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**Enacting the Norm : The European Union's  
Contribution to the Non-Proliferation  
of Small Arms and Light Weapons**

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## Abbreviations

CFSP	Common Foreign and Security Policy
ECJ	European Court of Justice
ECOWAS	Economic Co-operation Organization of West African States
EEC	European Economic Community
ESS	European Security Strategy
EU	European Union
GRIP	Groupe de recherche et d'information sur la paix et la sécurité
ICRC	International Committee of the Red Cross
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organization
NTEU	New Treaty on the European Union
NTFEU	New Treaty on the Functioning of the European Union
OSCE	Organization for Security and Co-operation in Europe
PoA	UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons
SALW	Small arms and light weapons
TEU	Treaty on the European Union
UK	United Kingdom
UN	United Nations

# Introduction

“At the supranational level, the European Union is one of the most interesting but complex creations which the human mind has achieved through the formulation of ideas, their subsequent transformation into laws, and their projection into the material world”<sup>1</sup>.

## 1. Hypothesis

The attempt of this dissertation will be to try to put into perspective if and how the EU can reinforce its status as global actor by means of its engagement in the combat against the proliferation of small arms and light weapons. While assessing the EU’s effective capability to influence the political game in the area of small arms and light weapons non-proliferation, I will engage with the EU’s impact as global actor from a behavioural approach.

The present thesis aims to evaluate the impact that the EU’s contribution to small arms and light weapons non-proliferation may have in improving its actorness on the international scene. By discussing the Union’s engagement in combating the spread and accumulation of small arms and light weapons (SALW), I wish to examine whether the Union sees its role as peace and security actor strengthened by its initiatives in this security area. The EU’s action in this sector will hence be understood as part of a wider agenda aiming the reinforcement of its political status as global power that privileges the pre-eminence of responsibility, of the use of norm, of arbitration and of multilateral diplomacy.

The Union’s ambition to play a key role as normative global power in international affairs, by means of the instrumentalization of values and norms and of their transformation into political objectives, renders it an appropriate advocate to improve the control measures of small arms and light weapons (SALW) transfers both at the regional and global levels. In this sense, Lucarelli notes that “the founding values of the Union were never abandoned in the political system and continue to be visible in its foreign policy performance”<sup>2</sup>. Furthermore, the entry into force of the Lisbon Treaty and the amendments it entails in the area of transborder crime may render the Union’s arms control policies more effective.

Vogler and Bretherton rightly claim that the constant fashioning of its identity as regional and international power is to be conceptualized at the crossroad of its external relations and its understanding of its role in international affairs<sup>3</sup>. Grounding myself on Bretherton’s claim that the Union’s opportunity to render itself a more visible actor depends on its capabilities as well as on external circumstances<sup>4</sup>, I will argue that its occasion to enhance global small arms control through multilateralism and political dialogue builds on its own capacity as well as on that of its Member States to issue and implement efficient policies in this field at the internal and the external levels. From this

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<sup>1</sup> NEUWIRTH, Rostam Josef, “Spaces of Normativity. Law as Mnemonics: The Mind as a Prime Source of Normativity” in *European Journal of Legal Studies*, Vol. 2, No. 1, 2008, pp. 171.

<sup>2</sup> LUCARELLI Sonia, MANNERS Ian (Ed.), *Values and Principles in European Foreign Policy*, London and New York, Routledge, 2006, pp. 8

<sup>3</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, London and New York, Routledge, pp. 27.

<sup>4</sup> *Ibid.*, pp. 29.

perspective, both its legitimacy and agency as normative actor promoting responsible arms production and transfers rely on the improvement of its policies and instruments addressing SALW non-proliferation. In short, championing a leading place within the international negotiation forums aiming a more effective control of SALW transfers is closely linked to the Union's use of external opportunity and to its capacity to produce and implement efficient mechanisms tackling the constant evolution and challenges of the arms circuit in a globalized world.

Other questions arise concerning the Union's potential to influence the choices of other actors. First, it is worthwhile noting that in comparison to other parts of the world the demand for illicit weapons in the EU is not high despite the existence of "a small steady market for weapons sought by criminal groups to facilitate illegal activities such as drug trafficking, prostitution, money laundering and extortion"<sup>5</sup>. Thus, in comparison to other zones such as Africa, South-East Asia and other regions where high criminality as well as post conflict instability and violence are serious issues, the dissemination and accumulation of small arms and light weapons is not a major concern within EU territory. Given these circumstances, on what grounds does the Union constitute an interesting example in matters of SALW non-proliferation?

This dissertation considers the EU as an instructive study case for plural reasons. First, as an effect of its complex, multi-level functioning as a supranational polity composed of twenty-seven member states. Second, because of its capacity to develop new policies in order to pursue its interests and better respond to concerns of the external international environment. Third, it may be interesting to consider the Union's contribution to the non-proliferation of SALW as an opportunity to promote its values by helping to construct international structures grounded on the norms it pursues as part of its external policies. In this sense, the European Union's engagement in promoting more responsible global policies, as it did for instance in the environmental area or in the human rights domain by getting involved in the fight against the death penalty, ground the assumption subtending the present paper.

## 2. The European Union: a political actor under construction

Schwok argues that the EU constitutes at the global level the most developed existing institutional form<sup>6</sup>. It is widely agreed that the conceptualization of the role and nature of the EU's internal and external action is indebted to the nature of its dynamism. The mutating, multi-faceted substance of the EU's policies, and subsequently of its international role, are determined both by the "spillover" of norms and by the specificity of its multilevel functioning that eludes classical categorization<sup>7</sup>. Given the fact that the EU is a hybrid polity<sup>8</sup>, how can its actorness be evaluated on grounds of its action and behaviour in International Relations?

The question of how the EU pursues its foreign policy objectives can be approached through a constructivist perspective. Indeed, a constructivist approach permits to make sense of the Union's understanding of its identity and agency in the international political game through its choices and the nature of its interaction with other actors. My option is to approach the Union's initiative in the field of SALW from the perspective of its capacity to influence other actors' choices. Since the Union's actorness is under construction<sup>9</sup>, the successful promotion of more responsible arms control systems at the global level may enhance its visibility. Nonetheless, the successful pursuit of its policy objectives are conditioned by factors in the external context favouring EU action, as well as by its capabilities –

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<sup>5</sup> [http://www.unidir.org/pdf/EU-background-papers/EUBGP\\_04pdf](http://www.unidir.org/pdf/EU-background-papers/EUBGP_04pdf), pp. 1.

<sup>6</sup> SCHWOK, René, *Théories de l'intégration européenne*, Paris, Montchrestien, 2005, pp. 112.

<sup>7</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 22.

<sup>8</sup> MANNERS, Ian, "The Social Dimension of EU Trade Policies: Reflections from a Normative Power Perspective", *European Foreign Affairs Review*, no 14, 2009, pp. 785.

<sup>9</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 24.

i.e., “the availability of policy instruments” to be used in response to opportunity<sup>10</sup> –. From the standpoint of the Union’s pursuits as normative power, it is important to note that the issue of SALW fits into its main foreign policy objectives, such as the promotion of human rights, the prevention of violent conflict, democracy and good governance<sup>11</sup>. Hence, the Union’s initiatives will be assessed from the standpoint of its normative behaviour based on norm advocacy.

Björkdahl’s concise definition of normative power is stated as resting:

“On the power of ideas and norms, and it is related to the concept of ‘civilian power’, ‘soft power’, as well as the notion of ‘ideational power’. Normative power is conceptualized as a norm-generating and norm-spreading capability exercised in order to change normative convictions and to set normative standards through processes of norm advocacy”<sup>12</sup>.

It is crucial to highlight the importance of ideas in the internal and external development of the EU and in the nature of its agency. Its uncommon evolution was denoted by Alott in terms of: “une formation sociale intermédiaire entre nationalisme et mondialisme”<sup>13</sup>.

On grounds of the forementioned elements, this thesis addresses the Union’s initiative in the SALW field as yet another element of its *self-fashioning* mechanism. Since the issue of small arms and light weapons is inherent in other major EU policies, such as development, humanitarian aid and conflict prevention, it constitutes an occasion to strengthen the Union as a promoter of norms grounding its action on the respect of international law and of peaceful dialogue. It therefore inscribes itself in what Manners has conceptualized in terms of the norms that have been developed over the last fifty years, “and that are constitutive of the EU as a hybrid polity and as part of its international identity in world politics”<sup>14</sup>. Similarly to other policies, such as the prevention of violent conflict policy, whose discursive origin I will highlight in the following section, the Union’s contribution to SALW non-proliferation cannot be severed from the values that are inherent in the EU’s historical existence. EU’s engagement in improving arms control is here read as part of its pursuit in promoting its main constitutive value: sustainable peace.

As shall be discussed in the first chapter, the values the Union builds upon are used in the refashioning of its policies and are therefore inherent in “the constant updating of its *acquis communautaire*”<sup>15</sup>. Hence, peace, democracy, the rule of law and the defence of human rights are values which have helped to develop not only its internal market via the enlargement and integration processes, but have also participated in defining its status as global, normative actor. These core notions have inspired the construction of a wider discursive network, which has served to legitimize the Union’s role in the international political game. As previously noted, the importance of ideas in the materialization and constant expansion of the European project justifies my choice to approach the development of the EU’s policy to combat SALW proliferation via a constructivist reading which focuses on its normative approach to International Relations.

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<sup>10</sup> *Ibid.*, pp. 24.

<sup>11</sup> SMITH, Karen, *European Union Foreign Policy in a Changing World*, Cambridge, UK, Polity Press, 2003, pp. 159.

<sup>12</sup> BJORKDAHL, Annika, “Norm Advocacy: A Small State Strategy to Influence the EU”, *Journal of European Public Policy*, Vol. 15, No 1, *op. cit.*, pp. 3.

<sup>13</sup> ALLOT, Philip, “Ouvrir l’esprit humain” in *European Journal of Legal Studies*: Issue 1, 2007, pp. 17.

<sup>14</sup> LUCARELLI Sonia, MANNERS Ian (Ed.), *Values and Principles in European Foreign Policy*, *op. cit.*, pp. 32.

<sup>15</sup> NEUWIRTH, Rostam Josef “Spaces of Normativity. Law as Mnemonics: The Mind as a Prime Source of Normativity”, *European Journal of Legal Studies*, vol 2(1), *op. cit.*, pp. 171.



## 2.1. *Small arms and light weapons: an obstacle to the promotion of EU's substantive values of peace, development and human rights*

Given the nature and specificities of small arms and light weapons, their easy transfer and use and the current international context defined by porous borders, states cannot counter on their own the disastrous effect of this phenomenon. Because the EU is composed of twenty-seven Member States, there is ground to assume that the policies aiming the control of arms within its supranational territory could provide interesting feedback in developing international instruments regulating arms control at the transnational level. In this sense Laidi suggests that there is “ a certain degree of porosity between European governance and world governance, simply because both of them seek to solve problems that states can no longer solve on their own”<sup>16</sup>. Because the Union promotes normativity both discursively and factually, it endorses in some way the mission of participating in the organisation of the complex relationships that govern life in a globalized world by cultivating norm and responsibility. Therefore, by promoting its norms in a coherent and consistent way, the Union participates in the construction of international structures.

## 2.2. *Peace: the Union's major objective and the value leading to a “spillover” of policies*

*The European Security Strategy*, adopted in 2003 claimed that the effects of the uncontrolled circulation of conventional weapons are inherent in four of the five threats the Union must respond to within the post-Cold War background. In effect, the unregulated transfers of arms participate in enhancing terrorism, organized crime, it fuels and maintains conflict and leads to the collapse of state structure<sup>17</sup>. The 2005 *EU Strategy to combat SALW*, notably assesses that present day wars are conducted by non state groups “with no military discipline”, which essentially use small arms and light weapons rather than heavy weaponry<sup>18</sup>. This situation has led to the privatization of war and has consequently raised awareness on the importance of including provisions restricting the supply of small arms to governments so as to avoid their potential deviation to non-state actors.

NGO reports note that “the uncontrolled spread and widespread availability of SALW undermine human security more than any other kind of conventional weapons”<sup>19</sup>. The uncontrolled spread of these weapons has a devastating impact on state structures, on economic development and augment poverty as well as pandemics. A major concern is that most global firearms, which represent approximately 75 per cent of the known total, are found in the hands of civil society. Ownership laws and practices vary dramatically from country to country and region to region. The Americas and the Middle East well illustrate that civil society possession is hard to estimate as a consequence of spotty national registration and reporting<sup>20</sup>. The *Small Arms Survey* claims that “the fluctuating use and impact of firearms depends on specific circumstances defining countries and regions, and are of more consequence than the number of weapons present in a particular geographical spot”<sup>21</sup>. According to reports established by the International Committee of the Red Cross, SALW are often used to target civilians, as unlike major weapons systems, their availability is subject to few internationally accepted rules<sup>22</sup>. The same report observes that easy access to arms and ammunition implies that the risks that civilians face when a conflict ends is similar to those faced during wartime. In many parts of the

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<sup>16</sup> LAIDI, Zaki, “Europe and World Governance: Norms over Power”, 2007, pp. 19, [http://sciencespo-globalgovernance.net/webfm\\_send/19](http://sciencespo-globalgovernance.net/webfm_send/19)

<sup>17</sup> *A Secure Europe In a Better World, European Security Strategy*, Brussels, 12 December 2003, <http://www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf>

<sup>18</sup> *EU Strategy to Combat Illicit Accumulation and Trafficking of SALW and their Ammunition*, of January 2006, pp. 4. <http://register.consilium.europa.eu/pdf/en/06/st05/st05319.en06.pdf>

<sup>19</sup> *IPB Report on Small Arms & Development*, <http://www.ipb.org/smallarms.html>

<sup>19</sup> *Small Arms Survey*, <http://www.smallarmssurvey.org/>

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> ICRC, <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0864>

world, military weapons are so easy to obtain and armed violence so prevalent that citizens face the same threats in conflict situations, post-conflict situations and in peacetime<sup>23</sup>. The situation is such that during and after conflicts, rifles are often easier and cheaper to get than food. The widespread availability of weapons following conflict situations contributes to continued tension and violence and jeopardizes efforts to establish lasting peace. Significantly, when falling into the hands of new actors, including armed groups, criminal gangs and civilians, small arms and light weapons facilitate violations of International and Humanitarian Law<sup>24</sup>.

The hypothesis is that the EU's international role as a normative power allows it to act as a privileged defender of the pre-eminence of values which have served its constitution— peace, the rule of law and human rights – the Union's engagement in favour of these values would enhance its visibility. The consequences of the excessive and uncontrolled presence and use of illicit small arms are therefore at conflict with the core values defended by the European Union. Armed violence and the illicit trafficking of small arms and light weapons (SALW) entail systematic abuses and endangers the maintenance of democratic principles, good governance and the effective protection of human rights. On ground of its specific nature and as a result of its functioning “both as a laboratory and a motor of the political changes brought about by, and expressed in, the process of globalisation”<sup>25</sup>, the EU represents a promising candidate in the international diplomatic exchanges aiming the creation of a more responsible international community. The Union may indeed help enhance a more secure and peaceful international dynamic. My assumption is that by combining distinct EU methods of tackling SALW with other regional approaches, a more efficient and comprehensive regulation of small arms and light weapons may be achieved in the long run. Regulated production, imports and exports of small arms, strictly based on and restricted to the security needs of states, would on the long run permit the creation of a safer global environment.

The Union's choice to enhance world and regional security by countering the proliferation of small arms through combined means, builds on its understanding of “its internal character and capabilities and on external opportunities”<sup>26</sup>. While acknowledging the challenge generated by armed conflicts, EU official discourses reiterate the preservation of peace as one of its pre-eminent objectives. In this sense the discourses produced by EU representatives also highlight the importance of elaborating effective and coherent policies in view of enhancing the Union's capacity to prevent conflicts in the short and long term. The High Representative for the CFSP assessed that:

“Preserving peace, promoting stability and strengthening international security worldwide is a fundamental objective for the Union, and preventing violent conflict constitutes one of the most important external policy challenges”<sup>27</sup>.

Thus violent conflicts hamper the Union's foreign policy objectives, such as the promotion of democracy or the encouragement of regional cooperation. The disregard for the values the Union defends, as grounds for a more ethical and responsible international environment, undermine the legitimacy of its policies:

“For the European Union, the existence of violent conflicts in Africa is increasingly challenging the achievement of its declared policy goals. Fostering peace, stability, democracy and human rights under the conditions of conflicts is a nearly impossible task”<sup>28</sup>.

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<sup>23</sup> ICRC, <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0864>

<sup>24</sup> ICRC, <http://www.icrc.org/web/eng/siteeng0.nsf/html/p0864> and see pp. 52 of the Appendix under Introduction, point 1.

<sup>25</sup> LUCARELLI, Sonia, MANNERS Ian (ed.), *Values and Principles in European Foreign Policy*, *op. cit.*, pp. 8.

<sup>26</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, 2006, pp. 35.

<sup>27</sup> *Improving the Coherence and Effectiveness of the European Union Action in the Field of Conflict Prevention*, 2000, pp. 3, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/EN/reports/98328.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/98328.pdf)

Apart from endangering the values the EU promotes as part of its agency as global actor, armed conflicts have damaging economic consequences, as they obviously require more costs than the establishment of effective conflict prevention approaches:

“Conflict bears a human cost in suffering and undermines economic development. It also affects EU interests by imposing a heavy financial burden in reconstruction and ultimately by threatening the security of its citizens. The financial costs of preventing conflict are small compared to the cost of addressing its consequences”<sup>29</sup>.

The notion of conflict prevention is to be briefly defined from the European Union’s perspective. Conflict prevention thus refers to the “actions undertaken over the short term to reduce manifest tensions and / or to prevent the outbreak or recurrence of violent conflict”<sup>30</sup>. It is worthwhile noting that this issue “became an integral and legitimate part of EU policy and practice” following Sweden’s 1990 initiative, which called for international attention concerning the importance of preventing violent conflict<sup>31</sup>. Sweden’s successful advocacy relied on a common understanding of the materialization of values and norms into effective policies. The EU policy instruments for conflict prevention notably comprise: financial assistance, conditionality, sanctions, limits on arms exports, early warning, political dialogue and mediation support for regional cooperation, civilian crisis management capabilities and military instruments<sup>32</sup>. As part of the Union’s comprehensive responses to conflict prevention, the last chapter of the thesis will discuss the instruments relative to arms exports and imports.

### **3. The performative role of ideas in building the Union’s normative power: the Union’s opportunity to strengthen its role as international normative actor**

The commencement and evolution of regional and global responses to SALW proliferation illustrate the process that has often been qualified by academics in terms of the performative power of ideas. The following section briefly conveys how new policies start off as pure abstractions. Effective action stems from ideas and values before gaining a life of their own. Thus, in August 2001, in the aftermath of the UN Conference on the illicit commerce of SALW, Kofi Annan deplored the fact of its not being banned by means of a treaty or by International Conventions, as is the case with chemical, biological and nuclear weapons. On that occasion, Annan proposed Governments to surpass the *Programme of Action* adopted in 2001 and to negotiate binding international conventions on the production and transfer of SALW. The question of the export controls of conventional weapons was further discussed at the regional level nine years later, in February 2010, within the context of the promotion of the negotiation of an Arms Trade Treaty. Against this background, the EU representative for non-proliferation, Ms Giannella stressed the gaps and weaknesses still enduring in spite of national, regional, and international export control agreements and regimes. The EU representative emphasised the fact that this state of affairs favours “the undesirable and irresponsible proliferation of conventional arms undermining peace and security”<sup>33</sup>. By alluding to two of the constitutive values at the core of the EU’s internal and external policy – peace and security – Ms Giannella puts forth the example of the Union as a group of twenty-seven sovereign states capable of

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<sup>28</sup> Statement of the European Commission, SEC (96), qtd. in SMITH, Karen, *European Union Foreign Policy in a Changing World*, 2003, *op.cit.*, pp. 153.

<sup>29</sup> *Improving the Coherence and Effectiveness of the European Union Action in the Field of Conflict Prevention*, 2000, pp. 3, [http://www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressdata/EN/reports/98328.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/EN/reports/98328.pdf)

<sup>30</sup> European Commission, Development Directorate-General, <http://www.europa.eu.int/comm/development/prevention/definition.htm>

<sup>31</sup> BJORKDAHL, Annika, “Norm Advocacy: A Small State Strategy to Influence the EU”, *Journal of European Public Policy*, Vol. 15, No 1, *op. cit.*, pp. 1-2.

<sup>32</sup> *Ibid.*, pp. 3.

<sup>33</sup> Promoting Discussion on an Arms Trade Treaty, <https://ue.eu.int/showPage.aspx?id=1170&lang=en>

agreeing on an instrument regulating the conventional arms trade while still being able to exercise their national responsibilities.

This speech act is an illustration of how the EU is made into an example of successful negotiations leading to enhanced accountability in matters of arms control transfers. As claimed by Ms Giannella, “the EU experience with its own conventional weapons export control system demonstrates the feasibility of agreeing on an instrument, without depriving States of their national prerogative to license or deny individual exports”<sup>34</sup>. Giannella’s discourse conveys the Union as advocate for a comprehensive, global instrument that can ensure an effective response to the gaps and weaknesses still enduring in global small arms controls. What is more, by referring to the EU’s integrated action aiming both the legal and illegal dimensions of the conventional arms market, Giannella highlights its comprehensive approach. By reaffirming the EU’s full support to the UN initiatives to combat SALW non-proliferation, the speaker implicitly conveys the Union’s engagement for peace and enhanced human security through a dual approach: the diplomatic channel and its instruments and policies. We here hold an illustrative example of how the discourses of high representatives participate in fashioning and in legitimizing the political pursuits of a political actor.

The purpose of assessing the Union’s contribution in this area from the dual perspective of its interaction with the mutating wider global political scene, and as a result of its internal dynamic, is to highlight how ideas and values are turned into norms that guide policy-making. Accounting for the EU as an example of how discourses help fashion political pursuits, allows to unravel its character as shifting project<sup>35</sup> that induces a great deal of expectations and of deception.

The question deriving from this logic is whether the EU effectively manages to materialize the ideas it enhances. By assessing its regional and international contribution in preventing and eradicating small arms proliferation, the underlying question is whether its instruments and other policies can confer enhanced reliability to its efforts to promote the adoption of a more harmonized, inclusive system of arms control at the regional and international levels. The other hypothesis is that the Union’s action in this area would notably help to accelerate the negotiation of a global marking and tracing system and of an international, legally binding instrument regulating the trade in conventional arms.

#### 4. Methodological approach

The present paper addresses aspects related to the EU’s internal action as well as to its external role concerning the SALW issue. The two facets are interdependent, as a successful multilevel action within the borders of its internal territory and its member states’ efficient monitoring of small arms transfers would legitimize its contribution as a peace actor. The question of how efficient the EU’s instruments in the field of small arms and light weapons are encompasses two levels. The first is relative to the Union’s internal measures regulating the control of arms production, possession and transfers. The second aspect deals with the EU’s external action in terms of the small arms issue.

The paper therefore discusses the role that the EU and its member states can play in countering the effects of small arms proliferation by improving control measures relative to the harmonization of production and of transfers. Small arms proliferation from a demand perspective will not be discussed in this dissertation. I will therefore not engage with an approach on small arms dissemination and accumulation focusing on the motivations and the means of weapons acquisition as essential factors of this process<sup>36</sup>.

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<sup>34</sup> *Ibid.*

<sup>35</sup> LUCARELLI Sonia, MANNERS Ian (Ed.), *Values and Principles in European Foreign Policy*, 2006, pp. 8.

<sup>36</sup> Small Arms Survey, <http://www.smallarmssurvey.org>

See pp. 84 of the Appendix under the second point of the Introduction for a fuller view on the demand perspective.

The dissertation encompasses three parts. The first chapter will look at the nature of the EU's actorness and at the ways by which it exerts its power. The argument developed under this section is that the EU has used its founding values to forge a discourse subject to constant refashioning and revision, which has helped to elude its institutional limits as well as the initial absence of a foreign policy. The first chapter will highlight the importance of values and of their subsequent fashioning into a norm based narrative aiming to surpass the Union's institutional limits, to help its enlargement and to exert influence on the global stage in the name of a more ethical international environment. Hence, the assessment of the Union's capacity to influence global debates aiming the non-proliferation of small arms and light weapons, will build on the assumption that its impact in International Affairs is of a normative nature.

In order to evaluate the means by which the EU can set itself as a regional and international example with respect to third parties in the area of SALW, the second chapter will discuss general technicalities related to the small arms circuit. By engaging with the intricacies of small arms, as well as with the concerns and challenges defining cross-border arms control, I hope to highlight the aspects of small arms proliferation that must be addressed at the regional and global level. My claim is that a general view on the complexity of the SALW field permits a better understanding of the capabilities of the European Union's action with respect to specific concerns inherent in arms control policies.

The third chapter will inquire whether the EU can prove an appropriate actor advocating a solid and comprehensive system of monitoring arms transfers at the global level on grounds of its functioning as a supranational territory. As the instruments the Union produces in this area are linked and conditioned by its internal multi-level institutional functioning and evolution, the chapter will briefly discuss the policy areas involved in regulating the EU's internal and external action in arms control. In order to account for the elements which could function as guidelines for the drafting of further documents regulating the criteria of production and of transfers of arms at the regional and international level, it will focus on the instruments produced by the EU to address the non-proliferation of small arms at the internal and external levels. It will also discuss its current involvement in supporting the negotiations of an Arms Trade Treaty established by the Council Decisions dating of 2009 and 2010. The Union's involvement in the promotion of a legally binding instrument regulating the trade of Conventional Arms is an example of how the EU uses the opportunities from the external environment to strengthen its action as ethical, normative actor. By using multilateralism to promote co-responsibility as the key concept of International Relations, the EU hopes to influence the choices of actors in international decision-making. The conclusive section will attempt to evaluate the capability-expectation gap with respect to its real influence in the establishment of more comprehensive systems of control of small arms transfers.

# Chapter I

## The European Union's actorness: Enacting and Imposing the Norm

“The EU is itself a peace project and a supremely successful one... through the process of enlargement, through the common foreign policy, through its development and assistance programmes the EU now seeks to project stability also beyond its own borders”<sup>37</sup>.

### Abstract

In order to account for the possible impact of the EU's promotion of its policies relating to SALW non-proliferation in international forums, this first chapter will try to grasp the nature and functioning of the European Union's presence and action in the global political game. I will assess the Union's actorness by looking at the principles by which it functions and interacts on the international scene. I will argue that the nature of its interaction with other entities at the global scale is grounded on two elements. My first assumption is that its ability to function as actor capable of making political choices and of undertaking action so as to influence and co-opt other entities to its principles is either made possible or obstructed by the specificity of its institutional functioning. The second hypothesis is that the nature of the Union's actorness is to be sought for in the values which have enticed its founding, as well as its subsequent development and enlargement. The opening chapter also puts into perspective the performative power of values in challenging the numerous institutional limits governing EU external action. Basing myself on the academic research discussing this aspect, I will argue that values and principles have not only played a constitutive role in the EU's coming into being, but they have also been used to enhance new policies, while shaping and empowering its visibility in International Affairs.

### 1. The Nature of the Beast

The Union's institutional dynamic is a micro-reflection of the complexity defining the current globalized international environment. Its specific multilevel functioning fashions both its internal and external actions. As suggested by Schwok, the Union “est devenue la principale puissance commerciale mondiale, ainsi qu'un donateur majeur pour l'assistance humanitaire et l'aide au développement”<sup>38</sup>. While trying to pin down the specificity of the Union's role in the international political game, this chapter will also engage with the manner in which values and principles have been turned into discursive tools enabling the development of a narrative of responsibility. I will argue that the values underlying the ethical rhetoric that partly fuels the Union's external action also operate as regulators of its existence and behaviour in international affairs.

Academics agree that as a supranational entity, the European construction constitutes a new and unique dynamic entailed by the idiosyncracies of the Post-Westphalian order. Schwok argues that:

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<sup>37</sup> Speech delivered by the Commission in 2001, quoted in BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op.cit.*, pp. 189.

<sup>38</sup> SCHWOK, René et MERAND, Frédéric, *L'Union européenne et la sécurité internationale: théories et pratiques*, Louvain-la-Neuve, Academia Bruylant, 2009, pp. 17.

“L’UE est l’un des acteurs les plus particuliers du système international. Depuis les années 1950, elle s’est développée de manière graduelle afin de promouvoir son rôle international dans presque tous les coins de la terre, se servant d’une panoplie d’instruments de politique étrangère: diplomatique, économique et même depuis 2003, des capacités militaires limitées”<sup>39</sup>.

As a consequence of this constant institutional growth and as an effect of the spillover of its policies, the Union plays today an influential role on the international scene. By means of its preference for multilateralism and for cooperative diplomacy, it advocates in international arenas a series of policies, which build on its constitutive principles and values. Thus, Schwok claims that:

“L’UE s’est engagée dans un processus continu de croissance institutionnelle depuis les années 1970, produisant des “outputs” de politique étrangère de plus en plus ambitieux et influençant de nombreux problèmes globaux”<sup>40</sup>.

Schwok assesses that “il devient de plus en plus difficile de négliger le rôle international de l’UE”<sup>41</sup>. Schwok qualifies the EU as being essentially “une ‘puissance normative’ qui cherche à promouvoir et à diffuser les normes de coopération pacifique qui sont à son origine”<sup>42</sup>.

## 2. Conceptualizing the EU’s international role

The Union’s external action is bound to and conditioned by its internal structures and functioning which determine its effective capability to act. Nonetheless, as previously argued, its founding values have often been used by EU representatives to challenge the limits and the impediments triggered by its institutional dynamic. Despite its late development in the European construction, the evolution of the CFSP is an eloquent example of the role played by the Union’s values in shaping what turned out to be a successful narrative grounded on responsibility. Thus, the use and the reiteration of the Union’s core values and principles in the discourses of official Representatives have generated a foreign-policy narrative, which relates the exertion of power to a multilateral approach, to dialogue and co-operation instead of military coercion.

Values and principles were subsequently used to forge a narrative promoting responsibility and multilateralism. Petiteville contends that “l’UE a toujours développé en priorité ses relations extérieures sur le registre coopératif, institutionnel et économique, plutôt qu’en cherchant à s’imposer comme puissance militaire”<sup>43</sup>. Petiteville signals that the EU’s external action has enticed the development of what he names “une diplomatie coopérante”, which promotes norms and values such as human rights, democracy, multilateralism, as well as commercial incentives (“clauses commerciales”)<sup>44</sup>. Petiteville suggests that the Union’s trade relations with third parties and its use of cooperating diplomacy helps to pacify international relations and to promote its constitutive norms<sup>45</sup>. From this standpoint, the EU acts and interacts by exporting its norms so as to help construct and develop international structures. This aspect of the EU’s dynamic was qualified by Manners in terms of “normative power”.

According to Petiteville, Manners spots in the notions of democracy and human rights, which are inherent principles of European Law, not only “les fondements de ‘l’identité internationale’ de l’Union

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<sup>39</sup> SCHWOK, René et MERAND, Frédéric, *L’Union européenne et la sécurité internationale: théories et pratiques*, op. cit., pp. 16.

<sup>40</sup> *Ibid.*, pp. 17.

<sup>41</sup> *Ibid.*, pp. 17.

<sup>42</sup> *Ibid.*, pp. 19.

<sup>43</sup> *Ibid.*, pp. 64.

<sup>44</sup> *Ibid.*, pp. 64.

<sup>45</sup> *Ibid.*, pp. 64.

Européenne, mais aussi les ferments de changements normatifs à l'échelle internationale"<sup>46</sup>. Smith explains that:

“In this world, the EU can indeed exercise normative power more effectively – to determine what is normal in international relations [...] The EU can contribute to the transformation of the international system, to change its milieu, by reinforcing elements of international society such as international law and inter-state cooperation, and thus minimizing those of power politics”<sup>47</sup>.

Attempting to qualify the external role of the EU requires understanding what sort of political structure it is. Furthermore, it means identifying the performative function of the values that its existence and evolution build upon. Describing the international action of the EU proves complicated because its political entity escapes traditional taxonomy. The European Union is therefore a hybrid system “consisting of supranational and international forms of governance”<sup>48</sup>. The EU may be envisioned as a transnational social space regulated both by member states and Union policies.

### 2.1. *EU global actor despite its specific nature?*

Two approaches put forth by academics must be retained when assessing the nature of the EU's actorness. First, it is important to understand that the Union's agency depends on the interplay between a series of internal and external factors. Second, the EU is a project under construction, and therefore an open-ended process<sup>49</sup>. What are we to understand by the EU's existence as process? The notion of process designates the mechanisms of widening and deepening that had to be undertaken in terms of EU policies so as to respond to the institutional changes induced by Treaty revisions and by its successive enlargements. It is also related to the concept of spillover as a consequence of integration requirements.

Petiteville puts into perspective the interdependence between the Union's international role and its successive enlargements:

“Les élargissements ont bien produit des effets contradictoires sur le rôle international de l'Union européenne – d'un côté l'accroissement de son assise géopolitique et la démultiplication de ses relations extérieures, de l'autre la complexification du processus d'agrégation des intérêts nationaux – mais, les bénéfiques l'ont emporté sur les coûts”<sup>50</sup>.

The critic suggests that the EU seems capable of exerting an important influence in helping to construct international structures for two reasons. First, it is composed of twenty-seven sovereign States. Second, we may assume that when Member States reach consensus, its influence in international forums increases. As one of the central issues this paper deals with is the Union's capacity to capitalize opportunity and capability to help promote its norms at the international level, several questions arise. Besides the issues of whether the Union's advocacy of a safer world through enhanced arms controls can endow it with more visibility and the question of how the Union interacts with other actors, what is at stake is the capacity of its member states to gain in visibility by undertaking specific initiatives related to SALW within the EU. When a member state pushes policies relative to small arms, it means besides pressuring other member states to upgrade their practices in the area, that it must itself conform to the standards it advocates. Indeed, a member state's action in favour of the Union's objectives of peace and fundamental rights may grant it more visibility within the EU.

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<sup>46</sup> *Ibid.*, pp. 70.

<sup>47</sup> SMITH, Karen, *European Union Foreign Policy in a Changing World*, *op. cit.*, pp. 203.

<sup>48</sup> MANNERS, Ian, “The Normative Ethics of the European Union”, *International Affairs* no 84.1, 2008, pp. 65.

<sup>49</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op.cit.*, pp. 2.

<sup>50</sup> PETTEVILLE, Franck, *La politique internationale de l'Union européenne*, *op. cit.*, pp. 176.



This thesis therefore addresses the question of the EU's impact as global actor from a behavioural approach. As an entity involved in purposive action, the EU manifests its actorness "by formulating purposes and by making decisions"<sup>51</sup>, which ultimately show its open, shifting nature. The fact that its external action is regulated by a recurrent reference to norms signifies that its identity is constantly being processed and reshaped. This perspective on the open nature of the EU's character and evolution establishes its existence as process. Conceptualizing the Union's nature and presence as a process implies acknowledging that its transformations depend on contextual internal and external factors. It therefore implies that its existence is bound since the foundation of the European Community to a dynamic of refashioning and interaction. Pinning down the Union's nature to rigid concepts would mean disregarding its shifting substance and its potentialities as actor on the international scene.

## 2.2. *An overview of several criteria defining actorness*

Petiteville contends that the EU must respond to four criteria in order to be envisaged as international actor:

"Une reconnaissance effective de ce statut par des acteurs tiers sur la scène internationale (attestés par l'acceptation de ces acteurs d'interagir avec l'UE), une autorité légale à agir dans l'ordre international, une certaine autonomie décisionnelle de l'UE vis-à-vis de ses parties constituantes et un minimum de cohérence dans la gestion des ses relations extérieures"<sup>52</sup>.

According to Petiteville the EU's intergovernmental character does not obstruct its capacity to exert "une influence internationale multiforme"<sup>53</sup>. He notably establishes the existence of a European collective diplomacy, which has been operating over the last thirty years in various domains of international politics<sup>54</sup>. We may note that independently from the Union's former lack of legal personality under the Treaty on The European Union, its capacity as global actor had to be pondered in relation to its effective influence in international affairs.

## 2.3. *Identifying the elements at the heart of EU's external action: a hybrid polity built and building on values*

The EU is "a hybrid polity consisting of supranational and international forms of governance"<sup>55</sup>. The Union's potential as a global actor essentially builds on its ability or inability to act in specific contexts and circumstances. Thus, the EU's existence as actor in international affairs is grounded on two essential factors. First, its agency is conditioned by the external environment, which delineates grounds for its action or inaction. Second, it depends on its effective capability to undertake action. Whereas the first parameter stresses the fact that the EU's external action is context-specific, i.e., it is subject to definite circumstances, the second one points to the limits of its agency, which is determined by the political interests its member states pursue, and more technically by Treaty grounded procedures and limitation of competences.

Vogler and Bretherton explain that "agency is not unlimited"<sup>56</sup>. The Union's capacity to act therefore depends upon "internal capabilities and external opportunities"<sup>57</sup>. It consequently builds on "the availability of policy instruments and on the EU's understandings about its ability to utilize these

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<sup>51</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 17.

<sup>52</sup> PETTEVILLE, Franck, *La politique internationale de l'Union européenne*, *op. cit.*, pp. 195.

<sup>53</sup> *Ibid.*, 197.

<sup>54</sup> *Ibid.*, 209.

<sup>55</sup> MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* no 84.1, 2008, *op. cit.*, pp. 65.

<sup>56</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 35.

<sup>57</sup> *Ibid.*, pp. 35.

instruments”<sup>58</sup>. In other words, the inner capability of the EU to undertake external action is bound to existing institutional regulations and constraints. Under the Treaty on the European Union, policy-making in the area of external action was often subject to inconsistency and incoherence as well as to lack of inter-pillar coordination. The enduring question is whether these obstacles will be overcome with the reforms entailed upon the entry into force of the Lisbon Treaty.

### 3. The CFSP as promoter of European values and norms

Interestingly, similarly to most policy developments of the EU, the emergence of the foreign policy area was induced by changes in the external environment since the end of the Cold War<sup>59</sup>. The post Cold War period generated a new security paradigm. With the extinction of the Cold War bipolar logic, member states understood the importance of creating new strategic structures dealing with the security aspect both at the internal and external levels. The Maastricht Treaty addressed the challenges induced by the European Community’s enlargements and by the collapse of the USSR by establishing two distinct security structures. As the two new policy areas established by the Maastricht Treaty involved sensitive areas of sovereignty for member states, both the second pillar, Common Foreign Security Policy (CFSP), and the third, Justice and Home Affairs (JHA), were subject to intergovernmental procedures and legislative instruments.

At the internal level, the third pillar dealing with judicial and police cooperation, aimed at tackling the difficulties triggered by the entry into force of free-movement as a fundamental EU principle. At the external level, the second pillar contributed to enhancing EU common diplomacy and defence. In this sense, the Treaty on the European Union played a key role in developing its role as a global actor<sup>60</sup>. Article 2 of the Treaty on the European Union (TEU) significantly provided that the Union should establish “its identity on the international scene”<sup>61</sup>. The origins and the gradual evolution of the Union’s foreign policy is an example of how the EU uses its capabilities to respond to opportunities and thus reinforce its status as regional and global actor. In short, both the EU’s internal and external development and action are shaped at the crossroad of the interaction between external circumstances and its multilevel, complex institutional structure, where EU institutions and Member states co-act in compliance with Treaty based competences.

Critics have qualified the EU’s external policy as structural. The term meant to account for the nature of this policy area, which initially encompassed non-military instruments and which distinguished itself by its unfinished character. According to Manners and Lucarelli, “the fact that the Union is at the same time actor, process and project makes it behave differently in comparison to traditional actors in world politics”<sup>62</sup>. Notwithstanding, its self-fashioning potential in matters of internal and external policy build on its character as process, which favour the emergence of new policies as a consequence of skilful discursive representations:

“Moreover, the existence of the ‘EU as a process’ influences the self-representation of the Union made by relevant figures such as the presidents and the institutions. Thus, the ‘EU project’ and ‘EU self’ are intertwined and compounded in the self-representations of the Union”<sup>63</sup>.

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<sup>58</sup> *Ibid.*, pp. 24.

<sup>59</sup> *Ibid.*, pp. 5.

<sup>60</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 30.

<sup>61</sup> Article 2 in KADDOUS, Chritine, PICOD, Fabrice, *Union européenne, Communauté européenne : recueil de textes*, (ed.), 7è édition, 2008.

<sup>62</sup> LUCARELLI, Sonia, MANNERS Ian (Ed.), *Values and Principles in European Foreign Policy*, *op. cit.*, pp. 8.

<sup>63</sup> *Ibid.*, pp. 8.

#### 4. The EU's foreign policy: the limits of discursive practices with respect to effective capability

Assessing the Union's capability regarding its external action requires understanding the mechanisms of the CFSP policy-making. Within the specific framework of the CFSP, responding to opportunities depends on achieving coherence and consistency. Given the intergovernmental character of the CFSP, policy formulation takes place within the Council of Ministers and its various working groups on grounds of the unanimity procedure<sup>64</sup>. A more comprehensive view on the possibilities and challenges provided by the CFSP institutional frame will be provided in the third chapter, which notably assesses the EU's capabilities in terms of internal and external responses to small arms and light weapons non-proliferation.

What is more, a constructivist approach on the CFSP's functioning highlights its nature as a "processus collegial de socialisation diplomatique, d'apprentissage, de circulation d'idées et de normes"<sup>65</sup>. Thus, from a constructivist insight, the CFSP "conduit à modifier non seulement les stratégies des acteurs diplomatiques nationaux, mais aussi leurs intérêts, leurs préférences et leur identité sur la scène internationale"<sup>66</sup>. The constructivist approach thus accounts for the way in which ideas and norms fashion the identities of international actors<sup>67</sup>. It also stresses the fact that as a consequence of the socializing process, when they are adopted and integrated by distinct political entities, norms alter identities and trigger normative changes at the international scale<sup>68</sup>.

However, since EU foreign policy overlaps with the national preferences of member states in this domain, its initiatives to implement consistent policies fail "where economic and strategic interests come into play"<sup>69</sup>. Indeed, as Smith contends, "the EU members states do not often sacrifice key interests to pursue milieu goals through the EU"<sup>70</sup>. The initiatives encompassed in EU discourses are thus often blocked by the lack of effective agreement among member states.

#### 5. The EU as normative power

The last section of this chapter will discuss the Union's preference for the norm as a means to co-opt third parties to its beliefs and practices. By referring to the interdependence of capability and opportunity in promoting the dialogue on the regulation of small arms transfers and production at the international level, I will put into perspective the importance of the Union's use of the norm in its interactions at the international scale. The underlying argument is that the Union's contribution in the area of arms control could help to reinforce its presence as normative power and thus increase its influence in global negotiations and decision-making. I will therefore focus on the means the Union uses to exert its influence and co-opt other entities to its views and choices. In order to do so, I will discuss the notion of normative power from the perspective of the EU's character and behaviour. Then, while considering the Union's multilateral approach, I will question how the EU as a normative power can affect the international political decisions that are made in response to small arms proliferation.

What are we then to understand by the notion of normative power when it is used to designate the EU's presence and agency in foreign affairs? It is commonly acknowledged that the meaning of a

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<sup>64</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 8.

<sup>65</sup> SCHWOK, René et MERAND, Frédéric, *L'Union européenne et la sécurité internationale: théories et pratiques*, *op. cit.*, pp. 69.

<sup>66</sup> *Ibid.*, pp. 69.

<sup>67</sup> *Ibid.*, pp. 70.

<sup>68</sup> *Ibid.*, pp. 70.

<sup>69</sup> SMITH, Karen, *European Union Foreign Policy in a Changing World*, *op. cit.*, pp. 200.

<sup>70</sup> *Ibid.*, pp. 200.

concept is to be interpreted in relation with the parameters of a definite framework. Given that a concept gains meaning against the specificities of a determined situation, it is necessary to question how the notion of normative power can be understood when referring to the EU as a global political actor.

Manners claims that assessing the EU's normative power in world politics requires an understanding of the principles it promotes, of how it acts and of what impact it has<sup>71</sup>. In other words, "a normative power perspective attempts to understand and judge the ideational aspects of the EU by studying the EU's principles, actions and impact in world politics"<sup>72</sup>. The critic argues that normative power "relies more on persuasion, argument and shaming than on illegitimate force to shape world politics"<sup>73</sup>. In this sense Laidi puts forth Rosencrance's view that "normative power refers to the idea of setting world standards, in contrast to empirical power, which imposes itself by conquest or physical domination"<sup>74</sup>. The initiator of the normative power approach with respect to the EU, Robert Rosencrance thus claims that "Europe, after having been imperialist, has sought to influence the world through a certain number of driving ideas"<sup>75</sup>. Exerting influence on the choices of other political entities signifies however that an actor should have effective capabilities. Then again, the Union presents itself as a specific institutional system, whose particularities are partially grounded on the fact that at the moment of its foundation under the name of the European Community in 1958, it was exclusively a civilian body<sup>76</sup>. In what aspect of the EU's nature and agency does its influence and co-option power lie?

Manners suggests that the EU as a normative power can be understood from the perspective of "its substantive, normative principles and from its procedural normative ethics".<sup>77</sup> In short, Manners explains the Union's normative ethics in terms of its relations with the wider world. The EU's normative action aims "to contribute to the development of international law by virtue 'of living by example', by duty of its actions in 'being reasonable', and by consequence of its impact in 'doing least harm'"<sup>78</sup>. According to Manners an insight into these three behavioural standards allows to better grasp the way in which the EU exercises its normative power<sup>79</sup>. Making sense of the EU as normative power thus implies looking at "the way in which the EU promotes its substantive principles"<sup>80</sup> by means of enacting the values that have induced its foundation and evolution through its interaction with the wider external environment.

Thus, article 21, paragraph 1 of the Lisbon Treaty provides that the Union's action in the international political game is inspired by "the principles that have inspired its creation, development and enlargement"<sup>81</sup>. Academics have recurrently noted that the values that are at the origins of the European project are used as a means of empowerment with respect to its international affairs<sup>82</sup>. Laidi reasserts Manners' argument according to which the Union rests on Post-Westphalian norms, which it tries to export so that they become co-opting tools in negotiation processes. The ability to exert

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<sup>71</sup> MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* 84, n° 1, *op. cit.*, pp. 66.

<sup>72</sup> MANNERS, Ian, "The Social Dimension of EU Trade Policies: Reflections from a Normative Power Perspective", *European Foreign Affairs Review*, *op. cit.*, pp. 786.

<sup>73</sup> MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* 84, n° 1, *op. cit.*, pp. 77.

<sup>74</sup> LAIDI, Zaki, "Europe and World Governance: Norms over Power", *op. cit.*, pp. 6-7, [http://sciencespo-globalgovernance.net/webfm\\_send/19](http://sciencespo-globalgovernance.net/webfm_send/19)

<sup>75</sup> *Ibid.*, pp. 12.

<sup>76</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 3.

<sup>77</sup> MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* no 84.1, *op. cit.*, pp. 67.

<sup>78</sup> *Ibid.*, pp. 66.

<sup>79</sup> *Ibid.*, pp. 66.

<sup>80</sup> *Ibid.*, pp. 67.

<sup>81</sup> KADDOUS, Chrstine, PICOD, Fabrice, *Traité sur l'Union européenne, Traité sur le fonctionnement de l'Union européenne tels qu'ils résultent du Traité de Lisbonne du 13 décembre 2007*, 2008.

<sup>82</sup> MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* no 84.1, *op. cit.*, pp. 68.

influence at the global level by playing upon the norms which are constitutive of the EU's foundation and development pinpoints at their performative nature. What is more, this reading highlights the preference for dialogue and multilateralism by means of "networks of communication and cooperation" over "expressions of military power and domination"<sup>83</sup>.

Manners uses the term "normative power" to "describe the EU's principles, actions and impact in world politics"<sup>84</sup>. He therefore equates the EU to a normative power because it engages "in promoting a series of normative principles that are generally acknowledged within the United Nations system, to be universally applicable"<sup>85</sup>. Laidi suggests that understanding the EU's relation to norm "is essential to understanding the enigma of European power"<sup>86</sup>. The critic explains the concept as follows:

"A normative power is therefore a power of which the identity and strategy is grounded on a preference for overarching rules of behaviour applicable – largely but not exclusively – to states and which has three essential characteristics: to have been negotiated and not imposed; to have been legitimated equally by representative international bodies; and to be enforceable on all actors of the international system notwithstanding their rank within it. Normative power thus seeks the integration of a world order based on the legitimacy of rules, the predictability of behaviour and especially the enforceability of accepted principles"<sup>87</sup>.

The Union's overarching rules of behaviour build on the principles of democracy, the rule of law, social justice and human rights. These values constitute a fertile ground for the further elaboration of norms, which are, as previously discussed, elaborated in response to the requirements of the external environment, as well as by EU internal dynamic. In other words, by means of effective political situations, as well as through the speeches produced by official representatives, we notice that "norms beget norms"<sup>88</sup>. Interestingly, we are here again confronted to a spillover mechanism. Laidi accounts for the logic of this dynamic in the following terms, "as states gradually agreed to extend the Union's competences, Europe's normative provisions had to be extended as well"<sup>89</sup>.

Subsequently the Union's ability to influence and shape the perceptions, expectations and behaviours of others is to be spotted in the nature of its presence, in what it does. Indeed, the assumption that an entity is defined by what it does brings into question the complex notion of identity. Bretherton and Vogler argue that identity plays no small part in singling out a political actor's intentions and agency. The critics claim that an actor uses what it has established as being its identity as a reading scheme against which political opportunities are evaluated and action undertaken. In other words: "not only do identities suggest roles, and associated priorities, it is in terms of understandings about identity that policy is evaluated"<sup>90</sup>. In the process of building actorness, identity functions as a mediating instance between opportunity and action<sup>91</sup>. From this standpoint, the Union's identity cannot be severed from the fact that it is "a value-based community"<sup>92</sup>.

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<sup>83</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 60.

<sup>84</sup> MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* no 84.1, *op. cit.*, pp.67.

<sup>85</sup> *Ibid.*, pp. 66.

<sup>86</sup> LAIDI, Zaki, "Europe and World Governance: Norms over Power", *op. cit.*, pp. 13,

[http://sciencespo-globalgovernance.net/webfm\\_send/19](http://sciencespo-globalgovernance.net/webfm_send/19)

<sup>87</sup> *Ibid.*, pp. 12.

<sup>88</sup> *Ibid.*, pp. 16.

<sup>89</sup> *Ibid.*, pp. 16.

<sup>90</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, 2006, pp 27.

<sup>91</sup> *Ibid.*, pp 60.

<sup>92</sup>*Ibid.*, pp 60.

## 6. The Union's promotion of peace and of its other core values: the choice of multilateralism

The Union's action on the international scene "is guided by the principles which have inspired its creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, etc"<sup>93</sup>. The values and principles that the Union is committed to were provided under the Treaty on the European Union and are reiterated with the entry into force of the Lisbon Treaty<sup>94</sup>. These values, which range according to Bretherton and Vogler "from economic and social progress to sustainable development, to democratic governance and the rule of law", help to single out the Union's identity<sup>95</sup>.

The notion of peace, which was a motor value in the foundation of the European Community, and which served to justify the Union's further enlargement, has been constitutionalized and enshrined as its prime objective under article 3, paragraph 1 of the Lisbon Treaty<sup>96</sup>. On grounds of the Union's resources and capabilities, the peace objective can be fulfilled in three ways. First, peace can be maintained between European States through membership<sup>97</sup>. Second, it can be guaranteed by means of peaceful relations based on cooperation with neighbouring countries<sup>98</sup>. Third, peace and international security are generally promoted through the EU's external actions<sup>99</sup>. In pursuit of its external policy objectives the EU traditionally uses different means. These comprise political instruments that include diplomacy and negotiation channels, economic means, which include incentives and sanctions, or the military medium<sup>100</sup>.

Manners establishes sustainable peace as the Union's prime normative principle. Conflict prevention, which encompasses the issue of arms control, and more specifically their regulation, thus appears as a counterpart of the EU action in view of promoting sustainable peace. The EU's combined efforts to enhance its policies of "development aid, trade, interregional cooperation, political dialogue and enlargement as elements of a more holistic approach to conflict prevention"<sup>101</sup>, participate in the attempt to render war "materially impossible"<sup>102</sup>. These principles can be effectively defended in an environment such as that advocated by the EU, which favours multilateralism and dialogue over military force.

What are the tools that the EU as normative power uses to tackle the issue of the non-proliferation of small arms? The Union's advocacy in international forums in favour of a more comprehensive and harmonized approach in the area of regional and international small arms control, as part of its security agenda ensuring peace-keeping, the respect of human rights and of the rule of law, builds on two aspects. First, it is grounded discursively on the values and norms inspiring its very construction. Second, it rests on the political and economic instruments at its disposal.

Critics have suggested that given the nature of the EU, multilateralism imposed itself as a logical dynamic of interaction with third parties. In other words: "the European Union's DNA predisposes it

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<sup>93</sup>MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* no 84.1, *op. cit.*, pp. 68.

<sup>94</sup> See articles 2 and 3 of the Lisbon Treaty in KADDOUS, Chrstine, PICOD, Fabrice, *Traité sur l'Union européenne, Traité sur le fonctionnement de l'Union européenne tels qu'ils résultent du Traité de Lisbonne du 13 décembre 2007*, 2008.

<sup>95</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 30.

<sup>96</sup> KADDOUS, Chrstine, PICOD, Fabrice, *Traité sur l'Union européenne, Traité sur le fonctionnement de l'Union européenne tels qu'ils résultent du Traité de Lisbonne du 13 décembre 2007*, 2008.

<sup>97</sup> MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* no 84.1, *op. cit.*, pp. 69.

<sup>98</sup> *Ibid.*, pp. 69.

<sup>99</sup> *Ibid.*, pp. 69.

<sup>100</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, 2006, pp. 33.

<sup>101</sup>MANNERS, Ian, "The Normative Ethics of the European Union", *International Affairs* no 84.1, *op. cit.*, pp. 68.

<sup>102</sup> *Ibid.*, pp. 68.

to support multilateralism”, as the latter constitutes a means for the EU to increase the legitimacy of the norms it defends by shaping the behaviour of others<sup>103</sup>. The Union’s preference for multilateralism is justified by its utility as a tool of communication, which potentially helps to maintain pacific relations with third parties. It allows the Union to cooperate on a dynamic of dialogue and political compromise. Petiteville qualifies multilateralism in terms of “une idéologie”<sup>104</sup> and defines it as being:

“La production par les Etats, les organisations internationales et les ONG des normes et des règles visant à établir un ordre international coopératif régissant les interdépendances internationales<sup>105</sup>”.

The meaning of this notion therefore refers to “une valeur”, to “un principe dynamique de coopération”, as well as “une impulsion vers l’universalité” and “un principe d’organisation de la vie internationale”<sup>106</sup>. All these are parameters that the Union tries to impose through its agency grounded on the ethical use of norm.

Manners qualified the Union in terms of “normative power” in order to surpass the civilian / military dichotomy in favour of “a focus upon the ideational impact of the EU’s international identity / role”<sup>107</sup>. The concept of normative power is an attempt to suggest that not only is the EU constructed on a normative basis but also that this predisposes it to act in a normative way in world politics. It is built on the crucial, and usually overlooked observation, that the most important factor shaping the international role of the EU “is not what it does or what it says, *but what it is*”<sup>108</sup>. In short, this chapter has attempted to put forth the assumption that the Union’s comprehensive approach, relying as much on effective policies as well as on persuasion tools, is an effective medium allowing it to act as normative power, and subsequently to enhance its status as global political actor. The enduring question is the following: what of the limits of this process?

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<sup>103</sup> MANNERS, Ian, “The Social Dimension of EU Trade Policies: Reflections from a Normative Power Perspective”, *European Foreign Affairs Review*, n° 14, *op. cit.*, pp. 801.

<sup>104</sup> PETITEVILLE, Franck, *Le multilatéralisme*, 2009, pp. 12.

<sup>105</sup> *Ibid.*, pp. 13.

<sup>106</sup> *Ibid.*, pp. 12.

<sup>107</sup> BRETHEBERTON, Charlotte and VOGLER, John, citing Manners, “Normative Power Europe: a contradiction in terms?”, pp. 238 in *Journal of Common Market Studies*, Vol.40, no 3, qtd. in *The European Union as a Global Actor*, *op. cit.*, pp. 42.

<sup>108</sup> LUCARELLI Sonia, MANNERS Ian (Ed.), *Values and Principles in European Foreign Policy*, *op. cit.*, pp. 6.

## Chapter II

### The Small Arms and Light Weapons Network

“As to complexity, we know that the international trade in small arms is a multifaceted phenomenon. There are complex interactions between the public and the private, the state and the civilian, the licit and the illicit, the national and the international. Most small arms begin as legal commodities, whether sold to states or directly to civilians. But because they are durable they are often sold and resold many times, creating a range of opportunities for diversion from legal to illegal markets. Illicit arms traffickers respond to demand and will supply weapons to anyone who can afford them, whether they are combatants in civil war or criminal gangs in the inner city. Consequently it is difficult to separate the small arms which fuel ‘conflict’ from the small arms which fuel ‘crime’. Indeed in some regions the two are inseparable. And because illicit markets are fuelled by diversion of small arms from licit markets, a comprehensive strategy to combat the illicit trade must not ignore licit markets”<sup>109</sup>.

#### **Abstract**

In order to better put into perspective the overall efficiency of the measures encompassed in the Union’s instruments in the area of arms control to be discussed in the following chapter, this section will engage with the technical aspects inherent in the Small Arms and Light Weapons circuit. An insight into the specificities of small arms, as well as an overview of the different levels composing their circuit would allow us to better understand in what ways the EU can establish itself as a relevant example in matters of small arms control. The hypothesis hereby proposed is that its capabilities in this domain, enhanced by the consistency and coherence of the position of its member states in international negotiation forums would help to influence more effectively the international decision-making process. It would also reinforce its impact with respect to the establishment of a legally binding instrument regularizing the trade in conventional arms, as a category including small arms and light weapons, as well as on adopting global marking and tracing standards. On grounds of its agency as global power involved in promoting the use of norm and of responsibility as key notions governing global dynamic, we will question the ways in which the EU provides an interesting response to small arms and light weapons illicit dissemination and accumulation.

#### **1. Conceptualizing the EU and small arms and light weapons proliferation**

In view of putting into perspective both the effectiveness and the flaws inherent in the Union’s policies aiming the non-proliferation of small arms, the present chapter discusses the specificities of this type of weapons, as well as the concerns and challenges in controlling their flow at the transnational level. The first part of this chapter endeavours to convey a comprehensive take on the small arms system. It provides a theoretical insight on the notion of small arms controls and on its constitutive counterparts from the perspective of a transnational context. This section discusses the importance of agreeing upon common definitions when tackling the issue of small arms within a cross-border situation. Besides mapping small arms and light weapons as a subcategory of Conventional Weapons, the role of definitions is to establish the types of weapons ranging under this name. Their identification permits to sort out their specificities, and so to shed light on how they determine the complexity of the fragmented, multi-level small arms and light weapons circuit. It is commonly acknowledged that in a transnational context, the use of common definitions enhances cooperation and coordination practices, thus allowing easier tracing and prosecution of non-compliant

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<sup>109</sup> WILPF, <http://www.reachingcriticalwill.org/social/genderdisarm/WILPFSMALLARMS.html>



entities. Employing common definitions may also help to approximate the different marking, registration and transparency procedures enduring between national orders. Stricter and shared definitions may trigger improved approximation and may thus help to level the differences between domestic practices.

Furthermore, by discussing the ways in which licit weapons become illicit, this chapter provides a brief view of the relationship between the licit and the illicit markets. The easy conversion of legal arms into illegal arms will put into perspective the concerns of the unregulated arms trade. The numerous types of existing transfers thus often result in deviated arms that are quite impossible to track by competent authorities. Regulating transfers means that appropriate and systematic measures must be taken at the domestic level during the production and post-production phases.

A perspective on the small arms circuit notably offers a glimpse on the weaknesses and gaps of control mechanisms, while emphasising the key-role of states in the process, as well as the necessity of harmonizing national practices. Accountability and co-responsibility of actors and of national governments thus emerge as key-instruments in tackling small arms proliferation in a cross-border framework. Indeed, as most weapons become illicit during their post-production phase, national governments play a crucial role in guaranteeing that the transfers they effect entail as little deviation as possible. Import, export, retransfer and brokering must hence be subject to very strict rules whose respect should be controlled by a competent jurisdiction. Furthermore, loopholes in control mechanisms are due to the lack of the harmonization of marking, registration and transparency proceedings of small arms at the regional and global levels. This factor accounts for their difficult tracking once they are deviated from the licit to the illicit markets.

Conveying a theoretical perspective on the intricacies of small arms and on the concerns triggered by their transfers helps to stress the importance of applying a common set of rules relative to the import and export of arms as a means of combating more effectively their proliferation within a cross border framework. The existing *EU Code of Conduct on Arms Export* also illustrates how “EU policy-making feeds back into national foreign policy decisions”<sup>110</sup>. By pushing for the EU to adopt a non-binding Code of Conduct on Arms Exports “as part of its foreign policy with an ethical aspect”<sup>111</sup>, the UK had to conform to the standards it advocated and so to upgrade them. What is more, the UK’s successful initiative triggered the subsequent alignment of the other member states in these matters. The *EU Code of Conduct on Arms Export* regulating the transactions exercised by Member States puts forth the Union’s capability in this domain.

By providing the example of the 27 Members States being able to agree upon a common instrument providing common standards in terms of arms exports, the EU may set itself as example of a supranational polity composed of sovereign states which have accepted and adhered to common rules in this sector. The existence of such instruments, showing the engagement of member states in the area of arms control, may potentially enhance its influence within the negotiation processes aiming the adoption of a global legally binding treaty regulating the conventional weapons trade, set for 2012. The Union’s current engagement under the 2009 and 2010 Council Decisions establishing the promotion of the negotiation of an international, comprehensive, legally binding instrument on the conventional arms trade could turn out to be a leap forward in helping to control the spread and excessive accumulation of weapons in vulnerable regions, where these tools are often used in violation of International and Humanitarian Law.

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<sup>110</sup> SMITH, Karen, *European Union Foreign Policy in a Changing World*, *op.cit.*, pp. 198.

<sup>111</sup> SMITH, Karen, *European Union Foreign Policy in a Changing World*, *op.cit.*, pp. 198.

## 2. The complex field of SALW control: technical aspects

### 2.1. *An insight into the challenges of controlling small arms transfers*

Addressing the question of small arms light weapons proliferation at the global level signifies dealing with a highly fragmented system defined by distinct national monitoring measures and practices. The logic of fragmentation induced by the globalization process entails a constant reconfiguration of the traditional notions of state sovereignty and of frontier. In the context of the globalized world order and of its porous frontiers, small arms transfer controls represent a real challenge. Thus, discussing small arms proliferation signifies not only accounting for its specificities, but also understanding the importance of regional parameters when dealing with its concerns. Addressing the intricacies of the illicit accumulation and dissemination of weapons at the regional level thus requires an evaluation of the factors defining it. In this sense, the distinct regional responses to firearms proliferation developed in different parts of the world are useful in providing a more comprehensive view on this issue for decision makers. The *Small Arms Survey* establishes South America as a relevant case study showing the importance of harmonizing national measures when coping with small arms illicit trafficking. In the South American context, the harmonization of domestic small arms control laws is fundamental “as legal flaws in neighbouring countries are used by criminals in order to purchase and smuggle small arms across national borders”<sup>112</sup>. Being informed with respect to the best practices and policies developed in this field can notably make a difference in the process of agreeing on an inclusive and effective legally binding global instrument.

An inclusive and effective response to the weaknesses and gaps of SALW control systems requires a comprehensive perspective on its structural levels. Thus, understanding the processes inherent in the small arms light weapons circuit, which encompasses the production of small arms and of their ammunitions, the crucial role of State Governments in effectively and systematically complying with marking and registration measures, as well as with export, import and brokering standards – is an essential step in coping successfully with its transnational dimension. The approximation of national practices relative to the minimum standards regarding small arms and light weapons and ammunition marking, to the systematic registration of their production and transfers, and notably to the physical inspection of weapons when transferred<sup>113</sup> are essential steps in preventing their proliferation.

The *UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons* emphasises state responsibility and action in issuing and implementing “necessary legislative and other measures to establish as criminal offences under domestic law the illegal manufacture, possession, stockpiling and trade of SALW within their area of jurisdiction”<sup>114</sup>. National and regional action is nevertheless insufficient. Coping with the small arms proliferation circuit at the national and regional levels exclusively is ineffective, as transnational non-compliant conducts are difficult to prosecute and sanction. Impunity subsequently emerges as a serious issue.

Successful prosecution in this domain requires a global, multilevel response, with respect to criminalization, coordination and sanctioning practices on non-compliant small arms illicit production and transfers. These approaches should be completed by further humanitarian initiatives. Agreeing upon a legally binding instrument would be an important step forward in this process. An international instrument regulating the trade in conventional arms, by notably establishing strict standards for arms transfers between actors, would licit more harmonized practices relative to control systems and record keeping at the international level. Moreover, if States complied with internationally shared standards, coordination and cooperation between domestic and regional competent organs in

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<sup>112</sup> *Small Arms Survey*, <http://www.smallarmssurvey.org/>

<sup>113</sup> GRIP, pp.8, [http://www.grip.org/pub/rapports/rg04-4\\_convmarquage-en.pdf](http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf)

<sup>114</sup> *UN Programme of Action to Prevent, Combat, Eradicate the Illicit Trade in SALW*, 2001, [http://www.nti.org/e\\_research/official\\_docs/inventory/pdfs/aptsarms.pdf](http://www.nti.org/e_research/official_docs/inventory/pdfs/aptsarms.pdf)

this area would be enhanced and the loopholes in the control systems could be surpassed. In order to establish “the most adequate way to harmonize legislation in this domain at a global level” an in-depth legal study is required <sup>115</sup>. Researchers agree that establishing an international instrument on marking and tracing and a global legally binding Treaty regulating the trade in conventional arms would be the most realistic means of tackling this issue successfully.

My claim is that the participation of regional actors in the combat against small arms proliferation is an important step in the process of agreeing on a global instrument in this area. I will briefly put forth several hypotheses relative to the contribution of regional organs in enhancing the efforts towards establishing a comprehensive instrument regulating arm transfers and strengthening existing control practices. Given its aim to regulate the transnational trade in arms, the provisions of the Treaty would then build on the approaches proposed by the various existing instruments with respect to the challenges of arms control systems. First, the provisions encompassed in the distinct regional instruments tackling this issue, would help to lay down efficient provisions under the Treaty. Second, the dialogue and expertise sharing between sub- and interregional actors would trigger a complementary and more comprehensive approach to the complex issue of small arms and light weapons proliferation. The prospect of this interactive framework would ensure, as a consequence of the use of the best practices tested at regional scales, an improvement in arms control mechanisms.

## *2.2. The necessity of common and detailed definitions of small arms and light weapons in national, regional and international documents*

Experts agree that preventing and combating the deviation of small arms and of their ammunitions to the illicit market at the transnational level requires the existence of a clear framework regulating manufacture, transfers and brokering. Improvement in arms control systems depends on the establishment of a common, precise and detailed definition of small arms and light weapons, of ammunition and of their components, as well as of their marking and registration. The responsibility of actors, the criminalization of conducts and the appropriate sanctions, are elements that must be taken into consideration in order to combat SALW in a comprehensive way. Researchers claim that the establishment of standard and explicit definitions of this category of weapons is the primordial criterion towards the harmonization of national, regional and global legislations in this field. Establishing progressive common standards in terms of national production, record-keeping, import and export rules and sanction systems cannot be properly achieved unless definitions are shared and respected.

Agreeing upon a list of definitions to be integrated in regional and international instruments regulating the different levels of SALW controls would help to counter the flaws in domestic policies. If states referred to a specific set of existing definitions when applying national measures aiming to combat the unregulated spread of arms, weaknesses in control systems would be partially avoided. What is more, a common reference system would entail more transparency and would ease and accelerate the mechanisms of mutual assistance and cooperation between competent national and transnational organs in terms of tracking weapons and prosecuting non-compliant conducts.

Hence the importance of establishing a clear, comprehensive list of definitions of conventional arms that should include small arms and light weapons during the negotiations of the Arms Trade Treaty that the EU is currently promoting under its 2009-2010 Common Positions. The scope encompassed in the Treaty, which provides the types of arms – components, ammunitions – and the types of transfers it regulates, will be one of the elements allowing the fruitful fulfilment of its objectives. Indeed, the clarity of the notions falling under the scope of an arms trade treaty is one the conditions of its effective implementation at the national level by State Parties.

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<sup>115</sup>GRIP, pp.8, [http://www.grip.org/pub/rapports/rg04-4\\_convmarquage-en.pdf](http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf)

### 2.3. SALW: a subcategory of conventional weapons

Small arms and light weapons constitute a subcategory of the wider category known by the name of conventional arms. The term “conventional arms” commonly refers to weapons which are not nuclear, chemical or biological. Conventional weapons include small arms and light weapons, sea and land mines, as well as non-nuclear bombs, shells, rockets, missiles and cluster munitions. The use and non-use of conventional weapons during conflict is regulated by the provisions of the *Geneva Convention* and by the *United Nations Convention on Certain Conventional Weapons*<sup>116</sup>.

Reviewing some of the characteristics of SALW may be useful in highlighting the massive abuses that their uncontrolled use entails. First, their specificities allow their extended use within internal conflicts<sup>117</sup>. Their low cost and availability on both civil and military markets increases their presence on the illegal market. Their circulation is hard to control because they are hard to track and easy to transfer<sup>118</sup>. This aspect explains their easy deviation from the legal to the illegal market, as well as their accumulation in post-conflict regions. The illicit spread of SALW constitutes an acute concern as they are operational during decades, they demand little maintenance, they are easy to hide and to transport to zones of conflict where they can be used by a great number of actors ranging from regular armed forces, to rebels, terrorists, children and civil factions wishing to defend themselves<sup>119</sup>.

The destructive potential and consequences of SALW and ammunitions is then amplified by the difficulty of controlling their stay on the legal market. Because of the lack of harmonization between national control systems, weapons that are diverted from the legal to the illegal market are hard to track. It is therefore almost impossible “to go back to the source of these weapons and trace their route”<sup>120</sup>. Their easy deviation to the illicit market while transferred is due to the heterogeneous nature of national systems of marking and record-keeping and to the non-harmonized legislation on exports and brokering of small arms, their component parts and ammunitions.

A comprehensive response to the small arms and light weapons proliferation issue signifies engaging with the complexity of its multilevel circuit. NGO experts have observed that small arms and light weapons control presents itself as a puzzle<sup>121</sup>. What is to be spotted at the core of the twofold, yet interdependent process of illicit dissemination and accumulation of SALW is the difficulty to keep trace of their movement. Berkol states that “one of the major handicaps to struggle against this phenomenon is often the impossibility to identify the connections and responsibilities involved in the illicit production, transfers and uses of small arms”<sup>122</sup>. In this sense, Krause claims that “most governments and non-governmental actors have recognized the complexity of the problem of SALW and are already promoting a diversity of approaches to address it”<sup>123</sup>.

Moreover, small arms and light weapons have a long life and present a fragmented structure, which enhances their destructive potential. Their fragmented structure permits their component parts to be recovered and reintegrated so as to convey a new lethal tool. This aspect permits the recuperation of distinct parts and their re-integration to other pieces. Their destructive potential is therefore enduring. Their tracking becomes almost impossible once they penetrate the illicit market provided that the main structural part and the other components should be systematically marked. The parts disseminated illicitly thus give way to the perpetration of new offences.

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<sup>116</sup>Congressional Research Service Reports on Conventional Weapons Systems, <http://www.fas.org/sgp/crs/weapons/index.html>

<sup>117</sup>GRIP, pp. 15, <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=511>

<sup>118</sup> *European Commission*, pp.5, [http://ec.europa.eu/external\\_relations/cfsp/salw/docs/small\\_arms\\_en.pdf](http://ec.europa.eu/external_relations/cfsp/salw/docs/small_arms_en.pdf)

<sup>119</sup>GRIP, <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=511>

<sup>120</sup> GRIP, [http://www.grip.org/pub/rapports/rg04-4\\_convmarquage-en.pdf](http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf)

<sup>121</sup> *Amnesty International, Iansa*, [http://www.iansa.org/documents/2005/markings\\_tracing\\_report\\_jan2005.pdf](http://www.iansa.org/documents/2005/markings_tracing_report_jan2005.pdf)

<sup>122</sup> GRIP, <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=511>

<sup>123</sup> pp. 2, <http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5LLHN2?OpenDocument>

Krause highlights the important distinctions between the production and transfers of small arms and light weapons and that of other major conventional weapons. He estimates the number of countries producing SALW to at least 70 states, which surpasses the number of states producing other conventional weapons. Five EU member states are among the ten largest suppliers of conventional weapons: France, the UK, Germany, the Netherlands and Italy<sup>124</sup>. Krause also emphasises that “unlike major conventional weapons systems, which are principally traded between states, SALW have three distinct sets of clients: national arsenals (military, police), non-state actors (both domestic and extra-national) and other foreign governments”.<sup>125</sup> These two factors illustrate the concerns inherent in small arms transfers control and the concern of their leakage to the illicit market.

#### 2.4. Definitions of small arms and of their ammunitions

The definitions of small arms and of their ammunitions vary slightly depending on the instruments in which they are mentioned. *The Small Arms Survey* distinguishes between the different types of small arms and light weapons by referring to the differences between their size, cost and destructive capacity<sup>126</sup>. According to the *Small Arms Survey* the term “small arms and light weapons encompasses small arms intended for both civilian and military use, as well as light weapons intended for military use”<sup>127</sup>. *The Small Arms Survey* often follows the definition used by the *United Nations Report of the Panel of Governmental Experts on Small Arms* that lists the weapons entering each of the two categories. Thus, on grounds of the list drawn by the *United Nations Report of the Panel of Governmental Experts on Small Arms*, the *Small Arms Survey* uses the term “small arms” to designate such weapons as “revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles, and light machine guns”<sup>128</sup>.

The notion of ‘light weapons’ encompasses “heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of calibres of less than 100 mm”<sup>129</sup>. The same sources define “ammunitions” as consisting of: “cartridges for small arms, shells and missiles for light weapons, mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems”. Anti-personnel, anti-tank hand grenades and landmines also figure under the term “ammunitions”<sup>130</sup>.

#### 2.5. Licit and illicit transfers: the two faces of the small arms and light weapons circuit

In order to tackle the question of small arms proliferation it is fundamental to understand the relationship between the legal and the illegal markets, as well as between the civil and the military markets. Berkhol observes that there is an overlapping between civil and military weapons, as military arms are spread within the civil society when surplus stocks are sold. The concern of the deviation of military weapons is that these tools are more lethal than civil ones. In Rwanda, Mozambique and South Africa for instance, huge quantities of arms were distributed to civil populations for distinct

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<sup>124</sup> SMITH, Karen, *European Union Foreign Policy in a Changing World*, *op. cit.*, pp. 164.

<sup>125</sup> pp. 6, <http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5LLHN2?OpenDocument>

<sup>126</sup> *The Small Arms Survey*, <http://www.smallarmssurvey.org/>

<sup>127</sup> *Ibid.*

<sup>128</sup> *United Nations Report of the Panel of Governmental Experts on Small Arms and The Small Arms Survey*, <http://www.fas.org/asmp/campaigns/smallarms/IssueBrief3ArmsTrafficking.html>

<sup>129</sup> *Ibid.*

<sup>130</sup> *Ibid.*

Also, see pp. 52 of the Appendix, under Chapter II, point 1, for further definitions of small arms and light weapons, such as those encompassed in the 2002 *Joint Action on the European Union’s Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons and Repealing Joint Action 1999/34/CFSP*, (2002/589/CFSP).

reasons<sup>131</sup>. Another example is constituted by the United States Army, which charged the company CMP to sell an important quantity of firearms to individuals and to shooting galleries in order to eliminate its stocks of firearms<sup>132</sup>. Such circumstances not only entail the deviation of an important number of firearms to the illicit market, but also trigger the progressive militarization of the civil society and the creation of a culture of violence. Experts state that civil weapons are often used during conflict and that military ones are quite easily deviated to the civil society and towards criminal networks<sup>133</sup>. Research in the area notably shows that criminal networks control arms trafficking among civil populations and play a key role in weapon delivery during violent conflicts<sup>134</sup>.

According to the *Small Arms Survey*, a further study and assessment of the relations between authorized and illicit trade in small arms would improve the prevention policies aiming their non-proliferation. In order to briefly establish the meaning of licit and illicit transfers I will rely on distinct sources, such as the *Small Arms Survey* as well as on GRIP reports<sup>135</sup>. The *Small Arms Survey* enunciates “legal transfers” as occurring “with either the active or passive involvement of governments or their authorized agents, and in accordance with both national and international law”<sup>136</sup>.

The secondary circuit of small arms and light weapons proliferation encompasses the potentially legal market, or the “grey market” as well as the “black market”. The black market includes wholly illicit transactions. The secondary circuit therefore consists of SALW transactions, which “are not sanctioned by relevant state authorities at the appropriate official level, or that are state-authorized but secret”<sup>137</sup>. According to the *Small Arms Survey*, the “illicit grey market transfers” consist of “Governments, their agents, or individuals exploiting loopholes or intentionally circumventing national and / or international laws or policies”<sup>138</sup>. On the illegal black market however transfers are transactions made “in clear violation of national and / or international laws and without official government consent or control”<sup>139</sup>. These transfers may also “involve corrupt government officials acting on their own for personal gain”<sup>140</sup>.

Stemming illicit trafficking and use of small arms and light weapons signifies coping with a complicated, multilevel network. The arms control system is a loophole circuit where weapons production, legal and illegal transfers, export and brokering are regulated by distinct national, regional and international legislative instruments in force. The key initiatives developed in order to tackle the problem of SALW illicit dissemination bring into focus the importance of what Krause calls the “First Generation” supply measures. First generation measures consist of the marking and tracing of SALW and of their ammunitions, of export control initiatives, as well as of stockpile management and security. Among the global and regional instruments regulating the circulation of SALW, we recall the *UN Programme of Action* (2001), the *UN Firearms Protocol* (2001, 2005), the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement*, the *OAS Firearms convention / Model regulations*, the *EU initiatives*, the *OSCE Document on SALW*, the *ECOWAS Convention* and the *SADC and Nairobi Protocols*. The second chapter will bring more light on the instruments developed by the EU in this area.

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<sup>131</sup> GRIP, pp 12, <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=511>

<sup>132</sup> *Ibid.*, pp. 13.

<sup>133</sup> *Ibid.*, pp. 13.

<sup>134</sup> *Ibid.*, pp. 13.

<sup>135</sup> *Ibid.*

<sup>136</sup> *The Small Arms Survey 2001*, pp. 167.

<sup>137</sup> Krause., pp. 8, <http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5LLHN2?OpenDocument>

<sup>138</sup> *Ibid.*, pp. 8.

<sup>139</sup> *The Small Arms Survey 2001*, pp. 167.

<sup>140</sup> *Ibid.*, pp. 167.

## 2.6. *The role of states in regulating and controlling the illicit spread of small arms and of ammunitions*

While establishing the traditional model of arms proliferation and control, Krause acknowledges the impossibility to capture its reality from a global perspective<sup>141</sup>. Nonetheless, Krause's scheme retraces an approximate overview of the major SALW transfers, and identifies states and national governments as key actors in the small arms production and transfer processes. The model he establishes is grounded on three assumptions: 1. that most arms production is *government* controlled or authorized; 2. that most transfers are conducted on a *government-to-government* basis; 3. that recipient states do not produce or transfer significant quantities of arms<sup>142</sup>.

This scheme also helps to establish the distinct spots escaping governmental regulation measures. It therefore puts forth the challenges inherent in SALW control mechanisms. The *UN Programme of Action on small arms and light weapons* (PoA) provides that states are responsible for issuing appropriate legislation, for monitoring its effective implementation, and notably, for sanctioning offences occurring on their territory<sup>143</sup>. The *UN Programme of Action* (PoA) invests states with full competence relative to non-compliant conducts relative to small arms manufacture and transfers occurring on their territory. States therefore regulate the process of production, acquisition, export, brokering and sanctioning. Fighting the illegal dissemination of SALW at the national, regional and global levels subsequently requires the full participation of national governments in all processes ensuring efficient tracing. Competent state authorities must be equipped to tackle the specificities of small arms and light weapons illicit dissemination and accumulation.

The following section aims to show by which means states constitute key-actors in the small arms proliferation scheme. Since national governments play a key role in production and transfer procedures, they must be technically and logistically equipped to meet these requirements. In this sense, numerous states having submitted observations in the UN General Assembly with respect to the provisions that a Treaty on arms trade should encompass, have argued in favour of including the possibility for state parties to benefit when necessary from technical and logistical assistance allowing them to comply with its measures<sup>144</sup>.

## 2.7. *The dangers inherent in a loophole pattern: the importance of effective marking and tracing in combating small arms and light weapons proliferation*

As a consequence of systematic and appropriate marking, firearms can be registered and successfully tracked when non-compliant. Marking is therefore a crucial step in tracing firearms. It allows to follow the course of these tools and to reach their actual source<sup>145</sup>. Marking and tracing are processes that ensure an improved control of SALW and a means to identify them when diverted to the illegal market. Marking and tracing function as necessary steps in prosecuting non-compliant weapons. Marking practices have gained in visibility and in importance when the international community has become aware of the importance of tracing weapons in order to limit the disasters caused by their illicit dissemination and accumulation in particularly vulnerable areas. The intervention of states during the production phase, before and during transfers constitutes a way of reducing such calamities.

Small arms, light weapons and ammunitions should be marked when manufactured in a clear and precise way so as to guarantee their effective tracking as well as the application of sanctions in case of violations. More concrete results in this area would be reached if the international community decided

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<sup>141</sup> Krause, pp. 2, <http://www.reliefweb.int/rw/lib.nsf/db900SID/LGEL-5LLHN2?OpenDocument>

<sup>142</sup> *Ibid.*, pp. 2

<sup>143</sup> GRIP, pp. 8, [http://www.grip.org/pub/rapports/rg04-4\\_convmarquage-en.pdf](http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf)

<sup>144</sup> for a fuller view of the role of states in matters of production, transparency and stockpiles management of SALW, see pp. 53-54 of the Appendix, under Chapter II, point 2.

<sup>145</sup> GRIP, pp. 11, <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=511>

to negotiate an internationally binding treaty providing common standards relative to marking and tracing practices. Establishing common minimum and detailed marking and registration standards, whose implementation would be handled by state parties, would entail a more effective tracing of illicit weapon transfers at the international level.

Establishing universal marking and registration systems would permit competent authorities to cooperate and coordinate their efforts in establishing at which moment of the transfer chain an infringement occurred. Thus, the existence of an international instrument on reliable marking and tracing would ease the sanctioning of non-compliant factions and thus reduce their uncontrolled dissemination. What is more, the biggest producers of SALW in Europe are industrialized states, which signifies that they can effectively upgrade their marking and registration procedures and policies in the area of arms control. European small arms producers benefit from a context enabling them to act as responsible producers and exporters. Acting responsibly at the regional level would help to set the example internationally and would potentially co-opt other regional actors to more transparent and ethical behaviours in the area of arms control. Strengthening EU standards in matters of marking and tracing and of arms export policies, would send out a clear message in terms of the individual and collective responsibility of states. From the perspective of the reinforcement of its status as global actor, the fore-mentioned co-option logic would legitimize the Union's role as peace actor exercising its power and influence through the norm.

#### a. Marking

The process of marking weapons is crucial, as it allows effective tracing and contributes to a better transmission of information on non-compliant weapons between competent authorities. Marking indicates the type of arm, the serial number and in some cases, a quality standard number or acronym<sup>146</sup>. Experts claim that “à n'importe quel moment, un élément de marquage devrait permettre d'accéder aux informations portant sur la dernière transaction et l'origine de l'objet”<sup>147</sup>.

Marking permits competent organs to trace smugglers and combat illicit arms trade efficiently. However, according to *GRIP* reports traditional marking lacks precision and allows lethal tools to be easily deviated to the illegal market. *GRIP* experts assess that “current marking practices are neither sufficient nor uniform and are sometimes altogether lacking”<sup>148</sup>. The *Small Arms Survey* has observed that among the 74 States having signed the *UN Protocol on firearms*, very few mark their weapons upon import<sup>149</sup>. Expert documentation also shows that the laser marking technique allows “security markings to be applied simply and economically”. Marking can occur on several components of the weapon. Specific focus should be given to the main part of the weapon, which should not be replaced<sup>150</sup>. Imprecise marking practices consequently hinder identification and tracing processes. In such circumstances, serial numbers may be removed or falsified, as the numbers marked on arms do not clearly designate the number of manufacture or the factory that produced them<sup>151</sup>. Effective marking processes should impart each weapon with a distinct identification: a unique serial number, the manufacturer's identification and the year and the country of manufacture. A gradual harmonisation of marking practices would in the long term facilitate transfers controls and effective tracking of non-compliant weapons.

The use and misuse of small arms depends on the availability of ammunition. In this respect the UN Group of Governmental Experts on Tracing Illicit Small Arms and Light Weapons established that

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<sup>146</sup> *GRIP*, pp.23, [http://www.grip.org/pub/rapports/rg04-4\\_convmarquage-en.pdf](http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf)

<sup>147</sup> *GRIP*, pp. 45, <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=511>

<sup>148</sup> *GRIP*, pp. 23, [http://www.grip.org/pub/rapports/rg04-4\\_convmarquage-en.pdf](http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf)

<sup>149</sup> *The Small Arms Survey*, 2009, *Les ombres de la guerre*,

[http://www.un-ngls.org/spip.php?page=article\\_s&id\\_article=1481](http://www.un-ngls.org/spip.php?page=article_s&id_article=1481)

<sup>150</sup> *GRIP*, pp. 55, <http://www.grip.org/fr/siteweb/dev.asp?N=simple&O=511>

<sup>151</sup> *GRIP*, pp. 23, [http://www.grip.org/pub/rapports/rg04-4\\_convmarquage-en.pdf](http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf)



“ammunition and explosives (...) are regarded as part of the problem of small arms and light weapons”<sup>152</sup>. Therefore high standards allowing effective tracing of ammunition are crucial when dealing with the illicit spread of small arms. Since illicit weapons and ammunition flows are often trafficked via the same routes, identifying and tracing ammunition flows may reinforce the prevention of arms leakage. Clear marking of ammunition indicating the lot number, the manufacturer, the year and country of manufacture permits, when the ammunition is used in violation of international law, to identify “the supply chain of the perpetrator”<sup>153</sup>. An obstacle to implementing such high marking standards was the Governments’ argument over the costs it would induce for manufacturers and for those in charge of record-keeping systems<sup>154</sup>. However, under Brazilian legislation ammunition is to “be placed in packages containing a bar code engraved on the box”<sup>155</sup>. This enables the identification of the manufacturer and of the purchaser and imposes the responsibility of the entities engaged in the illicit transfer.

#### b. Registration

Tracing small arms and light weapons rapidly and precisely requires the establishment of national and international records where all transactions are listed<sup>156</sup>. National and international registers for SALW and ammunitions transfers permit the tracing of their circulation. In order to trace possible diversions of small arms and light weapons to the illicit market, it is important to include in the national registers detailed information about the weapons that have been produced and are to be transferred. The information requiring registration encompasses the coordinates of the parties engaged in the transaction of the weapons, details of the marking, a clear description of the weapons and the quantity that is to be transferred<sup>157</sup>. It is notably useful to register indications relative “to the intermediaries and transport companies engaged in the transfer and to the route taken” by the tools<sup>158</sup>.

Uniform and appropriate tracing and sanctioning systems of non-compliant weapons can only be successful in a context where national marking and registration practices are harmonized. The existence of an international register would not only guarantee better tracing, but would also help to combat impunity. Indeed, the presence of such an instrument signifies that when transferred from the state where the weapons were marked and registered manufacturers and other non-compliant entities cannot escape sanctions.

#### c. Tracing

In view of permitting a successful tracing of non-compliant small arms and thus allow a uniform application of sanctions, states must ensure an unrestrained exchange of information between their national agencies<sup>159</sup>. The execution of physical controls of recorded weapons during transfers is another way of completing the tracing operations. These interventions render the tracking process more effective. High standard tracing measures of illicit small arms and light weapons and ammunition allow the identification of the transaction chain and the entities involved in procuring arms to actors acting in violation of International and Humanitarian Law<sup>160</sup>. However, States provide

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<sup>152</sup> *Amnesty International, Iansa, Oxfam*, pp. 13-14,

[http://www.iansa.org/documents/2005/markings\\_tracing\\_report\\_jan2005.pdf](http://www.iansa.org/documents/2005/markings_tracing_report_jan2005.pdf)

<sup>153</sup> *Ibid.*, pp. 14.

<sup>154</sup> *Ibid.*, pp. 14.

<sup>155</sup> *Ibid.*, pp. 15.

<sup>156</sup> GRIP, pp. 25, [http://www.grip.org/pub/rapports/rg04-4\\_convmarquage-en.pdf](http://www.grip.org/pub/rapports/rg04-4_convmarquage-en.pdf)

<sup>157</sup> *Ibid.*, pp.25.

<sup>158</sup> *Ibid.*

<sup>159</sup> *Ibid.*, pp. 13.

<sup>160</sup> *Amnesty International, Iansa, Oxfam.*, pp. 19,

[http://www.iansa.org/documents/2005/markings\\_tracing\\_report\\_jan2005.pdf](http://www.iansa.org/documents/2005/markings_tracing_report_jan2005.pdf)

a weak response to UN requirements formulated with respect to tracing measures. According to the *2009 Small Arms Survey*, only 30% of the tracing requirements have been met by States<sup>161</sup>.

### **3. Enacting the norm: an attempt to regulate the global trade in conventional arms by promoting a global Arm Trade Treaty?**

Why then examining the EU as a study case of a potentially *successful* regional small arms control system? For an actor to successfully promote and export its norms, it should be able to account for its own capabilities with respect to a specific field of action. As argued in the first chapter, the Union's capacity to influence and fashion the choices of the international community relative to the adoption of an instrument on the conventional arms trade as well as further first generation control measures mainly depend on two elements. These are the opportunity and capability factors. On the one hand, its opportunity to act is provided by the current activities undertaken by the UN in view of the 2012 negotiation of an Arms Trade Treaty. This context entailed the adoption of the CFSP Council Decisions relative to the promotion of such an instrument among third parties. On the other hand, its capabilities relative to small arms non-proliferation may be measured against the instruments and policies developed as part of its external action, within the CFSP and by means of development agreements, as well as within the Justice and Home Affairs Area (JHA).

My claim is that the promotion of a legally binding instrument on the trade in conventional arms is an opportunity for the EU to promote its principles and by so doing to strengthen its normative power. As already highlighted, the uncontrolled spread of weapons may hamper the Union's intention to successfully promote its beliefs and core values as regulating parameters of International Relations. The misuse of conventional arms, and particularly that of small arms and light weapons contradict the global ethical interactions the Union advocates. It hampers the building and development of the infrastructures necessary to sustain a healthy state guaranteeing the safeguard of its citizens' fundamental needs and rights and, and feeds the activities of organized criminal networks. Furthermore, post conflict small arms mismanagement obstructs solid economic development and challenges human security. All these challenges should hence be addressed by the provisions encompassed in prospective legally binding instruments on the trade and tracing of arms.

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<sup>161</sup> *Small Arms Survey*, 2009, *Les ombres de la guerre*,  
[http://www.un-ngls.org/spip.php?page=article\\_s&id\\_article=1481](http://www.un-ngls.org/spip.php?page=article_s&id_article=1481)

## Chapter III

### The SALW policy of the EU: a means to empower its international normative agency

#### **Abstract**

This chapter engages with the Union's responses to the issue of SALW illicit spread and accumulation, and takes into account its regional and global contribution. It will hence discuss some of the EU instruments tackling different aspects of the SALW issue. This section will also attempt to show that the Union's authority as international peace actor advocating more responsible practices and its effective influence on other actors' choices in the sphere of small arms production and transfers depends on its capacity to establish itself as an example in this field. This chapter will also pause on the fact that the Union's promotion of its standards in the area of arms control in view of constructing more ethical international structures regulating the illicit flow of arms requires the coherence and consistency of its Member States' positions on the issue.

#### **1. The EU global actor: assessing its role as international peace actor in the light of its instruments to combat small arms proliferation**

The present chapter will tackle the Union's ability to influence the choices of other political entities in the domain of small arms control by pondering the effectiveness of its internal capabilities, of its existing instruments and policies, as well as their subsequent implementation and development by Member States. Both its credibility and impact as normative actor promoting ethical and transparent mechanisms in the production and transfer of arms thus depend on the improvement of its internal practices addressing SALW non-proliferation. My claim is that the Union's internal capacity amplified by that of its member states to produce appropriate and comprehensive mechanisms tackling the constant evolution and challenges of arms control would legitimize its initiative in this field in the international arenas and would thus consolidate its status as normative power.

In order to have a better grasp over the Union's opportunities to empower its role in the regulation of the small arms circuit, it is fundamental to understand the importance of the EU's institutional dynamic as a key-aspect of its ability to act. Within the framework of the EU, the progression of a policy area widely depends on the competent institutions, on the procedures and on the legislative instruments regulating it in compliance with the Treaty's provisions. It will hence be useful to establish the overlapping EU domains that regulate the SALW production and transfers at the internal and international levels.

By taking into account the specificities of the institutional mechanisms at the heart of the Union's policy-making, the first part of the chapter will look at the role of the European institutions as well as of Member States in issuing and implementing measures in the field of arms transfers. The second part will question whether the changes induced by the entry into force of the Lisbon Treaty will provide the possibility to strengthen the policies regulating the illicit dissemination of small arms within EU territory. We will discuss the changes triggered by the insertion of provisions aiming enhanced prosecution mechanisms relative to transborder organized crime, which includes the illegal trafficking of firearms. In terms of the EU's external action we will question whether the amending provisions of the Reform Treaty will induce more consistency and coherence to its engagements in

the CFSP area. The third part of this section will discuss the joint actions, framework decisions, codes of conduct and strategies produced to address the complexities of SALW controls.

## 2. The European institutional game at the heart of SALW policy making

The Union's borderless territory calls for efficient and coordinated monitoring systems aiming to counterbalance the threat of transborder crime. As subcategory of organized crime, illicit trafficking in small arms induces insecurity, the rise in organized crime and the endurance of armed conflicts in vulnerable regions defined by fragile state structures. As conveyed in the second chapter, the illicit circulation of small arms notably derives from non-authorized transfers, from transactions of unmarked weapons, and other activities resulting in their leakage from the licit to the illicit market. Pertinent measures and policies have been therefore issued at the EU level mainly within the second and third pillars in order to complement the action of Member States.

The effectiveness of EU small arms instruments and policies therefore depends on the institutional factor, as well as on the member states' capacity to reach a common position concerning the standards to be respected at EU and at the national levels in terms of arms transfers. The Union's policies in the field of small arms control also build on substantial agreements with third countries and organisations, and are therefore comprised in its Development policy, which falls under Community competence. The CSFP and the Justice and Home Affairs areas also cope with the issues of small arms control at the external and respectively at the internal levels. The former third pillar also tackles the issue of arm trafficking as a sub-component of transborder crime. Therefore, the improvement of the Union's external and internal monitoring capabilities in terms of arms transfers is inextricable from the changes entailed by the Lisbon Treaty.

Considering the nature of the policies regulated under the second and third pillars, national susceptibilities constitute an obstructive factor to policy-making in these domains. Security, defence and criminal law are pre-eminent aspects of national sovereignty, and are therefore sectors that member states wish to keep under their control. Member states show particular sensitivity over "their role in the areas of traditional foreign and security policy"<sup>162</sup>. Bretherton and Vogler notably stress that the acute impediments relative to CFSP policy-making are generated by the inconsistencies typical of intergovernmental decision-making<sup>163</sup>. Bretherton and Vogler note that the CFSP is a "highly institutionalized and complex process of consultation and cooperation between Member State governments"<sup>164</sup>. In such a framework, action can ensue only "when there is consensus among member states"<sup>165</sup>. However, despite the inconsistency and incoherence obstacles, which often obstruct EU foreign policy-making, academics acknowledge "a gradual strengthening over the past two decades of commitment to and capacity for cooperation" in this sector<sup>166</sup>.

The measures adopted at EU level relating to arms control cover the transfers of small arms at the internal and the external levels. At the internal level, they regulate the control of the circulation of small arms and the cooperation between national administrations<sup>167</sup>. To achieve an effective tracing of arms transfers, various policies, as well as administrative and criminal measures have been developed under the former third pillar. Their objective is to ensure an effective cooperation and coordination between national administrations and other competent Community organs.

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<sup>162</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 162.

<sup>163</sup> *Ibid.*, pp. 162.

<sup>164</sup> *Ibid.*, pp. 163.

<sup>165</sup> *Ibid.*, pp. 163.

<sup>166</sup> *Ibid.*, pp. 163.

<sup>167</sup> EUROPA, [http://ec.europa.eu/home-affairs/policies/crime/crime\\_intro\\_en.htm](http://ec.europa.eu/home-affairs/policies/crime/crime_intro_en.htm)

Most of the Union's existing instruments aiming to combat the proliferation of conventional weapons, and subsequently that of small arms and light weapons, have been adopted according to the specific intergovernmental procedures of the second pillar. Thus, the object, scope and implementation of these instruments are subject to and conditioned by the limitations of the second pillar decision-making procedures. However, the concrete consequences of the EU instruments developed to better monitor arms production and transactions depend on the effective implementation of the measures they provide. Although the Union can assist Member States in developing domestic transparency and monitoring mechanisms, the implementation of EU instruments falls under the competence of national authorities and of their administrative and technical capacities and services. Within the Union's territory, the implementation policies relative to the combat against firearms trafficking notably aim a more efficient control over the sales and the legal possession of arms. These control policies establish monitoring mechanisms relating to the movement of arms within the EU, and call for mutual cooperation between national police services and customs. Complementary assistance in this respect is provided by Europol, Eurojust and by the European Judicial Network<sup>168</sup>, which function as coordination tools<sup>169</sup>.

Complementary initiatives to the internal control mechanism of arms have been adopted within the framework of the CFSP. These instruments encompass policies aiming at preventing and eradicating conventional arms trafficking, an *EU Code of Conduct* relative to the export of conventional weapons, and distinct instruments tackling the non-proliferation of small arms and light weapons. On grounds of the fact that EU member states are major arms producers, and that certain South-Eastern European countries possess important stocks of arms inherited from the Cold War period, strict regulation on arms transfers proves essential. Imposing harmonized and clear criteria establishing the circumstances under which EU Member States must not authorize exports of arms to third parties helps preventing their destabilising effect in vulnerable zones where such tools proliferate. The eight main criteria on which EU Member States must ground their exports to third countries, are enunciated in the *EU Code of Conduct on Arms Exports*.

### 2.1. *The Limits of the EU policies relative to SALW non-proliferation: conflicting competences and competing interests*

The following section discusses the procedure governing policy-making within the Foreign Policy and Justice and Home Affairs sectors. Indeed, the limits of intergovernmental decision-making in these policy domains determine and condition the effectiveness of EU action. Under the Treaty on the European Union, the second and the third pillars were strictly intergovernmental and were subject to unanimity in the Council<sup>170</sup>. Therefore, the CFSP and the JHA did no benefit from the effectiveness defining the Community method of decision-making proper to the first pillar.

The effectiveness of the instruments adopted under the CFSP may be evaluated in the light of their adoption procedures as well as against the purpose they serve. The objective of the CFSP is to establish a framework coordinating the foreign policies of Member States<sup>171</sup>. Policy instruments under the CFSP encompass Common Strategies, Joint Actions and Common Decisions. Their substance often overlaps, as they combine "traditional tools of foreign policy, such as diplomacy, economic measures and use of military means"<sup>172</sup>. With respect to the Union's preference for multilateralism, it is worth noting that it can successfully promote its policies in international forums only if unanimous support and coordination of Member States occurs. What is more, the Presidency can speak on behalf of Member States only when "the willingness of their governments permits it"<sup>173</sup>.

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<sup>168</sup> *Ibid.*

<sup>169</sup> *The EU Strategy to Combat Illicit Accumulation and Trafficking of SALW and their Ammunition*, pp. 8, <http://register.consilium.europa.eu/pdf/en/06/st05/st05319.en06.pdf>

<sup>170</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 168.

<sup>171</sup> *Ibid.*, pp. 178.

<sup>172</sup> *Ibid.*, pp. 178.

<sup>173</sup> *Ibid.*, pp. 185.

EU foreign-policy strongly builds on economic measures and multilateralism. Among the economic measures integrated in foreign policy instruments are the conditionalities included into agreements with third countries. Such incentives aim at ensuring the respect of the contracting party for human rights, for the rule of law, democracy, as well as at establishing measures to counter terrorism<sup>174</sup>. A similar example is the use of embargoes on arms exports and export of equipment, in the cases where they are used in the recipient country in violation of International Law or International Humanitarian Law<sup>175</sup>. The objective of these economic measures is to ensure that third countries respect a range of principles that are EU core values, which it attempts to legitimize and promote within its foreign policy endeavours. These proceedings, although not always successful because of the difficulty in reaching agreement, highlight the nature of its actorness and the will to promote more responsible global policies.

Recourse to effective multilateralism is a key aspect of the European Union's action as normative power. According to Vogler and Bretherton, multilateralism expresses "both the Union's preferred approach to international affairs and a desire to emphasize its distinctiveness from the unilateralism of the USA"<sup>176</sup>. The fact that the EU is 'recognized among the UN membership as a formidable force' without whose support nothing gets accomplished"<sup>177</sup>, is proved by the Union's will to promote its normative approach and values through its initiatives in international forums. In this sense, the EU has played a central role in promoting the Kyoto Protocol to the climate Change Convention, in establishing the International Court of Justice, as well as the Code of Conduct on the proliferation of ballistic missiles"<sup>178</sup>. It has notably enhanced a "distinctive, multi-faceted approach to combating terrorism"<sup>179</sup>. Through its diplomatic engagement and action, the EU has earned a "greater recognition by third parties as a serious protagonist" cultivating the multilateral approach<sup>180</sup>.

This is further demonstrated by the 2009 and 2010 EU Common Decisions supporting the Arms Trade Treaty (ATT) process. Under these instruments the EU has undertaken diplomatic action in view of enhancing and promoting its core values and principles through dialogue and socialization. Thus, the EU is currently undertaking advocacy in support of the negotiation process towards the Arms Trade Treaty that is to be negotiated within the UN forum in 2012. Regional discussion forums allowing experts as well as national and regional representatives to further engage with the challenges of agreeing upon a comprehensive, legally binding international instrument, are currently under way.

### **3. Enhanced consistency and monitoring capabilities with the Lisbon treaty?**

#### *3.1. Changes induced in the area of its external action*

Blockmans and Wessel claim that strengthening the Union's role in the world is one of the reasons of the conclusion of the Lisbon Treaty<sup>181</sup>. In short, the Reform Treaty aims to improve the coherence and consistency of its external action, which was under the Treaty on the European Union "seriously hampered by the institutional structure, in which external competences and procedures in all three pillars were kept apart"<sup>182</sup>. One may assume that the integration of the European Community into the

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<sup>174</sup> *Ibid.*, pp. 180.

<sup>175</sup> *Ibid.*, pp. 181.

<sup>176</sup> *Ibid.*, pp. 185.

<sup>177</sup> *Ibid.*, pp. 186.

<sup>178</sup> *Ibid.*, pp. 185.

<sup>179</sup> *Ibid.*, pp. 187.

<sup>180</sup> *Ibid.*, pp. 187.

<sup>181</sup> BLOCKMANS, Steven, WESSEL, Ramses, "The European Union and Crisis Management: will the Lisbon Treaty Make the EU More Effective?", 2009, pp. 9,

[http://www.asser.nl/upload/documents/9212009\\_14424clee09-1full.pdf](http://www.asser.nl/upload/documents/9212009_14424clee09-1full.pdf)

<sup>182</sup>*Ibid.*, pp. 10.

European Union and the Union's newly gained legal personality under article 47 of the New Treaty on the European Union (NTEU) may enhance the coherence of its external action.

The Reform Treaty consists of two parts. The first, the New Treaty on the European Union encompasses all institutional provisions as well as the Common Foreign Security and Defence Policy. The second part, the Treaty on the Functioning of the EU, comprises all policy areas including the former third pillar. Therefore, the former second pillar<sup>183</sup> "will continue to have a separate status in EU law"<sup>184</sup>. Conversely to the new Union procedure, where qualified majority voting is the rule, decisions under the CFSP are grounded on unanimity except in the cases where the Treaty provides otherwise<sup>185</sup>. It is also worth noting that in opposition to the former third pillar, the CFSP is not subject to ECJ jurisdiction, except for the new article 40 NTEU, which replaces article 47 of the TEU<sup>186</sup>.

Manners argues that "in addition to legal personality and guiding principles, the Lisbon Treaty mandates the High Representative of the Union for Foreign Affairs and Security Policy with responsibility for the consistency of the Union's external relations"<sup>187</sup>. These amendments may lead to the assumption that in the fields of development, humanitarian aid, enlargement and trade, greater consistency and coherence may be possible<sup>188</sup>. Bretherton and Vogler suggest that the creation of the posts of President and Foreign Minister indicate "the growing awareness of large Member States that it is both desirable and necessary to construct a foreign policy actor capable of connecting the economic power of the EC to some form of collective political purpose"<sup>189</sup>. Blockmans and Wessel acknowledge "that most of the institutional changes in the Lisbon Treaty relate to the new position of High Representative of the Union for Foreign Affairs and Security Policy"<sup>190</sup>:

"The upgraded role of the High Representative is certainly the most innovative aspect. Apart from his extensive role as key representative of the Union in (all) international affairs, his function has the potential of bridging the divide between Community and CFSP external relations. Its introduction (...) may improve leadership, especially when duly assisted by the Commission, of which s/he will be Vice-President, and the European External action Service"<sup>191</sup>.

Indeed the merging of these two roles into a single position promises an enhanced coherence between external policies and hence a possibility for the Union to become a more visible international actor. This element is part of the improvements that the Reform Treaty offers in compensation for "the choice to separate the foreign, security and defence policy from other external policies, including trade

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<sup>183</sup> With respect to the CFSP areas of competence, the Reform Treaty provides under article 24.1 that:

"The Union's competence in matters of common foreign policy shall cover all the areas of foreign policy and all the questions relating to the Union's security, including the progressive framing of a common defence policy that might lead to a common defence"<sup>183</sup>.

<sup>184</sup> BLOCKMANS, Steven, WESSEL, Ramses, "The European Union and Crisis Management: will the Lisbon Treaty Make the EU More effective?", *op. cit.*, pp. 10,

[http://www.asser.nl/upload/documents/9212009\\_14424clee09-1full.pdf](http://www.asser.nl/upload/documents/9212009_14424clee09-1full.pdf)

<sup>185</sup> *Ibid.*, pp. 32.

<sup>186</sup> VAN VOOREN, Bart, "The Legacy of the Pillars Post-Lisbon: Objectives of the CFSP and the new non-affectation clause", *op. cit.*, pp. 9. Also see Appendix pp. 55, under Chapter III, point 1, for a brief explanation of article 40, as amended by NTEU

[http://www.pravo.hr/download/repository/Bart\\_Van\\_Vooren.doc](http://www.pravo.hr/download/repository/Bart_Van_Vooren.doc)

<sup>187</sup> MANNERS, Ian, "The Social Dimension of EU Trade Policies: Reflections from a Normative Power Perspective", in *European Affairs Review 14*, *op. cit.*, pp. 803.

<sup>188</sup> *Ibid.*, pp 803.

<sup>189</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 187.

<sup>190</sup> BLOCKMANS, Steven, WESSEL, Ramses, "The European Union and Crisis Management: will the Lisbon Treaty Make the EU More Effective?", *op. cit.*, pp. 35,

[http://www.asser.nl/upload/documents/9212009\\_14424clee09-1full.pdf](http://www.asser.nl/upload/documents/9212009_14424clee09-1full.pdf)

<sup>191</sup> *Ibid.*, pp. 46.

and economic, social and environmental development”<sup>192</sup>. Yet, whether this artifice will serve to better attune external policies cannot fully escape doubt.

### 3.2. *A briefing of the evolution of capabilities in the area of the Justice and Home Affairs: from Maastricht to Lisbon*

As argued in the second chapter, being aware of the factors defining a precise territory ensures gaining a more comprehensive view on regional arms control and on how the former can contribute to providing useful feedback in establishing a comprehensive, legally binding instrument at the international level. This section discusses the SALW illicit dissemination in relation with the type of territoriality of the European Union and with its functioning as a supranational institutional body.

Against the background of EU’s specificities, small arms control is grounded on the tension between guaranteeing free movement within its borderless territory and the measures that must be taken for criminals not to benefit from border abolishment<sup>193</sup>. Primarily, evaluating the control of the production and transfers of small arms within its territory means considering the progression achieved during the post-Maastricht period in the area of Justice and Home Affairs relative to prosecution and concurrent jurisdiction<sup>194</sup>. An assumption accounting for a more consistent monitoring of small arms production and transfers, is that three of the key notions that condition an effective control of their circuit, harmonization, cooperation and transparency, are also favourite concepts underlying the Union’s former first and third pillar policies. Europol, Eurojust and the European Judicial Network also play a crucial role in monitoring illicit arms transfers on EU territory. Secondly, we can assume an improvement in control capacity in the aftermath of the ratification of the Lisbon Treaty.

Development of procedural and legislative approximation in the third pillar prior the ratification of the Lisbon Treaty was mainly obstructed for the two reasons previously mentioned concerning the inconsistency of CFSP policy-making. On the one hand, similarly to the issues dealt with in the CFSP area, criminal law traditionally constitutes the prerogative of the sovereign state. This partly justifies the susceptibility of Governments relative to agreements that may encroach upon their powers. On the other hand, in the post-Maastricht period the third pillar was a domain governed by intergovernmental decision-making, which also accounts for the above-mentioned slow progression.

The hypothesis concerning accelerated judicial co-operation and prospective criminalization of small arms illicit trafficking with the entry into force of the Lisbon Treaty is justified by the inclusion of articles 82 and 83 NTUE. These new articles enable the expansion of prosecution for serious transnational organized crime<sup>195</sup>. While the provisions under article 82 TFEU establish the mutual

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<sup>192</sup> *Ibid.*, pp. 39.

<sup>193</sup> MITSILEGAS, Valsamis, *EU Criminal Law*, 2009, pp. 118.

<sup>194</sup> *Ibid.*, pp. 115.

<sup>195</sup> Article 82 (ex Article 31 TEU) : 1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures to:

- (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) support the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States. They shall concern:



recognition of judgments in criminal matters, article 83 TFEU envisions the approximation of criminal legislation, offences and sanctions, and potential enhanced cooperation in the areas of particularly serious crime with a cross-border dimension.

By reviewing the type of progression achieved in the area of Justice and Home Affairs with the establishment of the third pillar with Maastricht, the coming section attempts to show some aspects of police and judicial cooperation dynamic on EU territory. Specific instruments, such as the 2002 European Arrest Warrant, which comprises the illicit trafficking of firearms within the list of the 32 eurocrimes it establishes, contributed to improve and speed up the circulation of judicial decisions and of the surrender procedure. Cases presented in front of the Court of Justice of the European Communities dealing with third pillar issues brought a new light on the “configuration of territoriality, sovereignty and on the relationship between the individual and the State in EU criminal law”<sup>196</sup>. More specifically, the interpretation given by the Court to mutual recognition and *ne bis in idem* – the principle forbidding a second judgement for the same conduct (*idem factum*) – have triggered the renegotiation of the relationship between Member States and the Union in the field of criminal law. This has brought new light on the question of EU competence in this sector and on the primacy of third pillar law over domestic law<sup>197</sup>. Furthermore, as shown by key decisions of the ECJ, the regulating principle of mutual recognition is not only a response, but also a means to accelerate integration in EU criminal matters<sup>198</sup>.

The systematic application of mutual recognition has triggered more integration in European criminal matters. The 1999 Tampere Conclusions enshrined the principle of mutual recognition as the “cornerstone of judicial co-operation” in the criminal field<sup>199</sup>. The doctrine has evaluated the application of mutual recognition as an alternative for “total harmonization, where each member state recognizes the validity of decisions of courts from other Member States in criminal matters with a minimum of procedure and formality”<sup>200</sup>. Thus, in compliance with the principle of loyal cooperation, mutual recognition requires that in specific circumstances member states recognize and effectively apply the law in force in other member states. This signifies that in certain third pillar cases, the competent authority of the executing member state is required to favour the law of another member state at the expense of national provisions. Hence the EU mutual recognition mechanism allows effective cooperation and coordination between authorities without prior harmonisation of the domestic legislation of Member States. On the basis of the principal of mutual trust, a national standard, judgement or order must be recognized as legitimate with a minimum of formality<sup>201</sup>.

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- (a) mutual admissibility of evidence between Member States;
  - (b) the rights of individuals in criminal procedure;
  - (c) the rights of victims of crime;
  - (d) any other specific aspects of criminal procedure which the Council has identified in advance by a decision; for the adoption of such a decision, the Council shall act unanimously after obtaining the consent of the European Parliament. Adoption of the minimum rules referred to in this paragraph shall not prevent Member States from maintaining or introducing a higher level of protection for individuals.

Article 83 (ex Article 31 TEU) 1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.

These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organized crime.

<sup>196</sup> MITSILEGAS, Valsamis, *EU Criminal Law, op. cit.*, pp.15.

<sup>197</sup>*Ibid.*, pp. 115.

<sup>198</sup>*Ibid.*, pp. 117.

<sup>199</sup>*Ibid.*, pp.117.

<sup>200</sup>*Ibid.*, pp. 117.

<sup>201</sup>*Ibid.*, pp. 119.

Academics have rightly observed that the “functioning of mutual recognition requires a minimum harmonisation of standards among Member States and thus leads to a spill-over of further measures in the field”<sup>202</sup>. Besides creating “extraterritoriality” and representing a “journey into the unknown”, the mutual recognition principle challenged national sovereignty and territoriality, and has been a motor towards enhanced harmonization in EU criminal matters<sup>203</sup>.

Apart from the inclusion of articles 82 and 83 in the NTFUE and the subsequent perspective of enhanced prosecution and criminalisation measures on EU territory relative to transborder organized crime with the entry into force of the Lisbon Treaty, the former third pillar will function on Community mechanisms and procedures. As it is now included in the second part of the Reform Treaty – the NTFEU –, it will benefit from more simple legislative procedures, from the direct effect that its instruments trigger and from jurisdictional control of the ECJ. In these circumstances, there is ground to assume that the measures issued under the JHA policy relative to transborder crime in general, and arms trafficking in particular will be more effective.

#### **4. An insight into the Union’s instruments to combat SALW proliferation<sup>204</sup>**

The distinct overlapping instruments and organs coping with the regulation of small arms within the supranational polity of the Union, where EU law and policies coexist with domestic ones, provide an instructive insight on the difficulties as well as on the advantages of using common standards and organs for improving the monitoring of small arms at the transnational level generally speaking. The EU action in this field serves as guideline in the drafting and in the improvement of conventional arms and SALW controls in neighbouring and third countries. Action in this domain was nonetheless initiated within the United Nations forum.

The effects of the unregulated dissemination and accumulation of small arms, their enduring negative effect on human security as well as their obstruction of relief and development programmes have first been addressed in 1995 by a General Assembly Resolution (A/RES/50/70B)<sup>205</sup>. In the aftermath of this event, the Secretary-General established by means of two resolutions – (A/52/298 (1997) and A/54/258 (1999) – two expert groups, whose task was to report on the subject<sup>206</sup>. The Millenium Declaration adopted during the Millenium Summit by the UN General Assembly in September 2000, established the common values and notably the key-objectives with respect to the action of the international community at the start of the new millenium<sup>207</sup>. It is worthwhile noting that action to counter and to eradicate small arms proliferation and its consequences would widely help in achieving long-time objectives and in promoting the principles enunciated in the “Millenium Declaration”. The 2001 United Nations Conference on the Illicit Traffic in Small Arms and Light Weapons in All Its Aspects constituted another major leap forward in this security sector. This multilateral cooperation event proved fruitful, as it allowed participating States to agree upon and adopt the *Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons, in All Its Aspects* (PoA)<sup>208</sup>.

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<sup>202</sup>*Ibid.*, pp. 117.

<sup>203</sup>*Ibid.*, pp. 119.

<sup>204</sup> See appendix, pp. 55, under Chapter III, point 2.

<sup>205</sup>UNOG,

[http://www.unog.ch/80256EE600585943/\(httpPages\)/D987C5EFC8A87B41C1257180004B1B31?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/D987C5EFC8A87B41C1257180004B1B31?OpenDocument)

<sup>206</sup>UNOG,

[http://www.unog.ch/80256EE600585943/\(httpPages\)/D987C5EFC8A87B41C1257180004B1B31?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/D987C5EFC8A87B41C1257180004B1B31?OpenDocument)

<sup>207</sup>UNOG, <http://www.un.org/millennium/declaration/ares552e.htm>

<sup>208</sup>UNOG,

[http://www.unog.ch/80256EE600585943/\(httpPages\)/D987C5EFC8A87B41C1257180004B1B31?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/D987C5EFC8A87B41C1257180004B1B31?OpenDocument)

4.1. *The 2001 Programme of action (PoA): a crucial step in enhancing regional responses to SALW proliferation at the regional and national level*

Although it is not a legally binding instrument, the adoption of the 2001 *Programme of Action (PoA)* was a key-step in addressing the issue at the global level. *The Programme of Action* envisions regulating arms trade via legislative measures necessitating national, regional and international implementation. The document also operates as a referential framework regarding the destruction of weapons once they are confiscated, seized, or collected. Furthermore, it sets norms to improve the capacity of states to identify and trace illicit small arms and light weapons via international cooperation and assistance. This global instrument permitted a more concrete approach to the concern of SALW proliferation at the national, regional and global levels and catalyzed the production of new regional documents tackling this issue.

4.2. *The Union's instruments countering SALW proliferation*

*The Council Directive on control of the acquisition and possession of weapons of 18 June 1991 and of 21 May 2008*

The EU initiatives in the domain of SALW originated in 1991 with the adoption of a Directive regulating on the one hand the control of the acquisition and possession of small arms and on the other hand, the small arms transfers on the Union's territory. The directive was adopted against the background of the completion of the Internal Market, as the free circulation of goods, and notably of firearms, called for accompanying security measures. Besides defining four categories of firearms by order of their level of danger, it indicates on what grounds their acquisition and possession is admitted<sup>209</sup>. In order to guarantee effective tracing within a borderless territory the directive provides that each firearm and package of ammunition must be marked upon manufacturing. It also establishes that member states must set a computerised data system in view of their registration, which competent authorities can access. Besides being responsible for the control of the sale, acquisition and possession of these weapons, member states are also free to take further measures in order to comply with the Directive's objectives<sup>210</sup>. The directive also indicates procedures relative to definitive and temporary transfers of firearms between member states<sup>211</sup>.

The signing of the *United Nations Protocol on the fight against illicit manufacturing and trafficking of firearms* triggered the revision of the 1991 Directive by the 2008 act. The 2008 Directive added new details relative to definitions, marking procedures, the necessity of regulating the activities of brokers, as well as of their registration on the territory where they are operating<sup>212</sup>. Extra conditionalities were added relative to the persons allowed to acquire and possess weapons. In view of the efficient application of the Directive, Member States are required to exchange information and the Commission is called to set a contact group to facilitate data sharing. Article 16 of the Directive lays down the responsibility of member states relating to the rules and penalties applicable for non-compliance with national measures<sup>213</sup>. The implementation of these two directives has triggered the progressive harmonization of practices concerning the acquisition and possession of firearms on the Union's territory.

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<sup>209</sup> EUROPA, [http://europa.eu/legislation\\_summaries/customs/14011\\_en-htm](http://europa.eu/legislation_summaries/customs/14011_en-htm)

<sup>210</sup> *Ibid.*

<sup>211</sup> For further details, see Directive 91/477/EEC, [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:179:0005:0011](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:179:0005:0011)

<sup>212</sup> See articles 10-16 of the 2008 Directive, EUR-LEX, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008L0051:EN:NOT>

<sup>213</sup> Article 16 provides that : "Member States shall lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive", pp. 3.

### *The European Union Code of Conduct on Arms Exports*

*The European Union Code of Conduct on Arms Exports*, adopted in 1998, “set up a mechanism for information exchange and consultation among the member states based on common criteria”<sup>214</sup>. The Code lays down eight high common criteria for the export of conventional arms. It therefore wishes to prevent transactions of conventional arms that can be used for “internal repression, international aggression or that contribute to regional instability”<sup>215</sup>. The document comprises a notification and consultation mechanism in case of prohibited transfers. It also encompasses a transparency procedure by means of the publication of the EU annual reports on arms exports.

The implementation of the Code’s measures permitted member states to commence a process of convergence of national arms export control policies. The implementation at the domestic level of the measures laid down by the document drove arms-exporting states to enhance transparency mechanisms by publishing reports on transactions. The instrument provided the opportunity for member states to concert on the harmonization of the notion of transactions, on national control policies of arms exports to vulnerable regions requiring particular vigilance<sup>216</sup>. Its purpose has been to gradually enhance the harmonization of arms export control policies of EU Member States. Furthermore, the criteria and principles it includes have been since used as guidelines in regulating and codifying the export control mechanisms of third countries<sup>217</sup>. The provisions comprised in the *EU Code of Conduct* have thus been used in the drafting of regional instruments. Similarly to other regional instruments dealing with arms transfers, the *EU Code of Conduct* notably inspires the work of the delegations of UN Member States involved in agreeing upon an international, legally binding instrument regulating the trade in arms.

### *Joint Action on the Union’s contribution to combating the destabilising accumulation and spread of SALW*

The 2002 *Joint Action on the Union’s contribution to combating the destabilising accumulation and spread of SALW* (2002/589/CFSP) repealed the 1999 Joint Action, as the latter did not treat ammunition within its framework. The 2002 Joint Action encompassed three overarching objectives. First, it wishes to counter and contribute to ending the destabilising accumulation and spread of small arms. Second, it aims the reduction of existing accumulations of these weapons and their accumulations, as well as that of their ammunitions to levels compatible with countries’ legitimate security needs. Third, it attempts to address the problems triggered by these excessive accumulations<sup>218</sup>. As part of the Union’s contribution to specific projects the document establishes that the Union should provide financial and technical assistance, such as weapons collection, security sector reform, demobilization, reintegration and victim assistance programmes<sup>219</sup>. The dispositions covered by the 2002 Joint Action have been further enhanced by the provisions of the 2006 *EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition*. The latter thus expands upon the Union’s preventive and reactive capacity to respond to the multilevel phenomenon of SALW proliferation.

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<sup>214</sup> *Second Annual Report According to Operative provision 8 of the European Union Code of Conduct on Arms Exports*, pp. 1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2000:379:0001:0006:EN:PDF>

<sup>215</sup> *European Union Code of Conduct on Arms Exports*, pp.1, <http://www.consilium.europa.eu/uedocs/cmsUpload/08675r2en8.pdf>

<sup>216</sup> Second annual report (2000/379/01), pp. 2-4.

<sup>217</sup> *Council Joint Action 2008/230/CFSP*

<sup>218</sup> 2002/589/CFSP, pp.1, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:191:0001:0004:EN:PDF>

<sup>219</sup> *Ibid.*, pp. 2.

### *The European Security Strategy (ESS)*

The 2003 *European Security Strategy* “provides an overarching framework that guides EU external activities as a whole” and thus traces the “Union’s role as global actor”<sup>220</sup>. It therefore establishes a framework that reasserts long-term priorities of the EU, such as the promotion of regional stability and the strengthening of multilateral processes and organizations<sup>221</sup>. The EU’s multilateralism thus functions as an organizing principle in a world characterized by multipolarity<sup>222</sup>. The Security Strategy analyses the external context of EU action, while identifying the challenges and opportunities it faces. It assesses regional conflicts, state failure and organized crime as key-threats<sup>223</sup>. It therefore establishes both a vision of the Union’s role as global actor, and an “overarching framework of its external policy”<sup>224</sup>.

### *The EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition*

The *EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition*, continues to provide the strategic guidelines for both the EU and its Member States’ activities in the SALW domain by means of the different existing instruments<sup>225</sup>. The instrument was issued within the framework of the CFSP in 2006. The document emphasises that present days wars are essentially fought with small arms and light weapons<sup>226</sup>. It claims to be responding to the measures set by the UN’s 2001 *Programme of Action (PoA)* as it implements its dispositions at the global, regional and national levels. The EU Strategy reaffirms that “the excessive accumulation and uncontrolled spread of small arms and light weapons are central to four of the five threats enunciated by the *European Security Strategy*” elaborated in 2003<sup>227</sup>. The *EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition* participates in responding to these multi-faceted challenges by developing “an integrated approach and comprehensive plan of action to combat the illicit trade in SALW and their ammunition”<sup>228</sup>. Its provisions aim at combining its security and its development policy in order counter the instability caused by their uncontrolled dissemination and accumulation.

The *EU Strategy to combat illicit accumulation and trafficking of SALW and their ammunition* reiterated that the problems of transfers of SALW to vulnerable zones required arms-exporting countries “to exercise the highest degree of responsibility” with respect to the transaction effected<sup>229</sup>. Thus, the document enumerates the available instruments regulating the Union’s external action, as well as internal action. On the one hand, external action mainly fosters effective multilateralism for relevant regional initiatives<sup>230</sup>. On the other hand, internal action is mainly grounded on police, customs and judicial cooperation mechanisms, such as Europol and Eurojust<sup>231</sup>. The Action Plan encoded in the EU Strategy covers the EU’s initiatives and contribution on its territory, at the regional and international

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<sup>220</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 5 and pp. 11.

<sup>221</sup> *Ibid.*, pp. 187.

<sup>222</sup> SKANDER, Nasra, Book Review : *L’action extérieure de l’Union européenne*, Louvain-la-Neuve, Academia Bruylant, 2008 in *European Foreign Affairs Review* 14, 2009, pp. 305-311.

<sup>223</sup> BRETHERTON, Charlotte and VOGLER, John, *The European Union as a Global Actor*, *op. cit.*, pp. 182.

<sup>224</sup> *Ibid.*, pp 181.

<sup>225</sup> *Ninth Annual Report on the Implementation of the Council Joint Action of 12 July 2002 on the European Union's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons* <http://register.consilium.europa.eu/pdf/en/10/st09/st09997.en10.pdf>,

<sup>226</sup> *EU Strategy to Combat Illicit Accumulation and Trafficking of SALW and their Ammunition*, pp. 4, <http://register.consilium.europa.eu/pdf/en/06/st05/st05319.en06.pdf>.

<sup>227</sup> *EU Strategy to Combat Illicit Accumulation and Trafficking of SALW and their Ammunition*, pp. 2, <http://register.consilium.europa.eu/pdf/en/06/st05/st05319.en06.pdf>

<sup>228</sup> *Ibid.*, pp. 3.

<sup>229</sup> *Ibid.*, pp. 5.

<sup>230</sup> *Ibid.*, pp. 8.

<sup>231</sup> *Ibid.*, pp. 9.

levels, as well as within the framework of agreements and structured dialogues. The document also envisages that the Union should provide assistance to countries claiming support for controlling and destroying surplus arms and ammunitions existing on their territory. It also establishes that in view of resolving armed conflicts, the Union should encourage demobilisation, the elimination of surplus weapons, and favour the reinsertion of former combatants<sup>232</sup>.

*The Ninth Annual Report on the implementation of the Council Joint Action of 12 July 2002 on the European Union's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons*

The implementation of the 2002 *Council Joint Action* has triggered a series of annual reports compiling information relating to the national and the international efforts undertaken by member states to fulfil its provisions. Thus, the 9<sup>th</sup> Annual Report compiles as part of the implementation of the 2002 *Council Joint Decision* (2002/589/CFSP) three different levels of action. The first part reviews the Member States' efforts addressing the small arms issues at the national level<sup>233</sup>. This section refers to the effort undertaken by Member States to enhance their capacity in terms of cooperation, coordination and information exchange between administrative and law enforcement agencies with respect to the concerns of the illicit trade in SALW, as well as to their excessive accumulation<sup>234</sup>. The second subsection of the first part of the document comprises the national efforts and initiatives of Member States in the sector of enhancing the capacity of domestic administrations. This has been achieved by means of the organisation of training courses, seminars and workshops engaging administrative representatives of the Ministry of Foreign Affairs or members of the industry. The purpose of these campaigns/ initiatives has been to raise awareness on the complex question of small arms and on its network effects. Other contributions included the undertaking of enhanced transparency measures relative to arms production and transactions, as well as the organized apprehension and destruction of arms in distinct member states<sup>235</sup>.

The second part of the 9<sup>th</sup> *Annual Report* on the responses to the dispositions of the 2002 *Joint Action* encompasses a description of the international implementation efforts undertaken by the EU in 2009. As part of its contribution to countering the accumulation and spread of small arms and light weapons, as well as to preventing illicit trafficking in conventional arms, the EU maintained support of the *UN Programme of Action on SALW* (PoA). In response to the Union's commitment to advocating the promotion of a future Arms Treaty (ATT), two acts were adopted in the framework of the *European Security Strategy* to support the Arms Treaty negotiation process among third countries. The first and second Council Decisions were issued on 19 January 2009, and on 14 June 2010 respectively. Their provisions build on articles 26(2) and 31(1) of the Treaty on European Union (TEU).

In 2009, the EU also provided support to the African Union in order to assist them in the drafting of an African Union SALW Strategy through the financing of an expert. In order to promote the EU Common Position on Arms exports<sup>236</sup>. The EU has organized three seminars for Ukraine, Western Balkans and Southern Caucasus to enhance coherence and transparency measures of national legislation with respect to principles and criteria defining exports control<sup>237</sup>.

Further, the Union engaged to provide a 1 million Euro fund in view of SALW and ammunition destruction in Ukraine. In the Western Balkans the EU continued effort in support of demilitarisation

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<sup>232</sup>*Ibid.*, pp. 14.

<sup>233</sup> <http://register.consilium.europa.eu/pdf/en/10/st09/st09997.en10.pdf>

<sup>234</sup>*Ibid.*, p. 4-27.

<sup>235</sup>*Ibid.*, pp. 27-31.

<sup>236</sup>*Ibid.*, pp. 33.

<sup>237</sup>*Ibid.*, pp. 34.

through three complementary lines of action<sup>238</sup>. It has notably committed to strengthening the rule of law in Kosovo by financing an expert to establish a system on SALW conform to EU standards on licensing, import, export. The EU continued the implementation of the ongoing projects relating to SALW in the regional economic communities of Africa (RECs) by developing the capacity of states to effectively manage illicit SALW, to respond to cross-border proliferation and thus “ensure overall political oversight and efficient management of legal arms transfers in the region”<sup>239</sup>. Other initiatives targeting projects in Africa include prospective work on the fight against the illicit accumulation and trafficking in firearms, as well as assistance of national authorities in building a more secure environment inside and outside the country. In Central America, the Union engaged in supporting the Central American SALW Control Programme to improve fight against illicit trafficking of firearms and explosive material in Central America and the Caribbean region. Other EU projects aimed violence prevention and encompassed risk education and victim assistance. The EU continued dialogue on the issue of SALW with third countries and sub-regional organisations and it started work on establishing a dialogue with China. Ongoing negotiations are pursued with Brunei, China, Libya, Mongolia, Russia, Thailand and Vietnam<sup>240</sup>.

Besides pursuing financial and technical assistance to SALW projects<sup>241</sup>, EU member states also organized and participated in international seminars and conferences. Other EU initiatives pursued in 2009 were the Common Position on Arms Exports and the EU initiative to hinder SALW air trafficking. Member States have also undertaken action on a national basis by organizing seminars and by furthering data exchange on licensed brokering transactions of weapons<sup>242</sup>.

The third part provides the contribution of Member States to the work of international organisations and regional arrangements in the field of conventional arms, with specific focus on small arms and light weapons. With respect to its substance, the third section encompasses the contributions of Member States to enhance transparency relative to arms transactions at the global level. They have done so by submitting annual reports relating to national conventional weapons transfers to the UN Register on Conventional Arms and other relevant international reporting data-bases<sup>243</sup>. Other contribution by member states consisted of the financing of, and the support through expertise sharing of the regional implementation of the *UN Programme of Action*, or other regional instruments. Distinct states have also contributed in terms of capacity-building, by offering assistance on establishing marking and tracing structures in countries, or regions requiring assistance. Within the UN General Assembly Forum, different EU Member States supported the initiative on a legally binding document regulating the trade in Conventional Weapons. The section in question also resumes the contribution of Member States to the initiatives and instruments of the OSCE, NATO, ECOWAS, as well as their support to related field and research events<sup>244</sup>.

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<sup>238</sup>*Ibid.*, pp. 35-36.

<sup>239</sup>*Ibid.*, pp. 36.

<sup>240</sup> *Ibid.*, pp. 39.

<sup>241</sup> For specific and detailed contribution, see pp. 39-51 of *The Ninth Annual Report on the Implementation of the Council Joint Action of 12 July 2002 on the European Union's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons*

<sup>242</sup> pp. 52-53 of *The Ninth Annual Report on the Implementation of the Council Joint Action of 12 July 2002 on the European Union's Contribution to Combating the Destabilising Accumulation and Spread of Small Arms and Light Weapons*, <http://register.consilium.europa.eu/pdf/en/10/st09/st09997.en10.pdf>

<sup>243</sup> pp. 58-64, <http://register.consilium.europa.eu/pdf/en/10/st09/st09997.en10.pdf>

<sup>243</sup> *Ibid.*, pp. 64-83.

<sup>244</sup> *Ibid.*, pp. 68-76.

*Council Common Position of 23 June 2003 on the control of arms brokering*

The *Council Common Position* dating of 2003 aims at controlling arms brokering in order to avoid infringement of UN, EU and OSCE embargoes on arms exports, as well as on the principles set by the *EU Code of Conduct on Arms Exports*. Besides providing a definition of the notions of “broker” and “brokering”, the *EU Common Position* endows Member States with the responsibility of establishing measures and legislation regulating brokering within their territory in the domain of arms transfers. Furthermore, member states are required to establish a system of exchange on brokering activities and are recommended to set a register of arms brokers and control brokering activities outside of their territory<sup>245</sup>. The instrument therefore provides that common standards should be created among member states so that brokers cannot exploit the loopholes deriving from national differences in control practices<sup>246</sup>.

*Council Joint Action of 17 March 2008*

The *Council Joint Action* issued in 2008 within the frame of the CFSP was envisioned “to promote the control of arms exports and the principles and criteria of the *EU Code of Conduct on Arms Exports* among third countries”<sup>247</sup>. This instrument also responds to the *EU Strategy to combat illicit accumulation and trafficking of SALW* (2006), which establishes that the EU is responsible for supporting and strengthening export controls and the criteria of the *EU Code of Conduct on Arms Exports*, at regional and international levels. The document acknowledges and supports the Resolution of the UN General Assembly envisioning the negotiation of an Arms Trade Treaty (ATT), whose objective is to set international standards for transfers of conventional arms.

The 2008 *Council Joint Action* aims the implementation of the dispositions included in the *European Security Strategy*, those encompassed in the 2006 *Strategy to combat illicit accumulation and trafficking of SALW and their ammunition*, as well as of provision 11 encompassed in the *EU Code of Conduct on Arms Exports*. The instrument mainly provides that the Union shall support activities in order to promote the criteria included in the *EU Code of Conduct on Arms Export* among third countries and assist states in drafting and implementing the legislation needed to secure efficient arms exports.

*Council Decision of 14 June 2010, on EU Activities in Support of the Arms Trade Treaty, in the Framework of the European Security Strategy*

The Council of the European Union issued two Common Decisions in 2009 and 2010 respectively, relative to the support of EU activities “in order to promote among third countries the process leading towards an Arms Trade Treaty (ATT), in the framework of the *European Security Strategy*”<sup>248</sup>. The 2009 and 2010 Common Positions provide the establishment and encouragement of dialogue and expertise-sharing among the national representatives and experts of third countries relative to the substance and purpose of an Arms Trade Treaty. The implementation of the provisions of the EU Common Decisions envisages seven regional events aiming to “support the preparatory process leading up to the UN conference on the ATT”<sup>249</sup>. These sessions have a twofold objective. On the one hand, they aim “to ensure that the conference will be as inclusive as possible and able to make

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<sup>245</sup> *Safeworld*, [http://www.unidir.org/pdf/EU-background-papers/EUBGP\\_04pdf](http://www.unidir.org/pdf/EU-background-papers/EUBGP_04pdf), pp. 9.

<sup>246</sup> *Ibid.*, pp. 9.

<sup>247</sup> 2008/230/CFSP, pp.1,

[http://eur-](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:075:0081:0085:EN:PDF)

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:075:0081:0085:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:075:0081:0085:EN:PDF)

<sup>248</sup> 2009/42/CFSP, pp.1,

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:017:0039:0044:EN:PDF>.

<sup>249</sup> 2010/336/CFSP,

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:152:0014:0020:EN:PDF>.



concrete recommendations on the elements of the future ATT<sup>250</sup>. On the other hand, the interactive nature on which the seminars build, provide national representatives and experts with the occasion to exchange on the common concerns and issues inherent in conventional arms control. The aim of enhancing the dialogue on the numerous technicalities of the arms circuit is to allow UN member states to better envision the urgent administrative and logistical reforms that must be undertaken in view of implementing the prospective provisions of the Arms Trade Treaty. In other words, it prepares and supports UN Member States in developing and improving national and regional systems permitting the implementation of effective arms transfer controls. On the long run this learning and socializing process provides solid feedback as to the complexities of the implementation of a prospective Arms Trade Treaty and subsequently contributes to ensuring its effectiveness<sup>251</sup>.

#### **4. The strengths and weaknesses of the Union's SALW instruments**

By what means then, does the EU and its member states manage to improve the small arms control policies? Effective capability with respect to the control of the spread of small arms depends on the effective implementation of EU policies by member states. The EU's efficiency in this area is conditioned by several aspects. Among these, we retain the initiatives pursued by member states alongside EU institutions and the necessity of reaching consensus when negotiating a new instrument and of agreeing over international conventions or on sanctions such as arms embargos.

Furthermore, the annual assessment of the domestic implementation of distinct instruments aiming the control of arms transactions, and of their worrying accumulation in vulnerable regions, is beneficial for several reasons. First, it keeps Member States updated concerning the development of certain mechanisms in other member states, while involving them in a constant learning process. Reports on the implementation of the EU instruments in this area, illustrate the progress achieved both through the initiatives of the EU and of member states. Thus, the reports on the implementation of the *EU Code of Conduct on Arms Exports* for instance, help to assess the improvement in capability generated by the effort of member states in exchanging and concerting on national control policies relative to arms exports to countries demanding vigilance. Second, this constant updating and reporting process among member states triggers a gradual harmonisation of procedures and practices. Furthermore, the effectiveness of the Union's policies builds on the member states' coordination of their national positions and depends on their reaching consensus with respect to the promotion of EU standards and principles on arms controls within regional and international bodies. In short, we notice that the EU's involvement in advocating a safer world through more comprehensive SALW controls may be hindered by numerous internal and external elements.

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<sup>250</sup> *Ibid.*

<sup>251</sup> *Ibid.*

## Conclusion

This dissertation has attempted to grasp whether the EU's international role can be strengthened through its engagement in promoting more responsible policies in the area of small arms and light weapons control. In order to show why and how the Union pursues the development of its internal and external policies aiming to counter the uncontrolled spread of small arms, I have considered four factors, which could influence its contribution in constructing more responsible international structures. The first assumption has been that the Union's agency is conditioned by its own complex institutional functioning, which grants member states the prerogative to enhance or block distinct initiatives according to their national interests. The second hypothesis has stressed the importance of favourable occasions arising in the external environment that would permit the Union to capitalize its interests. The third hypothesis has raised the question of the EU's and its member states' capabilities in the area of arms control as a condition of its influence related to the SALW issue in international arenas. The fourth has put into perspective how the Union's constitutive values have been used to create a narrative based on norms aiming at the creation of a more ethical global environment.

I have claimed that both the Union's use of norms and their conversion into principles subtending its policy-making have allowed it to outgrow the loopholes inherent in its system. Besides participating in the spillover of norms and policies, EU values have thus been instrumentalized to gain more visibility, and ultimately, more power of persuasion with respect to other international actors' choices. Nonetheless, one issue that deserves further research is a detailed perspective on the effectiveness of the actions of the European Union and of its member states in matters of small arms proliferation.

What is more, as the gravity of this issue is not massive within EU borders, it would be interesting to compare its operational means to that of other regional organisations, which are active in zones seriously affected by the trafficking and accumulation of small arms. I leave that question to further research while taking the occasion to reassert the genuine gravity of the impact of the unregulated flow of this type of conventional arms on human security.

Indeed, within the current international environment, the number of victims due to the misuse of small arms and light weapons is superior to that generated by any other type of arms, whether conventional or nuclear. The uncontrolled dissemination and accumulation of small arms and light weapons hinder all attempts towards the construction of solid state structures while accelerating the spread of poverty and pandemics. Their connection to other forms of international crime and their role in spreading conflict and instability have determined states, NGOs, as well as regional and international organizations to take action in raising awareness and in developing comprehensive structures able to respond to the dangers issued by this multilevel issue.

Finally, by briefly referring to the specific cases Sweden and the UK, I have also tried to emphasise that the EU offers member states the occasion to gain in visibility by initiating and pursuing EU policies in the areas of conflict prevention and of arms control respectively. If member states are using the Union to promote universal values in international forums, they also do so on their own account. It is worthwhile noting that the "member state preferences are affected in turn by the EU policy-making process"<sup>252</sup>. Indeed, "once they become involved in a process, [...] the common interest is upgraded, because the most reluctant states can be prodded and persuaded into agreeing to EU

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<sup>252</sup> SMITH, Karen, *European Union Foreign Policy in a Changing World*, 2003, pp. 197.

policies”.<sup>253</sup> Such a functioning may trigger new initiatives and thus further action and enhance EU and member state capability in this policy area. It stays true nonetheless that the Union continues both to surprise and to deceive. And yet, there is a sense where its specific potentialities in World Affairs can still provide ground for the emergence of new political and perhaps more ethical structures

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<sup>253</sup> *Ibid.*, pp. 197.

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# Appendix

## *Introduction*

1. This section develops the point discussed on page 5:

Deficient small arms control systems give way to severe infringement of International and Humanitarian Law and strengthens organized criminal networks, as these weapons are “among the favourite tools of human rights violators and abusers throughout the world”<sup>254</sup>. The easy leakage of small arms and of their ammunitions from the legal to the illegal market while being transferred further complicates the instability of certain regions. Their accumulation in vulnerable areas obstructs infrastructure and social reconstruction, and affects the neighbouring region in its entirety.

2. This section develops the argument discussed on page 12:

Similarly to approaching arms control from a supply insight, the demand perspective aims to gain a comprehensive view of armed violence in view of reducing it<sup>255</sup>. This type of approach aims to understand arms acquisition by concentrating “on individual and group preferences for weapons”<sup>256</sup>. It aims to comprehend why mostly young male individuals choose or don’t choose to acquire and use firearms. Other elements helping to evaluate demand are “monetary and non-monetary resources required to obtain weapons, as well as their real and relative prices”<sup>257</sup>.

## *Chapter 2*

1. With reference to page 40, here are the definitions of small arms and light weapons as provided by the *COUNCIL JOINT ACTION of 12 July 2002 on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP, (2002/589/CFSP)*:

“The Joint Action shall apply to the following categories of weapons, while not prejudging any future internationally agreed definition of small arms and light weapons. These categories may be subject to further clarification, and may be reviewed in the light of any such future internationally agreed definition.

(a) Small arms and accessories specially designed for military use:

- machine-guns (including heavy machine-guns),
- sub-machine guns, including machine pistols,
- fully automatic rifles,
- semi-automatic rifles, if developed and/or introduced as a model for an armed force,
- moderators (silencers).

(b) Man or crew-portable light weapons:

- cannon (including automatic cannon), howitzers and mortars of less than 100 mm calibre,
- grenade launchers,
- anti-tank weapons, recoilless guns (shoulder-fired rockets),
- anti-tank missiles and launchers,
- anti-aircraft missiles/man-portable air defence systems (MANPADS).”

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<sup>254</sup> *Amnesty International, Iansa, Oxfam*, pp. 4,

[http://www.iansa.org/documents/2005/marking\\_tracing\\_report\\_jan2005.pdf](http://www.iansa.org/documents/2005/marking_tracing_report_jan2005.pdf)

<sup>255</sup> *Ibid.*

<sup>256</sup> *Ibid.*

<sup>257</sup> *Ibid.*

2. The following section provides further insight on the distinct processes inherent in the small arms and light weapons network discussed on page 44, such as production, illicit production, transfers, illicit transfers, transparency and state stockpiles.

### *Production*

Krause estimates that one thousand one hundred thirty companies in ninety-eight countries are involved in some aspect of production, components and repair<sup>258</sup>. The majority of small arms and light weapon production facilities operate on grounds of licences issued with the consent of a host state. The *Small Arms Survey* claims that “the bulk of the world's small arms and light weapons are legally manufactured in relatively large factories, that are recognised as legitimate enterprises by the host state”<sup>259</sup>. Legal small arms and light weapon producers “range from large state-owned companies, which manufacture a wide range of SALW, to large, privately owned companies and to small, specialist producers of weapons”<sup>260</sup>. Consequently, licit production occurs as much in “small workshops” as in “some of the most technology-intensive production facilities in the world”<sup>261</sup>.

### *Illicit Production*

Most often, a weapon becomes part of the illicit trade after the weapon has left the factory, i.e., during transactions. Although the *Small Arms Survey* claims that the illicit production of small arms is occurring at a fairly small scale, it nonetheless acknowledges the important impact it has “on the proliferation of these tools at the local level”<sup>262</sup>. The *Small Arms Survey* claims that illicit production of this type of weapons stems from the activities of large enterprises “operating under the auspices of a regional authority, such as in the case of Transdnestr”<sup>263</sup>. Other actors operating within this category at a smaller scale are “armed groups illegally producing light weapons, such as the LTTE in Sri Lanka or the FARC in Colombia”<sup>264</sup>. According to the same source, other very small workshops involved in illicit production are located in Ghana, Pakistan and in the Philippines.

### *Transfers*

The *Small Arms Survey* estimates the total value of the authorized trade in small arms to 4 billion dollars a year<sup>265</sup>. Krause’s traditional model of arms proliferation and control shows that transfers of small arms and light weapons and of their ammunition occur both on an authorized basis and illicitly. Transfers take place between states, from states to non-state actors, and between non-state actors<sup>266</sup>. The standards that States must consider when exporting arms are provided under distinct instruments. Thus, transfers of small arms are authorized on grounds of an evaluation of the use that they will be given by the recipient party. States are admitted to export weapons provided they don’t entail violations of International and Humanitarian Law. Minimal transparency rules must also be respected with respect to the transactions effected by a State. As most weapons are deviated to the illegal market during transfers, other minimal criteria such as marking and registration are required to ensure their tracing.

Among the major challenges in the process of controlling arms transfers are the loopholes in authorized transfers systems. Furthermore, the illicit transfers of small arms ammunition constitute an

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<sup>258</sup> [www.cisd.soas.ac.uk/Editor/assets/krause\\_salw.pdf](http://www.cisd.soas.ac.uk/Editor/assets/krause_salw.pdf)

<sup>259</sup> <http://www.smallarmssurvey.org/>

<sup>260</sup> *Ibid.*

<sup>261</sup> *Ibid.*

<sup>262</sup> *Ibid.*

<sup>263</sup> *Ibid.*

<sup>264</sup> *Ibid.*

<sup>265</sup> *Ibid.*

<sup>266</sup> *Ibid.*

important segment of the danger inherent in illicit trafficking. Indeed, the availability of ammunition is strictly linked to the “outbreak and the duration of armed conflicts and to acts of criminal gun violence” once the corresponding weapons are in place<sup>267</sup>. The respect of transparency regulations and the strict compliance of governments with transfers and brokering standards, as well as with arms embargos are crucial in controlling the shift of small arms and of ammunition from the licit to the illicit market.

### *Illicit Transfers*

The weapons existing on the legal market - domestic as well as international – can be diverted any time to the illicit realm. In short, the diversion of small arms and light weapons to the illegal zone encompasses government supplies to armed non-state factions, violation of arms embargoes, and violation of end-user agreements. Weapons can notably be diverted from government or authorized private stockpiles, battlefield seizures and war booty<sup>268</sup>.

### *Transparency*

Transparency is a crucial process in preventing unauthorized transfers and the diversion of small arms and light weapons to the illicit market. The main sources on authorized transfers of small arms, light weapons, and their ammunition are provided by the UN Comtrade database, by national arms export reports, and other sources<sup>269</sup>. UN Comtrade has reported for the years 1999-2003, total annual values of authorized exports to approximately USD 2 billion<sup>270</sup>. The divergent practices and requirements relative to national arms export reports, which “differ considerably regarding comprehensiveness and level of detail” participate in undermining an effective cooperation and data transmission between competent authorities. As a consequence of the fact that countries' export reports formats differ widely, comparing them is a complicated process. In some countries reports encompass statistics, whereas in others such documents include hundreds of pages of text and tables<sup>271</sup>. To assess the improvement of the transparency of reporting practices, in 2004 the *Small Arms Survey* introduced “The Small Arms Trade Transparency Barometer”. The purpose of this tool was to measure the usefulness of export reports as a means for understanding a country's small arms exports. The Small Arms Trade Transparency Barometer looks at “factors such as timeliness, access, clarity, comprehensiveness, and information on deliveries and licenses in countries' reporting on their small arms exports”<sup>272</sup>. Other sources are national arms export reports and global small arms inventories. The EU as well as other countries publish official data on arms exports, arms export licenses or both. With respect to inventories existing at a global level, the *Small Arms Survey* estimates that “there are at least 875 million combined civilian, law enforcement, and military firearms in the world”<sup>273</sup>.

### *State Stockpiles*

According to the *Small Arms Survey*, the Government-owned small arms inventories constitute a major small arms category<sup>274</sup>. Conversely to weapons of civil society, official weapons such as military weapons are stockpiled<sup>275</sup>. When subject to theft or diversion, stockpiled weapons may augment the

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<sup>267</sup> *Amnesty International, Iansa, Oxfam*, pp. 13,

[http://www.iansa.org/documents/2005/markings\\_tracing\\_report\\_jan2005.pdf](http://www.iansa.org/documents/2005/markings_tracing_report_jan2005.pdf)

<sup>268</sup> *Ibid.*

<sup>269</sup> <http://www.smallarmssurvey.org/>

<sup>270</sup> *Ibid.*

<sup>271</sup> *Ibid.*

<sup>272</sup> *Ibid.*

<sup>273</sup> *Ibid.*

<sup>274</sup> *Ibid.*

<sup>275</sup> *Ibid.*

danger of illicit transfers. The *Small Arms Survey* estimates that apart from theft and pilferage from government stockpiles, the loss of entire government arsenals can be immensely damaging<sup>276</sup>.

### Chapter III

1. With reference to the point developed on page 56, below is Blockmans' and Wessel's explanation of article 40 of The New Treaty on the European Union:

“Art. 40 reflects the current preservation of the *acquis communautaire* clause and states that the implementation of the CFSP shall not affect the other policy areas of the Union and *vice versa*”<sup>277</sup>.

According to Van Vooren, the new article 40 of the Lisbon Treaty distinguishes between the distinct external policies as follows:

“The implementation of the development policy (...) shall not affect the implementation of the CFSP which ‘shall pursue the objectives, and be conducted in accordance with, the general provisions laid down in Chapter I’”<sup>278</sup>.

2. Generally speaking, global responses to small arms light weapons non-proliferation are envisioned within the framework composed of UN and OSCE instruments in this domain. Consequently, numerous regional and national instruments relative to small weapons control implement existing international provisions in this field.

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<sup>276</sup> *Ibid.*

<sup>277</sup> BLOCKMANS, Steven, WESSEL, Ramses, “The European Union and Crisis management: will the Lisbon Treaty make the EU more effective?”, *op. cit.*, pp. 35,  
[http://www.asser.nl/upload/documents/9212009\\_14424clee09-1full.pdf](http://www.asser.nl/upload/documents/9212009_14424clee09-1full.pdf)

<sup>278</sup> *Ibid.*, pp. 9.