

Traded Without Restraint? Transfers of Small Arms and Light Weapons

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Abstract

Prescriptive analyses of small arms and light weapons (SALW) transfer regimes have been advanced, but comparative assessment of the selling and importing of this weaponry is undeveloped. That includes examples of major arms sellers transferring this weaponry into locations embroiled in armed conflict. After surveying existing SALW restraints and their shortcomings, the extent to which due diligence risk considerations shape relevant arms selling conduct is considered. Existing explanatory frameworks discussed are found incomplete. Accordingly a model is outlined addressing impediments to the due diligence risk assessments required to meet international humanitarian and human rights legal obligations. For SALW sellers, they include executive dominance of sale purchase decisions; strategic imperatives; economic and commercial incentives; and capacity to conduct independent auditing of arms sales conduct. Within conflict afflicted recipient locations, they include defective public accountability; corruption; impunity; and inability to effect peaceful dispute settlement. Utilising these determinants, dyads embracing major SALW sellers transferring this weaponry into locations of persisting armed conflict are considered.

Keywords

small arms – light weapons – international transfers – international law – restraints

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Introduction

Concerns over the proliferation, unauthorised transfer and negative impacts of small arms and light weapons (SALW) persist.¹ In 2018, United Nations (UN) Secretary-General Guterres released *An Agenda for Disarmament: Securing Our Common Future*. This noted ‘the widespread availability of small arms and light weapons and their ammunition is a key enabler of armed violence and conflict. High levels of arms and ammunition in circulation contribute to insecurity, cause harm to civilians, facilitate human rights violations and impedes humanitarian access.’² He reiterated these concerns in 2021, providing data on SALW inflicted civilian casualties.³

Yet despite reiterations of concern, SALW proliferation continues to sustain excessive innocent civilian casualties. And 2020 projections forecast continuing growth in sales of this weaponry in the decade ahead.⁴

Charting a feasible pathway towards consistently applied SALW restraint is complicated by the contrasting settings within which it is expected to apply. Where this weaponry is manufactured, promoted, and licenced for sale and export, valid expectations require conformity to regulations subject to penalty in the event of infraction. Where those requirements are incomplete or inconsistently applied, compliance is sporadic. In locations of armed conflict, they may even encounter deliberate violation.

But regardless of situation, a common difficulty confronting formulation and implementation of SALW transfer restraints is the tenuous distinction drawn between licit and illicit transfers. Rightly condemned by officialdom, the latter’s legally authorised origins are inadequately acknowledged. That is

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- 1 This weaponry includes revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns. Light weapons, include heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles (sometimes mounted), portable launchers of anti-aircraft missile systems (sometimes mounted), and mortars of calibre less than 100 mm.
 - 2 *An Agenda for Disarmament. Securing Our Common Future*, New York: UN Office of Disarmament Affairs 2018 p.40.
 - 3 Indicated were at least 176,095 civilian deaths recorded in 12 of the world’s deadliest armed conflicts between 2015 and 2020. In 2020, five civilians per 100,000 people were killed in armed conflict, one in seven a woman or child. Most civilian deaths were caused by small arms and light weapons (27 per cent) or by heavy weapons and explosive munitions (24 per cent). The death toll of armed violence outside conflict was rated higher, more than half of all homicide victims killed with a firearm. Report of the Secretary-General to the UN Security Council October 6, 2021. UN Doc. S/2021/839, p. 2.
 - 4 In 2020, the global small arms market was projected to reach \$US6.5 billions by 2027, a 3.96 percent over the forecast period. That for light weapons by \$US \$17.33 billions, a 4.67 per cent over the same period. *Fortune Business Insights*, July 2020. <<https://www.fortunebusinessinsights.com/small-arms-market-103173>>.

not surprising given their elusive, frequently shifting chains of transfer. Such evasion facilitates diversion, the accountability restraints required to control this weaponry consequentially weakened.

This paper proceeds along the following lines. After surveying existing SALW restraints and their shortcomings, due diligence considerations shaping arms selling conduct are assessed. Second, a model is provided identifying determinants that impede such assessments. Considered are standards of government accountability, official transparency, and administrative capacity required to discharge these obligations. Third, these determinants are tested against dyads that include the United Kingdom and Saudi Arabia; France and Mali; Russia and Syria; the United States and Afghanistan; and China and South Sudan. Based on these findings, recommendations for enhanced SALW restraint are advanced within a concluding summary.

Existing SALW Restraints

It took the end of the Cold War for the international community to begin gradually negotiating SALW restraints. Mechanisms include, most recently, the 2013 Arms Trade Treaty (ATT). This was preceded by the 2001 Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (POA). As a political commitment and policy framework, that sought to foster appropriate national control measures. Similarly focused, the 2005 International Tracing Instrument (ITI) has relied upon voluntary marking, record-keeping, and international cooperation designed to trace illicit small arms and light weapons. The 1983 Convention on Certain Conventional Weapons (CCW) has sought to prohibit or restrict the use of certain conventional weapons considered excessively injurious, or whose effects are indiscriminate. To which can be added the 2003 UN Convention Against Transnational Organised Crime and its associated Firearms Protocol. This legally binding measure is designed to counter the illicit manufacturing of, and trafficking in firearms, their parts, components and ammunition. It obligates signatories to establish relevant crime control, licencing, and weapons marking and tracing measures.

Non-binding SALW restraint guidelines offer advantage to governments prepared to use them. They include suggested controls over questionable SALW re-export practices, as recommended under the 1996 Wassenaar Arrangement.⁵ The European Union (EU) 2008 Code of Conduct does likewise, amplified in 2018 with recommendations for SALW export controls. While an advance and a model for emulation, it lacks a comprehensive EU plan designed to prevent

5 Wassenaar Arrangement. Best Practice Guidelines for export of small arms and light weapons (Article 5 (1)).

SALW diversion into locations of known armed conflict.⁶ Other trans-European restraint initiatives include the 2012 and 2020 Organisation for Security and Cooperation in Europe (OSCE) Guidelines on small arms and light weapons management.⁷ Despite difficulties encountered by the COVID-19 pandemic, SALW restraint initiatives have been implemented across the Western Balkans through the so-called Roadmap under joint EU and UN sponsorship.⁸

More widely in global multilateral settings, violations of the human right to life inflicted by unrestrained SALW transfers has gained salience.⁹ Under the 2030 UN Sustainable Development Goals Programme – in particular Goal 16 – directives are designed to end illicit arms diversion and its corruption, unaccountable government, and gender-based violence.¹⁰

Viewed overall, the existing SALW restraint repertoire exhibits three general features. A first has been its halting, uneven progress. After the end of the Cold War, its major protagonists continued opaque transfers of SALW supplies into arenas of contested influence. Joining key American and Russian suppliers were Ukraine and former Warsaw Pact members.¹¹ Whether out of perceived remoteness, indifference or fatalism, the human cost of innocent lives lost and material damage sustained went neglected. Although not absent, SALW restraint remained a secondary arms control objective.¹²

6 Nils Duquet, *The 2018 EU SALW Strategy: Towards an Integrated and Comprehensive Approach. EU Non-Proliferation and Disarmament Consortium*. Paper No. 62 (2019) p. 16. Noted as well have been ‘worrying differences’ in the arms export licencing practices of EU states. C. Schliemann & L. Bryk, *Arms Trade And Corporate Responsibility. Liability, Litigation and Legislative Reform*. Bonn: Friedrich Ebert Stiftung, (2019), p. 7.

7 Respectively OSCE *Document on Small Arms and Light Weapons* 2012; and OSCE *Best Practice Guide: Minimum Standards for National Procedures for the Deactivation of Small Arms and Light Weapons*, 2020.

8 *Western Balkans SALW Control Roadmap Multi-Partner Trust Fund. Annual Report 2020*. Belgrade: UNDP/SEESAC 2020.

9 UN Human Rights Council. *Impact of Arms Transfers on Human Rights*. UN Doc. A/HRC/44/29. 19 June 2020. Common Article 1 to the four 1949 Geneva Conventions requires Parties to ‘respect and to ensure respect for the present Convention in all circumstances’.

10 Goal 16 requires states to significantly reduce all forms of violence and related death rates (16.1); significantly reduce illicit financial and arms flows, strengthen recovery and return of stolen assets, and combat all forms of organized crime (16.4); reduce corruption and bribery (16.5); ensure effective, accountable and transparent institutions at all levels (16.6); and establish responsive, inclusive, participatory and representative decision-making at all levels (16.7).

11 L. Polyakov, *Aging Stocks of Ammunition and SALW in Ukraine: Risks and Challenges*. Paper, No. 41. Bonn: Bonn International Conversion Centre (2005) p.8.

12 For example the 1990 Treaty on Conventional Armed Forces in Europe – a confidence building measure later placed in abeyance – did not itemise SALW as a category under ceiling restraint.

Second, the incomplete SALW repertoire has reflected the dominance exercised by major arms suppliers over diplomatic processes consider inimical to their commercial interests. Here they have effectively relegated ammunition as a key restraint objective, significantly so within the POA, to a lesser extent within the ATT. To strong opposition by African governments during that treaty's formulation, attempts to regulate SALW transfers to armed non-state actors also encountered major power resistance.¹³

Third has been a grudging, but eventual acknowledgement by major arms selling governments of restraint measures advanced through informed non-governmental advocacy. It has been bolstered by parliamentary support, International Committee of the Red Cross recommendations, and the small state diplomatic initiatives that helped shape formulation of land mine and cluster munitions prohibitions.¹⁴ Combined, this activity has encouraged multilateral agency funding for programmes linking small arms restraint to poverty reduction, security sector reform, and prevention of gender-based violence.

Risk Evaluation

When States decide to sell arms abroad, what risk evaluations do they undertake? Looking beyond five years, what estimates are made about the impact of such infusions, particularly within locations of armed conflict? (Some even argue risk among major arms sellers is deliberately made *not* to matter.)¹⁵ And what of receiving locations that have not just altered, but done so drastically – as occurred in post-Gadafi Libya? One response asserts SALW infusions prevent security conditions from deteriorating. But that assumption risks self-fulfilment, entrenching bureaucratic processes authorising arms transfers to continue regardless. Unanswered by treaty texts, these concerns cannot go ignored when evaluating their implementation.

Here the key risk provisions of ATT Articles Six and Seven continue generating debate. Under Article 6(3), arms transfers are subject to prohibition if a State Party 'has knowledge at the time of authorisation' arms would be used in commission of genocide, crimes against humanity and certain war crimes. A transfer not so prohibited will, under Article 7, incur mitigating risk assessment should exported arms have 'negative consequences' for peace, security

13 *African Union Common Position on an Arms Trade Treaty*. Addis Ababa: African Union (2014) Principle 19 p. 3.

14 *Arms Transfer Decisions. Applying International Humanitarian Law and International Human Rights Law Criteria. A Practical Guide*. Geneva: International Committee of the Red Cross 2020.

15 Anna Stavrianakis. "Requiem for Risk: Non-knowledge and Domination in the Governance of Weapons Circulation", *International Political Sociology* 14 (2020) p. 234.

and human rights. Here, an export denial is required should an ‘overriding risk’ exist where the exported arms are used to commit or facilitate serious violations of international humanitarian or human rights law. Or of possible offences under international conventions or protocols relating to terrorism, international organised crime, and risks of use to commit or facilitate serious acts of gender-based violence or violence against children.

However, the legally nebulous ‘overriding’ terminology affords ample leeway to SALW exporters. Added space is provided by open-ended Article 7 applications to measures designed to combat terrorism, transnational organised crime, or controlling transit trade.¹⁶ As well, state differences persist over application of customary international law prior knowledge, due diligence requirements. Alleged failure to meet them has resulted in charges of complicity in the committal of potentially harmful acts under international humanitarian law.¹⁷ (Imperfections in ATT risk provision are not without precedent. During its formulation, the POA failed to agree on what comprised an ‘excessive and destabilising’ SALW accumulation.)

Yet despite its loopholes and imprecision the ATT, like the 2008 EU Common Position, provides positive guidance to state due diligence compliance in arms transfer policy.¹⁸

But like other SALW restraint mechanisms, the ATT is reliant upon states to report relevant export data, legislate for arms brokering, and assess harm, ‘at the time of authorisation’. That language permits a state to avoid responsibility should an arms transfer subsequently result in misuse and diversion.¹⁹ That possibility exists within an instrument whose preambular wording acknowledges ‘the legitimate political, security, economic and commercial interests of States in the international trade in conventional arms.’ Or as put by American negotiator Countryman during this treaty’s formulation, to ‘level the playing field’ by establishing common export standards.²⁰

16 Jillian Rafferty, Elizabeth Kirkham & Roy Isbister. *Arms exports, terror and crime: Reducing risk under the Arms Trade Treaty*. Saferworld Briefing No. 7. London: Saferworld (2021) p.7.

17 For example the knowledge requirements necessary to impute responsibility for the commission of wrongful acts as identified in Articles 16 and 41 of the relevant 2001 Draft Articles on. Responsibility of States for Internationally Wrongful Acts.

18 Borja Álvaro Álvarez Martínez, “A Balance of Risks: The Protection of Human Rights in International Arms Trade Agreements”, *Security & Human Rights* 21 (2018) p. 214.

19 L. Lustgarten, “The Arms Trade Treaty: Achievements, Failings, Future”, *International Comparative Law Quarterly* 64 (2015) p. 598.

20 Remarks of Thomas Countryman. Arms Control Association Briefing on the ATT, November 7 2013, <<https://www.armscontrol.org/events/2013-11/transcript-available-arms-trade-treaty-just-facts>>.

While stipulation of risk avoidance criteria is deemed an advance, its potential is restricted by the ATT's institutional inadequacy. Here it lacks a central mechanism capable of driving forward measures States parties are committed to introduce. Tenably argued is the need to establish a mechanism independent of States, but reporting to them via the UN General Assembly and Security Council.²¹ Although different, the International Atomic Energy Agency's functions within the Nuclear Non-Proliferation Treaty are instructive. Here such a body can set best practice standards, foster control of brokerage activity, challenge patently unwarranted state secrecy, and promote expanded treaty membership. That need is apparent: significant ATT absentees include the United States, Russia, India, Egypt, Iran, Indonesia and Saudi Arabia.²²

A further impediment involves deficiencies in reliably recorded data, something unnecessary given available, affordable computerised record-keeping for state-owned small arms and ammunition.²³ While offering guidelines for end-use documentation, relevant intergovernmental initiatives lack consistency in their criteria and modes of application.²⁴ Data utilisation has also been handicapped by a steady decline in the number and quality of national reports annually required under the 1991 UN Register on Conventional Arms.²⁵ Whether through lack of necessary skills, defective administrative capacity, or preferences to retain secrecy, similar declines have occurred under the ATT.²⁶

As elusive has been reliable, publicly available documentation of SALW ammunition flows. During the ATT's formulation, opposition from Russia, China, India and, most conspicuously, the US insisted record keeping for this

21 L. Lustgarten. "Future Directions." *Law and the Arms Trade: Weapons, Blood and Rules*. Oxford: Hart Publishing, 2020. p. 457.

22 Among the top 25 arms exporters in 2020, eight were not ATT States Parties, but represented 62 per cent of recorded exports. Wezeman, P. D., Kuimova, A. and Wezeman, S. T., "Trends in international arms transfers, 2020", SIPRI Fact Sheet, March 2021. Those that have signed but not ratified the ATT include Israel, Turkey, Ukraine, Singapore and the United Arab Emirates.

23 For analysis of relevant applications such as ArmsTracker, see Philip Alpers, "A Pressing Need: Decades of Agreement, Few Results on Arms Record Keeping", *Journal of Conventional Weapons Destruction* 25 (2) (2021) 1–6.

24 Conflict Armament Research. *Diversion Digest*, 2 (2019), p. 8.

25 UN General Assembly. Continuing operation of the United Nations Register of Conventional Arms and its further development. UN Doc. A/71/259, 29 July 2016.

26 In 2021, and of 110 ATT States Parties, 26 had failed to submit required reports. Of the 84 doing so, 15 had not met obligations to enact arms brokering control measures, while a further 20, including China, Greece and Nigeria, sheltered under provisions restricting public disclosure of their reports. Information extrapolated from reports submitted to the ATT Secretariat as at 15 October 2021. <<https://www.thearmstradetreatyorg/initial-reports.html?templateId=209839>>

purpose was not possible. This was deemed too costly and time-consuming for annual imports exceeding billions of rounds of small ammunition.²⁷ Unacknowledged was the reality that such quantities compound illicit SALW diversion.²⁸

Data regarding SALW transfers to armed non-state actors is either missing or frequently concealed. It includes supplies to armed proxies engaged within internal conflicts spilling beyond borders. Failures to verify the amount, movement, financing and eventual location of this weaponry has persistently generated political, diplomatic and legal controversy. It flared over supplies to rebel forces in Nicaragua during the 1980's, to armed insurgencies in Bosnia a decade later and, more recently, to forces in revolt against the Assad regime in Syria.

Whether tracing SALW transfers to armed non-state actors or ammunitions flows, compilations of accurate paper trails face substantial impediments. They include lack of international standardisation between exporting and importing authorities, differing national systems rendering supply chain control difficult.²⁹ Beyond a declared end user, diverted SALW may end up under weak stockpile management or fall to battlefield capture.³⁰ This points to failings at critical end use junctures – whether through deliberate neglect, private profiteering, or absent seller/recipient cooperation. But as now discussed, required remedies extend beyond technical and administrative prescription.

Modelling Risk Calculation

An attempt to model determinants risking SALW transfers includes the Cato Institute's Arms Sales Risk Index for 2021.³¹ Concerned primarily with US exports, it evaluates policy risks encountered when selling into locations variously viewed at risk from corruption, instability, violations of human rights, and incidence of armed conflict. For SALW transfers, this Index provided case studies of US sales to Mexico (direct contribution to local crime and corruption); the Philippines (continued arms flows contributing to extra-judicial killing); and Ethiopia (limited supplies of small arms, but damaging to local conflict resolution). While of assistance, these indicators do not flag systemic

27 L. Lustgarten, op. cit., (2015) 64.

28 On the dangers of unsupervised ammunition accumulation, and its need for through-life management, see 2021 report of UN Group of Governmental Experts on problems arising from the accumulation of conventional ammunition stockpiles in surplus. UN Doc.A/76/20.

29 Conflict Disarmament Research. *Diversion Digest*. August (2019) p. 4.

30 Ibid.

31 T. Thrall & J. Cohen. 2021 *Arms Sales Risk Index*. Compiled by Cato Institute, Washington DC: Cato Institute 2022.

breakdowns – whether of institutional integrity, political accountability, or office holding maintained without public consent. Corruption, impunity and unaccountable government receive only passing mention.³²

Better addressing these concerns are recommendations published by UK Saferworld.³³ Although not providing records of state performance, they recommend transfers do not obstruct state/society relations, allow evidence revealing clear breaches of consolidated EU export licencing criteria, remain gender sensitive, and not impede civilian, parliamentary and judicial oversight.

When appraising major seller conduct, there is a need to include national executive dominance over SALW transfer decisions; strategic security imperatives; presumed economic advantages; and scope of independent audit – whether financial, administrative, or evaluative of policy outcome. In receiving locations, impediments to note include failed official accountability, corruption, impunity, and dislocations of civil order obstructing peaceful dispute settlement under the rule of law. Now outlined, these headings clarify the obstructions impeding state compliance with SALW transfer restraints, and compliance with international humanitarian and human rights law.

Seller Determinants (a) National Executive Dominance

Major arms selling States, without exception, privilege executive dominance. Evident is reluctance by judiciaries, even legislatures to challenge policies that national executives deem essential for the promotion and protection of state security.³⁴ In recent decades that caution has been widened by policies pursued under a broad rubric of counter-terrorism, obligations to maintain essential humanitarian protections in armed conflict rendered secondary.³⁵ Further executive advantage is maintained by delay or redaction of official information deemed 'sensitive' (at times in deference to allied governments),

32 For fuller attention to these concerns, see Simon Yazgi & Erica Mumford, *The Arms-Related Risk Analysis Toolkit. Practical guidance for integrating conventional arms-related risks into conflict analysis and prevention*. Geneva: UNIDIR (2021).

33 Lewis Brooks. *Playing with Matches? UK Security Assistance and its conflict risk*. London: Saferworld (2021).

34 In Belgium and the United Kingdom, proceedings have been taken against national authorities on grounds of arms exports violating international humanitarian and human rights legal obligations. However these initiatives have been subject to delay, protracted appeal, temporary accommodation, or only modest revision of export licencing regulations.

35 In 2019 the UN Security Council modestly acknowledged this problem. Under Resolution 2462, states were required to 'take into account' the potentially negative effect that measures designed to counter the financing of terrorism exerted upon exclusively humanitarian activities. UN Doc. S/RES/2462, 28 March 2019.

or under-resourcing of legislative research and investigative functions. These restrictions handicap non-governmental advocacy for enhanced SALW restraint.

(b) Strategic Imperatives

Whether as obligations entered into under negotiated agreements, or as ‘understandings’ within ‘coalitions of the willing’, advantages gained through militarised interdependence incur costs. Difficulties of withdrawal from military engagements outmatch presumed advantages of initial entry, particularly in theatres with complex, unreconciled identity differences and mixed legacies of foreign intervention. While warranted on paper as response to insurgency, problems increase in proportion to the volume of weaponry supplied and length of engagement. When both expand, wider strategic costs begin mounting. They range from domestic political opposition over prolonged engagement within armed conflicts, to declining morale among serving personnel. Their mission purpose is eroded when SALW supplied to local ‘partners’ are looted for private gain or criminal enterprise. Such leakages increase once a coalition deployment ends in haste.³⁶

(c) Economic Advantages

Exploiting executive privilege and strategic imperatives, selling interests are enhanced by the presumed commercial and economic benefits obtained through SALW transfers. Inducements to local defence industries include lowered unit production costs, employment generation, technological innovation, and rising returns.³⁷ Less visibly promoted are hidden costs incurred through use of offsets, and ‘commissions’ (in effect bribes) demanded by purchasers exploiting buyers’ market conditions.³⁸

36 For a graphic example, see Conflict Armament Research. *Illicit Weapons in Afghanistan* (2021), p. 3. <storymaps.arcgis.com/stories/773ba742c1d1402582bb0ccc38414b34>.

37 Price increases in SALW ammunition offer a good example. From an Index of 100 at June 1985, the US Bureau of Labour Statistics charted growth in the price of small arms ammunition manufacturing. By 2000, it had reached 111; by 2010, 184; reaching 284 by 2021. *Producer Price Index by Industry: Small Arms Ammunition Manufacturing*. US Bureau Labour Statistics, Washington DC 2021. <<https://fred.stlouisfed.org/series/PCU332992332992>>. Projected to continue, these rises followed relaxation of munitions controls and domestic sales during the Covid 19 pandemic.

38 Offsets may be direct, a purchaser receiving work or technology immediately related to the weapons sale, typically by purchase of the weapon system or its components under licence. Less directly, they involve countertrade deals, investment in the buying country, or transfer of technology unrelated to weapons sold. Under World Trade Organisation Government Procurement Rules (Article 111.1), offsets are permissible on grounds of national security.

Treated as ‘sensitive’, these costs are shielded by comfortable relationships major arms exporting corporates establish with home governments. These are frequently opaque as is use of third party agents, intermediaries, and joint venture arrangements.³⁹ Shared interests ensure little more than a ‘light hand’ of regulatory restraint applies to SALW transfers, international humanitarian or human rights law obligations deemed primarily those of client responsibility. Here the clear risk of diversion to an ‘undesirable end user or undesirable end use’, enunciated by the 2008 EU Code of Conduct, has been overridden by economic incentives. That saw France and the UK selling SALW to Egypt, Turkey and the United Arab Emirates, weaponry subsequently diverted to Libya and beyond.⁴⁰

Business solicitation is less secluded when government and corporate interests actively promote SALW transfer advantages. Whether for domestic protection against terrorist outrages, or meeting security needs of foreign clients, these messages are systematically conveyed at international arms and security fairs.⁴¹ With approximately 60 such events occurring annually, arms industry and foreign policy agencies cooperate in maximising mutually advantageous SALW promotion. US representatives have also used these events to not just promote sales, but brief counterparts on opportunities offered by new policies.⁴² Nevertheless the strength of the economic imperative varies among major state sellers. While dominant in the US – particularly under the Trump Administration – it has been less paramount for China’s SALW exports.

39 Transparency International (TI). Defence and Security. *Defence Companies Index on Anti-Corruption and Corporate Transparency 2020*. London TI, (2021), p. 13.

40 Andrew Rettman. ‘Why do EU arms end up in Libya despite UN ban?’ *EU Observer* 24 January 2020. <<https://euobserver.com/foreign/147256>>. For the substantial scale of arms selling by EU states to Libya between 2005 and 2010, see Susanne Therese Hansen & Nicholas Marsh. “Normative power and organized hypocrisy: European Union member states’ arms export to Libya”, *European Security* 24 (2) (2015) pp. 264–286.

41 International security trade fairs as a dynamic in the global arms trade remain inadequately analysed. For assessment of their role as globalised platforms transmitting security technologies, where security aims and objectives are negotiated, see Leila Stockmarr, “Security Fairs”, in Anna Leander and Rita Abrahamsen (eds.), *Routledge Handbook of Private Security Studies*, London: Routledge (2015) 187–196.

42 Comments of Ambassador Tina Kaidanow, US State Department, to Centre for Strategic and International Studies joint briefing on US Arms Transfer Policy, 8 August, 2018 <[CSIS%20Panel%20on%20US%20Arms%20Transfer%20policy%208%20August%202018.pdf](https://www.csis.org/panel/2018/08/08/us-arms-transfer-policy)>.

(d) Scope of Independent Audit

Independent auditing of SALW transfer decisions matters in two respects: first it offers credibility by being seen to operate at arms length from either governmental or commercial interests and, second, by providing information needed to sustain administrative challenge against suspect export licenses.⁴³ And in a trade where corruption is endemic, it helps uncover malfeasance by ‘following the money’. Those opportunities diminish once transparency is officially compromised and access to authoritative documentation restricted.

However the uneven audit performance of major SALW suppliers is sometimes less a problem of process, than of failure to follow previously recommended regulatory enforcement.⁴⁴ A 2016 US government audit of the Department of Defence revealed a lack of accurate records as to the quantity and location of major SALW infusions into Kuwait and Iraq. Yet identical problems previously uncovered in 2007 had gone unrectified.⁴⁵ Despite enforcement of foreign bribery offences in 2012, nine years later France awaited implementation of recommendations made in 2009. They included improved internal controls, and adherence to ethics and compliance standards in Defence Minister approval of arms export licences.⁴⁶ Across the Channel, the UK Ministry of Defence was found in 2021 to have continually failed to learn from its past mistakes including ‘many expensive failures’.⁴⁷

While checking unauthorised expenditure, fully independent legislative oversight is compromised by party affiliation to key office-holders or, as in the United States Congress, committee member partisan links to leading commercial arms exporters. However some independent scrutiny of SALW export conduct has occurred, including reports provided by the US Special Inspector

43 Existing indicative guidelines do not prescribe auditing functions. Apart from China, all major SALW exporters subscribe to the non-binding Wassenaar Arrangement. However its consensus procedures restrict its capacity to monitor countries considered ‘states of concern’ or sales constituting a ‘destabilising’ arms transfer.

44 Some reports refer to audit procedures only partially completed, limited, or pending or requiring improvement. Commonwealth of Australia. *Design and Implementation of the Defence Export Strategy*. Auditor General Report No. 6 (2020), pages 9, 34, and 54. The UK National Audit Office concentrates more on procurement delays and cost overruns, than wastage incurred by indiscriminate SALW diversion.

45 Amnesty International Iraq: US military admits failures to monitor over \$1 billion worth of arms transfers, Press Release 24 May 2017. <<https://www.amnesty.org/en/latest/news/2017/05/us-military-admits-failures-to-monitor-over-1-billion-worth-of-arms-transfer>>.

46 *Implementing the OECD Anti-Bribery Convention. Phase 4 Report-France*. Paris: OECD (2021) pages 6, 253.

47 House of Commons Committee of Public Accounts. *Improving Performance of Major Defence Equipment Contracts*. (2021), p. 6.

General for Afghanistan Reconstruction and, if only partially, the UK Serious Fraud Office Inquiry into the corruption infested Al-Yamamah arms deal with Saudi Arabia.⁴⁸

Conflict Affected Recipients: (a) Defective Governing Accountability

Abuse of office in SALW receiving, conflict afflicted locations is frequent. Demarcations dividing public performance from private interest are frequently blurred, free and fair electoral processes compromised with the rule of law unreliably maintained, and freedoms of assembly and civic voice frequently obstructed. Legislatures lack the capacity or will to check unaccountable executive conduct. Indeed, they may worsen it representatives using these institutions to extract private gain as evident in Afghanistan, the Democratic Republic of the Congo (DRC) and Nigeria.

As serious is governmental neglect of essential physical and protective social infrastructure. Here civilians are at risk from accidental explosions often caused by haphazard storage, neglected supervision, or mishandling of SALW stocks.⁴⁹

Insecurity at high value resource locations and mining sites has been a magnet for the illicit diversion and trafficking of SALW – the DRC a continuing example.⁵⁰ Aggravated by disease and climate change, these worsening service deficits intensify public mistrust of official authority. These unstable conditions see embattled individuals and communities turning to gang formations offering ‘protection’ with small arms.

(b) Corruption

The damage sustained by SALW infusions within conflict locations is exacerbated by corruption. That is confirmed by ratings extrapolated from the 2020 World Justice Project Rule of Index. Here, scores indicating poor controls over corruption were compared with those indicating lack of effective domestic

48 SIGAR. Special Inspector For Afghanistan Reconstruction. Quarterly Report October 30 2021. The UK Serious Fraud Office investigation of the scandal-ridden Al-Yamamah arms deal (at one stage shut down by Prime Minister Blair in 2006) sustained delays before resuming in 2020.

49 In four decades from 1979, an estimated 30,000 people across 101 countries were killed or injured by unplanned explosions at such sites. Of the 606 recorded incidents, nearly three quarters involved state-owned stockpiles. Small Arms Survey. *Unplanned Explosions at Munitions Sites*. Geneva: SAS (2018) p.1.

50 Brian Wood and Peter Danssaert, “Africa Armed Violence and the Illicit Arms Trade”, In *Gun Trafficking and Violence* Springer International Publishing (2021) 189–238.

SALW controls. Examples where both aligned negatively included Afghanistan, the DRC, Mali, Ethiopia, El Salvador and Honduras.⁵¹

The corruption nexus links SALW availability to crime and armed conflict. In Central America and Afghanistan, such criminality is central to domestic and trans-border narcotics trading. Small arms violence also facilitates trafficking of animal parts, precious minerals, and smuggling of those driven to flee internal displacement, crime, human trafficking, unemployment, and food insecurity.⁵² False documentation is utilised in the so-called 'Ant' trade, movement of small, easily concealed batches of SALW components across porous borders. Examples include Mexico's crime infested border with the United States, the Balkans and South-eastern Europe, as well as Central Africa and the Sahel. Avoiding surveillance by similar means are hand crafted, artisanal small arms and light weapons that frequently circulate throughout West Africa.⁵³

As a multi-layered network the corruption SALW trade nexus is complex, crossing borders, and extending beyond personal greed to encompass high level political connections. Shielded by secrecy, detection and prosecutions are rendered problematic.⁵⁴ These disorders compromise judicial independence, restrict press and news media investigation, and facilitate banking practices that allow money laundering and irregular fund transfers.

(c) *Impunity*

Exploiting unaccountable government and corruption, impunity is a further determinant compounding illicit SALW transfers. As a failure of law enforcement, it festers where police forces violate human rights or overtly fail to protect them.⁵⁵ Inadequately trained or paid force personnel fall vulnerable to bribe taking and the informal in-house collective codes that enforce it.

51 World Justice Project. Rule of Law Index 2020. Washington DC, 2020. Absence of Corruption by state entry. For analysis of how these indices relate to international humanitarian law compliance, see Roderic Alley, "Humanitarian Law Compliance. The Disadvantaged State Problem." *Journal International Humanitarian Legal Studies* 12 (2021) 169–197.

52 Lucia Bird and Tuesday Reitano. *Trafficking in Persons in Conflict Contexts*. Enact Policy Brief, (2019) p. 6. <<https://enactafrica.org/research/policy-briefs/trafficking-in-persons-in-conflict-contexts-what-is-a-realistic-response-from-africa>>.

53 *Small Arms, Light Weapons and Terrorist Financing*. International Centre for Counter-Terrorism Report. The Hague: ICCT (2021) p. 20.

54 Sam Perlo-Freeman, "Arms, corruption, and the state: Understanding the role of arms trade corruption in power politics", *The Economics of Peace and Security Journal* 13 (2) 2018, p. 43.

55 Graham Smith. "Effective Investigation of Alleged Police Human Rights Abuse: Combating Impunity". In R. Alleweldt & G. Fickenscher (eds.), *The Police and International Human Rights Law*, Springer International Publishing AG (2018) p. 85.

Within climates of fear investigation of human rights and humanitarian law violations are compromised, state-directed intimidation left unchecked.⁵⁶ When challenged, attempted reforms encounter opposition, even abandonment. That was the fate of Guatemala's UN-backed International Commission Against Impunity (CICIG) which, until its 2019 termination, reduced local gun violence.⁵⁷

Impunity is entrenched when local police employ additional enforcement services. Designated specific achievement targets, as with narcotics control in the Philippines or Colombia, these entities acquire *de facto* immunity for extra-legal use of small arms. Operating beyond the law, these forces are emboldened to seize, hold, and divert weaponry to aligned militias engaging in armed violence.⁵⁸ In retaliation, armed groups begin to form – as in Mexico – worsening fragile public order by increasing SALW proliferation. This problem is not confined to SALW recipients, informal operatives exploiting arms availability with impunity regardless of jurisdiction.⁵⁹

(d) *Peaceful Dispute Settlement*

The relationship between SALW and armed conflict has been aptly described as 'complex, multi-faceted and context dependent.'⁶⁰ This also applies to attempts to settle conflicts by peaceful means. They are complex to the extent that, within SALW recipient locations, incentives to acquire, store, trade and

56 Problematic is discharge by SALW recipient ATT member states of Article 8 obligations to ensure provision of appropriate relevant information, on request to an exporting state, and assist its conduct of human rights risk assessments.

57 With the Attorney General's Office, the CICIG exposed over 60 corruption schemes, implicating officials in all three branches of government, and prompting the resignation and arrest of the country's then president and vice-president in 2015. Homicide rates between 2007 and 2017 fell by over 4,500. *International Crisis Group Commentary*. "Curtain Falls on Guatemala's International Commission against Impunity", 3 September (2019) p.3. <<https://www.crisisgroup.org/latin-america-caribbean/central-america/guatemala/curtain-falls-guatemalas-international-commission-against-impunity>>.

58 J. Albarracin & L.Tiscornia "Breaking state impunity in post-authoritarian regimes: Why transitional justice processes deter criminal violence in new democracies", *Journal of Peace Research* 55 (6) (2018) p. 790. See also *Small Arms, Light Weapons and Terrorist Financing*, op. cit., pages 8–9, 57.

59 Delivering the 2021 Massachusetts Institute of Technology Muh Alumni Award Lecture, former British Foreign Secretary David Miliband warned the next decade would be a race between accountability and impunity, within countries and internationally, noting over two thirds of the global population now lived under autocratic rule, a fifth increase in the last decade. <[ps://news.mit.edu/2021/david-miliband-despotic-governments-0430](https://news.mit.edu/2021/david-miliband-despotic-governments-0430)>. By whatever means, UK-made Accuracy sniper rifles found their way into the hands of Russian special forces operating in Eastern Ukraine. Lewis Brooks. op. cit., p. 28.

60 *Small Arms, Light Weapons and Terrorist Financing*, op. cit., p.3.

use this weaponry are driven by longstanding historical, territorial and identity disputes. These differences may be inflamed by scarcity: of grazing and arable land, of water, and of inequality worsened by armed conflict and poverty.

Barriers to peaceful conflict persist where generalised disorder remains endemic, functions of impartiality, independence, and acceptability to protagonists correspondingly handicapped. Complications magnify when national armed conflicts embroil neighbouring and regional actors, their capacity to perform independent mediating functions accordingly compromised. That was evident in the outwardly supportive, yet ambiguous role performed by Ethiopia and Uganda attempting to broker a political accommodation in South Sudan.⁶¹ Mediation capacity is also weakened when key national protagonists conceal or falsify holdings of small arms for purposes of future diversion.⁶²

Context dependency is significant for case differences revealed between use of force in armed conflict, and subsequent SALW diversion. In some instances, and in an absence of plural authority or national control – South Sudan an example – weapons seized following attack become primary sources of local diversion.⁶³ Yet in other African locations more orderly forms of SALW restraint post-conflict have proved workable.⁶⁴ In such settings, amnesties stipulating weapons surrenders may operate to effect, insurgents more amenable to negotiation knowing they will not face prison sentences.

Elsewhere such agreements prove not just ineffectual but counter productive, political elites manipulating amnesty provisions for self serving advantage. However, an unconstrained SALW presence can be mitigated by arms surrenders, selective amnesty use, demobilisation of combatants and their civilian integration, and compliance achieved through traditional authority structures. To succeed, such initiatives require effective use of any political space to negotiate and build legitimised national institutions, and with sufficient capacity to last beyond ceasefires, truces, and provisional settlements.

61 Comments of diplomatic envoy Betty Bigome. International Crisis Group Podcast, 21 April (2021) <www.crisisgroup.org/africa/horn-africa/south-sudan/inside-regions-struggle-peace-south-sudan>.

62 This has occurred in South Sudan. Amnesty International *News Report* 30 April 2020. <<https://www.amnesty.org/en/latest/news/2020/04/south-sudan-evidence-of-violations-and-illicit-concealment-of-arms-must-spur-un-to-renew-arms-embargo>>.

63 G. R. Nyoot. *The Case of Disarmament in South Sudan*. Beyond Intractability Knowledge Base, December (2013) <<https://www.beyondintractability.org/casestudy/nyoot-disarmament>>.

64 In Côte d'Ivoire, security forces developed electronic databases allowing authorities to trace weapons collected during disarmament and demobilisation phases. This permitted marking and registration in accordance with relevant ECOWAS Convention commitments. *The Role of Weapon and Ammunition Management in Preventing Conflict and Supporting Security Transitions*. Geneva: UNIDIR (2019) p. 18.

Contrasted Vulnerabilities

Having outlined impediments to restraint of extra-legal SALW usage, comparisons are considered. Here a profile of major sellers comprising all five permanent members of the UN Security Council is provided: the US, Russia, China, UK and France. In that order, a corresponding list of key client SALW recipients is provided, namely Afghanistan, Syria, South Sudan, Saudi Arabia, and Mali. Those interactive relationships are provided in Table 1. An estimate of the impediments hindering effective SALW transfer restraint among major sellers is furnished in Table 2. Finally an estimate of the impediments hindering effective SALW transfer restraint among SALW recipients is provided in Table 3.

TABLE 1 SALW Key Seller/Recipient Interactions

	USA	UK	France	China	Russia
Syria					x
South Sudan				x	
Saudi Arabia		x			
Mali			x		
Afghanistan	x				

TABLE 2 Major Sellers: Restraint Impediments

Indicator	USA	UK	France	China	Russia
Exec. Dominant	1	1	1	2	1
Strategic imperative	1	2	2	2	1
Economic incentive	1	1	2	3	1
Defective Audit	2	2	2	2	3

Key

- 1: Strong
- 2: Moderate
- 3: Limited

TABLE 3 Recipient Restraint Impediments

Indicator	Syria	S. Sudan	S. Arabia	Mali	Afghanistan
Fail Accountability	1	1	1	2	1
Corruption	1	2	1	2	1
Impunity	1	1	2	2	1
Failed Settlement	1	2	2	2	1

Key

1: Strong

2: Moderate

3: Limited

SALW Exporter Score Ratings

The normative record of major SALW sellers in maintaining standards required to discharge due diligence risk obligations, as required under international humanitarian and human rights law, varies across selected indicators. Relevant data was collated from the World Justice Project's (WJP) 2021 Rule of Law Index; the 2021 Transparency International Corruption Perception Index (CPI); and the 2020 Global Economy Voice and Accountability (V&A) Index. From the latter's 206 entries the UK, US and France were included in the top quartile, China and Russia in the bottom fourth. The US, UK and France were included in the second quartile of the WJP Index, China and Russia in the bottom fourth. France, the UK and the US were included in the first quartile of the CPI index, China in the second and Russia in the fourth.

To the detriment of effective due diligence risk assessment, curbs over executive dominance in arms export policy are limited in the US, UK and France. In China those curbs are slightly more evident, a still weak normative record primarily concerned to avoid excessive corruption. In Russia such curbs are effectively absent.

Strategic imperative's key role in blocking due diligence leaves these functions weak but not fully absent in China for reasons of prudence and caution. They are eclipsed by the strength of Russia's commitment to a strategic imperative of resort to full use of force. For the US, UK and France strategic reconsideration of the value of stronger due diligence risk assessment for all arms transfers has occurred, but primarily *ex post facto* following unsatisfactory policy outcomes.

Retaining powerful ascendancy, economic incentives totally dominate due diligence considerations in Russia, only slightly less so in the US, UK and

France. Of interest is China where in South Sudan, and bowing to international pressure, it relinquished limited economic advantages by restricting SALW transfers.

While operative among major sellers, variance exists in the independence, impact and resourcing of audit functions. In France, the UK and, through the modest US Blue Lantern and Golden Sentinel programmes, limited monitoring of end-use SALW transfers occurs. However as in China and Russia, all major exporters see this function as primarily seeking value for money and orderly procurement. Notwithstanding the relatively limited SALW transfer income streams generated by corporates, no major state seller has full audit authority over this conduct.

SALW Importer Score Ratings

The indifferent normative record of particular SALW importing states stems from their direct embroilment with armed conflict.⁶⁵ When reading across the first indicator – defective accountability – and despite a prolonged military engagement in Yemen, Saudi Arabia remained largely unscarred by armed conflict. By contrast, decades of conflict-related damage to Afghanistan subverted any institutional checks established prior to the Soviet Union's intervention in 1979. In Syria and Mali, conditions proved little better, intra-elite checks over power holders unstable and arbitrary. Under South Sudan's externally sponsored 2020 power sharing Unity agreement, a transitional legislature lacked the institutionalised representation needed to hold office holders to account.

Corruption among the selected importing states seriously inhibited SALW restraint. Its tentacles have embraced border, customs, and stockpile administration, while blocking arrest or prosecution of those committing sexual violence, kidnapping, or trading in stolen and looted SALW for private or group profit. For the remaining three indicators, weakness is evident across all states considered. Peaceful dispute settlement is handicapped by national judiciaries and executives corroded by corruption and impunity. In South Sudan external agency support through the Intergovernmental Authority on Development (IGAD) assisted in conflict settlement necessary for SALW reduction and

65 When grading recipient states, Mali was found in the bottom quartile of the WJP and V&A Indexes as was Afghanistan. Saudi Arabia was included in the fourth quartile of the V&A Index and in the second of the CPI Index. South Sudan, Syria, Mali and Afghanistan were all included in the fourth quartile of the CPI.

control. But this could not substitute for local engagement and ownership of negotiating processes necessary for durable conflict settlement.

Within these dyads, difficulties continued to dog engagements by the United States in Afghanistan and France in Mali. Utilising SALW infusions, both prioritised militarised engagement ahead of time consuming, but imperative establishment of resilient institutional supports. Failure here facilitated SALW proliferation, manifest as bribes and blandishments exchanged by compradors of crime, religious fundamentalism, and narcotics trading.

Different but comparable, were the impacts of British arms exports to Saudi Arabia and those of Russia to Syria. In both, SALW were secondary as sources of economic return, but significant for the toll of innocent civilian casualties exacted. In the UK, those losses galvanised public opposition, fortuitously assisted by high level Saudi complicity in the Istanbul assassination of fellow citizen and journalist Khashoggi. Russian complicity in gross humanitarian law violations in Syria steadily hardened global opinion against Moscow. In both instances, immediate material advantages outweighed recognition that such policies eroded reputational standing. For Russia, the UK, France and the US, the longer those engagements persisted, the greater their policy damage. It was compounded by public resentment incurred by so-called 'blowback' that is, abundant stocks of SALW left in the hands of adversaries. Public disquiet was further manifest with threats of shareholder divestment from arms exporting interests, and mounting alarm over civilian loss of life incurred to little purpose.

France's security engagement in Mali from 2013 encompassing the Serval and Barkhane operations, concluded as failure with withdrawal in 2022. Although not major components of either operation, prior SALW supplies by France to Libya and adjacent locations were substantial. Their use in Mali's continuing armed conflicts reflected a one-dimensional, anti-terrorist conception of jihadist activity ignoring the complexities of its allegiances and motivations. Adding to France's no-win entanglement was its increased alienation from Mali's convoluted politics, and a local populace as estranged from foreign intervention as intra-jihadist armed violence. In sum, France's past arms transfer policies into Africa delivered outcomes never intended.

In similar vein but more drastically, the same is now valid for Russian arms supplies to Syria. They 'succeeded' to the extent the Assad regime was not toppled, but such concentrations of unrelenting Russian firepower continued to damage the Putin regime's international standing and foreign relations. Although not widely reported, Chinese retirement of SALW supplies to South Sudan was instructive, although relatively modest compared to the scale of

China's SALW transfers elsewhere in Africa.⁶⁶ Facing international opposition for their inherently interventionist nature, these transfers were restricted to South Sudan's warring factions in 2014, indicating a readiness to accommodate. While China's decision to join the ATT in 2020 was motivated by a desire to outpoint the US, this arena allowed Beijing to curry African favour by reiterating a policy of not permitting arms transfers to non-state actors.

Conclusions

In review, factors weakening arms seller accountability and compliance with international humanitarian and human rights obligations have been revealed. The secrecy and economic advantage maintained by major SALW sellers were shielded by imperatives of national and strategic security. By interacting with recipients displaying systemic institutional and public management deficiencies, negative juxtapositions resulted. None of these unsatisfactory results were immune from the impact of unrestrained SALW infusions.

This does not disregard arms trading grounded upon the legitimate self-defence needs of states. But accompanying that right is a corresponding obligation to ensure that weaponry is transferred in ways that ensure respect for international humanitarian law. This survey has indicated that, by not doing so, sellers risk policy failures and reputational damage. That can be alleviated by improved comprehension of the distinctive conflict dynamics operative within prospective recipient locations. Should they display persisting violations of international humanitarian and human rights law, those considerations need to outweigh commercial incentives.

Overall, the progress of SALW restraint has been modest once stated aims are matched against actual achievements. While the profits sellers attain through sale of this weaponry remain relatively modest, the lethal and intimidating potency of unrestrained SALW is unmodified. Now into its eighth decade, the ever-reliable, ubiquitous, but unglamorous AK47 semi-automatic rifle and its permutations rarely reaches headlines as a disarmament priority. But this weaponry's capacity for hibernation cannot go mistaken for the risks entailed in its eventual use. That is a lesson to revisit once the SALW flooding into Ukraine since February 2022 subsequently flows through numerous tributaries of diversion.

66 While selling to over 20 countries in Africa, China arms exports have operated on a low cost, no strings attached basis. China has also been outbid by Russia and the US in supply of more expensive equipment across this Continent. Luke Encarnacion. "Assessing the Impact of Chinese Arms in Africa", *Georgetown Security Studies Review* 9 (1) (2021) p. 2.

Official emphasis upon curbing illicit SALW transfers runs counter to a reality of their origins as legitimately traded items. Onus of responsibility for illicit diversion has been disproportionately placed in the hands of importers. Here prescriptive requirements have gained more diplomatic air time than others, recipient responsibility for stockpile management not matched by equally necessary, but inadequately addressed seller responsibility to legislate for arms brokerage controls. Rightful condemnation of falsified end-user certification within receiving locations has not been replicated by seller willingness to scrutinise dubious arms sale commissions, or facilitate extra-territorial application of anti-corruption laws.

Overall, the existing SALW restraint repertoire while useful and hortatory remains limited, largely non-binding, and overly susceptible to open-ended interpretation. Here positive due diligence guidelines need strengthening by legally enforceable arms brokering measures; appropriate penalties for deliberate falsification of end-user certificates; intrusive end-user validation where necessary; and independent, regular verification of end-user compliance with international humanitarian and human rights law obligations.

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