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Arms transfer controls: EU outreach into the near neighbourhood

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Just as in other areas, in the field of arms transfer controls the EU is an imperfect beast. However there is little doubt that the influence of the EU on transfer control regimes of countries on its eastern and south eastern flanks has been positive. This applies both to the newer members (numbers 16 to 27) as well as to states still on the outside but with aspirations to join or at least develop closer relations.

This aspiration has, as far as transfer controls are concerned, on many occasions been publicly indicated by states announcing that they are aligning themselves to the principles of the EU Code of Conduct on Arms Exports. However, as we are all aware, building an effective transfer control system involves a lot more than making a one-off declaration. And for whatever reason, be it the legacy of past conflicts, or because of the difficulties of state-building and political transition, a number of EU neighbourhood states have struggled to control the availability and transfer of arms from their territories.

For several years now, EU member states have been attempting to assist neighbouring states to improve their systems, however outreach has in the past suffered from a lack of strategic thinking and concerted co-ordination. In addition, some EU states have played a much smaller outreach role than one might have hoped.

It is with this in mind that Saferworld has been undertaking in-depth studies of the arms transfer control regimes in numerous states or territories located in Central, Eastern and South Eastern Europe and the Caucasus.¹ The research has been designed to highlight those areas where there is more to be done in terms of building responsible and effective transfer control systems. By picking out common themes and identifying those areas most urgently in need of support, it

¹ States or territories surveyed include Albania, Bosnia and Herzegovina, Bulgaria, Croatia, FYR Macedonia, Moldova, Montenegro, Romania, Serbia, Ukraine, and the UN-administered territory of Kosovo. The surveys of the Western Balkans states was carried out by Saferworld on behalf of SEESAC (the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons). Copies of completed reports can be downloaded from <http://www.saferworld.org.uk/publications.php?id=225>, http://www.saferworld.org.uk/images/pubdocs/Bulgaria_Export-Controls.pdf and http://www.saferworld.org.uk/images/pubdocs/Romania_Export_Controls.pdf.

is hoped that our findings can be used by EU member states to better target and prioritise their outreach efforts. However, although there are a number of common themes, the circumstances of the countries covered by the research vary considerably. For example, included in the survey are territories as diverse as Romania, which has recently acceded to the EU, where legislation has already been agreed and the system of governance is well advanced, and where the challenge is more one of implementation and enforcement, and Albania, which has relatively recently suffered from the collapse of central authority and which is consequently starting from a much lower base. With such variety, there is a need to be wary of over-generalising.

The research, conducted in 2006 and 2007, combined in-country interviews, analysis of existing laws, regulations and procedures, and reviews of published information. An innovative research methodology was developed specifically for this project, which included a questionnaire of over 60 questions relating to all aspects of arms transfer control decision-making. A point was made of consulting separately with officials from the full range of government departments involved in the arms transfer licensing process as well as external observers, on the basis that a range of perspectives is necessary to get a fully-rounded picture of how extant systems are really working.

The main findings of the research can be divided into three main categories: legislation and regulation; implementation and enforcement; and transparency and accountability.

Legislation and regulation

It is with legislation that progress in the region is most obvious. Over the last few years, many of the states surveyed have, frequently with the support of international partners, developed new legislation. There remains, however, room for improvement in all cases. There is a tendency to under-regulate what might be described as the “traditional loopholes”, issues such as arms brokering, the transfer of production offshore, transit and transshipment, components, post-transfer controls. There is also a need for clear and unambiguous reference in law to the criteria licensing officials and their political masters are to follow when making licensing decisions. For those states that aspire to join the EU or have aligned themselves to the principles of the EU Code, it makes sense that these criteria should be those of the EU Code. But even when such references exist, it is not always clear just how much force they carry, or how the letter and spirit of the Code affect actual transfer licensing decisions.

Implementation and enforcement

Which brings us to implementation and enforcement. Because of course it is not sufficient to merely include mention of the EU Code criteria in law; it is critical for the development of an effective system that the criteria are well understood and broadly accepted by the officials involved in and politicians with responsibility for the licensing process. In many cases, understanding and acceptance would seem to be only partial, and often residing only among a minority of licensing officials. The research suggests that Foreign Ministries are generally the most aware of the Code criteria, but it is critical that other ministries within governments are thoroughly engaged and involved in the decision-making process based on rigorous application of these criteria. This lack of cross-government engagement on the criteria is symptomatic of the way in which arrangements for inter-ministerial co-operation are in some countries underdeveloped; in some instances there is concern that these arrangements could be undermined by inter-departmental rivalries. The underdevelopment of co-operative frameworks extends across borders to inter-state co-operation with neighbouring and EU member states, and not just in terms of licensing decisions, but also with regards

to border controls. The ability to take effective physical control of the country's borders is a serious issue for many countries.

EU member states could and should be doing more to improve practice in all these areas. But it is not merely a case of describing and demonstrating good practice. Underpinning many of these problems is a chronic lack of capacity in the region (in terms of both personnel and technical support). Without increasing the level of local capacity, any changes introduced are likely to struggle. This building of local capacity requires engagement with the political establishment and with a broad range of officials at the licensing stage, as well as support for Customs officials and border police.

Transparency and accountability

Our study discovered that in many cases there is little enthusiasm for building a culture of transparency and accountability around transfer controls. Little is made public, and most parliaments have to date seemed to broadly accept the traditional view, i.e. that this is the exclusive business of government. Yet the mood does seem to be changing, albeit slowly. Romania recently decided to publish quarterly reports on licences issued according to destination, type and value of equipment and information on deliveries). This is a significant advance, and it to be hoped that Romania can act as an example for other states in the region.

For states to apply good practice it is essential that in the first instance they publish data on licences awarded and refused, and then allow parliament to examine this data, through cross-examination of ministers and officials if necessary. In addition, more should be done to engage with broader civil society, in order to boost interest in an area that many people believe is still the preserve of governments. There is a clear role for the EU in this area, both in terms of demonstrating how constructive this broader engagement can be, and in terms of providing the resources to enhance civil society capacity.

Conclusion

This study is not finished as yet. There are still a couple more countries we intend to survey.

But it is already clear that there is more that could be done to assist states in bringing their practice into line with that of the EU. Although progress is inevitably complicated, there is currently an openness to new ideas on transfer controls that EU member states (and others) should seek to exploit. Saferworld is keen to work with interested states to build a package of measures, and we believe the research we have been doing provides the basis for developing such a package.