

EUROPEAN UNION INITIATIVES TO CONTROL SMALL ARMS AND LIGHT WEAPONS: TOWARDS A MORE COORDINATED APPROACH

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I. INTRODUCTION

The European Union (EU) is a major player in global efforts to prevent and combat the uncontrolled accumulation and proliferation of small arms and light weapons (SALW) as well as their ammunition. It was among the first regional organizations to recognize the negative impact of the uncontrolled proliferation of SALW on security and development in many regions of the world. Since the late 1990s, the EU has accordingly been in the process of elaborating a coherent and comprehensive policy to address small arms proliferation.¹ The central element of these efforts is the EU's 2005 'Strategy to combat illicit accumulation and trafficking of SALW and their ammunition'.² Its adoption represents a significant step towards the integration of action against SALW proliferation into the EU's overall foreign policy. However, in spite of its ambition to 'develop . . . an integrated approach and a comprehensive plan of action', the strategy adopts a targeted approach and is framed as a response to threats beyond the EU's borders.³ Indeed, its main goals

¹ Council of the European Union, European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Weapons, 9057/97 DG E-CFSP IV, 26 June 1997; Joint Action of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons (1999/34/CFSP), *Official Journal of the European Communities*, L9, 15 Jan. 1999, pp. 1–5; Council of the European Union, Joint Action 2002/589/CFSP of 12 July 2002 on the European Union's contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, *Official Journal of the European Communities*, L191, 19 July 2002, pp. 1–4; and Council of the European Union, Strategy to combat illicit accumulation and trafficking of SALW and their ammunition, 5319/06, 16 Dec. 2005, <<http://register.consilium.europa.eu/pdf/en/06/st05/st05319.en06.pdf>>.

² Council of the European Union, Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (note 1).

³ Council of the European Union, Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (note 1), p. 3.

SUMMARY

The European Union (EU) is a major player in global efforts to prevent and combat the uncontrolled accumulation and proliferation of small arms and light weapons (SALW) and their ammunition. The 2005 'Strategy to combat illicit accumulation and trafficking of SALW and their ammunition' has given a significant impetus in promoting multilateralism activities in order to establish mechanisms in relevant forums to fight illicit proliferation of SALW, in structuring and prioritizing EU small arms assistance programmes as well as mainstreaming SALW in broader peace and security initiatives.

This paper argues that a better coordination between EU export controls—which today remain a national prerogative—and small arms assistance policies is essential for a more integrated and coherent approach to fighting the illicit proliferation of SALW. In particular, EU member states should pay special attention when assessing SALW export licences to countries benefiting from EU assistance and to other destinations in the neighbourhood of such countries. Recent developments at the international and EU levels should encourage the EU to comprehensively review and update the 2005 SALW Strategy.

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relate to building consensus in relevant international forums to strengthen SALW-related norms and to carrying out bilateral small arms assistance projects with third countries (i.e. all countries except EU and NATO members, Australia, Japan, New Zealand and Switzerland) and organizations.

The broad scope of the EU's SALW Strategy potentially gives the EU institutions and the member states the ability to act extensively and decisively on many aspects of the fight against illicit SALW proliferation in a coordinated way. Experience shows that the strategy has given a significant impetus in structuring and prioritizing EU small arms assistance programmes as well as mainstreaming SALW in broader peace and security initiatives. Although the strategy calls for strengthening the SALW export control policies of the EU and its member states, compared to the strategy's other goals, it provides little guidance for implementing that goal. Today export controls remain a national prerogative and there is no indication that EU member states systematically take into account the potential impact of their exports on countries and regions that benefit from SALW-related assistance and development cooperation programmes initiated or supported by the EU.

This paper argues that better coordination between EU export controls and small arms assistance policies is essential for a more integrated and coherent approach to fighting the illicit proliferation of SALW. In particular, EU member states should pay special attention when assessing SALW export licences to countries benefiting from EU assistance and to other destinations in the neighbourhood of such countries. In addition to these considerations, recent developments at the international and EU levels—such as the adoption of the international Arms Trade Treaty (ATT), important security changes in regions close to the EU (particularly, the Middle East, North Africa and the Sahel) and the recently adopted EU Communication on firearms and the internal security of the EU—should encourage the EU to comprehensively review and update the 2005 SALW Strategy.⁴

Section II of this paper provides a brief history of efforts initiated by the EU to develop a common approach towards fighting illicit small arms proliferation from the late 1990s to the adoption of the

⁴ European Commission, Communication from the Commission to the Council and the European Parliament, Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking, Com(2013) 716 final, 21 Oct. 2013.

SALW Strategy in 2005. Section III offers an analytical overview of the most significant EU foreign policy actions to fight small arms proliferation, which fall under three categories: (a) promoting multilateralism activities in order to establish mechanisms in relevant forums to fight illicit proliferation of SALW, (b) advancing SALW-specific assistance initiatives, and (c) mainstreaming SALW in broader peace and security initiatives. Section IV explores the extent to which the EU's SALW export control policies, and related initiatives, have been strengthened in order to contribute to the EU's objective of fighting the illicit proliferation of SALW. The paper argues that the level of coordination between the initiatives and the strategy has been poor and uneven, at times hindering the shared objective of combating the proliferation of SALW. Section V provides conclusions and recommendations, including ideas for how the EU's Strategy could be updated and reviewed.

II. ELABORATING THE FRAMEWORK: THE 1998 JOINT ACTION AND THE 2005 STRATEGY

Since the end of the cold war, the proliferation of SALW and their ammunition has gradually become a particular concern for the international community, especially in view of the important role played by SALW in triggering and perpetuating criminality and armed conflicts worldwide.

On 17 December 1998 the Council of the European Union adopted the 'Joint Action on the EU contribution to combating the destabilising accumulation and spread of small arms and light weapons' (1998 Joint Action).⁵ The initiative took place in the context of ongoing discussions among the EU member states about their conventional weapon export policies and the potential for harmonization, which earlier that year had culminated in the adoption of the Code of Conduct on Arms Exports.⁶ It also echoed the submission in 1997 to the United Nations General Assembly of the Report of

⁵ Joint Action 1999/34/CFSP of 17 December 1998 (note 1), pp. 1–5. This Joint Action builds on a previous initiative related to conventional weapons adopted by the Council in 1997. Council of the European Union, European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Weapons (note 1).

⁶ For perspective on the context leading to the adoption of the Code of Conduct on Arms Export see Bromley, M., 'The Review of the EU Common Position on Arms Exports: prospects for strengthened controls', Non-Proliferation Papers no. 7, EU Non-proliferation Consortium, Jan. 2012, <<http://www.nonproliferation.eu/activities/activities.php>>.

the Panel of Governmental Experts on Small Arms. The 1998 Joint Action was the first EU initiative to address the issue of SALW in the union's Common Foreign and Security Policy (CFSP). It particularly acknowledged that 'comprehensive measures [are required] for the elimination of uncontrolled circulation of small arms'. In July 2002 the 1998 Joint Action was repealed and replaced by another, which included ammunition within its scope.⁷ This new document established three general objectives, which still prevail in the SALW-related initiatives undertaken by the EU today: (a) to fight against the destabilizing accumulation and spread of SALW, (b) to contribute to the reduction of stocks of SALW and their ammunition, and (c) to help solve the problems caused by such accumulations.

The 2002 Joint Action in general terms laid the foundation for a structured EU policy on SALW. It both gave a promotional role to the EU, which should encourage other states and regions to comply with the objectives listed above, and contained several commitments related to export control for the member states. These commitments included, among others, the obligation 'to import and hold small arms only for their legitimate security needs' and the duty for 'exporting countries to supply small arms only to governments'.⁸ Through these provisions, the EU member states thus recognized that an adequate regulation of legal transfers of SALW might have a positive impact on preventing their uncontrolled and illicit proliferation. The 2002 Joint Action also set out other priorities, including stockpile destruction, removal of surplus weapons, disarmament, demobilization, and reintegration (DDR), and the target of promoting these priorities at relevant international and regional forums. Article 6 specified the conditions for the EU to provide financial and technical SALW-related assistance to non-EU states and also established the framework for the many assistance programmes initiated and supported by EU institutions and the member states. Article 7 stated the pre-eminence of the Council in deciding on the allocation of such assistance and the priorities for use of the funds. In the absence of an internationally agreed definition of SALW, the annex also specified the types of weapon that fall under the term SALW in EU legislation. Only small arms that are 'specially designed for military use' were included

⁷ Council of the European Union, Joint Action 2002/589/CFSP of 12 July 2002 (note 1), pp. 1–4.

⁸ Council of the European Union, Joint Action 2002/589/CFSP of 12 July 2002 (note 1), Article 3.

in the definition, thus excluding 'civilian weapons' from its scope (see box 1).⁹ Finally, it was agreed that the Council would review the actions taken in the framework of the joint action annually.¹⁰

Three years later, the Council reviewed its political documents on SALW on the basis of the commitments assumed under the European Security Strategy (ESS) in 2003. Drawing inspiration from the 2003 EU Strategy against the Proliferation of Weapons of Mass Destruction (WMD), a distinctive European Strategy on SALW was adopted on 16 December 2005 to 'develop . . . an integrated approach and a comprehensive plan of action to combat the illicit trade in SALW and their ammunition'.¹¹ Indeed, the EU recognized that its SALW-related initiatives had been almost exclusively focused on the consequences of small arms proliferation so far (e.g. DDR programmes and security sector reform (SSR) in countries affected by armed violence). The 2005 Strategy argued that these so-called 'reactive initiatives' must urgently be supplemented by what is deemed a more 'preventive action' so as to tackle 'illegal supply and demand' (e.g. disposal of surplus weapons in originating countries and regions with illicit weapons).¹² Another of its important aspects was the aim to 'ensure that [the EU] security policy and its development policy are consistent' by mainstreaming the SALW issue in all aspects of its external policy, using existing initiatives and actions and by 'fully exploiting the means available

⁹ Council of the European Union, Joint Action 2002/589/CFSP of 12 July 2002 (note 1).

¹⁰ The annual reports on implementation of the Joint Action are available on the European External Action Service website, <http://eeas.europa.eu/non-proliferation-and-disarmament/documentation/documents/index_en.htm#Bookmark16>.

Due to a degree of redundancy with progress reports on the implementation of the EU SALW Strategy, production of annual reports on implementation of the Joint Action was suspended from 2011. Representative of the EEAS Non Proliferation and Disarmament Unit, Email exchange with author, 19 Sep. 2013.

¹¹ In contrast to the proliferation of WMD, the uncontrolled proliferation of SALW was not identified as one of the 5 key threats facing the EU and was only incidentally mentioned in the ESS (whose aim is to identify the key challenges and threats to EU security). Retrospectively, the SALW Strategy nonetheless states that the 'consequences of the illicit manufacture, transfer and circulation of small arms and light weapons and their excessive accumulation and uncontrolled spread are central to four of these five challenges'—that is, terrorism, regional conflicts, state failure and organized crime.

¹² The 2005 Strategy makes a distinction between 'reactive' and 'preventive' SALW assistance. The former takes place in countries affected by armed violence that are considered to be at the very end of the illicit SALW proliferation, while the latter refers to assistance in countries and regions regarded as source of illicit proliferation.

Box 1. Small arms versus firearms

The European Union (EU) legal texts distinguish between ‘small arms’ and ‘firearms’. The term ‘small arms and light weapons’ (SALW) is generally used in the context of the EU’s Common Foreign and Security Policy (CFSP). The 2002 Joint Action and the 2005 SALW Strategy only include small arms and accessories ‘specially designed for military use’, in line with the categorization put forward by the Report of the Panel of Governmental Experts on Small Arms in 1997.^a Other small arms considered to be for civil use (i.e. revolvers, self-loading pistols and rifles) are not covered by the 2005 SALW Strategy. Such weapons are defined as ‘firearms’ in the EU internal market and common policy commercial policy. The 2008 directive on the control of the acquisition and possession of weapons (‘any portable weapon that expels, is designed to expel or may be converted to expel shot, bullet or projectile by the action of combustible propellant’) is based on the definition adopted by the 2001 United Nations Protocol on Firearms and excludes firearms designed for military purpose.^b

However, recent research shows that, currently, there is no international consensus among states, experts and industry on the difference between military and civil small arms. Cultural considerations and differences in the categorization of small arms in national legislation, even among EU member states, represent a significant obstacle in that perspective. Weapons considered as military within the EU may be transferred to a third state, which categorizes them as civil weapons, and vice versa. Similarly, civil firearms may be used in the context of military conflicts, and small arms ‘specially designed for military use’ are frequently used in criminal activities. Additionally, recent technological developments make it difficult to distinguish between military and civil small arms.^c Finally, it has been pointed out that the definition of small arms used in the context of the CFSP is too narrow and should be expanded ‘in order for the EU to address the full range of small arms problems, especially in relation to criminality’.^d

^a Council of the European Union, Joint Action 2002/589/CFSP of 12 July 2002 on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, *Official Journal of the European Communities*, L191, 19 July 2002, annex. See also United Nations, Report of the Panel of Governmental Experts on Small Arms, A/52/298, 27 Aug. 1997, pp. 11–12.

^b Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, *Official Journal of the European Union*, L179, 8 July 2008; and United Nations, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the Convention against Transnational Organized Crime, General Assembly Resolution 55/255, 31 May 2001, Article 3.

^c Royet, N., ‘Les difficultés du contrôle des exportations d’armes à feu civiles’ [The difficulties of civilian arms export controls], Groupe de recherche et d’information sur la paix et la sécurité (GRIP) Note d’analyse, 27 June 2012, <http://www.grip.org/sites/grip.org/files/NOTES_ANALYSE/2012/NA_2012-06-27_FR_Q-ROYET.pdf>.

^d United Nations Institute for Disarmament Research (UNIDIR), ‘European action on small arms and light weapons and explosive remnants of war: final report’, 2006, <<http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=121757>>, pp. 24–25.

to it at multilateral and regional levels, within the European Union and in the EU’s bilateral relations’.¹³ It also intended to pull together all the instruments at the disposal of the EU, namely ‘the Member States’ civilian and military capabilities, the CFSP and ESDP instruments, including the Code of Conduct on Arms Exports, other external action instruments, including action through the European Community, and police, customs and judiciary action within the EU’.¹⁴ It is worth mentioning that the 2005 Strategy’s preamble identified export controls as a preventive tool to deter

the uncontrolled proliferation of SALW, but proposals to strengthen EU export control policies represent a small section of the overall plan of action set out in the strategy.

The 2005 Strategy reaffirmed the three overarching objectives set out in the 2002 Joint Action and added a new important objective—the establishment and development of the necessary structures within the EU to implement the strategy. It also reaffirmed the two priority regions of intervention already identified by the 1998 Joint Action: sub-Saharan Africa, considered by the EU as the area most affected by conflicts that are fuelled by SALW proliferation and accumulation; and Eastern and South Eastern Europe, given that major quantities of illicit SALW and ammunition disseminated in Africa originate from weapon stockpiles in these regions. Besides these regions, ‘priority attention’ was given to ‘other regions affected

¹³ Council of the European Union, Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (note 1), p. 6.

¹⁴ On the EU SALW Strategy see European External Action Service, ‘The fight against excessive accumulation and illicit trafficking of SALW and their ammunition’, <http://eeas.europa.eu/non-proliferation-and-disarmament/salw/index_en.htm>.

by the proliferation and excessive accumulation of SALW', namely, Central Europe and Latin America and the Caribbean. The EU intended the action plan articulated in the 2005 Strategy to be 'flexible and adaptable to the circumstances of the international security context' and stipulated that its implementation would be 'reviewed and updated' every six months by means of a progress report.¹⁵ The strategy aimed to structure and make more coherent the existing EU SALW-related initiatives and, where relevant, to incorporate the small arms dimension in broader CFSP and foreign policy initiatives.

III. AN OVERVIEW OF EUROPEAN UNION INITIATIVES TO FIGHT THE ILLICIT PROLIFERATION OF SMALL ARMS AND LIGHT WEAPONS

This section highlights some of the significant actions that have been taken by the EU on an ad hoc basis from the mid-1990s to 2005 and the initiatives adopted under the 2005 SALW Strategy. The EU's SALW-related initiatives fall under three main categories: (a) activities aimed at promoting multilateralism in order to forge mechanisms and norms in relevant forums to fight illicit proliferation of SALW, (b) SALW-specific assistance initiatives, and (c) activities to mainstream SALW in broader peace and security initiatives.

Forging mechanisms and norms through multilateralism

As the 2003 European Security Strategy emphasized, the promotion of multilateralism is a favoured working method of the EU foreign policy to establish mechanisms and norms at various levels. In comparison with other arms control fields, international and regional norms and mechanisms against the proliferation of SALW, albeit imperfect and uneven, have developed at a rapid pace in recent decades and the EU has played a significant role in this regard.

¹⁵ The 2005 Strategy also stipulates that the progress report will apply the decisions taken in the 2002 Joint Action and will supplement them where necessary. The six-monthly progress reports on the implementation of the EU's SALW Strategy are available at European External Action Service, 'Implementation of the EU SALW Strategy', <http://eeas.europa.eu/non-proliferation-and-disarmament/documentation/documents/index_en.htm#Bookmark16>.

The EU and its member states have dedicated considerable effort to the UN framework to negotiate and adopt the three main international instruments against SALW proliferation: the 2001 UN Programme of Action, the 2005 International Tracing Instrument, and the 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (Firearms Protocol). Although the EU did not succeed in making the two first instruments legally binding or to explicitly include ammunition within their scope, it managed, among other goals, to put forward strong commitments in some key areas, such as marking and tracing, stockpile management, DDR programmes, and assistance and international cooperation. After the failure of the 2006 review conference of the Programme of Action, significant attention has been dedicated by the EU to ensure that the ongoing review process of the Programme of Action focuses on the effective implementation of the commitments agreed on by UN member states in 2001. Transfer controls, marking and tracing, brokering regulations, regulation of ammunition and the integration of SALW measures into development assistance are among the key areas that the EU has identified as major obstacles to the implementation of the Programme of Action and where it intends to push forward.¹⁶ The EU has also taken an active part in the negotiations leading to the adoption of the Firearms Protocol, the only legally binding international instrument on small arms.¹⁷ In the context of the Arms Trade Treaty (ATT) negotiations, the EU was a consistent supporter of the inclusion of SALW and ammunition in the scope of the treaty. On several occasions, the EU also supported seminars and meetings of experts to promote UN instruments

¹⁶ See e.g. Council of the European Union, First progress report on the implementation of the EU Strategy to Combat Illicit Accumulation and Trafficking of SALW and their Ammunition, 10538/06, 14 June 2006, p. 3; and Working Paper of the Outcome of the 2012 Review Conference on the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects, 24 July 2012, <<http://www.poa-iss.org/RevCon2/documents/EU%20working%20paper%2024%20July%202012.pdf>>, pp. 1–3; and United Nations Institute for Disarmament Research (UNIDIR), 'European action on small arms and light weapons and explosive remnants of war: final report', 2006, <<http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=121757>>, p. 24.

¹⁷ United Nations, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the Convention against Transnational Organized Crime, General Assembly Resolution 55/255, 31 May 2001

to control SALW, the principles underpinning these efforts and the ATT in other regions of the world.¹⁸

At the regional level, EU member states have been active in the Organization for Security and Co-operation in Europe (OSCE), a forum that provides a unique opportunity to bring together major small arms-producing and -exporting states from North America and Central, Eastern and Western Europe. In recent years, the OSCE has adopted several texts relating to some of the EU's SALW interests (e.g. the 2000 Document on SALW and the 2004 'Decision on standard elements of end-user certificates and verification procedures for SALW exports').¹⁹ Discussion has also taken place on other EU priorities (e.g. the 2007 initiative of France and Belgium on small arms trafficking by air and, most recently, a conference on tracing in the OSCE area that was held in May 2013).

Finally, the EU also dedicates efforts to promote implementation of the relevant SALW commitments in the framework of political dialogue with third countries and regional organizations. In addition to regular dialogue at various levels with 'like-minded' countries, the EU regularly stresses that the issue of SALW is included in the dialogue with third countries, particularly 'countries holding surplus stocks of SALW left from the Cold War' in Eastern and South Eastern Europe as well as 'major exporters of SALW'.²⁰ In 2010 the EU and China started

consultations 'on the possibility to explore avenues of cooperation' on SALW and ATT.²¹ Although the outcome of this dialogue remains difficult to assess, in February 2012 the Council adopted a decision to support activities to promote an Africa–China–EU dialogue and cooperation on conventional arms. The two-year decision carried out by the non-governmental organization (NGO) Saferworld aims at the establishment and development of a joint Africa–China–EU expert working group on conventional arms and a joint Africa–China–EU research centre on conventional arms controls.²² Another initiative is the integration of small arms into the country and regional strategy papers drafted by the European Commission in partnership with relevant countries and regional organizations. These documents identify the strategic guidelines that the Commission follow in managing its development cooperation policy. Since 2005 the EU has negotiated several SALW articles in agreements with third countries, mostly at their request and on a case-by-case basis. In December 2008 the Council formalized this procedure. This so-called 'SALW clause' stipulates, among other things, that 'the Parties agree to observe and fully implement their respective obligations to deal with the illicit trade in small arms and light weapons, including their ammunition'.²³ Its language has proved to be less ambitious than the 'non-proliferation clause' (also known as the 'WMD clause') that was adopted in November 2003 and whose implementation and effectiveness have been questioned.²⁴ However, the general language of the SALW clause makes it, at best, a political commitment for the few countries that have agreed to commit themselves to it.²⁵

¹⁸ Examples include Joint Action 2008/113/CFSP in support of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit SALW in the framework of the EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition, *Official Journal of the European Union*, L40, 14 Feb. 2008. It is implemented by the UN Office for Disarmament Affairs (UNODA). See also Council Decision 2009/42/CFSP of 19 January 2009 on support for EU activities in order to promote among third countries the process leading towards an Arms Trade Treaty, in the framework of the European Security Strategy, *Official Journal of the European Union*, L17, 22 Jan. 2009; and Council Decision 2010/336/CFSP of 14 June 2010 on EU activities in support of the Arms Trade Treaty, in the framework of the European Security Strategy, *Official Journal of the European Union*, L152, 18 June 2010. The latter 2 are implemented by the UN Institute for Disarmament Research (UNIDIR).

¹⁹ Organization for Security and Co-operation in Europe (OSCE), 'OSCE document on small arms and light weapons', Annex II: Decision no. 5/04 on standard elements of end-user certificates and verification procedures for SALW exports, updated on 20 June 2012, <<http://www.osce.org/fsc/20783>>.

²⁰ The six-monthly progress reports on the implementation of the Strategy contain a section on 'SALW in the framework of political dialogue, strategy papers and action plans'. The section almost always specifies that 'SALW was included in the agenda of a number of EU's regular political dialogues' with other countries. Little detail is generally provided about the content and the outcome of the dialogue on small arms issues.

²¹ Council of the European Union, Eleventh progress report on the implementation of the EU SALW Strategy, 13128711, 20 July 2011.

²² Council Decision 2012/121/CFSP of 27 February 2012 in support of activities to promote EU–China–Africa dialogue and cooperation on conventional arms controls, *Official Journal of the European Union*, L54, 28 Feb. 2012.

²³ Council of the European Union, Council conclusions on the inclusion of a SALW article in agreements between the EU and third countries, 17186/08, 17 Dec. 2008.

²⁴ Grip, L., 'The EU non-proliferation clause: a preliminary assessment', SIPRI, Background Paper, Nov. 2009, <http://books.sipri.org/product_info?c_product_id=394>.

²⁵ Prior to the adoption of the SALW clause in 2008, a similar article was adopted with Central American states, South Africa and Ukraine. See the progress reports on the implementation of the SALW Strategy, European External Action Service (note 15). From 2008 SALW clauses were included in agreements with several countries, including Iraq and South Korea (in 2009); China, Libya, Mongolia, the Philippines, Russia and Viet Nam (in 2010); and Azerbaijan and Georgia (in 2011).

Providing small arms and light weapons assistance

Since the late 1990s the EU has been very active in providing assistance in many regions of the world to help fight the illicit proliferation of small arms. The range of activities pursued in this context is extensive and makes the EU a major and indispensable player in the fight against SALW proliferation. The EU's small arms actions often combine both crisis management or 'short-term' elements (such as monitoring and supporting disarmament and demobilization of parties to a conflict, collecting weapons, securing stockpiles of weapons and ammunition, and so on) and conflict prevention, development and security building or 'long-term' activities (such as the provision of SALW-related assistance in SSR programmes, capacity building of national officials to enable them to manage and control small arms, support to regional and international organizations that are mandated to fight small arms proliferation, support to research on small arms and the like).²⁶

Before the adoption of the 2005 Strategy, the EU's CFSP SALW assistance programmes generally were of a short nature and were mainly implemented bilaterally, as illustrated by almost 10 different Council decisions covering five countries (Albania, Georgia, Mozambique, Serbia and South Africa) on four continents during the period 1999–2002 for a cumulated budget of €7 300 200.²⁷ The EU's Assistance on Curbing Small Arms and Light Weapons in Cambodia (EU ASAC) initiative stands out as its length, scope and costs are exceptional compared to other projects initiated and supported during the same period. This mission provided financial and technical assistance to the Cambodian Government to develop appropriate SALW legislation and regulations, to establish guidelines for record keeping and inventory of SALW of its armed forces, and to provide assistance to the government's DDR programme.²⁸ Initially, the programme was established in 1999 for one year and with a budget of €500 000. However, positive

evaluation led to its extension and it lasted from 1999 to 2006, with an overall budget of €8 575 818.

While the independent evaluation team pointed to several areas of concern that remained unsolved at the end of the project (including the absence of proper legislation and an adequate national SALW control strategy, and the unsafe storage of large quantities of ammunition, which EU ASAC was not mandated to address) it gave an overall positive assessment of EU ASAC. It noted that most of the weapons deemed to be in circulation had been destroyed or properly stored by the armed forces, which could rely on 'appropriate safe and secure storage locations' and 'an effective stockpile management system'.²⁹ The evaluation also observed that the project had 'a positive impact on countering the proliferation of SALW' in the country and provided valuable lessons for future projects: notably, the need for long funding cycles (two years or more) and the provision of the 'mandate and capability to engage in all areas of SALW control, as holistic and integrated strategies and responses are more efficient, effective and have longer-term impact'.³⁰ In spite of the positive outcome of the initiative, both in terms of arms circulation and the impact on human security, this approach was not replicated in subsequent assistance programmes supported by the EU.

In spite of the controversy between the Commission and the Council (see box 2), the adoption of the 2005 Strategy gave a significant impetus to structuring and prioritizing EU assistance programmes related to the control of SALW. As mentioned above, the strategy prioritizes two geographical areas. The first, sub-Saharan Africa, is a long-standing recipient of EU assistance, particularly in the field of development cooperation through the European Development Fund (EDF) and the Instrument for Stability (IFS), which has been driven by the ambition of reinforcing African ownership of conflict prevention, management and resolution.³¹ The focus on Eastern Europe and South Eastern Europe aims to promote stability in the EU

²⁶ United Nations Institute for Disarmament Research (note 16), p. 8.

²⁷ EU Commission, External Relations Directorate General, Past, present and possible future small arms and light weapons projects [co] financed by the European Union, 3 Mar. 2003.

²⁸ Council Decision of 15 November 1999 implementing Joint Action 1999/34/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Cambodia (1999/730/CFSP), Official Journal of the European Communities, L294, 16 Nov. 1999.

²⁹ Of the 330 000 weapons evaluated to be in circulation in 1991, 142 871 were destroyed and 158 760 were securely and safely stored. See Small Arms Survey, 'Stabilizing Cambodia: small arms control and security sector reform', *Small Arms Survey Yearbook 2006: Unfinished Business* (Oxford University Press: Oxford, 2006), p. 125.

³⁰ South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), 'Evaluation of the EU small arms and light weapons assistance to the Kingdom of Cambodia (EU-ASAC)', 2006, <<http://www.seesac.org/res/files/publication/533.pdf>>.

³¹ United Nations Institute for Disarmament Research (note 16), p.41.

Box 2. Small arms and light weapons assistance: a security or a development issue?

In 2004–2005 the issue of assistance to fight small arms and light weapons (SALW) proliferation was the subject of a controversy between the European Commission and the Council. In the wake of a 2004 Commission proposal to rationalize external relations budget lines with a view to simplifying and clarifying all European Union (EU) aid management, the question arose whether small arms assistance initiatives aim at achieving the objectives of the Common Foreign and Security Policy (CFSP) rather than those of Community development cooperation policy. In February 2005 the Commission asked the European Court of Justice to annul the Council decision providing financial and technical support to the Economic Community of West African States (ECOWAS) in its initiatives to fight SALW proliferation.^a The Commission argued that, by this decision, the Council impinged on competences conferred on the Commission in the area of development cooperation of which the topic of small arms is an integral part. In May 2008 the European Court of Justice's judgement confirmed the superiority of the Commission's development cooperation prerogatives. It also stated that, in cases where the same measure simultaneously pursues development goals and goals related to the CFSP, the Commission retains the authority to intervene.^b Although the judgement solved the conflict between the Council and the Commission, the three-year period of uncertainty resulted in the postponing of a number of European SALW initiatives that fell under both CSFP and Commission development policy.

Nevertheless, after ratification of the 2007 Lisbon Treaty, the EU competences on the matter have been simplified.^c The main cooperation tools dealing with security and conflict issues have been placed under the control of the European External Action Service (EEAS), the EU's diplomatic corps, launched in 2011. Its mandate makes it an adequate structure to bridge the CFSP and Commission competences. For instance, it coordinates and defines priorities for the Instrument for Stability, the main EU financial tool for conflict prevention and peacebuilding activities in developing countries.

^a Council Decision 2004/833/CFSP of 2 December 2004 implementing Joint Action 2002/589/CFSP with a view to a European Union contribution to ECOWAS in the framework of the Moratorium on Small Arms and Light Weapons, *Official Journal of the European Union*, L359, 4 Dec. 2004.

^b European Court of Justice, Judgment of the Court (Grand Chamber) of 20 May 2008, Commission of the European Communities versus Council of the European Union, Action for annulment, Article 47 European Union Common foreign and Security Policy, Decision 2004/833/CFSP, Implementation of Joint Action 2002/589/CFSP, Combating the proliferation of small arms and light weapons, Community competence, Development cooperation policy, Case C-91/05.

^c Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed 13 Dec. 2007, entered into force 1 Dec. 2009, <http://europa.eu/lisbon_treaty/>.

close neighbourhood by supporting the strengthening of national small arms control capacities and the destruction of the massive stockpiles that exist there. In both areas, the EU has favoured operational and institutional capacity building of national and regional structures through support at the regional and sub-regional level over initiatives at the national level.³²

Many factors may explain this trend, among them the fact that the transnational nature of illicit proliferation of SALW requires addressing the issue not only at the national level, but also at the regional level. From the EU perspective, regional support is therefore seen as an adequate response to the threat. In that sense, it should ideally be a 'force multiplier' by strengthening and empowering institutions in recipient areas both

at the regional and national levels, and it should foster the harmonization and coherence of small arms actions taken by states in recipient regions. It is also sometimes pointed out that, as many states are reluctant to recognize that illicit small arms accumulation represents a national problem, outreach and assistance at the regional level provide the most adequate channels to address SALW proliferation.³³

However, experience shows that the successful transfer of these discussions and initiatives to regional forums often relies on the depth of the relationship between states of the recipient region and on the slow development of these, often immature, structures. Furthermore, in spite of the regional perspective, success at the national level ultimately depends on the willingness and capacity of each state to translate the assistance into action.

³² Examples of initiatives at the national level include the financial support to the North Atlantic Treaty Organization Maintenance and Supply Agency (NAMSA) in the demilitarization and destruction of SALW and ammunition in Ukraine. Decision 2005/852/CFSP of 29 November 2005 for the destruction of small arms and light weapons (SALW) and their ammunition in Ukraine, *Official Journal of the European Union*, L315, 1 Dec. 2005.

³³ Rousseau, N., L'UE et les armes légères en Afrique subsaharienne [EU and small arms in sub-Saharan Africa], Groupe de recherche et d'information sur la paix et la sécurité (GRIP) Note d'analyse, 4 Feb. 2011, <<http://www.grip.org/fr/node/142>>.

A significant example is the support granted in 2006 to the Economic Community of West African States (ECOWAS) Small Arms Control Programme (ECOSAP).³⁴ This multi-donor project was intended to strengthen the capacities of ECOWAS and its member states to control small arms (through the support and capacity building of the ECOWAS Small Arms Unit and the setting up of a national commission, or national focal point, and their support to design and implement national action plans on small arms). From the outset, the project faced structural difficulties (such as weaknesses in the initial programme documents and continuing financial management problems) and often competing priorities between the project and the ECOWAS Small Arms Unit. In spite of this and the ‘sometimes mixed or poor results’, the ECOSAP final evaluation team considered that the project had made slow but useful progress, particularly at the national level as national commissions were set up in all ECOWAS member states and national action plans were adopted in seven of them. In this regard, it stressed that ‘although commission members are generally highly motivated and display a certain dynamism, their action very often remains dependent upon both the human and financial investment made by the national authorities’.³⁵ The evaluation concluded that national and regional actors were in ‘a totally midstream position’ and that, with a reorientation of the assistance, further support would be needed to strengthen them so that they could efficiently fulfil their mandate.³⁶ Despite a request in 2010 from the ECOWAS member states to extend ECOSAP, the donors, among them the EU, decided not to prolong their support. Institutional and operational capacity building can be slow and therefore necessitate long-term support to nascent organizations. However, this does not always fit into the donors’ long-term priorities.

The EU’s regional focus is sometimes dictated by the structure for allocation of the EU assistance programmes. The Regional Centre on Small Arms in the Great Lakes Region (RECSA), an intergovernmental organization created to coordinate action on small arms in the Horn of Africa and the Great Lakes region, has received substantial support from the Commission, via the EDF, to strengthen the capacity of civil society

(€500 000 in 2010–12).³⁷ In 2010 the Commission (under the IFS’s ‘Countering global and trans-regional threats’ aspect of its long-term component) entrusted RECSA with an ambitious €3.3 million project for the three-year period 2010–12.³⁸ Because the IFS long-term component requires, among other things, the projects it supports to be ‘trans-regional’, the geographical scope of this pan-African project covers all of sub-Saharan Africa, including areas not under RECSA’s mandate. Although RECSA ensured technical implementation and coordination, the project had to be formally endorsed by the African Union (AU). As a consequence, activities undertaken by RECSA under the AU umbrella sometimes met with reluctance to cooperate from regional organizations in areas outside its original mandate.³⁹ In 2012 the EU granted a €2.7 million three-year extension to the project for the period 2013–16.⁴⁰

In Eastern and South Eastern Europe one of the most significant EU contributions in the field of SALW control is the support provided from 2002 onwards to the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC).⁴¹ Created in 2002, SEESAC was mandated by the United Nations Development Programme (UNDP) and the Stability Pact for South Eastern Europe to act as a main component of the Regional Implementation Plan on Combating the Proliferation and Impact of Small Arms and Light Weapons adopted by the Stability Pact for South Eastern Europe in

³⁷ Council of the European Union, Tenth Progress Report on the implementation of the EU Strategy to Combat Illicit Accumulation and Trafficking of SALW and their Ammunition, 18040/10, 16 Dec. 2010, p. 10; and Representatives of Regional Centre on Small Arms in the Great Lakes Region (RECSA) and sub-Saharan regional organizations, Interviews with author, Mar. and June 2013.

³⁸ Countering global and trans-regional threats is 1 of the 3 aspects of the IFS long-term component. It covers 3 thematic areas: protecting critical infrastructure, countering terrorism and fighting organized crime. Projects to fight illicit proliferation of SALW fall under the latter area. Regional Centre on Small Arms in the Great Lakes Region (RECSA) and European Union, ‘The fight against the illicit accumulation and trafficking of firearms in Africa: first pan African Project on SALW funded by the European Union’, [n.d.], <http://reliefweb.int/sites/reliefweb.int/files/resources/AA97CF00C8B27939492576E700079C74-Full_Report.pdf>.

³⁹ Representatives of Regional Centre on Small Arms in the Great Lakes Region (RECSA) and sub-Saharan regional organizations (note 37).

⁴⁰ Representative of the EEAS Non Proliferation and Disarmament Unit, Interview with author, Aug. 2013.

⁴¹ The original mandate of SEESAC focused only on South Eastern Europe. After revision of its mandate, in 2008, the scope of SEESAC’s activities now covers a wider regional area, including the Caucasus, Central Asia and some East European countries.

³⁴ Council of the European Union (note 16), p. 6.

³⁵ Poitevin, C. and Grega, P., Evaluation of the ECOWAS Small Arms Control Programme (ECOSAP), Final Report, Oct. 2011, p. 16.

³⁶ Poitevin and Grega (note 35), pp. 40–43.

November 2001. SEESAC aims to provide operational support and facilitate the exchange of information on a wide range of areas, including SALW destruction, stockpile management, collection programmes, marking, tracing and record keeping, arms export controls and assistance in formulating national strategies for small arms control. Financial support was provided by the Council in 2002, 2003, 2004 and 2010.⁴² The Council is considering continuation of its support beyond 2013.⁴³

In 2003 and 2006 the Council also supported the UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UNLIREC).⁴⁴ More recently, support has been provided through the IFS long-term component to the Central American Programme on Small Arms Control (CASAC). The purpose is to develop a regional structure and long-term strategy to fight illicit small arms proliferation in the region. Funding for 2011–12 was \$1 million and the initiative was extended to 2013–15 and given €2.3 million in funding. Another programme—‘Countering transnational illicit arms trafficking through the implementation of the

⁴² Council Decision of 21 October 2002 concerning the implementation of Joint Action 2002/589/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of SALW in South East Europe 2002/842/CFSP, *Official Journal of the European Union*, L289, 26 Oct. 2002; Council Decision 2003/807/CFSP of 17 November 2003 extending and amending Decision 2002/842/CFSP concerning the implementation of Joint Action 2002/589/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in South East Europe, *Official Journal of the European Union*, L302, 20 Nov. 2003; Council Decision 2004/791/CFSP of 22 November 2004 extending and amending Decision 2002/842/CFSP implementing Joint Action 2002/589/CFSP with a view to a European Union’s contribution to combating the destabilising accumulation and spread of SALW in South East Europe, *Official Journal of the European Union*, L348, 24 Nov. 2004; and Council Decision 2010/179/CFSP of 11 March 2010 in support of SEESAC arms control activities in the Western Balkans, in the framework of the EU Strategy to combat the illicit accumulation and trafficking of SALW and their ammunition, *Official Journal of the European Union*, L80, 26 Mar. 2010.

⁴³ Representative of the EEAS Non Proliferation and Disarmament Unit (note 40).

⁴⁴ Council Decision 2003/543/CFSP of 21 July 2003 concerning the implementation of Joint Action 2002/589/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Latin America and the Caribbean, *Official Journal of the European Union*, L 185, 24 July 2003; and Council Decision 2006/1000/CFSP of 11 December 2006 concerning the implementation of Joint Action 2002/589/CFSP with a view to a European Union contribution to combating the destabilising accumulation and spread of small arms and light weapons in Latin America and the Caribbean, *Official Journal of the European Union*, L367, 22 Dec. 2006.

UN Convention against Transnational Organized Crime (UNTOC) and the Firearms Protocol, and through capacity building’—promotes the ratification and implementation of the Firearms Protocol, in combination with capacity building of law enforcement agencies and civil society organizations in the Caribbean, Latin America and West Africa.

At the global level, an interesting recent project was launched under the IFS long-term component: the creation and development of ‘iArms’, a centralized database for tracing and tracking stolen and lost firearms, which is implemented and executed by Interpol. The 2011–12 project, with €699 937 in funding, aims to facilitate information exchange and investigative cooperation between law enforcement agencies in relation to the international movement of illicit firearms, and licit firearms that have been involved in the commission of a crime. The 2013–14 extension of the initiative aims to develop the database and launch outreach activities in selected countries in the Caribbean, Latin America and West Africa, and has been allocated €1.5 million

In June 2013 the Council adopted a decision to assist the Libyan Government in strengthening the physical security and stockpile management (PSSM) of state-held SALW and ammunition.⁴⁵ The length of the project and the funds allocated for its implementation are exceptional in comparison with previous EU commitments as it provides the framework for a five-year project, co-financed by the EU (€5 million) and the German Federal Foreign Office (€1.6 million), and implemented by the German Agency for International Cooperation. This approach has seemingly been favoured because of the gravity of the situation in Libya rather than because the EU intends to resume projects similar to EU ASAC, whose time frame, relevance and timeliness ensured greater sustainability and ownership by the local partners, thereby increasing the chance of having a positive impact on human security.

Mainstreaming small arms and light weapons in broader peace and security initiatives

Under the SALW Strategy, the EU has actively sought to mainstream the issue of small arms also in broader

⁴⁵ Council Decision 2013/320/CFSP of 24 June 2013 in support of physical security and stockpile management activities to reduce the risk of illicit trade in small arms and light weapons (SALW) and their ammunition in Libya and its region, *Official Journal of the European Union*, L173, 26 June 2013.

initiatives, including those related to arms export control in third countries and development cooperation programmes and agreements. The EU has been engaged in conventional arms export control outreach activities, mostly in neighbouring countries in Eastern and South Eastern Europe, to promote alignment with the EU Common Position on Arms Exports. Such programmes typically provide opportunities for experts from participating states to discuss their practices related to the export control of conventional weapons, including SALW and their ammunition.⁴⁶

At another level, the European Court of Justice reaffirmed in 2008 that ‘certain measures aiming to prevent fragility in developing countries, including those adopted in order to combat the proliferation of small arms and light weapons, can contribute to the elimination or reduction of obstacles to the economic and social development of those countries’.⁴⁷ Thus, in recent years the European Commission has launched and supported various development cooperation initiatives, which include a small arms component to some extent, mainly through its geographical instruments. For instance, the Cotonou Partnership Agreement, signed in June 2000 and revised in 2010, defines the general framework of trade relations and development aid from the EU to the ‘African, Caribbean and Pacific Group of States’. The EDF also funds various five-year plans for different areas. Article 11 of the Cotonou Partnership Agreement stresses focusing on combating the use of landmines and the spread, illegal trafficking, and excessive and uncontrolled accumulation of SALW.⁴⁸ Examples of SALW-related programmes financed through the EDF include the ‘Conflict prevention and peace building’ project (€5.5 million) in West Africa, which aims to increase ECOWAS’s strategic and management

capacity in order to fulfil its mandate in the area of peacebuilding and conflict prevention in a durable way. Among its expected results was increasing the capacity of ECOWAS in the area of small arms control (€1.45 million in 2008–10). A similar programme, ‘Conflict prevention, management and resolution in the Eastern and Southern Africa region’ was launched in 2008 and ended in 2012. One of its three components (€2.8 million of a total of €10 million in funding) was the reinforcement of the regional capacity to fight arms trafficking and arms proliferation in the East African Community (EAC).⁴⁹

The complementarity of assistance projects that specifically focus on SALW with broader development cooperation and human security initiatives is a crucial aspect of the European policy to fight SALW proliferation. Indeed, illicit circulation of small arms is both a cause and a manifestation of armed violence. Fighting SALW proliferation requires not only addressing issues strictly related to small arms, but also, perhaps more importantly, tackling underlying factors that may be feeding the demand for arms, such as the inadequate capacities of relevant institutions, corruption, the absence of rule of law, and economic, social and cultural factors. In that sense, timely and relevant support has been provided to ECOWAS to develop peace and security capacity in the field of conflict prevention, early-warning mechanisms, cooperation with civil society organizations, and political and diplomatic actions.⁵⁰ The provision of technical expertise, specifically in the field of SALW, is also included. More importantly, the support assists Central African states in laying the foundation of a more robust and efficient regional organization that might serve as a forum to solve regional peace and security issues, including those related to SALW control. Indeed, in the absence of such an organization and without sufficient political will from its member states, the Kinshasa Convention, the regional SALW control instrument, is unlikely to be fully endorsed and

⁴⁶ For perspective on this issue see Holtom, P. and Mičić, I., ‘European Union arms export control outreach activities in Eastern and South Eastern Europe’, Non-proliferation Papers no. 14, EU Non-proliferation Consortium, Apr. 2012, <<http://www.nonproliferation.eu/activities/activities.php>>.

⁴⁷ European Court of Justice, Judgment of the Court (Grand Chamber) of 20 May 2008, Commission of the European Communities versus Council of the European Union, Action for annulment, Article 47 European Union Common foreign and Security Policy, Decision 2004/833/CFSP, Implementation of Joint Action 2002/589/CFSP, Combating the proliferation of small arms and light weapons, Community competence, Development cooperation policy, Case C-91/05.

⁴⁸ Cotonou Partnership Agreement, signed in Cotonou on 23 June 2000, revised in Luxembourg on 25 June 2005, revised in Ouagadougou on 22 June 2010, Article 11, para. 3a.

⁴⁹ Some of the expected results are reinforced cooperation among security agencies to investigate and prosecute illicit arms dealers, the development of cooperation mechanisms, the establishment of mechanisms for monitoring the movement of illicit small arms, and support to institutional and capacity development in fighting arms trafficking and SALW.

⁵⁰ The first *Projet d’Appui en matière de Paix et Sécurité* (PAPS action) ended in June 2011 (€5.5 million) and a 3-year follow-up PAPS II started in Jan. 2012 (€3 million).

Box 3. Initiatives to fight trafficking inside the European Union

No EU member state currently experiences armed conflict within its territory and the level of armed violence remains low in Europe compared to many other regions of the world.^a According to Europol, the market for illicit firearms in the EU remains modest in size and stable: ‘Trafficking occurs on a small scale and the weapons trafficked are intended for either personal use or to meet specific orders’. In Europe, the Western Balkans and former Soviet Union countries remain the primary sources of weapons that are used in criminal activities.^b Outside Europe, Libya is now identified as a source of illicit firearms for the European black market but the precise scope of this trend is unknown.^c Weapons coming from these regions are generally referred to as ‘heavy weapons’; many of them, such as automatic and semi-automatic assault rifles and explosive devices, originate from military stockpiles and fall under the European definition of ‘military’ small arms (see box 1). Other main sources of illegal weapons identified by Europol include ‘the reactivation of neutralised weapons; burglaries and thefts; embezzlement of legal arms, legal arms sold in the illegal market; firearms retired from service by army or police; [and] the conversion of gas pistols’.^d

The legal trade and circulation of civil firearms within the EU’s borders is regulated by the 1991 Directive on control of the acquisition and possession of weapons (Firearms Directive). Initially designed to facilitate intra-community movement of civilian firearms, the directive was reviewed and amended in 2008 to take into account the UN Protocol on Firearms.^e The 2008 Firearms Directive goes beyond the provisions of the protocol in many areas, including the requirements for marking weapons and keeping records of information on firearms in national computerized databases for at least 20 years. The directive even regulates the marking of ammunition lots, an aspect not covered by the protocol.^f These provisions create the conditions for a more efficient and coordinated effort by EU member states to trace illicit firearms and identify arms trafficking patterns within the borders of the EU, and even outside the EU. In addition, the directive supplements the lack of commitment showed by EU member states to ratify the UN Protocol on Firearms.

Recently, the Commission has launched a concerted initiative to address the illicit trafficking of firearms at the European level. This action, under the supervision of the Directorate-General Home Affairs and in strong cooperation with the Directorate-General Enterprise and Industry, has already resulted in several actions. In March 2013 the Commission put forward a proposal for a Council decision to conclude ratification of the UN Protocol on Firearms on behalf of the EU.^g The adoption of the decision would bind all the EU member states to the UN instrument’s provisions—only 14 EU members are contracting parties to the protocol.^h An expert group on measures against illicit trafficking in firearms to safeguard the EU’s internal security (the Firearms Expert Group) was set up in 2013 to help the Commission prepare legislative measures and policy initiatives and to monitor the evolution of the policy.ⁱ The group’s first meeting will take place in December 2013. In addition, the fight against illicit trafficking of firearms has been identified for the first time as a priority by EU member states and the Commission for the next policy cycle (2014–17) of the Standing Committee on Operational Cooperation on Internal Security (COSI), whose mandate is to facilitate, promote and strengthen the coordination of EU states’ operational actions in the field of internal security.^j In October 2013 the Commission presented a communication entitled ‘Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking’ on how to limit the threat of illicit firearms to the EU’s internal security.^k The communication put forward several propositions, including a revision of the Firearms Directive for 2015, a proposal for a directive to harmonize penal sanctions, and the establishment of an EU standard on marking. In addition to those measures, the communication also stressed that initiatives related to fighting the illicit trafficking of firearms outside the EU’s borders may have a positive impact on security within the EU. It emphasized that these measures must be complementary to existing structures and initiatives on external action and would be jointly elaborated with the European External Action Service. They may include police cooperation, through training and joint operations, with countries in the neighbourhood of the EU (particularly, Eastern and South Eastern Europe and North Africa).^l

^a See e.g. Small Arms Survey, ‘Tracking national homicide rates: generating estimates using vital registration data’, *Armed Violence Issue Brief*, no. 1 (Nov. 2012), pp.2–5.

^b Europol, EU Serious and Organised Crime Threat Assessment (SOTCA) 2013, 19 Mar. 2013, <<https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta>>, p. 31.

^c Representative of the European Commission Directorate-General Home Affairs, Interview with author, 4 Sep. 2013.

^d Europol (note b), p. 31.

^e Directive 2008/51/EC of the European Parliament and of the Council of 21 May 2008 amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons, *Official Journal of the European Union*, L179, 8 July 2008.

^f Directive 2008/51/EC (note e), Article 2, paras 2 and 4. For an in-depth analysis of the 2008 Directive see Berkol, I., ‘Protocole des Nations unies sur les armes à feu : état de son application et mise en œuvre dans l’Union européenne’ [UN Firearms Protocol: Enforcement Status and Implementation in the European Union], Groupe de recherche et d’information sur la paix et la sécurité (GRIP) Note d’analyse, 11 Apr. 2008.

^g European Union Commission, Proposal for a Council Decision on the conclusion, on behalf of the European Union, of the 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, Mar. 2013.

^h On 8 Nov. 2013, 14 of the 28 EU member states ratified the UN Protocol on Firearms: Belgium, Bulgaria, Croatia, Cyprus, Estonia, Italy, Latvia, Lithuania, the Netherlands, Poland, Romania, Slovakia, Slovenia and Spain.

ⁱ Commission decision of 11 April 2013 setting up an expert group on measures against illicit trafficking in firearms to safeguard the EU's internal security ('the Firearms Expert Group'), *Official Journal of the European Union*, C107, 13 Apr. 2013.

^j Council conclusions on the creation and implementation of a EU policy cycle for organised and serious international crime, 3043rd Justice and Home Affairs Council meeting, Brussels, 8 and 9 Nov. 2010.

^k European Commission, Communication from the Commission to the Council and the European Parliament, Firearms and the internal security of the EU: protecting citizens and disrupting illegal trafficking, Com(2013) 716 final, 21 Oct. 2013.

^l Representative of the European Commission Directorate-General Home Affairs (note c); and Communication from the Commission to the Council and European Parliament (note k), p. 16.

implemented by the countries of the region in the near future.⁵¹

IV. EUROPEAN UNION SMALL ARMS AND LIGHT WEAPONS EXPORT CONTROL POLICIES AND RELATED INITIATIVES

Over the course of the past decade, the EU has also adopted a set of measures aimed at controlling international transfers of conventional weapons (including SALW and ammunition). Indeed, controlling the legal trade in SALW and, if necessary, blocking the transfer of weapons which may be diverted to illicit users or used to trigger or perpetuate armed violence represent preventive tools in the fight against illicit proliferation. Both are also much more cost-effective ways to prevent and stop armed violence than establishing a posteriori crisis management operations and assistance programmes (see box 3).

This concern is reflected in the principles and the plan of action set out in the 2005 Strategy. Calling for the EU to strengthen its export control policies, that document noted the importance to 'ensure that the 2002 Joint Action is implemented' and to 'promote implementation by the member states of the EU's 2003 Common Position on brokerage, and harmonised application of the Code of Conduct on Arms Export'. It also sought the establishment of 'mechanisms approved by the member states for the exchange of information on SALW trafficking networks' and 'the development, via Europol, Eurodouanes and Eurojust, of a policy for actively combating illicit networks trafficking in SALW . . . using the EU's air, sea and land

⁵¹ Central African Convention for the Control of Small Arms and Light Weapons, their Ammunition and all Parts and Components that can be used for their Manufacture, Repair or Assembly, adopted 30 Apr. 2010, will enter into force '30 days after the date of deposit of the sixth instrument of ratification'. For current status see <http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-7&chapter=26&lang=en>.

space'.⁵² Additionally, it called for better coordination and cooperation within EU institutions that deal with SALW issues, particularly between the Council and the Joint EU Situation Centre 'to promote the collection and circulation of information and intelligence from the member states'.⁵³

This section briefly presents the most recent small arms export figures from the EU member states. It then details the main instruments adopted by the EU to regulate international transfers of SALW and the extent to which their implementation concurs with the implementation of the 2005 Strategy. It argues that the level of coordination between these initiatives and the strategy is poor and uneven, hindering their shared common objectives of fighting SALW proliferation. Indeed, today export controls remain a national prerogative and there is no indication that EU member states systematically take into account the potential impact of their exports on countries and regions that benefit from SALW-related assistance and development cooperation programmes initiated or supported by the EU.

Exporting small arms and light weapons worldwide

According to the most recent estimates, several EU member states rank among the main global exporters of SALW and ammunition, which makes the EU as a whole a major player in the authorized trade in small arms. Between 2001 and 2008 Austria, Belgium, Germany and Italy were listed as 'top exporters' (having exported \$100–499 million annually). The Czech Republic, Finland, France, Spain, Sweden and the United Kingdom were categorized as

⁵² Council of the European Union, Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (note 1), p. 13.

⁵³ Council of the European Union, Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (note 1), p. 15.

'major exporters' (having exported \$50–99 million annually).⁵⁴ Figures from the most recent EU annual Council Working Group on Conventional Arms Exports (COARM) reports show that each year EU member states grant export licences for small arms only (excluding light weapons and ammunition for SALW) at an average amount of €1.033 million in 2007–11 (3.04 per cent of the financial value of all export licences delivered).⁵⁵ From a quantitative point of view, European SALW exports seem consistent with the objectives and priorities of the EU's SALW Strategy. The main destinations of small arms export are North America (50.21 per cent). EU member states themselves account for 11.53 per cent. Most regions which fall under the scope of the SALW Strategy represent only a marginal share of EU small arms exports. Sub-Saharan Africa, the main focus of the strategy, represents 1.57 per cent of EU exports, while other European countries and Central America and the Caribbean account for 6.17 per cent and 2.62 per cent of the total, respectively.⁵⁶ The only noticeable exception is the Middle East, whose market share represents more than a seventh of the EU's small arms exports (13.63 per cent). However, these figures do not cover light weapons and ammunition for SALW, which cannot be disaggregated in EU arms export controls.⁵⁷ Furthermore, the financial value of small arms transfers only shows part of the picture: in fact, when it comes to this type of weapon, it is not necessary for the amounts involved to be huge for the

consequences of the transfer to be significant. One example is the export, in 2008, by the Czech Republic of 20 000 assault rifles to the Sri Lankan Government, although it was involved in an extensive civil war with the Liberation Tigers of Tamil Eelam (LTTE) that affected a major part of the population. Although this transfer represented only a modest financial amount (approximately €7.3 million), it had the potential to have a major impact on the Sri Lankan population.⁵⁸

Regulating small arms and light weapons international transfers

Recent decades have been characterized by significant efforts by the EU to strengthen and harmonize its member states' conventional arms (including SALW and their ammunition) export policies. The most important instruments are the arms embargoes and the 1998 Code of Conduct on Arms Exports that was replaced by the 2008 Common Position on Arms Exports.⁵⁹

Arms embargoes are used by the EU as a means to change the behaviour patterns of states or other entities. They intend 'to stop the flow of arms and military equipment to conflict areas or systems which may be used to for internal repression or aggression against a foreign country'.⁶⁰ EU arms embargoes typically cover at least all items of the EU common military list and therefore include SALW and their ammunition. Although the member states unanimously agree to impose arms embargoes on specified end users or destinations by way of regulation, the translation and the implementation of this decision remains a national prerogative. As a decision by Cypriot authorities to release a Russian ship loaded with ammunition and purportedly en route to war-torn Syria illustrates, the absence of mechanisms of monitoring and verification prevent any suspicion of an EU arms embargo violation from being independently

⁵⁴ Small Arms Survey, 'Small arms transfers: exporting states', Small Arms Survey Research Notes no. 11 (Oct. 2011). Seven other current or future EU member states were listed as having exported \$10–49 annually: Bulgaria, Croatia, the Netherlands, Poland, Portugal, Romania and Slovakia.

⁵⁵ EU Council, Tenth annual report according to operative provision 8 of the European Union Code of Conduct on Arms Exports, 2008/C 300/01, *Official Journal of the European Union*, C300, 22 Nov. 2008. EU Council, Eleventh, twelfth, thirteenth and fourteenth annual reports according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, 2009/C 265/01, 2011/C 9/01, 2011/C 382/01 and 2012/C 386/01 are available at European External Action Service, <http://www.eeas.europa.eu/non-proliferation-and-disarmament/arms-export-control/index_en.htm>. These figures only cover small arms (category ML1 of the EU Common Military List). Light weapons fall in the ML2 category and ammunition for ML1 and ML2 fall in the ML3 category. Both ML2 and ML3 also contain significant elements of non-SALW. Council of the European Union, Common military list of the EU adopted by the Council on 11 Mar. 2013, CFSP, 2013/C 90/01.

⁵⁶ The EU categorization 'other European countries' include Eastern and South Eastern European countries and countries such as Andorra, Iceland, Liechtenstein, Norway, Switzerland etc.

⁵⁷ See note 55.

⁵⁸ Vranckx, A. (ed.), *Rhetoric or Restraint? Trade in Military Equipment under the EU Transfer Control System* (Academia Press: Ghent, 2010), pp. 48–49.

⁵⁹ Council of the European Union, 'European Union Code of Conduct on Arms Exports', 8675/2/98 Rev 2, 5 June 1998; and Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment, *Official Journal of the European Union*, L335, 13 Dec. 2008.

⁶⁰ European External Action Service, 'Sanctions or restrictive measures', spring 2008, <http://eeas.europa.eu/cfsp/sanctions/index_en.htm>, p. 4.

investigated and formally discussed and evaluated collegially among member states.⁶¹

The main objectives of the 2008 Common Position on Arms Export are ‘to set high common standards which shall be regarded as the minimum for the management of, and restraint in, transfers of military technology and equipment by all Member States’ and ‘reinforce cooperation and to promote convergence’ in that field.⁶² In practice, the Common Position does not harmonize the export practices of its member states. While it establishes common criteria that have to be taken into account by EU member states when evaluating an export licence for conventional weapons (including SALW and their ammunition), the room for interpretation of all eight criteria is still very broad. It has resulted in 28 different export practices, despite the guidelines provided by the User’s Guide to the Common Position.⁶³ Regularly, academia and NGOs report discrepancies or differences between national policies of the EU member states and exports to ‘sensitive’ countries (in terms of respect of human rights and the risk of unauthorized diversion of exported arms) or even to countries that are under an EU sanctions regime.⁶⁴ Moreover, notwithstanding a reference to the 2002 Joint Action and the 2005 SALW Strategy in the Common Position’s preamble, member states occasionally authorize exports that may contribute to the illicit proliferation of small arms and have dramatic consequences for human security in the country of destination. Incidentally, they may also have an adverse impact on assistance and development cooperation programmes provided by the EU in the country of destination and in neighbouring countries.

⁶¹ Grove, T. and Kambas, M., ‘Russian-operated ship with bullets reaches Syria’, Reuters, 13 Jan. 2012, <<http://www.reuters.com/article/2012/01/13/syria-russia-ship-idUSL6E8CD4DD20120113>>. For an analysis of EU arms embargoes see Moreau, V., ‘Les embargos sur les armes de l’Union européenne. Des mesures symboliques?’ [European Union arms embargoes: symbolic measures?], Groupe de recherche et d’information sur la paix et la sécurité (GRIP) Note d’analyse, June 2012.

⁶² Council Common Position 2008/944/CFSP (note 59).

⁶³ Council of the European Union, User’s Guide to Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, 9241/09, 29 Apr. 2009, <<http://register.consilium.europa.eu/pdf/en/09/st09/st09241.en09.pdf>>.

⁶⁴ See e.g. Vranckx, A. (ed.), *Rhetoric or Restraint? Trade in Military Equipment under the EU Transfer Control System* (Academia Press: Gand, 2010); and Isbister, R., Slijpers, F. and Vranckx, A. (eds), *Lessons from MENA. Appraising EU Transfers of Military and Security Equipment to the Middle East and North Africa* (Academia Press: Gand, 2011).

Another significant initiative is the 2003 Common Position on the Control of Arms Brokering.⁶⁵ The main objective of this instrument is to avoid circumvention of EU, OSCE or UN embargoes on arms exports, and of the EU Common Position on Arms Exports by way of brokering activities.⁶⁶ Arms brokers are individuals or entities that organize and facilitate transfers of military equipment. Although brokering activities can be carried out in a legal framework, brokers sometimes operate with impunity by taking advantage of the weaknesses of, and the differences between, national laws and control regimes. SALW are frequently transferred by way of such illicit transactions, which originate from, or are destined to, countries affected by armed violence. Ten years after the adoption of the Common Position, significant differences remain between the 24 control regimes that currently comply with the instrument.⁶⁷ These differences may have adverse consequences on both the quality and efficiency of brokering controls. Indeed, loopholes and differences can facilitate illegal arms brokering activities as brokers operate from countries where controls are poor or non-existent. Furthermore, with the notable exception of the UK, there is little evidence of EU member states investigating and prosecuting individuals and companies that are involved in illicit brokering activities.⁶⁸

The effectiveness of these export control instruments relies on the willingness and the capacities of the member states to transpose and implement them at the national level. In addition, the lack of coordination of arms export controls at the EU level continues to limit the convergence of these policies and their consistency with the objectives of the strategy against the proliferation of SALW. At present, no member state is prepared to delegate part of its decision-

⁶⁵ Council of the European Union, Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering, *Official Journal of the European Union*, L156, 25 June 2003.

⁶⁶ Council of the European Union (note 65), pp. 79–80.

⁶⁷ Tricot O’Farrell, K., ‘Arms brokering controls: how are they implemented in the EU?’, Groupe de recherche et d’information sur la paix et la sécurité (GRIP) Rapport du GRIP, Aug. 2013, <http://www.grip.org/sites/grip.org/files/RAPPORTS/2013/Rapport_2013-2_EN.pdf>. Luxembourg is the only country that has yet to adopt a law on the control of military arms brokering. In addition, 3 states, Belgium, France and Italy, still need to ensure the compliance of their national regulations with all the requirements of EU legislation.

⁶⁸ ‘Over the past 5 years the UK government have launched at least 11 successful prosecutions relating to violations of national transfer controls, including at least two cases involving transfers of SALW’. Bromley, M., Proposals to prevent the further proliferation of SALW, Presentation to the European Parliament Public Hearing, 29 May 2012.

making power to the EU. The issue of arms trade, and particularly of SALW and their ammunition, exposes contradictions between, on the one hand, the economic and political interests of the member states that are producers and exporters and, on the other hand, the common European rhetoric on the fight against SALW proliferation. The case of small arms exports to Libya in the years prior to the 2011 uprising provides a concrete illustration of these tensions. It reminds EU member states that a consistent policy against the proliferation of SALW starts with strict control at the beginning of the supply chain: namely, control over legal transfers. Inconsistent EU SALW export controls may contribute to the illicit proliferation of small arms and have dramatic consequences for human security in the country of destination and, incidentally, may also have an adverse impact on assistance and development cooperation programmes provided by the EU in the country of destination and in neighbouring countries. The lifting of the EU arms embargo in October 2004 gave hope to many European arms companies that Libya would be a promising market because of its need to modernize and replace large quantity of its conventional arsenal. Between the lifting of the embargo and the end of 2008, more than 300 export licences to Libya were granted by EU member states for a total of €492 million. However, exports of SALW and their ammunition seemed to be a 'red line' for EU member states: only 14 licences at a value of €292 012 had been granted for weapons under the ML1 category of the EU common military list (i.e. small arms); 1 licence for €5007 for the ML2 category, which covers light weapons and also larger calibre weapons; and 7 licences for €2 368 907 for the ML3 category, which includes ammunition for SALW and for other types of weapons. Moreover, in 2008 the UK denied a brokering licence for a UK-based intermediary that sought to facilitate the import of 130 000 Kalashnikov automatic rifles from Ukraine to Libya's Ministry of Defence (MOD). The UK's embassy in Tripoli expressed concern that the weapons may be diverted to either the governments or armed rebel factions in Chad and Sudan.⁶⁹ Furthermore, consistent evidence exists that, in previous years, arms originating from Libya's stockpiles have been repeatedly found in the hands

⁶⁹ UK denies licence for export of Kalashnikovs to Libya; GOL potentially seeking alternative sellers, Cable 08TRIPOLI868 from the United States Embassy in Tripoli, 6 November 2008, <<http://wikileaks.tetlab.org/mobile/classification/confidential.html#/mobile/cables/08TRIPOLI868.html>>.

of warring parties in sub-Saharan African countries under international arms embargoes, including Chad, Liberia, Sierra Leone, Somalia and Sudan. However, in 2009, in spite of the other member states' reservations and the diversion track record of the Libyan Government, small arms were exported from Belgium and Italy to the Libyan MOD.⁷⁰ The significant risk that the exported small arms (or the ones that replaced the new acquisition) would be diverted to unauthorized and illicit end users in sub-Saharan Africa, which is the priority area for EU small arms assistance, did not seem of particular concern to the licensing authorities in both states.⁷¹ Two years later, in 2013, the EU Council decided to dedicate €5 million to support PSSM activities to reduce the risk of illicit trade in SALW, acknowledging that 'the uncontrolled spread of SALW and ammunition has fuelled insecurity in Libya, in neighbouring countries and in the broader region, exacerbating conflict and undermining post-conflict peace building and, thus, posing a serious threat to peace and security'.⁷² As far as arms exports are concerned, no coordinated and structured policy or strategy relating to this specific and essential aspect of the fight against the proliferation of SALW currently exists.

Arming non-state actors in Libya and Syria: a reality check for the 2005 SALW Strategy?

The intervention of third states in theatres of conflict through the transfer of weapons to non-state actor was particularly used during the cold war.⁷³ This practice of providing weapons to non-state actors

⁷⁰ The €11.5 million Belgian contract was signed in 2008 and included 367 FN 5-7 pistols, 50 FN HP Renaissance pistols, 367 FN P-90 submachine guns, 367 FN F2000 assault rifles, and 30 FN Minimi light machine guns, as well as 2000 FN303 semi-automatic less-lethal riot guns. Spleeters, D., reporter, Interview with author, 4 Oct. 2013. The Italian delivery consisted of 7500 semi-automatic Beretta PX4 Storm pistols, 1900 semi-automatic Beretta CX4 Storm rifles, and 1800 M4 Super 90 shotguns manufactured by Benelli. Santopinto, F., *Le contrôle du commerce des armes par l'UE. Un cas emblématique venu de Libye* [EU arms export control: the case of Libya], Groupe de recherche et d'information sur la paix et la sécurité (GRIP) Note d'analyse, June 2011, <http://www.grip.org/sites/grip.org/files/NOTES_ANALYSE/2011/NA_2011-06-07_FR_F-SANTOPINTO.pdf>, p.5.

⁷¹ Later, in the run-up to the Libyan uprising and the loss of control of the government stockpiles, the Belgian and Italian weapons were spotted in the hands of rebel forces and some of them are now in circulation in the Libyan population and still potentially able to contribute to insecurity in the country and abroad. Spleeters (note 70).

⁷² Council Decision 2013/320/CFSP (note 45), p. 1.

⁷³ Smith, C., 'Weapon transfers to non-state armed groups', United Nations Institute for Disarmament Research (UNIDIR), Disarmament Forum: Engaging non-state armed groups, no. 1 (2008), p. 46.

has persisted after the end of the cold war, although supplying governments now prefer to justify such decisions by using the principles of ‘responsibility to protect’, ‘human security’ and ‘extreme cases’.⁷⁴ Although justifications change over time, the risks related to transferring arms to non-state actors remain unchanged. Such actions almost systematically tend to favour the destabilization of a government or a regime change by providing non-state actors with the means to trigger or perpetuate violence. Due to loose or sometimes inexistent command structures, non-state actors often are unable to effectively secure and control their weapon stockpile. This situation dramatically increases the short- and long-term risk of diversion of transferred weapons, particularly SALW, to unauthorized end users.⁷⁵ These elements explain why refraining from arming non-governmental actors is one of the major principles of the EU’s policy to fight illicit proliferation of SALW. The 1998 Joint Action and its amended 2002 version stipulate that the EU shall seek to build consensus in international and other relevant forums on ‘a commitment by exporting countries to supply small arms only to governments (either directly or through duly licensed entities authorised to procure weapons on their behalf) in accordance with appropriate international and regional restrictive arms export criteria, as provided in particular in the EU code of conduct, including officially authorised end-use certificates or, when appropriate, other relevant information on end-use’.⁷⁶ The 2005 SALW Strategy reiterated this common stance of the EU member states.⁷⁷

However, during the conflicts in both Libya and Syria, this common position was ignored by some member states, which clearly stated their intention to arm non-state actors facing repressive regimes. In June 2011, while the regime of Muammar Gaddafi was slowly regaining control of parts of its territory from the rebel forces, the French Government decided

⁷⁴ Farhat, L. and Senora, J., *Acquisitions d’armes par les acteurs non étatiques—Pour une régulation plus stricte? [Arms acquisition by non-state actors: for a stronger regulation?]*, Groupe de recherche et d’information sur la paix et la sécurité (GRIP) Note d’analyse, Nov. 2011, <http://www.grip.org/sites/grip.org/files/NOTES_ANALYSE/2011/NA_2011-11-04_FR_J-SENIORA.pdf>, p. 7.

⁷⁵ Farhat and Senora, (note 74), p. 7.

⁷⁶ Joint Action 1999/34/CFSP of 17 December 1998 (note 1), Article 3.b.

⁷⁷ Council of the European Union, *Strategy to combat illicit accumulation and trafficking of SALW and their ammunition* (note 1), p. 10.

to airdrop in rebel zones ‘arms and ammunition several times, including assault rifles, machine guns and rocket-propelled grenades and launchers’.⁷⁸ While France officially presented the operation as the supply of ‘defensive weapons to civil population because we consider that they are under threat’, officials anonymously acknowledged that ‘it was meant to help break the stalemate in Libya’.⁷⁹ In early 2013, as the conflict was raging in Syria between the government and rebels groups, division grew among EU member states about sending arms to the Syrian anti-government factions. Again, France and the UK advocated such a move in order to give the civilian population the means to protect themselves and to turn the tide of the conflict.⁸⁰ The other EU member states stressed the risks of arming the Syrian rebellion, owing to the illicit proliferation and diversion of weapons in Syria and the whole region, increased Russian arms transfers to the Bashar al-Assad regime, inadequate use and storage of weapons, the escalation of the armed violence, and so on. This sharp disagreement among EU member states led to the lifting, on 1 June 2013, of the arms embargo on Syria that had been in place since 2011. While the vast majority of the EU member states opposed this major shift in EU policy, they assented in order to preserve the other set of restrictive measures (financial, economic etc.) on Syria.⁸¹ But at the same time, several member states, including Austria, Belgium, the Czech Republic, Finland, the Netherlands, Romania and Sweden, immediately declared that they had no intention of arming the Syrian rebels.⁸² In July 2013, two months after the lifting of the embargo, the UK reversed its stance, citing strategic considerations and concerns about the

⁷⁸ Jolly, D. and Fahim, K., ‘France says it gave arms to the rebels in Libya’, *New York Times*, 29 June 2011.

⁷⁹ ‘Des avions français ont parachuté au sud de Tripoli des armes légères destinées à la rébellion pour l’aider’ [French planes parachuted light weapons south of Tripoli to help the rebels], France 2, 1 July 2011, <http://www.francetvinfo.fr/monde/proche-orient/des-avions-francais-ont-parachute-au-sud-de-tripoli-des-armes-legeres-destinees-a-la-rebellion-pour-l-aider_225935.html>. See also Jolly and Fahim (note 78).

⁸⁰ Erlanger, S., ‘Seeking to aid rebels in Syria, France urges end to arms embargo’, *New York Times*, 14 Mar. 2013.

⁸¹ Without an agreement, all EU measures against Syria, including asset freezes and travel bans, would have expired on 1 June 2013. See also Traynor, I., ‘UK forces EU to lift embargo on Syria rebel arms’, *The Guardian*, 28 May 2013; and De Groof, M., ‘La levée de l’embargo européen sur les armes destinées à la Syrie: quelles implications?’ [The lifting of the European arms embargo for Syria: what implications?], RTBF Opinions, 29 May 2013, <<http://www.grip.org/fr/node/902>>.

⁸² Traynor (note 81).

risk of proliferation.⁸³ Despite persistent contradictory rumours in the press, no evidence exists of the UK's having supplied arms to Syria. France announced in mid-September that it favoured sending arms to the Free Syrian Army, but only 'with a number of States and a framework which can be controlled', in order to prevent the weapons falling into the hands of Islamist groups.⁸⁴ As of late October 2013 there had not yet been an official declaration that French arms transfers had occurred, although several sources reported French arm transports to Syria, even before the arms embargo was lifted.⁸⁵

In both situations—in 2011 in Libya and in 2013 in Syria—there was little indication that the EU member states explicitly referred to their common commitment not to send weapons to non-state actors: namely, the 2002 Joint Action, which is a legally binding instrument, and the SALW Strategy. Reference was often made to the risk of diversion of the transferred weapons by countries that opposed the lifting of the arms embargo. EU member states also failed to highlight the potential danger posed by this risk of diversion to other initiatives and commitments made under the SALW Strategy in the countries and regions neighbouring Libya and Syria. All in all, these actions strongly bring into question the level of priority given by the EU and its member states to the fight against the illicit proliferation of SALW when other interests are at stake.

V. CONCLUSIONS AND RECOMMENDATIONS

The European Union brings a major and undeniable contribution to fighting the illicit trade in SALW and its consequences in many parts of the world. The EU's 2005 SALW Strategy has allowed for more coherent and structured action by the EU, particularly with respect to the assistance and support it provides to control small arms and to the inclusion of small arms concerns in broader EU peace and security initiatives. However, there is little evidence that the EU and its member states have made concerted and coordinated

efforts to strengthen their SALW export control policies with the particular aim of preventing illicit small arms proliferation, notably in or towards regions prioritized by the SALW Strategy. Particular cases of small arms exports to the Libyan Government in 2009 bring into question the extent to which the objectives of the strategy and the initiatives to fight illicit proliferation are taken into account in the evaluation of export licences to sensitive countries. The decision by some EU member states to supply small arms to non-state actors in Libya and consideration of doing the same thing in Syria further call into question the actual level of priority given by the EU to the fight against small arms proliferation.

The 2005 EU SALW Strategy was not elaborated and adopted in a vacuum. It was intended to define an EU integrated plan of action to fight illicit proliferation of SALW, among other things, on the basis of the EU security priorities set out in the 2003 ESS, the assessment of the regions and thematic areas in most pressing need of assistance, and also the EU institutional architecture at the time. Circumstances may have changed to varying degrees since then. Indeed, recent developments at the international level, such as the adoption of the ATT and major security changes in regions close to the EU (particularly, the Middle East, North Africa and the Sahel) and at the EU level (most notably the creation of the EEAS and the adoption in October 2013 of a communication on firearms and the internal security of the EU), should encourage the EU and its member states to comprehensively review and update the 2005 SALW Strategy.

The following sections offer recommendations on areas to address or consider in the event of a review of the EU's Strategy on SALW.

Conduct a comprehensive assessment of past European Union initiatives against the proliferation of small arms and light weapons

The adoption of the 2005 SALW Strategy provided for one single document integrating already existing EU policies and initiatives to fight the illicit proliferation of small arms. It also clarified the objectives pursued by the strategy and a general, yet targeted, plan of action. To date, although specific initiatives have been individually evaluated, particularly in the field of assistance, the EU has not conducted an overall assessment of the actions undertaken under the

⁸³ See e.g. Swinford, S., 'David Cameron warned arming Syrian rebels could embroil Britain in all-out war', *The Telegraph*, 15 July 2013.

⁸⁴ See 'Syrie : Hollande pour une livraison d'armes 'contrôlée' pour les rebelles' [Syria: Hollande for delivery of weapons 'controlled' for rebels], *Le Monde*, 20 Sep. 2013; and 'Hollande in favour of 'controlled' arms shipments to Free Syrian Army', *Fox News*, 19 Sep. 2013.

⁸⁵ See e.g. 'La France livre déjà des armes à l'opposition syrienne' [France already delivers weapons to the Syrian opposition], *L'Express*, 21 Mar. 2013.

strategy's plan of action in order to evaluate the extent to which they have contributed to the set objectives.

After more than a decade of European and international SALW-related assistance, the EU should take time to evaluate the successes and failures of the various initiatives that have been launched and supported in many regions of the world to combat the illicit proliferation of SALW. Such an evaluation may serve as the basis for a review of the priorities and modalities of the EU's SALW Strategy (see section below). Lessons from these experiences may also prove highly useful in establishing new priorities and designing future interventions in other areas, particularly in the framework of forthcoming assistance and cooperation programmes related to the recently adopted ATT.

Review the scope and priorities of the 2005 SALW Strategy

Reevaluate the priority regions of the 2005 SALW Strategy and its modus operandi

The 2005 Strategy identified two main geographical priority zones based on its assessment of the impact of SALW proliferation: sub-Saharan Africa, considered as 'the continent most affected by the impact of internal conflicts aggravated by the destabilising influx of SALW' and Eastern and South Eastern Europe as 'an increasing proportion of the SALW disseminated in Africa have come from weapons stockpiles' in these regions.⁸⁶ The EU should assess to what extent the impact and the nature of SALW proliferation have evolved in both regions and the consequences for the design and prioritization of future EU actions. In parallel, in the wake of the Arab Spring and its ramifications, the Middle East and North Africa are increasingly affected by the illicit proliferation of SALW and are now also growing sources of proliferation. These regions were initially not in the scope of the EU's SALW Strategy. However, as illustrated by the proliferation of SALW originating from Libyan stockpiles in the Sahel, instability has already had a significant impact on security in many sub-Saharan African countries, which are among the main beneficiaries of EU SALW-related assistance.

⁸⁶ Council of the European Union, Strategy to combat illicit accumulation and trafficking of SALW and their ammunition (note 1).

In addition to the geographical priorities, the EU should also consider a reevaluation of the way its initiatives are implemented under the strategy. In particular, a comprehensive evaluation of EU small arms assistance is necessary and may help the relevant EU institutions. Several elements of such an evaluation may already be highlighted. In particular, the long-term support provided to build the capacities of relevant national and regional agencies and institutions represents an important contribution to the fight against the illicit proliferation of SALW in regions such as sub-Saharan Africa, Eastern and South Eastern Europe and Latin America. The impact of such assistance programmes varies from one region to another and is sometimes difficult to evaluate in the short or medium term. The EU should continue to support such initiatives as they often pave the way for further local initiatives in that field. However, as useful as this type of assistance is, it must be supplemented by long-term targeted projects at lower levels (at the national level or by groups of countries). Such initiatives should focus on practical activities that aim to directly improve human security by reducing illicit SALW proliferation. EU ASAC, the EU contribution to Cambodia, provides an excellent example of such practice.

Build bridges between the different European Union initiatives on small arms and light weapons

Bridge the gap between the 2005 Strategy and the Common Position on Arms Export

The Common Position on Arms Export's preamble refers to the SALW Strategy as implying 'an increased common interest of Member States in a coordinated approach to the control of exports of military technology and equipment'. Similarly, the strategy's preamble refers to the Common Position and explicitly calls for strengthening the EU's export control policies. However, the strategy's plan of action remains limited in this particular area, and there is little evidence that action has been taken to implement it effectively. Moreover, as illustrated above, practice shows that the EU member states do not appear to envisage a structural link between the control of their individual arms exports and their common policies against illicit proliferation of SALW.

EU member states should review the strategy in order to include practical suggestions to make export

controls a distinctive element of the EU common policy to fight the illicit proliferation of SALW (see the ‘Bridge the gap between assistance and development programmes’ cooperation and export controls’ section below).

Take into account the fight against trafficking of firearms inside the European Union

Another shortcoming of the current EU SALW Strategy is its focus on illicit proliferation of small arms outside the EU. Trafficking of weapons is transnational per nature as illustrated by the Western Balkans origin of many illicit weapons in circulation inside the EU. The initiatives launched by the Commission to coordinate the EU’s response to the trafficking of firearms within the EU represent a step in the right direction. The Commission’s communication recognizes, among other things, that initiatives to tackle proliferation in the close neighbourhood of the EU may have a positive impact on human security within its borders.

The EU’s legal texts differentiate between small arms specifically designed for military use, which fall under the category ‘SALW’, and firearms. Although the differentiation makes sense in the context of export control and regulation of legal ownership, such a distinction is not relevant on the ground in (post-) conflict contexts or as regards criminality; illicit actors use all kinds of SALW, be they military or civil, depending on their availability. The EU should consider amending the scope of the strategy in order to include SALW and firearms (as per the EU’s categorization).

Enhance coordination among European Union institutions and member states

Coordination of EU institutions’ actions to fight the illicit proliferation of SALW currently relies heavily on informal contacts between representatives of EU institutions. The EU may consider setting up a formal structure for the different EU institutions (including at least representatives from the EEAS and the Directorate-General Development Cooperation, Enterprise and Industry, and Home Affairs) to exchange information and coordinate views on current and forthcoming initiatives related to the strategy. Through this structure, the EU may also consider strengthening the exchange of information with EU members and providing a clearing house for optimizing the integration of SALW-related assistance programmes initiated by the institutions and the member states. In that view, the SALW

Strategy’s six-monthly progress report may incorporate elements provided by EU member states regarding SALW-related initiatives taken at the national level. Such information was provided in the annual progress reports on the implementation of the 2002 Joint Action, whose production was suspended from 2011.

Bridge the gap between assistance and development programmes’ cooperation and export controls

SALW export controls remain a national prerogative of each EU member state, while an important part of the actions taken under the SALW Strategy and the Joint Action is elaborated and decided by the Commission or at the Council level. At present, collective decision making regarding SALW exports seems unlikely. As illustrated several times since the beginning of the Arab Spring, when it comes to arms export, the economic and strategic interests of member states often take precedence over their common stance, presenting the EU as a ‘soft power’, promoting peace and security worldwide.

However, EU member states may take practical steps to ensure that their SALW exports do not risk undermining the objectives of the EU’s SALW Strategy. Such actions should clearly be integrated in the reviewed strategy.

Further explore how to enhance diversion risk assessment at the European Union level

During the recent review of the Common Position on Arms Exports, substantive discussions were held on how the member states may improve the information at the disposal of export licensing officers to assess the risk of diversion. Some member states have made proposals to share information on convicted traffickers and to use information on traced illicit weapons. These initiatives are a timely echo of one of the actions related to export control identified by the SALW Strategy (i.e. ‘devise mechanisms approved by the Member States for the exchange of information on SALW trafficking networks’).

More generally, the EU should assess existing capacities and practices both at the member state and European levels to evaluate the pre-licensing risk assessment of diversion as well as to identify the opportunities and challenges in terms of cooperation and exchange of information between member states. Currently, the national licensing officers of each member state undertake the pre-licensing risk

assessment of diversion individually, notably, on the basis of available information on past diversion. This information, which may be open source or not, is often dispersed in various locations (reports produced by international and regional institutions, NGOs, intelligence services, results of tracing requests etc.). In the absence of a pooling and sharing system at the European level, the ability to appropriately collect and analyse such information relies above all on the means available to each member state.

For instance, the establishment of a confidential database on proven and suspected cases of diversion or unauthorized re-export of SALW may provide every EU member states with an equivalent capacity to carry out an informed risk assessment of the risk of diversion and of illicit proliferation. In turn, such a mechanism could lead to greater harmonization in decision making, particularly in the case of exports to ‘sensitive’ countries.

Create post-embargo and SALW Strategy toolboxes

In 2004 the EU member states discussed, but did not adopt, the introduction of a ‘toolbox’ for exports to destinations that had previously been the subject of EU arms embargoes. Under this mechanism, EU members ‘would have agreed to exchange detailed information on export licences granted to the previously embargoed destination every three months—including the quantity and type of military equipment, the end-use and the end-user’.⁸⁷ Post-embargoed countries generally are post-conflict countries. They are often situated in regions particularly affected by the illicit proliferation of SALW or are themselves in that situation. In other instances, they may be subject to greater scrutiny for their past (active or passive) participation in the illicit circulation of weapons. The adoption of a toolbox mechanism may directly contribute to integrating considerations about the proliferation of SALW in the risk assessment of each member state.

In the same manner, EU member states may establish and regularly update a list of countries and regions that benefit from actions in the framework of the EU’s SALW Strategy and of states that are known or suspected to be diverting weapons to those countries. By taking into account this list in their risk assessment, member states would avoid being in the difficult position of having participated in the proliferation of SALW to countries or regions that also benefit from the

assistance of the EU, as was the case with exports to the Gaddafi regime, a major player in the proliferation SALW in sub-Saharan Africa in recent decades.

Adopt a ‘new for old’ clause for small arms and light weapons export

Since 2003 Germany has required, where possible, that the authorities of the importing state make a commitment to destroy SALW that are decommissioned but still usable in exchange for SALW purchased from Germany. This ‘new for old’ clause, which applies to third countries, aims to prevent a domino effect.⁸⁸ Although it is difficult for a single country to require such a practice on the part of the importing government (particularly because of the financial burden of destruction), systematization of this clause for all SALW European exports would certainly be more effective and persuasive for the potential importing countries. Because of the important market shares of the 28 EU member states in the global trade in SALW, it would be more difficult for an importing country to ignore this clause and circumvent a member state’s denial by acquiring SALW in another member state.

Enhance the guidance to export licensing officers

COARM draws up and regularly updates a User’s Guide to the Common Position on Arms Exports that serves as guidance to assist member states in implementing the Common Position. It is intended for use primarily by export licensing officials.

However, this document does not mention the EU’s SALW Strategy. As such, it does not specify EU assistance programmes and other initiatives taken under the SALW Strategy as factors to take into account when assessing export licences to countries that are beneficiaries of EU assistance or countries neighbouring such countries. Furthermore, it only mentions SALW once, stating that in ‘analysis of the risk of diversion’ they ‘could be the subject of special attention’.⁸⁹

COARM should consider reviewing the User’s Guide in the light of the priorities and objectives of the SALW

⁸⁸ Poitevin, C., ‘Prolifération des armes légères : l’UE a-t-elle vraiment une stratégie?’ [Proliferation of small arms: does the EU really have a strategy?], Groupe de recherche et d’information sur la paix et la sécurité (GRIP) Note d’analyse, 20 Dec. 2011, <http://www.grip.org/sites/grip.org/files/NOTES_ANALYSE/2011/NA_2011-12-20_FR_C-POITEVIN.pdf>.

⁸⁹ Council of the European Union, User’s Guide (note 63), p. 74.

⁸⁷ Bromley (note 6).

Strategy in order to ensure that member states take into account on a regular basis the potential impact of their SALW exports for countries and regions that benefit from assistance and development cooperation with the EU.

ABBREVIATIONS

ATT	Arms Trade Treaty
CFSP	Common Foreign and Security Policy
COARM	Council Working Group on Conventional Arms Exports
DDR	Disarmament, demobilization and reintegration
ECOSAP	ECOWAS Small Arms Control Project
ECOWAS	Economic Community of West African States
EDF	European Development Fund
ESS	European Security Strategy
EU ASAC	European Union Assistance on Curbing Small Arms and Light Weapons in Cambodia
IFS	Instrument for Stability
NGO	Non-governmental organization
OSCE	Organization for Security and Co-operation in Europe
RECSA	Regional Centre on Small Arms in the Great Lakes Region
SALW	Small arms and light weapons
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
SSR	Security sector reform
UN	United Nations
WMD	Weapons of mass destruction

A EUROPEAN NETWORK

In July 2010 the Council of the European Union decided to create a network bringing together foreign policy institutions and research centres from across the EU to encourage political and security-related dialogue and the long-term discussion of measures to combat the proliferation of weapons of mass destruction (WMD) and their delivery systems.

STRUCTURE

The EU Non-Proliferation Consortium is managed jointly by four institutes entrusted with the project, in close cooperation with the representative of the High Representative of the Union for Foreign Affairs and Security Policy. The four institutes are the Fondation pour la recherche stratégique (FRS) in Paris, the Peace Research Institute in Frankfurt (PRIF), the International Institute for Strategic Studies (IISS) in London, and Stockholm International Peace Research Institute (SIPRI). The Consortium began its work in January 2011 and forms the core of a wider network of European non-proliferation think tanks and research centres which will be closely associated with the activities of the Consortium.

MISSION

The main aim of the network of independent non-proliferation think tanks is to encourage discussion of measures to combat the proliferation of weapons of mass destruction and their delivery systems within civil society, particularly among experts, researchers and academics. The scope of activities shall also cover issues related to conventional weapons. The fruits of the network discussions can be submitted in the form of reports and recommendations to the responsible officials within the European Union.

It is expected that this network will support EU action to counter proliferation. To that end, the network can also establish cooperation with specialized institutions and research centres in third countries, in particular in those with which the EU is conducting specific non-proliferation dialogues.

<http://www.nonproliferation.eu>



FOUNDATION FOR STRATEGIC RESEARCH

FRS is an independent research centre and the leading French think tank on defence and security issues. Its team of experts in a variety of fields contributes to the strategic debate in France and abroad, and provides unique expertise across the board of defence and security studies.

<http://www.frstrategie.org>



PEACE RESEARCH INSTITUTE IN FRANKFURT

PRIF is the largest as well as the oldest peace research institute in Germany. PRIF's work is directed towards carrying out research on peace and conflict, with a special emphasis on issues of arms control, non-proliferation and disarmament.

<http://www.hsfk.de>



INTERNATIONAL INSTITUTE FOR STRATEGIC STUDIES

IISS is an independent centre for research, information and debate on the problems of conflict, however caused, that have, or potentially have, an important military content. It aims to provide the best possible analysis on strategic trends and to facilitate contacts.

<http://www.iiss.org/>



STOCKHOLM INTERNATIONAL PEACE RESEARCH INSTITUTE

SIPRI is an independent international institute dedicated to research into conflict, armaments, arms control and disarmament. Established in 1966, SIPRI provides data, analysis and recommendations, based on open sources, to policymakers, researchers, media and the interested public.

<http://www.sipri.org/>