About this Paper

This paper is the result of research commissioned by Project Ploughshares for a project to engage civil society and governments in the Americas region in advancing international support for improved transfer controls in the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. A central project objective was to provide research to inform and advance commitment to global principles, based on state responsibilities under international law, to govern national decisions on the export of small arms and light weapons.

About the Author

Rachel Stohl is Senior Analyst at the Center for Defense Information at the World Security Institute in Washington, DC.

Project Ploughshares Working Papers are published to contribute to public discussion and debate of peace and security issues.

The views and policies presented in this paper are the author’s and do not necessarily reflect the policies of Project Ploughshares, or the churches and agencies which sponsor Project Ploughshares.

First published March 2006

ISSN 1188-6811
ISBN 1-895722-50-0
Background: The US Arms Trade

The United States is the world’s largest arms exporter. In 2004, arms transfer agreements worldwide amounted to nearly $37 billion, the largest total since 2000, rising well above the 2003 sum of $28.5 billion. The top five arms exporters accounted for 79.5 per cent of all arms transfer agreements in 2004, and the United States topped that list, accounting for 33.5 per cent ($12.4 billion) of the total. In 2004, global arms deliveries totaled $34.8 billion. The top five arms exporters accounted for 86.8 per cent of that total, but the United States alone accounted for more than half with $18.6 billion (53.4 per cent) in completed arms deliveries. Nearly $21.8 billion of arms transfer agreements in 2004 were made with developing countries. The United States leads all countries in both arms transfer agreements with and arms deliveries to developing nations, concluding $6.9 billion in transfer agreements and $9.6 billion in arms deliveries with developing nations in 2004 (Grimmett 2005).

US arms sales fall into five main categories. The two largest programs are Foreign Military Sales (FMS), government-to-government sales negotiated by the Department of Defense; and Direct Commercial Sales (DCS), sales negotiated by US companies and foreign buyers. The other three categories of arms sales are: leases of military equipment, excess defense articles, and emergency drawdowns of weapons stocks. The FMS program is run by the Defense Security Cooperation Agency (DSCA) at the Department of Defense. Purchasers negotiate sales through the Department of Defense, which is responsible for all aspects of the sales logistics—from contracts to deliveries to servicing. The DCS program is administered by the State Department’s Directorate of Defense Trade Controls (DDTC). Companies transferring arms through DCS must apply for a license from DDTC for each arms transfer. In 2004, FMS totaled nearly $10.7 billion and DCS totaled approximately $7.6 billion (US DSCA 2004).

The United States also transfers arms through covert means. Data on the quantity and value of these sales is nearly impossible to come by, but policy statements do give a glimpse of the nature and recipients of these covert arms sales. For example, after September 11, 2001, Secretary of Defense Donald Rumsfeld stated that the United States would provide arms to the Afghan Northern Alliance/United Front in order to achieve military goals. Moreover, the US covert weapons program to Afghanistan during the 1980s has been extremely well documented, with estimates of total US military assistance during the Soviet occupation of Afghanistan reaching $7 billion. The US also transferred covert weapons worth millions of dollars to many Central American countries during the same period, although an accurate accounting of the extent and value of the transfers to Central America is difficult to ascertain. The United States often supplied Soviet weapons to avoid culpability if the weapons transfers were discovered. However, reports reveal that US arms to Nicaragua alone included at least 10,000 Kalashnikov AKM assault rifles, German-type G-3 assault rifles, 200 RPG-7 rocket launchers, 200 60 mm mortars, 50 82 mm mortars, 60 12.7 mm machine guns, 50 SA-7 portable surface–to–air missiles and related ammunition (Lumpe 1999a). These weapons were, of course, supplied in addition to non-covert arms transfers, which were substantial. FMS deliveries to Central America between 1980 and 1989 totaled $922,761,000, nearly a billion dollars. The supply of US-origin weapons that filtered into Central America during the 1980s is a source of continued proliferation, as many of these weapons remain in circulation today. US insistence on providing weapons to non-state actors and an unwillingness to have the international community dictate the tools available for conducting US foreign policy have cemented US
opposition to proposed bans on weapons sales to non-state actors. This position has not shifted, and is unlikely to do so in the future, regardless of which party controls the White House.

In discussions on efforts to control the proliferation and misuse of small arms, the US government often declares that transfers of weapons originating in the United States do not contribute to the global spread of small arms on the illicit market and that, as former Assistant Secretary of State Lincoln Bloomfield said in 2001, “lawful manufacture, trade and possession are not the problem.” Despite this insistence, U.S weapons have been found in conflict zones and have been used in violent crimes around the world. For example, in the mid-1990s Brazilian police consistently recovered guns of United States origin that had been used to commit crimes in Brazil. However, according to export and import records, the United States had not supplied Brazil with the models or quantities of the weapons that were recovered. The United States Bureau for Alcohol, Tobacco, and Firearms (ATF), with the assistance of the Office of Defense Trade Controls and the US State Department, undertook a bilateral effort with the Brazilian police, allowing the United States to trace the origins of the recovered weapons, which were legally transferred from the United States to Paraguay, and then illegally diverted across the Brazil-Paraguay border. These US weapons were used illicitly in Brazil, and many of these same weapons remain in circulation today. This case, while receiving limited attention from policy analysts and the international community, marks an important example of US interest in, and cooperation on, tracing illicit transfers of US small arms and light weapons. Moreover, it clearly links licit and illicit transfers and suggests that stronger legal controls—in this case, better end-use certification and monitoring—could prevent leakage into illicit markets. In this case, US action seems to go beyond US policy statements (see below).


In the United States, the majority of arms sales are governed by two pieces of legislation: the 1976 Arms Export Control Act (AECA) and the 1961 Foreign Assistance Act (FAA). US law is designed to ensure that US weapons are transferred only to desirable actors in accordance with US policy objectives. According to US law, US weapons transfers may not take place if the weapons would undermine regional and global security and stability, weaken democratic ideals, support military coups, escalate arms races, exacerbate ongoing conflicts, cause regional arms buildups, or be used to commit human rights abuses. The AECA is implemented by the International Traffic in Arms Regulations (ITAR). The ITAR contains the US Munitions List, a list of all items considered defense articles subject to control by the State and Defense Departments, and regulates commercial sales, which require licenses from DDTC. Small arms and light weapons, as well as their ammunition, are covered in categories I through IV of the US Munitions List. For example, Category I–Firearms, Close Assault Weapons and Combat Shotguns provides definitions for the various types of weapons covered by this category.\(^2\)

Until the mid-1990s, dual-use items, goods, and technologies, or those items that could be used for either weapons production or other, non-military purposes, were regulated by the Export Administration Act (EAA), which was administered by the Bureau of Industry and Security at the Department of Commerce through the Export Administration Regulations (EAR). The Commerce Control List (CCL) identifies the majority of items subject to the EAR. Some small arms and light weapons are on this list, namely shotguns, and are subject to Department of Commerce Control
procedures. However, the EAA expired in 1994, and due to political infighting has not been renewed. Therefore, dual-use items are currently regulated by the International Emergency Economic Powers Act (IEEPA).

Arms sales are an important tool of US foreign and security policy. Indeed, in the Defense Department manual, *Management of Security Assistance*, 17th edition, the transfer of defense articles, defense services, military training, and economic assistance is identified as having been, and remaining, “one of the primary methods used to carry out US foreign and national security policy” (Slack, n.d.). US arms sales are governed by Presidential Decision Directive (PDD) 34, established by President Bill Clinton in 1995. This policy both promotes restraint in arms transfers and supports transfers to allies to enhance US national security and foreign policy interests. The policy’s goals (White House 1995) are:

1) To ensure that our military forces can continue to enjoy technological advantages over potential adversaries.
2) To help allies and friends deter or defend themselves against aggression, while promoting interoperability with U.S. forces when combined operations are required.
3) To promote regional stability in areas critical to U.S. interests, while preventing the proliferation of weapons of mass destruction and their missile delivery systems.
4) To promote peaceful conflict resolution and arms control, human rights, democratization, and other U.S. foreign policy objectives.
5) To enhance the ability of the U.S. defense industrial base to meet U.S. defense requirements and maintain long-term military technological superiority at lower costs.

Although clear in their individual objectives, these goals may conflict when the US government determines whether or not to make a transfer. The PDD states that each arms transfer decision will be made on a case-by-case basis, and lays out general criteria for arms transfers. While these criteria have been established in US policy for decades, the Clinton guidelines included one additional criterion: “the impact on U.S. industry and the defense industrial base whether the sale is approved or not” (White House 1995). This guideline now permits economic considerations to play an equal part in transfer decisions in what was previously the realm of national security and foreign policy considerations.

Even though the US executive branch has statutory authority to approve arms transfers, the power is not absolute. The US Congress also plays a role in the arms transfer process. The House International Relations Committee (HIRC) and the Senate Foreign Relations Committee (SFRC) are responsible for oversight of defense export controls and the licensing process under the AECA. The AECA establishes the dollar-value thresholds that require potential sales to be formally submitted for review by Congress, through the HIRC and SFRC. For potential small arms transfers, Congress must be notified if an export license is being considered for a transfer valued at $1,000,000 or greater. Congress in turn can disapprove these potential sales within a specific time. If Congress does not give specific disapproval, however, the sale can proceed. Congress has no direct role in reviewing individual dual-use licenses. Although Congress does have the statutory power to stop sales, the process is actually quite difficult. For a sale to be stopped, both the House and the Senate must pass identical joint resolutions of disapproval within a specified time. This joint resolution must be signed into law by the President. However, since the administration is proposing the sale, it is usually in favor of the sale’s proceeding, and it is therefore unlikely that the President would sign
the resolution of disapproval into law. The resolution of disapproval must pass by a two-thirds majority to be able to override a presidential veto. Therefore, Congress works instead to raise the political cost of a questionable sale by influencing the budget authority of the agencies involved in the export process, requiring new certifications or reports regarding the impact of the sale or the actions of the recipient, or prohibiting all arms sales to a specific country.

The recent restoration of US military ties with Indonesia by the executive branch demonstrates the limited ability of Congress to prevent arms transfers. In November 2005, the US Congress placed conditions on US FMF and lethal military exports to Indonesia, saying that Indonesia needed to demonstrate steps to counter international terrorism, undertake military reforms, protect human rights, and implement punitive measures for human rights violators, allowing the Secretary of State to waive requirements for the interest of national security. Only one week after the bill’s passage, the Bush administration announced that they were conditionally waiving the legislative provisions out of US national security interests. Indonesia is now free to receive weapons from the United States, including small arms and light weapons.

Obviously, it is very difficult to ascertain information about the quantity, frequency, and destinations of covert arms sales. However, while most determinations for covert sales are made on a case-by-case basis and implement specific legislation preventing or allowing some of them, covert sales in general are authorized by US law. The National Security Act of 1947 provides authorization for US covert political and military operations, including the supplying of arms. In order to meet the act’s obligations, the President has to present a “finding that the operation is vital to US national security” (Lumpe 1999b, 78). In addition, Section 505 of the act requires that the appropriate intelligence agency—either the Central Intelligence Agency (CIA) or other agencies involved—notify the relevant congressional committees (those that are responsible for US intelligence oversight) of arms transfers valued at $1 million or more (Lumpe 1999b, 78-79).

In some cases, the US Congress has passed legislation to prohibit specific covert supplies of weapons. For example the Boland Amendment (US Congress 1982) among other things prohibited “covert assistance for military operations in Nicaragua.” In addition, the Tunney Amendment, and later the Clark amendment, to Title IV of HR 9861, the Defense Department appropriations bill for FY 1976, suspended covert military aid to Angola, other than intelligence gathering (Johnson 2003). While these bills can be useful in the short term for reining in covert arms sales, they are made on a case-by-case basis and usually have a time limit attached to them.

**US as Party to International Agreements**

As international concerns increasingly focus on the global proliferation of small arms and light weapons, international agreements centered on these weapons are also proliferating. While many countries jump into each new potential initiative with gusto, the United States takes a more tempered (although some might call it hostile) approach to international negotiations and agreements. The United States does not sign up to an international, multi-lateral, or regional agreement if it does not plan on conforming to the principles enunciated in the document. On most occasions, the United States does not agree to agreements or guidelines that would require a change
in US law or policy. This makes US participation in or leadership of small arms initiatives very limited and narrowly focused.

**The UN Process**

The United States has made it very clear that its primary focus on small arms and light weapons at the international level is the illicit trade. In his opening statement at the 2001 UN Small Arms Conference, then Under-Secretary of State John Bolton laid out the US position on the Conference and its proceedings, claiming that the UN process should tackle only the illicit transfer of military-style weapons, excluding firearms and non-military rifles, and outlined US “redlines,” issues that the United States viewed as unacceptable for inclusion in the Program of Action. While the United States compromised on the review conference, the other redlines have remained entrenched in US policy at the international level (an important exception, however, is the United States support of the ban on the export of Man-Portable Air Defense Systems (MANPADS) to non-state actors). The redlines include those things the United States refused to support in a final Conference document:

- restrictions on ownership of weapons by civilians
- restrictions on the legal trade and manufacture of small arms and light weapons
- promotion of international advocacy by NGOs and international organizations
- restrictions on the sale of small arms and light weapons to entities other than governments
- a mandatory review conference
- a commitment to begin discussions on legally binding agreements.

Restrictions on the scope of small arms initiatives have been reiterated at subsequent UN meetings. For example, in the US 2003 Biennial Meeting of States (BMS) statement, Assistant Secretary of State Bloomfield restated:

> Regardless of one's personal views on that issue, in the US or any other country, the UN Conference had a very specific mandate from the General Assembly, and lawful gun ownership was not part of that mandate. The scope of the Conference—and the Program of Action—concerns the illicit trade in small arms and light weapons (SA/LW). That remains our focus today.

In 2005, the US government again emphasized the focus on the illicit trade in small arms and light weapons, but also mentioned that stricter export controls may help fight the illegal weapons transfers. In its report to the second BMS the United States (Dept. of State 2005) said:

> We [the United States] believe the Program of Action gave us a solid foundation four years ago to forcefully tackle the illicit trade in SA/LW. However, much more can be done. We urge States to continue to work to develop and implement all provisions of the Program of Action. Achieving that progress, in our view, will require addressing many factors underlying the illicit trade in SA/LW worldwide. Such trade persists in part because of lax enforcement of laws and regulations, or their absence altogether. It occurs because of poor governance and an environment that tolerates illegal commerce, often involving corruption among government officials. Stricter border security and export controls will certainly bring us closer to our goals.

As mentioned above, the focus on illicit transfers has been central to the US position at the United Nations. At the 2001 UN Conference, then Assistant Secretary of State Lincoln Bloomfield clearly
enunciated this US position, stating that “the U.S. opposes efforts to further restrict the lawful manufacture, trade and possession of firearms. However, it is deeply committed to stamping out the illegal trade in these weapons around the world.”

In the two related UN processes on marking and tracing and brokering, the United States has taken similar positions to those enunciated at the 2001 UN Conference. The United States has not wanted to rush the process toward possible agreements on these issues and has encouraged the idea that they be only politically binding, not legally binding. Moreover, the United States wanted the negotiations towards these international instruments to occur consecutively, rather than concurrently, waiting to undertake discussions on brokering until after the marking and tracing process is completed, after the 2006 Review Conference. While the United States seems entrenched in these positions there is clearly some room to compromise. The United States did agree to longer record-keeping than what already existed in US law during the marking and tracing negotiations, which demonstrates some flexibility in the US position.

The United Nations has also taken up the small arms issue outside the UN Conference process. In the drafts of the UN Summit declaration marking the 60th anniversary of the United Nations, the United States initially proposed striking all references to small arms and light weapons. Small arms were not the only issue discussed in the declaration, but even minimal references to the work the United Nations was doing to curb the proliferation and misuse of small arms were unacceptable to the United States. In the end, the United States agreed only to one sentence on small arms and light weapons, supporting implementation of the PoA.

These US positions have colored US small arms and light weapons initiatives in fora outside the United Nations and may make it difficult to achieve the inclusion of export criteria on legal transfers in upcoming UN meetings. Lessons drawn from US participation in the UN Process demonstrate that the United States wants international action on small arms to focus on illicit trade issues. Moreover, the protection of US prerogatives, such as preventing restrictions on civilian possession, is paramount. The focus on the illicit trade (to the exclusion of the legal trade in small arms) and the continued insistence on the redlines in UN meetings are unwavering and can be expected in some form again at the 2006 Review Conference. In fact, this viewpoint was hinted at during the US July 2005 BMS speech, when it was said (US Dept. of State 2005) that “we believe that we cannot seriously consider ‘the way forward’ or develop new initiatives for 2006 until we have thoroughly assessed progress in fulfilling commitments made in the PoA.”

**US Involvement in the Wassenaar Arrangement**

Although the United States wanted the UN process to focus only on the illicit trade in small arms, in other fora the United States is more amenable to discussions of legal small arms transfers (the United States has supported other small arms initiatives, such as MANPADS controls, at the United Nations, but has a limited focus for the UN Conference process). For example, the United States has supported export controls in the Wassenaar Arrangement, particularly of weapons that are of particular concern in the hands of terrorists. In support of the US focus on the “war on terror,” the United States took a leadership role in pushing for the adoption of best practices for the export of MANPADS through the Wassenaar Arrangement. These best practices outline control and evaluation criteria for MANPADS exports, including taking into account the “potential for diversion or misuse in the recipient country; the recipient government’s ability and willingness to protect against unauthorised re-transfers, loss, theft and diversion; and the adequacy and effectiveness of the
physical security arrangements of the recipient government for the protection of military property, facilities, holdings, and inventories” (Wassenaar Arrangement 2003).

The United States has also pressed the Wassenaar participants to develop best practices on small arms exports. Although the United States had proposed these best practices prior to September 11, 2001, the call for their development was re-energized as linkages were made between the conflicts fuelled by small arms and the areas that served as breeding grounds for terrorists. The objectives for developing the best practices include “the prevention of destabilising accumulations of such arms; and the need to prevent the acquisition of conventional arms by terrorist groups and organisations, as well as by individual terrorists.” Among the criteria for determining if a transfer should occur is to take into account, “the risk of diversion or re-export in conditions incompatible with these Guidelines, particularly to terrorists.” Moreover, the best practices state that Wassenaar States will avoid issuing small arms export licenses, if there is a clear risk that the small arms in question might “support or encourage terrorism” (Wassenaar Arrangement 2002).

The lessons drawn from US participation in the Wassenaar Arrangement are simple. If the United States is going to serve as a leader on a small arms initiative, the initiative has to be something the United States is already doing, that serves US interests, and that is linked to terrorism and US objectives in the “war on terror.” In addition, it appears that, in some circumstances, limiting the focus to a particular weapon system (such as MANPADS), rather than an entire classification of weapons (small arms or light weapons) is essential to garner US interest for developing new initiatives.

**US Participation in the OSCE**

The United States has been a strong supporter of the creation and implementation of the OSCE Document on Small Arms, which “introduced the world's strictest standards and measures to restrain transfers, secure stockpiles and remove weapons from circulation” (OSCE 2003). The United States also assisted in the development of the “Handbook of Best Practice Guides on SALW control issues,” which consists of “eight practical guides aimed at governments, parliaments, non-governmental organizations and international organizations, [which] will help in reviewing legislative proposals or formulating new programmes to reduce the availability of small arms” (OSCE 2003).

The United States often remarks in informal consultations that the US government strongly supports the OSCE document, which is stronger than the PoA and includes stricter export criteria. Efforts to encourage adoption of export criteria in the PoA process might be well served by linking the proposals to the language in the OSCE Document, demonstrating that the new language is simply a globalization of that document.

**Existing US Laws and Policies and the Proposed Global Transfer Principles**

To identify similarities and gaps between existing US law and the global principles of the proposed Arms Trade Treaty (see Appendix A) a matrix was developed that lists all proposed export criteria alongside the appropriate domestic regulations, laws, practices, and policy statements, and international obligations the United States has agreed to (see Appendix B). The findings are quite simple: US law or policy appears consistent with virtually every proposed principle. The only
exceptions are that US law does not explicitly prevent arms transfers in which the weapons might be used to commit genocide or violent crimes. However, using existing regulations, especially those enunciated in the Arms Export Control Act, Section 38 (a) (1), that arms transfers will be made only in the “furtherance of world peace and the security and foreign policy of the United States,” one can infer that both of these are prevented and would not occur under US practice, although the actual prohibitions are not clearly enunciated.

The comparison suggests that US laws are consistent with the global principles. However, without further specificity in the global principles, and additional legal analysis, it is hard to say with any clear certainty what specific changes to US law might be required for the United States to be in compliance with all of the proposed principles. As evidenced by the tables provided, US legislation and international agreements on the export of small arms and light weapons reflect nearly all of the proposed principles (even if further legal analysis is required to determine the precise extent of US compliance with the principles). Indeed, the global principles, in general, seem to fit the call for strong export criteria and practice by the US government in recent speeches (see below) and, therefore, would be in the US interest. The United States has called for improvements to international transparency mechanisms, and offered bilateral assistance to improve other countries’ export control systems. Support for the global principles would seem a logical next step to encourage other states to adopt stricter export control regulations. However, a key obstacle to US support of the global principles is political will and US leadership on the global principles will not be soon in coming. One can extrapolate that US laws and practice fit the intent of the proposed international arms trade treaty. Under that interpretation, there may be few legal obstacles in the way of US compliance with the global principles. The United States is in the same situation with the Firearms Convention of the Organization of American States (OAS), where US law is consistent with the Convention, but the United States has still not yet ratified it.

**The United States and the OAS Firearms Convention**

The United States has not yet ratified the OAS Firearms Convention (CIFTA), a legally binding instrument, which it signed in November 1997. The OAS CICAD Model Regulations for firearms transfers are also linked to CIFTA. These model regulations have been further developed to include brokering standards which, in fact, mirror the standards of the proposed global transfer principles. Although the United States helped to draft the CIFTA text, and actively supported the Convention, the Convention has languished in the Senate Foreign Relations Committee (the Committee in charge of the ratification process) since 1998. According to the law firm Covington & Burling, which did a comparative review of US law and the Convention for the Federation of American Scientists, the OAS Convention is consistent with US law; ratification would require minor, if any, adjustments to US laws and regulations and no new laws at all (Schroeder 2004, 33). Further, according to the State Department (2002),

The Convention will make the citizens of the hemisphere safer by helping to shut down the illicit transnational arms market that fuels the violence associated with drug trafficking, terrorism, and international organized crime....While strengthening countries’ ability to eradicate illicit arms trafficking, this regional agreement protects the legal trade in firearms and lawful ownership and use of firearms and it is modeled on U.S. laws, regulations, and practices.
Moreover, as recently as October 27, 2005, the United States touted the importance of the OAS Convention and US support for its implementation. In a speech to the Inter-American Defense College, the Principal Deputy Assistant Secretary for Western Hemisphere Affairs (Shapiro 2005) said:

The OAS has made important contributions towards reducing the problem of illicit weapons proliferation and the U.S. encourages the Organization of American states and its member states to continue to make progress in this area. The entry into force of the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Explosives (CIFTA) in 1998 made the OAS a leader in multilateral efforts to address the problem of illicit weapons trafficking. As a CIFTA signatory, the U.S. supports the Convention and OAS states parties’ efforts to aggressively implement it.

Effective export and import controls and their enforcement are the cornerstones of any successful effort to mitigate the problems of illicit trade in small arms and light weapons.

Thus, the refusal to ratify the Convention makes no sense. The Convention does not focus on the legal trade in small arms, nor does it have any effect on legal civilian possession of weapons—the two big no’s in US small arms policy, as discussed above. Moreover, although the National Rifle Association (NRA) has perhaps changed its mind, immediately after the Convention was drafted, the NRA was reportedly pleased with the outcome (Schroeder 2004, 33). In addition, the United States undertook some regulatory changes in 1998 in order to comply with the Convention, such as revising Bureau of Export Administration regulations (Schroeder 2004, 35).

What, then, is the rationale behind the lack of US ratification? One explanation was offered in an e-mail message from Andy Fisher, press officer for the Senate’s Foreign Relations Committee, to journalist Mike Ceaser. Fisher wrote, “Because the US complies and cooperates with the provisions of the Convention, the Clinton and Bush administrations have not pressed for its Senate ratification” (Ceaser 2004). However, this explanation does not entirely add up. If the United States meets the provisions, and is willing to cooperate with other countries on the Convention, then the decision not to ratify must be based on other factors. One possibility is that the United States is not interested in signing another international agreement and would rather pursue the objectives of the Convention through bilateral and multilateral US-led initiatives.

In conclusion, the United States under the Bush Administration has had a track record of hostility to treaties outside the small arms realm, an attitude that is unlikely to change in the near future. A new administration may or may not adopt the Bush Administration position on the OAS Convention, and without significant effort from Members of Congress and NGOs in particular, US ratification of the Convention remains unlikely. The implications of this unstated administration policy are significant for other international agreements as well. If the United States refuses to ratify a treaty that does not require significant changes in domestic laws and fits the US national interest, it is unlikely that the United States will be part of a treaty and treaty process that would require modifications to US law.
Analysis of the US Position on Global Principles

To understand the US position on global principles, it is necessary to understand the political context in which arms trade issues operate in the United States. The arms control situation in the United States is unique for two reasons. First, the NRA has remarkable influence on both Members of Congress and the Administration. This influence ranges from the presence of NRA board members on the US delegations at UN and other multilateral meetings to the catering by US officials to NRA positions in policy statements and speeches (the 2001 speech of then Under Secretary of State for Arms Control and International Security and now US Ambassador to the UN John Bolton at the UN Conference, in which he made specific reference to the importance of the Second Amendment, is a perfect example.) Second, the post-September 11, 2001 world has also colored US perspectives, especially regarding the threat of small arms in the hands of terrorists, and has renewed the US focus on MANPADS.

In particular, since September 11, 2001, the United States has used export controls to support its “war on terror.” The United States has focused above all on making sure that “bad” actors, and specifically terrorists, do not get their hands on US weapons. In 2004, the Blue Lantern program, one of the two US end-use monitoring programs, conducted its highest number of end-use checks ever. In addition, the United States has been diligent in making sure that US allies—especially those helping with the “war on terror”—are able to get US weapons as quickly as possible.

However, in the course of arming its allies in the “war on terror” over the last four years, the United States has provided weapons to several countries it had previously criticized formally for human rights violations, lack of democracy, and support of terrorism (such as Uzbekistan, Ethiopia, and Yemen), simply because they pledged assistance to the United States as it carries out its “war on terror.” In fact, immediately after September 11, 2001, the Bush administration proposed allowing arms sales to all countries previously ineligible to receive US weapons, due to placement on the ITAR list of prohibited recipients. However, this blanket provision without an end-date was unacceptable to Members of Congress, who would have had to legislate the change. In the end, sanctions were lifted for only six countries: Armenia, Azerbaijan, India, Pakistan, Tajikistan, and Yugoslavia. However, arms sales to some troubling countries that were not formally sanctioned, such as Djibouti, Kenya, and Nepal, have all increased in the name of the “war on terror.” While the actual dollar value of the military assistance to some of these countries is relatively minimal, it still amounts to hundreds of thousands or several million dollars in weapons and training, which many of these countries were not receiving from any other sources prior to receiving them from the United States (Stohl 2005).

Understanding these parameters helps in drawing some general conclusions about US policy on the proposed global principles. In addition, it is important to note that, in general, US policy is consistent in that any treaty that the United States negotiates or participates in is open to US interpretation, which allows the clarification of US viewpoints through declarations, reservations, and understandings that shape US participation in a treaty. Therefore, any arms trade treaty would be subject to US interpretation and may not fit all goals the treaty is trying to accomplish. Moreover, in general the United States seems more likely to take leadership on practical steps, rather than political ones. This sentiment has permeated US small arms policy for years. In July 2003, then Assistant Secretary of State Lincoln Bloomfield highlighted US participation and leadership in practical small arms measures, such as in the Organization of American States, the Wassenaar
Arrangement, and the OSCE. Further he encouraged and supported the development of “Best Practices” in these fora to address the consequences of small arms proliferation. Although many countries and NGOs are frustrated with the US position on small arms policy and highlight the large quantity of US arms exports, US government officials continually remind audiences that the United States is the world leader in trying to curb the spread of illicit small arms and light weapons through US destruction and stockpile management programs. By late 2005, the United States had destroyed over 800,000 small arms and light weapons, 80 million rounds of ammunition in 23 countries, and over 15,000 MANPADS in at least 13 countries.

Although one can deduce what the United States will support in general, making definitive predictions about global principles (and the proposed Arms Trade Treaty from which they are derived) is more difficult. One of the challenges has been that several different State Department offices and personnel have administered the ATT portfolio in recent months. However, some hints about US policy towards export criteria and the global principles can be found in Assistant Secretary of State John Hillen’s November 3, 2005 speech to the 18th Annual Global Trade Controls Conference:

Given the increasingly global nature of defense trade, a key element of our defense export policy is to strengthen international export controls, which is also a major pillar of our broader nonproliferation policy.

While much of our [US government] work is aimed at meeting the threats posed by emerging challenges in the area of terrorism and nonproliferation, we also scrutinize potential defense exports for their effect on regional stability. And so we must recognize that international defense trade controls is not simply dependent on complementary regulatory regimes, but on common perspectives about security threats.

The United States strongly welcomes the efforts of the European Union to improve its Code of Conduct on Arms Transfers, whose normative criteria strongly resemble those of the US Conventional Arms Transfer policy. However, we do not believe that even a strengthened Code of Conduct is an adequate substitute for the EU's China arms embargo.

Throughout his speech, Hillen highlighted United States efforts within the Wassenaar Arrangement guidelines and US aid to other countries to bring their export control systems in line with international standards. These statements in strong support of export controls and criteria could bode well for US support of the global principles, as well as of the Transfer Controls Initiative (TCI) of the UK government.4

Applying these viewpoints to the context of the UN Review Conference then, it is clear that the United States views the meeting as an opportunity for taking stock of what other countries are doing to implement the PoA and looking for ways to increase implementation of its own existing responsibilities. The United States sees adding new provisions to the PoA as adding responsibilities on top of other responsibilities that are not being implemented. Rather, to increase implementation of existing provisions, states need to provide technical and financial assistance to help others. Until that happens, the United States is not open to revisiting additions to the PoA. (The consensus view among states is not to rewrite the PoA, but rather add addenda to the existing text, something the United States also supports.)
Although the current position of the United States on global principles remains unclear, we can conclude that the US attitude toward the idea of global principles for small arms and light weapons transfers is likely reflected in its current response to and view of the TCI proposals. The United States is currently not in the position to be a leader in pushing for the TCI. Officials are still negotiating with the United Kingdom and other countries on what the TCI means, what it is supposed to accomplish, and how it can fit into the Review Conference process. The United States has not made a clear decision about the TCI yet, as analysis and discussions continue. However, the United States already has some of the best export control laws in the world. While this should allow for US leadership on the issue, the United States has taken the position that other countries must improve their export laws before higher international standards are developed. The United States has not been a leader in promoting the ATT or the TCI and, in my opinion, will not assume leadership of these issues in the near future.

**Key Actors in the United States**

As an advocacy and policy issue, the conventional arms trade does not have much salience among the US NGO and government communities. While in both cases, specific offices and groups are particularly knowledgeable about and engaged in the arms trade, in general the issue remains low on the agenda.

The key NGOs consistently working on arms trade issues are: Amnesty International USA (AIUSA), the Center for Defense Information (CDI), the Federation of American Scientists (FAS), the Friends Committee on National Legislation (FCNL), and Oxfam America (OA). Each organization brings their own specific area of expertise to the table and, when working collectively, under the Arms Transfers Working Group (ATWG) and the US Small Arms Working Group (SAWG), the organizations utilize their comparative advantages to divide the workload. AIUSA specializes in human rights, CDI in research and analysis, FAS in data collection and analysis, FCNL in grassroots and lobbying work, and Oxfam in development and lobbying. Other groups, such as the British American Security Information Council (BASIC) regularly participate in meetings and events, and could be useful in developing advocacy efforts around the global principles. In order for arms trade issues to have more salience with US policy makers, groups outside of Washington must be involved. Arms trade issues must be expanded to other national groups, including grassroots groups, and in particular those groups operating outside Washington, in order to put pressure on Members of Congress.

At the State Department, the main office addressing small arms issues is the Office of Weapons Removal and Abatement (WRA) in the Bureau of Political-Military (PM) Affairs. Sympathetic staff in this office can be useful in explaining the US position on small arms issues, but are limited in their influence on policy development. WRA is responsible for issues related to TCI. The Directorate of Defense Trade Controls, which is responsible for export licensing, monitoring, and verification of US arms exports, currently houses the point person for the Arms Trade Treaty. TCI and ATT portfolios are separated because the TCI are specific to small arms issues, while the ATT covers all conventional weapons.

The Assistant Secretary of State for Political-Military Affairs responsible for export controls is John Hillen. Since his appointment is relatively recent, Hillen’s specific viewpoints and attitudes toward
the UN Process, the PoA, and global principles remain unclear. However, some clues as to his position on these issues can be found in his November 2005 speech:

If defense cooperation is to be successful, it is imperative that shared technology does not fall into the hands of those who would use it against us or our friends and allies. Defense export controls are an integral part of our broader security agenda, whether it is the global war on terrorism, preventing the spread of weapons of mass destruction, or bolstering regional stability around the globe.

This statement reinforces State’s commitments to export controls in a domestic context and within US national interests. Robert Joseph, the Under Secretary of State for Arms Control and International Security, oversees the PM bureau.

In general, the more recent political appointees are more open to and interested in small arms issues. They have sought out briefings on various small arms trade topics, rather than waiting for WRA to ask for a meeting to present relevant issues and needs arising in the small arms policy arena.

Getting Congress interested in the small arms trade has been and will remain quite difficult. Many Members do not understand specific global and domestic arms trade issues and see them as too complicated and too controversial. Moreover, many feel that the United States already has good laws regulating the arms trade, and that other countries should bear the responsibility for improving their own systems and raising their own standards. Further, many Members confuse export criteria with domestic gun control and choose not to get involved in that debate. Many Members feel that global controls may infringe on US sovereignty and the constitutional rights of US citizens, while others fear the wrath of the National Rifle Association. However, even with all of these obstacles, some Members, particularly in the Senate, are sympathetic to the small arms issue. Senators Richard Lugar (R-IN) and Barack Obama (D-IL) have recently introduced the Lugar-Obama Bill, which includes legislation on conventional arms destruction. Senator Dianne Feinstein (D-CA), along with Senator Patrick Leahy (D-VT) and Senator Daniel Akaka (D-HI), have repeatedly introduced legislation supporting small arms work and have pushed small arms provisions through other bills. The small arms NGO community is still searching for a small arms champion in the House. US NGOs worked with Senator Feinstein to prepare a January 2006 Dear Colleague letter (a letter signed by numerous Members of Congress), that encouraged Secretary of State Condoleezza Rice to support the insertion of global principles in the PoA. The list of signatories to the Dear Colleague letter identifies possible additional leaders and champions of small arms issues in Congress.

In conclusion, US leadership in drafting an international instrument on global principles or encouraging its adoption is unlikely to happen in the short term. However, US NGOs can utilize the strengths of the US government and the US political system to effectively work on inserting global principles into the UN Small Arms Programme of Action.
Notes

1. Author interviews with government officials.

2. Category I covers Firearms, Close Assault Weapons and Combat Shotguns; Category II is Artillery Projectors; Category III covers Ammunition; and Category IV covers Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines.

3. CICAD is the Spanish acronym for the Inter-American Drug Abuse Control Commission of the OAS.

4. While the US government recognizes that US policy and regulations fit the Transfer Controls Initiative proposals in general, they have not yet conducted a line-by-line comparison of US law and the proposed criteria. However, the current US position on TCI has two elements. First, the US government is open to the idea of TCI and USG personnel have said in numerous bilateral meetings that the US government supports the goals of the TCI, referring to the concept of strong export controls. However, the United States is still examining the TCI, attempting to fully understand all of the criteria’s implications. Second, as stated before, the Bush Administration has a particularly strong allergic reaction to entering into new obligations and creating new standards, even if they are consistent with US law (again, a notable exception would be the US-driven initiatives on MANPADS). That said, the United States does want to be involved in TCI discussions and negotiations and wants to be involved in the process from the beginning. The United States is interested in making sure that all relevant positions and practices are taken into account from the beginning and does not want to be seen as coming to the table late and blocking an initiative from moving forward.
References


## Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AECA</td>
<td>Arms Export Control Act</td>
</tr>
<tr>
<td>AIUSA</td>
<td>Amnesty International USA</td>
</tr>
<tr>
<td>ATF</td>
<td>Bureau for Alcohol, Tobacco, and Firearms</td>
</tr>
<tr>
<td>ATT</td>
<td>Arms Trade Treaty</td>
</tr>
<tr>
<td>ATWG</td>
<td>Arms Transfers Working Group</td>
</tr>
<tr>
<td>BASIC</td>
<td>British American Security Information Council</td>
</tr>
<tr>
<td>BMS</td>
<td>Biennial Meeting of States</td>
</tr>
<tr>
<td>CDI</td>
<td>Center for Defense Information</td>
</tr>
<tr>
<td>CIA</td>
<td>Central Intelligence Agency</td>
</tr>
<tr>
<td>CIFTA</td>
<td>OAS Firearms Convention</td>
</tr>
<tr>
<td>DCS</td>
<td>Direct Commercial Sales</td>
</tr>
<tr>
<td>DDTC</td>
<td>Directorate of Defense Trade Controls</td>
</tr>
<tr>
<td>DSCA</td>
<td>Defense Security Cooperation Agency</td>
</tr>
<tr>
<td>EAA</td>
<td>Export Administration Act</td>
</tr>
<tr>
<td>EAR</td>
<td>Export Administration Regulations</td>
</tr>
<tr>
<td>FAA</td>
<td>Foreign Assistance Act</td>
</tr>
<tr>
<td>FAS</td>
<td>Federation of American Scientists</td>
</tr>
<tr>
<td>FCNL</td>
<td>Friends Committee on National Legislation</td>
</tr>
<tr>
<td>FMS</td>
<td>Foreign Military Sales</td>
</tr>
<tr>
<td>HIRC</td>
<td>House International Relations Committee</td>
</tr>
<tr>
<td>IEEPA</td>
<td>International Emergency Economic Powers Act</td>
</tr>
<tr>
<td>ITAR</td>
<td>International Traffic in Arms Regulations</td>
</tr>
<tr>
<td>MANPADS</td>
<td>man-portable air defence systems</td>
</tr>
<tr>
<td>NRA</td>
<td>National Rifle Association</td>
</tr>
<tr>
<td>OA</td>
<td>Oxfam America</td>
</tr>
<tr>
<td>OAS</td>
<td>Organization of American States</td>
</tr>
<tr>
<td>OSCE</td>
<td>Organization for Security and Co-operation in Europe</td>
</tr>
<tr>
<td>PDD</td>
<td>Presidential Decision Directive</td>
</tr>
<tr>
<td>PM</td>
<td>Bureau of Political-Military Affairs</td>
</tr>
<tr>
<td>PoA</td>
<td>Program(me) of Action</td>
</tr>
<tr>
<td>PoA/POA</td>
<td>Program(me) of Action</td>
</tr>
<tr>
<td>SA/LW</td>
<td>Small arms and light weapons</td>
</tr>
<tr>
<td>SALW</td>
<td>Small arms and light weapons</td>
</tr>
<tr>
<td>SAWG</td>
<td>Small Arms Working Group</td>
</tr>
<tr>
<td>SFRC</td>
<td>Senate Foreign Relations Committee</td>
</tr>
<tr>
<td>TCI</td>
<td>Transfer Controls Initiative</td>
</tr>
<tr>
<td>WRA</td>
<td>Office of Weapons Removal and Abatement</td>
</tr>
</tbody>
</table>
Appendix A:
Global principles for arms transfers

The following are the core principles of the international “Arms Trade Treaty” proposed by a network of civil society organizations and Nobel Peace Laureates with the support and interest of a growing number of states. The Principles bring together the existing obligations of states under international law and standards with respect to the international transfer of arms. The Principles reflect commitments resulting from many international instruments including universal treaties, regional treaties, UN declarations, and model regulations for national legislation. The compilation indicates to states the best current rules to adopt to establish effective control of international arms transfers according to the rule of law.

Principle 1: Responsibilities of states
All international transfers of arms shall be authorised by a recognized state and carried out in accordance with national laws and procedures that reflect, as a minimum, states’ obligations under international law.

Principle 2: Express limitations
States shall not authorize international transfers of arms that violate their expressed obligations regarding arms under international law.

This includes:
A Obligations under the Charter of the United Nations—including:
• decisions of the Security Council, such as those imposing arms embargoes;
• the prohibition on the use or threat of force;
• the prohibition on intervention in the internal affairs of another state.

B Any other treaty or decision by which that state is bound, including:
• Binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional bodies to which a state is party;
• Prohibitions on arms transfers that arise in particular treaties which a state is party to, such as the 1980 UN Convention Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, and its three protocols, and the 1997 Anti-personnel Mines Convention.

C Universally accepted principles of international humanitarian law:
• Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering;
• Prohibition on weapons that are incapable of distinguishing between combatants and civilians.

D Transfers which are likely to be diverted for any of the above or be subject to unauthorized transfer.

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

**Principle 3: Limitations based on use or likely use**
States shall not authorize international transfers of arms where they will be used or are likely to be used for violations of international law, including:

A breaches of the UN Charter and customary law rules relating to the use of force;
B the commission of serious violations of human rights;
C the commission of serious violations of international humanitarian law, genocide, and crimes against humanity.

Nor should they be diverted and used for the commission of any of the above.

In Principle 3, the limitations are based on the use or likely use of the weapons to be transferred. All states should abide by the principles of state responsibility, as set out in international law, which include supplier-state responsibility and accountability for the use of arms transferred between states.

**Principle 4: Factors to be taken into account**
States shall take into account other factors, including the likely use of the arms, before authorizing an arms transfer, including:

A the recipient’s record of compliance with commitments and transparency in the field of non-proliferation, arms control, and disarmament.

States should not authorize the transfer if it is likely to:
B be used for or to facilitate the commission of violent crimes;
C adversely affect regional security or stability;
D adversely affect sustainable development;
E involve corrupt practices;
F contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non-proliferation, arms control, and disarmament to which the exporting, importing, or transit states are party;
G or be diverted for any of the above.

Principle 4 does not contain clearly stated prohibitions on the authorization of arms transfers. Instead, it identifies possible consequences that states are required to take into account before authorizing an arms transfer, imposes a positive duty on states to address these issues, and establishes a presumption against authorization where these consequences are deemed very likely.

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

**Principle 6: Specific Controls**
States shall establish common standards for specific mechanisms to control: (a) arms brokering activities; (b) the export of licensed arms production; (c) the transit and transshipment of arms; and (d) government to government transfers. States shall establish operative provisions to monitor enforcement and review procedures to support the full implementation of the principles.

Principle 6 will help ensure that particular action is taken by states to close loopholes in national laws and regulations according to common standards, and ensure that the principles are implemented consistently.
# Appendix B

The following chart is an examination of the proposed global principles for arms transfers and the related existing U.S. laws and regulations. The list of U.S. laws and international obligations are for illustrative purposes only and are not exhaustive. (Prepared: November 21, 2005 by Rhea Myerscough and Rachel Stohl, Center for Defense Information)

## Proposed Global Principles for Arms Transfers

<table>
<thead>
<tr>
<th>PRINCIPLE #1: Responsibilities of States</th>
<th>All international transfers of arms shall be authorized by a recognized state and carried out in accordance with national laws and procedures that reflect, as a minimum, states’ obligations under international law.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>US Law (Congress/Executive)</strong></td>
<td>“In furtherance of world peace and the security and foreign policy of the United States, the President is authorized to control the import and the export of defense articles and defense services and to provide foreign policy guidance to persons of the United States involved in the export and import of such articles and services.”</td>
</tr>
<tr>
<td><strong>Arms Export Control Act, Section 38 (a) (1)</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Sec. 502. Utilization of Defense Articles and Services.</strong>— Defense articles and defense services to any country shall be furnished solely for internal security (including for antiterrorism and nonproliferation purposes), for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of assisting foreign military forces in less developed friendly countries (or the voluntary efforts of personnel of the Armed Forces of the United States in such countries) to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries.”</td>
<td></td>
</tr>
<tr>
<td><strong>Foreign Assistance Act, Section 502</strong></td>
<td></td>
</tr>
<tr>
<td>“In addition to undertaking a legal review of each proposed arms transfer and third party transfers, PM/RSAT [Bureau of Political-Military Affairs, Office of Regional Security and Arms Transfers] also applies the following criteria prior to making a determination:</td>
<td></td>
</tr>
<tr>
<td>• Consistency with international agreements and arms control initiatives.”</td>
<td></td>
</tr>
<tr>
<td><strong>Conventional Arms Transfer (CAT) Policy</strong></td>
<td></td>
</tr>
<tr>
<td><strong>PRINCIPLE #2: Express limitations.</strong> States shall not authorize international transfers of arms that violate their expressed obligations regarding arms under international law. This includes:</td>
<td></td>
</tr>
<tr>
<td>1. Obligations under the Charter of the United Nations</td>
<td></td>
</tr>
<tr>
<td>• Decisions of the Security Council, such as those imposing arms embargoes</td>
<td></td>
</tr>
<tr>
<td>• Prohibitions on the use or threat of force</td>
<td></td>
</tr>
<tr>
<td>• Prohibition on intervention in the internal affairs of another state</td>
<td></td>
</tr>
</tbody>
</table>

---

US small arms and global transfer principles 21 Ploughshares Working Paper 06-1
| US Law (Int'l) | “CRITERION ONE
Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on nonproliferation and other subjects, as well as other international obligations.

An export licence should be refused if approval would be inconsistent with, inter alia:
   a) the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes;
   b) the international obligations of member states under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
   c) their commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
   d) their commitment not to export any form of anti-personnel landmine.”
| EU Code of Conduct (endorsed by US, 1999)¹
| “Article 5.
Prohibitions
(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:
   (d) violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies.”
| OAS/CICAD Model Regulations on Brokering
| PRINCIPLE #2: Express limitations. States shall not authorize international transfers of arms that violate their expressed obligations regarding arms under international law. This includes:
  2. Any other treaty or decision by which that state is bound
     • Binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional bodies to which a state is party
     • Prohibitions on arms transfers that arise in particular treaties which a state is party to
| US Law (Congress/Executive) | “It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services destined for or originating in certain countries or areas. This policy also applies to exports to and imports from these countries or areas. This policy applies to Albania, Bulgaria, Cambodia, Cuba, Estonia, Latvia, Lithuania, North Korea, Outer Mongolia, Romania, the Soviet Union and Vietnam. This policy also applies to countries or areas with respect to which the United States maintains an arms embargo (e.g., Angola) or whenever an export would not otherwise be in furtherance of world peace and the security and foreign policy of the United States. The exemptions provided in the regulations in this subchapter, except Sec. 123.17 and Sec. 125.4(b)(13) of this subchapter, do not apply with respect to exports to or originating in any of such proscribed countries or areas.”
| International Traffic in Arms Regulations, Section 126.1
| “(d) No brokering activities or brokering proposal may be carried out with respect to countries which are subject to United Nations Security Council arms embargo (see also §121.1(c)). “
| International Traffic in Arms Regulations, Section 129.5 (d)
| US Law (Int'l) | “We, the States participating in this Conference, bearing in mind the different situations, capacities and priorities of States and regions, undertake the following measures to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects:

15. To take appropriate measures, including all legal or administrative means, against any activity that violates a United Nations Security Council arms embargo in accordance with the Charter of the United Nations.
32. To cooperate with the United Nations system to ensure the effective implementation of arms embargoes decided by the United Nations Security Council in accordance with the Charter of the United Nations.”

**UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15)**

**“CRITERION ONE**
Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on nonproliferation and other subjects, as well as other international obligations.

An export licence should be refused if approval would be inconsistent with, inter alia:

- e) the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes;
- f) the international obligations of member states under the Nuclear Non-Proliferation Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;
- g) their commitments in the frameworks of the Australia Group, the Missile Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;
- h) their commitment not to export any form of anti-personnel landmine.”

**EU Code of Conduct (endorsed by US, 1999)**

“**Article 5. Prohibitions**

(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:

- (d) violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies;
- (g) result in a breach of a bilateral or multilateral arms control or non-proliferation agreement.”

**OAS/CICAD Model Regulations on Brokering**

**PRINCIPLE #2: Express limitations.** States shall not authorize international transfers of arms that violate their expressed obligations regarding arms under international law. This includes:

- Universally accepted principles of international humanitarian law
  - Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering
  - Prohibition on weapons that are incapable of distinguishing between combatants and civilians

**US Law (Congress/Executive)**

“Notice is hereby given that all licenses, approvals, sales or transfers of landmines specifically designed for antipersonnel use, regardless of method of delivery, are suspended until further notice. Additionally, all existing authorizations for the sale, export, or transfer of such defense articles are revoked until further notice.”

**Arms Export Control Act, note 201**

“b) STATEMENT OF POLICY-

(1) It shall be the policy of the United States to seek verifiable international agreements prohibiting the sale, transfer, or export, and further limiting the use, production, possession, and deployment of anti-personnel landmines.

(2) It is the sense of the Congress that the President should actively seek to negotiate under United Nations auspices or other auspices an international agreement, or a modification of the Convention, to prohibit the sale, transfer, or export of anti-personnel landmines.

(c) MORATORIUM ON TRANSFERS OF ANTI-PERSONNEL LANDMINES ABROAD-

For a period of one year beginning on the date of the enactment of this Act--
(1) no sale may be made or financed, no transfer may be made, and no license for export may be issued, under the Arms Export Control Act, with respect to any anti-personnel landmine; and 
(2) no assistance may be provided under the Foreign Assistance Act of 1961, with respect to the provision of any anti-personnel landmine.”


“*Provided, That section 1365(c) of the National Defense Authorization Act for Fiscal Year 1993 (Public Law 102-484; 22 U.S.C., 2778 note) is amended by striking `During the 11-year period beginning on October 23, 1992’ and inserting `During the 16-year period beginning on October 23, 1992’.”*

**Public Law 107-115, Section 548 (The Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002).**

“Further recalling the general principle of the protection of the civilian population against the effects of hostilities, 

Basing themselves on the principle of international law that the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited, and on the principle that prohibits the employment in armed conflicts of weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering, 

Confirming their determination that in cases not covered by this Convention and its annexed Protocols or by other international agreements, the civilian population and the combatants shall at all times remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”

**Convention on the Prohibitions or Restrictions on Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects**

**“Article 3 - General restrictions on the use, of mines, booby-traps and other devices**

1. This Article applies to:  
(a) mines;  
(b) booby-traps; and  
(c) other devices.

2. Each High Contracting Party or party to a conflict is, in accordance with the provisions of this Protocol, responsible for all mines, booby-traps, and other devices employed by it and undertakes to clear, remove, destroy or maintain them as specified in Article 10 of this Protocol.

3. It is prohibited in all circumstances to use any mine, booby-trap or other device which is designed or of a nature to cause superfluous injury or unnecessary suffering.”

**Amended Protocol II, Convention on Certain Conventional Weapons**

**“CRITERION ONE**

Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on nonproliferation and other subjects, as well as other international obligations. 

An export licence should be refused if approval would be inconsistent with, inter alia:  
i) the international obligations of member states and their commitments to enforce UN, OSCE and EU arms embargoes;  
j) the international obligations of member states under the Nuclear Non-Proliferation Treaty,
| the Biological and Toxin Weapons Convention and the Chemical Weapons Convention;  
| k) their commitments in the frameworks of the Australia Group, the Missile Technology 
| Control Regime, the Nuclear Suppliers Group and the Wassenaar Arrangement;  
| l) their commitment not to export any form of anti-personnel landmine.” |

| EU Code of Conduct (endorsed by US, 1999) |

| **PRINCIPLE #2: Express limitations.** States shall not authorize international transfers of arms that violate their expressed obligations regarding arms under international law. This includes: |
| 4. Transfers which are likely to be diverted to any of the above or be subject to unauthorized transfer |

| “No defense article or defense service shall be sold or leased by the United States Government under this Act to any country or international organization, and no agreement shall be entered into for a cooperative project (as defined in section 27 of this Act), unless— |
| the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it, or produced in a cooperative project (as defined in section 27 of this Act), to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specific member countries (other than the United States) in the case of a cooperative project) and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained.” |

| Arms Export Control Act, Section 3 (a) (2) |

| “(Licensee) agrees to incorporate the following statement as an integral provision of a contract, invoice or other appropriate document whenever the articles covered by this agreement are sold or otherwise transferred: |
| These commodities are authorized for export by the U.S. Government only to (country of ultimate destination or approved sales territory). They may not be resold, diverted, transferred, transshipped, or otherwise be disposed of in any other country, either in their original form or after being incorporated through an intermediate process into other end-items, without the prior written approval of the U.S. Department of State.” |

| International Traffic in Arms Regulations, Section 124.14 (c) (7) |

| “Technical data authorized for export may not be diverted or transferred from the country of ultimate end-use (as designated in the license or approval for export) or disclosed to a national of another country without the prior written approval of the Department of State.” |

| International Traffic in Arms Regulations, Section 125.1 (c) |

| **US Law (Int'l)** |

| “CRITERION SEVEN  
The existence of a risk that the equipment will be diverted within the buyer country or reexported under undesirable conditions  
In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:  
| a) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity.” |

| EU Code of Conduct (endorsed by US, 1999) |

| “Article 5. Prohibitions  
(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has |
reason to believe that the brokering activities will, or seriously threaten to:

(f) result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime.”

**OAS/CICAD Model Regulations on Brokering**

“2.5 Decisions to authorize MANPADS exports will take into account:
— Potential for diversion or misuse in the recipient country;
— The recipient government’s ability and willingness to protect against unauthorized re-transfers, loss, theft and diversion; and
— The adequacy and effectiveness of the physical security arrangements of the recipient government for the protection of military property, facilities, holdings, and inventories.”

**OSCE Principles for Export Controls of Man-Portable Air Defense Systems (MANPADS)**

“In this context, the United States and the European Union have decided to act jointly to encourage all arms exporting countries to submit their export decisions to rigorous criteria and to greater transparency. In particular, we commit ourselves to promoting the highest possible standards of conduct and enhanced export control practices based on our shared principles of responsibility, transparency and restraint, including:

- authorization of exports of arms and military equipment, and of related technologies only after an in-depth review of the internal situation of the buyer country and of the regional context in order to assure that such exports are not likely to create or heighten internal tensions or conflicts, to be used for the violation of human rights, to threaten peace and regional stability, or be diverted or re-exported in undesirable conditions.”

**Declaration by the United States and the European Union on the Responsibilities of States and on Transparency Regarding Arms Exports**

<table>
<thead>
<tr>
<th>PRINCIPLE #3: Limitations based on use or likely use.</th>
<th>States shall not authorize international transfers of arms where they will be used or are likely to be used for violations of international law, including:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1. Breaches of the UN Charter and customary law rules relating to the use of force</td>
</tr>
</tbody>
</table>

**US Law (Congress/Executive)**

“The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”

*Charter of the United Nations, Article 2(4)*

**US Law (Int’l)**

“No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.”

*Charter of the OAS, Chapter IV, Article 19*

**PRINCIPLE #3: Limitations based on use or likely use.** States shall not authorize international transfers of arms...
where they will be used or are likely to be used for violations of international law, including:

5. Commission of serious violations of human rights

“Except under circumstances specified in this section, no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights. Security assistance may not be provided to the police, domestic intelligence, or similar law enforcement forces of a country, and licenses may not be issued under the Export Administration Act of 1979 for the export of crime control and detection instruments and equipment to a country, the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate and the chairman of the Committee on Banking, Housing, and Urban Affairs of the Senate (when licenses are to be issued pursuant to the Export Administration Act of 1979), that extraordinary circumstances exist warranting provision of such assistance and issuance of such licenses. Assistance may not be provided under chapter 5 of this part to a country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance.”

Foreign Assistance Act of 1961, Section 502 (B) (a) (2)

The President shall consider the following criteria in the negotiations referred to in subsection (a):

(2) Respects human rights.--The government of the country--

(A) does not persistently engage in gross violations of internationally recognized human rights, including--

(i) extrajudicial or arbitrary executions;
(ii) disappearances;
(iii) torture or severe mistreatment;
(iv) prolonged arbitrary imprisonment;
(v) systematic official discrimination on the basis of race, ethnicity, religion, gender, national origin, or political affiliation; and
(vi) grave breaches of international laws of war or equivalent violations of the laws of war in internal armed conflicts;

(B) vigorously investigates, disciplines, and prosecutes those responsible for gross violations of internationally recognized human rights;

(C) permits access on a regular basis to political prisoners by international humanitarian organizations;

(D) promotes the independence of the judiciary and other official bodies that oversee the protection of human rights;

(E) does not impede the free functioning of domestic and international human rights organizations; and

(F) provides access on a regular basis to humanitarian organizations in situations of conflict or famine.

International Arms Sales Code of Conduct Act of 1999 (HR 3194, Section 1262)

“1. Each Participating State will, in considering proposed exports of SALW, take into account:

(i) The respect for human rights and fundamental freedoms in the recipient country.”

“2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might:
“(i) Be used for the violation or suppression of human rights and fundamental freedoms.”

**Wassenaar Arrangement, Best Practice Guidelines for Exports of Small Arms and Light Weapons**

“(A) Common export criteria

1. The participating States agree to the following criteria to govern exports of small arms and technology related to their design, production, testing and upgrading, which are based on the OSCE document on “Principles Governing Conventional Arms Transfers”.

2.(a) Each participating State will, in considering proposed exports of small arms, take into account:

(i) The respect for human rights and fundamental freedoms in the recipient Country.”

**OSCE Document on Small Arms and Light Weapons**

“(b) Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might:

(i) Be used for the violation or suppression of human rights and fundamental Freedoms.”

**OSCE Document on Small Arms and Light Weapons**

**“CRITERION TWO**

**The respect of human rights in the country of final destination**

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

a) not issue an export licence if there is a clear risk that the proposed export might be used for internal repression.

b) exercise special caution and vigilance in issuing licences, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU; For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. In line with operative paragraph 1 of this Code, the nature of the equipment will be considered carefully, particularly if it is intended for internal security purposes.

Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.”

**EU Code of Conduct (endorsed by US, 1999)**

**“Article 5. Prohibitions**

(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:

(b) violate humans rights contrary to international law.”
**OAS/CICAD Model Regulations on Brokering**

“In this context, the United States and the European Union have decided to act jointly to encourage all arms exporting countries to submit their export decisions to rigorous criteria and to greater transparency. In particular, we commit ourselves to promoting the highest possible standards of conduct and enhanced export control practices based on our shared principles of responsibility, transparency and restraint, including:

- authorization of exports of arms and military equipment, and of related technologies only after an in-depth review of the internal situation of the buyer country and of the regional context in order to assure that such exports are not likely to create or heighten internal tensions or conflicts, to be used for the violation of human rights, to threaten peace and regional stability, or be diverted or re-exported in undesirable conditions.”

**Declaration by the United States and the European Union on the Responsibilities of States and on Transparency Regarding Arms Exports**

<table>
<thead>
<tr>
<th>PRINCIPLE #3: Limitations based on use or likely use.</th>
<th>States shall not authorize international transfers of arms where they will be used or are likely to be used for violations of international law, including:</th>
</tr>
</thead>
<tbody>
<tr>
<td>6. Commission of serious violations of international humanitarian law, genocide, and crimes against humanity</td>
<td></td>
</tr>
</tbody>
</table>

**US Law (Congress/Executive)**

“(b) The Secretary of State shall transmit to the Congress, as part of the presentation materials for security assistance programs proposed for each fiscal year, a full and complete report, prepared with the assistance of the Assistant Secretary of State for Democracy, Human Rights, and Labor and with the assistance of the Ambassador at Large for International Religious Freedom, with respect to practices regarding the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance. Wherever applicable, such report shall include consolidated information regarding the commission of war crimes, crimes against humanity, and evidence of acts that may constitute genocide (as defined in article 2 of the Convention on the Prevention and Punishment of the Crime of Genocide and modified by the United States instrument of ratification to that convention and section 2(a) of the Genocide Convention Implementation Act of 1987).”

**Foreign Assistance Act, Section 502 B (a) (4) (b)**

“The President shall consider the following criteria in the negotiations referred to in subsection (a): (2) Respects human rights.—The government of the country—(A) does not persistently engage in gross violations of internationally recognized human rights, including--(vi) grave breaches of international laws of war or equivalent violations of the laws of war in internal armed conflicts.”

**International Arms Sales Code of Conduct Act of 1999 (HR 3194, Section 1262 (b) (5))**

**US Law (Int'l)**

“CRITERION SIX

**The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law**

Member States will take into account inter alia the record of the buyer country with regard to:

- a) its support or encouragement of terrorism and international organised crime;
- b) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;
- its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament
conventions referred to in sub-para b) of Criterion One.”

EU Code of Conduct (endorsed by US, 1999)

“Article 5. Prohibitions
(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:
   (a) result in acts of genocide or crimes against humanity;
   (b) violate humans rights contrary to international law;
   (c) lead to the perpetration of war crimes contrary to international law.”

OAS/CICAD Model Regulations on Brokering

PRINCIPLE #4: Factors to be taken into account. States shall take into account other factors, including the likely use of the arms, before authorizing and arms transfer, including:
1. The recipient’s record of compliance with commitments and transparency in the field of non-proliferation, arms control, and disarmament

US Law (Congress/Executive)

“Decisions on issuing export licenses under this section shall take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.”

Arms Export Control Act, Section 38 (a) (2)

“In addition to undertaking a legal review of each proposed arms transfer and third party transfers, PM/RSAT [Bureau of Political-Military Affairs, Office of Regional Security and Arms Transfers] also applies the following criteria prior to making a determination:
- The human rights, terrorism and proliferation record of the recipient and the potential for misuse of the export in question.”

Conventional Arms Transfer (CAT) Policy

“The President shall consider the following criteria in the negotiations referred to in subsection (a):

(5) Not contributing to proliferation of weapons of mass destruction.--The government of the country does not contribute to the proliferation of weapons of mass destruction.”

International Arms Sales Code of Conduct Act of 1999 (HR 3194, Section 1262 (b) (5))

US Law (Int'l)

“(A) Common export criteria

1. The participating States agree to the following criteria to govern exports of small arms and technology related to their design, production, testing and upgrading, which are based on the OSCE document on “Principles Governing Conventional Arms Transfers”.

Wassenaar Arrangement, Best Practice Guidelines for Exports of Small Arms and Light Weapons
2.(a) Each participating State will, in considering proposed exports of small arms, take into account:

(iii) The record of compliance of the recipient country with regard to international obligations and commitments, in particular on the non-use of force, and in the field of non-proliferation, or in other areas of arms control and disarmament, and the record of respect for international law governing the conduct of armed conflict.”

OSCE Document on Small Arms and Light Weapons

“CRITERION SIX
The behaviour of the buyer country with regard to the international community, as regards in particular to its attitude to terrorism, the nature of its alliances and respect for international law
Member States will take into account inter alia the record of the buyer country with regard to:

- c) its support or encouragement of terrorism and international organised crime;
- d) its compliance with its international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international and non-international conflicts;
- its commitment to non-proliferation and other areas of arms control and disarmament, in particular the signature, ratification and implementation of relevant arms control and disarmament conventions referred to in sub-para b) of Criterion One.”

EU Code of Conduct (endorsed by US, 1999)

PRINCIPLE #4: Factors to be taken into account. States should not authorize the transfer if it is likely to:

1. Be used for or to facilitate the commission of violent crimes

| US Law (Congress/Executive) | “Article 5. Prohibitions
(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:

- (e) support terrorist acts;
- (f) result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime.”

OAS/CICAD Model Regulations on Brokering |

PRINCIPLE #4: Factors to be taken into account. States should not authorize the transfer if it is likely to:

2. Adversely affect regional security or stability

| US Law (Int'l) | “Decisions on issuing export licenses under this section shall take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.”

Arms Export Control Act, Section 38 (a) (2) |

US small arms and global transfer principles 31 Ploughshares Working Paper 06-1
“The President shall consider the following criteria in the negotiations referred to in subsection (a):

(6) Regional location of country.--The country is not located in a region in which arms transfers would exacerbate regional arms races or international tensions that present a danger to international peace and stability.

International Arms Sales Code of Conduct Act of 1999 (HR 3194, Section 1262 (b) (6))

“In addition to undertaking a legal review of each proposed arms transfer and third party transfers, PM/RSAT [Bureau of Political-Military Affairs, Office of Regional Security and Arms Transfers] also applies the following criteria prior to making a determination:

- Consistency with U.S. regional stability interests, especially when considering transfers involving power projection capability or introduction of a system which may foster increased tension or contribute to an arms race.”

Conventional Arms Transfer (CAT) Policy

“In support of the principles agreed by the United States and the European Union and to advance their common objectives, the U.S. and the EU will take the following steps:

4. Promote support for the observance and the enforcement of the Economic Community of West African States’ (ECOWAS) moratorium on the import, export and manufacturing of small arms in West Africa.

5. Promote the observance of UN Sanctions governing arms transfers to areas of conflict in Africa. Work together in the UN and in other fora to strengthen enforcement of arms embargoes established under the UN Security Council, including working together to tighten controls on sources of financing that help sustain arms flows and violent conflict in Africa.”

U.S.-EU Action Plan On Small Arms And Light Weapons

“1. Each Participating State will, in considering proposed exports of SALW, take into account:
(a) The need to avoid destabilising accumulations of arms, bearing in mind the particular circumstances of the recipient country and its region;
(b) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts and details of the recipient within that country.”

Wassenaar Arrangement, Best Practice Guidelines for Exports of Small Arms and Light Weapons

“(A) Common export criteria
1. The participating States agree to the following criteria to govern exports of small arms and technology related to their design, production, testing and upgrading, which are based on the OSCE document on “Principles Governing Conventional Arms Transfers”.

2.(a) Each participating State will, in considering proposed exports of small arms, take into account:

(ii) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts.”

OSCE Document on Small Arms and Light Weapons

“CRITERION THREE
The internal situation in the country of final destination, as a function of the existence of tensions or armed conflicts
Member States will not allow exports which would provoke or prolong armed conflicts or aggravate existing tensions or conflicts in the country of final destination.”

EU Code of Conduct (endorsed by US, 1999)

“CRITERION FOUR
Preservation of regional peace, security and stability
Member States will not issue an export licence if there is a clear risk that the intended recipient would use the proposed export aggressively against another country or to assert by force a territorial claim.
When considering these risks, EU Member States will take into account inter alia:
   a) the existence or likelihood of armed conflict between the recipient and another country;
   b) a claim against the territory of a neighbouring country which the recipient has in the past tried or threatened to pursue by means of force;
   c) whether the equipment would be likely to be used other than for the legitimate national security and defence of the recipient;
the need not to affect adversely regional stability in any significant way.”

EU Code of Conduct (endorsed by US, 1999)

“CRITERION FIVE
The national security of the member states and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries
Member States will take into account:
   a) the potential effect of the proposed export on their defence and security interests and those of friends, allies and other member states, while recognising that this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability;
   b) the risk of use of the goods concerned against their forces or those of friends, allies or other member states;
   c) the risk of reverse engineering or unintended technology transfer.”

EU Code of Conduct (endorsed by US, 1999)

“In this context, the United States and the European Union have decided to act jointly to encourage all arms exporting countries to submit their export decisions to rigorous criteria and to greater transparency. In particular, we commit ourselves to promoting the highest possible standards of conduct and enhanced export control practices based on our shared principles of responsibility, transparency and restraint, including:

• authorization of exports of arms and military equipment, and of related technologies only after an in-depth review of the internal situation of the buyer country and of the regional context in order to assure that such exports are not likely to create or heighten internal tensions or conflicts, to be used for the violation of human rights, to threaten peace and regional stability, or be diverted or re-exported in undesirable conditions.”

Declaration by the United States and the European Union on the Responsibilities of States and on Transparency Regarding Arms Exports

PRINCIPLE #4:  Factors to be taken into account. States should not authorize the transfer if it is likely to:
3. Adversely affect sustainable development
**US Law (Congress/Executive)**

“Restraint in Arms Sales to Sub-Saharan Africa.—It is the sense of the Congress that the problems of Sub-Saharan Africa are primarily those of economic development and that United States policy should assist in limiting the development of costly military conflict in the region. Therefore, the President shall exercise restraint in selling defense articles and defense services, and in providing financing for sales of defense articles and defense services, to countries in Sub-Saharan Africa.”

*Arms Export Control Act, Section 33*

<table>
<thead>
<tr>
<th><strong>PRINCIPLE #4:</strong> Factors to be taken into account</th>
<th>4. Involve corrupt practices</th>
</tr>
</thead>
</table>

| **US Law (Int'l)** |  
|-------------------|-----------------------------|

**PRINCIPLE #4:** *Factors to be taken into account.* States should not authorize the transfer if it is likely to:

- Contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non-proliferation, arms control, and disarmament to which the exporting, importing, or transit states are party.

| **US Law (Congress/Executive)** |  
|-------------------|-----------------------------|

“Decisions on issuing export licenses under this section shall take into account whether the export of an article would contribute to an arms race, aid in the development of weapons of mass destruction, support international terrorism, increase the possibility of outbreak or escalation of conflict, or prejudice the development of bilateral or multilateral arms control or nonproliferation agreements or other arrangements.”

*Arms Export Control Act, Section 38 (a) (2)*

| **US Law (Int'l)** |  
|-------------------|-----------------------------|

“2. Each Participating State will avoid issuing licences for exports of SALW where it deems that there is a clear risk that the small arms in question might:

- Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, agreements on non-proliferation, small arms, or other arms control and disarmament agreements.”

*Wassenaar Arrangement, Best Practice Guidelines for Exports of Small Arms and Light Weapons*

| **US Law (Int'l)** |  
|-------------------|-----------------------------|

“(b) Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might:

- Contravene its international commitments, in particular in relation to sanctions adopted by the Security Council of the United Nations, decisions taken by the OSCE, agreements on non-proliferation, small arms, or other arms control and disarmament agreements.”

*OSCE Document on Small Arms and Light Weapons*

**“CRITERION ONE**

Respect for the international commitments of EU member states, in particular the sanctions decreed by the UN Security Council and those decreed by the Community, agreements on nonproliferation and other subjects, as well as other international obligations. An export licence should be refused if approval would be inconsistent with, inter alia:

- the international obligations of member states and their commitments to enforce...
UN, OSCE and EU arms embargoes;  
h) the international obligations of member states under the Nuclear Non-Proliferation 
Treaty, the Biological and Toxin Weapons Convention and the Chemical Weapons 
Convention;  
c) their commitments in the frameworks of the Australia Group, the Missile 
Technology Control Regime, the Nuclear Suppliers Group and the Wassenaar 
Arrangement;  
d) their commitment not to export any form of anti-personnel landmine.”

EU Code of Conduct (endorsed by US, 1999)

“Article 5.  
Prohibitions  
(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has 
reason to believe that the brokering activities will, or seriously threaten to:

(d) violate a United Nations Security Council embargo or other multilateral sanctions to which the 
country adheres, or that it unilaterally applies;  
(g) result in a breach of a bilateral or multilateral arms control or non-proliferation agreement.”

OAS/CICAD Model Regulations on Brokering

PRINCIPLE #4:  Factors to be taken into account. States should not authorize the transfer if it is likely to:

6. Be diverted for any of the above

US Law  
(Congress/Executive)

“In addition to undertaking a legal review of each proposed arms transfer and third party transfers, 
PM/RSAT [Bureau of Political-Military Affairs, Office of Regional Security and Arms Transfers] 
also applies the following criteria prior to making a determination:

• The degree of protection afforded sensitive technology and potential for unauthorized 
third-party transfer, as well as in-country diversion to unauthorized uses.”

Conventional Arms Transfer (CAT) Policy

US Law (Int'l)

“We, the States participating in this Conference, bearing in mind the different situations, capacities 
and priorities of States and regions, undertake the following measures to prevent, combat and 
eradicate the illicit trade in small arms and light weapons in all its aspects:

11. To assess applications for export authorizations according to strict national regulations and 
procedures that cover all small arms and light weapons and are consistent with the existing 
responsibilities of States under relevant international law, taking into account in particular the risk of 
divergence of these weapons into the illegal trade. Likewise, to establish or maintain an effective 
national system of export and import licensing or authorization, as well as measures on international 
transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade 
in small arms and light weapons. “

UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and 
Light Weapons in All Its Aspects (A/CONF.192/15)
“(b) Each participating State will avoid issuing licences for exports where it deems that there is a clear risk that the small arms in question might:

(iii) Be diverted to territories whose external relations are the internationally acknowledged responsibility of another State.”

OSCE Document on Small Arms and Light Weapons

“CRITERION FIVE
The national security of the member states and of territories whose external relations are the responsibility of a Member State, as well as that of friendly and allied countries

Member States will take into account:
a) the potential effect of the proposed export on their defence and security interests and those of friends, allies and other member states, while recognising that this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability;

b) the risk of use of the goods concerned against their forces or those of friends, allies or other member states;

c) the risk of reverse engineering or unintended technology transfer.”

EU Code of Conduct (endorsed by US, 1999)

“CRITERION SEVEN
The existence of a risk that the equipment will be diverted within the buyer country or reexported under undesirable conditions

In assessing the impact of the proposed export on the importing country and the risk that exported goods might be diverted to an undesirable end-user, the following will be considered:

b) the legitimate defence and domestic security interests of the recipient country, including any involvement in UN or other peace-keeping activity.”

EU Code of Conduct (endorsed by US, 1999)

“Article 5.
Prohibitions
(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:

(f) result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime.”

OAS/CICAD Model Regulations on Brokering

“2.5 Decisions to authorize MANPADS exports will take into account:
— Potential for diversion or misuse in the recipient country;
— The recipient government’s ability and willingness to protect against unauthorized re-transfers, loss, theft and diversion; and
— The adequacy and effectiveness of the physical security arrangements of the recipient government for the protection of military property, facilities, holdings, and inventories.”

OSCE Principles for Export Controls of Man-Portable Air Defense Systems (MANPADS)
“In this context, the United States and the European Union have decided to act jointly to encourage all arms exporting countries to submit their export decisions to rigorous criteria and to greater transparency. In particular, we commit ourselves to promoting the highest possible standards of conduct and enhanced export control practices based on our shared principles of responsibility, transparency and restraint, including:

• authorization of exports of arms and military equipment, and of related technologies only after an in-depth review of the internal situation of the buyer country and of the regional context in order to assure that such exports are not likely to create or heighten internal tensions or conflicts, to be used for the violation of human rights, to threaten peace and regional stability, or be diverted or re-exported in undesirable conditions.”

Declaration by the United States and the European Union on the Responsibilities of States and on Transparency Regarding Arms Exports

PRINCIPLE #5: Transparency. States shall submit comprehensive national annual reports on international arms transfers to an international registry, which shall publish a compiled, comprehensive, international annual report.

<table>
<thead>
<tr>
<th>US Law (Congress/Executive)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“A critical element of U.S. policy is to promote control, restraint, and transparency of arms transfers. To that end, the U.S. will push to increase participation in the UN Register of Conventional Arms. We will also take the lead to expand the Register to include military holdings and procurement through national production, thereby providing a more complete picture of change in a nation’s military capabilities each year. The U.S. will also support regional initiatives to enhance transparency in conventional arms such as those being examined by the OAS and ASEAN, and will continue to adhere to the London and OSCE guidelines, while promoting adherence to such principles by others. The United States will continue its efforts to establish a successor export control regime to the Cold-War era COCOM. Our goals for this regime are to increase transparency of transfers of conventional arms and related technology, to establish effective international controls and to promote restraint -- particularly to regions of tension and to states that are likely to pose a threat to international peace and security.”</td>
</tr>
</tbody>
</table>

Fact Sheet: Conventional Arms Transfer Policy, February 17, 1995

<table>
<thead>
<tr>
<th>US Law (Int'l)</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Member States are requested to provide data for the Register, addressed to the Secretary-General, on the number of items in the following categories of equipment imported into or exported from their territory.”</td>
</tr>
</tbody>
</table>

A/RES/36/46 L (Transparency in Armaments), Annex: Register of Conventional Arms

<table>
<thead>
<tr>
<th>PRINCIPLE #6: Comprehensive Controls. States shall establish common standards for specific mechanisms to control the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The direct import and export of arms</td>
</tr>
</tbody>
</table>
“Requirement for export or temporary import licenses.

(a) Any person who intends to export or to import temporarily a defense article must obtain the approval of the Office of Defense Trade Controls prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter. Applications for export or temporary import must be made as follows:

(1) Applications for licenses for permanent export must be made on Form DSP-5 (unclassified);
(2) Applications for licenses for temporary export must be made on Form DSP-73 (unclassified);
(3) Applications for licenses for temporary import must be made on Form DSP-61 (unclassified); and

(4) Applications for the export or temporary import of classified defense articles or classified technical data must be made on Form DSP-85. (b) Applications for Department of State export licenses must be confined to proposed exports of defense articles including technical data.

(c) As a condition to the issuance of a license or other approval, the Office of Defense Trade Controls may require all pertinent documentary information regarding the proposed transaction and proper completion of the application form as follows:

(1) Form DSP-5, DSP-61, DSP-73, and DSP-85 applications must have an entry in each block where space is provided for an entry. All requested information must be provided.
(2) Attachments and supporting technical data or brochures should be submitted in seven collated copies. Two copies of any freight forwarder lists must be submitted. If the request is limited to renewal of a previous license or for the export of spare parts, only two sets of any attachment (including freight forwarder lists) and one copy of the previous license should be submitted.
(3) A certification letter signed by an empowered official must accompany all application submissions (see § 126.13 of this subchapter).

(4) An application for a license under this part for the permanent export of defense articles sold commercially must be accompanied by a copy of a purchase order, letter of intent or other appropriate documentation. In cases involving the U.S. Foreign Military Sales program, three copies of the relevant Department of Defense Form 1513 are required, unless the procedures of § 126.4(c) or § 126.6 of this subchapter are followed.

(5) Form DSP-83, duly executed, must accompany all license applications for the permanent export of significant military equipment, including classified hardware or classified technical data (see §§ 123.10 and 125.3 of this subchapter).

(6) A statement concerning the payment of political contributions, fees and commissions must accompany a permanent export application if the export involves defense articles or defense services valued in an amount of $500,000 or more and is being sold commercially to or for the use of the armed forces of a foreign country or international organization (see part 130 of this subchapter).

(d) Provisions for furnishing the type of defense services described in § 120.9(a) of this subchapter are contained in part 124 of this subchapter. Provisions for the export or temporary import of technical data and classified defense articles are contained in part 125 of this subchapter.

(e) A request for a license for the export of unclassified technical data (DSP-5) related to a classified defense article should specify any classified technical data or material that subsequently will be required for export in the event of a sale. “

International Traffic in Arms Regulations, Section 123.1

“47.45 Importation.

(a) Articles subject to the import permit procedures of this subpart imported into the United States may be released from Customs custody to the person authorized to import same upon his showing that he has a permit from the Director for the importation of the article or articles to be released. For articles in Categories I and III imported by a registered importer, the importer will also submit to Customs a copy of the export license authorizing the export of the article or articles from the exporting country. If the exporting country does not require issuance of an export license, the importer must submit a certification, under penalty of perjury, to that effect.

(1) In obtaining the release from Customs custody of an article imported pursuant to a permit, the
The permit holder will prepare Form 6A, in duplicate, and furnish the original to the Customs officer releasing the article. The Customs officer will, after certification, forward the original ATF Form 6A to the address specified on the form.

(2) The ATF Form 6A must contain the information requested on the form, including:

(i) The name, address, and license number (if any) of the importer;
(ii) The name of the manufacturer of the defense article;
(iii) The country of manufacture;
(iv) The type;
(v) The model;
(vi) The caliber, gauge, or size;
(vii) The serial number in the case of firearms, if known; and
(viii) The number of defense articles released.

(b) Within 15 days of the date of their release from Customs custody, the importer of the articles released will forward to the address specified on the form a copy of Form 6A on which will be reported any error or discrepancy appearing on the Form 6A certified by Customs and serial numbers if not previously provided on ATF Form 6A.”

Importation of Arms, Ammunition, and Implements of War, Section 47.45

“178.92 Identification of firearms, armor piercing ammunition, and large capacity ammunition feeding devices.

(a)(1) Firearms. Each licensed manufacturer or licensed importer of any firearm manufactured or imported shall legibly identify each such firearm by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame or receiver thereof in a manner not susceptible of being readily obliterated, altered, or removed, an individual serial number not duplicating any serial number placed by the manufacturer or importer on any other firearm, and by engraving, casting, stamping (impressing), or otherwise conspicuously placing or causing to be engraved, cast, stamped (impressed) or placed on the frame, receiver, or barrel thereof in a manner not susceptible of being readily obliterated, altered or removed, the model, if such designation has been made; the caliber or gauge; the name (or recognized abbreviation of same) of the manufacturer and also, when applicable, of the importer; in the case of a domestically made firearm, the city and State (or recognized abbreviation thereof) wherein the licensed manufacturer maintains its place of business; and in the case of an imported firearm, the name of the country in which manufactured and the city and State (or recognized abbreviation thereof) of the importer.

(2) Special markings for semiautomatic assault weapons, effective July 5, 1995. In the case of any semiautomatic assault weapon manufactured after September 13, 1994, the frame or receiver shall be marked “RESTRICTED LAW ENFORCEMENT/GOVERNMENT USE ONLY” or, in the case of weapons manufactured for export, “FOR EXPORT ONLY,” in the manner prescribed in paragraph (a)(1) of this section.

(3) Exceptions—(i) Alternate means of identification. The Director may authorize other means of identification of the licensed manufacturer or licensed importer upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(ii) Destructive devices. In the case of a destructive device, the Director may authorize other means of identifying that weapon upon receipt of a letter application, in duplicate, from the licensed manufacturer or licensed importer showing that engraving, casting, or stamping (impressing) such a
weapon would be dangerous or impracticable. 

(iii) Machine guns, silencers, and parts. A firearm frame or receiver, or any part defined as a machine gun, firearm muffler, or firearm silencer in § 178.11, which is not a component part of a complete weapon at the time it is sold, shipped, or otherwise disposed of by a licensed manufacturer or licensed importer, shall be identified as required by this section. The Director may authorize other means of identification of parts defined as machine guns other than frames or receivers and parts defined as mufflers or silencers upon receipt of a letter application, in duplicate, showing that such other identification is reasonable and will not hinder the effective administration of this part.

(b) Armor piercing ammunition—(1) Marking of ammunition. Each licensed manufacturer or licensed importer of armor piercing ammunition shall identify such ammunition by means of painting, staining or dying the exterior of the projectile with an opaque black coloring. This coloring must completely cover the point of the projectile and at least 50 percent of that portion of the projectile which is visible when the projectile is loaded into a cartridge case. 

(2) Labeling of packages. Each licensed manufacturer or licensed importer of armor piercing ammunition shall clearly and conspicuously label each package in which armor piercing ammunition is contained, e.g., each box, carton, case, or other container. The label shall include the words “ARMOR PIERCING” in block letters at least 1/4 inch in height. The lettering shall be located on the exterior surface of the package which contains information concerning the caliber or gauge of the ammunition. There shall also be placed on the same surface of the package in block lettering at least 1/8 inch in height the words “FOR GOVERNMENTAL ENTITIES OR EXPORTATION ONLY.” The statements required by this subparagraph shall be on a contrasting background.

(c) Large capacity ammunition feeding devices manufactured after September 13 1994. (1) Each person who manufactures or imports any large capacity ammunition feeding device manufactured after September 13, 1994, shall legibly identify each such device with a serial number. Such person may use the same serial number for all large capacity ammunition feeding devices produced. 

(i) Additionally, in the case of a domestically made large capacity ammunition feeding device, such device shall be marked with the name, city and State (or recognized abbreviation thereof) of the manufacturer; 

(ii) And in the case of an imported large capacity ammunition feeding device, such device shall be marked:

(A) With the name of the manufacturer, country of origin, and, 
(B) Effective July 5, 1995, the name, city and State (or recognized abbreviation thereof) of the importer.

(iii) Further, large capacity ammunition feeding devices manufactured after September 13, 1994, shall be marked “RESTRICTED LAW ENFORCEMENT/ GOVERNMENT USE ONLY” or, in the case of devices manufactured or imported for export, effective July 5, 1995, “FOR EXPORT ONLY.”

(2) All markings required by this paragraph (c) shall be cast, stamped, or engraved on the exterior of the device. In the case of a magazine, the markings shall be placed on the magazine body. 

(3) Exceptions—(i) Metallic links. Persons who manufacture or import metallic links for use in the assembly of belted ammunition are only required to place the identification marks prescribed in paragraph (c)(1) of this section on the containers used for the packaging of the links. 

(ii) Alternate means of identification. The Director may authorize other means of identifying large capacity ammunition feeding devices upon receipt of a letter application, in duplicate, from the manufacturer or importer showing that such other identification is reasonable and will not hinder the effective administration of this part.” 

《Commerce in Firearms and Ammunition, 27 CFR 178.92》

US Law (Int'l)

“Article VI: Marking of Firearms

1. For the purposes of identification and tracing of the firearms referred to in Article I.3.a, States Parties shall:
a. require, at the time of manufacture, appropriate markings of the name of manufacturer, place of manufacture, and serial number;
b. require appropriate markings on imported firearms permitting the identification of the importer's name and address; and
c. require appropriate markings on any firearms confiscated or forfeited pursuant to Article VII.1 that are retained for official use.
2. The firearms referred to in Article I.3.b should be marked appropriately at the time of manufacture, if possible.”

“Article IX: Export, Import, and Transit Licenses or Authorizations

1. States Parties shall establish or maintain an effective system of export, import, and international transit licenses or authorizations for transfers of firearms, ammunition, explosives, and other related materials.
2. States Parties shall not permit the transit of firearms, ammunition, explosives, and other related materials until the receiving State Party issues the corresponding license or authorization.
3. States Parties, before releasing shipments of firearms, ammunition, explosives, and other related materials for export, shall ensure that the importing and in-transit countries have issued the necessary licenses or authorizations.
4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition, explosives, and other related materials.”

Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials

“Article 7
Record-keeping
Each State Party shall ensure the maintenance, for not less than ten years, of information in relation to firearms and, where appropriate and feasible, their parts and components and ammunition that is necessary to trace and identify those firearms and, where appropriate and feasible, their parts and components and ammunition which are illicitly manufactured or trafficked and to prevent and detect such activities. Such information shall include:
(a) The appropriate markings required by article 8 of this Protocol;
(b) In cases involving international transactions in firearms, their parts and components and ammunition, the issuance and expiration dates of the appropriate licences or authorizations, the country of export, the country of import, the transit countries, where appropriate, and the final recipient and the description and quantity of the articles.

Article 8
Marking of firearms
1. For the purpose of identifying and tracing each firearm, States Parties shall:
(a) At the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture;
(b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes;
(c) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.
2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings.

Art. 10
General requirements for export, import and transit licensing or authorization systems
1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.
2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:
   (a) That the importing States have issued import licences or authorizations; and
   (b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.
3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.
4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.
5. Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.
6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.”

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol)

“2. Control conditions and evaluation criteria

2.1 Decisions to permit MANPADS exports will be made by the exporting government by competent authorities at senior policy level and only to foreign governments or to agents specifically authorized to act on behalf of a government after presentation of an official End-User Certificate (EUC) certified by the government of the receiving country.
2.2 General licences are inapplicable for exports of MANPADS; each transfer is subject to an individual licensing decision.
2.3 Exporting governments will not make use of non-governmental brokers or brokering services when transferring MANPADS, unless specifically authorized to on behalf of the government.
2.4 In order to prevent unauthorized use, producer countries will implement technical performance and/or launch control features for newly designed MANPADS as such technologies become available to them. Such features should not adversely affect the operational effectiveness of MANPADS for the legal user.”

OSCE Principles for Export Controls of Man-Portable Air Defense Systems (MANPADS)

“MANPADS Threat Reduction

- Work toward expedited adoption of the updated 2003 Wassenaar "Elements for Export Controls on MANPADS" as an international standard.”

G-8 Secure and Facilitated International Travel Initiative (SAFTI)
“In this context, the United States and the European Union have decided to act jointly to encourage all arms exporting countries to submit their export decisions to rigorous criteria and to greater transparency. In particular, we commit ourselves to promoting the highest possible standards of conduct and enhanced export control practices based on our shared principles of responsibility, transparency and restraint, including:

- implementation of stringent national controls over exports of arms and military equipment, and of related technologies.”

**Declaration by the United States and the European Union on the Responsibilities of States and on Transparency Regarding Arms Exports**

<table>
<thead>
<tr>
<th><strong>PRINCIPLE #6: Comprehensive Controls.</strong></th>
<th>States shall establish common standards for specific mechanisms to control the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.</td>
<td>Arms brokering activities</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>US Law (Congress/Executive)</strong></th>
<th>“Purpose. Section 38(b)(l)(A)(ii) of the Arms Export Control Act (22 U.S.C. 2778) provides that persons engaged in the business of brokering activities shall register and pay a registration fee as prescribed in regulations, and that no person may engage in the business of brokering activities without a license issued in accordance with the Act.”</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>International Traffic in Arms Regulations, Section 129.1</strong></td>
</tr>
</tbody>
</table>

| **US Law (Int'l)** | “Participating States will, in addition to continuing the elaboration and refining of criteria for effective arms brokering legislation and discuss enforcement measures, consider, inter alia, such measures as:

- Requiring registration of arms brokers;
- Limiting the number of licensed brokers;
- Requiring licensing or authorization of brokering; or
- Requiring disclosure of import and export licenses or authorizations, or of accompanying documents and of the names and locations of brokers involved in transactions.” |
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>Statement of Understanding on Arms Brokerage, Wassenaar Arrangement</strong></td>
</tr>
</tbody>
</table>

| | “We, the States participating in this Conference, bearing in mind the different situations, capacities and priorities of States and regions, undertake the following measures to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects:

14. To develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within the State's jurisdiction and control. “ |
| | **UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15)** |

| | “On the basis of these discussions the meeting identified areas for further study, as well as appropriate measures that could be considered for adoption and implementation. These are reflected below. |
| | **Measures on arms brokering** |
| | **International** |
• Develop common understandings of basic issues and the scope of the problems related to arms brokering.
• Consider the insertion of clauses on brokering activities in legally binding UNSC embargo resolutions.
• Include appropriate provisions on brokering in relevant international legal instruments. In particular, the proposed provision in the Draft Protocol on Firearms would make a significant contribution to a global approach to regulating brokering of arms.
• Develop improved international standards on documentation to reduce fraud.
• Enhance measures between exporting and importing countries to ensure that shipments are not diverted.
• Develop model brokering legislation and regulations, including comprehensive definitions, in order to achieve more effective national control on brokering in all its aspects as well as related activities. These could constitute international standards against which implementation could be measured.

National

• Encourage greater national commitment to implement measures to control brokers and brokering, e.g. by regulation, authorization and/or registration, including prior license requirement.
• Establish national legislation and enforcement systems on small arms brokering where none exist and criminalize violations.
• Offer outreach/training for the adoption of suitable legislation and effective enforcement mechanisms, including industry awareness-building, to countries wishing to improve their systems.

Information Exchange

• Exchange information bilaterally, in regional organizations and in other appropriate fora on legislation and enforcement systems concerning brokering and related activities. Such exchanges could i.a. identify loopholes in existing laws and enforcement practices.
• Establish cooperative measures to share information on illicit traders, cf. the IAEA information exchange on illicit trafficking of nuclear material.”

Elements of a Common Understanding, The Second Oslo Meeting on Small Arms and Light Weapons

“Article 5.
Prohibitions
(1) The National Authority shall prohibit brokering activities and refuse to grant licenses if it has reason to believe that the brokering activities will, or seriously threaten to:
   (d) result in acts of genocide or crimes against humanity;
   (e) violate humans rights contrary to international law;
   (f) lead to the perpetration of war crimes contrary to international law;
   (g) violate a United Nations Security Council embargo or other multilateral sanctions to which the country adheres, or that it unilaterally applies;
   (h) support terrorist acts;
   (i) result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime; or
   (j) result in a breach of a bilateral or multilateral arms control or non-proliferation agreement.”

OAS/CICAD Model Regulations on Brokering
**Article 15**

**Brokers and brokering**

1. With a view to preventing and combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering. Such a system could include one or more measures such as:
   (a) Requiring registration of brokers operating within their territory;
   (b) Requiring licensing or authorization of brokering; or
   (c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

2. States Parties that have established a system of authorization regarding brokering as set forth in paragraph 1 of this article are encouraged to include information on brokers and brokering in their exchanges of information under article 12 of this Protocol and to retain records regarding brokers and brokering in accordance with article 7 of this Protocol.”

**Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol)**

**PRINCIPLE #6: Comprehensive Controls.** States shall establish common standards for specific mechanisms to control the following:

3. The export of licensed arms production

---

US Law (Congress/Executive)

“**Defense service.**

Defense service means:

1. The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles; or
2. The furnishing to foreign persons of any technical data controlled under this subchapter (see §120.10), whether in the United States or abroad.”

**International Traffic in Arms Regulations, Section 120.9**

“**Manufacturing license agreements and technical assistance agreements.**

(a) The approval of the Office of Defense Trade Controls must be obtained before the defense services described in §120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Office of Defense Trade Controls. Such agreements are generally characterized as either Manufacturing license agreements, technical assistance agreements, distribution agreements or off-shore procurement agreements, and may not enter into force without the prior written approval of the Office of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in §120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from the licensing requirements of this subchapter pursuant to §125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, The Office of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in §120.9(a) of this subchapter by granting a license under part 125 of this subchapter. Also, see §126.8 of this subchapter for the requirements for prior approval of proposals relating to significant military equipment.”
### US Law (Int'l)

**“MANPADS Threat Reduction**
- Further strengthen controls on transfer of MANPADS production technology to deter marketing of MANPADS by countries that do not maintain strong standards of export controls.”

*G-8 Secure and Facilitated International Travel Initiative (SAFTI)*

### PRINCIPLE #6: Comprehensive Controls.

States shall establish common standards for specific mechanisms to control the following:

4. The transit and trans-shipment of arms

### US Law (Congress/Executive)

“In order to improve accountability with respect to defense articles and defense services sold, leased, or exported under this Act or the Foreign Assistance Act of 1961, the President shall establish a program which provides for the end-use monitoring of such articles and services.”

*Arms Export Control Act, Section 40A (a) (1)*

### US Law (Int'l)

“We, the States participating in this Conference, bearing in mind the different situations, capacities and priorities of States and regions, undertake the following measures to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects:

2. To put in place and implement adequate laws, regulations and administrative procedures to ensure the effective control over the export and transit of small arms and light weapons, including the use of authenticated end-user certificates and effective legal and enforcement measures.”

*UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/15)*

**“Actions to be taken**

Immediate action could focus on the prevention of illicit transfers and tighter control in connection with legal transfers. The great number of casualties and the extent of human suffering caused by the use of small arms in war-torn societies point to the urgent need for the reduction of such weapons in these situations of conflict.

**Prevention aspects**
- Develop national and regional mechanisms including codes of conduct in connection with the legal manufacturing, transit, transfers and, where appropriate, reduction of small arms and light weapons.”

*An International Agenda on Small Arms and Light Weapons: Elements of a Common Understanding, The Oslo Meeting on Small Arms*

**“Article 10**

*General requirements for export, import and transit licensing or authorization systems*

1. Each State Party shall establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and ammunition.

2. Before issuing export licences or authorizations for shipments of firearms, their parts and components and ammunition, each State Party shall verify:
   
   (a) That the importing States have issued import licences or authorizations; and
   
   (b) That, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.
3. The export and import licence or authorization and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of the firearms, their parts and components and ammunition and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.

4. The importing State Party shall, upon request, inform the exporting State Party of the receipt of the dispatched shipment of firearms, their parts and components or ammunition.

5. Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified or validated.

6. States Parties may adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.”

Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol)

**PRINCIPLE #6: Comprehensive Controls.** States shall establish operative provisions to monitor enforcement and review procedures to strengthen the full implementation of the Principles.

**US Law (Congress/Executive)**

“SEC. 40A. END-USE MONITORING OF DEFENSE ARTICLES AND DEFENSE SERVICES.

(a) ESTABLISHMENT OF MONITORING PROGRAM-

(1) IN GENERAL- In order to improve accountability with respect to defense articles and defense services sold, leased, or exported under this Act or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.), the President shall establish a program which provides for the end-use monitoring of such articles and services.

(2) REQUIREMENTS OF PROGRAM- To the extent practicable, such program--

(A) shall provide for the end-use monitoring of defense articles and defense services in accordance with the standards that apply for identifying high-risk exports for regular end-use verification developed under section 38(g)(7) of this Act (commonly referred to as the 'Blue Lantern' program); and

(B) shall be designed to provide reasonable assurance that--

(i) the recipient is complying with the requirements imposed by the United States Government with respect to use, transfers, and security of defense articles and defense services; and

(ii) such articles and services are being used for the purposes for which they are provided.

(b) CONDUCT OF PROGRAM- In carrying out the program established under subsection (a), the President shall ensure that the program--

(1) provides for the end-use verification of defense articles and defense services that incorporate sensitive technology, defense articles and defense services that are particularly vulnerable to diversion or other misuse, or defense articles or defense services whose diversion or other misuse could have significant consequences; and

(2) prevents the diversion (through reverse engineering or other means) of technology incorporated in defense articles.

(c) REPORT TO CONGRESS- Not later than 6 months after the date of the enactment of this section, and annually thereafter as a part of the annual congressional presentation documents submitted under section 634 of the Foreign Assistance Act of 1961, the President shall transmit to the Congress a report describing the actions taken to implement this section, including a detailed accounting of the costs and number of personnel associated with the monitoring program.

(d) THIRD COUNTRY TRANSFERS- For purposes of this section, defense articles and defense services sold, leased, or exported under this Act or the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) includes defense articles and defense services that are transferred to a third country or
other third party.'.

(b) EFFECTIVE DATE—Section 40A of the Arms Export Control Act, as added by subsection (a), applies with respect to defense articles and defense services provided before or after the date of the enactment of this Act.

Arms Export Control Act, Section 40A

“(7) The President shall, in coordination with law enforcement and national security agencies, develop standards for identifying high-risk exports for regular end-use verification. These standards shall be published in the Federal Register and the initial standards shall be published not later than October 1, 1988.”

Arms Export Control Act, Section 38 (g) (7)

“Eligibility.—(a) No defense article or defense service shall be sold or leased by the United States Government under this Act to any country or international organization, and no agreement shall be entered into for a cooperative project (as defined in section 27 of this Act), unless—
(2) the country or international organization shall have agreed not to transfer title to, or possession of, any defense article or related training or other defense service so furnished to it, or produced in a cooperative project (as defined in section 27 of this Act), to anyone not an officer, employee, or agent of that country or international organization (or the North Atlantic Treaty Organization or the specific member countries (other than the United States) in the case of a cooperative project) and not to use or permit the use of such article or related training or other defense service for purposes other than those for which furnished unless the consent of the President has first been obtained.”

Arms Export Control Act, Section 3 (a)

“(g) Any agreement for the sale or lease of any article on the United States Munitions List entered into by the United States Government after the date of enactment of this subsection shall state that the United States Government retains the right to verify credible reports that such article has been used for a purpose not authorized under section 4 or, if such agreement provides that such article may only be used for purposes more limited than those authorized under section 4, for a purpose not authorized under such agreement.”

Arms Export Control Act, Section 3 (g)

“Sec. 4. Purposes for Which Military Sales by the United States Are Authorized.—Defense articles and defense services shall be sold or leased by the United States Government under this Act to friendly countries solely for internal security, for legitimate self-defense, to permit the recipient country to participate in regional or collective arrangements or measures consistent with the Charter of the United Nations, or otherwise to permit the recipient country to participate in collective measures requested by the United Nations for the purpose of maintaining or restoring international peace and security, or for the purpose of enabling foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to the economic and social development of such friendly countries. It is the sense of the Congress that such foreign military forces should not be maintained or established solely for civic action activities and that such civic action activities not significantly detract from the capability of the military forces to perform their military missions and be coordinated with and form part of the total economic and social development effort. Provided, That none of the funds contained in this authorization shall be used to guarantee, or extend credit, or participate in an extension of credit in connection with any sale of sophisticated weapons systems, such as missile systems and jet aircraft for military purposes, to any underdeveloped country other than Greece, Turkey, Iran, Israel, the Republic of China, the Philippines, and Korea unless the President determines that such financing is important to the
national security of the United States and reports within thirty days each such determination to the Congress.”

**Arms Export Control Act, Section 4**

“(a) In addition to such other provisions as the President may require, no defense articles or related training or other defense service shall be furnished to any country on a grant basis unless it shall have agreed that—

(1) it will not, without the consent of the President—
(A) permit any use of such articles or related training or other defense service by anyone not an officer, employee, or agent of that country,
(B) transfer, or permit any officer, employee, or agent of that country to transfer such articles or related training or other defense service by gift, sale, or otherwise, or
(C) use or permit the use of such articles or related training or other defense service for purposes other than those for which furnished;
(2) it will maintain the security of such articles or related training or other defense service, and will provide substantially the same degree of security protection afforded to such articles or related training or other defense service by the United States Government;
(3) it will, as the President may require, permit continuous observation and review by, and furnish necessary information to, representatives of the United States Government with regard to the use of such articles or related training or other defense service; and
(4) unless the President consents to other disposition, it will return to the United States Government for such use or disposition as the President considers in the best interests of the United States, such articles or related training or other defense service which are no longer needed for the purposes for which furnished.”

**Foreign Assistance Act, Section 505 (a)**

“(a) In order to carry out his responsibilities for the management of international security assistance programs conducted under this chapter, chapter 5 of this part, and the Arms Export Control Act, the President may assign members of the Armed Forces of the United States to a foreign country to perform one or more of the following functions:
(1) equipment and services case management;
(2) training management;
(3) program monitoring;
(4) evaluation and planning of the host government’s military capabilities and requirements;
(5) administrative support;
(6) promoting rationalization, standardization, interoperability, and other defense cooperation measures; 688 and
(7) liaison functions exclusive of advisory and training assistance.”

**Foreign Assistance Act, Section 515 (a)**

“We, the States participating in this Conference, bearing in mind the different situations, capacities and priorities of States and regions, undertake the following measures to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects:

4. To establish, or designate as appropriate, national coordination agencies or bodies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects. This should include aspects of the illicit manufacture, control, trafficking, circulation, brokering and trade, as well as tracing, finance, collection and destruction of small arms and light weapons.”

**UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and**
“With respect to policies on small arms and light weapons the U.S. welcomes the EU’s adoption of the EU Code of Conduct on arms exports and the principles contained in its criteria, which the U.S. endorses.”  


1
Project Ploughshares was established in 1976 as an agency of the Canadian Council of Churches to implement the churches’ imperative to seek and pursue peace. Our mandate is to work with churches and related organizations, as well as governments and non-governmental organizations, in Canada and internationally, to identify, develop, and advance approaches that build peace and prevent war, and promote the peaceful resolution of political conflict. Project Ploughshares is affiliated with the Institute of Peace and Conflict Studies, Conrad Grebel University College, University of Waterloo.

.... and they shall beat their swords into ploughshares and spears into pruning hooks; nation shall not lift up sword against nation; neither shall they learn war any more. (Isaiah 2:4)

Project Ploughshares
57 Erb Street West
Waterloo, Ontario N2L 6C2
Canada
519-888-6541
Fax: 519-888-0018
plough@ploughshares.ca
www.ploughshares.ca