

# **NORDIC ARMS TRANSFER CONTROLS AND THE ARMS TRADE TREATY: STRENGTHS AND CHALLENGES**

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# INTRODUCTION

A legitimate and lucrative area of international business, the production and trade in defence material requires careful controls and constant monitoring in order to avoid the many potentially devastating consequences of a poorly controlled and illicit arms trade. With the arms trade becoming increasingly globalized, it is more and more difficult for individual states to exercise the necessary controls and to effectively monitor the production and transfers of their weapons and equipment. Global activities require global standards.

On Christmas Eve, 24 December 2014, the landscape of arms transfer controls gained an important addition with the entry into force of the Arms Trade Treaty (ATT, in the text also referred to as “the Treaty”), the first international, globally binding treaty to control the transfers of conventional arms.<sup>1</sup> The Nordic countries of Denmark, Finland, Iceland, Norway and Sweden were among the most active supporters of the Treaty and were among the first to join it. They also remain committed to promoting the active implementation and universalization of the Treaty, and the experience gained by them in developing and undertaking arms transfer controls can undoubtedly provide valuable lessons learned and good practices to be internationally utilized.

As the ATT enters into its second year, more research will be needed both on countries’ strengths and on the practical challenges in implementing the Treaty, both nationally and in terms of promoting international compliance.

This report presents the legislative framework of Nordic conventional arms transfer controls<sup>2</sup> and discusses some practical measures taken by Denmark, Finland, Norway and Sweden<sup>3</sup> to implement effective export controls over these weapons. It is part of a project funded by the Ministry of Foreign Affairs of Finland and implemented between December 2014 and June 2015 to compare the arms transfer control structures of four Nordic countries. By analyzing the respective structures and practices, the report aims at identifying good practices and makes recommendations regarding some of the challenging aspects of the ATT’s implementation. Information in the report is based on interviews with officials from the Nordic countries conducted in March-May 2015, together with a range of background material, including relevant national laws and regulations, included in the bibliography.<sup>4</sup>

The first part of the report presents a brief history of Nordic defence policies and cooperation and gives an overview of the region’s

defence industry, especially in terms of conventional arms and equipment.<sup>5</sup> It also discusses the participation of Nordic countries in various multilateral export control regimes and support of the ATT.

The second part presents the ATT-related legislation that is relevant in the Nordic countries and discusses some of the general elements essential in its effective implementation, including the relevant national authorities and their cooperation, licensing procedures and the categorization of items and activities falling under the ATT.

The report places special emphasis on the definition and practical implementation of transit, re-transfer and end-use regulations, including addressing the risk of diversion. These are areas that remain challenging even in countries that have well-established transfer control systems, and can have devastating consequences on the ground. Transparency – already exercised at relatively high levels in the Nordic countries – is also one of the central themes in the report and its findings. These specific themes are discussed in the report’s third part.

In selected sections the report presents brief practical case studies to illustrate the strengths and weaknesses of different aspects of Nordic transfer controls. The report concludes with a collection of findings and recommendations relevant to both general aspects of ATT implementation and some specific challenges potentially related to it, stemming from the body text.

The report demonstrates that despite having comprehensive and sophisticated arms transfer control systems in place, even the Nordic export controls have potential areas of weakness that, if exploited, could enable weapons, ammunition and parts and components manufactured in these countries to be diverted or retransferred to areas of war or conflict, or to recipients that might use them to commit serious violations of human rights. It argues that constant review and development of both the regulative framework and actual practices is required in order to ensure continued and improved implementation of the ATT and overall responsible, transparent and comprehensive controls over the international legal trade in conventional arms.

## PART I

# BACKGROUND TO ARMS TRANSFER CONTROLS IN THE NORDIC COUNTRIES

The Nordic countries are often seen as a homogenous group, having partially undergone similar social and political developments. However, they each have their unique history and distinct national characteristics which have shaped their national defence policies: Denmark and Norway are long-standing members of NATO, while Finland and Sweden have remained non-aligned and built their doctrine around 'total defence'.<sup>6</sup> Denmark, Finland and Sweden are members of the EU and – with the exception of Denmark – implement the European Security and Defence Policy (ESDP). Despite their differences, the Nordic states have for decades systematically built their security and defence cooperation – a trend that today is possibly stronger than before.<sup>7</sup>

All Nordic countries have indigenous national defence industries, albeit of very different magnitudes, and have over the decades developed comprehensive regulations concerning transfers of arms and other war material. This section presents a brief history of Nordic defence policies and cooperation and gives an overview of the region's defence industry, especially in terms of conventional arms and equipment. It also discusses the participation of Nordic countries in various multilateral export control regimes and support of the ATT.

## HISTORY

The development of national defence policies and military industries in the four Nordic countries has undergone several transformations, mostly influenced by larger regional and international developments. Until the early 19th century, Denmark (which at the time included Norway and Iceland) and Sweden (which at the time included Finland) were major – although gradually declining – strategic players in Europe, and frequently competed and fought with each other for regional dominance. After the Napoleonic wars, when the larger European powers began to set the strategic agenda for northern Europe, 'Scandinavian-

ism'<sup>8</sup> became an increasingly important factor in Nordic culture and politics.

When the large European countries fought each other as part of the two World Wars, and the Cold War that followed divided the continent with an iron curtain, the Nordic countries took somewhat divergent paths in developing their security and defence needs. A key feature for all was some level of neutrality, however with national specificities and individual characteristics. In the 1960s, they started implementing what has been referred to as the 'Nordic balance': a combination of policies aimed at preserving a balance between the two superpowers while maintaining strong national defence, even with Norway and Denmark as members of NATO.<sup>9</sup> For much of the 20th century, emphasis was placed on forming and maintaining strong national armed forces based on conscription, which in turn required the establishment of strong national defence industries.

The economic downturn apparent across Europe since 2009 together with a perceived improved security situation in the Nordic states has led to a scaling down of defence structures and cutting down of the related budgets. Since 2014, rising tensions in Europe following Russian actions against Ukraine have started to turn the trend, but its full budgetary and operational impacts, for instance in terms of possible increases in defence spending and the number of military exercises, are yet to be seen at the time of writing.

Today, the Nordic countries have strong mutual ties in many fields of security and defence.<sup>10</sup> In terms of national defence structures, the earlier desire of especially Finland and Sweden to be self-sufficient with regard to military equipment has been replaced by a growing need to cooperate, not only with their Nordic neighbours but also with other like-minded countries, especially within the context of the European Union. As stated by Sweden in 2014, 'the interests of Swedish security policy lie in safeguarding long-term, continuous cooperation

with traditional partner countries. This mutual cooperation is based on both exports and imports of military equipment,<sup>11</sup> and increasingly also on integrating parts of their defence industries. Even though they have remained outside NATO, Sweden and Finland have also moved closer to NATO in recent years and entered into a partnership agreements with the Alliance.

All four countries studied here have traditionally been active in peacekeeping operations in various parts of the world, especially as part of UN operations, and also in the form of combined Nordic units, where the similarities and compatibility of their technical systems have been noted to improve their operational effectiveness.<sup>12</sup> Recently, the emphasis has shifted from traditional peacekeeping towards both military and civilian crisis management and cooperation in related missions abroad.<sup>13</sup>

As noted in a joint statement by the defence ministries of the Nordic countries in April 2015, 'a closer cooperation in the Nordic and solidarity dealings with the Baltic countries helps to strengthen security in our region, and raises the threshold for military events to occur. By acting determined, predictable and consistently together, we can contribute to peace and security in our part of the world. Simultaneously, we can strengthen the cohesion of NATO and the EU, and help to maintain the transatlantic link.'<sup>14</sup>

## NORDIC DEFENCE INDUSTRIES

For much of the 20th century, emphasis in the Nordic countries was placed on forming and maintaining effective national armed forces based on conscription,<sup>15</sup> which in turn required some national equipment production capabilities. As a consequence Sweden, Finland and Norway all have relatively strong national defence industries, including for the export markets. Denmark's industry, by contrast, has never been very large, and ranks as the smallest of the four Nordic nations'. National authorities

have provided innovation policy support to the domestic defence industry, believing that defence companies can foster economic growth and international competitiveness by introducing technologically advanced products. They have also supported the respective national industries so that defence companies can provide the armed forces with access to high-end technological expertise and ensure that the countries have a steady supply of equipment, parts, components and ammunition in times of possible crisis.

The Nordic countries are also home to relatively active groups of sport and hunting shooters, and the levels of civilian ownership of firearms are higher than in many other parts of the world,<sup>16</sup> which for its part keeps up in particular the production of highly sophisticated civilian-type small arms, related ammunition, and parts and components.

Sweden has by far the largest defence industry in the region. This has been the case since it was a more active military power. During the Second World War, Sweden was cut off from foreign imports and became entirely self-sufficient in defence procurement. Today, the Swedish defence industry employs some 30,000 people, many of them in towns where arms factories are the largest private sector employer. All in all, around 130 Swedish companies are licensed to manufacture and supply military equipment, of which over 50 are active exporters, including large companies such as Saab AB.<sup>17</sup> According to the national report of the Swedish export control authorities, the value of Swedish exports in 2009-2013 was on average EUR 1 billion per year.<sup>18</sup> As with companies in other Nordic countries, the ownership of Swedish defence industry organizations has internationalized, mostly through mergers with foreign companies.<sup>19</sup> Swedish companies have also increasingly been entering into various forms of leasing agreements with foreign customers and concluding armament cooperation agreements with other EU countries most notably through the European Defence Agency (EDA).<sup>20</sup>

The second largest defence industry in the Nordic region is in Norway, with around 120 members – mostly small and medium enterprises (SMEs) – of the national defence industrial association, representing a combined total of more than 25,000 employees.<sup>21</sup> The turnover in defence is estimated at more than NOK 12 billion (EUR 1.4 billion) per year, of which approximately NOK 4.4 billion (EUR 500 million) is exported.<sup>22</sup> As in Sweden, an increasing share of the business in Norway comes from participation in joint ventures, with the production chain distributed across countries and continents, and where Norwegian parts and components are used in various products assembled abroad.

In Finland, as noted by the country's Association of Defence and Aerospace Industries, the defence sector is seen as a fundamental element of an overall credible national defence. A major part of the country's army and air force maintenance has been outsourced to private companies, many of which act as close partners to the Defence Forces. Most of the roughly 100 Finnish defence, aerospace and security companies are privately owned SMEs that directly employ around 7,000 people. In 2013, their cumulative turnover was approximately EUR 1.4 billion, around half of which was directed to exports.<sup>23</sup> In recent years, Finland's exports have been roughly about EUR 100 million, with notable peaks caused by large individual deals, such as a contract between the Finnish company Patria and the Swedish armed forces worth some EUR 260 million for 2013-2014. Because of this, the approximate value of Finnish exports in 2013 was EUR 224 million.<sup>24</sup>

Denmark is the smallest Nordic exporter of military goods, with export values of approximately EUR 12 million in 2009, 9 million in 2010 and 17 million in 2011.<sup>25</sup> The country's defence industry employs just over 1,000 people and involves approximately 25 active companies, mainly focused on high-technology radar and sensory equipment and other niche supplies, also on DUI. Danish market leaders

in the field include Terma A/S and Systematic A/S.<sup>26</sup> The primary area of interest of the Danish defence industry is naval shipbuilding and transportation activities, as well as strategic and military products.

All of the Nordic countries have their own national defence industry associations, with the participation of most companies operating in the field in their respective countries: The Association of Defence Manufacturers in Denmark (FAD), The Association of Finnish Defence and Aerospace Industries (AFDA) in Finland, the Association of Norwegian Defence and Security Industries (FSi, Forsvars- og Sikkerhetsindustriens forening), and the Swedish Security and Defence Industry Association (SOFF). The region's industry has also seen some mergers and development of mutual cooperation initiatives in the area of the defence industries. For an example of a company with a joint Nordic identity, ownership and operations, see Box 1 on Nammo AS.

## FIGURES FOR ANNUAL EXPORTS FROM THE NORDIC COUNTRIES<sup>27</sup>

The global volume of international transfers of major conventional weapons grew by 16 per cent in 2010–14 compared to 2005–2009. The flow of arms to Africa, the Americas, Asia and Oceania and the Middle East increased significantly, while there was a notable decrease in arms transfers to Europe.<sup>28</sup> Export statistics from Nordic countries have some distinctive national characteristics, mostly due to the nature of the respective national industries and individual large business deals.

With the largest defence industry in the Nordic region, Sweden is also the biggest exporter in the region, with roughly three times more exports than Norway, which comes in second, followed by Finland. Denmark's exports are quite limited, and the country's most notable involvement in the international conventional arms trade comes through freight and trans-

## BOX 1: NORDIC AMMUNITION COMPANY NAMMO – SPEARHEADING JOINT NORDIC DEFENCE INDUSTRY<sup>1</sup>

One of the most prominent Nordic companies exporting defence equipment is the Norwegian-Finnish aerospace and defence group Nammo AS, which specializes in the production of ammunition, rocket motors and space applications, as well as demilitarization. With three fully owned subsidiaries in Sweden, Finland and Norway, the company has two shareholders: 50 per cent of its ownership belongs to the Norwegian Government represented by the Ministry of Trade, Industry and Fisheries, and 50 per cent to Patria Industries Oyj of Finland. Nammo was formed in 1998 through a merger of three Nordic companies, the State-owned Swedish Celsius AB and Finnish Patria Oyj, and the Norwegian Raufoss ASA. After a few years, the Raufoss ASA ownership was taken over by the Norwegian State, and Celsius AB was acquired by SAAB AB. In 2006, SAAB sold their 27,5 percent of shares to Patria and to the Norwegian State, who both became 50-50 owners of the Nammo Group.

Nammo's main products are shoulder-launched munitions systems, military and sports ammunition, rocket motors for military and space applications and environmentally friendly demilitarization services. With over 20 production sites and

sales offices in ten countries, the company employs around 2,200 personnel and has an annual revenue of roughly USD 650 million (EUR 490 million). The company's main customers are national and international armed forces and other defence industry actors. About 15 per cent of the products are specifically developed for civilian purposes, for distributors of, for example, sport and hunting ammunition and sea safety systems, as well as specialized aerospace products for the US and European aerospace industries. All exports of Nammo products require an export licence from the respective national authorities.

In its company vision and values, Nammo profiles itself as an ethical and responsible actor with a long-term vision on how to improve security through defence. It also supports the UN Global Compact, which promotes Global Corporate Social Responsibility.

One of the best known amongst Nammo's products is the 12.7mm (.50 calibre) multi-purpose ammunition, commonly referred to as simply the Multi Purpose round or the Raufoss round, referring to one of Nammo's original parent companies. From an ethical export control perspective, this is probably also

the company's most challenging product. Originally developed for use towards aircraft, helicopters and vehicles, it has in the past decades become increasingly the ammunition of choice in sniper rifles used by law enforcement personnel and military, leading it to also be used specifically to target personnel. The International Committee of the Red Cross (ICRC) has sought to have the ammunition banned, claiming that its incendiary and explosive components and their effect when used against people would make it illegal under international law. Trials conducted by Forsvarets Forskningsinstitutt (Norwegian Defence Research Establishment) have concluded that the ammunition most likely does not have an unlawful effect if unintentionally used against personnel, and the stance of the Norwegian Government is that the ammunition should not be used against personnel, within an exception for snipers. According to officials, the ammunition is being exported strictly in an anti-matériel capacity. Nammo has also licensed other companies to manufacture this ammunition abroad, for instance in the US.

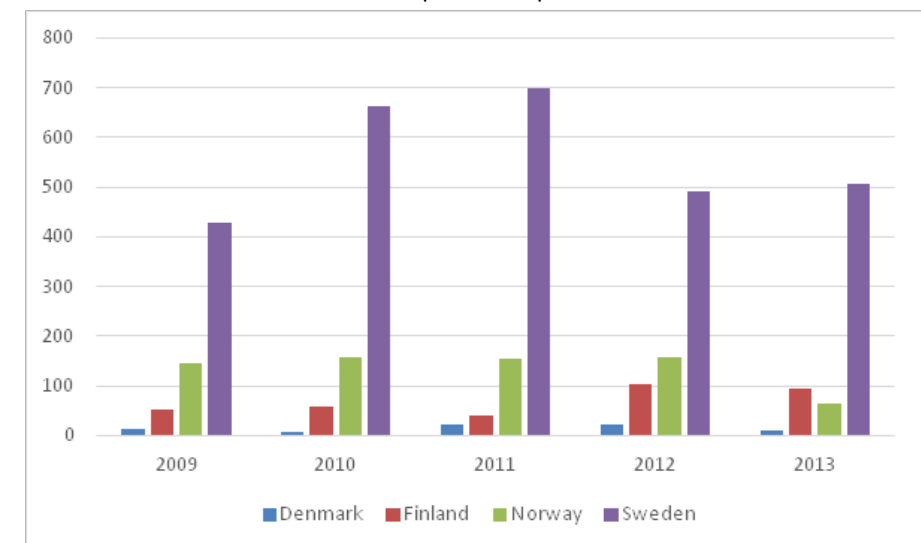
<sup>1</sup> Information in the box is based on NAMMO (n.d.) and Holm and Marsh (2006).

portation activities. Of the Nordic countries, only Sweden ranks amongst the 20 largest exporters of conventional arms, being in 11<sup>th</sup> place in statistics covering 2010-2014. The Nordics do not feature as major importers of weapons.<sup>29</sup>

The Nordic states rank relatively high in global export statistics in terms of exports of small arms and light weapons (SALW): in 2012, the latest year for which information was available at the time of writing, Norway ranked as the 12<sup>th</sup> largest exporter of SALW, with exports estimated to be worth at least USD 129 million (EUR 115 million), followed by Finland (18<sup>th</sup> with exports of at least USD 87 million – EUR 77 million), Sweden (24<sup>th</sup> with exports of at least USD 48 million – EUR 43 million) and Denmark (37<sup>th</sup> with exports of at least USD 11 million – EUR 9.8 million). The main SALW export products from the Nordic states are small arms ammunition, sporting and hunting weapons as well as military firearms such as sniper rifles, and parts and accessories. The Nordic countries also import SALW, albeit relatively less than what they export: internationally in 2012, Norway ranked as the 14<sup>th</sup> largest SALW importer with Denmark 22<sup>nd</sup>, Sweden 26<sup>th</sup> and Finland 38<sup>th</sup>.<sup>30</sup>

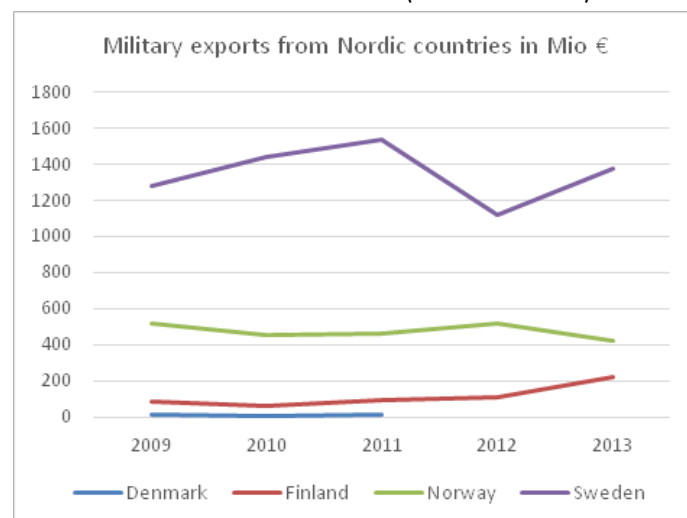
Even though the group of the largest recipient countries of conventional arms varies from year to year – especially as large single orders can have a very sharp impact on statistics – the overwhelming majority of Nordic military exports of major conventional weapons and equipment go to EU member states, other European countries and (other) NATO members. According to the SIPRI Arms transfer database, approximately 30 per cent of the military exports in 2009-2013 from Denmark, Norway and Sweden went to Europe. In Finland the number was even higher, over 80 per cent. Within Europe, the most important export partners for Finland were Poland, Croatia and Sweden, and outside Europe, North America, with 11 per cent in 2009-2013. Outside Europe, Sweden also exports considerable amounts to the Middle East (12 per cent of total exports in 2009-2013) and to Sub-Saharan Africa (6 per cent of total exports in 2009-2013). Seventy-four per cent of Norway's exports in the same period went to other NATO countries and 15 per cent to Sweden and Finland. Denmark's most important market area is Europe, with Lithuania and the Netherlands its most significant export partners in 2009-2013.

FIGURE 1: EXPORTS OF DEFENCE MATERIAL FROM NORDIC COUNTRIES IN 2009-2013 (TIV VALUE)



Source: SIPRI Arms Transfers Database. Last accessed in March 2015.

FIGURE 2: VALUE OF DEFENCE MATERIAL EXPORTS FROM NORDIC COUNTRIES IN 2009-2013 (IN EUR MILLION)



Source: SIPRI yearbook of 2014 and national reports from Finland, Norway and Sweden; in current prices with each year's average exchange rates.

Because of the recent global economic downturn and the cuts in defence budgets in many of their traditional EU and Western trade partner countries, the Nordic defence sector is facing the same challenge as many others in today's world: there is a constant need to search for new markets and reach out, not only to new products and technologies, but also to new geographical regions. Asia has continuously raised its importance as a recipient region. Reports from Finnish and Swedish authorities show that while in 2009 roughly 24 per cent of Swedish and 0.3 per cent of Finnish exports went to Asia, the percentages for 2013 were 38 and 3.5 respectively. This 'branching out' has led some observers of arms transfers to make the charge that, despite the strengthening of international control regimes, the Nordic countries have also become more inclined to arm non-democratic regimes and countries accused of human rights abuses, as demand from Western nations has declined.

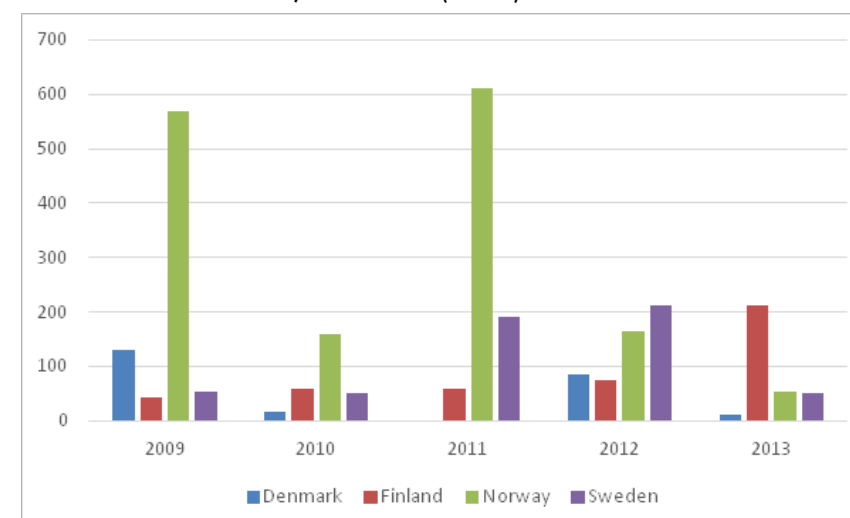
The SIPRI Arms transfer database allows a closer comparison of the total military exports from the Nordic countries and makes it possible to calculate trends in international arms transfers over particular periods of time.<sup>31</sup> The Trend Indicator Value (TIV) chart of Nordic

military exports of major conventional arms in 2009-2013 shows Sweden as the leading exporter, and reveals a general trend whereby – mostly affected by the volume of Swedish exports – the total Nordic exports of military products increased continuously from 2009 (639 in TIV) to 2011 (918 in TIV), after which they reduced in 2013 (672) almost back to the level of 2009, again with national specificities (see Figure 1).

Figure 2 presents the trends in exports of defence materiel from the four Nordic countries studied here in 2009-2013.<sup>32</sup> Comparing the values of Nordic exports in actual currency is challenging because reporting practices and definitions vary, and publicly available information is sometimes incomplete (see the section on transparency in this report). Therefore the illustration should be used mostly to depict trends rather than to indicate absolute values.

The Nordic countries export a variety of conventional arms, with a notable proportion coming from the production of armoured combat vehicles and battle tanks, as well as their components. Among the most exported Swedish products are ground vehicles, including miscellaneous equipment and material (ML 6 and

FIGURE 3: IMPORTS OF DEFENCE MATERIAL INTO THE NORDIC COUNTRIES, 2009-2013 (IN TIV)



Source: SIPRI Arms Transfers Database. Last accessed in March 2015.

ML 17) and aircraft (ML 10). Norway exports missiles and missile launchers in particular, but also armoured combat vehicles, aircraft and ships. In addition, the country exports large numbers of military parts and components. In 2009-2013, 65 per cent of Finland's military exports consisted of ground vehicles and components (ML6). Denmark's limited exports consist largely of military sensors and ships. Three Nordic companies appear in the SIPRI Top 100 arms-producing and military services companies list: the Swedish Saab (31<sup>st</sup> in ranking), Kongsberg Gruppen from Norway (67<sup>th</sup>) and Patria Industries from Finland (73<sup>rd</sup>).

In terms of imports of defence material, Norway is the biggest Nordic actor, with a TIV of over 600 in 2011 (Figure 3). In 2009-2013, Norway's imports consisted mostly of armoured combat vehicles from Italy and Germany, and aircraft from the USA. The SIPRI TIV table shows that 2011 was a statistical peak and the value of Norway's imports decreased dramatically in the following two years. The amounts of military imports of Denmark, Finland and Sweden during this time fell far behind those of Norway.

Denmark's imports were characterized by product categories such as armoured com-

bat vehicles from Sweden and Switzerland, battle tanks from Germany and large-calibre artillery systems from Israel. Finland imported mostly from Italy, the USA, France and Sweden. The main product categories were aircraft, missiles and sensors. Norway's most important trade partners are other NATO countries, and imported products include ships, sensors and aircraft. Sweden's main imports in 2009-2013 were aircraft, missiles and sensors from the USA, Germany and France.

## PARTICIPATION IN EXPORT CONTROL REGIMES

Since the Second World War, the Nordic countries chosen different paths with regard to membership in international organizations. However, in their policies they all emphasize the importance of regional and international security cooperation and the development of common norms on arms control and disarmament. All four countries have a long and active history of participating in different multilateral export control regimes.

All of the Nordic countries, including the non-EU member, Norway, abide by the EU Common Position on Arms Exports and have incorporated its eight criteria into their national legislation.<sup>33</sup> The Nordic EU member states participate in EU coordination and information exchanges relevant to conventional arms exports.<sup>34</sup> The Nordic countries also participate in the work of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA), including in its information exchanges, and take the WA guidelines and procedures into account in their national control systems.

The countries are also participating States of the OSCE<sup>35</sup> and have agreed to be bound by its Criteria on Conventional Arms Transfers of 1993, the Document of Small Arms and Light Weapons of 2000, and the Document on Stockpiles of Conventional Ammunition of 2003, together with a number of related Decisions. In addition, the OSCE has its own confidential information exchange on exports and imports of conventional weapons, in which all Nordic countries participate.

## SUPPORT FOR THE ATT NEGOTIATIONS AND TREATY IMPLEMENTATION

The four Nordic countries have been firm supporters of the ATT since the beginning of the process at the UN: Finland was one of the initiative's co-authors and was invited to take part in the work of the ATT Group of Governmental Experts (GGE), while Denmark, Sweden and Norway also all voted in favour of the five UN resolutions preceding the Treaty<sup>36</sup> and actively participated in its preparatory work. They all co-sponsored the 2013 resolution adopting the Treaty.<sup>37</sup> Nordic civil society organizations provided strong support to the Treaty negotiations and were also on some occasions included in national delegations.

During the treaty process, the Nordic countries held a number of coordination meetings and

working lunches in addition to – mostly with the exception of Norway – participating in the EU coordination. The countries' views on the feasibility, goals and scope of the Treaty as well as the export criteria to be included in it were largely analogous with national priorities, with some slight differences in views concerning, for example, the inclusion of hunting and sport weapons, parts and components and the extent to which the Treaty should include import regulations. The Nordic countries also had their own individual national priorities: Norway was especially active on questions related to the potentially humanitarian effects of an ATT, including human rights and international humanitarian law considerations in export licence assessments, and following the example of, amongst others, the Convention on Cluster Munitions (CCM), promoted the inclusion of 'victim assistance', which however was in the end only included in the Treaty's preamble. Transparency measures and accurate yet flexible categorization of items were spearheaded amongst others by Sweden and Finland, who also actively supported the initiative promoted by Iceland, among others, to include gender-based violence (GBV) in the Treaty as an export control criterion. Finland also called for the strengthening of ATT's Article 6 on prohibitions in addition to war crimes and crimes against humanity to include grave and systematic violations of human rights. The strong support for the development of an ATT was in many ways a logical continuation of the Nordic countries' policy towards combating the illicit trade and proliferation of SALW as well as their support of a number of regional and multilateral arms transfer controls initiatives. All of the Nordic countries supported a strong Article 7 on human rights and humanitarian law criteria for export authorization.

All of the Nordic countries signed the Treaty immediately when it opened for signature, and ratified it during the first half of 2014 following the necessary national and – as relevant for Denmark, Finland and Sweden – EU administrative processes.<sup>38</sup> Joining the ATT and starting its implementation did not require any changes in the respective national legislations,



PHOTO: UNITED NATIONS



TABLE 1: NORDIC FUNDING IN SUPPORT OF THE ATT IN 2010–2015

COUNTRY	YEAR(S)	INSTITUTION AND/OR PROJECT	AMOUNT
Denmark	2014	Support for UNSCAR (UN Trust Facility Supporting Cooperation on Arms Regulation)	USD 1 million (EUR 823,000)
Finland	2010	Saferworld: ATT seminar in Kazakhstan	EUR 15,000
	2012	Saferworld: Seminar on ATT reporting	EUR 10,000
	2012-2013	Parliamentarians for Global Action: Workshops in Africa	EUR 35,000
	2013	IANSA (international Action Network on Small Arms); ATT conferences in Africa	EUR 50,000
	2013	ATT Conference – Support for additional interpretation services	EUR 10,000
	2015	SaferGlobe: Nordic Arms Transfer Controls and the Arms Trade Treaty: Present Practice and Future Challenges	EUR 37,500
	2015-2019	Support for UNSCAR	EUR 4 million (1 million per year)
Norway	2010	Support for Oxfam (NGO Secretariat for ATT process), SIPRI	NOK 2.3 million (EUR 293,000)
	2011	Support for Oxfam, Saferworld	NOK 1.2 million (EUR 155,000)
	2012	Support for Oxfam, Control Arms, SIPRI, World Council of Churches	NOK 4.1 million (EUR 556,000)
	2013	Support for Saferworld, Oxfam, Control Arms, GICHD, Stimson Center	NOK 2.3 million (EUR 273,000)
	2014	Support for Control Arms	NOK 5 million (EUR 553,000)
	2015	Support for Control Arms, sponsorship programme UNDP	NOK 3.5 million (EUR 407,000)
Sweden	2015	Support to UNSCAR	EUR 1 million
	2014	Saferworld: Hitting the ground running: promoting effective implementation of the Arms Trade Treaty (ATT). Project to support ATT implementation so as to enhance its positive impact on human security.	SEK 600,000 (EUR 64,000)
	2014	SIPRI: Supporting ATT-related cooperation and assistance activities in arms transfer controls. Project to help the future ATT Secretariat, states, NGOs, international organizations and regional organizations to form an understanding of the types of cooperation and assistance that are relevant for supporting ATT implementation efforts as well as access to relevant best practice guides and training modules	SEK 160,000 (EUR 17,000)
	2014	UNDP: ATT Sponsorship-program to enable the participants of delegates from [79] eligible low-income countries to attend informal and formal consultations in the preparatory process in advance of the first CSP	SEK 2 million (EUR 211,000)
	2013	Support for UNSCAR	SEK 860,000 (EUR 96,000)
	2012	SIPRI: ATT project that produced a written report and held a seminar on treaty implementation, especially regarding outreach and assistance activities	SEK 270,000 (EUR 30,000)
	2012	University of Georgia, Center for International Trade & Security (UGA-CITS): Contribution to a project producing a paper on the US position towards ATT and on the issue of ammunition and national control	USD 4,900 (EUR 3,700)
	2010	SIPRI: Project to facilitate a workshop and produce reports for the UN ATT conference in 2012	SEK 450,000 (EUR 50,000)

but country officials have stated that they are prepared, for example, to continue reviewing their practical controls and to further improve cooperation between national authorities as necessary. In the Nordic countries, the Treaty's requirements to assess arms export criteria are applied in parallel with the existing national laws, regulations and guidelines and, among others, the EU Common Position on Arms Exports.

The Nordic countries have also been firm supporters of the first stages of the ATT's implementation and universalization through funding various capacity-building projects, and participated in meetings to prepare for the first Conference of States Parties (CSP) held in Mexico in August 2015. In addition, Finland and Sweden have put forward candidates to head the ATT Secretariat. For details of ATT-related funding provided in 2010-2015, see Table 1.

The information presented in the table is not exclusive. It is based on publicly available information and information provided by the relevant Nordic national officials.

## PART 2

# NORMATIVE AND STRUCTURAL FRAMEWORK

The main channel through which ATT states parties are to implement the Treaty's requirements is through their national legislation and regulations relevant to international transfers of conventional arms. All of the Nordic countries have a long history of arms transfer controls, with laws first introduced almost a hundred years ago. This section presents the legislation relevant to the ATT and discusses some of the general elements essential in effectively implementing it, including the relevant national authorities and their cooperation, licensing procedures and the categorization of items and activities falling under the ATT. After presenting each of the themes, the report makes some recommendations and presents lessons learned through comparing the different aspects of the Nordic control structures, building upon the presented features.

## RELEVANT LEGISLATION

The Nordic countries have a long history of national controls in this area, as they had already started developing the basis of their current legislation on conventional arms exports during the two World Wars: the origins of modern Swedish export controls date back to the late 1910s and in Finland the first law on exports of war material was introduced in 1938.<sup>39</sup> The basis for Norwegian transfer controls is a 1959 Government statement. Even though Denmark introduced its first Laws on War Materials later than the other Nordic countries, its exports of military material were already previously defined by a regulation set in 1937, as well as specific parts of other legislation, for instance prohibiting exports to embargoed destinations.

During the first decades of modern arms transfer controls, the main considerations about where arms could be sold were based on national security and procurement considerations. However, the Nordic countries have a relatively long background of also taking into account the potential consequences of arms transfers: One of the primary guidelines for

Swedish arms exports is a 1971 parliamentary decision that recipient nations must respect international human rights, and early Danish policy regulations state that Denmark is not to export weapons to countries at war, areas of tension or countries where human rights are suppressed. In Norway, the export control system is based on the Government's statement from 1959, which states that when considering exports of arms and munitions, 'importance shall be attached to foreign and domestic policy assessments, and the primary consideration should be that Norway will not permit the sale of arms or munitions to areas where there is a war or the threat of war, or to countries where there is a civil war.'<sup>40</sup> This principle was updated in 1997 to include human rights concerns and a consideration of issues relating to democratic rights.

Today, all of the Nordic countries apply the eight criteria of the EU Common Position's Article 2, and Articles 6 and 7 of the ATT in their licensing assessment. The grounds for refusing a licence as well as factors to be taken into account regarding the possible negative consequences of arms transfers on issues such as grave and systematic violations of human rights and the risk that the transfer would aggravate conflicts and violations of international humanitarian law (IHL) are also included in detail in their national laws. However, as will be discussed later in the report, Nordic arms exports have at times come under severe public scrutiny and criticism precisely for allegedly having violated the criteria for assessing an export to be permitted.

The export control regulations in all of the Nordic countries come under regular review and are frequently updated and complemented. In the past, amendments and changes have usually been initiated after public criticism concerning particular arms transfer decisions, as well as to follow regional and international developments such as new regulations introduced by the EU, or most recently through the adoption of the ATT in 2013.<sup>41</sup> For an overview of the relevant laws and regulations, see Table 2.

TABLE 2: ATT-RELEVANT LEGISLATION IN DENMARK, FINLAND, NORWAY AND SWEDEN

COUNTRY	TITLE	YEAR
Denmark	War Material Act (Act no. 1004 of 22 October 2012)	2012
	Weapons and Explosives Act (Act no. 1005 of 22 October 2012 with subsequent changes)	2012
	Weapons and Ammunition Circular (Circular no. 9597 of 30 October 2013)	2013
	Weapons and Ammunition Order (Order no. 1248 of 30 October 2013 with subsequent changes)	2013
Finland	Act on the Export of Defence Material(282/2012)	2012
	Government Decree on the General Conditions for the Permit Procedure for the Export of Military Equipment (311/2013)	2013
	Firearms Act (1/1998)	1998
	Firearms Decree (145/1998)	1998
	General Guidelines for the Export and Transit of Defence Material (1000/2002)	2002
Norway	Act of 18 December 1987 relating to control of the export of strategic goods, services, technology, etc., cf. Royal Decree No. 967	1987
	Guidelines of 28 February 1992 for the Ministry of Foreign Affairs when dealing with applications concerning the export of defence-related products, as well as technology and services for military purposes (most recently amended 28 November 2014)	1992
	Implementing legislation of 19 June 2013 under Section 1 of the Act of 18 December 1987 relating to control of the export of strategic goods, services, technology	2013
Sweden	Military Equipment Act (SFS1992:1300)	1992
	Military Equipment Ordinance (SFS1992:1303)	1992
	Ordinance SFS 2013:707 concerning the control of certain firearms, parts of firearms and ammunition	2013

As of 31 March 2015. The English translations of titles are to be considered as informal. For full references for the documents mentioned in the table, see the bibliography.

Finland, Norway and Sweden have implemented bifurcated legislation on items commonly considered as conventional arms and included in the EU Military List (ML): military items are covered as part of acts relating to the export of defence items or war materials, whereas civilian weapons and related equipment, including ammunition, intended, for example, for hunting and sporting purposes are controlled by a separate law specifically on ‘firearms’, or for example on ‘weapons and ammunition’. In Denmark, the Weapons and Explosives Act regulates the export of both military and civilian products, regardless of the products’ recipient or their intended use. Denmark has also gone furthest in incorporating its national legislation into European controls: the country uses

the EU’s common legal basis directly as part of its legislation, complemented by national criminal and administrative provisions.<sup>42</sup>

In Sweden, an on-going review of legislation initiated by the Government in 2012 is undertaken by a specifically appointed parliamentary committee (‘Krigsmaterielexportöversynskommittén’, KEX). Sparked largely by the Arab Spring of 2011, the committee’s task is to conduct a comprehensive overview of Swedish legislation in light of piecemeal developments and revisions made since 1992, including the EU Common Position and the ATT, and to prepare a proposal for new military equipment legislation with the aim of increasing controls over, among other matters, exports

to non-democratic states. In addition, the committee examines what should in the future be considered as follow-on deliveries and what rules should apply to these, and scrutinizes and charts export control systems in partner countries such as the other Nordic countries. At the time of writing, the committee was due to present its findings on 30 June 2015. For an example of the development of arms transfer policy in Sweden, see Case 1.

On paper, the countries differ in their approaches to the right to manufacture, import and export conventional arms, but in practice the legislations seem to work pretty similarly: for example, in Denmark and Sweden, the laws state that in principle it is prohibited to manufacture or export military equipment, firearms or ammunition, but individual licences for manufacture of weapons may be granted based on a case-by-case evaluation. The production ban does not apply to military authorities or the Police, and the export ban does not apply to the police or armed forces and military personnel carrying out military services. Finland, then again, does not refer to the production or transfer of weapons being prohibited, but all weapon-related commercial activities require licensing and exports of defence material and its transit are only allowed if authorization (an export licence) has been granted. According to the law, such an authorization will only be granted in cases which do not jeopardize Finland’s security and are in line with the country’s foreign policy.

All of the Nordic countries have also developed supporting documents and instructions on how their laws are to be interpreted and implemented. In Sweden, for instance, the relevant Act and Ordinance are supported by the Government’s guidelines on exports of military equipment as approved by the Parliament. They detail the principles applied when examining licence applications for the exportation of military equipment and foreign cooperation agreements.

In addition to national legislation, all of the Nordic countries take into account and apply a number of international commitments applicable to them, such as the EU Common Position on Arms Exports,<sup>43</sup> its updated User’s Guide, WA guidelines and procedures,<sup>44</sup> as well as the OSCE decisions.<sup>45</sup> For example, all of the Nordic countries revisited their relevant laws following a new EU Directive on intra-Community transfers of defence-related products, adopted in May 2009 (2009/43/EC), and made the necessary amendments to their rules governing exports of civilian weapons to complement the 2012 EU Regulation (No 258/2012),<sup>46</sup> which now regulates authorization to transfer civilian firearms, their component parts and ammunition outside the EU. The ATT, in force since late 2014, is the latest addition to the web of international commitments taken into account in Nordic national regulations and implemented nationally through relevant legislation and regulations.

The Swedish case study and the overall review of the Nordic arms transfer legislation shows that:

- ✓ **To remain accurate and effective, arms control legislation and regulations have to be regularly reviewed and updated. A national system that is based on constant pro-active re-evaluation of risks and follows international and regional developments is likely to be more successful and reliable than one reviewed only after gaps are identified through unintended transfers or media scandals.**

In addition to conducting periodic full legislative reviews:

- ✓ **Regulations, guidelines and user guides are an efficient way of complementing and concretizing legislation, as they allow for more timely and small adjustments and can give**

## CASE 1: GIVING HUMAN RIGHTS A CHANCE? SWEDEN DECIDES NOT TO PROLONG MILITARY COOPERATION WITH SAUDI ARABIA

The most talked about arms exports case in Sweden in recent years has been the country's ten-year long military cooperation agreement with Saudi Arabia. Dating back to 2005 and extended for another five years in 2010, the agreement – wide in its coverage and application – covered amongst other things exports of defence material, research and training and transfer of military technology. Between 2009 and 2013, Sweden exported weapons to Saudi Arabia worth over SEK 4.8 billion (EUR 513 million). Most of this came from exports of the airborne reconnaissance radar system 'Erieye' and anti-tank robot 'Bill'.

In 2011, Sweden decided to review its policy regarding exporting arms and defence materials to non-democratic states. The study, still in preparation at the time of publication of this report, is expected to be presented by 30 June 2015. Saudi Arabia has long been criticized for systematic human rights violations, including towards religious minorities and women, but also for instance for the lack of transparency in the country's legal system.

As the second term of the five-year cooperation agreement drew towards a close at the beginning of 2015, its renewal became an item of intense discussion in the Swedish Government, which at the time was composed of social democrats and the environment party. Two months before the set renewal in May 2015, the Government announced that Sweden would not renew the contract for now. The announcement was met with wide approval but also with

scepticism and disappointment both in Sweden and abroad. The media coverage of the decision to suspend the cooperation agreement concentrated mainly on exports of military products from Sweden to Saudi Arabia and linked the decision not to supply them with the on-going review of arms control policy. For example, Professor of political science at Gothenburg University, Dr. Ulf Bjereld, commented on the decision: 'Sweden has shown the world that when we talk about human rights it is not just words but also actions, which could lead to a picture of Sweden as a state with great integrity on these issues'.<sup>1</sup> Despite being debatable, his statement seemed to echo many others who felt that the non-renewal of the Saudi contract was a first instrumentalization of the items that Sweden's Foreign Minister Margit Wallström had raised in her March speech to the Parliament. She noted the safeguarding of human rights as a 'cornerstone of Swedish foreign policy' and said that a strategy for human rights, democracy and the rule of law was being drafted. She also talked about making a 'feminist foreign policy' an 'integral part of activities throughout the Swedish foreign service', aiming to strengthen women's rights, improve access to resources and increase women's representation internationally.<sup>2</sup>

On the other hand, some politicians and many export control practitioners called the Government's decision risky and going too far, and criticized also the media's concentration on only one aspect of the defence cooperation agreement. Taking a business-orientated stance on

the decision, Mr. Carl Bildt, a former Swedish foreign minister, wrote in his blog that terminating the agreement was a mistake that damaged Sweden's credibility as a trading partner and gave an upper hand to its competitors in the market. He described the hope that Sweden's stance in the affair would change the human rights situation in Saudi Arabia as 'a pure illusion', and called for the continuation of diplomacy and dialogue also with countries whose views Sweden does not share.<sup>3</sup> The view was partially shared by the country's current Prime Minister Mr. Stephen Löfvren, who underlined that the decision whether to extend or not the military agreement with Saudi Arabia depended on several points, not only on the country's poor human rights situation. 'The situation was such that we did not want to keep the military agreement, but it does not mean that Sweden would not want to have good relations with Saudi Arabia or other countries like it. Having a good relationship, even if we disagree, is extremely important,' he said.<sup>4</sup> The decision not to renew the arms agreement was met by a stunned silence from Sweden's top business leaders, more than 30 of whom signed an open letter in March imploring the Government to honour the agreement and maintain the country's reputation as a trading partner.<sup>5</sup>

1 See Crouch (2015).

2 Wallström (2015).

3 Bildt (2015).

4 See Westin, Hansson, and Asplund (2015).

5 Gerdfeldter (2015).

### helpful guidance to practitioners on how to implement the relevant laws.

Finally, as the Nordic examples show, there is necessarily no direct or linear link between on-paper laws and regulations and their implementation in practice, because:

- ✓ **National export licensing criteria are always likely to contain both objective and subjective (i.e. political) considerations, depending on a country's national policy priorities and circumstances. Such differences in criteria are also both implementable and acceptable under the ATT, as long as they meet the Treaty's requirements in terms of both prohibitions and factors taken into account in export assessments, and are implemented responsibly and transparently.**

## RESPONSIBLE AGENCIES

According to the ATT (Article 5.5), its states parties shall take the necessary measures to implement the Treaty and 'shall designate competent national authorities in order to have an effective and transparent national control system regulating the transfer of conventional arms'. The four Nordic countries have taken somewhat different structural approaches to the task of implementing their national transfer controls, dating back to the times where national legislations were developed and ranging from a single central authority in Sweden to a highly divided control structure in Denmark. The differences in approach can on one hand be explained by the way in which domestic regulative frameworks have developed and on the other hand by the structure and scale of defence industries in the respective countries (see also the section on 'Nordic defence industries'). As with laws and regulations, the practical application of export controls works very similarly across the Nordic countries despite their structural differences. The enforcement of

transfer controls in all of the Nordic countries lies with the national customs authorities and the judicial system.

In Denmark, several Government units and agencies are involved in the export and import of conventional arms. As is also the case in Finland and Norway, the main division between the responsible agencies is drawn based on the categorization of the exported product as either 'military' or 'civilian'. The Danish Ministry of Justice administers the export control legislation in relation to arms and war material, and is also the main licensing authority. Permission for export of weapons and related equipment falling under the Arms Act is to be requested from the Ministry of Justice. If there is doubt as to whether the product to be exported is subject to licensing under the Arms Act, the Danish Defence Acquisition and Logistics Organization (DALO) can advise and liaison with the Ministry of Defence on behalf of the Ministry of Justice to specify the correct categorization. The final decision to approve or deny a licence is taken by the Ministry of Foreign Affairs after considering relevant foreign and security factors and taking into account Denmark's international commitments. In general, few denials are issued, largely due to pre-authorization consultations. The authorities strive to provide a reply within a few weeks in complicated matters, and within one week in matters that are not complicated. Exporters also have the opportunity to obtaining advice and guidance if they are in doubt about the procedures, and can also consult in cases of licence denials.<sup>47</sup>

The Danish Business Authority (Erhvervsstyrelsen) is the authority in charge of the administration of the international export control on dual-use products and works in close coordination with the Ministry of Justice (MoJ) and the Ministry of Foreign Affairs (MFA) on matters related to exports of military equipment.

Similarly to Denmark, the export licensing authority in Finland is divided between three official agencies depending on the type of ma-

material to be exported, its intended use and the value and political importance of the potential transfer. The primary authority in charge of export licensing for defence material is the Ministry of Defence (MoD). It has the authority to take decisions on all exports to the countries of the European Economic Area (EEA) as well as to other countries classified as being of 'low political risk'. When making its decision on exports to other countries than the ones specified above, the MoD consults the Ministry of Foreign Affairs for advice on any possible foreign and security policy related aspects related to the application. In addition, the MoD convenes meetings of the relevant authorities to discuss relevant licence applications (see also 'Coordination and outreach'). Export applications for defence material (EU ML categories 1-10 and 12) of a significant value (de facto over EUR 1 million) are subject to approval by the Council of State. According to the law, this approval is also needed if the proposed exports have potentially significant foreign and security policy implications. Finland processes around 200 licence applications annually for defence items. In 2013, five licence applications sent to the MoD were rejected. Detailed information about the reasons behind denying licences is not publicly available.

In Finland, commercial exports and imports under the Firearms Law are processed by the National Police Board, which in recent years has processed hundreds of licences. Even though it is primarily in charge of licences for civilian weapons, the National Police Board also authorizes exports to armies and security forces, depending on the type of material to be exported. Similarly to Denmark, exports of dual-use technology are processed by the Ministry of Foreign Affairs. For an example of some of the practical challenges of having the authority to control exports authorities divided between different actors, see Case 2 on Finland.

In Norway, the licensing authority for exports of war material is the Royal Ministry of Foreign Affairs, Section for Export Control. When

it is seen to be necessary or desirable, it may consult other bodies, such as the Ministry of Defence (for instance its Defence Research Establishment), Ministry of Finance, customs authorities, or the Security Service (Politiets Sikkerhetstjeneste). In cases that are considered sensitive or problematic, the Section usually asks the MFA's relevant regional desk(s) to provide an analysis of the situation in the proposed country of destination. In particularly sensitive cases, the final decision about the export may be taken at a high political level by the Secretary of State or the Minister of Foreign Affairs. The Police grant exports of hunting and sports weapons. Norway processes about 2,000 military export licences per year, of which 19 were met with a refusal in 2013.<sup>48</sup> Ten people in the MFA's Section for Export Control process these licences.

Unlike in, for example, Sweden, the Norwegian Parliament is not involved in routinely scrutinizing arms exports prior to their licensing. In addition to receiving an annual export report, the Parliament holds regular briefings on export controls, and there is a practice of consulting it in cases that have specific foreign policy or principal importance. The time for processing export application in Norway is noted to be a maximum of twelve weeks for category A products (see Figure 4 below) and six weeks for other applications.

Sweden's system differs from those of its neighbours in that the country has a special dedicated authority, the Inspectorate of Strategic Products, ISP (Inspektionen för strategiska produkter).<sup>49</sup> Established in 1996, this is an independent agency in charge of overseeing the licensing of exports of all military and dual-use items as well as civilian firearms, in accordance with the Military Equipment Act. Since 30 September 2013, the ISP is the licensing authority not only for military equipment but also for cases in accordance with Regulation No 258/2012 of the European Parliament and of the Council of 14 March 2013, regulating licence applications to export civilian firearms, their parts and components and ammunition

outside of the EU and certain import and transit measures. The ISP's 25 staff members process approximately 2,000 licences annually. Other institutions, such as the Swedish Military Intelligence and Security Directorate (Must) and the Swedish Security Service (Säpo), supply the ISP with information. The ISP also has an established partnership with Swedish Customs, according to which some of the ISP's supervisory inspections, for example, are carried out jointly with the customs authority, and the two bodies also exchange information on export licences.

The Government provides support for the ISP in the form of a parliamentary oversight body called the Export Control Council (ECC). The ECC was established in the 1980s to increase transparency and consultation on matters relating to exports of military equipment. All parliamentary parties are represented on the 12-member ECC, which is chaired by the ISP Director-General (DG). Based on his political and risk analysis, he selects the cases that are brought to the consultation at the ECC, which normally meets between four and six times annually and discusses one or two cases at each meeting. In addition, the DG has to consult the Council before the ISP submits an application to the Government for assessment under the Military Equipment Act or the dual-use items and Technical Assistance Control Act. The ECC does not have the power to overrule the ISP's decisions, only to provide advice and express its opinion.

At the ECC's meetings, the ISP DG presents the cases and usually invites the MFA to give its assessment of the relevant purchasing countries and the MoD to assess the defence policy aspects of the applications. The ISP DG may also summon other experts. Since it would harm the exporting companies commercially if their plans were made known before they had concluded a deal, the ECC's discussions are not made public. In addition to the ECC's guidance, the ISP has the possibility of taking export control-related issues for governmental consideration. This option has been used very

rarely, mostly related to mergers of Swedish defence companies with their international partners.

In determining its position regarding export authorizations, the ISP conducts a political and risk assessment similar to those undertaken by the relevant authorities in the Ministry of Justice in Denmark, the MoD in Finland and the MFA in Norway. The intention of the Swedish system, unique in international terms in that representatives of political parties can discuss a number of potential arms exports in advance, is to build a broad consensus on export control policy and promote its continuity.

The examples from the Nordic systems show that, given the different historical developments in the respective countries, in their legislative and administrative practices and, for example, the structure of national defence industries:

- ✓ **There is no 'one-size-fits all' approach to the establishment and functioning of authorities in charge of national arms transfer controls. The ingredients of a well-functioning transfer control agency include adequate resources and technical know-how, access to all relevant information, openness and dialogue, as well as readiness to reassess both structures and practices whenever necessary.**

The leading system in the Nordic countries is to keep the licensing systems of war material and civilian arms separate from each other. While this can be a functioning solution:

- ✓ **Combining the licensing authorities in charge of all conventional weapons and related equipment regardless of their specification as 'military' or 'civilian' does seem to have many positive consequences. These range from optimization of resources to clarity of controls and the com-**

## CASE 2: CHALLENGES OF DECENTRALIZED CONTROLS: FINNISH SNIPER RIFLES TO BAHRAIN<sup>1</sup>

One of the arms trade-related issues most widely covered in the Finnish press during recent years has been a series of licences granted for Bahrain. As reported in the annual statistics on export licenses issued for military items in September 2010, the Finnish Ministry of Defence granted a licence for 205 sniper rifles to be exported to the Bahraini armed forces. According to the authorization data, the transaction amounted to EUR 872,000. The arms for which the MoD licence was sought were exported by a Finnish company, Sako Oy, the subsidiary company of the Italian Fabbrica d'Armi Pietro Beretta that produced the rifles. The export was not considered to be significant in terms of Finland's foreign and security policy and its economic value did not exceed EUR 1 million, so the licence application was not put forward as requiring an approval by the Council of State.

What raised interest in the national media was that according to the Finnish customs statistics from 2013, six other, assumingly related military exports to Bahrain took place simultaneously with the MoD export licence process (see Table 3). For instance, Finland shipped over 13,000 kilograms of ammunition, confirmed to be for types TRG-22 and TRG-42 sniper rifles that were the subject of the MoD licensing procedure.<sup>2</sup> According to customs data, Bahrain also received about EUR 950,000 worth of weapons parts and accessories. The exact content of the cargo was not indicated in the customs statistics, but the tariff category mentioned may include, for example, arms logs and trunks, triggers, springs, front support

(bipods) and magazines. Bahrain also received optics including 205 binoculars worth EUR 670,000. These are commonly used together with sniper rifles to improve accuracy to hit a telescopic sight and with light amplifiers meant to improve the ability to shoot in low light conditions or in the dark. Finally, the export statistics revealed the export of about EUR 245,000 worth of what were likely weapon carrier and transport bags.

The exports, together with a series of licence approvals of smaller financial value from preceding years, were criticized in the Finnish media after the statistics became known. The criticism was made especially against the backdrop of the 2011 Arab Spring, the developments for which could in the case of Bahrain be traced back to the country's constitutional reform of 2002, which according to the authorities was to set a roadmap towards a democratic society. The implementation of the reform was delayed due to reluctance on the part of the leading national authorities. As a result, Bahrain's internal situation and its ranking in international stability and development reports dropped drastically after 2007. The tensions continued to rise in spring 2010 and culminated in the general elections held later that year. The Government started systematically pressing the opposition after the so-called Manama incident involving the arrest of a number of female human rights protestors at a shopping mall in Manama, and during the events of late 2010, hundreds more people were arrested.

It is not known for how long Bahrain was negotiating the pur-

chase of the sniper rifles with the manufacturing company. The export licence application was submitted to the Ministry of Defence just before the incident in Manama, and the export permit was granted only a few weeks after the hostilities. The arms were shipped to Bahrain in January 2011. Extensive violence broke out in Bahrain in mid-February 2011.

The Managing Director of the Finnish company Sako Oy, Mr. Raimo Karjalainen, defended the sale of these particular weapons, citing the fact that the company operates strictly according to the instructions and guidelines of the Finnish Ministry of Foreign Affairs and the Ministry of Defence. 'All permits were in order with the exports to Bahrain. The deliveries took place in accordance with the granted export licenses and mention what products were exported.'

The licensing authorities could not predict the outbreak of violence and the resulting mass movements of the Arab Spring – they also came as a surprise to the majority of the international research community. The export licences were granted because the starting point of the Finnish law on the export of military items is that licences are granted unless there is serious ground to believe that they would, for example, be used to commit war crimes or serious human rights violations. A general suspicion about a possibility is not enough, but the authorities must be able to prove the link between the specific exported product and likely violations. One must, for instance, prove that the recipient of the items has previously committed human rights violations or

that the product in question has previously been used several times to commit such violations. Bahrain's armed forces have not been reported to have committed human rights violations, even though the country's National Security Agency (NSA, the National Security Apparatus) has,

according to reports, infringed human rights.<sup>3</sup> After the outbreak of large-scale violence in countries affected by the Arab Spring, the Finnish MFA re-evaluated all export licences granted to the region. However, the Bahrain

deliveries had already been shipped.

<sup>1</sup> The box, including the COMTRADE statistics in Table 1 is based on Kytömäki and Pykälä (2013), pp. 11–13.  
<sup>2</sup> YLE (2013).  
<sup>3</sup> BICI (2011).

TIME	HS CODE	TITLE	EUR VALUE	KG	AMOUNT
1/2011	93033000	Other sporting, hunting or target-shooting rifles	872 165	1 086	205
	93052900	Other parts of shotguns or rifles	954 604	2 383	
	93063010	Cartridges and parts thereof for revolvers and pistols of heading 9302 and for sub-machine-guns of heading 9301	812 250	13 512	
	90051000	Binoculars	467 211	225	205
	90139090	Parts and accessories for lasers and other instruments, apparatus and appliances not specified or included elsewhere	210 615	133	
	42021250	Trunks, suitcases, vanity cases, executive cases, briefcases, school satchels and similar containers, with outer surface of moulded plastic material	80 220	2 050	
	42029211	Travelling-bags, toilet bags, rucksacks and sports bags, with outer surface of plastic sheeting	1 67 728	1 640	
		Annual total	3 564 793	21 029	
7/2009	93063010	Cartridges and parts thereof for revolvers and pistols of heading 9302 and for sub-machine-guns of heading 9301	77 747	1 850	
	93063091	Centrefire cartridges for rifle-barrelled shotguns	95 849	1 717	100 000
	93063093	Rimfire cartridges for rifle-barrelled shotguns	7 368	271	80 000
1/2009	93063091	Centrefire cartridges for rifle-barrelled shotguns	6 300	93	2 000
		Annual total	187 264	3 931	
2/2007	93063030	Cartridges and parts thereof for military weapons	76 509	1 762	
		Annual total	76 509	1 762	
9/2006	93063010	Cartridges and parts thereof for revolvers and pistols of heading 9302 and for sub-machine-guns of heading 9301	16 456	544	
	93063091	Centrefire cartridges for rifle-barrelled shotguns	47 997	1 202	70 000
	93063093	Rimfire cartridges for rifle-barrelled shotguns	1 238	68	20 000
3/2006	93063030	Cartridges and parts thereof for military weapons	15 565	510	
		Annual total	81 256	2 324	
3/2005	93063010	Cartridges and parts thereof for revolvers and pistols of heading 9302 and for sub-machine-guns of heading 9301	15 900	579	
		Annual total	15 900	579	
4/2004	93063091	Centrefire cartridges for rifle-barrelled shotguns	30 540	858	50 000
		Annual total	30 540	858	

TABLE 3: RECORDED ACTUAL EXPORTS FROM FINLAND TO BAHRAIN, 2004–2011

**prehensiveness of risk assessments. In cases where a centralized body is not seen as being feasible, a key to effective controls is regular coordination and dialogue between the different authorities.**

Examples from the different Nordic countries show that:

- ✓ **Having a parliamentary committee or other form of practical and timely guidance on licensing decisions is a good way to ensure parliamentary oversight of arms transfers and to increase their public legitimacy. Given the number of licences processed by many countries, a functioning model could be to subject a selected, limited number of licence applications for parliamentary discussion prior to their processing, and circulate overall statistics and information about other cases to it after they have been processed.**

## DEFINING PRODUCTS, ACTIVITIES AND RECIPIENTS

The ATT, according to its Article 2, applies to 'all conventional arms within the following categories: (a) Battle tanks; (b) Armoured combat vehicles; (c) Large-calibre artillery systems; (d) Combat aircraft; (e) Attack helicopters; (f) Warships; (g) Missiles and missile launchers; and (h) Small arms and light weapons'.<sup>50</sup> In its Articles 3 and 4 it also covers national export controls of ammunition, parts and components for the categories above and in its Article 5.2 specifies that all states parties shall 'establish and maintain a national control system, including a national control list, in order to implement the provisions of this Treaty'. The categorization was left deliberately open so that already existing recording and reporting categories such as those used by the WA, the EU or cus-

toms authorities could all fit within and be consistent with the ATT.

### PRODUCT CATEGORIES

All of the Nordic countries including Norway follow the EU Common Military List (ML) in their categorization of items.<sup>51</sup> There are also some national additions and further divisions, in addition to being consistent with the EU categorization, Norwegian exports of strategic goods and technology are divided into two product categories for licensing purposes – 'category A' and 'category B' – depending on their strategic importance (see Figure 4).

Similarly, Sweden controls its export items according to a national list of 'military equipment and technical assistance', which is included as an appendix in its Military Equipment Ordinance. In terms of conventional arms, the national categories are identical to the EU ML, with a complementary division into military equipment for combat purposes (MEC) and other military equipment (OME). The MEC category includes equipment with a destructive impact, including sights for such equipment and fire control equipment. The OME category includes parts and components for MEC, as well as equipment that does not have a directly destructive impact in a combat situation. The Danish legislation has directly incorporated the EU ML.

Division of weapons into 'military' and 'civilian' differs depending on countries' national specifications, and while the division is for the most part clear-cut, there are no product-based simplified lists, etc. based on which the categorization could be determined, as products and their specifications change frequently and it might prove challenging to keep a detailed list up to date. As noted in the section discussing relevant legislation, the division of items into either 'military' (defence/war material) and 'civilian' determines the law under which they fall, and respectively affects (with the exception of Sweden) the authority that han-

dles licence applications regarding them. In Finland, the division into 'military' and 'civilian' weapons is decided based on their category and intended use: while there is no list of national defence products or categorization that could automatically be used to define the division of responsibilities between the MoD and the Police Board, the scope of civilian firearms is defined in the Firearms Act. The EU ML is used as a tentative guidance to define military items, but decisions are made on a case-by-case basis. For example, Finland produces items falling under the EU categories ML 1, ML 2 and ML 3<sup>52</sup> that can be exported for civilian purposes, the licensing of which in those cases falls under the authority of the National Police Board. Under ML 1, items that are classified as 'defence material' include fully automatic weapons, sniper rifles, smoothbore weapons and tubeless guns, as well as equipment, parts and components designed for these categories. For example, all pistols and revolvers are classified as 'civilian' under Finnish legislation. Under ML 3, defence material includes only those under point 3b, and in ML 2 weapons of calibre 12.7mm or greater, as well as the associated parts and components, armour piercing, inflammable and tracer ammunition and other equipment and components marked according to military standards.

Similarly, in Norway, the categorization of items into category 'A' or category 'B' (see Figure 4) is not based on detailed lists. Instead, decisions on categorization are taken on a case-by-case basis and the classification is decided during the evaluation of the licence in question. The MFA keeps a record of previous licensing decisions according to the categorization of items, so that it can follow precedent when confronted with subsequent transfers of identical pieces of equipment. The country has specific guidelines for exports of equipment originally designed or modified for military use, but which are no longer considered to be of any military use. In addition, the guidelines note that the licensing rules do not apply to the export of 'insignificant quantities of goods

which are not intended for military or police use'.

Despite their long-standing cooperation and coordination as EU member states, Sweden, Finland and Denmark have only relatively recently started using the EU ML categorization directly as a basis for their decision-making as opposed to developing their national control lists in conformity with EU ML. In 2013 Norway moved from the national list to the EU Common Military List and also agreed to start implementing it in English instead of translating it into Norwegian. One reason behind maintaining the English list was said to be the MFA's wish to facilitate the possibilities for Norwegian industry to participate in European trading under the same terms and conditions as EU member states.

As with the other Nordic countries, Denmark also applies the EU definition of the term 'designed for military purpose' as 'equipment specifically designed or adapted for military purposes and intended for use as an arm, munitions or war material'.<sup>53</sup> In practical terms, this does not result in differences in practice, as the Danish Weapons and Explosives Act regulates the export of both military and civilian products.

## RECIPIENTS OF NORDIC DEFENCE MATERIAL

With the exception of Norway (see Figure 4), the Nordic countries do not apply an explicit category- or list-based approach to the recipient countries of their material. In practice however, the approaches in this area are also very similar, despite being expressed differently. Like Norway, Denmark, Finland and Sweden differentiate between exports to EU/EEA countries and other countries considered as low-risk and/or being of special strategic importance. Export licence applications in all four countries are considered on a case-by-case basis within the set national frameworks.

For example, Sweden states in its regulations that ‘there are no obstacles in terms of foreign policy to cooperation with, or exports to, the Nordic countries and the traditionally neutral countries of Europe. In principle, cooperation with these countries may be considered consistent with Sweden’s security policy. As cooperation with the other countries in the European Union develops, the same principles regarding cooperation with foreign partners and exports should be applied to these countries.’

Denmark follows a different procedure in its licensing depending on whether the exports applied for are intended for other EU member states, for seven countries closely related to Denmark, or for third countries. The type of the recipient country also guides the decision on the type of authorization required.<sup>54</sup> The Danish Weapons and Explosives Act does not list the conditions to be fulfilled for an export licence to be granted or any particular set of countries to which Danish products may or may not be exported. For a number of years, however, export licences have, as a general rule, not been granted to countries involved in armed conflicts or to areas with such a level of unrest and instability that an outbreak of violent conflict must be reckoned with.

As a general rule, licences in the Nordic systems may only be granted to governments, central Government authorities or Government-authorized recipients, depending on the type of material in question as well as on the country or region to which it would be exported.

The Norwegian guidelines specify different assessment criteria for products in category A and category B. Category A items can only be exported to governmental end-users, with the exception of hunting and competition weapons, which ‘may be exported to recipients approved by the authorities in the recipient state’, also including private/commercial entities. The guidelines further specify that a licence to export category A items must be dealt with by the Government, except if the recipient coun-

try belongs to Group 1, seemingly referring to Group 2 as the only other group of countries eligible to receive this equipment. In these cases an officially confirmed EUC with a non-re-export clause is also required.

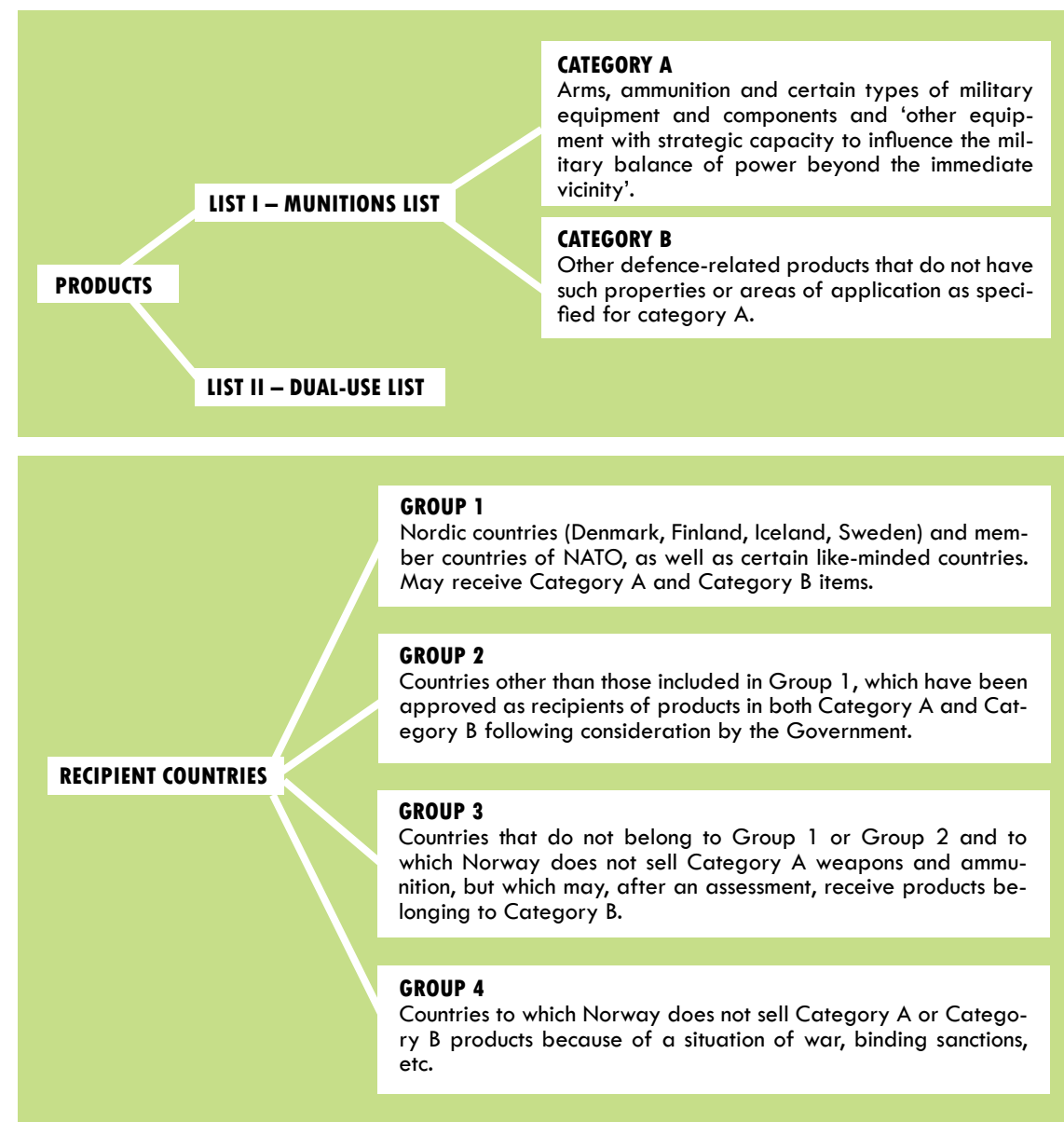
## TYPES OF ACTIVITY AND LICENCE

The legislation in all four countries specifies that the export and transit of defence material are allowed only if authorization (an export licence) has been granted. The primary responsibility for determining whether a licence is needed or not lies with the exporter, who has to assess whether the items they want to export fall into one of the controlled categories. Regulation of the documentation is mainly conducted by national customs authorities which, upon actual export, may question the need for a licence and enquire about the legality of the export.

In addition to following similar product categorization, the Nordic countries have adopted similar approaches to defining both ‘exports’ and the exported/transited items. The most important recent modification to the classification of activities was caused by the introduction of the European Commission’s Intra-Community Transfer Directive 2009/43/EC from 2009 (ICT Directive),<sup>55</sup> after which the Nordic countries modified their legislation to incorporate the ICT directive into their national legislation. For example, Finland modified its export control legislation on EU ML items following the introduction of the ICT directive to comprise two main categories of licences – transfer licences and export licences. Of those, transfer licences apply to exports to other EEA countries, and can be of three varieties:

1. An *individual transfer licence* allows the export of a specified amount of products mentioned in the licence for a specified end-user.
2. A *combined transfer licence* is similar to the individual licence, but allows the

FIGURE 4: AN EXAMPLE OF CATEGORIZING ITEMS AND RECIPIENTS – NORWAY



defined products to be exported multiple times to different end-users.

3. A *general transfer licence* consists of five different types, which vary depending on the end-user and material classes. Before using a general licence, the prospective exporter has to be registered at the MoD. In processing registrations in this category of exporters, the MoD evaluates the nature of the business activity in question and

the capability of the exporter to comply with export regimes. Approved companies can download general licence application forms online.

Export licences apply when Finnish companies wish to export to countries outside the EEA. They allow exports of a specific number of products for a specified end-user. Export licences always require a political risk analysis implemented by the MFA (see ‘Responsible





agencies' above). A risk analysis is not needed when goods are to be exported to countries that are defined as reliable by the Government. At the time of writing in 2015, these countries are: Australia, Japan, Switzerland, New Zealand, Canada and the USA.

The necessary documentation for obtaining an export licence depends, among other things, on the type and status of the exporter and the recipient, the importing country, the number of weapons, the intended use and quantity.

In Denmark, according to the country's international reporting, an end-user statement 'may' be required, depending on the circumstances. An export application has to contain information on the exporter's name, address, contact person, destination, country of transit if relevant, information on the importer, and the end-user (name, address if known),<sup>56</sup> information about the product, intended use, placement on the EU Common List and the value in DKK or EUR. The application shall also include information on whether the export is permanent or temporary (test, demonstration, exhibition, damage control or service, maintenance). In addition, the application could contain other relevant information, such as previous applications or whether the product is for military or civilian use.

In Sweden and Denmark, it is possible to transmit licence applications electronically as an alternative to exchanging hard copy documents. In addition, Norway has since 2012 worked to develop an electronic service to modernize its licensing and record-keeping system and to make it more secure and effective. The new system is scheduled to become fully operational in the course of 2015.

## LICENSING THE TRANSFER OF PARTS AND COMPONENTS

In today's world, military equipment is rarely fully manufactured in one country and then ex-

ported to another. Instead, parts and components for sophisticated weapons systems such as fighter jets or warships are sourced from across the globe and assembled in one country with technology purchased from another. This globalization of the supply chain presents several challenges to all countries involved in the arms trade. For the Nordic countries, this becomes apparent especially through increased involvement in joint ventures with other countries, both within the EU and in third countries, potentially magnifying the numbers of exports of controlled items.

Globalization also requires that Nordic laws and regulations on the production and export of parts, components and intangible technology are kept up to date to ensure that military equipment containing Nordic strategic components does not end up in places where it could be used against the principles of the ATT. Further problematic areas are licensed production of Nordic defence equipment abroad as well as the control of foreign-based wholly owned subsidiaries of Nordic companies operating as intermediaries in international transfers.

The ATT covers parts and components in its Article 4, which requires all states parties to 'establish and maintain a national control system to regulate the export of parts and components where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1)'. The Treaty also extends the application of its export prohibitions and assessment criteria to such parts and components.

In Finland, just as with weapons and equipment, the regulation and licensing of parts and components also falls under two different laws depending on their type: According to the Firearms Act, a 'part' of a weapon is its standalone piece such as the body, barrel, magazine, shutter and its body, silencer and functionally corresponding items. The Firearms Act does not use the term 'component', but the definition of 'parts' also includes components.

The law on the exports of defence equipment notes that a ‘component’ means a product or apparatus intended to be incorporated into military equipment so that it does not constitute the dominant element of the final product’s identity. When deciding upon the authorization of military parts and components, the MoD takes into account the export policy of the third country that wants to purchase the component or subsystem, as their possible re-export takes place under the authority of the third country. The starting point for repeated deliveries is approval, if the new delivery is by its nature similar to the previous export, it is part of the same delivery or otherwise bound with a previous transaction.

According to the Norwegian guidelines, the export of parts and components means the export of products that have no independent function. In cases where parts and components are to be exported in accordance with international cooperation agreements, ‘an export licence shall be granted’ if the agreement as a whole has been approved by the authorities. The guidelines also note that ‘cooperation agreements with group 1 [see Figure 4] countries should normally be approved, provided that the Norwegian parts, subsystems or components are integrated with parts from other sources, and the finished product is not designated Norwegian’. In these cases, an EUC is not required. The designation also counts in exports of parts and components outside cooperation agreements: if the end product is not to be Norwegian, a licence is generally granted for all other destinations than group 4 countries, and an EUC is not required. In cases where the end product would be designated as Norwegian, it is dealt with in the same way as finished military products.

According to the Swedish regulations, licences for exports of spare parts for military equipment exported previously with the requisite licence should be granted, provided there are no unconditional obstacles. With specific reference to agreements with foreign partners on the joint development or manufac-

ture of military equipment, the basic criteria mentioned above are to be applied when licence applications are assessed. Exports to the partner country under the agreement should be permitted unless an unconditional obstacle arises. If a cooperation agreement with a foreign partner is dependent on exports from the partner country to third countries, the issue of such exports should, insofar as the end product in question has a predominantly Swedish identity, be assessed in accordance with the guidelines for exports from Sweden.

As regards equipment with a predominantly foreign identity, exports from the partner country to third countries should be considered in accordance with the export rules of the partner country. If Sweden has a strong defence policy interest in cooperation and the partner country sets a condition that certain exports have to be allowed from that country, exports to a third country within the scope of the partner country’s export rules may, in general, also be permitted. In cases involving more extensive and, for Sweden, more important cooperation with a foreign partner in the field of military equipment, an intergovernmental agreement should be concluded between Sweden and the partner country. The Advisory Council on Foreign Affairs should be consulted before such agreements are concluded.

## REVOKING APPROVED LICENCES

In principle, in all Nordic countries it is possible to revoke already granted licences should such need arise. The Norwegian legislation, for instance, states that a licence for the export of military items may be revoked or suspended, or modified to be more restrictive in scope, if the exporter misuses the granted licence or fails to comply with the conditions specified therein. Furthermore, a licence can also be revoked if ‘new information emerges or the political situation or conditions in the recipient state or area change, and this significantly alters the basis on which the licence was granted’.

In Sweden, an export licence that has been granted should be revoked not only if unconditional obstacles to exports arise, but also if the recipient state becomes involved in an armed conflict with another state or becomes the site of internal armed unrest. Exceptionally, revoking a licence may be foregone in the latter two cases if this is consistent with international law and the principles and objectives of Swedish foreign policy.

In practice, revocations of granted licences are rare and generally considered as something to be avoided to the extent possible through a comprehensive and cautious licensing procedure.

The differences in categorizing items in the Nordic countries subject to this study as well as the presented practical examples about challenging export cases lead to the following conclusions and recommendations:

- ✓ **The division of items into categories of goods designed for ‘military’ or ‘civilian’ use creates a potential loophole in arms control regulations, especially as in most cases, the division leads to different authorities being in charge. Although usually of insignificant quantities of low-risk transfers, the exports of ‘civilian’ firearms can – if not properly controlled – cause similar suffering to that caused by the use of military equipment.**
- ✓ **Comprehensive assessment of not only the situation in the recipient country or region but also in terms of previous licence applications for the same end-user or destination in different product categories should be conducted, and the respective authorities should strive to maintain an open and constructive dialogue.**

Even though all Nordic countries follow the EU ML in their categorization of items, they do not use product-by-product lists or other simple lists that could be used to define, for example, the authority under which the licensing of different products belongs. Indeed, the findings show that:

- ✓ **Establishing and maintaining a product-by-product list of items to form the basis of categorization might prove resource-intensive and difficult to keep up to date in light of new products and technological developments. Despite these limitations, countries could consider indicative lists based on products already on the market. Such listings might facilitate procedures at least in a majority of borderline cases and also prove useful guidance to customs authorities dealing with actual exports and the categorization of items at their end.**

The same applies to creating simple country-lists of potential recipients or banned destinations:

- ✓ **Categorizing potential recipients of defence equipment is a reality in many exporting states even if they refrain from using ‘negative lists’ of recipient states or destinations apart from those based on international and regional sanction regimes. Utilizing ‘positive lists’ of trade partners considered as low-risk based on previous assessments and political particularities can prove an effective tool for licensing controls, but a balance should always be maintained between smooth licensing and retaining the necessary level of risk assessment and controls. If used, positive lists of recipient countries should be reviewed in real time to ensure a timely response to possible changes in their situation.**

Finally, as an additional suggestion to facilitate the categorization and recording of transferred items as well as to facilitate ATT implementation:

- ✓ **Further possibilities of aligning the export control lists categories and the scope of the ATT better with customs tariff codes used in the Harmonized System of the World Customs Organization should be explored. This would make it easier to follow and record licences versus actual deliveries, simplify the generation of trade statistics for reporting and improve the possibilities of the analysis of trade flows for export control purposes.**

## COORDINATION AND OUTREACH

### CONTACTS BETWEEN NATIONAL AUTHORITIES

Despite their divergent structural approaches to arms transfer controls, all of the Nordic countries conduct regular domestic consultations involving all their relevant authorities. This is conducted mostly as informal day-to-day exchanges of information and advice related to specific licence applications such as shown above in examples from Sweden and Norway, but in some cases also supported by more formal discussion and consultation fora. In Finland, for instance, licence applications for military items processed by the MoD are discussed monthly in meetings of a joint committee (maastavientityöryhmä). The meetings, chaired by the MoD, are attended by representatives of the MFA, the Police Board, the Defence Command, the Finnish Security Intelligence Service (Supo) and Customs. Even though in small systems such as the Nordic ones the most functioning form of inter-departmental cooperation is often personal and informal, it would be useful to introduce some level of procedural/formal coordination in the system

to avoid the risk of institutional memory loss at times when key personnel change, and ensure flexible operations irrespective of personalities involved.

Such meetings have been recognized as being beneficial, especially in terms of exchanging information about on-going licence applications and to bring together expertise from different areas in order to make comprehensive and well-informed decisions. In addition to national and EU-level coordination, Nordic officials also cooperate closely with each other, especially in cases involving joint cooperation agreements or exports of similar products to various destinations.

### OUTREACH TO THE DEFENCE INDUSTRY

As noted in the preamble to the ATT, the defence industry is a stakeholder in the implementation of the ATT, mostly through being obliged to follow the respective national regulations of its states parties. This broad term includes not just manufacturers and integrators but logistics providers, freight forwarders and shippers, among others. All Nordic countries report having relatively close and well-functioning relations with their respective defence industry actors. As with the cooperation between different Government authorities, the outreach to industry in the four countries also relies heavily on personal contacts and informal enquiries. In general, the feeling in the Nordic countries is that the local defence industry is well informed about relevant transfer control regulations and practices and enjoys good cooperation with the authorities.

In order to maintain good working relations and ensure a good level of know-how amongst small and medium enterprises (SMEs), all Nordic authorities organize outreach events to the defence industry. Norway reports that it holds annual seminars for the export industry, and in 2013 started to organize training on export controls and licensing for companies involved in exporting military products. The training courses proved popular and were seen as

beneficial to both industry and the regulators, and further courses are being considered.

In Sweden, the primary responsibility for staying in touch with private industrial actors involved in the export of strategic products lies with the ISP. It maintains regular contact with the companies, who also have to regularly report to the ISP on their marketing activities abroad. These reports form the basis for the ISP's periodic briefings with the companies regarding their export plans. In conjunction with this dialogue, the ISP may issue positive or negative advance decisions to the companies concerning destinations that are sensitive or have not yet been assessed.

Based on interviews regarding the functioning of the four studied Nordic systems, one can draw a number of potentially general conclusions and recommendations:

- ✓ **Functioning arms transfer controls by their nature require active and functioning cooperation between different governmental authorities, regardless of the specific system in place. Particularly in countries with smaller regulatory bodies, this can be undertaken primarily through day-to-day informal contacts between the different officials in charge of the various aspects of controls. However, some degree of formalization and periodic meetings should be introduced in all systems to ensure the maintenance of institutional memory and the comprehensiveness of consultations.**
- ✓ **The Nordic countries have valuable experience in developing full-of-government approaches to export controls, with many lessons learned being useful for countries with defence industries that are considering joining and implementing the ATT: the national defence industry – whether private or nation-**

**alized – should be kept in the loop of all necessary regulatory changes and be invited to participate in their formation. As a practical measure, industry representatives should be invited to participate as partners, participants or advisors in all processes that will have an impact on that specific industry's business in the future.**

- ✓ **Continued cooperation between the regulatory authorities and defence industry actors is crucial for the success of the ATT: joining a globally emerging norm is in the interest of the treaty actors in the UN and national governments, who therefore have to reach out more to other stakeholders to ensure optimal cooperation and build on each others' experience to ensure the full and comprehensive implementation of the Treaty. It is in the long-term interest of the defence industry to join global developments that otherwise might prove detrimental to its development. The ATT can prove crucially important for international cooperative agreements and joint ventures involving both the increasing ATT participation base and current non-members. The Nordic states could lead by example in this.**
- ✓ **To work more effectively with the defence sector, the Nordic countries, just like other governments exporting and/or importing conventional arms, should continue to develop their technical expertise and understanding of the functioning of the global defence industry in order to ensure that the ATT, through the actions of its states parties, will stay on top of technical developments and will also be able to respond to the future needs and requirements of the sector.**

## PART 3

# CURRENT PRACTICES IN SELECTED KEY AREAS

This section concentrates on a number of key areas relevant to the implementation of the ATT, where background research conducted as part of the Nordic Arms Transfer Control project indicated particular strengths as well as challenges. Building on the overview of national defence structures and the overall normative framework on arms transfer controls, the section discusses Nordic reporting and transparency measures in both the domestic and multilateral contexts; the regulations and procedures in use to determine the end-use(r) of the exported items; definitions and resulting controls on the brokering, transit, re-transfer and import of conventional arms; penalties and sanctions; as well as outreach to the defence industry. Together with the information presented in the previous sections, the findings of the section form the basis for the compilation of recommendations and lessons learned presented in the next and final section of the report.

## RECORD-KEEPING AND TRANSPARENCY

The Nordic countries traditionally rank high in comparisons of openness related to exports and imports of conventional arms.<sup>57</sup> With a long-standing culture of public accountability and democratic control of defence policy and procurement, they have a history of relatively active reporting on these matters, both for domestic audiences and in different regional and international fora.

### RECORD-KEEPING

The first step towards transparency is often record-keeping, which allows a country to produce reports and maintain institutional memory of transactions. The ATT contains obligations for its states parties regarding record-keeping: according to Article 12, '[e]ach State Party shall maintain national records, pursuant to its national laws and regulations, of its issuance of export authorizations or its actual exports of the conventional arms covered under Article

2 (1)'. In addition, states are encouraged to keep records of imported and transited weapons. The information included in the records should include: the quantity, value, and model/type of the arms authorized for transfer, as well as the arms actually transferred, details of exporting State(s), importing State(s), transit and trans-shipment State(s), and end-users, as appropriate.

In general, the Nordic Government authorities are required by law to save their records of both their licensing decisions and transfer activities. However, the details of these, as well as the format and location where they are kept, vary. Instructions for culling archives are provided individually to each authority. There are no centralized national databases in use in the Nordic countries, but some explorations have been made, at least in Norway, as to the functionality and benefits of developing such a system. Currently, the authorities in charge of the difference licences and actual transfers maintain their own records.

With the exception of Finland, where the licence applications and record-keeping of transfer authorizations is still based on hard copies, the Nordic states use electronic databases for record-keeping. This allows them to be kept at least in theory indefinitely, but at least for the timeframe – 10 years – required in the ATT.<sup>58</sup> The Swedish ISP comes closest to maintaining a national centralized database, as holders of Swedish export licences are obliged by law to report their annual actual arms exports to the ISP. Thus, the ISP possesses information both on licences granted and on actual exports. Also, in Norway, the suppliers of weapons are required to maintain records and licences for at least ten years from the end of the calendar year in which the export took place, allowing for the MFA – if it is seen as necessary – to request this information for control purposes.

## DOMESTIC REPORTING

All of the Nordic countries produce annual parliamentary reports on their exports of conventional arms. The aim of the domestic reports is to provide a basis for the wider national discussion of issues related to export controls on military equipment and dual-use items. The responsible reporting bodies vary depending on the primary authority or authorities tasked with keeping records on exported material.

Sweden was the first of the Nordic countries to start annual domestic reporting, with its report dating back to 1985.<sup>59</sup> Its current reports are compiled by the ISP, based on the statutory annual reports made by the military equipment-exporting companies and the relevant authorities.<sup>60</sup> They contain statistics on the preceding year's export control activities as well as an overview of Sweden's export control policy. In Denmark, the Ministry of Justice reports to the Foreign Affairs Committee (Det Udenrigspolitiske Nævn) in Parliament on the number of companies that have been denied or have received export licences issued by the Ministry of Justice together with the number of exported goods.<sup>61</sup> In Finland, the MoD provides other authorities with information about granted and denied licence applications and collates the annual report, which is discussed at the Parliament. The licences for military items handled by the MoD are public, but those of the National Police Board concerning the export of civilian weapons are restricted and not accessible to other licensing bodies or the general public. In Norway, the Government reports annually to the Parliament (Stortinget) on exports of military goods. According to the country's official reports, this transparency measure plays an important role as reviews and recommendations by the politicians feed directly into the legislation and actual practices.<sup>62</sup>

The statistics on arms exports are quite comprehensive, however with some limitations concerning both the details of information provided as well as the timing with which they

are made public. The timeframe in which the domestic reports on exports statistics from the previous calendar year vary depending on the country and the year in question: the goal in the Nordic states is to produce the information during the first quarter of the following year, but in practice the reporting often tends to be delayed until the parliaments' fall sessions.

The submission of the report is usually followed by a parliamentary debate, whereby the parliamentarians can comment on and ask questions about the reported exports as well as denied licences.

## REGIONAL AND INTERNATIONAL TRANSPARENCY

All of the Nordic countries are active in sharing their conventional arms transfer statistics in different regional and international fora. The responsible body for submitting the information in all the countries is the Ministry of Foreign Affairs, but the practical ways in which the information is gathered depends on the authority or authorities responsible for licensing and record-keeping. For more details on their recent reporting, see Table 4.

The ATT by its Article 13, 'Reporting' requires its states parties to submit two types of information to the Secretariat: within the first year after entry into force of this Treaty for the country in question, it has to provide an initial report of measures undertaken to implement the Treaty. Information to be reported includes national laws, national control lists and other regulations as well as administrative measures. After the initial report, countries have to send a report to the Secretariat whenever they have any relevant new information. In addition, states parties are encouraged to report on measures that they have taken and that have been proven effective in addressing the diversion of transferred conventional arms.

In addition, ATT states parties are required to submit annual information about authorized or actual exports and imports of convention-

TABLE 4: NORDIC PARTICIPATION IN EXCHANGES OF INFORMATION ON CONVENTIONAL ARMS (ACCORDING TO REPORTING YEAR)

	DENMARK	FINLAND	NORWAY	SWEDEN
<b>UN Conventional Arms Register (UNROCA, calls for annual reporting)<sup>1</sup></b>				
2010	X (E, I, H, S)	X (I, H)	X (E, I)	-
2011	X (E, I, H, P, S)	X (E, I, H)	X (S)	X (E, I, H, P, S)
2012	X (H, P, S)	X (H)	X (E, I, S)	X (E, I, H, P, S)
2013	X (H)	X (E, I, H, P, S)	X (E, I, S)	X (E, I, H)
2014	X (H, S)	-	X (E, I, S)	X (E, I, H, P, S)
<b>UN Programme of Action on Small Arms and Light Weapons (encourages biannual reporting)</b>				
2008	X	X	X (also 2009)	X
2010	X	X (also 2011)	X	X
2012	X	X	X	X
2014	X	-	X	X
<b>UN Legislation Exchange</b>				
	-	2010	2009, 2010, 2013, 2014	2005
<b>EU Reporting (restricted, compiled in a public EU Consolidated Report)</b>				
	Annually	Annually	- <sup>2</sup>	Annually
<b>OSCE Information Exchange on Transfers of Conventional Arms (calls for annual reporting, restricted)<sup>3</sup></b>				
2014	E, I, S (nil)	E, I, S (nil), D (nil)	E, I, S, D	E, I, S
<b>Wassenaar Arrangement (calls for biennial reporting, restricted)</b>				
2014	X	X	X	X

<sup>1</sup> E=exports, I=imports, H=national holdings, P=procurement through national production, S=SALW

<sup>2</sup> A specific information exchange system between the EU and third countries aligned with the Common Position such as Norway has been in place since 2012.

<sup>3</sup> E=exports, I=imports, S= Surplus destroyed, D= seized and confiscated SALW destroyed.

al arms covered under the Treaty's scope. The deadline for submitting this information is 31 May for information covering the preceding calendar year. It is noted that the report 'may contain the same information submitted by the State Party to relevant United Nations frameworks, including the United Nations Register of Conventional Arms. Reports may exclude commercially sensitive or national security information.'

ATT's reporting requirements should not pose great challenges to the Nordic states, as they have a long-standing tradition of submitting information to the UN Register and other reporting instruments, compile national reports on both the statistics and administrative framework of conventional arms transfers, and al-

ready for the most part also include information on their transfers of SALW in the reporting. The most demanding aspect of the reporting will probably relate to its timing: at the moment, the majority of countries miss the UN Register's deadline of 31 May, and as noted above, the Nordic countries often only compile their domestic reports during the parliamentary autumn session. In addition, the Nordic states will have to ensure to include all the relevant information in their reports each year, as currently, for instance, the UNROCA reporting shows some gaps in the data provided.

To facilitate effective ATT implementation and further increase the transparency of Nordic arms transfers:

- ✓ **The Nordic countries should strive to submit their statistical reports to the ATT by 31 May each year. Introducing comprehensive, centralized electronic record-keeping systems to maintain information on both licences and actual transfers of weapons would also assist in effectively producing timely reports as required by the ATT.**
- ✓ **Taking a comprehensive approach to the implementation of the ATT, all of the Nordic countries should strive to report on all of their exports (and imports), including items categorized as both military and civilian.**

In addition:

- ✓ **The transparency of Nordic conventional arms transfers could be enhanced by systematically including information on both granted licences and actual transfers, as well as on the quantity of exported items, their precise type and categorization, and the identity and location of the end-users in the international reports, keeping commercial sensitivities in mind.**

As a general recommendation it is suggested that:

- ✓ **The effectiveness of ATT reporting could be enhanced by developing the UN's electronic reporting system to include the possibility for ATT states parties to submit their annual information to the UN Register and the ATT simultaneously.**

## CONTROLLING IMPORTS

The ATT includes imports in its definition of 'transfers', specified in Article 2.2,<sup>63</sup> and in Article 8 obliges countries to introduce measures

that will allow it to regulate, 'where necessary', imports of arms under its jurisdiction. The Treaty does not specify what exact measures are to be taken or how. Importers are asked to cooperate with states exporting weapons to them by providing 'appropriate and relevant information' upon request, including, for example, end-use or end-user documentation, and to combat diversion by working together. Import statistics are also to be included in the ATT states parties' annual information exchange.<sup>64</sup>

The Nordic countries have taken different approaches to controlling imports of conventional arms, reflecting their arms export policies.

In Denmark, it is in principle prohibited to import firearms, ammunition and other conventional military equipment, but individual licences for the import of weapons may be granted on a case-by-case evaluation. Sections 1(1) and (2) of the Weapons and Explosives Act list the weapons covered by the import ban. The import ban covers the physical movement of weapons etc. into Danish territory. The import ban applies neither to military authorities nor to the police (Sections 8(1) and 9(1) of the Weapons and Explosives Act).<sup>65</sup>

In Finland, imports of defence material are under the current law not subject to licensing. Import licences for commercial weapons fall under the Firearms Act and are granted by the National Police Board. The importer is obligated to report to the Finnish customs if the products are inspected for their user safety. The Finnish customs reports to the National Police Board on the imported commercial weapons every three months.

In Norway, to import strategic goods and technology, the importer must have an import certificate confirming that the importer has declared that the goods are to be imported to Norway, and that Norwegian legislation will be imposed by an re-export.

Sweden does not collectively control or record imports of military equipment or civilian weapons into its territory. The import of civil-

ian firearms and ammunition is covered by the Firearms Act (1996:67), supplemented by the Firearms Ordinance (1996:70). Imports of military equipment do not require an import licence. According to the Swedish authorities, the national control system allows them to interdict shipments that pass through the land territory in contravention of Article 6 of the ATT and the equivalent national and EU guidelines. Against this background, the Government is not considering introducing a general licensing system for imports of arms into Swedish legislation.

In general, the control and recording of imports of military items and civilian firearms in the Nordic countries is less centrally controlled and relies mostly on customs and police force monitoring and record-keeping. This is in line with the requirements of the ATT. However:

- ✓ **While import regulations in the Nordic countries are as such in conformity with the ATT, further development of national import controls could help to combat diversion and facilitate ATT-related information exchanges both with regard to discussing specific transfers and when preparing national reports.**

## BROKERS AND BROKERING ACTIVITIES

As with imports of conventional arms, brokering<sup>66</sup> is also included in the ATT's scope of activities. Specifically, in its Article 10, the Treaty states that 'Each State Party shall take measures, pursuant to its national laws, to regulate brokering taking place under its jurisdiction for conventional arms covered under Article 2 (1). Such measures may include requiring brokers to register or obtain written authorization before engaging in brokering.'

In many parts of the world, brokering regulations are lagging behind the development of export and import controls for conventional

arms.<sup>67</sup> The Nordic countries have, however, included brokering activities in their respective national legislations, and regulate brokering through both licensing and registering requirements.

Danish brokering controls are specified in Act No. 555 of 24 June 2005, according to which brokers need a licence from the Minister of Justice to negotiate or arrange transactions that involve the transfer of weapons between countries outside the EU. Furthermore, it is prohibited to buy or sell weapons as part of a transfer between countries outside the EU, or for the owner of the weapons to arrange such a transfer. Individual licences for arms brokering may be granted on a case-by-case basis.<sup>68</sup>

In Finland, brokering controls were introduced into the legislation in 2002 by a legislative amendment, the purpose of which was to bring the Finnish regulation in line with the Firearms Protocol and the OSCE Small Arms Document, as well as recommendations adopted by the EU Conventional Arms Exports Working Group (COARM) and the Wassenaar Arrangement. Later, this also came to encompass the 2003 EU Council's Common Position on arms brokering (2003/468/CFSP). In the territory of Finland, arms brokering between third countries is permitted only with a valid brokering licence. Extra-territorial brokering controls cover the citizens of Finland, Finnish corporations and foreign nationals permanently residing in Finland, again only with a valid licence. Brokering licences are granted by the Ministry of Defence.

Brokering activities, trade or other kind of assistance regarding the trade of strategic goods and/or technology from a foreign country to another also require a licence in Norway, where the responsible agency is the MFA. In Sweden, the control of arms brokering is guided by the provisions of the Military Equipment Act, and supplemented by the EU Common Position. In Sweden, some 25 companies are registered as brokers of products classified as

military equipment. The EU Common Position is also incorporated in the legislation of the other Nordic countries.

The report suggests that:

- ✓ **As the Nordic countries have relatively long-standing expertise in controlling the brokering of defence equipment and have also introduced extra-territorial controls, their lessons learned could be valuable for other ATT states parties which are only developing their national legislation and regulations.**

## TRANSIT AND TRANS-SHIPMENT

The ATT covers transit and trans-shipment in its Article 9, according to which 'Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law.'

In Denmark, 'transit' is considered to be an import followed by an export, and is governed by the rules of import and export. Controlling transit and trans-shipment in the country is especially important. While being a relatively small exporter of conventional arms, Denmark is actively involved in the global transportation business, which involves transfers of strategic items. When applying for permission to transit through Denmark, there is a requirement that the applicant provides evidence that the recipient country agrees to the transfer, for example through a licence or international import certificate. The rules imply that transit through Denmark as a principal rule requires prior permissions to import and export. The Ministry of Justice issues the permissions as one joint licence, called a transit licence. For a brief study of Danish trans-shipment controls, see Case 3.

In Finland, the concept of transit also covers all transports through Finnish territory. The national legislation does not use the term 'trans-shipment'. Instead, transit regulations are covered in both the Firearms Act and Act on the Export of Defence Material. A transit licence granted by the MoD, the Police Board or the Council of State (depending on the case) is needed if the exporter, consignee or both are from a non-EEA country.

In Norway, transit refers to the transport of goods across the Norwegian customs area without reloading, when the sender and recipient are located outside the Norwegian customs area, according to Section 1 of the Export Control Act of 2013/1987.

Up until today, the regulation of international transportation of arms remains limited and relies mostly on national legislation. The report suggests that:

- ✓ **Going beyond the scope of the ATT, international regulation of weapons transportation is an area where expertise developed, for example, through the development of a voluntary Code of Conduct for the transport sector could possibly feed into later evaluations and reviews of the Treaty.**

## CONTROLLING RE-TRANSFERS: NOTIFICATIONS AND END-USE GUARANTEES

In its preamble, the ATT underlines 'the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end-use and end-users, including in the commission of terrorist acts'. In the operative section, obligations on end-use are left vague and placed mostly on the importer: Article 8.1 of the Treaty states that '[e]ach importing State Party shall



PHOTO: JOHANNES JANSSON/NORDEN.ORG

### CASE 3: WORKING BEYOND THE ATT: THE DANISH SHIPPING INDUSTRY AND ATTEMPTS TO CONTROL ILLEGAL ARMS TRANSPORTATION<sup>1</sup>

Denmark does not have a large national defence industry but is heavily involved in the international transport business, especially in the area of sea cargo. With almost 10 per cent of all maritime shipping worldwide, Denmark is one of the world's leading shipping nations. In recent decades, there have been several incidents where ships sailing under the Danish flag have been accused of being involved in illegal arms trafficking and have been found to have transported weapons and other military equipment to places such as the South African apartheid regime, African civil wars and the war between Iran and Iraq.

For many years there were attempts to regulate arms trafficking, and revelations of dubious deliveries to different warring parties and conflict regions around the world led to proposals for an outright ban of weapons transportation by private companies. The Danish shipping industry came out strongly against any such bans and managed to make a legitimate case for maintaining national employment and business opportunities in the area of strategic sea cargo.

Awareness of the risks related to the shipping business started to rise during the first years of the 21<sup>st</sup> century, and measures to improve the accountability, transparency and responsibility of the Danish shipping industry were widely debated in the domestic arena. Instead of opting for a general prohibition of arms transfers, the process led to the establishment of a list of

'banned rogue states' to which Danish ships are forbidden to transport weapons. The list of 'red flag states' was the first step in improving regulations, but it has been criticized for several shortcomings and loopholes, including the possibility of using a foreign subsidiary, delivering weapons to an unblocked neighbouring country, mislabelling containers or tinkering with end-user licences. No Danish authorities or organizations, such as the Shipowners Association or the Ministry of Foreign Affairs, keep statistics about weapons transportation by Danish companies.<sup>2</sup>

Up until today, regulation of international transportation of arms has remained limited and relies mostly on national legislation. A relatively recent plague for the shipping business especially in and around the Horn of Africa, has brought out new incidents of Danish cargo vessels involved in illicit arms trafficking: for instance in early 2011, Somali pirates hijacked a Danish freighter outside Oman, and found the ship to be loaded with weapons and explosives. In 2007 a Danish coaster was also attacked by Somali pirates right after having taken a large load of ammunition on board.

Although the successful adoption of the ATT has greatly helped in building and enhancing international norms surrounding the international trade in conventional arms, it has failed to directly address the question of weapons transportation, leaving it largely unregulated. The only explicit reference regulating acts of transit or trans-ship-

ment of conventional arms in the Treaty text is in its Article 9, which states that 'Each State Party shall take appropriate measures to regulate, where necessary and feasible, the transit or trans-shipment under its jurisdiction of conventional arms covered under Article 2 (1) through its territory in accordance with relevant international law' (ATT, 2013, Art. 9). As a result, the decision to transport or not to transport is still, to a significant extent, left to the transporting company itself.

During the ATT negotiations, Denmark was one of the most vocal supporters of a treaty that would have underlined the importance of taking into account the roles and responsibilities of global transport companies and the complex global supply and transport chain that underwrites the international movement of all goods, including the legitimate transfer of conventional arms. As advocated by Denmark, understanding the complex network that comprises the modern global supply chain and how the ATT will interrelate with different already existing instruments, will therefore be critical to the full and effective implementation of any global agreement on the regulation of conventional arms.<sup>3</sup>

As the then Danish Minister of Foreign Affairs, Villy Søvndal noted at a side event held in the margins of the 2013 ATT Conference, 'We need to think ahead. We owe this to the millions of people suffering from the consequences of unaccountable and immoral transport of weapons to conflict areas. It is

certainly a paradox that a flag-ship can transport weapons between third countries for which they would not be able to obtain a national export license.<sup>4</sup>

Trying to learn from its own past, Denmark is proposing solutions to improve transport regulations related to the ATT and other strategic goods. One

proposed step on the road ahead is the development of a voluntary Code of Conduct for the transport sector, and work is reportedly on-going on developing its substance in close cooperation with industry and other stakeholders, including Amnesty International. According to Denmark, the focus of the Code will be on responsibility,

accountability and transparency. It aims to introduce 'golden rule-style' criteria in relation to the transport of weapons, while at the same time maintaining a level playing field for companies operating in the area.

<sup>1</sup> The box is based on Paamand (2011).  
<sup>2</sup> Danmarks Rederiförening (n.d.).  
<sup>3</sup> Stimson (2013).  
<sup>4</sup> Søvndal (2013).

take measures to ensure that appropriate and relevant information is provided, upon request, pursuant to its national laws, to the exporting State Party, to assist the exporting State Party in conducting its national export assessment under Article 7. *Such measures may include end-use or end-user documentation*' (italics added by the author). The ATT 's requirements on this are left vague, as the Treaty does not explicitly require countries to include EUCs in their licensing documentation, nor to keep records of them.<sup>69</sup>

All of the Nordic countries are committed to implementing the EU Common Position's Criterion Seven, which calls for the assessment of a risk that the military technology or equipment to be licensed might be diverted within the buyer country or re-exported under undesirable conditions. This principle is also embedded in EU member states' national laws. The laws also note that end-user guarantees are often in principle requested, but in practice the policies on this vary. The decision about whether to request an EUC usually depends on the importing country: end-user requirements are more lax with regard to exports (or, as defined in the EU, 'transfers') to other EU/EEA countries, recipients otherwise classified as low-risk, or in the case of Denmark and Norway, NATO allies.

Denmark, as the principal rule and unless specifically agreed with the respective authorities, does not notify the original exporting state if

it decides to re-export defence equipment. As a general rule, licence applications to export Danish products to EU and NATO countries do not require information on re-export, or the re-export of components when the application concerns bilateral and multilateral cooperation between military authorities in Denmark and these countries.<sup>70</sup> With regard to licences to export to other countries (not EU nor NATO member states), the permission is assessed on a case-by-case basis so that the authorities can determine whether there should be any limitations or need to control possible re-export.

Prior to an application, exporters may obtain information about critical end-users and denials by contacting the Danish Business Authority. At the same time, it is possible to get an answer to whether it is necessary to apply for an export authorization, or whether the exporter themselves must decide whether an authorization is needed. Only in cases where definite critical information about the end-use of products exists will the authority require that exporters apply for an authorization.

According to the Finnish regulations, arms factories that use components produced in Finland do not normally need consent for re-exportation if they can verify that the purchased material will only be used in their own production. For other users, re-exportation is only granted with the prior written consent of the Government of Finland.



## CASE 4: UNINTENDED RE-EXPORT: NORWEGIAN WARSHIPS IN NIGERIA<sup>1</sup>

In 2012, the Royal Norwegian Navy started the process of selling off some decommissioned warships as part of the Navy's modernization plan that had started replacing them with new class equipment. Six of the warships that were removed from service were scrapped and two were retained as training target ships, while the rest were demilitarized by removing all weapons systems so that they could be sold on the private market. Among the demilitarized ships to be exported were six fast-speed Hawk-class guided missile boats and one KNM Horten, a fast-attack craft.

Initially largely unnoticed in the press, the selling of the ships became under increased domestic pressure and international media attention in the autumn of 2014, as it turned out that seven Hawk-class missile torpedo boats had ended up in the hands of a former illegal militant leader from the Niger Delta, Mr. Government Ekpemupolo, alias Tompolo. Mr. Ekpemupolo runs the private security firm Global West Vessel Specialist, which handles maritime security issues for the Nigerian Maritime Administration and Safety Agency (NIMASA). Tompolo's firm is widely considered as corrupt and also accused of piracy. The affair was first published by a Norwegian newspaper, *Dagbladet*, which reported that the ships had been re-equipped with weapons and were allegedly being used as gunboats for anti-piracy patrol and tax enforcement in the Nigerian coastal waters.<sup>2</sup>

As per its export control legislation, Norway refuses arms

export licences to conflict areas and former and current rebel leaders. Exporting the vessels directly from Norway to Nigeria would probably have resulted in a long investigation and a probable licence denial.<sup>3</sup> However, as was quickly picked up in the press, depending on the categorization of strategic goods and technology, some items can be exported from Norway to its NATO allies and for example other Nordic countries in a way that allows them – if it is seen as desirable – to re-export them to states that are excluded from being direct recipients of Norwegian strategic goods and technology.

In the case of Nigeria, the decommissioned warships were demilitarized and reportedly first sold to CAS Global, a British security company, which fully legally applied for and received a licence from the Norwegian Ministry of Foreign Affairs. According to various sources, Mr. Ekpemupolo then bought the ships from the British company, which did not inform the Norwegian authorities about its intentions to re-export the ships.

In investigating the events, *Dagbladet* reported that both the Norwegian Armed Forces and the Ministry of Foreign Affairs had confirmed that neither of them checked the background of the company CAS Global or asked if it planned to re-export or rearm the disarmed vessels. This was mostly because the company provided reassurances that it would be sailing the ships under the UK flag and with a British crew, and as demilitarized, the warships were de facto sold as a 'civilian sale'.<sup>4</sup>

As of early 2015, the connection between the British company and the former Nigerian rebel leader remained unclear, but tracking information on ships and image documentation seemed to indicate that the vessels operate from the port city of Lagos, and are part of the private Nigerian coast guard fleet.

Interviewed by *Dagbladet* shortly after the news about the Nigerian affair broke out, an MFA official responsible for export controls stated: 'If this is true, it is quite far from what it says in the retail statement we got from the company CAS Global. It all seems chaotic. Had we known what we know now, we would never have recommended a sale.' On the other hand, according to the head of communications of the Norwegian State Department, Mr. Frode Andersen, the export of the vessels 'followed correct procedure and terms of export to Great Britain. The re-export from Great Britain to Nigeria is a question to be handled solely by British export control authorities.'<sup>5</sup> In the UK investigations into the matter, two British businessmen were arrested in January 2015 on suspicion of bribing a Norwegian official alleged to be involved in the controversial sale of the vessels to Mr. Ekpemupolo's private security company.

Whether Norwegian governmental employees knew about the re-exportation seems unclear. A 2014 governmental report into the affair says that the Navy held private meetings with Mr. Ekpemupolo in Norway, with visits to the Håkonsvern

military base outside Bergen. Large amounts of documents and contracts have also been classified as disappeared.

The case resulted in one of the most comprehensive hearings for many decades in Norway, when the Standing Committee on Scrutiny and Constitutional Affairs opened a case against both the Ministry of Defence (MoD) and the Ministry of Foreign Affairs (MFA). By January 2015, talks about the incident were also still on-going in the Norwegian Parliament and the case was under investigation at the time when this report went to print in June 2015.<sup>6</sup> In an open letter from the Minister of Defence to the Standing Committee, Ms. Ine Marie Eriksen Søreide confessed to 'reprehensible conditions', lack of expertise and inadequate procedures related to the assessment of export control regulations, documentation,

background research, and information exchange amongst the responsible authorities.<sup>7</sup>

A key factor in what went wrong in the sale of the decommissioned ships seems to relate to them first being sold to an European country as well as their classification as List-II items (demilitarized) and the resulting procedures regarding end-user guarantees: whereas a military item such as a warship would have required an authenticated end-use certificate as part of the export licence, such is not required for licensing List-II items. Also, according to the Norwegian legislation, had the original purchaser been a country outside the EU/NATO, the licence request would have been dealt with by the Government, and the granting of a licence would have required the submission of an officially confirmed end-user statement that would

have had to contain a re-export clause, i.e. a statement to the effect that re-export must not take place without the approval of the Norwegian authorities. Such a clause is not required in Norway for exports into the EU/EEA region.

Late in 2014, largely as a result of the warship case, the Norwegian MFA made a regulatory amendment to strengthen the licensing requirement for any products that have been used by the military, regardless of the equipment's control status under the Munitions List.

<sup>1</sup> The case study is based on Nødtvedt (2015); Egeberg (2014); Bøås (2014); and PWC Norway (2014).

<sup>2</sup> See Egeberg (2014).

<sup>3</sup> See Bøås (2014).

<sup>4</sup> See Egeberg (2014).

<sup>5</sup> Nigerian Bulletin (2014).

<sup>6</sup> The Norwegian Parliament, the Standing Committee on Scrutiny and Constitutional Affairs, [www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=61285](http://www.stortinget.no/no/Saker-og-publikasjoner/Saker/Sak/?p=61285)

<sup>7</sup> The Norwegian Parliament (2015).

Norway does not require end-user declarations preventing re-exports of weapons from its Nordic and NATO allies or under circumstances such as peacekeeping and equipment needed for training exercises, as such exports are 'taken on trust'.<sup>71</sup> For other countries, Norway normally requires an EUC in the original prior to authorizing an export.<sup>72</sup> Norway does not require information on other parties involved in the transaction, nor certification by the relevant Government authorities of the authenticity of the end-user. Norway does not require a Delivery Verification Certificate (DVC) to confirm that weapons or equipment have reached their intended end-user or intended importer in the importing State.

Even though it is politically an understandable stance, not requiring EUCs from other allied countries is not standard practice amongst NATO countries: for example, the US and Germany do not offer formal preferential/differ-

entiated treatment to other members of the alliance as part of their national arms export control system.

In 2014, following a scandal involving the re-export of Norwegian military equipment (see Case 4), the MFA made a regulatory amendment to strengthen the licensing requirement for any products that has been in use by the military. This implies that any product owned and/or used by Military Forces, regardless of the control status for such equipment, as given in the Norwegian Munitions List (List-I) is now controlled.

In Sweden, an end-user certificate or an own production declaration should normally be presented in connection with exports of military equipment, regardless of the destination. According to the export control guidelines, 'licences should be granted for exports of spare parts for military equipment exported previ-

ously with the requisite licence, provided there are no unconditional obstacles. The same should apply to other deliveries, e.g. of ammunition, linked to previous exports, or where it would otherwise be unreasonable to refuse a licence.’ A state which, despite undertakings given to the Swedish Government, allows, or fails to prevent, unauthorized re-export of Swedish military equipment will not, as a rule, be eligible to receive such equipment from Sweden as long as these circumstances persist. However, in the past there have been some cases where EUCs have not been required and the exported items have later been re-exported to an end-user that would probably not have been approved to receive Swedish equipment.

An issue of consideration in Sweden is also that of cooperation with other countries and the ‘identity’ of the exported item in cases where they are to be used as parts or components of products produced or assembled abroad. According to the guidelines, in the case of cooperation with foreign partners, exports to third countries should be assessed in accordance with the Swedish guidelines if the item has a predominantly Swedish identity. If the item has a predominantly foreign identity, or if Sweden has a strong defence policy interest in the partnership, the export rules of the partner country may be applied.

According to the Finnish authorities, when it comes to exports of items with a military classification, the MoD always requires an EUC or an OPD as part of the licence application. In the certificate, the recipient has to clarify the use and the end-user of the products in question and a declaration that the products will not be exported or re-exported without the prior written consent of Finland. By agreeing to the EUC, the end-user also confirms the possibility of an on-site inspection of the receipt of the goods performed by representatives authorized by Finland. In contrast to the MoD, the Police Board in charge of exports of civilian arms and related equipment does not always require end-user certificates as part of the licence request.

While requiring authenticated EUCs is an important first step in responsible export controls, they cannot effectively address the problem of unintended arms proliferation unless they are adequately monitored and enforced. The first and most important step in avoiding re-transfer violations and combating diversion is to ensure effective and comprehensive risk assessment *prior* to granting a licence. If there is any doubt of the authenticity or reliability of the end-use guarantees, an export licence should not be granted.

Often a practical obstacle in conducting thorough EUC verifications and post-delivery checks on exported products is the lack of financial and human resources, even in developed countries such as the Nordics, which all note that the number of checks they perform on their exports is very limited – the number of recent cases can be counted on two hands. However, practice has shown that conducting even rare random checks on delivered products increases the motivation of the recipients to obey their commitments and refrain from possible subsequent transfers or other contractual breaches. Further, some form of cooperation – for instance between Nordic countries, or amongst EU and/or NATO members in this could be considered, taking into account national sensitivities and business interests. For example US-UK cooperation on post-delivery verification has provided encouraging results that could be taken up also by other ATT states parties.

The report finds that re-export and end-use clauses or the lack of them are potentially one of the weaknesses of the Nordic arms export control systems. Therefore, it is recommended that:

- ✓ **Nordic countries should maintain and incorporate re-export and end-use clauses in all of their licensing, irrespective of the recipient and/or intended final user. Seeking explicit guarantees from those that purchase Nordic weapons that they will**

**not subsequently be transferred to governments or other parties that would use them to violate ATT obligations would present a helpful step towards ensuring that Nordic equipment does not in the future end up in the wrong hands.**

Lessons learned in the Nordic states with regard to end-user documentation and post-delivery verifications could be used in future implementation overviews and reviews of the ATT as an encouragement to all states parties to introduce them as standard features in their national export and import licensing procedures. Furthermore:

- ✓ **To ensure better compliance with EUCs and other end-use documentation, Nordic states should continue to strive to conduct ad hoc verification visits to verify that exported items actually reach the intended end-user and are employed as intended. As post-delivery verifications are resource-intensive, further cooperation with, for instance, other Nordic and/or EU diplomatic representations in the relevant countries could be considered, however taking into account commercial sensitivities and confidentiality needs.**

## PART 4

# CONCLUSIONS: NORDIC STRENGTHS AND CHALLENGES

Over the past decades, the Nordic countries have developed comprehensive regulations concerning transfers of arms and other war material. They also have a long and active history of participating in different multilateral export control regimes. The most recent example of international norm building in the field of conventional arms is the adoption of the legally binding treaty on transfers of conventional arms, the Arms Trade Treaty. The four Nordic countries have been firm supporters of the ATT since the beginning and were also amongst the first countries to join it. They remain committed to promoting the active implementation and universalization of the Treaty, among other means, through funding capacity-building projects and other assistance measures.

The ATT sets the minimum standards for the export, import and transfer of conventional arms by committing its states parties to introducing certain measures and applying a set of common criteria to be followed when considering granting national export licences. The Treaty does not specify the practical ways in which its different goals and objectives are to be implemented, but leaves this to be the national prerogative of the participating countries. Indeed, the ways in which states parties have incorporated the Treaty into their national legislation and developed their practical controls vary widely. There is no one-size-fits-all solution to effective and responsible arms transfer controls. However, experience has shown that certain lessons learned and good practices are almost universal and can be applied to countries irrespective of their size, economic structure or geographical location.

This also applies to the Nordic countries: despite their historical, cultural and administrative differences regarding arms control, they share many common elements, especially as it comes to practically controlling the licensing and transfer of conventional arms. All of them also have indigenous national defence industries that produce weapons and equipment for exports, even though the size of annual

exports, usual recipients and types of product vary.

Initiating the implementation of the Treaty did not require any changes in the respective national legislation, and the Nordic countries had already de facto incorporated ATT's export criteria (Articles 6 and 7) into their national licensing systems. Nevertheless, Nordic country officials have stated that they are prepared to continue to review their controls and improve cooperation between the national authorities. Annex 1 of this report presents an overview of ATT-related controls and structures in place in the four Nordic countries (Annex 1 is available electronically on SaferGlobe website).

The report shows that there are a number of general recommendations as well as specific challenges and problematic areas where the experience gained in the Nordic countries could prove beneficial to other ATT parties.

In terms of ATT's general implementation the report finds that:

- ✓ **To remain accurate and effective, arms control legislation and regulations have to be regularly reviewed and updated. A national system that is based on constant re-evaluation of risks and follows international and regional developments is likely to be more successful and reliable than one reviewed only after gaps are identified through media scandals.**
- ✓ **Regulations, guidelines and user guides are an efficient way of complementing and concretizing legislation, as they allow for more timely and small adjustments and can give helpful guidance to practitioners on how to implement the relevant laws.**
- ✓ **The ingredients of a well-functioning transfer control agency include adequate resources and technical**

know-how, access to all relevant information, openness and dialogue, as well as readiness to reassess both structures and practices whenever necessary.

- ✓ **Combining the licensing authorities in charge of all conventional weapons and related equipment regardless of their specification as ‘military’ or ‘civilian’ does seem to have many positive consequences ranging from optimization of resources to clarity of controls and the comprehensiveness of risk assessments.**
- ✓ **Examples from the Nordic countries show that having a parliamentary committee or other form of practical and timely parliamentary guidance on licensing decisions is a good way to ensure parliamentary oversight of arms transfers and to increase their public legitimacy.**

Concerning the categorization of items under the ATT and their licensing procedures, the report notes the following:

- ✓ **The division of items into categories of goods designed for ‘military’ or ‘civilian’ use creates a potential loophole in arms control regulations. The exports of ‘civilian’ firearms can – if not properly controlled – cause similar suffering to that caused by the use of military equipment. Comprehensive assessment of previous licence applications for the same end-user or destination in different product categories should always be conducted, and the respective authorities should strive to keep up dialogue.**
- ✓ **Utilizing ‘positive lists’ of trade partners considered as low-risk based on previous assessments and political particularities can prove an ef-**

**fective tool for licensing controls, but a balance should always be maintained between smooth licensing and retaining the necessary level of risk assessment and controls. If used, positive lists of recipient countries should be reviewed in real time to ensure a timely response to possible changes in their situation.**

On cooperation and outreach the report concludes inter alia that:

- ✓ **Functioning arms transfer controls by their nature require active and functioning cooperation between different governmental authorities, regardless of the specific system in place.**
- ✓ **The Nordic countries have valuable experience in developing full-of-government approaches to export controls, with many lessons learned being useful for countries that are considering joining and implementing the ATT: the national defence industry should be kept in the loop of all necessary regulatory changes and be invited to participate in their formation.**
- ✓ **The ATT can prove crucially important to international cooperative agreements and joint ventures involving both the increasing ATT participation base and current non-members. The Nordic states could lead by example in this.**
- ✓ **To work more effectively with the private sector, the Nordic countries, just like other governments exporting and/or importing conventional arms, should continue to develop their technical expertise and understanding of the functioning of the global defence industry in order to ensure that the ATT will stay on top**

**of technical developments and will also be able to respond to the future needs and requirements of the defence sector.**

On specific ATT-related thematic areas, the report puts forward the following notions and recommendations:

- ✓ **The Nordic countries should strive to submit their statistical reports to the ATT by 31 May each year. Introducing comprehensive, centralized electronic record-keeping systems to maintain information on both licences and actual transfers of weapons would also assist in effectively producing timely reports.**
- ✓ **The transparency of Nordic conventional arms transfers could be enhanced by systematically including information on both granted licences and actual transfers, as well as on the quantity of exported items, their precise type and categorization, and the identity and location of end-users in the international reports.**
- ✓ **Taking a comprehensive approach to the implementation of the ATT, all of the Nordic countries should strive to report on all of their exports, including items categorized as both military and civilian.**
- ✓ **The effectiveness of ATT reporting could be enhanced by developing the UN’s electronic reporting system to include the possibility for ATT states parties to submit their annual information to the UN Register and the ATT simultaneously.**
- ✓ **To facilitate the implementation of the ATT, further possibilities of aligning the export control lists categories and the scope of the ATT better with the customs tariff codes**

**used in the Harmonized System of the World Customs Organization should be explored.**

- ✓ **While import regulations in the Nordic countries are as such in conformity with the ATT, further development of national import controls could help combat diversion and facilitate ATT-related information exchanges.**
- ✓ **As the Nordic countries have relatively long-standing expertise in controlling the brokering of defence equipment and have also introduced extra-territorial controls, their lessons learned could be valuable for other ATT states parties which are only developing their national legislation and regulations.**
- ✓ **Up until today, regulation on international transportation of arms has remained limited and relies mostly on national legislation. Going beyond the scope of the ATT, the international regulation of weapons transportation is an area where expertise developed, for example, through the development of a voluntary Code of Conduct for the transport sector could possibly feed into later evaluations and reviews of the Treaty.**

The report finds that the most pressing challenge of Nordic states in implementing effective arms transfer controls is ensuring full control of their full transfer cycle. More specifically:

- ✓ **Nordic countries should incorporate re-export and end-use clauses in all of their licensing, irrespective of the recipient and/or intended final user. Seeking explicit guarantees from those that purchase Nordic weapons that they will not subsequently be transferred to governments or other**

parties that would use them to violate ATT obligations would present a helpful step towards ensuring that Nordic equipment does not in the future end up in wrong hands.

- ✓ **Lessons learned in the Nordic states with regard to end-user documentation and post-delivery verifications could be used in future implementation overviews and reviews of the ATT as an encouragement to all states parties to introduce them as standard features in their national export and import licensing procedures.**
- ✓ **To ensure better compliance with EUCs and other end-use documentation, Nordic states should continue to strive to conduct ad hoc verification visits to verify that exported items actually reach the intended end-user and are employed as intended. As post-delivery verifications are resource-intensive, further cooperation with, for instance, other Nordic and/or EU diplomatic representations in the relevant countries could be considered, however taking into account commercial sensitivities and confidentiality needs.**

Increased attention on the possible unintended negative causes of arms transfers in recent years is increasingly challenged on one hand by the globalization of the defence industry and the growing complexity of supply chains, and on the other hand because of the global economic downturn and cuts in many Western defence budgets. For the Nordic countries, this has meant that many of their traditional European trade partners have cut their purchases, leading the defence sector to look for new markets and reach out – not only to new products and technologies, but also to new geographical regions. This ‘branching out’ has led critics of arms transfers to charge that the Nordic countries have also, despite the strengthening of international control regimes, become more inclined to arm non-democratic regimes and countries accused of human rights abuses, as demand from Western nations has declined.

Taking into account the findings and recommendations of this report and ensuring the continued effective implementation and constant development of comprehensive arms transfer controls will hopefully assist both Nordic countries and other ATT states parties in further improving the responsibility and transparency of legal arms trade and combating the illicit trade and diversion of weapons that all too often have devastating consequences for people and communities around the world.

## NOTES

1 According to Article 2.2 of the ATT, ‘transfers’ comprise export, import, transit, trans-shipment and brokering of conventional arms.

2 Following the scope of the ATT, the report does not include analysis of dual use items (DUIs), i.e. items produced for legitimate civil uses which may also be used for military purposes, for example in the production of weapons of mass destruction or military equipment.

3 Iceland, also generally considered as part of Scandinavia and a Nordic country, was omitted from the study mainly because it does not have extensive production of items that come under export control, or a standing army. For more information about Iceland’s export control system, see <http://www.mfa.is/foreign-policy/security/export-control-system/>.

4 Instead of referencing each source document and interview separately, the references – apart from direct quotes – are comprehensively included in the bibliography.

5 Unless otherwise specified, the report uses terms such as ‘defence material/products/items’ and ‘war material’ interchangeably to refer to the range of conventional arms included in the ATT.

6 In this context meaning that all inhabitants are obliged to participate in national defence in case of emergency or war.

7 For a useful brief overview of the history of Nordic cooperation, see Norden (n.d.)

8 Contrary to the term used here, ‘Scandinavia’ is usually used to refer to those Nordic countries that belong to the same linguistic family and speak Scandinavian languages, Sweden, Norway, Denmark and Iceland, whereas ‘Nordic countries’ comprise all the five countries in the geographic Nordic region (including Finland), irrespective of linguistic affiliation.

9 For an elaboration of the ‘Nordic balance’, see Rieker (2004).

10 Following a continuum of gradually developing joint ventures related to defence spending and policies, a significant milestone in this cooperation was a memorandum of understanding on Nordic defence cooperation (NORDEFECO) signed in 2009 to strengthen the participating nations’ national defence, explore common synergies and streamline defence cooperation. For a brief history and explanation of NORDEFECO’s current structure and activities, see [www.nordefco.org](http://www.nordefco.org).

11 Sweden, 2014a, p. 9.

12 The countries are also considering joint Nordic contributions to the UN’s peacekeeping activities more closely (Tuomioja, 2013).

13 A recent joint project was the formation of the military force Nordic Battle Group. It consists of troops from Finland, Sweden and Norway along with Estonia and Ireland, with allegiance to the EU.

14 Søreide et al. (2015).

15 Denmark, Finland and Norway uphold conscription armies, with Norway also requiring women to enlist for service since 2009, whereas service for women is voluntary in Denmark and Finland. Sweden gave up its system of compulsory military service in 2010 and replaced it with a voluntary system, and in Denmark the vast majority of conscripts today are also volunteers.

16 See, for instance Small Arms Survey (2007).

17 See, for instance, Sullivan,(2014) and Global Security (2011a).

18 Westerlund (2015).

19 The first major corporate integration took place in 1997 with the takeover of Swedish Hägglunds by the British company Alvis. In 1998 British Aerospace, now known as BAE Systems, became Saab’s largest owner, acquiring 35 per cent of the shares (now owning 20 per cent). In 2000, the then US-based defence contractor United Defense bought Bofors Defence, and the German shipbuilding company HDW (Howaldtswerke-Deutsche Werft) acquired Kockums. Further, in 2004, the British

BAE Systems bought Alvis and formed LandSystems Hägglunds. In 2005, Thyssen Werften and HDW merged to form ThyssenKrupp MarineSystems AG, a civil-military shipbuilding group that also includes Kockums. In 2006, Saab acquired Ericsson Microwave Systems. See Global Security (2011a).

20 For more information, see [www.eda.europa.eu](http://www.eda.europa.eu).

21 Making comparisons on the number of employees is complicated by the fact that, for example, in Norway there are around 4,800 person years working in defence-related businesses, but the total of employees in the 120 companies is around 25,000.

22 Svengård (2011); Westerlund (2015).

23 PIA<sub>i</sub>(2014).

24 SaferGlobe (2014).

25 At the time of writing in March 2015, figures for 2012 and 2013 were not available. Westerlund (2015).

26 Global Security (2011b).

27 The section builds heavily on Westerlund (2015).

28 Wezeman and Wezeman (2015), p. 1.

29 See [www.sipri.org/research/armaments/transfers/measuring/recent-trends-in-arms-transfers](http://www.sipri.org/research/armaments/transfers/measuring/recent-trends-in-arms-transfers).

30 Small Arms Survey (2015).

31 SIPRI uses the Trend Indicator Value (TIV) to express the volume of arms transfers. TIV is based on the known unit production costs of a core set of weapons and is intended to represent the transfer of military resources rather than the financial value of the transfer.

32 At the time of writing in March 2015, the Danish figures for 2012 and 2013 were not available.

33 EU Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

34 In addition, Norway, as noted in its 2014 report to the Parliament (Innst. 103 S), conducts regular dialogue with the EU about export controls as well as the development of the implementation of criteria specified in the EU Common Position.

35 As a regional organization, the OSCE is not a 'multilateral export control regime' per se, even though its documentation and information exchanges have certain similarities with the WA, etc.

36 Resolutions 61/89 of 6 December 2006; 63/240 of 24 December 2008; 64/48 of 2 December 2009; 67/234 A of 24 December 2012, and 67/234 B of 2 April 2013, as well as decision 66/518 of 2 December 2011.

37 UN Document A/RES/67/234 B.

38 Norway ratified the ATT on 12 February, Den-

mark (approval) and Finland on 2 April, and Sweden on 16 June.

39 'Laki sotatarvikkeiden maasta viennistä' (318/1938).

40 The Government's statement was immediately affirmed by a Parliamentary (Storting) decision taking note of it and declaring that 'arms and munitions may be exported from Norway only after a careful assessment of the foreign and domestic policy situation in the area in question', and that the 'assessment must be conclusive of the question whether such goods are to be exported'.

41 Even though the ATT did not require legislative changes in the Nordic countries, references to it have been added to the relevant national regulations.

42 The criminal provisions governing breach of the export control rules in Denmark are laid down in the Enabling Act, which makes it possible to apply EU trade-controlling regulations in the national system.

43 Council Common Position 2008/944/CFSP of 8 December 2008 defining common rules governing control of exports of military technology and equipment.

44 See [www.wassenaar.org/guidelines/index.html](http://www.wassenaar.org/guidelines/index.html).

45 See for example the OSCE Document on Small Arms and Light Weapons of 2000 and the Principles Governing Conventional Arms Transfers of 1993.

46 Regulation (EU) No 258/2012 of the European Parliament and of the Council implementing Article 10 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), and establishing export authorisation, and import and transit measures for firearms, their parts and components and ammunition was adopted on 14 March 2012.

47 For more information, see [www.danishbusinessauthority.dk/variousoauthorisations](http://www.danishbusinessauthority.dk/variousoauthorisations)

48 As in the other Nordic countries, the number of denied licences is explained by Norwegian officials as being the result of an effective pre-licensing process and dialogue as well as the high knowledge of the national industry about limitations concerning their export activities.

49 For more information, see [www.isp.se](http://www.isp.se).

50 ATT's Article 5 notes that 'Each State Party is encouraged to apply the provisions of this Treaty to the broadest range of conventional arms. National definitions of any of the categories covered in Article 2 (1) (a-g) shall not cover less than the descriptions used in the United Nations Register of Conventional Arms at the time of entry into force of this Treaty. For the category covered in Article 2 (1) (h), national definitions shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force of this Treaty.'

51 The Common Military List of the European Union, covering equipment included in the Council Common

Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment. The EU list is updated annually based on – and being identical to – the list (also called the 'Munitions List') produced by the Wassenaar Arrangement. At the time of writing, the latest EU Council update was from 09 February 2015.

52 ML 1 covers 'Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories, as follows, and specially designed components therefor': ML 2 'Smooth-bore weapons with a calibre of 20 mm or more, other weapons or armament with a calibre greater than 12.7 mm (calibre 0.50 inches), projectors and accessories, as follows, and specially designed components therefor'; and ML 3 'Ammunition and fuse setting devices, as follows, and specially designed components therefor', with certain exceptions. For more information, see [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:090:0001:0037:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:090:0001:0037:EN:PDF).

53 Directive 2009/81/EC, Article 1(6).

54 For more information, see <http://danishbusinessauthority.dk/variousoauthorisations>.

55 The ICT Directive aims at improving the competitiveness of defence equipment markets across the EU by unifying and simplifying the terms and conditions of transfers of defence-related products within the Union.

56 Despite this requirement, Denmark also notes that 'if an export application does not include an end-user declaration, the Ministry of Justice may demand it, if necessary'. This implies that in practice an EUC is not always required.

57 See for example the Transparency Barometer of the Small Arms Survey, available at [www.smallarmsurvey.org/weapons-and-markets/tools/the-transparency-barometer.html](http://www.smallarmsurvey.org/weapons-and-markets/tools/the-transparency-barometer.html); transparency-related research by SIPRI, accessible through [www.sipri.org/research/armaments/transfers/transparency](http://www.sipri.org/research/armaments/transfers/transparency); and the work of Transparency International, including its corruption barometer: [www.transparency.org.uk/rss/12-blog/679-global-corruption-barometer-2013/679-global-corruption-barometer-2013](http://www.transparency.org.uk/rss/12-blog/679-global-corruption-barometer-2013/679-global-corruption-barometer-2013).

58 According to ATT's Article 12.4, '[r]ecords shall be kept for a minimum of ten years.'

59 Denmark's annual parliamentary reporting dates back to 1999; and Norway's to 1996.

60 Swedish exports of military equipment are also reported in the general statistics on foreign trade, which are based on the data submitted to Statistics Sweden by Swedish Customs. However, the statistics from Statistics Sweden differ from those reported by ISP. Statistics Sweden's statistics under the heading 'Arms and ammunition' include both items classified as military equipment and civilian products. Military aircraft, vehicles and vessels are reported under other headings. Furthermore, Statistics Sweden's statistics include items that crossed the border to be repaired in Sweden or abroad. In the ISP statistics, these are not reported as exports for sale. Consequently, Statistics Sweden's figures are not comparable with the ISP statistics.

61 Denmark's statistics can be accessed through [www.um.dk/da/udenrigspolitik/sikkerhedspolitik/nedrustning-og-ikke-spredning/udfoerselsrapporter/arkiv/](http://www.um.dk/da/udenrigspolitik/sikkerhedspolitik/nedrustning-og-ikke-spredning/udfoerselsrapporter/arkiv/); Finland publishes its reports at [www.defmin.fi/index.phtml?l=en&s=2](http://www.defmin.fi/index.phtml?l=en&s=2); Norway at XX; and Sweden at [www.government.se/sb/d/574/a/243515](http://www.government.se/sb/d/574/a/243515).

62 Norway's voluntary national response to UN GA resolution 68/44 in 2015.

63 'For the purposes of this Treaty, the activities of the international trade comprise export, import, transit, trans-shipment and brokering, hereafter referred to as "transfer".'

64 For a discussion of the importance of import controls in the ATT, see Bromley and Holtom (2011) and Control Arms (2012).

65 See [www.poa-iss.org/CASACountryProfile/PoANationalReports/2012@54@PoA-Denmark-2012.pdf](http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2012@54@PoA-Denmark-2012.pdf).

66 According to a 2007 UN report, broker is 'a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise' (UN doc. A/62/163, para. 8).

67 For more information, see for instance [www.smallarmssurvey.org/regulations-and-controls/control-measures/brokering.html](http://www.smallarmssurvey.org/regulations-and-controls/control-measures/brokering.html).

68 [www.poa-iss.org/CASACountryProfile/PoANationalReports/2012@54@PoA-Denmark-2012.pdf](http://www.poa-iss.org/CASACountryProfile/PoANationalReports/2012@54@PoA-Denmark-2012.pdf)

69 Article 12.3. 'encourages' states to also include in their records of transferred items information about end users, 'as appropriate'.

70 This change of practice with respect to documentation requirements for exports of firearms, parts and ammunition entered force with the Ministry of Justice memorandum of 10 May 2000 to the Legal Affairs Committee (1999-2000 - Legal Affairs, General. Part - Annex 892). In accordance with the European Union with the adoption of the EU firearms regulation and ratification of the UN Firearms Protocol, only import permits are required as documentation. Furthermore, any transit country must agree to the transit.

71 Holm and Marsh (2006), p. 8.

72 Information required in the EUC includes: detailed description (type, quantity, characteristics) of the weapon or technology; contract number or order reference and date; final destination country; description of the end-use; exporter's details (name, address and business name); end-user information (name, position, full address and original signature); and date of issue.

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