for the Barbados Defence Force including government to government arms transfers. The Customs and Excise Department may seize or return firearms, ammunition and explosives imported without appropriate licence documentation. The Department also requires a written report for any goods removed in Barbados from military aircraft or naval vessels. It authorizes the import of military goods that are not firearms or related equipment and issues licences for goods in transit, including military goods. Since equipment imports and exports for the Barbados Defence Force are exempt from the Customs Act, Customs does not regulate BDF transfers. Finally, the Barbados Civil Aviation Department licences the air transit of “weapons of war and munitions of war.”

The shared authorization process appears to administer the full scope of arms imported to, exported from and transited through Barbados, but it is not apparent how and when the relevant authorities collaborate and exchange information. For example, if it necessary for the BCID to rule on whether an imported item is a weapon of war, it is unclear how the ruling would inform the other regulatory bodies.

According to the available public data, Barbados imports and transits modest volumes of conventional weapons, mostly as firearms shipments. Barbados therefore should not be at risk of diversion of significant volumes of conventional arms into illicit channels.<sup>42</sup> Nevertheless, police tracing of illicit guns in the

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38 Ibid.

39 Ibid.

40 Barbados Civil Aviation Department Document OAC-009, “Transport of Sporting Weapons by Air”, pp.6-7.

41 Firearms Act, p.28.

42 This is not to say that there are no criticisms of the current licencing system. For example, one interview revealed domestic criticism that the licensing of shooting clubs provides loopholes for members to import

Caribbean region has revealed that firearms imported by Barbados may find their way to illicit markets.<sup>43</sup> As recently as 2011, for example, police in Trinidad and Tobago recovered a firearm manufactured in Italy that was shipped to Barbados but “found its way [to] Trinidad and it was used in a murder.”<sup>44</sup>

Consequently, as an island that both imports for its own requirements and re-exports and transits arms shipments to neighbouring states, Barbados could make transfer control improvements to further reduce the risks of diversion. The following recommendations are made based on a “best practice” approach that for the moment sets aside questions about resources and capacity. These questions could be raised in the context of the international cooperation and assistance provided under a number of existing agreements (such as CIFTA and the UN PoA) as well as within the context of Arms Trade Treaty negotiations.

## RECOMMENDATIONS FOR BARBADOS

### Improved transparency

Barbados has released little public data on weapons flows. This situation would be improved markedly if Barbados provided annual reports to the UN Register of Conventional Weapons, in particular on small arms and light weapons. Such data could capture not only the volume and nature of imports and export by Barbados but also the volume and nature of weapons transfers to RSS states for which Barbados acts as a transit point.

Improved reporting of weapons transfers into and through Barbados would be dependent on the responsible authorities drawing on the firearms acquisition, transfer and stockpiling records that are required under the current licencing system. With greater opportunities for, and implementation of, computerized systems of record keeping, this should be a practical goal.

As part of the implementation of CIFTA, the OAS encourages member states to create a registry of brokers operating within their jurisdiction. Barbados could compile a registry from the information required for licencing firearms dealers. This information could be shared among other OAS member states and beyond.

### Implementation of regional legal standards

Barbados could do more to draw on the model legislation and assistance mechanisms that are available to OAS member states under multilateral support for implementation of CIFTA. The model legislation and regulations provide shared high standards for the regulation of commercial firearms transfers in order to reduce and eliminate firearms trafficking. There are several mechanisms that Barbados could adopt to better regulate the import, export and transit of firearms – and indeed other conventional weapon systems. These include adoption of recommended record keeping standards and procedures, brokering regulations, an office of export controls, and an end-use certification process. In addition, export control recommendations in the model legislation would strengthen regulation of the transit of firearms through Barbados. And adoption by Barbados of standard firearms marking procedures at the point of import would not only assist Barbados to meet CIFTA obligations but also would similarly assist other Regional Security System members for which Barbados acts as a transit state. The marking process could be carried out at the bonded warehouses required by Barbados law.

### Coherence and cooperation among agencies responsible for authorizing transfers

The Barbados government should review its current procedures and standards with the view to ensuring cooperation, coherence and comprehensiveness among all Barbados authorities responsible for regulating international transfers of conventional arms. The review could assess the extent of implementation of rel-

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firearms that might be diverted.

43 The Royal Barbados Police Force cooperates with international partners to trace illicit firearms. This includes participation in the US “eTrace” system, a Web-based electronic system which allows the RBPF to submit firearms tracing requests to the National Tracing Center of the US Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The police force may also submit trace requests as a member of Interpol.

44 “Tracing begins on 102 seized guns,” Trinidad and Tobago Guardian On-Line, September 23, 2011 available at <http://www.guardian.co.tt/news/2011/09/22/tracing-begins-102-seized-guns>.

evant multilateral commitments regarding conventional arms transfers as well as conduct an international survey of “best practices” for import, export and transit regulations and procedures. Such a review also should consider the advantages of appointing a single point of authority to oversee and coordinate regulation of all conventional weapons into, through, and out of, Barbados. This authority could be modeled on the CIFTA-CICAD expert group recommendation for an Office of Export Controls. The coordinating authority could serve as the national point of contact for related multilateral instruments, including the UN Register of Conventional Arms, the UN Programme of Action on Small Arms, and CIFTA.

# Case study : Estonia

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## INTRODUCTION

The following case study provides an overview and analysis of the current state of the Estonian strategic trade control system, with a closer look at the country's legislation and procedures related to the import and transit control of conventional weapons.

Estonia has over the last 20 years developed a comprehensive strategic trade control system that takes into account the various steps of a trade transaction including import, export and transit. In addition Estonia has incorporated the trade control of both conventional weapons and so-called dual-use products<sup>45</sup> under one law. At the same time, trade-related control of military items can also be found in other types of legislation. A complex type of legislative network is not unique to Estonia. But there are lessons to be learned from building a cross-cutting system while at the same time safeguarding the country's access to defense items, and the development of its advanced technology trade.

Estonia is a Northern European country located on the eastern coastline of the Baltic Sea. As a neighbor to Sweden, Finland, the Russian Federation and Latvia, Estonia constitutes a key link in the East-West trade routes crossing the Baltic Sea and its connecting rivers. Estonia is also a European Union (EU) member and thus constitutes an important part of the border between the European Union internal market and the international trading community. In the 20 years since Estonia regained its independence in 1991,<sup>46</sup> the country has embarked on a free market and pro-business path with the capital Tallinn as the country's economic center. It is thus far the only new EU Member State that has been accepted to the euro zone (on January 1, 2011).<sup>47</sup> Estonia has established itself as an e-commerce innovator having one of the largest internet penetration levels in the world.<sup>48</sup>

Estonia is not a major producer or trader of conventional arms, but production and transfers exist and have the possibility to expand. Furthermore, the country's commitment to international norms and standards<sup>49</sup>, its growing high-tech industry and trade potential, and its geographical location make it an interesting case study. Lessons learned from Estonia are particularly relevant in view of Estonia's support for an international ATT. In 2009 Estonia voted yes to start negotiations for an Arms Trade Treaty in the United Nations<sup>50</sup> after already expressing support for a comprehensive ATT in its national statement in

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45 The term "dual-use" refers to the fact that the item or technology in question can have both a military as well as civilian use

46 "Independence restored", *The Official Gateway to Estonia*, available at <http://estonia.eu/about-estonia/history/independence-day.html>

47 "Economy in numbers", *The Official Gateway to Estonia*, available at <http://estonia.eu/about-estonia/economy-a-it/economy-in-numbers.html>

48 "e-Estonia", *The Official Gateway to Estonia*, available at <http://estonia.eu/about-estonia/economy-a-it/e-estonia.html>

49 Estonia, list of international agreements, *Inventory of International Nonproliferation Organizations and Regimes created by the Center for Nonproliferation Studies Last Updated: 14/07/2011*, available at the Nuclear Nonproliferation Initiative website [http://www.nti.org/media/pdfs/estonia.pdf?\\_=1316466791](http://www.nti.org/media/pdfs/estonia.pdf?_=1316466791)

50 United Nations General Assembly Resolution A/RES/48, December 2, 2009, United Nations Bibliographic Information System UNBISNET, available at the Dag Hammarskjöld Library website <http://unbisnet.un.org:8080/ipac20/ipac.jsp?session=12743L5D7S289.62634&menu=search&aspect=power&npp=50&ipp=>

2007. Estonia has also supported the efforts made in the Preparatory Committees that have met throughout 2010-2011.<sup>51</sup>

## DEVELOPMENT OF ESTONIA'S STRATEGIC TRADE CONTROL SYSTEM

The law On Export and Transit of Strategic Goods was adopted by the Riigikogu – the Estonian parliament - on April 6, 1994.<sup>52</sup> The law and its subsequent regulations combined elements of other national systems, the EU system, and export control principles from the multilateral export control regimes and tailored them for Estonian circumstances. Estonia chose to integrate principles from the international organizations and agreements to which the country was a member, as well as initiatives that Estonia chose to adhere to without membership.<sup>53</sup> The first law was therefore a deliberate amalgam of ideas. However, an early rewrite was necessary to accommodate Estonia's goal of EU membership. A new law, Import, Export and Transit of Strategic Goods, was therefore adopted on June 16, 1999 with a set of related secondary legislation adopted on September 28, 1999.<sup>54</sup>

On May 1, 2004 Estonia became one of ten new EU member states. EU accession meant that the Estonian legislation had to incorporate the set of laws and regulations that are obligatory for all EU member states. In preparation for EU accession Estonia adopted the Strategic Goods Act on December 17, 2003.<sup>55</sup> In the years that have followed 2004, both the regional and international strategic trade control systems have incorporated many changes, with a major set of changes adopted 2008-2009. Estonia has therefore pursued an update of its own legislation. A new version of the Strategic Goods Act entered into force on January 1, 2012, but is not yet available in an official English translation.<sup>56</sup> The new law takes into account the recent changes within the European Union such as the control on transit and brokering of dual-use goods as well as the new European Directive for the transfers of military items within the European Union. In addition the new law also elevates a number of pieces of secondary legislation to law.<sup>57</sup> The Strategic Goods Act has also streamlined the control of parts and components consistent with the Wassenaar Arrangement. Changes have also been made to the Weapons Act;<sup>58</sup> following an intergovernmental discussion in recent years on how to improve coherence between the Strategic Goods Act and the Weapons Act. Efforts have also been made to update the Estonian Penal Code.<sup>59</sup>

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[20&spp=20&profile=voting&ri=&index=.VM&term=&matchopt=0|0&oper=AND&x=11&y=14&aspect=power&index=.VW&term=Arms+Trade+Treaty&matchopt=0|0&oper=AND&index=.AD&term=&matchopt=0|0&oper=AND&index=BIB&term=&matchopt=0|0&limitbox\\_1=VI01+%3D+vi\\_a&ulertype=PD01&uloper=%3D&ullimit=2009&ulertype=&uloper=%3D&ullimit=&sort=#focus](#)

- 51 "Estonia: Positions and Quotes", Arms Trade Treaty Negotiation Mapping Database, available at [http://arm-streaty.org/mapsstates\\_state.php?id=126&issue=1346](http://arm-streaty.org/mapsstates_state.php?id=126&issue=1346), and "Strategic Goods commission Activity Report 2010" available at the Estonian Ministry of Foreign Affairs website <http://www.vm.ee/?q=en/node/5039>
- 52 "Estonia: Export Control Overview", archived file at the NTI website available at <http://www.nti.org/db/nis-profs/estonia/excon/exconovr.htm>
- 53 Author's interview with former Estonian Governmental official December 9, 2011
- 54 The regulations included: Government Regulation No. 280, Statute of the Control Commission of Export, Import and Transit of Strategic Goods, and Government Regulation No. 281, On Procedures of Export, Import and Transit of Strategic Goods. Government Regulation No 274, On establishment of Exceptions to Requirement of Import, Export and Transit Licenses for Strategic Goods, on September 22, 1999 and finally, Government Order No 154, On Confirming the List of Strategic Goods, issued on April 30, 2001, outlined the use of control lists in the Estonian system " Insights to the Estonian Export Control System", presentation at the 5th International Export Control Conference held in Budapest, Hungary September 15-17, 2003, available at <http://exportcontrol.org/library/conferences/1379/Estonia.pdf>
- 55 "Strategic Goods Act", adopted December 17, 2003, available at the Estonian Ministry of Foreign Affairs website <http://www.vm.ee/?q=en/node/5045>
- 56 Strategic Goods Commission Notice on Estonian Ministry of Foreign Affairs website <http://www.vm.ee/?q=en/taxonomy/term/58>
- 57 Author's interview with former Estonian Government Official December 9, 2011
- 58 Author's interview with Estonian Governmental Official at a UN meeting in New York, February 15, 2012
- 59 "Strategic Goods Commission Activity Report 2010", available at the Estonian Ministry of Foreign Affairs website [http://www.vm.ee/sites/default/files/2010\\_activity\\_report.pdf](http://www.vm.ee/sites/default/files/2010_activity_report.pdf)

[Special note: At the time of completion of this report no official English translation of either the new Strategic Goods Act of 2011 or of the updates to the Weapons Act had been made public. The following pages will therefore focus on the lessons learned from the old versions of the laws and from comments and interviews with Estonian experts and governmental officials that have provided insights on details in the updated laws. A comprehensive review of the new legal texts will most certainly provide even more food for thought for a future discussion. References to the Strategic Goods Act of 2003 therefore refer to the law before the update in 2011.]

## THE REGIONAL PERSPECTIVE

### EU Strategies, Laws and Regulations

As an EU Member State, Estonia is legally bound to implement EU legislation and adhere to relevant policies and strategies. The 27 member states of the European Union act together as one unit in a wide range of political, social and security related issues. This includes the enactment of legislation that is automatically binding on EU member states. These laws and regulations are implemented on a national level and the member states are free to choose the method for implementation. In the field of nonproliferation, arms, and strategic trade control, the following set of policy statements and regulations are relevant. In the case of Estonia, as well as the other EU member states these texts are the foundation for the national systems. Some states enact a direct link to the EU instrument, others – like Estonia – have chosen to incorporate the EU legislation in a standalone law. Estonia has also chosen to expand the scope of control in its law and that is why Estonia controls import of conventional weapons, while similar references are not yet incorporated in EU legislation. The relevant EU texts in this field are:

- Council Common Position 2008/944/CFSP, defining common rules governing the control of exports of military technology and equipment of December 8, 2008. The basis of this document was adopted in 1998 as the so called EU Code of Conduct for Arms Export. The new common position modified some definitions such as “brokering” and “transit,” thereby extending controls over those activities.<sup>60</sup>
- On June 13, 2000 the European Union Member States decided to adopt a Common Military List of Equipment. The most recent update of the list was approved in February 2011.<sup>61</sup> Estonia uses this list as one of its three control lists.
- The Council Common Position 2003/468/CFSP on the control of arms brokering, regulating arms brokering in order to avoid circumvention of UN, EU or OSCE sanctions.<sup>62</sup>
- Council Regulation (EC) No 428/2009 of May 5<sup>th</sup>, 2009, setting up the European Community regime for the control of exports, transfers and transit of dual-use items.<sup>63</sup>
- Joint Action 401/2000 CFSP, concerning the control of technical assistance related to certain military end-uses.<sup>64</sup>

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60 “Council Common Position #2008/944/CFSP defining common rules governing the control of exports of military technology and equipment” of December 8, 2008, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

61 “Common Military List of the European Union adopted in February 2011 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:086:0001:0036:EN:PDF>

62 “Security related export controls II – Military Equipment”, available at <http://www.consilium.europa.eu/eeas/foreign-policy/non-proliferation,-disarmament-and-export-control/-security-related-export-controls-ii?lang=en>

63 “Council Regulation (EC) No 428/2009 of May 5<sup>th</sup>, 2009 setting up Community regime for the control of exports, transfers and transit of dual-use items”, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:EN:PDF>

64 “Joint Action 401/2000 CFSP concerning the control of technical assistance related to certain military end-

- Council Regulation (EC) No 1236/2005 of June 27, 2005, concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman, or degrading treatment or punishment.<sup>65</sup>
- Directive 2007/23/EC of the European Parliament and the Council of May 23, 2007, specifying requirements for the handling of explosive substances and pyrotechnic articles intended for civilian purposes<sup>66</sup>
- Directive 43/2009/EC of the European Parliament and the Council of May 6, 2009, simplifying terms and conditions of transfers of defense-related products within the Community.<sup>67</sup> This initiative strives to simplify the rules and procedures that apply to the transfers within the EU for products on the EU Common Military List by introducing general and global licenses.<sup>68</sup>

The European Union has also adopted a set of non-proliferation and arms control related strategies such as:

- A **European Security Strategy** adopted December 12, 2003 and updated 2008. The strategy identified five challenges to the European Union: Terrorism, Proliferation of Weapons of Mass Destruction, Regional Conflicts, State Failure, and Organized Crime.
- A second strategy dealing directly with the threat of WMD was also adopted on December 12, 2003 – **“Strategy against the proliferation of WMD”** – looking closer at the threat of WMD and their related missiles.<sup>69</sup>
- On December 25-26, 2005 the European Council adopted **“Strategy to combat illicit accumulation and trafficking of SALW and their ammunition”**
- In conjunction with the European Security Strategy the EU Member States adopted a promotional view of the Arms Trade Treaty through **“Council Decision 2009/42/CFSP on support for EU activities in order to promote among third countries the process leading towards an Arms Trade Treaty”** in January 19, 2009.<sup>70</sup>

All strategies are intended to work seamlessly with their corresponding EU laws and regulations.

## THE ESTONIAN STRATEGIC TRADE CONTROL SYSTEM

Estonia’s strategic trade control system has one law that covers both conventional weapons as well as so-called dual-use products (products that can have both a civilian and a military use). It is therefore relevant to see the Estonian system of control in relation to the wide array of initiatives on the European regional level. In addition Estonia has used the prerogative that all EU member states have to extend the scope of control, and has thus incorporated in the Strategic Goods Act of 2003 the control of goods that can be used

uses”, available at [http://www.consilium.europa.eu/uedocs/cmsUpload/L\\_15920000630en02160217.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/L_15920000630en02160217.pdf)

65 “The Council Regulation (EC) No 1236/2005 of June 27, 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment”, updated four times, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:200:0001:0019:EN:PDF>

66 “Directive 2007/23/EC of the European Parliament and of the Council of 23 May 2007 on the placing on the market of pyrotechnic articles”, published in the *EU Official Journal* L 154 , 14/06/2007 P. 0001 – 0021, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32007L0023:EN:HTML>

67 Directive 43/2009/EC of the European Parliament and the Council of May 6, 2009 simplifying terms and conditions of transfers of defense-related products within the Community”, published in the *EU Official Journal* L146/1 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:146:0001:0036:EN:PDF>

68 “Strategic Goods Commission Activity Report 2010”, page 2

69 “Strategy to combat illicit accumulation and trafficking of SALW and their ammunition” available at <http://register.consilium.europa.eu/pdf/en/06/st05/st05319.en06.pdf>

70 “Council Decision 2009/42/CFSP promoting the process leading towards an Arms Trade Treaty”

to commit human rights violations. Transit and import controls on strategic goods have been applied by Estonian authorities since long before similar references were made in the European Union system. In addition to the laws specifically related to strategic trade, reference to transport restrictions for weapons and explosives can be found in other legal documents such as the Weapons Act from 2001.

### Controlling import and transit of conventional weapons in Estonia - legislation

Import and transit control for conventional weapons and technologies are covered in different legal texts within the Estonian system. Estonia differentiates between civilian, military, and government service uses of weapons and ammunition and the control of the movement of conventional weapons is spread over different legal instruments. The legislative network of controls potentially could create confusion for an outsider, but is considered within the system as multilayered control.<sup>71</sup> The different governmental branches that are involved in issuing permits collaborate closely and detailed information for how to apply for licenses is available online. Still, the intricate nature of the legislative framework begs the question of whether the complexity creates potential loopholes or overlap. Most current trade actors that operate within or with Estonia are familiar with the regulatory network, but newcomers could possibly have difficulties navigating the system.

Two pieces of legislation are the primary tools for the control of trade and movement of conventional weapons to, through and from Estonia. The Strategic Goods Act is the cornerstone of the current Estonian strategic trade control system. It establishes a strategic goods control system, regulating the transfers of strategic goods, provision of services related to strategic goods, import of strategic goods and end-use control and implementation of supervision in all these fields.<sup>72</sup> The Weapons Act of June 13, 2001 defines the handling of civilian weapons (firearms) and ammunition as “the manufacture, sale, acquisition, owning, possession, storage, carrying, conveying, transport, **import, export**, transfer...” and has requirements for permits for the carriage of weapons and ammunition over the customs frontier.<sup>73</sup> The Weapons Act focuses primarily on weapons (firearms) and ammunition for civilian use and is focused on the internal control of these types of goods. The Strategic Goods Act of 2003 on the other hand targets cross border movement on every type of strategic goods, including the military types of firearms.<sup>74</sup>

### Definitions for import and transit

The Strategic Goods Act of 2003 defined **import** as “the carriage of military goods to Estonia”, hence import controls do not extend to dual-use goods. Export of military goods and transmission of software or technology related to military goods is, however, controlled under the Strategic Goods Act of 2003. The Strategic Goods Act of 2003 regulates **transit of military goods** through Estonia; however the act does not specifically make the distinction between transit and transshipment.<sup>75</sup> Transshipment<sup>76</sup> is under the Estonian system considered as part of the transit concept. Estonia refers to the combined definition of transit and transshipment used in the EU Common Position on Arms Exports.<sup>77</sup> Permits for import and transit are required and are granted or denied by the Strategic Goods Commission.

The Weapons Act paragraph 59, article 2 stipulates that “weapons and ammunition shall be carried across the customs frontier pursuant to the procedure established in the Weapons Act, the Customs Code and the Strategic Goods Act and legislation issued on the basis thereof”, thereby tying the licensing and enforce-

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71 Author’s interview with Estonian Governmental Official at a UN meeting in New York, February 15, 2012

72 The preamble in the new Strategic Goods Act as communicated to the author in an email exchange with an Estonian Governmental official March 9, 2012

73 “Weapons Act”, adopted on January 13, 2001, available at <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>

74 Comment made by Estonian Governmental official in review to earlier draft of this report, March 15, 2012

75 Strategic Goods Act of 2003, paragraph 4

76 Transshipment - when the goods transported through the country change the means of conveyance

77 “Council Common Position #2008/944/CFSP defining common rules governing the control of exports of military technology and equipment” of December 8, 2008, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

ment legislative structure together.<sup>78</sup> According to the Weapons Act weapons and ammunition may be imported to Estonia as goods for release for free circulation if the importer obtains a special permit under the act and already has an activity license for the manufacture and sale of weapons.<sup>79</sup> Natural or legal persons from a foreign state are allowed to temporarily import weapons and ammunitions to Estonia for sporting competitions and hunting purposes, but need to obtain a license under the Act.<sup>80</sup> Since the update in 2007 the Weapons Act does not require a permit for the transit of weapons and ammunitions since those transactions are covered under the Strategic Goods Act.<sup>81</sup> In those cases the permit holder also has to abide by the procedures for internal transport of weapons.

All permits under the Weapons Act are single permits issued by the Estonian Police Board (now the Police and Border Guard Board<sup>82</sup>), under regulations established by the Ministry of Internal Affairs.

The Strategic Goods Act of 2003 also prohibits the export and transit of strategic goods and the provision of related services, with some exceptions, to countries subject to sanctions binding on Estonia.<sup>83</sup>

### **Different types of conventional weapons and their use according to the Weapons Act.**

The difference between military, service and civilian use of weapons and ammunition is defined in the Weapons Act. Military and service weapons and ammunition are excluded from the scope of the act.

- **Military weapons** are in general intended for the Estonian Defense Forces for military action and for agencies under the Ministry of Defense. They are entered into a register and the maintenance of this register as well as the issuance of regulations pertaining to military weapons is a responsibility that rests within the Ministry of Defense.<sup>84</sup> The registry of imported military weapons is not available to the public. Import to Estonia of military weapons for the use by Estonian Defence Forces is carried out under government to government agreements between the Estonian Ministry of Defense and the exporting country in question. This definition also includes weapons that are prohibited for civilian use.<sup>85</sup>
- **Service weapons** are weapons which are prescribed by law to government agencies exercising public authority. The procedures for handling this type of weapons are mandated the Ministry of Internal Affairs.<sup>86</sup> Service weapons as well as civilian weapons are also registered under the Ministry of Interior.
- **Civilian weapons** are weapons which, in general, are intended for hunting, involvement in corresponding sports, or the insurance of safety.<sup>87</sup> An Estonian citizen is through the Weapons Act permitted the access to firearms for civilian use, at the same time military and service weapons and ammunition are excluded from the Act.<sup>88</sup>

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78 Weapons Act, paragraph 59:2

79 Weapons Act, paragraph 60

80 Weapons Act, paragraph 57

81 Comment made by Estonian Governmental official in review to earlier draft of this report, March 15, 2012

82 The Police and Border Guard Board started its work on 1 January 2010 when Police Board, Central Criminal Police, Public Order Police, Border Guard Board, and Citizenship and Migration Board (CMB) were merged. "Police and Border Guard – in cooperation we create security", available at <http://www.politsei.ee/en/organisatsioon/organization/>

83 Strategic Goods Act of 2003, paragraph 7

84 Weapons Act, Chapter 1, paragraph 3:1:1

85 Author's interview with an Estonian Governmental Official at a UN meeting in New York, February 15, 2012

86 Weapons Act, Chapter 1, paragraph 3:1:2

87 Weapons Act, Chapter 1, paragraph 3:1:3

88 Weapons Act, paragraph 2

## Items under control

The Strategic Goods Act of 2003 defines “strategic goods” as including both military goods<sup>89</sup> and dual-use goods. In Estonia the concept of “strategic goods” incorporates both military and dual-use goods, as well as certain goods that could be used for capital punishment, torture, or other cruel, inhuman, or degrading treatment or punishment. Therefore, Estonia uses three different control lists for products in its strategic trade control system

1. List of certain goods that could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment correlates directly with EU Council Regulation (EC) No 1236/2005 of June 27, 2005.<sup>90</sup>
2. Government Regulation No. 171 of December 22, 2011 – List of Military Goods. This list includes the 22 categories from the Wassenaar Arrangement Munitions List as well as a number of specific categories adopted as a national prerogative.<sup>91</sup>
3. List of dual-use goods correlates directly with the EU Council Regulation (EC) No 428/2009 of May 5<sup>th</sup>, 2009, setting up the European Community regime for the control of exports, transfers and transit of dual-use items.<sup>92</sup>

The Weapons Act classifies weapons as; firearms; gas and pneumatic weapons, cut and thrust weapons, projectiles and electric shock weapons.<sup>93</sup>

## Small Arms and Light Weapons

Estonia does not have a specific national coordination authority for policy guidance, research and monitoring of issues related to SALW. The Weapons Act is the primary source of legislation for the control of SALW in conjunction with the Strategic Goods Act of 2003 and Government Regulation No. 397 adopted 2002, containing “Marking Requirements for Firearms and Essential Components of Firearms.” Estonia’s most recent report (2010) to the UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in SALW in all its Aspects indicates the Police and Border Guard Board as being responsible for the general supervision of SALW issues. This is where registers and archives containing SALW data are kept and maintained. The board also enforces legislation pertaining to the combat against illicit trade in SALW. The Estonian Tax and Customs Board contributes to the supervision of compliance regarding border transactions.<sup>94</sup>

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89 Strategic Goods Act of 2003, paragraph 2, article 1 - *“Military goods” means substances, materials, devices, equipment, systems and components thereof, software and technology used for military purposes, i.e.:*

*1) used for military purposes in their entirety; 2) incorporated into military items; 3) used for the development, manufacture, assembly, testing, analysis, handling, transport, maintenance or storage of military items; 4) used for the development, manufacture, handling, transport, maintenance or storage of production-, test- or analytical equipment for military items.*

90 The Council Regulation (EC) No 1236/2005 of June 27, 2005, and updated version of the list was adopted on December 20, 2011 by Commission Implementing Regulation (EU) 1352/2011, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:338:0031:0034:EN:PDF>

91 “Government Regulation No. 171 of December 22, 2011 – List of Military Goods. ”, this document is not yet available in English translation. Information given by Estonian Governmental Official March 15, 2012,

92 “Council Regulation (EC) No 428/2009 of May 5<sup>th</sup>, 2009 setting up Community regime for the control of exports, transfers and transit of dual-use items”, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:EN:PDF>

93 Weapons Act, paragraph 11

94 “On 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”, Estonia’s updated report 2010, Country profile – Estonia, available at the United Nations Programme of Action Implementation Support System: PoA-ISS: <http://www.poa-iss.org/CountryProfiles/CountryProfileInfo.aspx?Acc=M&Col=63>

## Licenses and permits

The Strategic Goods Act of 2003 stipulates that special authorization is required by the Strategic Goods Commission for the import, export, and transit of goods included in the list of strategic goods and for the provision of services.<sup>95</sup> In addition, Estonia also applies “catch-all” controls, whereby the government of Estonia may require special authorization to import, export, transit, or provide services related to items that are not on the list of controlled strategic goods. The Strategic Goods Commission may enforce “catch-all” controls when it has informed the holder, owner, or declarant that the goods in question have the characteristics of strategic goods, even if they are not on the list.<sup>96</sup> The new updated version of the Strategic Goods Act (2012) has a clarified definition for catch-all under its paragraph 2, article 11.<sup>97</sup>

Estonia uses three types of authorizations.<sup>98</sup>

- Individual – for one exporter or importer
- Global – for multiple exporters and importers under one license
- General – that sets basic conditions, destinations and goods.

The Ministry of Defence issues import license for military goods for Estonian defense purposes or the temporary export of military items for the use by Estonian defense forces in international military missions in accordance with Government Regulation No. 4 adopted 2003 (amended January 1, 2009), “Procedure for Handling Military Weapons and for Export and Import of Battle Equipment.”<sup>99</sup> Similarly the Ministry of Interior issues licenses for the import of service weapons under Government Regulation No. 53 adopted 2002 (amended January 30, 2009), “Types of Service Weapons and Handling and Transfer of Essential Parts, Components and Ammunition of Service Weapons.”<sup>100</sup>

In the case of an import of military goods from a third country to Estonia the law requires an import license<sup>101</sup>. The Estonian government also ensures the control over import and end-use of strategic goods through the issuance of International Import Certificates, End-User Certificates, or Verification Certificates.<sup>102</sup> This means that the Estonian government guarantees that the importer in Estonia has the right to import and that the goods have arrived. The end-user certificates can also be used in a similar way, in addition to their more traditional use, as an internal guarantee from the Estonian importer to the Estonian government that the goods imported will be used for the specified purposes and not be diverted or re-exported.<sup>103</sup>

## OTHER RELEVANT LEGISLATION

The International Sanctions Act was adopted on December 4, 2002. The Act regulates the internal application of international sanctions by which Estonia abides, including sanctions made by the United Nations, the European Union, and other international organizations, and sanctions passed by the Estonian Government. Its stated goals are “to maintain and reinstate peace, security and stability and to combat violations of human rights”.<sup>104</sup>

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95 Strategic Goods Act of 2003, paragraph 4, article 1

96 Strategic Goods Act of 2003, paragraph 4, article 2

97 Comment made by Estonian Governmental official in review to earlier draft of this report, March 15, 2012

98 Comment made by Estonian Governmental official in review to earlier draft of this report, March 15, 2012

99 Government Regulation No. 4 of the Ministry of Defense adopted 2003 (amended January 1, 2009) – “Procedure for Handling Military Weapons and for Export and Import of Battle Equipment”, available at [http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2010@63@2010-National-Report-Estonia\(en\).pdf](http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2010@63@2010-National-Report-Estonia(en).pdf) and <http://www.riigiteataja.ee/ert/act.jsp?id=13170904>

100 Government Regulation No. 53 of the Ministry of Interior adopted 2002 (amended January 30, 2009) – “Types of Civil Weapons and Handling and Transfer of Essential Parts, Components and Ammunition of Service Weapons” available at <http://www.riigiteataja.ee/ert/act.jsp?id=13125936>

101 Strategic Goods Act of 2003, paragraph 5

102 Strategic Goods Act of 2003, paragraph 6

103 Strategic Goods Act of 2003, Paragraph 30

104 “The International Sanctions Act” December 4, 2002”, available at the Estonian Ministry of Foreign Affairs

The Explosive Substances Act of March 24, 2004 deals with the handling of explosive substances and pyrotechnic articles intended for civilian purposes. Chapter 7 of the Act specifies rules for the carriage (including import) of explosive substances, what permits to apply for, what items are prohibited, and how the Explosive Substance Act correlates to other act such as the Strategic Goods Act of 2003.<sup>105</sup>

### **Institutions and their responsibilities**

The Estonian Government Regulation No. 26 established the Statutes of the Strategic Goods Commission on January 29, 2004.<sup>106</sup> The Strategic Goods Commission (SGC) is the licensing body within the Estonian Ministry of Foreign Affairs. Its main mandate is to execute the provisions set out in the Strategic Goods Act of 2003. Seven different institutions participate under the SGC: the Ministry of Foreign Affairs, which also serves as the chairman for the SGC; the Ministry of Defence; the Ministry of Economic Affairs and Communications; the Security Police Board; The Police Board; and the Tax and Customs Board.<sup>107</sup>

The SGC can issue, extend, and revoke all types of licenses. In addition, it can issue and revoke General Export Authorisation User Certificates, International Import Certificates, End-User Certificates, and Delivery Verification Certificates. The SGC also grants and rescinds registration as an authorized broker of military goods. Furthermore, the SGC is mandated to cooperate with relevant authorities of foreign states and international organizations for export control.<sup>108</sup>

The Statutes of the SGC stipulate that the Commission has the right to receive all relevant documentation from license applicants. It can also request information from supervisory agencies on the import and end-use control of strategic goods, the carriage of strategic goods across the customs frontier, and the provision of services related to military goods.<sup>109</sup> The meetings of the SGC are closed and can be convened via virtual means or in person.<sup>110</sup> Each year since 2004, the SGC has issued an annual report on the previous year's activities.<sup>111</sup>

An applicant pursuing a license from the SGC must first check that the item is controlled by checking the three control lists. If there are any doubts, the applicant can contact the SGC for assistance in determining if the item needs a license. If a license is needed an application should be submitted to the SGC. The application form must be specific to the desired activity and needs to be filled out in Estonian. After SGC has received the application it has 30 days to reach a decision whether to grant or deny the application. Most applications are processed within two weeks. Applicants also have to pay a state fee for the license processing.<sup>112</sup> Detailed procedures and related documents on how to apply for a license, how to maintain them, and how they can be revoked were previously described in special governmental regulations, but have now been incorporated in the law.<sup>113</sup>

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website: [http://web-static.vm.ee/static/failid/272/International\\_Sanctions\\_Act.pdf](http://web-static.vm.ee/static/failid/272/International_Sanctions_Act.pdf)

105 Explosives Substances Act, adopted March 24, 2004, Chapter 7, available at <http://www.legaltext.ee/text/en/X80039.htm>

106 "The Statutes of the Strategic Goods Commission", January 29, 2004, available at the Estonian Ministry of Foreign Affairs website: [http://www.vm.ee/sites/default/files/Statutes\\_of\\_Strategic\\_Goods\\_Commission.pdf](http://www.vm.ee/sites/default/files/Statutes_of_Strategic_Goods_Commission.pdf)

107 "Statutes of Strategic Goods Commission", Regulation No 26 of the Government of the Republic of 29 January 2004, Article 1, available at the Estonian Ministry of Foreign Affairs website: [http://www.vm.ee/sites/default/files/Statutes\\_of\\_Strategic\\_Goods\\_Commission.pdf](http://www.vm.ee/sites/default/files/Statutes_of_Strategic_Goods_Commission.pdf)

108 "Statutes of Strategic Goods Commission", Paragraph 4

109 "Statutes of Strategic Goods Commission" Paragraph 5

110 "Statutes of Strategic Goods Commission" Paragraph 6

111 "Statutes of Strategic Goods Commission" Paragraph 14

112 "Guide to getting a license", Instructions posted on the Estonian Ministry for Foreign Affairs: <http://www.vm.ee/?q=en/node/5037>, Comment made by Estonian Governmental official in review to earlier draft of this report, March 15, 2012

113 The Government Regulation No. 61 adopted March 9, 2004 – "Processing Terms for Individual Import Licenses, Export Licenses, Transit Permissions, General Export Authorization User Certificates, International Import Certificates, End-Use Certificates and Delivery Verification Certificates for Strategic Goods, Proc.", available at the Estonian Ministry of Foreign Affairs website: <http://www.vm.ee/?q=en/node/5046> has been replaced by new provisions in the Strategic Goods Act. Comment made by Estonian Governmental official

The Tax and Customs Board carries out the customs activities at the border mandated by the Customs Act.<sup>114</sup> This includes but is not limited to surveillance and inspection of goods and persons crossing the border. The Estonian Security Police conduct investigations of the alleged offences and takes the issue further to prosecution. The Tax and Customs Board as well as the Security Police constitute investigative bodies under the Code of Criminal Procedure adopted February 12, 2003.<sup>115</sup> The Security Police also have specific powers related to surveillance, investigation and pre-trial preparation.<sup>116</sup>

### Enforcement of the Estonian Strategic Trade Control System

The Customs Act adopted April 13, 2004<sup>117</sup> and the Penal Code adopted September 1, 2002 are the two main legal instruments for enforcement of the Strategic Goods Act of 2003. The Customs Act closely aligns Estonia with the instruments and customs procedures within the European Union. In addition Estonia has secondary legislation to describe the exact customs procedures. Government Regulation No. 257 on July 22, 2004, “Procedures for Customs Formalities relating to Strategic Goods and for Transfer of Strategic Goods within the European Community and List of information to be submitted to Customs Authorities,” describes both Customs’ role in processing strategic goods and the process of intra-Community transfers of strategic goods between Estonia and other EU Member States.<sup>118</sup> The Penal Code has a number of specific sections dedicated to strategic trade and arms control. Paragraph 372 establishes penal sanctions for illegal economic activities; paragraph 392 - illicit import and export of prohibited goods requiring a special permit; and finally paragraph 418 - unlawful handling of firearms prohibited for civilian use or essential components thereof or ammunition.<sup>119</sup>

Smuggling in and out of Estonia over the last few years appears to focus primarily on drugs, alcohol, and tobacco products.<sup>120</sup> The Strategic Goods Commission issues annual reports since 2004 that contain data on licenses and other relevant documents that have been issued, policy decisions and also short references to offences related to strategic goods and international sanctions. Four offences were reported in the first annual report.<sup>121</sup> The annual report of 2005<sup>122</sup> has the first reference to offences related to attempts to import military goods to Estonia without a license, reporting three such cases. The next year that number had increased to nine.<sup>123</sup> From 2005 onwards the reporting also mentions if the cases have triggered a criminal investigation under the Penal Code paragraph 392.

The Estonian Tax and Customs Board generates short press releases on activities,<sup>124</sup> including reporting arms related incidents. This case study reviews incidents between the years 2007-2010.<sup>125</sup> The Estonian

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in review to earlier draft of this report, March 15, 2012

114 Customs Act, Paragraph 2:8

115 Code of Criminal Procedure, adopted February 12, 2003, paragraph 31:1 available at <http://www.legaltext.ee/en/andmebaas/ava.asp?m=022>

116 Code of Criminal Procedure, paragraph 112:2, and paragraph 114:4 and paragraph 212

117 The Customs Act adopted April 13, 2004 available at <http://www.legaltext.ee/et/andmebaas/paraframe.asp?loc=text&lk=et&sk=en&dok=X80042K1.htm&query=tolliseadus&tyyp=X&ptyyp=RT&pg=1&fr=no>

118 The Government Regulation No. 257 adopted July 22, 2004 – “Procedures for Customs Formalities relating to Strategic Goods and for Transfer of Strategic Goods within the European Community and List of information to be submitted to Customs Authorities”, available at the Estonian Ministry of Foreign Affairs website: <http://www.vm.ee/?q=en/node/5048>

119 Penal Code adopted June 6, 2001, available at <http://www.legaltext.ee/text/en/X30068K8.htm>

120 “Finnish Customs Intelligence and Investigation Report 2009”, available at the Finnish Customs website: [http://www.tulli.fi/en/finnish\\_customs/publications/annual\\_reports/rikostorjunta\\_09\\_eng.pdf](http://www.tulli.fi/en/finnish_customs/publications/annual_reports/rikostorjunta_09_eng.pdf)

121 Strategic Goods Commission Activity Report 2004 available at the Estonian Ministry of Foreign Affairs website: [http://web-static.vm.ee/static/failid/123/2004\\_activity\\_report.pdf](http://web-static.vm.ee/static/failid/123/2004_activity_report.pdf)

122 Strategic Goods Commission Activity Report 2005 available at the Estonian Ministry of Foreign Affairs website: [http://web-static.vm.ee/static/failid/072/2005\\_activity\\_report.pdf](http://web-static.vm.ee/static/failid/072/2005_activity_report.pdf)

123 Strategic Goods Commission Activity Report 2006 available at the Estonian Ministry of Foreign Affairs website: [http://web-static.vm.ee/static/failid/278/2006\\_activity\\_report.pdf](http://web-static.vm.ee/static/failid/278/2006_activity_report.pdf)

124 These reports are available only in Estonian. Google Translate, a free online translation tool, was used to generate reports in English.

125 “Customs Controls Results – Archives”, available at the Estonian Tax and Customs Board website: <http://>

Security Police also submit annual reports and provide more detail on the cases that are brought to investigation. In the first few years of reporting the detail in the reports and press releases issued by the respective institutions was very limited, however the number of incidents appears to increase. There might be more incidents happening, but another more likely explanation is related to more efficient customs enforcement as an effect of extensive training.<sup>126</sup>

A combination of the SGC and Security Police annual reports and the press release information from the Estonian Tax and Customs Board illustrate the different ways the authorities operate and also the different types of incidents ranging from classic intervention at the border to the interception of postal items. Offences are recorded according to types of penalty. The Security Police Board investigates criminal cases, while the Tax and Customs Board investigates administrative offenses.<sup>127</sup> The Strategic Goods Commission's annual report combines the information of all types of incidents.

In 2007, the SGC states in its annual report that the Security Police Board initiated criminal proceedings in accordance with Penal Code paragraph 392 in 16 cases.<sup>128</sup> One incident is described in a press release by the Tax and Customs Board from August 27, 2007.

On August 27 Customs officers at the land border point of Ikla detained a vehicle believed to contain goods military in nature. A dissembled military aircraft was transported (imported) on a vehicle. The license was valid, but the transporter failed to submit a pre arrival notice which is mandatory for intra community transfers of military items. This would allow the customs to conduct controls if they deem it necessary. Administrative penal proceeding was initiated. After the vehicle was seized, Customs ascertained that the owner possessed a license to import military goods as issued by the SGC and allowed the vehicle to continue on.<sup>129</sup>

In the year 2008 the Tax and Customs Board discovered 15 violations of strategic trade control and criminal proceedings were initiated in 11 of these cases.<sup>130</sup> This year also provides two examples of a different type of interdiction.

On March 19, 2008 customs officials in Tallinn intercepted mail containing weapons components that were not accompanied by the required licenses. The Ministry of Foreign Affairs declared them strategic commodities, and the goods were detained and forwarded to the Security Police for prosecution. On the same date at the Tallinn airport, Customs officials detected Voyager-1 night vision devices in a courier shipment. The Ministry of Foreign Affairs deemed the devices a strategic commodity, which lacked the necessary license to enter the country. The goods were detained, and materials were forwarded to the Security Police for prosecution.<sup>131</sup>

In the year 2009 the Tax and Customs Board revealed a total of 26 violations of strategic trade control. The Security and Police Board initiated criminal proceedings in accordance with Penal Code paragraph 392 in 19 cases, of which 17 cases proceeded further. Eight cases were deferred to 2010.<sup>132</sup> The Security Police

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[www.emta.ee](http://www.emta.ee)

126 Comment made by Estonian Governmental official in review to earlier draft of this report, March 15, 2012

127 Author's interview with an Estonian Governmental Official at a UN meeting in New York, February 15, 2012

128 Strategic Goods Commission Activity Report 2007 available at the Estonian Ministry of Foreign Affairs website: [http://web-static.vm.ee/static/failid/060/2007\\_activity\\_report.pdf](http://web-static.vm.ee/static/failid/060/2007_activity_report.pdf)

129 "Customs Controls Results – Archives 2007", available at the Estonian Tax and Customs Board website: <http://www.emta.ee/index.php?id=3945&op=archive&year=2007&month=1>

130 Strategic Goods Commission Activity Report 2008 available at the Estonian Ministry of Foreign Affairs website: [http://web-static.vm.ee/static/failid/497/2008\\_activity\\_report.pdf](http://web-static.vm.ee/static/failid/497/2008_activity_report.pdf)

131 "Customs Controls Results – Archives 2008", available at the Estonian Tax and Customs Board website: <http://www.emta.ee/index.php?id=3945&op=archive&year=2008&month=1>

132 Strategic Goods Commission Activity Report 2009 available at the Estonian Ministry of Foreign Affairs website: [http://www.vm.ee/sites/default/files/2009\\_activity\\_report.pdf](http://www.vm.ee/sites/default/files/2009_activity_report.pdf)

Board report from the same year stated that the individuals that had been found to be in violation of the Strategic Goods Act of 2003 had paid penalty payments ranging 3,000 to 20,000 EEK. Most cases were related to electric shock devices and parts for firearms.<sup>133</sup>

On January 31, 2009 during a customs routine inspection officers detected 10 cartridge holders in the car entering Estonia from Russia. The ammunition was seized and the individual was charged with a misdemeanor.<sup>134</sup>

In the year 2010 the Tax and Customs Board revealed 27 offences related to transfers of strategic goods. The Security Police Board initiated criminal proceedings in 26 cases. Fines were issued in some cases, but 17 cases were deferred to 2011.<sup>135</sup> One example from 2010 describes a transit related case.

On February 17 a truck arrived at the Koidula Customs post and declared that it contained goods including vehicle bodies for BV-206 land vehicles. Officials were suspicious that these goods required an export permit. The Ministry of Foreign Affairs Weapons and Strategic Goods Control Bureau confirmed that the items were strategic goods and that they did require a permit. The correct permits were subsequently obtained.<sup>136</sup>

The Security Police Board annual report from that year states that the all-terrain tracked carrier BV-206 was on its way to Russia from Sweden via Estonia.<sup>137</sup>

## SPECIAL ATTENTION FOR NON-STATE ENTITIES

### Brokering

Estonia controls services related to military goods including brokering and technical assistance. In the Strategic Goods Act of 2003, brokering is defined as: “the provision or making available of information, practical assistance or funds with a view to arranging or negotiating the arrangement of transactions relating to military goods that involve the transfer of goods from a foreign country to any other foreign country.” The definition thus extends the scope of control to also capture financial transactions. In addition, the definition of brokering also controls the acquisition of military goods located in a foreign country with a view to transferring the goods to another foreign country.

According to the Strategic Goods Act of 2003 paragraph 4, article 2 (4), the definition of export includes the control of: “the provision of services, including brokering and technical assistance, from Estonia to a foreign country or to a foreign recipient of services regardless of the residence of the service provider who is a natural person or seat of the service provider who is a legal person or through the business activity of an Estonian service provider in a foreign country.”<sup>138</sup> There have been some changes in the definition under the new Strategic Goods Act of 2011 but the principals are the same. One addition is the extension of control to capture brokering of dual-use goods, a change made following recent changes in the EU dual-use regulation.<sup>139</sup> As such the control covers brokering that is conducted from Estonia, and also has an extra-territorial component that covers an Estonian broker operating in a third country conducting a transaction that would not involve Estonian territory.

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133 Security Police Board annual review 2009, available at the Estonian Security Police Board website: <http://www.kapo.ee/cms-data/text/138/124/files/aastaraamat-2009-eng-1.pdf>

134 “Customs Controls Results – Archives 2009”, available at the Estonian Tax and Customs Board website: <http://www.emta.ee/index.php?id=3945&op=archive&year=2009&month=1>

135 “Strategic Goods Commission Activity Report 2010”, available at the Estonian Ministry of Foreign Affairs website: [http://www.vm.ee/sites/default/files/2010\\_activity\\_report.pdf](http://www.vm.ee/sites/default/files/2010_activity_report.pdf)

136 “Customs Controls Results – Archives 2010”, available at the Estonian Tax and Customs Board website: <http://www.emta.ee/index.php?id=3945&op=archive&year=2010&month=1>

137 Security Police Board annual review 2010, available at the Estonian Security Police Board website: <http://www.kapo.ee/cms-data/text/138/124/files/kapo-aastaraamat-2010-eng.pdf>

138 “Strategic Goods Act”, paragraph 4, article 2(4)

139 Comment made by Estonian Governmental official in review to earlier draft of this report, March 15,

Furthermore, another change that has been made to the new Strategic Goods Act of 2011 is the inclusion into the Act of the concepts in the former Government Regulation No. 60 adopted March 9, 2004 – “Establishment of State Register of Brokers of Military Goods and Statutes for Maintenance of Register” that described the procedures related to the register.<sup>140</sup> In addition the state register is now a new database according to Foreign Minister Regulation No. 7 of December 27, 2011.<sup>141</sup> Between the years 2004 to 2010, most applications for a registration were granted. The exceptions were 2004, 2006 and 2007 that saw one denial per year.<sup>142</sup>

### **Free Trade Zones, commercial shipping and finance**

Estonia currently operates four free trade zones adjacent to ports; the Muuga in the northwest; the Paldiski in the north; the Sillamäe in the northeast, and finally the less-active Valga in the southeast.<sup>143</sup> Free trade zones are regulated through permits stipulated in the Customs Act. Transport service companies, freight forwarders and finance providers are not presently under any additional specific conditions or requirements, apart from the obligations under the Strategic Goods Act of 2003.

### **The Estonian Defense Industry**

Estonia is not a major weapons manufacturer and the companies that currently operate in the country focus primarily on small arms and light weapons. Estonia has however a potential as a weapons integrator through its budding high tech industry<sup>144</sup> and with its well established role as an internet innovator. Estonia has also taken a leading role in the development of cyber-security policies within the European Union after the extensive cyber-attack on Estonia in 2007.<sup>145</sup> The history of the defense industry dates back to the country's first period of independence after the First World War when the first state-owned company Arsenal was established. In 1994 Arsenal was re-established under the name E-Arsenal.<sup>146</sup> On February 19, 2009 the Estonian Defense Industry Association/Union was founded as a type of non-profit organization unifying the Estonian defense companies and protecting their interests.<sup>147</sup>

### **Government Collaboration with NGOs and civil society**

Estonia has, as previously stated one of the highest internet penetration rates in the world and an engaged population. The Estonian government has also actively pursued increased government and citizen interaction. In 2007 the State Chancellery opened a “Participation Portal” online. This portal makes it possible for individuals and civil society groups to comment on ongoing consultation processes. In addition, ministries can announce draft laws, publish background material, and post polls on current topics. Eventually citizens will be able to initiate legislation or policy initiatives.<sup>148</sup> There is no evidence currently available of any strategic trade related or SALW related initiatives on this portal.

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140 Comment made by Estonian Governmental official in review to earlier draft of this report, March 15, The concepts under the Government Regulation No. 60 of March 9, 2004 - “Establishment of State Register of Brokers of Military Goods and Statutes for Maintenance of Register” are now incorporated under the Strategic Goods Act paragraph 49-58.

141 Comment made by Estonian Governmental official in review to earlier draft of this report, March 15, 142 Annual reports from the Strategic Goods Commission 2005-2010

143 “Free zones in existence and in operation in the Community, as notified by Member States to the Commission”, as of September 6, 2011, available at the European Commission Website: [http://ec.europa.eu/taxation\\_customs/resources/documents/customs/procedural\\_aspects/imports/free\\_zones/list\\_freezones.pdf](http://ec.europa.eu/taxation_customs/resources/documents/customs/procedural_aspects/imports/free_zones/list_freezones.pdf)

144 “High-Tech Sector Powers Processing Industry Export”, Estonian Public Broadcasting Service October 4, 2001, available at <http://news.err.ee/economy/0667904e-eded-457c-8f0c-193a5c2c28f8>

145 Homeland Security News Wire “Estonia pushes for joint EU cyber response”, June 27, 2011, available at <http://homelandsecuritynewswire.net/estonia-pushes-joint-eu-cyber-response>

146 “Defense Industry”, Outline available at Ministry of Defense website: <http://www.kmin.ee/en/kaitsetoostus>

147 “Organization” Estonian Defence Industry Union website: <http://www.ediu.ee/index.php?id=10619>

148 “Estonia’s report 2010 on 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”, available at [http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2010@63@2010-National-Report-Estonia\(en\).pdf](http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2010@63@2010-National-Report-Estonia(en).pdf)

## Transparency in reporting

Estonia has in the last fifteen years built a record of nationally publishing a wide array of governmental reports, data and reviews often on an annual basis. The Strategic Goods Commission is only one of the institutions that issue an annual report. These reports have grown in detail since 2004 and in addition to describing licenses, permits and cases the report goes into detail on policy developments and future plans. A comparison of reports between different institutions describing the same area also shows signs of increased cohesion. The registers of weapons and ammunition for uses described in the Weapons Act are the exceptions where data is hard to come by in open sources. The register for military weapons is for instance not available through open sources.

At the same time Estonia's international reporting to fora such as the UN Register for Conventional Arms has decreased in complexity, dwindling down to nil reporting since 2008. The earlier years of reporting also proved difficult to analyze, due to the recurring difficulty of matching the data from different national reports. Some countries have reported transfers to Estonia that the country has not reported itself and vice versa. It is a challenge to explain why these discrepancies take place and a number of reasons have been given: a difference in categorization of weapons; a time lag between the permit and the delivery; or the number of reports requested across the international system. For instance, Estonia does not report on SALW transfers under the UN Register as it is already reports such data under the UN POA. In 2010 the format for reporting in the UN POA also changed.<sup>149</sup> Please see Annex 4: UN Register Reports — Estonia.

Estonia has never reported on SALW to the UN Register as it is reported under the UN PoA, as stipulated earlier. However, data on SALW transfers is also collected and analyzed by research organizations such as the Peace Research Institute Oslo (PRIO) in Norway. A closer look at the data regarding SALW imports to Estonia collected by the NISAT paints a picture of an active trade. There is no evidence of increased imports of SALW, but some years show peaks compared to other years. Please see Annex 5: Value of Estonian Small Arms Imports by Item, 2004-2009.

The difference between increased transparency at the national level, and a decrease at the international level is puzzling. It may be explained by the increased number of reports requested by the international community. Other reasons may be related to national security or report fatigue. Even so, the level of details in Estonia's national reporting continues to increase.

## RECOMMENDATIONS AND SUGGESTIONS FOR IMPROVEMENTS

Estonia has built a complex system for the control of conventional weapons as well as dual-use products and it did so from scratch in less than ten years. The legislative basis appears to cover all possible bases and the data found on enforcement results show that the system operates well, without hindering Estonia's acquisition of defense articles or the country's ambition to grow its industrial base to include more high-tech industries – an area that often uses dual-use products and technologies. However it is impossible to prove that the system catches every possible offence. It is equally impossible to prove that the same solutions would be applicable to a country with a much larger trade volume. Three lessons learned can however be drawn from the Estonian system that would be applicable in any national system.

Primarily the Estonian government has given itself the possibility to administer control through a rule of law. The control of import and transit of conventional weapons is covered in a number of different laws, governing different scenarios and conditions. With such a legislative foundation Estonia can prevent, as well as act on, offenses and provide clear control procedures for legitimate trade actors.

Secondly the Estonian system has built in intra governmental interaction through the Strategic Goods Commission membership that is designed to improve communication and increase the possibility that all types of perspectives are taken into account in a licensing decision. Finally the Strategic Goods Com-

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<sup>149</sup> Author's interview with an Estonian Governmental Official at an UN meeting in New York, February 15, 2012.

missions has published a wide array of information on its website on how to apply for licenses and what information to provide. This way of reaching out to the trade community is the first step in the vital information sharing that is necessary for any effective trade control system.

The Estonian system is comprehensive and appears to be functioning well also in areas that are challenging to all countries. But there is room for improvement. The complexity of the system can also be its greatest challenge. For an outsider there is obvious risk from not being able to navigate between the Strategic Goods Act of 2003 and the Weapons Act. From an internal perspective the different types of legislation can be viewed as complimentary or multilayer control that is very clear for the actors that are familiar with the system. However a country that is ambitious to attract foreign investment and business could benefit from streamlining its legislative basis. Licensing might be carried out primarily by the Strategic Goods Commission, but still other permits are required from a wide range of institutions such as the Ministry of Defense and Ministry of Interior. These procedures might be obvious from within the system, but navigating the legislative waters requires a very comprehensive map and good knowledge of Estonian. According to sources in Estonia this type of streamlining has been one of the goals that the new updated versions of the Strategic Goods Act and the Weapons Act have tried to achieve. Before a detailed review of the laws have been made it will be difficult to assess the success in the attempt to achieve more clarity. However increased clarity is a goal that the Estonian government has set itself.

Estonia has an impressive record in publishing data on its activities online, and naturally the websites provide a much broader scope of information in the country's native language. However some information is confusing such as reports on the same topic that do not use identical figures. These problems appear to have decreased in recent years. In addition, ways should be explored for improving reporting on imports of military weapons – data that is currently not shared publicly. There are national security concerns about reporting that need to be addressed, but still there is room for increased transparency. On the international level on the other hand, Estonia should return to a more active form of reporting. The decrease in reporting to the UN Register might be related to more detailed reporting through the EU Common Position on Arms Control, but the data that is submitted through the European Union does not provide the same type of detail that Estonia has been willing to submit earlier. A return to more open books at the international level, or cross referencing information that is available in other fora would set an example to others, especially since Estonia already reports in detail at home.

# Case Study: Namibia

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## INTRODUCTION

As indicated in the introduction to this report, the objective of the research was to contribute to knowledge on how governments that are not major actors in the international arms trade have responded to the requirements and challenges associated with conventional arms control, particularly import and transit/transshipment. This section therefore provides an analysis of conventional arms transfers in relation to one Southern African state, namely Namibia. It focuses on arms transfer control policy, legislation, structures, processes and practices in this country.

Namibia has been categorised by the United Nations Development Programme (UNDP) as experiencing medium human development, and its Human Development Index has gradually increased since 2000.<sup>150</sup> Namibia has a population of 2.3 million people, 38% of whom reside in urban areas. Economic activity predominantly revolves around mining and agriculture, and there is a modest industrial sector focusing on mining, and the processing of meat and fish and dairy products.

Namibia does not have a significant arms manufacturing (and export) sector, and in fact there is currently only one defence sector company, *Windhoek Maschiene-fabrik* (Pty) Ltd that assembles demining vehicles for the Namibian Defence Force (NDF) and the export market. This is primarily a consequence of Namibia's prolonged colonial history, where the German (1846-1915) and South African (1915-1990) administrations sourced arms, ammunition and military equipment from homeland industries and/or stocks. Following independence in 1990, the Namibian government has relied on arms imports to equip its security and military forces.

Hunting is prevalent in this Southern African nation, and is a significant source of income for the tourism sector, with trophy hunting revenues estimated to be N\$ 300 million per annum, which equates to 2.3% of GDP.<sup>151</sup> Consequently, the bulk of the arms control provisions have been established to regulate the transfer, trade, licensing and use of arms and ammunition for hunting purposes. Nonetheless, arms and ammunition comprise less than 1% of total imports.<sup>152</sup>

The Namibian Police Force and the NDF are the principal consumers of conventional arms, ammunition and military-related equipment. These arms have been acquired primarily for policing, law enforcement, border protection, responding to insurrection (Caprivi uprisings: 1998-99) and involvement in foreign wars (Democratic Republic of Congo: 1998-2002) However, security sector budgets for arms, ammunition and military equipment are limited with the 2011/12 capital expenditure budgets for Defence and Police being NAD 696,746,000 and NAD 343,310,000 respectively.

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150 See Namibia human development profile at <http://hdrstats.undp.org/en/countries/profiles/NAM.html>

151 Message of the President of the Republic of Namibia, His Excellency, President Pohamba, presented by Hon. Minister Willem Konjore, Opening remarks at the Symposium proceedings on the Ecologic and Economic Benefits of Hunting, 15th September 2009.

152 Southern African Development Community (SADC), Namibia Country Report, Inter-SADC trade performance review, SADC, Gaborone, 2007.

## REGIONAL CONTEXT

Namibia is a signatory to: the SADC Protocol on the Control of Firearms, Ammunition and Related Materials (2001); the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons (UNPoA) (2001); and the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons (2000).

Article 5 of the legally binding SADC Protocol requires SADC member states to “enact the necessary legislation and take 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”. Member states should also incorporate “co-ordination of procedures for the import, export and transit of firearm shipments...in their national laws as a matter of priority”. In addition, there should be “provisions promoting legal uniformity and minimum standards in respect of the manufacture, control, possession, import, export and transfer of firearms, ammunition and other related materials”.

There is currently no regional agreement specifically relating to conventional arms transfers, however, the SADC Protocol on Politics, Defence and Security Cooperation (2001) seeks to “promote peace and security in the region;...promote regional co-ordination and co-operation on matters related to security and defence and establish appropriate mechanisms to this end...[and] observe, and encourage State Parties to implement, United Nations, African Union and other international conventions and treaties on arms control, disarmament and peaceful relations between states...” The SADC Organ on Politics, Defence and Security Cooperation has the responsibility to facilitate the implementation of this protocol, however, the Organ has been largely ineffective with regards to conventional arms control.

## ARMS CONTROL ARCHITECTURE AND POLICY ENVIRONMENT

### Conventional arms

The control of the import and re-export of major conventional arms for the Namibia Defence Force (NDF), as well as the export of demining vehicles (mentioned above), is the responsibility of the Ministry of Defence. Internal systems and processes have been established within this Ministry for such purposes, with ultimate responsibility residing with the Minister of Defence. In this regard, the Procurement, Research and Development Division within the ministry facilitates the procurement of arms, ammunition and military equipment for the Namibian armed forces. As with many other African militaries, there is however an absence of national transparency on arms imports. In addition, Namibia has not provided data on arms imports to the UN Register of Conventional since the inception of the Register.

### Small arms and light weapons

The high-level government National Management Committee on Small Arms, Light Weapons and Explosives determines the appropriate small arms and light weapons control strategy for Namibia, but is primarily guided by the Namibian Action Plan (for arms control and disarmament) (2005). The Management Committee is comprised of the Permanent Secretaries of: Safety and Security (Chair), Office of the President, Foreign Affairs, National Planning Commission, Home Affairs and Immigration, Defence, Finance, Environment and Tourism, Agriculture, Water and Forestry, and Justice and Attorney General, as well as the Director of the Central Intelligence Agency.

The Namibian Action Plan under the UN PoA has its origins in Namibia’s ‘First National Conference on Small Arms and Light Weapons’, which took place in October 2002.<sup>153</sup> The conference was attended by 120 participants, and included: government officials, parliamentarians and civil society representatives. The objectives of the conference were: to raise awareness of small arms and light weapons issues among civil society; as well as raise the international profile of Namibia’s progress in implementing the UNPoA, the Bamako Declaration and the SADC Protocol on the Control of Firearms, Ammunition and Other Related Materials.

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153 Republic of Namibia, *Namibian National Action Plan 2005*, Pretoria: SaferAfrica and Saferworld, 2005, 5.

The Management Committee also directs the National Focal Point on Small Arms and Light Weapons, which is comprised of representatives from several government agencies/departments (Ministry of Safety and Security, Namibian Defence Force, Ministry of Finance, Ministry of Foreign Affairs, Office of the President, Ministry of Environment and Tourism, Agriculture and Forestry, Ministry of Justice and Auditor General; Ministry of Home Affairs and Immigration), as well as academia, and civil society. The National Focal Point has established Regional Focal Points in each of Namibia's 13 regions, and is responsible for implementation of the Action Plan. The National Focal Point has a Secretariat, which is based within the Ministry of Safety and Security.<sup>154</sup> The terms of reference and standard working procedures for the National Focal Point were finalised in April 2007. However, insufficient resources have restricted the comprehensive implementation of the Action Plan.<sup>155</sup>

### **Arms brokering**

In 2010, following considerable international debate on arms brokering, the Namibian government established a task team to formulate recommendations on the regulation of arms brokers and arms brokering activities within the borders of Namibia, as well as the arms brokering activities of Namibian citizens and permanent residents in other countries. This task team will: review and assess the relevance and effectiveness of Namibia's existing measures, policies and legislation to regulate arms brokers and arms brokering activities; assess the relevance of international best practice on the regulation of arms brokers and arms brokering activities for Namibia; and formulate recommendations for the government of the Republic of Namibia on enhancing the regulation of arms brokers and arms brokering activities.<sup>156</sup>

## **CONVENTIONAL ARMS TRANSFER CONTROLS: RELEVANT LEGISLATION**

### **Arms control legislation**

The specific legislation that governs arms transfers in Namibia is the Arms and Ammunition Act (1996) and the Defence Act (2002).

The Arms and Ammunition Act (No. 7 of 1996) regulates the manufacture, trade, transfer, use and possession of firearms and ammunition. The Namibian government is currently in the process of amending Namibia's firearms control legislation in order to: bring it into line with the SADC Protocol on the Control of Firearms, Ammunition and Related Materials; and strengthen domestic firearm controls.<sup>157</sup>

In terms of Chapter 3 of the Act, individuals or organisations that seek to trade in firearms and ammunition in Namibia require a dealer's licence, which is issued by the Namibian Police Force, and is valid for three years.<sup>158</sup> Dealers are required to establish and maintain registers on all arms and ammunition acquired, disposed of, transferred and sold.<sup>159</sup> The majority of dealers maintain manual registers. However, A Rosenthal, which is the oldest (est. 1908) and largest arms and ammunition wholesaler in Namibia, maintains electronic records.<sup>160</sup> Dealers are also required to submit monthly returns to the firearm registry (Namibian Police Force).

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154 Republic of Namibia, *Namibian national action plan 2005*, 9.

155 Republic of Namibia, *Namibian national action plan on small arms and light weapons report 2002-2007*, Windhoek: Namibian National Focal Point on Small Arms and Light Weapons Secretariat, 2007; Moses Shaama (Head of Namibia National Focal Point on Small Arms and Light Weapons Sub Division, Ministry of Safety and Security), personal interview, Windhoek.

156 Namibian National Focal Point on Small Arms and Light Weapons, *Terms of Reference for the Namibian National Focal Point on Small Arms and Light Weapons Working Committee on Arms Brokering (WCAB) in the Republic of Namibia*, 2010.

157 For example, firearm competency testing will be introduced as a prerequisite for civilians to acquiring a firearm licence.

158 Ignatius Nangombe, personal interview; Moses Shaama, personal interview.

159 Ignatius Nangombe, personal interview; Jürgen Cronjé, personal interview.

160 Demonstration of electronic registration system provided to author by the staff of A Rosenthal. The system was designed and established at the initiative and expense of A Rosenthal, who are seeking to sell the system to the Namibia Police Force and other arms and ammunition dealers.

Only licensed arms and ammunition dealers and appropriate government agencies, such as the Namibian Defence Force, are permitted to import and export commercial consignments of firearms and ammunition, and an import permit, issued by Namibian Police Force, is mandatory. Arms and ammunition dealers and those states that import arms and ammunition are required to provide the Namibian Police Force with an inventory of the goods that they seek to import. Similarly, a permit is required for arms and ammunition that are to be transited through Namibian territory.

Holders of Namibian firearm licenses may export specified personal firearms and ammunition. However, such exports require an export permit issued by the Namibian Police Force, and are dependent on the policy and legislation of the state to which the firearms and ammunition are being exported. Non-Namibian citizens may purchase firearms and ammunition in Namibia, but require a letter of permission from the appropriate authority in their country of residency.

Only firearms that are used for hunting and sport-shooting purposes are permitted for import, namely: bolt-action rifles of all calibres, doubles of all calibres, shotguns (pump action and semi-automatic, and semi-automatic rifles with magazine capacities not exceeding five rounds. The import of custom or modified firearms requires the permission of the Namibian Police Force. The import of pistols, revolvers and automatic rifles (and the ammunition for these types of firearms) is not permitted. Such weapons are required to be surrendered at their legal port of entry for safekeeping until the departure of the license holder from Namibia.<sup>161</sup>

In terms of the Defence Act (2002), the Minister of Defence “may do or cause to be done all things which are necessary for the efficient defence and protection of Namibia or any part thereof.” In particular, the Minister has, in terms of this Act, the authority to:

- Establish, maintain and operate factories for the manufacture and repair of arms, ammunition, vehicles, aircraft, vessels, military clothing and other stores and equipment;
- Acquire arms, ammunition, vehicles, aircraft, vessels, clothing, animals, stores and other equipment required for defence purposes; and
- In consultation with the relevant office, ministry or agency sell, let or otherwise dispose of any land, building, animal or thing mentioned in any of the preceding paragraphs [including arms] which is no longer required for defence purposes.

There is no permit requirement in law for the Ministry of Defence to import arms, which is similar to the state of affairs in many other African and non-African countries. However, in the case of arms exports and re-exports, it is a prerequisite that the importing state provide the Namibian authorities with an import permit and an end-user certificate (original documents are mandatory). Before an arms transaction is authorized, Namibian arms control officials require specimen signatures of the appropriate arms control officials and they contact the relevant authorities of the importing state to verify authenticity of the arms transfer application.<sup>162</sup>

The Namibian government has been undertaking a lengthy review of its arms control policy and legislation, and has sought to make provision for enhanced arms transfer control measures, including specific brokering regulations; and introducing a requirement that “end user certificates take the form of a legally binding commitment”.<sup>163</sup>

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161 Republic of Namibia, *Clarification on policy on bringing firearms into Namibia*. Windhoek, Government Printer, ND.

162 Namibia National Focal Point on Small Arms and Light Weapons, National Report 2011, UN Programme of Action Implementation Support System, 21 February 2012, <http://www.poa-iss.org/NationalReport/NationalReports.aspx>

163 Namibia National Focal Point on Small Arms and Light Weapons, National Report 2005, UN Programme of Action Implementation Support System, 30 June 2005, <http://www.poa-iss.org/NationalReport/NationalReports.aspx>

## Other legislation

There are four other key acts that relate to arms transfer controls, namely: the Customs and Excise Act (Act 20 of 1998), the Import and Export Control Act (Act 31 of 1994), the Extradition Act (Act 11 of 1996), and the International Co-operation in Criminal Matters Act (Act 9 of 2000).

In terms of the Customs and Excise Act (Act 20 of 1998), all individuals that enter Namibia are required to declare all goods in their possession which were purchased, acquired, remodeled or repaired outside Namibia, as well as goods that are prohibited, restricted or controlled under any law. All goods for export must also be declared. The customs and excise controller has the power to detain persons suspected of violating the provisions of the Act. Violation of the Act can result in the forfeiture of the goods in question and/or a fine and/or imprisonment. Customs officials are authorised to open and examine any container or package in the absence of the importer or exporter.<sup>164</sup>

A key aspect of the Import and Export Control Act (Act 31 of 1994) is that it makes provision for the penalties for those individuals or entities that violate the conditions of import and export permits. In terms of this act, such an infringement may be liable for two years imprisonment or a fine of N\$20,000 (maximum).

The Extradition Act (Act 11 of 1996) legislates for the extradition of those individuals accused of crimes committed in prescribed countries, mainly those with which Namibia has an extradition agreement. In addition, it makes provision for the prosecution and punishment of the extraditable offence in Namibia in accordance with the laws of Namibia. This is an important legislative tool in combating illicit arms brokering activities, as it provides a process for the extradition to Namibian soil of brokers allegedly involved in illicit arms transactions, where they will stand trial.<sup>165</sup> Similarly, the International Co-operation in Criminal Matters Act (Act 9 of 2000) provides for the following between Namibia and foreign states: mutual provision of evidence; mutual execution of sentences and compensatory orders; and confiscation and transfer of the proceeds of crime. All requests by Namibia to other states in regard are undertaken by means of letters of request.<sup>166</sup>

## ARMS MANUFACTURING AND ARMS BROKERING ACTIVITIES IN NAMIBIA

### Arms and military equipment manufacturing

As indicated above, the *Windhoek Maschiene-fabrik* (Pty) Ltd (WMF) is the only military hardware manufacturer in Namibia. WMF was established in 1939, and initially specialized in general engineering and steel construction work, in the manufacturing of fuel tanks, commercial heavy vehicle components and steel piping. In 1977, the WMF developed its first ballistic and mine-protected vehicles for both the domestic and international markets. In 1998 the Namibian government through the Ministry of Defence took over the ownership of WMF via its investment company, August 26 Holding (1998) Pty Ltd.

The WMF imports its component parts and raw materials directly from suppliers, and sells its products directly to governments, the United Nations, as well as demining and humanitarian organisations.<sup>167</sup> As indicated above, an import permit (from the importer) and an end-user certificate is required in order for the export to be authorized by the Namibian authorities. The company has manufactured an estimated 15 mine-protected vehicles annually since 1977, and has produced four types of such vehicles, namely:

- Wolf I
- Wolf II
- Wolf Turbo III
- WerWolf Mk 1 and Mk II

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164 Ray H Goba, Legislation and organised crime in Namibia, in Charles Goredema (ed), *Organised crime in Southern Africa: assessing legislation* (Monograph No 56), Pretoria: ISS, 2001.

165 Ibid.

166 Ibid.

167 Mathias Shiweda, personal interview; James Auala, personal interview.

## Arms brokering

The brokering of legitimate arms-related transactions have taken place inside Namibia, as well as outside of Namibian territory by Namibian residents and citizens. Much of the brokering has related to the supply of arms and ammunition to the Namibian security forces, but Namibian citizens were involved in the licit brokering of a multi-million US dollar deal between the British Aerospace (BAE)/SAAB and the South African government in the mid- to late-1990s. There appears to have been no recent evidence of significant cases of illegal brokering, however, it has been reported that the Namibian brokers associated with the BAE/Saab deal with South Africa may have engaged in criminal activities.

According to the National Focal Point, the Namibian Police Force acquires the majority of its firearms and ammunition from domestic dealers. All police arms and ammunition contracts are put out to tender, and in principle, only licensed dealers (in Namibia) are eligible to submit tender documents.<sup>168</sup> In this regard, dealers that are successful in securing a police contract, essentially act as brokers. The Ministry of Defence typically secures its arms, ammunition and military equipment directly from manufacturers, and does not make use of brokers.<sup>169</sup> Arms and ammunition dealers import most of their stock directly from manufacturers, mainly in Europe and the United States.

## Small arms transfers: loopholes in the legislation

Namibia's current firearms control legislation allows for citizens of SADC states (Namibian non-residents) to purchase firearms in Namibia, and then export them to their country of residence (subject to relevant national firearm controls). This is particularly with respect to Angolan citizens. In order for such a transaction to legally take place, the non-citizen in question requires an official export permit from Namibian Police Force.

However, interviews with the Namibian Police Force and arms and ammunition dealers revealed that there is typically no communication between the Namibian Police Force and the authorities of the state to which the individual is purporting to export the firearm(s) and ammunition to ascertain whether the firearm(s) and ammunition physically left Namibian soil. This state of affairs has the potential to allow for certain individuals to stockpile and illegally trade in firearms and ammunition in Namibia.

## ARMS IMPORTS

Table 1 below provides some data on arms transfers into Namibia, which is drawn from a variety of sources, such as SIPRI, the South African National Conventional Arms Control annual export reports and media reports. The Namibian government has both purchased and been recipient of donated arms and military equipment since independence in 1990.

In terms of the NDF's new defence policy, referred to as Defence Namibia 21 (DN21), the Ministry of Defence is seeking to secure: new aircraft, including maritime patrol, ground attack and helicopters for the air force; 130 Ratel armoured personnel carriers (from South Africa) for the army; small arms and mortars from the UK (surplus stocks); and five small patrol craft from Brazil for the naval wing.

In recent years, there have been allegations of corruption relating to the awarding of a lucrative NDF arms procurement contract to a Chinese company. More specifically in 2008 and 2009, Martin Shalli, the Chief of the NDF at the time the contract was awarded was implicated in receiving a US\$ 500,000 bribe from Poly Technologies Incorporated. Shalli was subsequently suspended and was investigated on charges of corruption and money laundering.<sup>170</sup> At the time of writing Shalli's innocence or guilt was yet to be determined by the Namibian judiciary. Nonetheless, Shalli was appointed as the Managing Director of Air Namibia in January 2012.<sup>171</sup>

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168 Ignatius Nangombe, personal interview; Moses Shaama, personal interview.

169 Mathias Shiweda (Managing Director, Windhoek Maschinenfabrik (pty) ltd), personal interview, Windhoek; and James Auala (Chief Executive Officer: August 26 Holding Company (Pty) Ltd), personal interview, Windhoek.

170 Werner Menges, Shalli's bank account frozen, *The Namibian*, 14 October 2011.

171 Corry Ihuhua, Shalli gets nod for Air Namibia post, *Namibian Sun*, 13 January 2012.

**Table 1: Transfers of major conventional weapons: sorted by supplier. Deals with deliveries or orders made for year range 1990 to 2010**

Supplier	No. ordered	Weapon designation	Weapon description	Year of order/ license	Year(s) of deliveries	No. delivered/ produced	Comments
<b>Brazil</b>							
	1	Imperial Marinheiro	Tug	2003	2004	1	Ex-Brazilian; for use as OPV; Namibian designation Hamaambo
	1	Grajau	Patrol craft	2004	2009	1	Part of \$35 m deal
<b>China</b>							
	2	Y-12	Transport aircraft	(1997)	1997	2	
	(4)	K-8 Karakorum-8	Trainer/combat ac	2000	2001	4	No. could be up to 12
	(12)	F-7MG	Fighter aircraft	(2005)	2006-2008	(12)	F-7NM version; incl FT-7NM
	(21)	WZ-5237 Type-05P	APC	(2008)	2009	21	For Namibian UN peacekeeping units
<b>Germany (FRG)</b>							
	(21)	BF-6	Diesel engine	(2008)	2009	21	For WZ-523 APC from China; from Chinese production line
<b>India</b>							
	2	SA-315B Lama	Light helicopter	1994	1994	2	Part of \$5.5 m deal; Cheetah version
	2	SA-316B Alouette-3	Light helicopter	1994	1995	2	Part of \$5.5 m deal; Chetak version
	1	SA-315B Lama	Light helicopter	2009			SA-315 Cheetah version; delivery 2011
	2	SA-316B Alouette-3	Light helicopter	2009			SA-316B Chetak version; delivery probably 2011
<b>Italy</b>							
	1	AW-139	Helicopter	2002	2004	1	\$8 m deal
	(12)	Grifo	Aircraft radar	(2006)	2006-2007	(12)	For 12 F-7NM combat aircraft from China; Grifo-MG version
<b>Libya</b>							
	2	Mi-24D/Hind-D	Combat helicopter	(2001)	2002	2	Ex-Libyan; aid
	2	Mi-8T/Hip-C	Helicopter	(2001)	2002	2	Ex-Libyan; aid
<b>Moldova</b>							
	(2)	Mi-8T/Hip-C	Helicopter	2001	2001	(2)	Second-hand; leased
<b>South Africa</b>							
	24	5.5in Gun Mk-3	Towed gun	1998	1998	24	Ex-South African; aid; South African designation G-2
<b>Ukraine</b>							
	(4)	AI-25/DV-2	Turbofan	2000	2001	(4)	For 4 K-8 trainer aircraft from China
<b>USA</b>							
	(6)	Cessna-337/O-2	Light aircraft	1992	1994	(6)	Ex-US; possibly incl for MP; no. delivered could be up to 13 including for spare parts only
	1	S-61/H-3A Sea King	Helicopter	(1993)	1995	1	Ex-US; for SAR

Source: SIPRI Arms Transfers Database

## South African arms transfers to Namibia: 1997-2010

Year	Category	Value (ZAR/N\$)	Comments
1997	B	56,000	
1998	C	5,282,000	
2004	C	768,000	
2005	B	49,000	
	C	15,000	
2007	C	9,530,000	
	G	8,000	
2009	C	4,096,650	Demonstration and sales
	G	1,166,840	Sales
2010	C	6,943,240	Demonstration and sales

*Source: South African National Conventional Arms Control annual arms export reports*

## TRANSIT AND TRANSHIPMENT

Given the Namibia's significant hunting industry there has been considerable transfers of small arms and light weapons into and out of Namibian territory by individual hunters and sports shooters. These firearms have typically been transported through Namibia's land borders and airports.

The transit/ transshipment of arms through Namibia has taken place on an occasional basis. For example, one of the principal firearm dealers in Botswana has reported that he had imported some firearms and ammunition via Namibia, as importing arms via South Africa was perceived to be overly restrictive and time-consuming.<sup>172</sup>

The main Namibian port of Walvis Bay has been indirectly linked to a controversial arms shipment. That is, in 2008 it was reported that a Chinese vessel had sought to unload a cargo consignment of arms and ammunition in Walvis Bay that would then be forwarded to the Zimbabwean government at a highly volatile time in Zimbabwe. The Namibian authorities however reportedly prevented this transshipment from taking place via Namibian territory.

## CONCLUSION AND RECOMMENDATIONS FOR IMPROVEMENT

The Namibian case study provides an example of where a state that is neither a major importer nor exporter of conventional arms has devised a relatively straightforward system of conventional arms control. The arrangement is grounded within policy and legislation, with permits being the principal tools of control. The control processes have largely been devised to regulate the transfers of firearms (and related ammunition), especially as a result of Namibia's noteworthy hunting industry. The entire arms transfer control system, however, is uneven as regulatory measures for arms transfers for the national military (including both firearms, ammunition and major conventional weapons) appear to be less rigorous than those established for police and civilian firearms transfers. In addition, government's control of arms is facilitated by means of a multiplicity of laws and regulations. Below are recommendations that may be useful to the government of Namibia in enhancing its arms transfer controls:

- 1) As effective conventional arms control is undermined by an absence of comprehensive and consistent conventional arms control policy and legislation, the government of Namibia should consider undertaking an audit of its current legislation, policies and guidelines that relate to arms control. On the basis of the findings of the audit the Namibian government should consider compiling overarching national conventional arms control policy and legislation.

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172 Interview with firearms dealer, Gaborone.

- 2) Transparency in relation to conventional arms transfers has the potential to promote both regional and international peace and security. Therefore, the government of Namibia should consider submitting annual reports to the UN Register of Conventional Arms, as well as compiling national arms import and export reports.
- 3) As Namibia is increasingly becoming a transit/transshipment hub for Southern Africa, the government of Namibia should review its arms transit/transshipment controls, especially with respect arms, in order to ascertain if such controls require to strengthening.
- 4) The amendment of Namibia's firearms and ammunition law, which includes a number of important arms transfer control enhancements, is yet to be enacted by the Namibian legislature. The Namibian government should hence consider prioritizing the finalization of this piece of legislation.

# Recommendations

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## SUMMARY

This report has sought to contribute to the knowledge on how governments that are not major exporters and importers of arms have responded to the requirements and challenges associated with conventional arms trade control. Its main objective has been to provide food for thought on how countries can efficiently control the import and transit of conventional arms -- a particularly challenging topic in the ongoing discussions regarding a future International ATT in the United Nations. The report provides case studies of Barbados, Estonia and Namibia representing three separate regions of the world-- all with different geographical, institutional and economical contexts. The study also examines the recent experience of states that are dependent on importing weapons to meet their security needs and that also are transit states for weapons transferred to neighboring states.

The regulatory starting point differs among the three states in the case studies but common trends are present. All three countries can take steps towards building even more effective regulatory systems.

From the case studies, the following general recommendations can be made:

### **1. The need for an adequate national legal and regulatory framework**

The bedrock of a comprehensive and effective ATT will be the strength of states parties' laws and regulations governing transfers of conventional weapons. A national system based on the rule of law provides confidence and predictability in procedures as well as trust and stability in implementation. In order to effectively implement a future global ATT, the national system must apply to the movement of arms into, through, and out of states. A common finding in the research is that in all cases arms transfer controls are embedded in a variety of national laws. The Estonian system is the most comprehensive but each case study reveals functioning legal requirements, procedures and penalties for offenses. The necessary regulatory framework is in place, but improvements can be made.

### **2. Consistency in legal and regulatory frameworks**

At the same time as strengths have been identified, the studies expose regulatory weaknesses. In all cases, weapons transfer controls are distributed across several national laws and regulations. The consequent division of regulatory authority between various government ministries and departments generates risks of implementation redundancies and gaps, especially for the control of weapons in transit. The research also reveals differences between existing control standards and the regulatory obligations and norms stemming from multilateral instruments. The three case study countries have relevant regional commitments and obligations. Estonia has made necessary strides to bring its national legislation into line with European Union common standards for conventional arms transfers as is mandatory for EU Member States. Barbados, in contrast, has been slow to implement the model legislation and regulations of the OAS firearms treaty, CIFTA. The Namibian government has introduced a new bill on SALW that incorporates import, export and transit control obligations under the SADC firearms control protocol. However, the conversion of the bill into law has been delayed by, amongst other issues, objections from hunting and other firearm-related civilian bodies. Worldwide, several regional conventions contain provisions that would ease national implementation of an Arms Trade Treaty.

### 3. Areas of specific regulatory importance

a. **Adopt brokering legislation.** UN General Assembly Resolution 63/67 calls on UN Member States to put in place adequate national legislation to control brokering. The UN Programme of Action on small arms and other multilateral instruments call for national controls on arms brokers. Still, no international instrument mandates national control of brokering – the ATT should serve that purpose.

Estonia has brokering controls within its Strategic Goods Act. Barbados requires licensing of firearms dealers but appears to have no regulations related to the brokering of military goods beyond firearms. Namibia is currently in the process of establishing controls over arms brokers, and has established a task team in this regard.

To prevent illicit brokers from taking advantage of legal loopholes, all UN member states would benefit from legislation that regulates brokering activities. The levels of sophistication in the control system will vary from country to country, but the basic legal framework and the possibility to act under the rule of law is the first step any country in the world can take.

b. **Seek strong and enforceable arms import standards.** There are challenges to governing weapons transfers faced by all states but especially by states with limited resources. The ever increasing volume of international container traffic, for example, has reached a level where there are major challenges to effective monitoring for illicit goods. Still, efficient and realistic import controls for conventional arms are possible and in many cases perceived as necessary for national security reasons. The dependence of many states on arms imports for their national security needs suggests the ATT should contain provisions for all parts of the trade transaction, including robust import standards consistent with the right to self-defence under Article 51 of the UN Charter. These standards should include:

- official import authorization by recipient states before exports are authorized by supplier states, consistent with an agreed end-use certification process;
- a standard and coordinated import authorization system for all conventional weapons imports by all end-users -- private, commercial or government;
- provision of delivery verification certificates following weapons deliveries to export authorities in supplier states;
- agreed special criteria for importing arms.

Estonia has established control on imports under its Strategic Goods Act and Weapons Act, and although the system can be seen as a layered form of control to the actors who are familiar with the system, a newcomer would find it hard to navigate the different layers of control. While Barbados clearly benefits from a container monitor at its main port, it would require additional resources to establish similar monitoring at other points of entry. Namibia has established fairly stringent controls over the import of firearms, with control over the major conventional arms imports being enforced by only allowing the military to import major conventional arms. However, there is value to further strengthening and streamlining such controls.

Provisions for international cooperation and assistance in an ATT would provide an operating system to assist those states that require it to upgrade their legislative and regulatory frameworks.

c. **Address transit and transshipment controls.** International law, such as the Convention on International Civil Aviation (Chicago Convention) provides the right of all sovereign states to regulate the movement of goods through their territory and the control of conventional weapons should be no different.<sup>173</sup> However, if there is no national regulatory requirement to stop goods in case of a transaction of concern, a

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173 Holtom, P. and Bromley, M., SIPRI Background Paper, "Transit and Trans-shipment Controls in an Arms Trade Treaty," July 2011, p.2, available at [http://books.sipri.org/product\\_info?c\\_product\\_id=427](http://books.sipri.org/product_info?c_product_id=427)

country's licensing and enforcement bodies have limited possibilities to act.

The research reveals that all the studied states control the transfer of conventional weapons through their territory. None, however, appears to make operative distinctions between the transit and transshipment of arms. In the cases of Barbados, Namibia and Estonia transshipment is considered to be part of the transit concept. Authorization is required for goods in transit but only Estonia requires a transit authorization that is specific to what they define as strategic goods.

The modalities of current transit and transshipment arrangements suggest that improved and clearly defined national regulations and practices are needed for most states to be confident that they are aware of, and as necessary, can control the conventional weapons that move through their jurisdiction.

A country's right to deny a weapons transit is particularly important for effective implementation of mandatory UN Security Council arms embargoes. The Namibia case study cites the example of South African authorities monitoring and seizing a vessel carrying arms in violation of a UN arms embargo. However, if a state neighboring an embargoed state is unable to identify weapons transiting its territory or cannot identify the destination of the weapons, then it would be impossible for the state to prevent embargo breaches. Unscrupulous actors regularly exploit such regulatory weaknesses. Similarly, if a state would choose to stop a transfer through its territory for other reasons, such as the possibility of the items contributing to a destabilization of the security situation in the region, the state would have to have the regulatory tools to do so.

Strong transit and transshipment provisions under the ATT will provide a necessary international mandate for many countries that have yet to implement such control mechanisms. Without such an international platform, the world is left with a patchwork of transit and transshipment controls, applied only in some places. New legislation may be required, for example, to clearly define the conditions and the authority to stop or return transiting military goods.

To limit the burden of regulation improvement, especially to smaller states, the ATT would have to include provisions for assistance. SIPRI has suggested that the ATT could assist states to pool their knowledge and experiences in implementing transit controls, as well as offer a system of international assistance toward transit control implementation.<sup>174</sup> As an example of best practice, Barbados could be cited for its practice of holding transit firearms under customs bond until a licence is received from the authority of the destination state.

#### **4. Improve reporting, information exchange and transparency**

The effective implementation of ATT will need to rest upon a transparent system of information, experience and data exchange. States parties will need to routinely report on their treaty implementation progress and conventional weapons transfers as well as exchange information with other states parties on issues of treaty relevance. These activities would be best performed transparently, by placing reports and information in the public domain. Without reporting and information exchange, it will not be possible for states to ensure treaty compliance. Without transparency, it also will not be possible to build public confidence in implementation of an ATT.

Of the three cases studied, Estonia is the sole state to issue national reports on conventional arms transfers. These reports are comprehensive in nature, following obligations within the EU Common Position on arms exports, but they could be extended to include data on transfers that correlate to Estonia's control of imports and transits of military items. Barbados and Namibia do not issue publicly accessible national reports on arms transfers and in recent years none of the three states has reported to the UN Register. The limitations of national reporting contrast with credible, if incomplete, weapons

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174 Holtom, P. and Bromley, M., SIPRI Background Paper, "Transit and Trans-Shipments Controls in an Arms Trade Treaty," July 2011, p.7.

transfer data that is available from open sources, including supplier reports to the UN Register that detail exports to the studied states.

The case study desk research benefitted from on-line access to national legislation and regulations. Estonia maintains a comprehensive on-line database of relevant regulatory material and, in the cases of Barbados and Namibia, most relevant legislation is available from national and other on-line sources. Regulatory forms such as firearms import licence applications are also available on-line.

The declining costs and growth in use of digital systems to collect and maintain data suggest that it is now practical and economical to digitize all arms transfer regulations and trade data. Once this is accomplished it would be only a short step to meet the universal reporting standards of an Arms Trade Treaty while still protecting sensitive data. The national security concerns raised regarding the release of import data will need to be addressed but can be alleviated by allowing for a reporting system that develops over time to include increased levels of detail. The countries that provide national reporting have tended to increase the detail in their reports over the years. This increased level of transparency can and should be mimicked on an international scale. The ATT will provide a new opportunity to increase the global level of national transparency in reporting and thereby contribute to vital confidence building mechanisms.

The Arms Trade Treaty should establish minimum standards for regular reporting on the importing, exporting and transiting of conventional weapons by all states parties. Through its assistance provision the ATT could be a forum for sharing information on national systems to the trading community; such as explanatory forms for licensing, best practice guides and templates.

## 5. What can be done and where to start.

The case studies suggest the following general measures are necessary to strengthen any national system and can be taken in a chronological order:

- a. **Conduct a national regulatory audit** to determine the extent to which domestic legislation adequately governs all conventional weapons imports and transit practices and situations. In addition to identifying relevant legislation and procedures -- and where these link and overlap -- the audit process would reveal any gaps and redundancies that need to be addressed. Any country large or small with a nascent or developed system can conduct such a regulatory audit with few resources.
- b. **Establish necessary legislation at all relevant levels of control** – if the regulatory audit reveals the need for additional legislation, steps should be taken to remedy the situation, possibly with assistance from domestic, bilateral or international partners.
- c. **Establish a national entity** (commission, committee or other coordinating body) - to oversee the control of conventional arms into, through, and out of national jurisdiction. This body could provide a basic capacity to coordinate and implement control of weapons movements and destinations. The entity can also be responsible for reporting requirements. Relevant bodies exist in two of the case studies. The institutional home for such an entity is less important than the establishment of the entity as such.
- d. **Meet existing regional, multilateral and international obligations** - In many cases, particularly among smaller states, a national coordinating entity would be an obvious candidate for the National Focal Point for regional as well as international instruments such as the UN Programme of Action on Small Arms or the Organization of American States Firearms Convention (CIFTA). The body could also be instrumental in the implementation of an Arms Trade.

# Annex I: Questionnaire on import and transit regulations and procedures

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## 1. EXISTING ARMS IMPORTING AND TRANSIT PRACTICE

### A. TRANSFER DATA

1. Data on arms imports and transit arms over past 5 years (if available)

### B. LAWS and REGULATIONS

2. Documentation of relevant legislation, regulations and policies re import, export and transit of conventional arms and related technologies
  - a. Difference between import and transit
3. Documentation of relevant multilateral treaties, agreements and instruments including data of the country' accession
4. Description of import and transit regulations and procedures for conventional arms and related technologies
  - a. Difference between import and transit
5. Goods subject to control for import and transit (eg control lists)
  - a. Difference between import and transit
6. Documentation needed from applicants
  - a. Difference between import and transit
7. Marking and tracing requirements
8. Types of licences (eg. individual, general)
9. End-use checks and certification requirements and practice (including re-export conditions)
10. Use of Import Certificates
11. Other regulation obligations to exporting state (eg. provision of import certificates or delivery verification certificates)
12. Variations in licencing and procedure requirements by end-user (eg. requirement variations between government (military and police) and commercial end-users)
13. Administrative and criminal sanctions
  - a. Related to violations of import or transit regulations
  - b. Related to UN arms embargoes
14. Offset requirements – position, regulations and experience with regard to offsets that accompany arms imports

### C. INSTITUTIONS and their RESPONSIBILITIES

15. Lead government agency on arms import and arms in transit
16. Ministries, departments and officials roles and responsibilities in each of:
  - a. licensing (authorization)
  - b. monitoring and enforcement
    - i. Customs
    - ii. Judicial branch
  - c. reporting (national, international, public) and accountability
  - d. information exchange among national departments and officials
  - e. information and document exchange with foreign officials
  - f. awareness-raising among commercial and other non-state entities
  - g. Maintaining and updating goods subject to control for import and transit (eg control lists)
  - h. Who is in charge of marking and tracing requirements?
    - i. Are there training programs for the officers?
17. Equipment used in monitoring (eg. customs and/or border patrol scanners)
18. Use of designated customs or border posts, including information required for processing at the post
19. Documentation
  - a. Documentation required at each stage (eg. for licences, transfers, recordkeeping) and when
  - b. Transit documentation required from other states (exporter or end-destination)
  - c. Documentation (examples) of judicial processes related to arms trafficking

### D. PROOF of IMPLEMENTATION

20. Reports on licensing
21. Are seizures made public?
22. Are cases made public?

### E. SPECIAL ATTENTION for NON-STATE ENTITIES

23. Brokers and brokering
  - a. Documentation of relevant legislation etc
  - b. Registration of brokers
  - c. Description of brokering procedures including documentation required
24. Dealers and other commercial importers

a. Assessment of importing potential of domestic industry

Repeat 23 a to c

25. Transport service and freight forwarders

Repeat 23 a to c

26. Finance providers

Repeat 23 a to c

27. Private importers (firearms owners)

Repeat 23 a to c

28. Civil society experts and monitors

Repeat 23 a to c

Summary Analysis of current import and transit regulations and practice

2. RECOMMENDED STANDARDS AND PRACTICE FOR IMPORTING OR TRANSITING CONVENTIONAL WEAPONS AND RELATED TECHNOLOGIES
3. SUGGESTIONS FOR IMPROVEMENTS TO ANY AND ALL ELEMENTS FROM INTERVIEWS

## Annex 2: Small arms and light weapons transfers to Barbados reported to the UN Register by some supplier states

Year	Supplier State	Number	SALW Item
2003	United Kingdom	2	Revolvers
		2	Rifles
		12	Shotguns
		2	Sniper rifles
		2	Submachine guns
2004	United Kingdom	1	Sporting rifles
		5	Semi-automatic pistols
		1	Revolvers
		1	Machine pistols
		1	Rifles
		2	Submachine guns
		NA	Components for submachine guns
		1	Assault rifles
		NA	Weapon cleaning kits, weapon sights, Components for machine pistols, Components for semi-automatic pistols
2005	United Kingdom	1	Shotguns
		5	Assault rifles
		3	Rifles
		2	Submachine guns
		1	Heavy machine guns
2006	United Kingdom	2	Pistols
		35	Submachine guns
		2	Assault rifles
		2	Shotguns
	Germany	35	Submachine guns
2008	Italy	9	Rifles and carbines
2009	Italy	92	Revolvers and self-loading pistols
		8	Rifles and carbines
	United Kingdom	3	Semi-automatic pistols
		2	Shotguns
		2	Sporting rifles

*(Barbados has not reported SALW data to the UN Register. Latest report — for 2003 — reported “Nil” for major categories\*)*

## Annex 3: Estonia National Reporting<sup>175</sup>

Year	Export License of Dual-Use goods	Import License of Military Goods	Export License of Military Goods	Service Export License for Brokering of Military Goods	Denials	Registered Brokers	Transit Permissions	International Import Certificate	End-Use Certificate for	Delivery Verification Certificate	General Export Authorisation User Document	EU001 General Export Authorisation User Certificate
2004	6	12	18	-	0	2	7	19	9	2		
2005	8	19	19	1	1 IMP, 1 EXP 1 TRAN		6	26	14	1		
2006	8	16	19	-	1 IMP 3 EXP 1 EUC		5	20	25	-		
2007	13	40	29	-	3 IMP 1 IIC	1	11	19	31	-		
2008	15	50	23	-	1 EXP	1	12	12	49	-		
2009	21	57	25	-	2 EXP	1	3	1	24	-		2
2010	38	86	24	3	0	2	9	4	24			

175 "Compilation of data from Estonia's National Reports (2004-2010)", available on Estonian Ministry of Foreign Affairs website: <http://www.vm.ee/?q=en/node/5039>

## Annex 4: UN Register Reports — Estonia<sup>176</sup>

UN Register IMPORTS/ EXPORTS	CAT I Battle Tanks		CAT II Armoured Combat Vehicles		CAT III Large Caliber Artillery Systems		CAT IV Combat Aircraft		CAT V Attack Helicopters		CAT VI Warships		CAT VII Missiles and Missile Launchers	
<b>2004 TOTAL</b>			0	7	37	56	5	0	3	0				
Finland					21	0								
Germany					16	16								
Poland							3	0	1	0				
Sweden					0	40								
Ukraine							2	0	2	0				
UK			0	7										
<b>2005 TOTAL</b>			22	35	4	106	6	0						
Finland			22	35										
Germany					4	4								
Sweden					0	102								
Ukraine							6	0						
<b>2006 TOTAL</b>			33	21			1	0			1	0		
Denmark											1	0		
Finland			33	21										
Ukraine							1	0						
<b>2007 TOTAL</b>			5	0			1	0						
Finland			5	0										
Romania							1	0						
<b>2008 TOTAL</b>							7	0						
Ukraine							7	0						
<b>2009: NONE</b>														
<b>2010: NONE</b>														

Reported by other countries

Reported by Estonia

*No reports on SALW in UN Register*

<sup>176</sup> Data from UN Register of Conventional Arms for Estonia 2004-2010, available at the United Nations Office for Disarmament Affairs: <http://www.un-register.org/Countries/Countries.aspx>

## Annex 5: Value of Estonian Small Arms Imports by Item, 2004 -2009<sup>177</sup>

Item	2004	2005	2006	2007	2008	2009
Grenade launchers, Flame Throwers & other (930120)	0	90888	0	0	3047351	31848184
Bombs, Grenades, Ammunition, Mines, & Others (930690)	886821	180907	1989497	5425559	759880	663138
Military Rifles, Machineguns, & other (930190)	1641	103052	700050	65920	2684181	3220813
Parts & accessories of Military Weapons (930591)	55325	1350	881267	57194	5967790	2755932
Sporting & Hunting Shotguns (930320)	155899	157940	304700	404467	293261	151455
Sporting & Hunting Rifles (930330)	191018	394482	647917	761492	612645	240743
Parts & accessories of shotguns or rifles (930529)						
Shotgun Cartridges (930621)	190246	49783	192286	235132	162126	194505
Air gun pellets, lead shot, parts of shotgun cartridges (930629)	23495	45193	32987	91085	89590	31623
Shotgun barrels (930521)	498	396	0	686	1805	411
Pistols & Revolvers (930200)	156030	121104	1753982	176892	276594	218970
Parts & accessories of revolvers or pistols (930510)	14705	8633	710552	82016	57310	212064
Parts & accessories for Small Arms & Light Weapons (930599)	39504	43613	67337	67571	183171	33230
Small Arms Ammunition (930630)	1110825	1273768	1827675	1978474	10223758	9649179

### TOTAL VALUE OF ESTONIAN SMALL ARMS IMPORTS, 2004 - 2009

Year	2004	2005	2006	2007	2008	2009
Value (USD)	4238988	2594858	9131366	9414297	24422394	49252190

177 "Compilation of data from Norwegian Initiative on Small Arms Transfers, (2004-2009)", *Small Arms Trade Database*, retrieved from [http://balder.prio.no:8080/PublicQuery\\_SQL.aspx](http://balder.prio.no:8080/PublicQuery_SQL.aspx).