

Introduction

In Paragraph 11 of Section II of the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects [SALW], States undertake:

11. To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons. [Emphasis added.]

What are the existing responsibilities of states under relevant international law with which their export authorizations must be consistent? It is the purpose of this paper to seek to identify the main legal prohibitions on arms transfers arising from treaty and customary international law, with the further objective of developing a preliminary list of situations in which transfers of SALW by states could constitute a breach of an international obligation.¹

¹ The resulting list is found in the first part of the Executive Summary with which this paper begins.