

A silhouette of a person aiming a rifle, set against a background of straw or hay. The image is rendered in a monochromatic reddish-brown color scheme. The person's hands are visible, gripping the rifle. The rifle is pointed towards the right side of the frame. The background consists of a dense field of straw, creating a textured, natural setting.

EASTASIA IN ACTION ON ARMS

Assessing regional compliance to the UN POA on small arms and light weapons

by Edgardo P. Legaspi

SOUTHEAST ASIA FORUM ON ARMED VIOLENCE

EASTASIA: INACTION ONARMS

Assessing regional compliance to the UN PoA on Small Arms and Light Weapons

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to the United Nations Programme of Action
on Small Arms and Light Weapons

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SOUTHEAST ASIA FORUM ON ARMED VIOLENCE

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Introduction

IT HAS BEEN FOUR YEARS since the approval of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA or PoA). At present, this is the most comprehensive international consensus for addressing problems arising from the global spread of small arms and light weapons (SALW). Reports from East Asian states on their voluntary implementation of the UNPoA indicate that the region is not starting from scratch on addressing SALW trade and transfer. However, most current measures preexisted, and few have developed since. There is a need to review current measures and problems in the context of the aims of the PoA, as well as to ask why a significant proportion of East Asian countries have not seen the need to participate in the submission of reports on compliance to the PoA.

Aims/Objectives

This brief report is a review of current activities by East Asian states to respond to the suggestions embodied in the UNPoA and to address problems related to small arms control. More broadly it aims to:

- Examine the Country Reports submitted on national implementation of the UNPoA.

- Evaluate the reports' content with the standards/objectives in the UNPoA provisions and other emerging standards in controlling the manufacture and trade of small arms and light weapons.
- Based on the reports, identify areas and issues of concern within countries and in the region which need further action towards closer compliance with the UNPoA and for a legally binding agreement such as an Arms Trade Treaty.
- Make recommendations to encourage future reporting, as well as to guide responses to identified issues and concerns.

This report should serve as an initial step towards a more detailed analysis of the states' responses to the UNPoA and to dynamics of SALW issue in the region. It also can be used as a guide for civil society to engage governments in the region about compliance with the UNPoA and in encouraging a legally binding international arms trade treaty.

As an NGO report, it goes beyond taking the country reports at face value by placing the country reports in the context of problems associated with the proliferation and misuse of weapons at the national, regional and international level. By doing so this report hopes to arrive at a more thorough assessment of reporting and contribute principles and suggestions towards a stronger agreement on illicit trafficking in SALW.

Coverage

Countries covered by this study include present members of the Association of Southeast Asian Nations (ASEAN)—Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar [Burma], Philippines, Singapore, Thailand and Vietnam—plus the neighbouring countries of Timor Leste, China, Japan, and South Korea.

Selection of the country coverage of this report has been made in the light of the ASEAN as the main dialog forum within the region that is initiating some form of response to the SALW issue. However, expansion of ASEAN into the "ASEAN+ 3" or "Greater East Asia" regional grouping is also being taken into account. Furthermore, the importance and influence of China, Japan and South Korea in regional and global security matters, as well as on development cooperation, is also considered in determining the report's coverage. Timor Leste is considered as it is a Southeast Asian country even if it is not yet an ASEAN member.

Methodology

The main methodology used for this study is the content analysis of national reports submitted in compliance with the UNPoA since it was adopted in 2001. The reports are compared with each other in terms of content and approach towards reporting. In addition to reports, specific laws and policies mentioned in the reports of countries are also examined, when these are available. Comparisons are made with the awareness of the diversity of contexts in each country, which means that there is no uniform procedure for approaching common concerns and problem areas.

The UNPoA itself contains explicit standards by which national reports of countries may be evaluated, in particular, objectives and direction of the action required of governments. Its preambular paragraphs also situate the context in which actions of states and regional organizations may be guided.

In addition, there are several emerging standards in the areas of concern of the UNPoA. These have been forwarded by other regional and interregional governmental organizations as well as NGOs in the form of recommendations, proposed principles and policy, and sometimes draft agreements or treaties. The importance of these proposals, especially those coming from major weapons-exporting states, to most countries covered in this study cannot be ignored.

Finally, this study takes into account inputs from other publications and studies on the SALW issue in the region.

Related Literature

A global study¹ on UNPoA reporting in 2003 was undertaken by the United Nations Institute for Disarmament Research (UNIDIR) with the United Nations Development Programme (UNDP) and the United Nations Department for Disarmament Affairs (UNDDA). This book presents the content of state reports submitted on the areas of action in implementing the UNPoA.

¹ See Kytomaki, E. and Yankey-Wayne V., 2004. *Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Analysis of the Reports Submitted by States in 2003*. United Nations, Geneva.

The International Action Network on Small Arms (IANSA) published a review of UNPoA activities, *Implementing the Programme of Action 2003: Action by States and Civil Society*, summarizing action by both states and civil society at national, regional and international levels to implement the UNPoA. IANSA's review contributed considerations to the 2003 Biennial Meeting, taking stock of the progress of implementation. No official reports were available from the E.A. region at the time the IANSA report was published, since most states submitted their reports around the dates of the Biennial Meeting. A second edition is being produced by IANSA ahead of the 2005 Biennial Meeting of States.

At the regional level, a similar study was made by Gina Rivas Pattugalan (2003) under the auspices of the Centre for Humanitarian Dialogue. The report covers Southeast Asia and the Pacific and was also prepared as a contribution to the 2003 Biennial meeting.

Format of Report

This report is divided into four parts: The first part examines the overall pattern of reporting in the region in the past four years under the UNPoA. Second, national implementation of specific aspects of UNPoA will be appraised based on the contents of reports submitted by the countries. The third part will present SALW issues that contextualize action at the national and regional level. The fourth provides conclusions and recommendations.

Overview of Reporting

Intention of Reporting in the UNPoA

The UNPoA is solely a political agreement and is not legally binding. Nonetheless, it represents the main consensus among UN member states to confront the issue of proliferation of illicit SALW. Its power derives from the 1999 UN General Assembly Resolution (54/54 V) to convene the 2001 UN Conference, in which the PoA was drafted and approved. Also, the adoption of the UNPoA was welcomed by the UN Security Council on September 2001, during which it called on all member states to take the required measures *to promptly implement its recommendations*.

The UNPoA requests for national reporting can be found in the following paragraphs:

Section II Paragraph 23: To make public national laws, regulations and procedures that impact on the prevention, combating and eradicating of the illicit trade in small arms and light weapons in all its aspects and to submit, on a voluntary basis, to relevant regional and international organizations and in accordance with their national practices, information on, inter alia, (a) small arms and light weapons confiscated or destroyed within their jurisdiction; and (b) other relevant information such as illicit trade routes and techniques of acquisition that can contribute to the eradication of the illicit trade in small arms and light weapons in all its aspects.

Section II Paragraph 33: To request the Secretary-General of the United Nations, within existing resources, through the Department for Disarmament Affairs, to

collate and circulate data and information provided by States on a voluntary basis and *including national reports*, on implementation by those States of the Programme of Action.” (emphasis supplied)

Unlike legally binding agreements, the UNPoA can not explicitly call for submission of national reports. State reporting in the context of the PoA is solely voluntary and it is done in the spirit of exchanging information on PoA-related activities of countries. Although there is no consequence if a UN member state does not submit annual national reports, good international citizenship should be enough motivation for states to submit reports, especially since the jointly agreed UNPoA itself stressed the urgency of cooperation and assistance in addressing the SALW issue. Given that the major challenge to the problem of illicit trade of SALW requires controlling transfer from one country to another, it is in the best interest of states to cooperate by sharing information.

At the very minimum, states should submit basic information that will allow review and comparison of their own SALW policies in the light of the UNPoA, both towards internal improvement and contributing to international cooperation. Still it would be more helpful and encouraging if sequential reports could demonstrate progress in implementation, which can only be established through the submission of more reports.

Report Submission in the Region

The UNIDIR report noted the “encouraging” rise of reports submitted in 2003 from 103 countries worldwide, compared with only 16 reports received during the 2002². Reports from countries in this study fall in this general trend, except for Cambodia, which submitted a report in 2004. It should be noted that none of the countries that submitted reports in 2003 did so the following year. A possible explanation for rise and fall of reporting in the countries concerned is the occasion of the 2003 Biennial Conference, as part of regular follow-up on the PoA. This downward trend of reporting is repeated throughout the rest of the globe because the total number of reports received is significantly lower at only 39 reports in 2004. A similar rise in reporting in 2005, when another biannual follow-up Conference is slated on July, will confirm this explanation.

Under the framework of the UNPoA, the following countries have submitted national reports: Cambodia, China, Indonesia, Japan, South Korea, Malaysia, the Philippines and

² Kytomaki and Yankey-Wayne, 2004, p.12.

Thailand. These countries have submitted one national report each since the PoA was approved. Other countries in the region—Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam—have yet to submit a single report as of this writing. Because of this, there is no way of assessing compliance to the program of action in these countries, unless a mechanism for scrutinizing each country is set up.

Table 1 presents an overview of the contents of the national reports thus far. It lists the content of each country's explicit statements responding to key action areas of the UNPoA. At this point, it is evident that all reports give information on the existence of relevant policy and procedure by each country to the PoA action area. However, it must be stressed that by no means does the non-appearance of the item in the report imply that a country does not have a relevant policy/procedure for that specific area. Unless the country specifically said so, it simply means that the country did not report the measure in their report. For example, this is the case in the absence, in most cases, of policy specifically on brokering, which is the PoA area that has the most gaps in implementation. Similarly, for destruction, demobilization and reconstruction, Thailand and Malaysia explicitly state that such a concern does not apply to them.

	<i>Cambodia</i>	<i>China</i>	<i>Indonesia</i>	<i>Japan</i>	<i>Korea, South</i>	<i>Malaysia</i>	<i>Philippines</i>	<i>Thailand</i>
Year Submitted	2004	2003	2003	2003	2003	2003	2003	2003
Laws of SALW	✓	✓	✓	✓	✓	✓	✓	✓
Criminalizing Illicit Activities	✓	✓	✓	✗	✗	✓	✓	✓
National Points of Contact	✓	✓	✓	✓	✓	✓	✓	✓
Marking, Record Keeping, Tracing	✗	✓	✓	✓	✓	✓	✓	✓
Export & Import Controls	✗	✓	✓	✓	✓	✓	✓	✓
Brokering Controls	✗	✗	✗	✓	✗	✓	✓	✓
Collection & Destruction	✓	✓	✗	✗	✓	✓	✓	✓
Stockpile Management	✓	✗	✓	✗	✗	✓	✓	✓

	Cambodia	China	Indonesia	Japan	Korea, South	Malaysia	Philippines	Thailand
Destruction, Demobilization & Reintegration	✓	✗	✗	✓	✓	□	✓	□
Public Awareness	✓	✓	✓	✓	✓	✓	✓	✓
Cooperation with Civil Society	✓	✗	✗	✓	✗	✓	✗	✓
Regional & International Cooperation	✓	✓	✓	✓	✓	✓	✓	✓

Legend: ✓ report explicitly mentions item
 ✗ report does not explicitly mention item
 □ report explicitly says the item does not apply to the country.

Because there is no existing guideline for reporting, the eight reports submitted vary in terms of levels of detail and length. Some countries describe specific points of a policy about each topic while others simply state the title of the policy or, in some cases, merely mention that such a policy/procedure exists. Because of this it is difficult to compare implementation of the PoA among all countries.

Reports on PoA compliance submitted to date should be treated as baseline information that can, and should, be expanded by subsequent reports to address existing gaps and/or lack of detail. There is a need to explain some curious procedures/policies or where these are not self-evident. For example, the stockpile management section of the Philippine report describes the rules³ governing the storage of SALW that may be seen as a lax security measure.

More details are needed to enable a thorough analysis of compliance with the PoA and comparison of different approaches. The general tone of reporting follows the traditional diplomatic practice of listing compliance measures as *accomplishments*. Reports avoid self-criticism or mention of challenges and problems. Some reports also give judgments about the measures they implement as being successful. Given the level of detail of the contents

³ It says that “[t]he storage vaults shall be opened at 9:00 o’clock in the morning and close at 5:00 o’clock in the afternoon, from Monday to Friday. After 5:00 p.m. no transaction shall be entertained except for delivery of firearms from Ninoy Aquino International Airport, or Customs or local factories.” This can mean that the vault is open during said hours and may be opened anytime. Comparatively, however, no other country gave similar levels of detail for this section than the Philippine report.

of the reports, the most that can be done from these is to raise more questions to seek more information on these measures. That this information will be made available to civil society or for public scrutiny is still a question that needs to be answered.

Thus aside from more details, there is a need for more candor about the situation in each country in the context of illicit trade in SALW being an internationally shared phenomenon. It is expected that countries might see some risk in sharing sensitive security information that can be used by organized crime and terrorist groups, and will recommend the need to adopt more security considerations on reporting.

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Reports avoid self-criticism or mention of challenges and problems.

The reports may also be distinguished from each other in terms of different priority concerns on PoA implementation of each country. In most reports, countries report more about measures to address the illicit trade of SALW, and little else on other aspects of the issue such as the national situation. These differences somehow illustrate the different dimensions of the problem of illicit trade of SALW in different countries. Differences in context make comparison difficult. Only two reports, Cambodia and Philippines, have approached the SALW issue as a challenge and describe to some degree the extent of their problem.

The UNPoA reporting system does not have a mechanism for responding or inquiring into the items conveyed by each country, so that there is no way to raise questions and elicit suggestions from others. The present mechanism should be improved so that

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constructive feedback can be given to countries that should respond by providing more explanations or information, and so countries can learn from each other's practices. It should also encourage those who have not reported on national implementation to share information.

A good report under this aspect should give details of applying different

aspects. For example, reporting on laws should describe important provisions, penalties and existing challenges. Given that providing such detail would produce a conceivably very voluminous report, reporting can have specific themes. This will also allow for better coordination since all countries shall reveal related information from each context. Alternatively, reports can point to URLs of websites (such as is being done at www.nisat.org) containing specific details of procedures and measures.

Given this situation, improving reporting, and feedback on responses to the SALW issue, is a reason for moving towards a more legally binding treaty on arms trade.

Implementing the PoA

A. National Coordination Agencies and National Point of Contact

UNPoA Provision Standards⁴

1. Existence of National Coordination Agencies for policy guidance, research and monitoring of efforts to combat and eradicate illicit trade in small arms. Aspects which should be covered by coordination should include illicit manufacture, control, trafficking, circulation, brokering and trade, as well as tracing, finance, collection and destruction (UNPoA Section II Paragraph 4).
2. Existence of a National Point of Contact to act as liaison between states on matters relating to implementation of the PoA. (UNPoA Section II Paragraph 5)

The aim of establishing national coordination agencies or mechanisms is to aid in harmonizing the work of different agencies that act on the issue or even specific aspects of the issue in order to integrate different measures towards better coherence and consistency within the country. The complexity and breadth of the SALW issue requires different responsibilities and areas of expertise and capability. These differences require contributions of inputs that will make responses as comprehensive and effective as possible.

⁴ The list in this subsection, as well as similar ones that follow, is a condensation of the UNPoA provision cited. The original text of the UNPoA should be used as reference instead of the text of these subsections.

The national point of contact, on the other hand, facilitates international coordination. At the regional and international level, coordination is also needed between countries that share common concerns and problems, and also between those who have solutions and those who currently experience challenges.

Table 2: Highlights of National Reports on National Coordination Mechanisms and National Points of Contact⁵

Cambodia	<i>Point of contact:</i> Department of Weapons and Explosives Management and Control, Ministry of Interior; and Military Equipment Department, Ministry of Defense
China	<i>Point of contact:</i> Department of Arms Control and Disarmament, Ministry of Foreign Affairs
Indonesia	<i>Point of contact and coordination mechanism:</i> Interdepartmental Working Group coordinated by the Directorate for International Security and Disarmament, Department of Foreign Affairs
Japan	<i>Point of contact:</i> Conventional Weapons Division, Ministry of Foreign Affairs
Korea, South	<i>Point of contact:</i> Ministry of Foreign Affairs and Trade; Defense for military; Police for non-military; and Customs for brokering
Malaysia	<i>National coordination agency:</i> Security and Public Order Division of the Ministry of Home Affairs <i>Point of contact:</i> Royal Malaysia Police and the Ministry of Defense
Philippines	<i>Point of contact:</i> Department of Foreign Affairs
Thailand	<i>Point of contact:</i> National Security Council <i>Coordinating body serving as liaison with UN and other states:</i> Ministry of Foreign Affairs <i>In charge of border controls and exports:</i> Customs Department

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- All countries have identified a national point of contact. Although many reports do not specify names of the point of contact or the specific office in the reports,

⁵ The highlights in this table (as well as subsequent tables) are intended to give a general overview of the content of the national report but not to represent the national report itself. The full text of all country reports on UNPoA implementation may be downloaded at: <http://disarmament2.un.org/cab/salw-nationalreports.html>

the list of contacts (as of 22 November 2004) in the UN Department of Disarmament Affairs indicates that this gap has been addressed. Almost all countries that submitted reports, except for Thailand⁶, have specified the names of the point of contact in the said list.

- Of the countries which did not submit national implementation reports as yet, only Myanmar (Burma) and Singapore has provided the names and offices of the national points of contact.
- Only three countries have reported the establishment/existence of a national coordination agency. These are either already existing agencies that perform such function or expansion of functions of existing agencies.
- Only Indonesia has specified an agency which acts as both the national coordination agency and national point of contact.
- With the exception of China and Thailand, no other country has reported on the details of work of the national point of contact.

Some governments have assigned as point of contact personnel from the foreign ministry or from the police/military. Both agencies have relative the strengths and weaknesses in relation to performing the tasks envisaged in the UNPoA. A foreign ministry point of contact will place the country better touch with the international community about existing and emerging international laws, trends, patterns, and the experiences of other countries. On the other hand, contacts from the military or police will be better placed to evaluate national practice and implementing laws because of the direct function to deal with SALW. It is difficult to find a final answer on which office is better suited to the task. The basis of selecting such offices should be evaluated in the light of the tasks of each agency as these relate to SALW.

The key requirement in determining the key coordination agency or national point of contact for the PoA is the need for effective relay of information within the country to ensure that responses will be better guided, realistic and up-to-date. Over time, lessons and experiences in implementing the PoA should answer this question.

Thailand's action on this aspect of the PoA is notable in identifying the National Security Council as a point of contact. Such a high level office has the potential of being more effective because of its political clout. However, the curious aspect of the Thailand report

⁶ When asked in January 2005, Thailand's Ministry of Foreign Affairs provided the name and contact details of of the National Point of Contact .

is reporting the NSC as point of contact and the foreign ministry as a coordinating body, although the latter is tasked with international liaison. This, as well as the gap of other countries in identifying or designating a national coordinating mechanism, can be pointed out as an area that needs further clarification.

As a further step to mentioning the existence of coordinating mechanisms and national points of contact, reports should demonstrate how these actually function within the national context, and in cooperation with other countries, and with regional and international governmental forums.

B. Laws, Regulations, and criminalization of illegal acts

UNPoA Provision Standards

1. Existence of adequate laws, regulations and procedures to exercise effective control over the production, export, import, transit or retransfer of SALW. (UNPoA Section II Paragraph 2)
2. Adoption of legislation on criminal offences on illegal manufacture, possession, stockpiling and trade of SALW, in order to enable prosecution. (UNPoA Section II Paragraph 3)
3. Identify and take action on groups and individuals engaged in illegal manufacture, trade, stockpiling, transfer, possession, as well as financing for acquisition, of illicit SALW. (UNPoA Section II Paragraph 6)

The relevant PoA provisions on national laws, regulations and criminalization of illicit acts (II.2, II.3 and II.6) seeks to ensure that there exists a regime of laws governing the production, export, import, transit or retransfer of small arms. All of these measures should aim to exercise “effective control” of different aspects of the weapons trade. In addition, laws on SALW should also criminalize and penalize violations of the laws to act as deterrent to illicit activities. Aside from ensuring that such legal and criminalization measures exist, governments are expected to act on groups and individuals who engage in illegal activities by identifying them and applying the existing law.

Table 3: Highlights of National Reports on Laws, Regulations and Criminalization of Illicit Activities

Cambodia
<p>Specifies laws on legal use, possession, including newer legislation to improve upon these laws</p> <p>Creation of new legislation on management and control of weapons</p>
China
<p>Specifies laws which control the production, stockpiling, transportation, import and export, use and confiscation of SALW.</p> <p>Laws also specify policy on both official and civilian use of weapons; including licensing, lending, distribution and designation of areas of use.</p> <p>States that illegal activities and violations are criminalized in such laws, including the Criminal Law criminalizing activities such as illicit manufacture, buying or selling, or transportation of firearms and ammunitions.</p>
Indonesia
<p>Specifies laws on licensing and possession</p> <p>Identifies head of police force as sole licensing authority for SALW possession.</p> <p>States the existence of a system governing the use, storage, distribution and destruction of weapons in the military.</p>
Japan
<p>Mentions existence of a legal system regulating manufacture, possession and transfer of firearms</p> <p>Specifies laws on manufacturing, private use and trading of SALW, including parts and other similar devices.</p> <p>Identifies authority regulating arms manufacturing.</p> <p>Specifies law governing use of weapons by peacekeepers in other territories.</p>
Korea, South
<p>Mentions existence of laws, regulations and procedure on production and trade within the framework of specific laws controlling civilian and military use, regulating defence industry supplies, and trade control mechanisms.</p>

Malaysia
<p>Specifies a central law on production, export and import of SALW, as well as supporting orders, regulations, policies and legislation strengthening this law.</p> <p>Specifies existing laws on arms smuggling and duty to follow international agreements on sanctions</p> <p>Specifies laws criminalizing violations of regulations on possession, licensing and trade; identifies laws on crimes involving the use of weapons.</p>
Philippines
<p>Specifies laws on possession, use and registration; including identifying authority responsible for licensing and revoking licenses.</p> <p>Specifies laws criminalizing activities involving SALW, including on manufacture and selling. A specific measure to eliminate illegal production is also mentioned to address the cottage industry type of illicit gun manufacturing.</p> <p>Specifies instances in which use of weapons are further regulated such as the election gun ban.</p> <p>Specifies penalties on illegal possession and use of weapons.</p>
Thailand
<p>Specifies titles of laws on controlling different aspects of SALW.</p> <p>Specifies measures to further regulate weapons use by increasing license fees and identify authorities responsible.</p> <p>Mentions conducting intelligence work to eliminate arms smuggling across borders.</p>

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Lested and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- All reports indicate that countries have laws in place that regulate the different aspects of the SALW issue. However since the particular context of each country is important in determining the shape of the laws, the reporting on and coverage of existing laws and regulations on SALW are expectedly different and uneven.
- At the minimum, all countries have specified the names of the relevant laws on SALW, including those that do not deal with PoA aspects directly but nevertheless affect the use and trade of SALW.
- Cambodia, Malaysia, and the Philippines have taken additional steps to describe the contents of the law, including penalties imposed for violations.

- Cambodia, Indonesia and the Philippines have included problems and challenges facing the enforcement of laws which address the SALW issue.
- Some countries did not report the full scope of laws regulating different aspects of SALW. For example, Indonesia's list of laws is limited to those involving SALW use and possession, but not on trade, which is the PoA's concern.
- Only the Philippines acknowledges the existence of illicit manufacture of weapons. However, illicit production is known to exist in other countries in the region—China, Indonesia, Laos, Malaysia and Thailand.⁷ Reports also mention some activity about amending existing weapons laws, regulations and criminalization to enforce stiffer penalties or adjust to new realities. In this aspect only Cambodia has amended SALW laws after 2001.
- Reports on national laws commonly share the separation of authorities (and in some even of policies) governing for civilian and military use and trade of weapons.
- Most countries have stated that violations are criminalized and penalties exacted on violators, although as mentioned earlier not all give details on violation. Japan and South Korea's reports do not specifically mention criminalization, although it is reasonable to assume that such provisions on imposing punishment for violators exist in their laws.

The objective of reporting on this aspect of controlling SALW use and trade is to enable comparison between countries in order to find out if there exist measures and practices that could possibly address problem areas in other countries that do not have similar policies. For this reason, even countries which have not submitted reports should cooperate on this matter towards the creation of a comprehensive database of laws and policies.

Reporting should demonstrate how effective laws are in preventing violations or contribute towards weapons proliferation. However, the effectiveness of laws is a matter of implementation. This principle addresses the concern that some countries have relatively old laws on weapons and crime using weapons, such as Malaysia's *Arms Act* (1960) and Thailand's *Firearms, Ammunition, Explosive Articles & Fireworks & Imitation of Firearms Act* (1947). A low level of crime involving the use of weapons and direct violations of weapons use, would mean that existing laws effectively act as deterrent, as compared with countries with higher transgressions of similar kinds. The same principle applies to laws which provide only minimal specifications but result in the achievement of desired

⁷ *Small Arms Survey*, 2001 p. 46, and 2002 p. 96.

Quality and effectiveness of enforcement is key determinant to the success of laws.

results. Ultimately, if the government authorities are vigilant enough to enforce the law effectively, violators would be prevented and discouraged.

In the context of the above, countries should also report on the scale of the problems on SALW proliferation. It is only by doing this that any evaluation of the appropriateness of laws to the situation can begin to be evaluated. Further details on the SALW-affected situation should be made available in order to be able to assess the effectiveness of laws and identify where problems and gaps exist.

There are differences in penalties in terms of the length of imprisonment and fines for criminalized activities on SALW. Different amounts of penalties are imposed on violators of similar crimes, making some crimes relatively *cheaper* than in other countries. This gives rise to an idea/suggestion on reevaluating the imposed fines and finding possibilities of imposing common standards. Still, the more important aspect of criminalization is not fines imposed but recording of violations. Criminal records should be a determinant in approving gun use and trading licenses, both locally and internationally.

Some countries have a highly centralized mechanism of approval of gun licenses. Indonesia, Philippines and Thailand, for example, require all licenses to be approved by the head of the police force. The rationale of these systems, though not explicitly mentioned, seems to be that centralization of decision making would assure better control. On the other hand, if there are too many applicants, the approving office will be too burdened with the task of verification of applications. It is practically impossible to know the background of each license applicant. Thailand for instance mentions more than 3,000 pending applications at one point in time. The principle that should be followed is ensuring that approval decisions are transparent and reliable.

Overall national laws, regulations and administrative procedures provide the legal framework governing SALW, covering different elements of licensing, including authorizing bodies, requirements, procedures, applicability, enforcement and penalties. Aside from aiming for consistency of measures and application, these should be consistent with the existing international obligations of the state.⁸ The key principle to be followed is ensuring transparency of procedures and accountability of mechanisms.

⁸ Organisation for Security Co-operation in Europe, 2003. *Handbook of Best Practices of Small Arms and Light Weapons*. Vienna, OSCE. p.4.

C. Marking, Record Keeping and Tracing

UNPoA Provision Standards

1. Application of reliable marking on each small arm during production to be able to identify the source country and to help national authorities in tracing each weapon. (UNPoA Section II Paragraph 7)
2. Existence of measures to prevent manufacture, stockpiling, transfer and possession of unmarked or inadequately marked SALW. (UNPoA Section II Paragraph 8)
3. Existence, as long as possible, of comprehensive and accurate records on manufacturing, holding and transfer of SALW. Authorities should be able to promptly retrieve and collate such records. (UNPoA Section II Paragraph 9)
4. Existence of effective tracing methods and procedures. (UNPoA Section II Paragraph 10)
5. Continued state responsibility for all SALW it holds and issues. (UNPoA Section II Paragraph 10)

This aspect of SALW trade and transfers covers two areas: (1) ensuring that all pieces of SALW bear appropriate marks to determine source and as part of the record of ownership/use; and (2) keeping records of weapons and users/owners. Marking and record keeping is important to keep track of SALW as it changes hands from the producer to traders and to end-users, as well as from one user to the next. In case of illicit use and trade, it is important to find out at which point weapons leave official and legitimate channels to be able to determine responsibility for diversion. The UNPoA also intends to strengthen the durability of marks and prevention of forgery, alteration, erasure or elimination of marks. Tracing procedures give the state duty to ensure that SALW are not used or made illegally and it agencies responsible should be accountable for such duty.

Table 4: Highlights of National Reports on Marking, Record Keeping and Tracing

Cambodia
Specifies laws on legal use, possession, including newer legislation to improve upon these laws
Creation of new legislation on management and control of weapons

China
<p>"Every piece" of SALW bears a unique marking containing type of weapon, code of the manufacturer, serial number, year of production, etc.</p> <p>Manufacturers and traders companies keep detailed records for an indefinite period. Records are kept in "every part of the chain from manufacturers to end-users".</p> <p>Considering building a nation-wide database on the manufacturing, holding, and import and export of SALW.</p>
Indonesia
<p>Manufacturer of weapons applies marking and identification, storage and documentation of weapons produced.</p> <p>Users applicants must to submit details to aid proper identification of the weapon as requirement for issuance of license. Information include type, mark, calibre, amount, past data, munitions, location of distribution, port of entry, country of origin and bio-data of user.</p>
Japan
<p>Each SALW is, in principle, marked with the name of manufacturer and a serial number at the time of manufacture.</p> <p>Records for SALW in civilian, police and military use are kept.</p>
Korea, South
<p>Defense ministry issues its own serial numbers which are engraved on weapons for military use until its disposal. Korea has an existing computerized inventory of military SALW.</p> <p>Non-military SALW also bear engraved marks from the factory, including serial numbers.</p> <p>Industry also issues delivery tags for each weapon providing information on year of production, factory name, serial number, etc. to enable tracing.</p>
Malaysia
<p>Marking is a not a requirement in specified in laws but manufacturers provide marking (serial number). Authorities keep serial numbers of weapons sold.</p> <p>Records of weapons are kept in a register. Recor</p> <p>Cooperation on tracing through bilateral and multilateral arrangements. ds are kept permanently.</p> <p>Renders assistance to different countries for this aspect.</p>

Philippines

Police conducts annual inspection of licensed firearms.

Issued memorandum on firearms description for more effective firearms identification and gun control.

The Firearms and Explosives Division of the Police inspects and conducts ballistics tests of each piece of SALW sold to legal users, and keeps records of tests (slugs and shells).

Thailand

Ministry of Interior is developing online database system of guns (possession, transfer, registration).

No time limits for keeping and destroying weapons records.

Since it is not an exporter, marking should be responsibility of arms producers.

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- The weapon's serial number, producer and country of origin are the most common marks used and records kept by all countries. In most cases, the reported details about marking and records keeping systems are too general to enable a detailed analysis or comparison. Because of this, the reliability of tracing weapons which cross national boundaries could become difficult.
- Only South Korea and the Philippines have reported taking an extra step beyond the existing marking and records system. Korea reports marking an additional serial number for weapons used by its military. The Philippines keeps ballistics samples (slugs and spent shells) of weapons sold.
- All countries that reported a system of recording keeps a register of legal weapons, although not every country made it clear whether all countries keep weapons records at the national levels. For the countries that reported on recording details, all state that records are kept for indefinite periods or until the disposal of weapons.
- Only one country, Japan, has explicitly reported the use of weapons records as national statistical data. This information is useful for analysis to keep track of volume of weapons and internal arms flows. It can also be made more useful because of easy access by other countries or in international cooperation among police forces.

- Only the Philippines reported an illegal practice in the marking of weapons through illegal tampering serial numbers of weapons in illicit hands and the duplication of weapons' serial numbers by illegal producers.
- Only China has reported keeping records *at every step of the chain of transfer*, until the final end user. This is in addition to plans of establishing a national arms database which can quicken the pace of weapons tracing.
- Indonesia reports the most information on records kept for weapons in its register.

In general, all countries report practices that meet the minimum basic information⁹ of marks on weapons—serial number, factory/manufacturer, country of manufacture. Additional markings such as year of manufacture and special marks are also reported. Discounting the illegal practice of tampering of marks, existing marks should be enough to enable tracing of weapons as it changes hands, provided records are kept. This is an aspect where there are considerable variations in practices of countries covered by this report. Thus far, China's reported practice of keeping records at all stages of weapons use is the most comprehensive practice reported, although it does not report keeping weapons statistics as national records similar to Japan. Such information is vital given that China is the biggest SALW exporter in this region and among the top producers in the world.

Japan's practice is notable on underlining the importance of keeping separate sets of weapons records both at the local level where weapons are being officially kept by owners, and at the national level where these should be consolidated. Records at these two levels are important to enable a more efficient weapons tracing if these are transferred within the country or beyond national borders.

No country has reported on international efforts to make a uniform system of marking or cooperation on this aspect which can facilitate international tracing efforts. Action in this regard should be coordinated at the global level since most weapons originate from outside the region. It would be in the best interest of states to subscribe to an internationally binding legal framework that would support their efforts at the country level and ensure a more comprehensive system for tracing weapons.

⁹ See OSCE, 2003b, p. 5.

D. Stockpile Management and security

UNPoA Provision Standards

1. Existence of adequate and detailed standards and procedures to ensure security of weapons stocks, including appropriate locations for stockpiles; physical security measures; control of access to stocks; inventory management and accounting control; staff training; security, accounting and control of small arms and light weapons held or transported by operational units or authorized personnel; and procedures and sanctions in the event of thefts or loss. (UNPoA Section II Paragraph 17)
2. Existence of mechanisms governing surplus weapons including those for review and identification programmes for responsible disposal, and adequate security while awaiting disposal. (UNPoA Section II Paragraph 18)

Weapons stocks of government must be made secure from unauthorized access to prevent their transfer to illegal activities. These stocks include those used by the armed forces, police and authorized agents, as well as those classified as surplus including collected, confiscated and seized by government. Surplus weapons need to be properly identified and stored as such so that they are not used in the same manner as officially issued weapons. States also need to regularly review weapons stocks by counting weapons and destroying the surplus.

Table 5: Highlights of National Reports on Stockpile Management and Security

Cambodia
<p>Construction of warehouses and shelves at national and provincial levels.</p> <p>Cooperation programmes with donors include projects on registration and safe storage of weapons, including those possessed by the police force.</p>
China
<p>Standardized procedures for the management of SALW stockpiles, which are stored at specialized warehouses equipped with necessary complementary facilities and personnel.</p> <p>The stockpiles are registered and checked regularly to ensure their safety and security.</p>

Indonesia
<p>Indonesian Army has responsibility to monitor and verify the use, storage, distribution and destruction of weapons for civilian use.</p> <p>Prior to sale, all weapons must be stored in police storage facilities for proper controlling and safety precaution.</p>
Japan
<p>Requires weapons to be stored, securely locked and their types, numbers, etc verified on a daily basis.</p> <p>Each firearm carried by a police officer is required to be registered in a record-keeping book each time it is taken out from and returned to the armory.</p> <p>Civilians who own firearms under permission are required to bring weapons to the police once a year for inspection, and store these in gun lockers. Records of firearms owned by civilians are kept at the prefecture level (registers) and national levels (data).</p>
Korea, South
<p>Manages inventory of all domestic military SALW through a computer programme known as the Firearms Management System. This system includes measures on: storage, physical security measures, inspections (monthly for records, annual on stockpile and on-demand), inventories and record keeping are implemented.</p>
Malaysia
<p>Inspection of police weapons stocks every six months. Arms Act also provides for regular inspection of weapons stocks-in-trade.</p>
Philippines
<p>The PNP Firearms and Explosives Division (FED) is mandated to stockpile commercial firearms, evidence firearms, and confiscated, captured, surrendered, and deposited firearms.</p> <p>FED is sole repository of all imported and locally manufactured firearms and ammunition. Have strict guidelines for storage to avoid congestion, smuggling of stocks and to attain maximum security.</p> <p>Different memoranda and official orders also provide procedures and guidelines for storage, recording, inspection, and tests of weapons.</p>

Thailand

National legislation and other measures cover the management & security of the SALW stockpile, including accountability processes such as reviews (annual), checks and tight security.

Annual review of stocks in military, police and other authorities. Officers who have access are subject to security clearance.

24-hour security for storage in defense facilities.

Process for bringing out weapons. Checking system upon return.

Developing online system on records of weapons stocks.

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- All states reports mention measures of varying detail on stockpiling and review and disposal of SALW stocks, both military and police stocks and collected weaponry. Stockpile management is in most cases covered by laws and administrative measures.
- However, some practices reported (Cambodia and Indonesia) do not specify physical security measures, inspection and record keeping.
- Reporting has focused on more stockpile and security measures than on review systems to govern and determine weapons for disposal.
- Indonesia and the Philippines mention the duty of police units to store and inspect weapons prior to their sale to licensed buyers. In addition, as also mentioned in Japan's report, licensed weapons are also inspected by the police on an annual basis, to ensure safety and monitor usage.

No country report mentions problems on arms leakages and diversion from stockpiles. Investigation into such incidents will help identify gaps on security measures of weapons stockpiles held by the government.

- Only Japan report mentions measures that govern even private storage of weapons, and record-keeping procedures for the official use of weapons.
- Two countries (Japan and Thailand) reported existing systems to check and record weapons taken out of or returned to the armory.

No country report mentions problems on arms leakages and diversion from stockpiles. Investigation into such incidents will help identify gaps on security measures of weapons stockpiles held by the government.

E. Export, Import and Transit controls

UNPoA Provision Standards

1. Existence of strict national regulations and procedures that cover all SALW to assess applications for export authorizations. (UNPoA Section II Paragraph 11)
2. Existence of effective national export and import licensing/authorization system, as well as measures on international transit (UNPoA Section II Paragraph 11)
3. Existence of adequate laws, regulations and administrative procedures to ensure effective control over the export and transit of SALW, including the use of authenticated end user certificates and effective legal and enforcement measures (UNPoA Section II Paragraph 12)
4. Notification of original exporting state about retransfer of weapons (UNPoA Section II Paragraph 13)

Strict arms trade and transit controls are key to securing transfer of weapons. This control system should include both reliable licensing and authorization systems, as well as monitoring of activities of legal traders and foolproof means of ensuring secure transit until weapons reach the legitimate end user.

Table 6: Highlights of National Reports on Export, Import and Transit Controls

Cambodia
<p>Banned the importation and manufacture of SALW because of proliferation or weapons.</p> <p>Policy not to export or traffic weapons.</p>

China

Enacted laws to regulate export and import of arms, and introduction of amendments in 2002 to enhance existing laws. These include regulations on Administration of Arms Exports, which specifically addresses this aspect by establishing a unified administration system for arms exports.

Existence of State principles governing arms exports: conduciveness to legitimate self-defense capability of the recipient country; non-negative impact on the peace and security of the region/world; and, non-use of weapons to interfere with internal affairs of recipient countries.

Requiring "business operation rights" to and specification of "approved scope of business" of arms exporters. Prohibition of individuals from conducting export and import of arms.

Export requires licensing and imposes punishment for violations.

Signed in 2002 the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing UN Convention Against Transnational Organized Crime.

Indonesia

Arms purchases, both imported and locally manufactured, require licenses from police. Department of defense authorises purchases of weapons for military use.

Japan

As a nation dedicated to peace, Japan does not export arms.

Prohibits importation of handguns, military rifles, machine guns and guns and imposes punishment of violations, including stiffer penalty for importation for profit.

Foreign trade law controls and coordinates external trade to a "minimum extent only", provided exports meet permission requirements from Ministry of Trade. Provides penalties for violations.

Follows three principles prohibiting arms exports to countries which are: communist, imposed UN arms embargo, or those which are "likely to be involved in international conflict". Further restrictions are made in keeping with Constitutional principle as a nation dedicated to peace, and foreign trade laws and the treatment of equipment on arms production to be in the same category as arms.

Signed in 2002 the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing UN Convention Against Transnational Organized Crime.

Korea, South

Ministry may consider further restrictions and/or adjustments to export permissions issued when necessary for maintenance of international peace and security or national security; and if exports will create "diplomatic friction".

Prohibition of exporting SALW to countries facing arms embargoes.

Law prohibits the import of handguns, military rifles, machine guns, guns & their ammunition & parts, and providing penalties for violation.

Manufacture and export of arms for civilian use requires permission from police authorities, approval is determined on a "case-to-case basis". Imposes penalties for violation of laws or engaging in manufacture, export and import through "fraudulent means".

Reports that there are "no cases of organized illegal production or transfer" as well as punishment of individuals found to have illegally modified weapons.

Malaysia

Arms Act regulates exports and imports of weapons through regulation of export and import (quantities), marking of cases of imported/exported weapons and issuance of notices; cancelling unlawfully imported weapons; specification of ports of entry and exit and sources; case-to-case prohibitions; and criminal acts violating controls.

It also requires licenses/permissions for transfer of weapons, except for licensed dealers and to police officers.

Philippines

Imposition of production quotas on firearms producers.

Requirement of approval of head of national police for importation.

Thailand

No capacity to manufacture arms for exports, except for raw materials, ammunition belts and parts of arms.

Specific act prohibits unlawful import, production and possession of munitions and requires permits from defense ministry to be able to do so legally.

Importers must possess license and needs to declare license at the (Customs) checkpoint.

Imposing quotas on number of weapons sold by importers to gun shops. Gun shops also have limits on the number of specific weapons at any given time.

Does not check containers declared as a SALW transit container, provided there is advanced notice and prior customs check.

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- Three countries, Cambodia, Japan and South Korea, prohibit importation of SALW, but the latter two do not give the reason for imposing such a ban. It should be noted that, of the three countries that stated that they prohibit importation, Japan and South Korea are arms exporters.
- All countries (except Cambodia) say they regulate quantities of manufacturing, importing and exporting, as applicable. Regulation includes appropriate licensing, approved by either the defense ministry or national police. Quotas are a common form of regulating weapons trade.
- Four countries, China, Japan, South Korea and Malaysia, mention penalizing violators of arms trade laws.
- Only three reports mention the official exportation of arms—China, South Korea and Malaysia—although other countries (Japan, Philippines and Thailand) also export firearms or firearms parts.
- Two reports explicitly state that they do not export arms. Japan does not export weapons in keeping with its principle as “a nation dedicated to peace”. Thailand’s report repeatedly mentions that it has “no capacity to export arms” but mentions export of arms parts, raw materials and ammunition belts, which are considered by other countries as arms exports.
- According to Japan’s export laws, “machines used for weapons production” are classified as weapons.
- China, Japan and South Korea include peace and security considerations in considering export approvals. No country specifically mentions human rights abuses as a consideration for prohibiting arms exports.

All countries that submitted national reports have the capability to produce arms and/or munitions.

Most legal regimes governing import and exports are not specifically designed for firearms except three countries—China, Malaysia and Thailand—which have specific laws on arms exports. In the rest, weapons and parts of weapons are included in the export/import control list.

No country has reported on the tariffs and other non-quota controls imposed on weapons trade, which can influence demand for SALW and ultimately affect potential leakages into illicit trade.

Despite stating in their reports that their countries do not export weapons, the *Small Arms Survey* 2001 and 2002 lists both Japan and Thailand¹⁰ as among the region's weapons exporters, including other countries in the as China, Indonesia, Malaysia, Philippines and Singapore. These cases of misreporting should be explained by the governments of both countries.

Three countries—China, Japan and South Korea—mentioned in their reports that they consider peace and security concerns in their decision to export arms. In Table 5, these peace and security considerations have been enumerated by each country but there are no explanatory details on how the countries actually put these into practice, particularly the more vague principles. For instance, how does China determine if a specific arms export could “interfere with internal affairs of the recipient country.” However, it should also be noted that the PoA does not exactly ask the states to go into more in depth definitions or illustrations of how they implement their own measures. A more comprehensive and legally binding agreement on the arms trade though could compel states to do this and even prove that they are actually implementing their claims.

F. Brokering Controls

UNPoA Provision Standards

1. Existence of national legislation and administrative procedures on arms brokering, including registration, licensing, or authorization of transactions and imposing penalties on violators. (UNPoA Section II Paragraph 14)
2. Observing and enforcing observance of UN Security Council arms embargoes. (UNPoA 11.15)

National weapons regulations should also covers individuals and groups who are involved in brokering, which is defined in this issue as the facilitation of arms transfers in grey areas as well as illicit transfers between countries. Thus, the UNPoA seeks to establish better rules governing this aspect of weapons trade, and with particular emphasis on criminalizing illicit brokering. The UNPoA is also concerned with the transfer of weapons to states facing UN arms embargoes.

¹⁰ Japan's total arms exports were valued at US\$30 million, while Thailand's exports were significantly smaller at US\$8,000. The amounts are based on Customs data obtained by the *Small Arms Survey 2001* (p. 148) and *Small Arms Survey 2002* (p. 127).

Table 7: Highlights of National Reports on Brokering Controls

Cambodia
No mention.
China
No mention.
Indonesia
No mention. Department of defense authorises purchases of weapons for military use.
Japan
Foreign Exchange and Foreign Trade Law restricts illegal brokering activities and restricts serving as intermediary in the international trade of arms. Penalties are provided for violations.
Korea, South
No mention. Requirement of permission to from the Defense ministry for major 'defense industry supplies' including SALW, and from the Minister of Commerce, Industry and Energy for general 'defense industry supplies'.
Malaysia
Existing laws do not define brokering as such, but related activities are covered by existing laws on trade and transfer.
Philippines
No specific legislation on arms brokering, but customs code prohibits unauthorized importation of "weapons of war". Police and defense directorates for logistics have authority for arms purchases for use in each command.
Thailand
No specific laws on arms brokering but existing export and import control laws & regulations is being used to control trading activities. Authorities have discussed developing national legislation and administrative procedures to regulate activities of those engaged in SALW brokering.

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- With the sole exception of Japan, no other country specifically addresses brokering through existing laws. Three countries (Malaysia, Philippines and Thailand) specifically say that the activity of brokering is covered by existing export, import and transfer laws affecting SALW.
- Three countries did not at all discuss brokering in their reports—Cambodia, China, and South Korea. The latter two are major arms exporters.
- Three countries, Indonesia, South Korea and the Philippines, mention procedures governing arms purchases of their own defense/police forces.

The general absence of laws on brokering among countries which submitted reports represents the biggest gap in implementation of aspects of concern in the UNPoA. At this point, presuming that brokering is covered by existing regulations on arms trade and transfer, the absence of regulations on brokering reveals differences in understanding the practice. Some countries insist that brokering is covered by export/import

What is brokering?

As far as domestic items are concerned, in many countries arms export control procedures provide for sufficient controls. Countries with reliable arms export controls in place can thus control the end use of these items through their export procedures. Therefore, the core brokering activities described below are those that refer to items located in a third country. These brokering cases are the most sensitive, since they are not covered by conventional export controls. States may consider, as an option, introducing brokering controls for domestic items as well, thus requiring two licences for one transaction (brokering and export licence).

The core activity includes the following:

- ◆ Acquisition of SALW located in one third country for the purpose of transfer to another third country;
- ◆ Mediation between sellers and buyers of SALW to facilitate the transfer of these weapons from one third country to another (synonyms for “mediation” are “to arrange”, “to negotiate” and “to organize” arms deals);
- ◆ The indication of an opportunity for such a transaction to the seller or buyer (in particular the introduction of a seller or buyer in return for a fee or other consideration).

The control of this core activity is indispensable for States in order to distinguish between

regulations might be taken to imply that there is no need for specific rules on brokering. Thus there is a need for a common definition and understanding of brokering in order to arrive at a common and complementary approach.

There is still a need to thoroughly examine such existing laws on arms trade and transfer to determine how well these cover the practice of brokering, particularly its problematic aspects that lead to weapons transfers to illicit use and to third countries.

The UNPoA does not have provisions on procedures governing official arms purchases of the military and police from both local and external suppliers. Although this activity falls beyond the concern of brokering of in the SALW trade, there is a further need to examine even legal procedures on how weapons purchases of armed forces and the police are regulated and made secure. Ensuring transparency in these purchases is an important because this is a potential leakage point of SALW to illegal users.

legal and illicit brokering, and to establish penal sanctions for the latter.

Activities related to brokering that might also be regulated include the arrangement of services such as:

- ☞ Transportation, freight forwarding and charter services;
- ☞ Technical services;
- ☞ Financial services; and
- ☞ Insurance services.

The term “brokering” does not encompass the following:

- ☒ Technical services, such as manual and intellectual services, that are performed locally and aid in the manufacture or repair of a weapon;
- ☒ Transfers within one and the same country;
- ☒ Acquisition of SALW for the purposes of permanent personal use.
- ☒ Manufacture of SALW;
- ☒ The provision of, rather than the arrangement of (which *could* be covered – see above):
 - ☒ Transportation, freight forwarding and charter services;
 - ☒ Financial services;
 - ☒ Technical services;
 - ☒ Insurance services;
 - ☒ Advertising services.

G. Collection and Destruction

UNPoA Provision Standards

1. Destruction of confiscated, seized or collected SALW, subject to any legal constraints associated with the preparation of criminal prosecutions, unless government authorizes other forms of disposition. (UNPoA Section II Paragraph 16)
2. Existence of legal system which ensures identification and responsible disposal of surplus stocks of SALW held by armed forces, police and other authorized bodies. (UNPoA Section II Paragraph 18)
3. Surplus stocks mentioned above should be adequately safeguarded until disposal. (UNPoA Section II Paragraph 18)
4. Ensuring that surplus SALW designated for destruction are destroyed. (UNPoA Section II Paragraph 19)

Regulation of weapons use should include strict measures governing surplus weapons, especially including collected illegal SALW. Surplus weapons should be properly disposed of. The UNPoA's preferred means of disposal is to destroy such weapons systematically, although other forms of disposing SALW could be legally authorized.

Table 8: Highlights of National Reports on Collection and Destruction

Cambodia
<p>General policy is on collection and destruction of SALW from outlawed armed forces, by demobilizing soldiers, and those illegally used by civilians.</p> <p>Established National Commission for Reform of Weapons Control.</p> <p>Pursues weapons collection and destruction programs in cooperation with NGOs and international donors. Collection activities include collection activities from civilians, including through projects on weapons-for-development exchange, and confiscation those left over from the civil war including previously hidden caches.</p> <p>Collection programme includes education component on human rights, democracy, peace and laws.</p> <p>Activities of weapons disposal include public destruction ceremonies and reverting weapons back to official, authorized the use by government.</p> <p>Collected 128,815 and destroyed 124,875 illegal weapons.</p>

China
<p>Cracks down on firearms related crimes.</p> <p>Illicit and decommissioned firearms are confiscated or collected for destruction.</p> <p>Launched series of nationwide campaigns in 1996 on firearms related crimes, and confiscated illicit firearms. Has so far collected over 30,000 small arms.</p>
Indonesia
<p>Does not mention collection and destruction activities.</p>
Japan
<p>Does not mention collection and destruction activities.</p>
Korea, South
<p>Confiscates illicit weapons in private hands. Surrendered SALWS are kept in each police station and are disposed of annually.</p> <p>Stores surplus military and police SALW are stored in secured armouries within military bases and the national police agency.</p> <p>Military SALW for disposal are divided into stocks of wooden and iron materials and are burned or recycled in accordance with the Non-militarization Standards.</p> <p>SALW for disposal are destroyed. Confiscated SALW are disposed according to criminal procedure code. Surrendered SALW are disposed of annually.</p>
Malaysia
<p>Conducts "regular exercises" to review weapons stocks and determine the need for disposal. Stocks disposed are stocks which have become ineffective, and which are then destroyed.</p> <p>Destroys collected and seized weapons after getting approval of relevant ministries. The standard means of weapons destruction is by melting the items.</p>
Philippines
<p>Existing policies provides for disposal of "abandoned firearms". Firearms not claimed within five years shall revert back to government ownership.</p> <p>Conducted two symbolic destructions of significant number of firearms.</p> <p>Destructions were carried out through burning, after which firearms were cut into pieces to render them completely unserviceable.</p>

Thailand

Confiscates and collects illegal weapons, which are "disposed of as surplus weapons." Confiscated weapons are secured by joint military and police units. Confiscated weapons that are still usable revert back to government ownership.

Collection methods include "buy back" programs.

Surplus weapons are destroyed once a year. Old weapons no longer in good condition are destroyed by separating their parts, changing their condition or melting them.

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- With the exception of Indonesia and Japan, which did not mention such activities in their reports, all countries conduct SALW destruction activities.
- However, Cambodia, the Philippines and Thailand mention the practice of re-using confiscated weapons as a means of disposal. Only unusable weapons are destroyed.
- Countries employ different methods of destruction—melting, burning, “bulldozing”, separating parts, changing their condition, or recycling.
- Three countries, Cambodia, the Philippines and Thailand, include weapons “buy back” programs as a method of collecting illegal weapons.
- Only Malaysia mentions the practice of reviewing collected or confiscated weapons stocks.

Arms amnesties are a common method of collecting surplus weapons or legitimizing weapons ownership or possession. While this is a method to make illegally possessed weapons surface, it can also promote proliferation of weapons and become a way for illegally acquired weapons to enter the legal market.

Questions should be raised on whether weapons buy-back programs (Philippines and Cambodia) are good means of weapons recovery. It is rational to offer money, or other livelihood incentives, in exchange for returning weapons. However, it can also become another form of an arms economy (See Box).

Cambodia, the Philippines and Thailand reports that some confiscated or collected illegal weapons revert back to government use, if these are still useable. In contrast with countries which have disposal policies of destroying seized weapons, these three countries emphasize the practical reason of reusing weapons instead of having to purchase new ones.

Different countries use different methods of weapons destruction. Public destruction ceremonies using burning, bulldozers or road rollers as a common method because they graphically depict destruction, even if these are somewhat ineffective in rendering some weapons and parts completely useless. Often these dramatic measures require additional steps before complete destruction.

These steps increase the risk of leakages when weapons are transferred or while awaiting transfer for final destruction. Means used to destroy weapons must ensure thorough destruction, rendering all parts useless for weapons repair or assembly.

A Weapons Improvement Programme?

Former Moro rebels take advantage of the Balik-Baril program, which is being implemented after the final peace agreement of 1996 with the government. Many of these rebels surrender their old weapons to the government in exchange for cash. However, instead of using the money for income generating projects (as intended by the program), they use it to buy newer, better weapons which are available in the black market. So I think the program can result in increased proliferation of weapons in the community, instead of reducing the number of weapons.

- From a participant from Mindanao during the founding meeting of the Philippine Action Network on Small Arms, 2001.

H. Disarmament, Demobilization and reintegration

UNPoA Provision Standards

1. Existence of effective disarmament, demobilization and reintegration programmes, including the effective collection, control, storage and destruction of small arms and light weapons, particularly in post-conflict situations. (UNPoA Section II Paragraph 21)
2. Existence of measures to address the special needs of children affected by armed conflict, in particular the reunification with their family, their reintegration into civil society, and their appropriate rehabilitation. (UNPoA Section II Paragraph 22)

Disarmament, demobilization and reintegration programmes in post conflict situations target not only combatants from insurgent forces but also the military, whose size is often enlarged during times of internal strife or armed conflict. Section II paragraph 21 can also be interpreted to include both post-conflict and regular disarmament programs, which

means that implementation on this aspect is closely related to the discussion in the previous section. The UNPoA pays special attention to the needs of children affected by the conflict.

Table 9: Highlights of National Reports on Disarmament, Demobilisation and Reintegration

Cambodia
<p>Demobilized 16,500 soldiers, 14,281 police and 28,929 militias.</p> <p>Cooperates with NGOs to monitor demobilization projects and educate ex-soldiers on peace-building, proper weapons use and weapons collection and reduction.</p> <p>Another cooperation program with the Japanese government encourages civilians voluntary surrender illegal weapons in return for development projects to be provided for their communities.</p>
China
<p>No mention made in the report.</p>
Indonesia
<p>No mention made in the report.</p>
Japan
<p>Carries out DDR programmes in Afghanistan and Sierra Leone.</p>
Korea, South
<p>Amnesty periods are set every year for voluntary surrender of illicit SALW.</p>
Malaysia
<p>Has no need to institute any disarmament, demobilization or reintegration programme in recent years.</p> <p>Protects needs of children by acceding to four Geneva conventions.</p>
Philippines
<p>Laws provides for the surrender and licensing of loose firearms, establishing a Central Records Unit for all firearms and for new period of application to surrender unlicensed or loose firearms, ammunition, explosives w/o incurring criminal liability, with the privilege to applying for license to register loose firearms.</p> <p>Has a law on weapons buy-back for firearms surrendered by "rebel returnees.</p>

Thailand

Says "[T]his is not applicable to Thailand because Thailand has never experienced large-scale conflict".

Thailand has implemented six amnesty periods, and is currently considering a seventh.

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- Most national reports (Cambodia, Indonesia, South Korea, the Philippines and Thailand) refer to amnesty periods to enable persons possession illegal or unlicensed weapons to surrender or legalize their weapons with out facing prosecution for criminal responsibility. South Korea and Thailand further mention of periodic amnesties to continually stem weapons proliferation.
- Only Cambodia and the Philippines mention measures on demobilization and reintegration in the context of armed conflict. Others explicitly remark that this measure does not apply to them because there has been no armed conflict in their societies. Cambodia makes no mention of a disarmament plan or a weapons collection process during demobilization.
- Japan's disarmament, demobilization and reintegration activities do not target its own citizens but other countries affected by conflict.

The fact that only two countries mention disarmament, demobilization and reintegration (DDR) activities does not reflect the reality that armed conflicts affect most of the other countries, including those that did not submit reports. Countries do not have to have internal conflicts to be affected by it. Those which share borders with conflict-affected countries become transshipment channels of weapons. In both these cases, conflict—whether internal or in neighboring countries—becomes a source of illegal weapons and fuel for illegal trade.

On this point, the case of Thailand is important, even though the national report says DDR “is not applicable to Thailand because Thailand has never experienced large-scale conflict.” The role of the country as a supply point for U.S. soldiers during the conflict in Laos and Vietnam, for the Khmer Rouge during the Cambodian civil war and for Burmese insurgents is widely known¹¹. Weapons intended for these users contribute to the proliferation of illicit arms within the country.

¹¹ See Pasuk Phongpaichit, Sungsidh Piriyarangsarn and Nualnoi Treerat, 1997. *Guns, Girls, Gambling and Ganja: Thailand's Illegal Economy and Public Policy*. Silkworm Books, Chiangmai. Chapter 7, pp. 127-154.

I. Public Awareness, and Confidence Building

UNPoA Provision Standards

1. Existence of public awareness and confidence programmes on the problems and consequences of illicit trade in small arms, including public destruction of surplus weapons and voluntary surrendered SALW. (UNPoA Section II Paragraph 20)

Table 10: Highlights of National Reports on Public Awareness and Confidence Building

Cambodia
<p>Implemented a disarmament campaign in 1999.</p> <p>Cooperates with NGOs and of international agencies to conduct held many activities country-wide to increase general awareness about weapons, including public forums, media efforts, workshops, seminars and publications, and traditional performances at the national and local levels.</p> <p>Education activities links issues of weapons with peace, security and development.</p> <p>Training for security sector on human rights, governance, conduct, arms laws.</p>
China
<p>National agencies of the Chinese government have conducted publicity activities through mass media in order to raise the public awareness of the consequences of the illicit trade in SALW.</p> <p>Published a handbook on the Study of the Firearms Protocol, with a view of educating and training relevant manufacturers and arms trading companies.</p>
Indonesia
<p>Organized the National Seminar in Nov 2001 in Bogor to implement the UN PoA.</p> <p>Jointly with the UN and Japan, Indonesia held the Asia Pacific Regional Seminar on SALW in Bali in 10-11 February 2003</p>
Japan
<p>Provides technical and financial assistance to many countries to help in their SALW problems, including capacity-building.</p>
Korea, South
<p>The National Police Agency designates an amnesty period for the voluntary surrender of illicit SALW once a year, during which those surrendering illicit SALW are exempt from criminal punishment.</p>

Malaysia
<p>National laws and regulations pertaining are published in the gazette to notify the public.</p> <p>Government "could also" hold information campaigns to raise awareness among the public, apart from educating the public on the issue.</p> <p>The Royal Malaysia Police has been cooperating with local shooting clubs to raise public awareness on illegal possession of firearms.</p>
Philippines
<p>Philippines co-sponsored with Canada the Regional Seminar implementing the UN PoA.</p> <p>Symbolic destruction ceremonies to dramatize support for the campaign against illicit trade in SALW are covered by media.</p>
Thailand
<p>Formal and informal meetings with NGOs and civil society, notably Nonviolence International.</p>

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

- Only Cambodia, Malaysia and Thailand report cooperation with civil society groups. These three countries cooperate with different types of NGOs in various levels of involvement.
- Japan makes no mention of internal public awareness activities but mentions cooperation with other countries.

BEST PRACTICE

Cooperation with NGOs in Cambodia

The Working Group for Weapons Reduction (WGWR) in Cambodia cooperates closely with the weapons reduction programs of the government. The national report recognizes the importance of cooperation with this NGO which conducts the following activities:

- ◆ Research and observation of demobilization projects.
- ◆ Awareness raising for demobilized soldiers.
- ◆ Advocacy for the continuous improvement of policy on weapons reduction and management through research.
- ◆ Mainstreaming the peace and disarmament education curriculum.
- ◆ Providing forums for provincial government and NGO partners to address SALW issues and promote disarmament at the local level.
- ◆ Public education campaigns on weapons reduction.

Reported activities on raising public awareness on SALW can be classified into three types of activities: public information drives (including publicizing SALW destruction activities), organizing conferences or meetings, and cooperation with civil society. It is noteworthy that the public information and cooperation are not common activities mentioned in state reports. Of those that do include such activities among citizens, only three countries mention the use of mass media, and three on cooperation with different types of civil society groups.

The low level of civil society cooperation may be explained by the absence or limited nature of civil society groups which can or are allowed to engage with government, whether on the issues of SALW or not.

J. Regional Cooperation

UNPoA Provisions

1. Identification of regional and subregional points of contact. (II.24)
2. Creation, ratification and implementation of relevant legally binding instruments aimed at preventing, combating and eradicating the illicit trade. (II.25)
3. Moratoria or similar initiatives on transfer and manufacture of small arms. (II.26)
4. Establish regional or subregional mechanisms on transborder customs cooperation, information sharing among law enforcement. (II.27)
5. Initiate regional action on illicit trade in SALW to introduce, adhere, implement or strengthen relevant laws, regulations and administrative procedures. (II.28)
6. Regional and subregional mechanism to promote safe, effective stockpile management and security, in particular physical security measures, for (II.29)
7. Regional support for national disarmament, demobilization and reintegration programmes, particularly in post-conflict situations. (II.30)
8. Regional measures to enhance transparency with a view to combat illicit trade in SALW. (II.31)

Table 11: Highlights of National Reports on Regional Action

Cambodia
Cooperates with EU and Japan on weapons collection and destruction programs
China
<p>Attended regional and international seminars.</p> <p>Signed Fire Arms Protocol of UN Convention Against Transnational Organized Crime</p> <p>Exchanges views with other governments on implementing PoA, specifically public security, and customs measures.</p> <p>Contributes experts that toward an international instrument to identify and trace illegal SALW.</p> <p>Police cooperation with Interpol and assistance to identify and trace arms.</p>
Indonesia
<p>Signed International Convention for the Suppression of Financing Terrorism, and Convention against Transnational Crime.</p> <p>Ratified four international conventions on terrorism.</p> <p>Co-organized with Japan the Asia Pacific Regional Seminar on SALW.</p> <p>Works with ASEAN on Transnational Crime.</p>
Japan
<p>Observes UN arms embargoes.</p> <p>Signed Fire Arms Protocol of UN Convention Against Transnational Organized Crime</p> <p>Ratified all 12 international treaties on terrorism</p> <p>Carries out DDR programmes in Afghanistan and Sierra Leone.</p> <p>Cooperates with judicial and law enforcement authorities of other countries and Interpol</p> <p>Offers technical assistance on police system operation, investigation and criminal identification</p> <p>Organized Tokyo follow-up meeting on PoA in 2002.</p> <p>Financial support for UNDDA and UNIDIR</p> <p>Cooperates with Cambodia on small arms collection project</p> <p>Offers and assists in capacity building in DDR</p>

Korea, South

Participates in regional seminars, meetings and workshops.
 ASEAN Regional Forum (October 2000), submitted country report on SALW misuse and illicit transfer.
 Observes UN arms embargoes. Maximum restraint on regions of tension and where risks in transfers exist.
 Acceded to eight out of 12 international treaties on terrorism
 Cooperates with other countries through Interpol.

Malaysia

Exchanges information and cooperates through bilateral and multilateral arrangements (ASEANAPOL, Interpol, Europol), subject to national security measures.
 Supports ASEAN Plan of Action to Combat Transnational Crime, including arms smuggling.
 Participates in dialogues, workshops on transnational crime.
 Ratified three of 12 international conventions, and one protocol on terrorism.
 Signed the UN convention against Transnational Organised Crime.

Philippines

Participation in regional and international conferences, meetings and seminars.
 Cooperation with governments of Indonesia, Japan and Taiwan.

Thailand

Information exchange through ASEAN Association of Heads of Police
 Cooperates with other countries through Interpol.
 Participates in regional and international seminars and conferences.
 Ratified four out of 12 conventions on Terrorism.
 Signed International Convention for Suppression of the Financing of Terrorism.
 Considering signing Firearms Protocol.
 Follows sanctions imposed by UNSC.
 Provides training and operation assistance to neighbouring countries.
 Works to prevent arms trafficking along borders with neighbouring countries.

Note: Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

Contents of national reports in regional/international cooperation and activities add up to give a broader picture of activities in this aspect. This includes not only activities within the ASEAN, but also bilateral cooperation within the region but also with countries and intergovernmental organizations outside East Asia.

Within ASEAN, the issue of small arms is tackled under the framework of transnational crime. Action is embodied in a regional plan of action and work programme, which is endorsed by and supposedly implemented through the ASEAN Association of Chiefs of Police, or ASEANAPOL.¹² The regional group does not separately address the SALW issue but only in the context of regional security problems such as smuggling (including SALW), drug trafficking and terrorism.

The issue of transnational crime represents the minimum common denominator within the region, in an organization which cooperates more on economic matters and less on political and security issues. There is little accessible information about the progress of the ASEAN plan of action and work programme on transnational crime.

However, the plan of action conveniently sidesteps more sensitive security issues, in which historically there has been a policy of *non-interference* with internal affairs of members and even friction on alleged support of neighbors for enemies of states. Closer cooperation on SALW would have entailed dealing with issues of security, laws on civilian demand and misuse, and transparency issues in internal SALW trade, on which there is a general low level of concern as reflected in the reports.

There have also been regional activities in cooperation with the UN to implement the PoA at the regional level, mostly through conferences and seminars. Japan's 2002 national report, in fact, is not about implementation of the UNPoA but about the Tokyo follow-up meeting on SALW.

The issue of transnational crime represents the minimum common denominator within the ASEAN--which cooperates more on economic matters and less on political and security issues. But even on transnational crime, there is little accessible information about the progress of an ASEAN plan of action and work programme.

¹² Rivas Pattugalan, 2003, p.3.

Issues that Matter: Contextualizing SALW in the Region

Analyzing national action on SALW through national reports is useful in reviewing compliance to technical aspects of the SALW trade that the UNPoA addresses. This approach however, does not take into account the context in which SALW trade and trafficking takes place and what or how problems occur. It is this context of addressing weapons proliferation and misuse that gave rise to the UNPoA. Hence an examination of action on SALW would be more complete when considering other issues relating to the use weapons. This section will give a broad overview of various aspects of issues on SALW in the region.

Weapons Proliferation

In the national reports, only Cambodia, Japan, Philippines and Thailand gave statistics on numbers of existing weapons. However, these statistics cannot be compared since different countries gave different sets of data relating to SALW (see Table 12). Each country reported a statistic according to its own context and purpose. Similar information given by other states is differentiated in terms of time and particular description, which makes comparison impossible between countries.

Table 12: National Arms Statistics Provided in National Reports by Country¹³

	Cambodia	China	Japan	Philippines ^a	Thailand
Manufacturers & Dealers				Yes	
Legal SALW			Yes ^b	Yes ^c	Yes ^d
Firearms License Applications					Yes
Illegal SALW	Yes			Yes	
Crime involving SALW				Yes	
Confiscated Weapons	Yes	Yes		Yes	
Destroyed Weapons	Yes			Yes	

Notes: a = provides breakdowns of figures depending on statistics;
 b = reported as civilian possession;
 c = reported as licensed and registered firearms;
 d = reported as total number of existing permits.

In most cases¹⁴, data were given to demonstrate progress of an arms control measure. For instance, Cambodia reports its estimates of number of illegal weapons (with no date indicating when this number was relevant) and it cites numbers of confiscated/collected and destroyed weapons, which are given in order demonstrate the success of weapons collection programmes that formed the main theme of the national report.

Similarly, the only figure quoted by China reports a total weapons confiscation figure of 30,000 weapons as of the first half of 2002 to demonstrate the “tremendous results” of the programme which began in 1996. The *Small Arms Survey 2002* cites much higher levels of weapons confiscation reported about the “Strike Hard” collection campaigns: 90,000 in 1993; 300,000 in 1998; 600,000 in spring 2001; and 240,000 in Guangxi region alone in 2000.¹⁵ These statistics, mostly coming from government sources, paint a completely different picture of the weapons proliferation problem in China quoting annual numbers up to 20 times the number given in the 2003 National Report. It seems that the China’s

¹³ Other countries which submitted reports did not give any statistic whatsoever.

¹⁴ The only notable exception to this trend is the Philippine report which provided the most data in its national report. The statistics cited gives an impression of the scale of the problem in the said country.

¹⁵ *Small Arms Survey 2002*, p. 97.

submission to the UNPoA also attempts to give an impression of success and reduces the scale of the problem which is quite different from reality.

Significantly, no country gave any information on the volume of arms trade and transfer in their national reports. This information should have been part of the core of the report and the main interest of reporting on SALW, given that the UNPoA is primarily concerned with trade and trafficking. However, existing data on weapons trade from countries in the region is scant, and where these are available, figures are not on numbers of weapons but on amounts spent on weapons. Spending figures generally do not give an idea of the amount of weapons and volume of trade in each country, which should provide the context of the implementation of the PoA.

There are also indications that some of the figures given are inaccurate. Rivas Pattugalan,¹⁶ for instance, cites news reports about Thailand in 2003 estimating the number of licensed weapons at 3.7 million and illegal weapons at 10 million pieces, as compared with just over 1 million licensed weapons in the 2003 national report. For the Philippines, the total number of weapons reported (registered weapons at 814,562 and unlicensed and illegal weapons at 284,100) is likewise below an estimate in the *Small Arms Survey 2002* which gives a figure of 4.2 million weapons, mostly in civilian possession. This figure is not improbable since the country's Association of Firearms and Ammunitions Dealers has said that its members sell a total of "about 50,000" units yearly.¹⁷

Comparison of figures in the Philippine report with other official statistics also raises serious questions about the accuracy of the information. The 2003 national report says there are 93,683 weapons in the hands of the police and military, which is lower than the number of weapons in the hands of rebel groups at 94,313 weapons.

Estimates of weapons in the hands of insurgents are likewise questionable. Estimates of the Philippine National Security Council in 2000, gives a total figure of about 25,000 members of the major armed groups¹⁸. This figure would mean that rebels in the country have up to three weapons per member and would have the entire military severely outgunned.

¹⁶ Rivas Pattugalan, 2003, p. 97.

¹⁷ Esguerra and Del Puerto, 2004.

¹⁸ Estimates of membership of the major rebel groups—New People's Army, Moro Islamic Liberation Front and Abu Sayyaf Group. There are several other minor insurgent forces in the Philippines but the size of each group is relatively low at probably less than 1,000 members.

Arms Inflow

Total weapons exported into the region in 2002 is still staggering at about US\$ 3.63 billion¹⁹ based on statistics supplied by major arms exporters: Australia, Belgium, Finland, Italy, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and the United States. Of this amount, the total value of foreign military sales from the US alone is US\$3.16 billion, of which more than US\$ 1 billion went to Taiwan, which is not a member of the UN and therefore prohibited from cooperating in PoA activities. The remaining amount is comprised of figures from all abovementioned exporting countries, both official military and commercial sales of weapons.

The figures quoted include all conventional weapons including SALW exports. Nevertheless, reported amounts from arms exporting countries means that governments are still the largest consumers of arms exports to the region. Data on arms imports in a given year alone do not show the full extent of weapons transfer and proliferation. To arrive at this figure, the actual number of weapons transferred in the span of several years would have to be added up, given that SALW remain serviceable for years, even decades.

During data gathering for this paper, there was been no immediately accessible data on the quantity of SALW exports from these countries, aside from value of trade. Still, even if monetary figures were obtained, this would still not give an accurate idea of the actual number of SALW transferred from major producing countries. For the purposes of controlling weapons flow, reporting on weapons exports should indicate the actual number of weapons sold in order to be consistent with the aims of the UNPoA.

In this context, mention must be made of the increasing consensus of the exporting countries to be bound by norms on arms trade—particularly on giving specific data volume of weapons exports and marking each weapon—to increase their accountability as sources of SALW. The lack of coordination and sharing of information on arms trade increases the risk of diversion to illegal arms users through brokers who exploit the lack of transparency in trade and legal gaps and inconsistencies between countries.

Within the region, eight countries are known legal weapons exporters: China, Indonesia, Japan, South Korea, Malaysia, Philippines, Singapore and Thailand. Among these countries in 1998 and 1999, exports from each of the five countries was valued at over

¹⁹ SIPRI, 2004.

USD one million per year—South Korea exported USD 43 million (1999), Japan USD 30 million (1999), China USD 27 million (1998), Philippines USD 2 million (1999), and Indonesia USD 1 million (1999). The amounts were based on Customs data (except for Korea's which came from a national report), which were shared by the countries voluntarily.

China is one of the largest weapons producers in the world. Its exports to developing countries from 1994 to 1997 was valued at USD 7.2 billion, averaging USD 920 million per year. The main arms producing company was the state-owned China North Industries Group Corporation (Norinco), which also produces tanks, missiles, armored vehicles, artillery guns, bombs and explosives. Small arms production makes up probably less than five percent of Norinco's arms exports.²⁰

Domestic Arms Manufacturing (Craft Production)

Weapons proliferation is also related to the volume of SALW produced and traded within the region and within the country. So far, information on weapons purchases of governments from within the region and within countries is scant because of the lack of transparency in official weapons trade and the voluntary nature of the information that is shared. Information from the Norwegian Initiative on Small Arms Trade (NISAT) indicates that all of the countries²¹ covered by this report have existing weapons manufacturing capability under both government and private ownership. NISAT's list of manufacturers numbers 51 firms²², excluding companies in China. These firms supply weapons, parts of weapons and ammunition to the military, police and the legal arms market for civilians.

Corruption

In 2002, the anti-corruption NGO Transparency International published a report²³ on corruption in the official arms trade. This area of concern, though serious, has not been the subject of official discussions on SALW, and is not included within the scope of the

²⁰ Small Arms Survey, 2002, p. 22.

²¹ The NISAT website (www.nisat.org) contains a list of major weapons producers in every country covered by this report, except for Brunei, Timor Leste, and China.

²² It should be noted that this number should be further verified. The Philippines weapons producers in the NISAT list contain only five firms, but the national report says there are 39 legal manufacturers in the country.

²³ See Courney, Catherine. 2002. *Corruption in the Official Arms Trade*. London, Transparency International.

²⁴ Courney, 2002, p. 11.

UNPoA. The TI study indicates that *corrupt payments are an accepted and integral part of arms contracts*²⁴ and is a *motor* of the official arms trade. Corruption in the legal arms trade has a negative impact for both the weapons importer and exporter.

Within the region, cases of military corruption on SALW in the Philippines and Thailand have been documented and reported in the media. Corruption in the armed forces of both countries include illegal diversion and sale of weapons and ammunition to rebel groups²⁵ (for the Philippines), and involvement in illicit weapons transfers to combatants in ongoing conflicts in neighboring countries²⁶ (Thailand). In the Philippines, allegations of such corruption in the military was a major issue raised by mutinous soldiers during a coup attempt on July 2003. That no conviction of a major offender has occurred in either country indicates that transparency requirements need to be met in authorizing arms transfers and procurements. Likewise in Thailand, handguns were seized by armed men from a warehouse at the Don Muang airport intended for guns shops in Hat Yai. This was suspected as a conspiracy between soldiers and gunshop owners to enable the latter to acquire more than their legal import quota of only 30 firearms in a year. To acquire more, they had government import extra guns under the cover of programs subsidizing the purchase of weapons for the police and military officers.²⁷ Convictions or any information as to the outcome of this case remain unknown.

Armed Conflict and Human Rights

Illegal trade and official corruption are grave enough concerns with regards to the proliferation of SALW, especially considering their impact on ongoing on armed conflicts which cause destabilization and security concerns within the country and in the region. Indonesia, Burma, and Philippines are countries in the region that stand out for their widely known armed conflicts. But elsewhere today, similar conflicts, though of lesser scale, also occur in other countries. Historically, sections of the population have resorted to arms to oppose the state, whether legitimately or not. Conflicts of much greater scale have also plagued the recent history of many countries in the region, and, as cited in the Cambodia report, are a major factor in proliferation of SALW.

It is difficult to determine the legitimacy of the causes espoused by groups opposed to the

²⁵ Lingao, 2003.

²⁶ Pasuk, Sungsidh and Nualnoi, 1997.

²⁷ Bangkok Post, 14 April 2001.

government. However, their existence and the threat of state destabilization are often used as a reason by states to crack down on the dissenters—including purely nonviolent struggles—and to curtail basic freedoms of their citizens. In this context, SALW play a central role as tools of suppression by the states. Too often, as experience in the region has widely shown, the state's monopoly of legitimate use of force embodied in the military and police has enabled it to inflict human rights violations on its peoples. Some of these violations reach the scale of internationally accepted definition of crimes against humanity. Thus, respect for human rights and, in cases of armed conflict, international humanitarian norms should be a critical determinant for legitimizing weapons transfers to governments, especially in the Asian region where many states have not ratified international human rights treaties.

Weapons Impact on Development

Whether there is an existing armed conflict or not, military expenditures have comprised a significant portion of government spending. The Control Arms study²⁸ on the impact of arms spending on sustainable development alleges that government spending on security severely impact on its capability to implement development programmes in several ways:

- money the financial opportunity of arms transfers in terms of increasing social development;
- the impact of arms transfers on economic growth;
- effects of misuse of arms; and
- the cumulative impact of arms transfers on all of the above.²⁹

Development and arms transfers are therefore not mutually exclusive³⁰ The high prioritization of military expenditure is significant in the context of the fact that most countries in the region are developing countries which have extremely limited resources that are taken away from social development expenditures and channeled to military purposes. Actual state decision-making on expenditures to balance legitimate security on one hand, and the welfare and development concerns on the other, is not simple. However, ethical considerations in this debate tilts the case in favor of stricter arms control.

²⁸ Control Arms, 2004.

²⁹ Control Arms, 2004, p. 18

³⁰ Control Arms, 2004, p.6.

Conclusion

National reports from the region reveal that implementation of the UNPoA will not begin from scratch. Measures regulating the possession, trade and transfer of SALW have already been in existence before official discussions of addressing the issue began. To some degree these measures have enabled states to address problems and issues on SALW that arise. In most cases, national reports claim that these are effective.

However, national reports submitted thus far have focused more on these existing measures than on identifying limitations and admitting challenges. The lack of admission that challenges exist makes it impossible to assess whether existing laws, procedures and regulations are effective or not. It is impossible to identify best practices if the context is not given. There has to be more openness and honesty about the prevailing situation of SALW so that problems can begin to be addressed since admission of the problem is the first step in finding solutions.

In addition, most measures in existence are national in scope and do not tackle external circumstances and factors which facilitate illicit SALW trade and transfer. In fact, there is a seeming reluctance of governments to take initiatives that will involve cooperation with external actors. The stark absence of existing measures on arms brokering and the absence of any tangible progress on regional cooperation illustrates this point quite clearly. Some governments have even insisted that existing external trade regulations of SALW are sufficient to cover the activity of brokering, despite worldwide evidence that brokers have taken advantage of these limitations since brokering takes place beyond the scope of national law. The lack of available details and information on the progress of the

ASEAN plan of action on transnational crime, including its non-legally binding nature, indicates that this agreement might be another paper tiger severely limited by the only effective policy of ASEAN: non-interference on internal affairs of member states.

Finally, there is a seeming lack of enthusiasm among governments in the region to implement the UNPoA. This can be gleaned not only from poor record of reporting since the agreement took effect (one report each from eight countries in four years and no reports from six countries), but also from the lack of new SALW initiatives since. So far, only three countries—Cambodia, China and the Philippines—have taken additional concrete action on SALW since 2001 apart from those which have mentioned reviewing or making plans to improve existing mechanism. Even then, the reports do not say whether the actions of these three countries have been pushed forward because of the UNPoA. At the regional level, ASEAN has insisted on subsuming SALW trade and trafficking in the context of transnational crime instead of directly tackling the issue, as suggested by the agreement.

In order to directly address the areas of action covered by the PoA, following recommendations can be made:

1. Promote greater national transparency on existing measures addressing different aspects of the UNPoA. This includes encouraging the other countries to submit reports and, for those which have already done so, disclosing more information on other aspects of SALW trade.
2. Improve reporting procedures and guidelines. UNPoA reporting can have specific themes per report or have follow-up mechanisms to inquire further about details reported.
3. Initiate researches on different aspects of SALW trade and trafficking, and independent evaluations of existing measures reported. This can help identify problem areas as well as formulate solutions within and among countries.
4. Enhance regional cooperation. Stronger and clearer regional agreements on illicit trade and transfer of SALW should be drawn up, including countries which are not part of ASEAN at present.

In addition to these, specific recommendations can also be made to enhance national and regional implementation of each aspect covered by the UNPoA, based on the content of the each report. However, there would be limitations on implementing these because of the political nature of the agreement. Since the compliance with the PoA is voluntary

and not legally binding, there is little that can be done to attain stricter compliance and enforcement of its provisions, even at the minimum level of providing information through national reports. There is a need for a stronger arrangement. The **Arms Trade Treaty** provides a mechanism which could enforce compliance on various aspects SALW trade and transfer presently covered by the PoA. It integrates existing international norms on human rights and humanitarian law into consideration by rules that govern SALW trade and transfer.

Appendix

The Arms Trade Treaty

The movement for an Arms Trade Treaty was initiated by the moral leadership of the Nobel Peace Laureates, particularly Dr. Oscar Arias of Costa Rica, who called for a Code of Conduct on Arms Transfers in 1997. This was subsequently developed into a proposal for a Framework Convention on International Arms Transfers, more popularly known as the Arms Trade Treaty or ATT. The legal concept text was first circulated at the UN Conference on small arms in 2001, and has since been slightly amended and reviewed by many national and international lawyers and government experts.

The objective of such a treaty is to crystallize states' existing and emerging obligations under international law into one framework convention. It is a simple, clear document that does not contain new substantive legal obligations, but provides an unambiguous universal standard for international arms transfers.

The core principles of the proposed treaty are presented in a legal 'process text' that can be found at <http://www.armstradetreaty.org/fccomment.html>. This text was drawn up to stimulate debate among governments, and to demonstrate how a convention might look. Governments must now develop this into a treaty, and we strongly encourage them to use the 2006 UN Review Conference to achieve a commitment to begin negotiations for a binding treaty.

The movement for an Arms Trade Treaty now has the backing of over 600 civil society organisations worldwide and is the main international objective of the Control Arms campaign. It has received support from President Lula of Brazil, Mary Robinson (the former High Commissioner for Human Rights), Archbishop Desmond Tutu, and many others. In April 2005, a civil society conference in Nairobi with 175 participants from 75 countries requested governments to seriously begin debate on an Arms Trade Treaty in the soonest possible time. Governmental interest is growing and the Arms Trade Treaty now has the explicit support of several states including Cambodia, Costa Rica, Finland, Germany, Ghana, Iceland, Kenya, Mali, New Zealand, Senegal and the UK.

The movement for an Arms Trade Treaty is guided by the following core principles, which are based on already existing obligations for arms transfers.

GLOBAL PRINCIPLES FOR INTERNATIONAL ARMS TRANSFERS

There are five key principles for global transfers that emerge from states' existing obligations under international law:

1. All international transfers of arms must be authorised by a recognised state and carried out in accordance with national laws and procedures that reflect, at a minimum, states' obligations under international law.
2. States shall not authorise international transfers of arms that would violate their expressed obligations regarding arms under international law.
3. States shall not authorize international transfers of arms where they will be used or are likely to be used for violations of international law.
4. States shall take into account other factors, including the likely use of the arms, before authorizing an arms transfer.
5. States shall submit comprehensive national annual reports on international arms transfers to an international registry, which shall publish a compiled comprehensive international annual report.

Principle 1: Responsibilities of states

All international transfers of arms must be authorised by a recognised state and carried out in accordance with national laws and procedures that reflect, at a minimum, states' obligations under international law.

Principle 2: Express Limitations

States shall not authorise international transfers of arms that violate their expressed obligations regarding arms under international law. This includes:

1. Obligations under the Charter of the United Nations – including:
 - decisions of the Security Council such as those imposing arms embargoes;

- the prohibition on the use or threat of force;
 - the prohibition on intervention in the internal affairs of another state.
2. Any other treaty or decision by which that state is bound, including:
 - Binding decisions, including embargoes, adopted by relevant international, multilateral, regional and sub-regional bodies to which a state is party;
 - Prohibitions on arms transfers that arise in particular treaties which a state is party to, such as the 1980 Convention on the Use of Certain Conventional Weapons Which May Be Considered Excessively Injurious and the protocols and the 1997 Anti-personnel Mines Convention.
 3. Universally accepted principles of international humanitarian law:
 - Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering;
 - Prohibition on weapons that are incapable of distinguishing between combatants and civilians.
 4. Transfers which are likely to be diverted for any of the above or be subject to unauthorised transfer.

This principle encapsulates existing express limitations under international law on states' freedom to transfer and to authorize transfers of arms. It focuses on circumstances in which a state is already bound not to transfer arms as set out in expressed limitations in international law; the language is clear – 'states shall not'.

When new binding international instruments are agreed, new criteria should be added to the above, for example, if there is new binding instrument on Marking and Tracing.

Principle 3: Limitations based on use or likely use

States shall not authorize international transfers of arms where they will be used or are likely to be used for violations of international law, including:

1. breaches of the UN Charter and customary law rules relating to the use of force;
2. the commission of serious violations of human rights;
3. the commission of serious violations of international humanitarian law, genocide and crimes against humanity;
4. or be diverted and used for the commission of any of the above.

In Principle 3, the limitations are based on the use or likely use of the weapons to be transferred. All states should abide by the principles of state responsibility as set out in

international law that include supplier state responsibility and accountability for the use of arms transferred between states.

Principle 4: Factors to be taken into account

States shall take into account other factors, including the likely use of the arms, before authorizing an arms transfer, including

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

States should not authorize the transfer if it is likely to:

2. be used for or to facilitate the commission of violent crimes;
3. adversely affect regional security and/or stability;
4. adversely affect sustainable development;
5. involve corrupt practices;
6. contravene other international, regional or sub-regional commitments or decisions made, or agreements on non proliferation, arms control and disarmament to which the exporting, importing or transit states are party;
7. or be diverted for any of the above.

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

Principle 5: Transparency

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

The overall objective of this principle is increased transparency to try to ensure compliance with Principles 1-4 above. States should report each international arms transfer from or through their territory or subject to their authorisation. Reporting should be standardised and tied to the implementation of the normative standards set out in the treaty. These reports should be sent to an International Registry of International Arms Transfers that should issue a comprehensive annual report.

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SOUTHEAST ASIA FORUM ON ARMED VIOLENCE

The Southeast Asia Forum on Armed Violence (FAV) is an open network of Nongovernmental Organizations who are concerned with the impact of weapons and armed violence in Southeast Asian society. We seek to better understand and take action on the following areas of concern:

- the impact of militarization and the growth of a culture of violence;
 - the availability of weapons which enable human trafficking or similar crimes;
 - the role of weapons in enabling human rights crimes;
 - the increasing power of organized groups willing to use or trade in weapons, and the negative impact on democratization within the region by the presence and activity of these groups;
 - the increasing focus on armed security as a solution to problems within the region;
 - The impact of the arms trade, both legal and illegal, and the increasing amount of resources redirected from poverty reduction programs to purchase them;
 - The impact of armed violence on the most vulnerable sectors of society, especially women and children, and the lack of availability of adequate social assistance and care for survivors of armed violence.
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- ❖ FAV shares resources among cooperating NGOs to increase our individual and joint capacities to bring about a reduction of armed violence in Southeast Asia.
 - ❖ FAV supports the movement for an Arms Trade Treaty (ATT) and the development of regional and international binding agreements to control the trade in arms.
 - ❖ FAV has sponsored meetings on these issues, to share information, develop strategies and take joint action on issues of concern.
 - ❖ FAV members have lobbied relevant policy bodies of governments and inter-governmental organizations to improve policies, or the implementation of them, for actions which will reduce armed violence.
 - ❖ FAV members are engaged in the development of popular education programs to develop support for the activities of the members of the network on this issue.

The FAV was launched on 4 June 2003, 14th anniversary of the Tinanmen Square democracy uprising, initially by the Gaston Z Ortigas Peace Institute, Manila, Working Group for Weapons Reduction, Phnom Penh and Nonviolence International Southeast Asia, Bangkok.

The United Nations Programme of Action on Small Arms and Light Weapons is currently the most comprehensive international document addressing the problems on small arms and light weapons. It calls on states to prevent and eliminate illicit trade in arms by initiating and enforcing measures in key action areas such as national gun laws, criminalizing illicit activities, export and import controls, and raising public awareness, and reporting these actions to the international body.

EASTASIA INACTION ONARMS reviews the East Asian country reports on the implementation of the UNPoA four years after its adoption. Of the 14 countries considered for this study, only eight states have submitted one report each, while the other six governments have chosen to ignore the call of the UN to present to the international community what they have done to curb illicit trade in SALW.

While some of the countries did try to come up with honest assessments on their situation and give an account of the measures they have come up with or plan to do in support of the PoA, the reports show obvious gaps in reporting, a tendency to focus on existing measures, and a seeming lack of enthusiasm to go into new initiatives to control arms and the destruction it causes in people's lives.

This study also looks beyond the country reports and asks: Are these efforts enough? Is the reporting process adequate? Does the UN PoA process—because it basically stems from a political agreement and is not legally binding—allow for complacency? Do we need a stronger accord? Is East Asia *in action* or is there *inaction* on the problem of arms in the region?