

Acknowledgements

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The report has been endorsed by the following organisations:

Africa-Europe Faith & Justice Network (AEFJN), Belgium

Amnesty International

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Armaments Information Office (RüstungsInformationsBüro), Germany

Burma Campaign France

Burma Campaign UK

Caritas France

Campagne tegen Wapenhandel, Netherlands

Campaign Against Arms Trade (CAAT), UK

Groupe de Recherche et d'Information sur la Paix et la Sécurité (GRIP), Belgium

Pax Christi Flanders

School for a Culture of Peace, Autonomous University of Barcelona (Spain)

Swedish Fellowship of Reconciliation (SweFOR)

Swedish Peace and Arbitration Society (SPAS)

Saferworld, UK

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Indian helicopters for Myanmar: making a mockery of the EU arms embargo?

Introduction

EU non-governmental organisations are concerned at reports from credible sources that the Government of India may transfer military helicopters to the Government of Myanmar (Burma) as part of the two countries' increasing military co-operation. EU and US based companies have been extensively involved in the design and production of these helicopters, the transfer of which would risk undermining existing EU and US sanctions and arms embargoes on Myanmar. This report examines EU (and, to a lesser extent, US) involvement in the making of India's Advanced Light Helicopter (ALH).

India has reportedly been in negotiations with Myanmar since late 2006 to supply military helicopters, including the ALH which is highly likely to contain components, technology and munitions originating from EU Member States and the US. Both the EU and the US have had long-standing sanctions and embargoes in place to prevent the transfer of military equipment to Myanmar, in response to the continuing violations of human rights.

The international community has extensively documented concerns about grave international human rights and international humanitarian law violations by the Myanmar authorities, including by the army (*tatmadaw*) in areas of armed conflict and counter-insurgency operations and ethnic minority areas.

The proposed transfer of arms to Myanmar

Defence co-operation between India and Myanmar has increased in 2007, as India seeks to counteract both what it describes as Myanmar based insurgent groups operating in North-Eastern India, and China's increasing strategic presence in Myanmar (seen by some Indian analysts as part of an attempt to increase regional influence). In January 2007 *The Australian* reported that Indian Foreign Minister Pranab Mukherjee had promised to give a "favourable response" to the Myanmar Government's request for military equipment.¹ In April it was reported that Indian and Myanmar Security Forces were "conducting joint military operations along the 1,643-km Indo-Myanmar border to neutralise insurgent groups."² There have also been recent reports linking Myanmar co-operation with the Indian Government in dealing with these groups with an Indian agreement to supply a variety of military hardware such as tanks, aircraft, artillery guns, radar, small arms and the ALH.³

On 22 November 2006 it was reported in the Indian press that Air Chief Marshal S.P. Tyagi made a three-day visit to Myanmar and that he would be discussing several arms offers made almost two years ago by his predecessor Air Chief Marshal S. Krishnaswamy in November 2004. The article stated that:

"After a pair of Naval BN-2 Islander short-range surveillance aircraft was gifted to Yangon in August, Tyagi's mission will be to revive a host of

¹ Bruce Loudon, 'India to snub US on Burma arms embargo', *The Australian*, 23 January 2007.

² 'Defense Relations With Myanmar Surge; Progress Made During Vice Admiral Thane's Visit', *India Defence*, 3 April 2007, <http://www.india-defence.com/reports/2996>.

³ See, for example, 'Indian Navy to Transfer BN2 Maritime Surveillance Aircraft to Myanmar', *India Defence*, 12 May 2007, <http://www.india-defence.com/reports/3179>; Rahul Bedi, 'Indian training missions underline desire for greater strategic influence', *Jane's Defence Weekly*, 9 May 2007.

offers, originally made during Myanmar leader Senior General Than Shwe's visit in 2004. This includes a comprehensive fighter aircraft upgrade programme *and the sale of [Hindustan Aeronautics Limited (HAL)]-built Advanced Light Helicopters*, Bharat Electronics (BEL) radars, airborne radio equipment and surveillance electronics."⁴ [Emphasis added]

In October 2006, Jane's Defence Weekly reported that:

"India plans to transfer a substantial amount of defence equipment to Myanmar in return for the military government's co-operation in flushing out Indian separatist groups operating from its territory against the insurgency-ridden north eastern states"

and that military sources had said:

"Negotiations for the proposed 'arms for military co-operation swap' were conducted during a 21 September [2006] visit to Myanmar by India's Defence Secretary Shekhar Dutt. During his two-day trip Dutt held discussions with Vice Senior General Maung Aye alongside other senior Myanmar military officers, focusing on New Delhi providing Yangon with T-55 main battle tanks, which the Indian Army is retiring, armoured personal carriers, 105 mm light artillery guns, mortars and *the locally designed advanced light helicopter at a 'special' price*."⁵ [Emphasis added]

Developing the Advanced Light Helicopter

The ALH is manufactured in India by HAL. According to the HAL website, the ALH has a wide range of military capabilities including anti-tank and anti-surface vessel combat, and providing close-air support. The army/air force ALH variant can carry the following systems: rockets, turret gun, air-to-air missiles, anti-tank guided missiles, landmines, radar and missile warning, flare and chaff dispenser, and infrared jammer.⁶ In December 1996, when it was reported that weapons integration work would start shortly on the Indian army's prototype of the ALH, it was noted that:

"The army variant will be equipped with a turret gun, anti-tank missiles and air-to-ground rockets for close-air support. A twin-barrelled, 20-mm turret gun will be mounted on a centerline pod and the options have been narrowed to offers from GIAT and General Electric. Third-generation, indigenously-developed Nag missiles are planned and the aircraft also will be capable of dispensing landmines."⁷

The ALH is currently in service with the Indian Army and is also manufactured in India for export. In 2004, two ALHs were exported to 11th Air Brigade of the Royal Nepalese Army Air Service⁸ despite the Nepalese armed forces' involvement in serious violations of human rights and international humanitarian law (IHL).

⁴ Shiv Aroor, 'Tyagi in Myanmar to push arms offer', *The Indian Express*, 22 November 2006, <http://www.indianexpress.com/story/17045.html>. Note that in May 2007 Jane's Defence Weekly reported that India had agreed to transfer a further two BN-2 Defender maritime surveillance aircraft to Myanmar (Rahul Bedi, 'India transfers more Defenders to Myanmar', *Jane's Defence Weekly*, 16 May 2007).

⁵ 'India swaps arms for co-operation with Myanmar', *Jane's Defence Weekly*, 11 October 2006.

⁶ See 'Armament Capability' illustration in the brochure for the exact specifications, <http://www.hal-india.com/helicopter/armed%20role.pdf>.

⁷ 'India's ALH Readied For Weapons Integration', *Aviation Week & Space Technology*, 2 December 1996.

⁸ Grzegorz Holdanowicz, 'Aircraft donation boosts Nepal's air capabilities', *Jane's Defence Weekly*, 15 December 2004.

Amnesty International had raised concerns about this and other military transfers. During 2004 in Nepal there were reports of civilians being killed or wounded in helicopter attacks by Nepalese security forces.⁹

Amnesty International wrote to HAL and the Indian Government in March 2007 regarding the prospective transfer of ALHs to Myanmar. So far there has been no response from HAL, despite a second letter being sent 1 June 2007. The response from the Indian Ministry of Defence noted only that "there is no proposal from HAL to supply ALHs to Myanmar."¹⁰ This reply, however, fails to address the press reports that Myanmar's negotiations for the transfer of ALHs had been taking place with the *Indian Government*, not with HAL. Concerns therefore remain that transfers of ALHs from India to Myanmar may still go ahead.



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Display board, Farnborough International Airshow, July 2006. The board provides details of some of the roles that the helicopter can perform, including: anti-tank operations, close-air support and air-to-air combat. Details of the weapons carried included: anti-tank missiles, 20mm turret gun, 68/70mm rockets and air-to-air missiles.

Foreign Involvement in the ALH

From the design to the provision of components and ammunition the involvement of foreign companies in the development of the ALH is considerable. At least 29 companies in nine countries across four continents have been involved with the development, licensed production or supply of components or munitions for the ALH. Ten of these companies are based in six EU Member States (Belgium, France, Germany, Italy, Sweden and the UK). Other companies involved include a number based in Israel and the USA. Since its inception, the ALH has been a

⁹ Amnesty International, 'Nepal: Military Assistance contributing to grave human rights violations', 15 June 2005, <http://web.amnesty.org/library/Index/ENGASA310472005?open&of=ENG-NPL>.

¹⁰ Letter to Amnesty International from Lt Col Marlo D'Monty, Department of Defence Production, Indian Ministry of Defence, dated 7 April 2007.

collaborative effort between the German company Messerschmitt-Bölkow Blohm (now Eurocopter Deutschland) and HAL:

“One thing should be clear. Though it is India's, if not Asia's, first *de novo* designed helicopter, it is not 'indigenous' in the Indian sense of the term, but a collaborative effort of HAL and specialists from Messerschmitt-Bölkow-Blohm, who built the Eurocopter, which the Advanced Light Helicopter resembles.”¹¹

It is not clear what configuration of armaments and components will be incorporated into the variants of any ALHs that might eventually be exported to Myanmar, but it is incumbent on governments to ensure that components produced or otherwise originating from within their jurisdiction are not incorporated into military helicopters transferred to Myanmar. The section below provides illustrative examples of key foreign involvement in the development of the ALH.

Core foreign components for the ALH include helicopter engines and rotor blades, as well as hydraulics, cockpit displays, vibration dampers and other "mission-critical parts". In addition, European firms have contributed to the offensive military capability of the attack helicopter version: variants of the ALH have incorporated rocket launchers of Belgian origin, and machine guns and missiles of French origin.

European and US firms have been involved in designing and developing the aircraft and its components. As a consequence — not least with major structural components like engines and rotors — it would be difficult, if not impossible, for HAL to source adequate alternative components from non-European or non-US suppliers. Similarly it may be difficult for HAL to manufacture such components itself without technical support from those firms.

Letters were faxed to each of the companies mentioned in this report, noting the reports that the Government of India was in negotiations with the Government of Myanmar to supply the ALH, and requesting information about their involvement in the development of the ALH through the manufacture and supply of components, technology and/or assistance. The letters also asked about the terms of the licences under which such transfers were made, including any restrictions applied to re-export.

Many of the companies' responses summarised below specifically state that the contracts conform to their government's requirements. Nevertheless, should such transfers of the ALH from India go ahead over the coming months, it is likely that military equipment, components and technology supplied from EU and US manufacturers incorporated into the ALH will end up in an embargoed destination. There is no suggestion that these companies will have broken current laws or regulations or deliberately violated the EU arms embargo on Myanmar. However, in almost all of these cases, the exports would not have been permitted from the country where the controlling company is based if they were supplied direct to Myanmar.

The following section illustrates the scale of involvement of non-Indian companies in the design.

¹¹ Stephen David, 'Advanced Light Helicopter', *India Today*, 21 July 1997.

The European Union

Belgium

Forges de Zeebrugge FZ

Variants of the ALH have incorporated rocket launchers produced by the Belgian company, Forges de Zeebrugge FZ. For example, the photo below shows the FZ nameplate on the rocket launcher mounted on ALH on display at Farnborough International, UK on 14 August 2006.



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Forges de Zeebrugge FZ confirmed that they have contracts with both HAL and the Indian Army, which have been approved by the Belgian authorities and are subject to end-use agreements. Confidentiality clauses contained within the contract prevented fuller disclosure of any details surrounding the nature of the deal.¹²

France

Turbomeca

The French company Turbomeca (now part of the Safran Group) has undertaken both the direct export of engines from France to India but has also established licensed production and technology transfer arrangements with HAL to produce engines for the ALH. In February 2003, it was announced that Turbomeca and HAL had signed three major contracts. These included a contract for the supply of TM 333 2B2 engines for application on the HAL helicopter; and another contract for the repair and overhaul licence for the TM 333 2B2.¹³ The HAL website states that the ALH continues to use the "Turbomeca TM 333-2B2 Twin Turbo-shaft Engine 746 kw (1000 SHP)".¹⁴

¹² Letter from Forges de Zeebrugge FZ, to Amnesty International dated 15 March 2007.

¹³ Turbomeca Press Release, 'Turbomeca confirms its strong link with India', *Turbomeca*, 9 February 2005, http://www.turbomeca.com/public/turbomeca_v2/html/en/actu/archives2005-detail.php?aid=1050&a=2005.

¹⁴ Exports, HAL, <http://www.hal-india.com/exports/alh.asp>, accessed 12 March 2007.

Turbomeca confirmed that it has three contracts with HAL, two of which cover the supply, repair, servicing and overhaul of the TM333-2B2 engines for the ALH. The company also stated that all its contracts were regulated by the appropriate French export licensing authorities.¹⁵ However in its response to our enquiries the French Government stated that the engines in question are not classified as war material by the French regulations and do not appear in the list of items subject to the Myanmar embargo. In our view, this interpretation is wrong because non-listed items in the EC Dual Use Regulation if incorporated into military items bound for embargoed destinations become licensable, that is subject to the embargo (for more on this see the section on *EU export controls on re-exports over military equipment* below).¹⁶ It would therefore appear that the French Government places no restrictions on the transfer of equipment fundamental to the operation of the ALH notwithstanding the fact that it is clearly also used as a military aircraft.

GIAT Industries (Nexter) and MBDA

In July 2006 defence news service Shepherd Rotorhub quoted Hindustan Aeronautics' chairman Ashok Baweja describing a weaponisation programme was under way for the ALH. This was to include a 20mm gun from the French company GIAT and rockets from European missile manufacturer MBDA.¹⁷ In December 2006, GIAT (now renamed Nexter) announced that it had been awarded a contract by HAL for:

“the supply of 20 THL 20 turrets that will equip the Indian Armed Forces' Advanced Light Helicopter. The order covers the development phase of 20 turrets. The first deliveries will take place in 2008...”¹⁸

In March 2007 Jane's Information Group reported that HAL signed a deal with MBDA in July 2006 for the supply of air-to-air Mistral missiles for armed versions of the ALH.¹⁹

Nexter has confirmed that it does supply products to HAL for the ALH. This currently includes twenty 'THL 20' 20mm Helicopter turrets. The company also stated that all of its exports are regulated and approved by the appropriate French export licensing authorities and that any additional contracts to supply the ALH that were not stipulated in the original contract would require a further export licence.²⁰

Germany

Eurocopter Deutschland (formerly MBB) and now wholly owned by Eurocopter
Eurocopter has been involved (originally as MBB) with the development of the ALH since at least July 1984.²¹ In November 1995, it was reported that

¹⁵ Letter from Turbomeca to Amnesty International, dated 19 March 2007.

¹⁶ Council Regulation (EC) No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology, Chapter 2, Article 4.2.

¹⁷ Andrew Drwiega, 'Boom Time for HAL', *Shepherd Rotorhub*, July 2006, <http://www.shephard.co.uk/Rotorhub/Default.aspx?Action=745115149&ID=c8346908-dba2-4220-8c65-444096face08>.

¹⁸ 'Contrat THL20 pour les forces armées indiennes', *Nexter Group*, 21 December 2006.

http://www.nexter-group.fr/index.php?option=com_content&task=view&id=165&Itemid=134.

¹⁹ Robert Hewson, 'MBDA wins contract to provide Mistrals for India's Dhruv', *Jane's Missiles and Rockets*, March 1 2007.

²⁰ Letter from Nexter Systems to Amnesty International, dated 19 March 2007.

²¹ 'MBB Messerschmitt-Bölkow Blohm of West Germany formally signed a long-awaited co-operation agreement with China during the International Aviation Exhibition (ILA) at Hanover', October 1997, *Remarks*, Textline Multiple Source Collection (1980-1994), 9 June 1986; 'Hindustan Aeronautics flies its Advanced Light Helicopter for the first time', *Flight International*, 9 September 1992; Andrew

Eurocopter had submitted a proposal to the Indian Defence Ministry to “co-produce the ALH designed by HAL. It plans to set up production facilities in India to manufacture the ALH for both local and export markets.”²² In 2006 both companies were advertising their mutual co-operation: Eurocopter noting that it was supplying rotor blades for the ALH,²³ and HAL announcing that “Eurocopter, the helicopter manufacturer owned by EADS, has been cooperating with HAL for over four decades ... India was the first nation with which Eurocopter signed a licence agreement for technology transfer.”²⁴ Amnesty International wrote to Eurocopter in March 2007 asking for clarification over its role in the development of the ALH. As of 25 June 2007, the company had not responded.

SITEC Aerospace

SITEC Aerospace manufactures a range of components and complete assemblies for flight/engine controls for various types of aircraft.²⁵ According to company literature on display at Farnborough International 2006, SITEC provides components for the ALH.

SITEC Aerospace confirmed that they supply parts for the ALH, but that they do not export these directly to HAL, but supply them to another unnamed German manufacturer who subsequently incorporates these items into other systems for the ALH.²⁶



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Italy

Elettronica Aster SpA

The Italian company Elettronica Aster SpA on its website describes HAL as a major customer. According to the “Company and Program Overview”, Elettronica Aster SpA has produced and supplied the ALH with a brake system.²⁷

Amnesty International wrote to Elettronica Aster SpA in March 2007 to ask for clarifications as to its involvement in the development of the ALH. In its reply

Chuter, 'India's Rotary Club', *Flight International*, 29 January 1997; *Flug Revue Online website*, <http://www.flug-revue.rotor.com/FRTypen/FRALH.htm>, last updated 16 October 1997 (last accessed 22 May 2007).

²² 'Eurocopter Submits Proposal for ALH Project', *Business Line (The Hindu)*, 7 November 1995.

²³ Eurocopter news release, 'Eurocopter in India – an ongoing success story in one of Asia's most promising markets', *Eurocopter*, 31 January 2006, <http://www.eurocopter.ca/asp/cmNews060131-tris.asp>.

²⁴ HAL Press Release, 'HAL, EADS set to explore new horizons', *HAL*, 1 September 2006, <http://www.hal-india.com/HAL-EADS.asp>.

²⁵ See 'Products', Sitec Aerospace, <http://www.sitec-aerospace.com>.

²⁶ Letter from Sitec Aerospace to Amnesty International, dated 12 March 2007.

²⁷ General Overview, *Elettronica Aster SpA*, http://www.elaster.com/General_Overview.pdf

dated 15 March, the company had no comment on the specifics of its supply of components for the ALH, stating only that Elettronica Aster SpA's "export activity is regulated by the rules called out in the Italian Law no.185/'90 (with amendment DDL 1927), establishing the regulation for weapons import/export/transit."²⁸

Sweden

Saab AB

Saab Avitronics, the South African joint venture company owned by Saab AB (Sweden) and Saab Grintek (South Africa, itself part owned by Saab AB), has been awarded a multi-million dollar export contract from HAL for the supply of self-protection equipment for installation on the ALH for the Indian Armed Forces.²⁹

Amnesty International wrote to Saab AB on 1 June 2007 asking for clarification over its involvement with the ALH. Saab AB replied saying: "All export approvals from the concerned authorities are in place. The export licences are supported by an end-user certificate."³⁰

The United Kingdom

APPH Precision Hydraulics

At the 2004 Farnborough arms fair, the UK company APPH Precision Hydraulics Ltd displayed its Hydraulic Package as the following:

"HAL Advanced Light Helicopter Hydraulic Package designed and manufactured by APPH Ltd"

Amnesty International wrote to in March 2007 to ask for clarifications as its involvement in the development of the ALH. As of 25 June 2007, the company had not responded.



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²⁸ Letter from Elettronica Aster S.p.A to Amnesty International, dated 15 March 2007.

²⁹ Military Technology Journal, 1 August 2005, Volume 29, Issue 8.

³⁰ Letters were also faxed to Saab Avitronics and Saab Grintek. The reply from Saab AB to Amnesty International was dated 12 June 2007.

FPT Industries Ltd

In 1993 it was reported that FPT Industries Ltd had been awarded a contract to supply floatation equipment for the ALH under development by HAL.³¹ FPT Industries is part of GKN Aerospace Services Ltd. In 1997, it was reported that FPT Industries' self-sealing fuel tank systems were being used in the ALH.³² In 2007, the FPT Industries website stated that: "FPT equipment is fitted to a range of helicopters including ALH".³³

In 1997, the then GKN Westland Aerospace Ltd (renamed GKN Aerospace Services Ltd in 2001) was awarded a contract to supply the internal gearbox BR715 for HAL's ALH.³⁴

GKN Aerospace Services Ltd confirmed that they have supplied fuel tanks, floatation equipment and related gaskets and seals for the ALH, but that these are subject to end-use certificates stipulating that they would not be re-exported. The company stated that future supplies for the ALH would be for components and kits for fuel tanks that would be assembled locally in India, but would again be subject to similar end-use undertakings.³⁵ However, while the UK Government normally requires the presentation of end-use documentation as part of the licensing process, it does not as a rule then include explicit end-use restrictions as a *condition* on the export *licence*. If this is the case in this instance, what force those end-use undertakings have is unclear.

Other third-country involvement in the ALH:

The United States

It should be noted that the US embargo on Myanmar does not specifically mention indirect supplies, nor does it place controls on civilian components that are incorporated into military systems. However, indirect supplies of US military components or other controlled items are subject to re-export controls under the US International Traffic in Arms Regulations (ITAR) system which specifically states that re-export of US-controlled content can only take place with the express permission of the US Government. Section 123.9 "Country of ultimate destination" provides that:

"(a) The country designated as the country of ultimate destination on an application for an export licence, or on a shipper's export declaration where an exemption is claimed under this subchapter, must be the country of ultimate end-use. The written approval of the Department of State must be obtained before reselling, diverting, transferring, transshipping, or disposing of a defense article in any country other than the country of ultimate destination as stated on the export licence, or on the shipper's export declaration in cases where an exemption is claimed under this subchapter. Exporters must ascertain the specific end-use and end-user prior to submitting an application to the Office of Munitions Control or claiming an exemption under this subchapter. End-use must be confirmed and should not be assumed."³⁶

³¹ 'FPT Industries Gets Contract', *Helicopter News*, 14 May 1993.

³² 'The design, manufacture and qualification of flexible fuel cells', *Aircraft Engineering and Aerospace Technology*, 1997 (v69, Iss3).

³³ GKN Aerospace, <http://www.fptind.co.uk/iqs/sid.0403795029511073502729/floatation-systems-overview.html>.

³⁴ GKN Report & Accounts 1996, <http://www.secinfo.com/dsvr4.83Nq.v.htm>.

³⁵ Letter from GKN PLC to Amnesty International, dated 12 March 2007.

³⁶ The US International Traffic in Arms Regulations (§123.9).

However, it is not clear whether components supplied by US companies for the ALH have been specifically designed or adapted for military use. If not, they may fall outside this specification.

Aitech Systems Ltd

In September 2005, it was reported that Aitech Systems Ltd, a US company, had announced it had "received the first production order from the Lahav Division of Israel Aircraft Industries (IAI) for Display & Mission Computers" for inclusion in the glass cockpit of the ALH. The Lahav Division of IAI is under contract to HAL to develop and provide the avionics system for the HAL.³⁷

Deliveries for the first production of Display and Mission Computers were due to be completed by May 2006:

*"Aitech will build 400 Display & Mission Computers for the ALH program, to be delivered over the next several years. In addition, Aitech is under contract to IAI to provide the next generation of Display & Mission Computer."*³⁸

Amnesty International wrote to the company in March 2007 asking for clarifications over its involvement with the ALH, but has yet to receive a reply (as of 25 June 2007).

Lord Corporation

In January 2004, it was reported that Lord Corporation had announced that it had been "awarded the first production contract for its active vibration control system" for the ALH. Lord Corporation had been supplying other parts (such as elastomeric bearings) for the main tail rotor and parts for various "isolators", which together formed part of an anti-resonance isolator system aimed at reducing vibrations in the aircraft." The report also stated that "Lord would supply the vibration dampers for these aircraft with user approvals."³⁹

The Lord Corporation wrote to Amnesty International on 9 March 2007 saying that contractual obligations of confidentiality prevented any disclosure of the Lord Corporation's involvement in military products, other than information currently in the public domain. The company also stipulated that it was fully aware of government compliance issues and "strives to be in full compliance with all applicable regulations."⁴⁰

³⁷ 'Advanced Light Helicopter (ALH) - DHRUV', IAI, <http://www.iai.co.il/Default.aspx?docID=31715&FolderID=17942&lang=en&res=0&pos=0> accessed 13 March 2007; 'Aitech Completes Delivery of First Production Lot of ALH Display and Mission Computers', *Military Embedded Systems*, 21 July 2006, <http://www.mil-embedded.com/news/db/?3433>. In 2002, IAI and HAL signed a Memorandum of Understanding agreeing to co-market the HAL. (HAL, Israeli co in marketing tie-up', *Business Line (The Hindu)*, 3 November 2002.) In 2006, the Indian Express stated that "Israel is largely responsible for making the indigenous ALH and OFB cargo ammunition internationally competitive." (Israel supplies key to Indian defence...and CPM wants Delhi to snap all military ties.' *Indian Express*, 1 August 2006.) In addition to possible transfers to Myanmar, according to *Aerospace Daily* "HAL is discussing exporting the ALH to Iran, Malaysia and Vietnam, and already has agreed to give IAI exclusive marketing rights to the helicopter." (Technology will reduce vibration in Dhruv helo, officials say', *Aerospace Daily*, 8 January 2004.) Amnesty International wrote to IAI on 1 June asking for clarification over its involvement with the ALH, as of 25 June has yet to receive a reply.

³⁸ 'Aitech receives first production order for advanced light helicopter display & mission computers', *Rugged Computer Systems*, 16 September 2005, <http://www.rugged.com/news1363.htm>.

³⁹ 'HAL may make tail rotors for Bell', *The Hindu*, 27 January 2004; According to the Lord Corporation website the company: "joined efforts with [HAL] in mid-2002 with the objective of minimizing vibration in the fuselage of the 12-passenger, two crew member aircraft, the Indian DHRUV. The result was the application of LORD's proven Active Vibration Control (AVC) System", <http://www.lord.com/Default.aspx?tabid=1519>.

⁴⁰ Letter from the Lord Corporation to Amnesty International, dated 9 March 2007.

Violations of international human rights and international humanitarian law in Myanmar

The international community has long-standing and extensively documented concerns about grave international human rights and international humanitarian law violations by the Myanmar authorities. The weight of evidence suggests that some of these violations constitute crimes against humanity. Violations committed by the army (*tatmadaw*) in areas of armed conflict and counter-insurgency operations and ethnic minority areas, are a matter of particular concern, and include enforced disappearances, torture, including rape, and extrajudicial, arbitrary or summary executions. Forced recruitment of children as soldiers for the Myanmar Army is reported to be continuing,⁴¹ as is the forced relocation of civilian populations and the destruction of houses, fields and crops. According to the report of the UN Special Rapporteur on the situation of human rights in Myanmar in February 2007:

“Reliable and independent sources estimate that between 1996 and 2006, 3,077 separate incidents of destruction, relocation or abandonment of villages have been documented in eastern Myanmar. Over a million people are understood to have been displaced from their homes during this time.”⁴²

Civilians, including prisoners, have been forced to carry out portering for the military; some have been used as human shields in conflict, or beaten and shot dead as punishment for not being able to perform their duties.⁴³ Widespread impunity has been enjoyed by state officials for human rights violations.

More than a dozen largely ethnically-based armed opposition groups are operating against the Myanmar central government.⁴⁴ During 2006, military activities by the *tatmadaw* in eastern Myanmar dramatically intensified, with a correspondent rise in grave violations of international human rights law and IHL, in particular with respect to civilians and other persons taking no active part in the hostilities. The 2007 Report of the UN Special Rapporteur on Human Rights in Myanmar to the UN Human Rights Council commented that:

“One of the most appalling features of the military campaign in ethnic areas is the disproportionate effect on civilian populations. In addition to the heightened risks posed by the widespread availability of small arms and light weapons and anti-personnel mines, the killing, terrorizing or displacement of civilians is often part of a deliberate strategy to separate ethnic armed groups from their civilian populations. It has been

⁴¹ Human Rights Watch estimated in 2002 that there were 70,000 child soldiers; see 'My gun was as tall as me: Child Soldiers in Burma', Human Rights Watch, October 2002, <http://hrw.org/reports/2002/burma/>.

⁴² Implementation of UN General Assembly Resolution 60/251, Human Rights Council Report of Paulo Sérgio Pinheiro, Special Rapporteur on the situation of human rights in Myanmar, UN Doc. A/HRC/4/14, 15 March 2006, p. 14, para 54. <http://daccessdds.un.org/doc/UNDOC/GEN/G07/107/31/PDF/G0710731.pdf?OpenElement>.

⁴³ Amnesty International interviews of Karen refugees, July 2006; see also, for example, 'Myanmar: Ethnic Minorities, Targets of Repression', *Amnesty International*, AI Index: ASA 16/014/2001, 25 June 2001.

⁴⁴ These include the Karen National Union (KNU) in the Kayah State; the Karenni National Progressive Party (KNPP) in the Kayah State; and the Shan State Army-South (SSA-South) in the southern Shan State, the Arakan Rohingya National Organization and Arakan Liberation Party in western Myanmar, Lahu Democratic Front, Wa National Army, Hongsawatoi Restoration Party, Mergui-Tavoy United Front, Lahu National Organization, National Socialist Council of Nagaland, Chin National Front and National Unity Party of Arakan.

considered by various observers to be a concerted policy aimed at denying people their livelihoods and food or forcing them to risk their lives when they attempt to return to their villages after having been forcibly evicted."⁴⁵

The US State Department's country report on human rights practices in Myanmar in 2006 also raises a number of concerns. It notes, for example, that:

"[t]he government's human rights record worsened during the year. ...The army increased attacks on ethnic minority villagers in Bago Division and Karen State designed to drive them from their traditional land. In addition, the government continued to commit other serious abuses, including extrajudicial killings, custodial deaths, disappearances, rape, and torture."⁴⁶

The State Peace and Development Council (SPDC), Myanmar's military government, has failed to implement successive recommendations in resolutions passed by the UN General Assembly, and the then UN Commission for Human Rights to improve the human rights situation. Draft UN Security Council resolution S/2007/14, on the situation of human and political rights in Myanmar, was tabled in January 2007, calling among other things on the Myanmar Government to cease military attacks against civilians in ethnic minority regions. While the governments of China and the Russian Federation vetoed the resolution, they and other members of the Security Council acknowledged the gravity of the challenges to human rights in Myanmar, including the situation of refugees, and the need for the SPDC to consider the recommendations made by the international community to improve the situation.⁴⁷

EU and US arms embargo on Myanmar

European Union

The EU has had an arms embargo on Myanmar since 1988. In 1996, the embargo was strengthened to become an EU Common Position, which noted concern "at the absence of progress towards democratisation and at the continuing violation of human rights in Burma/Myanmar".⁴⁸ The embargo was renewed in 2002 and again in 2006⁴⁹, again noting "continuing serious human rights violations including the failure to take action to eradicate forced

⁴⁵ Human Rights Council, Report of Paulo Sérgio Pinheiro, Special Rapporteur on the situation of human rights in Myanmar, UN Doc. A/HRC/4/14, 15 March 2006, para. 56.

⁴⁶ 'Country reports on human rights practices: Burma,' *The Bureau of Democracy, Human Rights, and Labor*, 6 March 2007, <http://www.state.gov/g/drl/rls/hrrpt/2006/78768.htm>.

⁴⁷ UN Doc S/PV.5619 UN Security Council 5619th meeting Friday, 12 January 2007, 4 p.m. New York.

⁴⁸ Common Position of 28 October 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Burma/Myanmar (96/635/CFSP). "The aforementioned embargo covers weapons designed to kill and their ammunition, weapon platforms, non-weapon platforms and ancillary equipment. The embargo also covers spare parts, repairs, maintenance and transfer of military technology. Contracts entered into prior to the date of entry into force of the embargo are not affected by this Common Position." 96/635/CFSP: Common Position of 28 October 1996 defined by the Council on the basis of Article J.2 of the Treaty on European Union, on Burma/Myanmar . <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31996E0635:EN:HTML>.

⁴⁹ To strengthen the Council Common Position, the European Council on 22 May 2000 agreed the Council Regulation (EC) No 1081/2000 prohibiting the sales, supplies and exports by an EU Member State of equipment which might be used for internal repression or terrorism as listed under Annex 1 of the Regulation. Both instruments were renewed recently: the Council Common Position (2006/318/CFSP) on 27 April 2006 and the Council Regulation (No 817/2006) on 29 May 2006.

For the text of the Common Position see: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_116/l_11620060429en00770097.pdf.

For the text of the Regulation see: http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/l_148/l_14820060602en00010029.pdf.

labour....the Council considers it fully justified to maintain the restrictive measures against the military regime in Burma/Myanmar".⁵⁰

The embargo, which is legally-binding and requires all EU Member States to implement and enforce its provisions at the national level, states that:

"The sale, supply, transfer or export of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment and spare parts for the aforementioned, as well as equipment which might be used for internal repression, to Burma/Myanmar by nationals of Member States or from the territories of Member States or using their flag vessels or aircraft shall be prohibited whether originating or not in their territories."⁵¹

The arms embargo also bans the provision of technical or financial assistance, brokering and other services related to:

"military activities and to the provision, manufacture, maintenance and use of arms and related materiel of all types, including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned directly or indirectly to any natural or legal person, entity or body in, or for use in Burma/Myanmar."⁵²

Indirect transfers of military components are covered within the scope of the EU embargo, yet there is no comprehensive EU-wide control system in place to ensure that governments can effectively implement and enforce their embargo commitments.

The indirect transfer of dual-use items and technology by EU Member States is also controlled by the EC Regulation on Dual-Use Items and Technology adopted 22 June 2000⁵³. Article 4.2. of the Regulation provides that:

"An authorisation shall also be required for the export of dual-use items not listed in Annex 1 if the purchasing country or country of destination is subject to an arms embargo decided by a Common Position or joint action adopted by the Council or a decision of the OSCE or an arms embargo imposed by a binding resolution of the Security Council of the United Nations and if the exporter has been informed by the authorities referred to in paragraph 1 that the items in question are or may be intended, in their entirety or in part, for a military end-use."⁵⁴

This Regulation was also renewed on the 11 April 2006⁵⁵ and includes an updated list of dual-use items and technology subject to control.⁵⁶

EU controls on re-exports of military equipment

⁵⁰ Council Common Position 2006/318/CFSP of 27 April 2006.

⁵¹ Article 1 of the Common Position 2006/318/CFSP.

⁵² Article 2 of the Regulation No 817/2006.

⁵³ Council Regulation (EC) No 1334/2000 of 22 June 2000.

⁵⁴ Article 4.2 continues: "For the purposes of this paragraph, 'military end-use' shall mean: a) incorporation into military items listed in the military list of Member States; b) use of production, test, or analytical equipment and components therefore, for the development, production or maintenance of military items listed in the abovementioned list; c) use of any unfinished products in a plant for the production of military items listed in the abovementioned list."

⁵⁵ Council Regulation (EC) No 394/2006 of 27 February 2006,

<http://www.dti.gov.uk/files/file26940.pdf>.

⁵⁶ http://trade.ec.europa.eu/doclib/docs/2006/december/tradoc_131576.pdf.

As well as writing to a number of companies during the researching of this report, letters were also written to several governments of countries from which components or related technology were supplied for the ALH asking if any re-export controls were applied. While most of the responses to those letters expressed confidence that onward export would be prohibited, a detailed analysis of the nature and extent of existing re-export controls gives considerable cause for concern. Standards across the EU vary widely; re-export controls appear to be applied only on a sporadic basis and are not always a legal requirement. Some major exporting states have no provision for such controls at all, some only apply controls to certain equipment and some only apply such provisions to end-use certificates associated with the original contract between companies involved and not subsequent re-transfers where the agent involved in the re-export is not the original importer.

Given an increasingly globalised arms market, in which such international collaboration on the production of military equipment is now the norm, it is a major weakness in the effectiveness of the EU's export control regime, especially for cases of potential re-transfers to embargoed destinations, that comprehensive re-export provisions covering re-transfers of equipment by any agent (companies or governments) are not standardised as legally-binding and enforceable commitments. A summary of some Member States re-export controls involved in the development of the ALH is as follows:

- In Belgium, an end-use certificate is always required, but while these *usually* contain a specific commitment not to re-export equipment without the permission of the Belgium Government, the provision of such a commitment is not obligatory. No information was forthcoming regarding whether the end-use certificates relevant to this case included prohibitions on re-export without permission. The Belgian authorities (in this case the Walloon regional authorities) have stated that if end-user agreements are violated, then further export licences are likely to be denied.
- In France, there is no legal obligation to apply re-export clauses as standard elements in transfers of military equipment. In this case, the French Government stated in its letter⁵⁷ that it has applied a re-export clause to the export of gun turrets and so India would be in violation of its agreement if this equipment was retransferred to Myanmar without French permission, which, we are informed, would be refused. However, as mentioned above, the French authorities have provided no such obligation on the Turbomeca engines, arguing that these are not military, but civilian items. This is a clear misreading of French obligations under the EC Dual-Use regulation, which specifies that civilian components, when destined for incorporation into military systems, fall within the scope of the embargo.
- In Germany, end-use certificates typically specify that re-exports cannot take place without prior authorisation from the German Government. However such stipulations appear to be associated with the original contract and it is questionable if they would apply in this case, if the transfer is proposed by the Indian Government and not by HAL (the original importer). Germany has stated that if end-user agreements are violated, further export licences are likely to be denied.⁵⁸

⁵⁷ Letter from the Director of Sensitive Technologies and Transfers of the General Secretariat of National Defence of the French Government to Amnesty International, dated 20 March 2007.

⁵⁸ Letter from the Federal Office of Economics and Export Control of the German Government, dated 16 March 2007.

- In Italy, a licence application must include an end-use certificate that requires prior written consent from the Italian Government for re-export. Should the Italian authorities be alerted to any unauthorised re-export, this would be factored into any subsequent licence applications to that country.
- In Sweden, an end-user or processing certificate is required whenever equipment is exported. In guidelines issued by the Swedish Inspectorate of Strategic Products, it is stated that “[a] state which has permitted or failed to prevent the re-export of Swedish military equipment despite a commitment undertaken to the Swedish Government, should not, in principle, be approved as a receiver of such equipment from Sweden as long as these circumstances prevail.”⁵⁹ Unfortunately these guidelines make no mention of whether such a commitment is required in all cases.
- The UK does not apply re-export controls. While end-use certificates are nearly always required and will contain general statements about not re-exporting the equipment, such statements are not legally binding. At no point does the UK require the original importing state to seek permission before re-export.

United States

On 16 June 1993 the US imposed an arms embargo on Myanmar “*in light of the human rights abuses being committed by the current Government of Burma.*”⁶⁰ This embargo suspended all licences and approvals to export or transfer defence articles or defence services by US manufacturers and exporters including “[m]anufacturing licenses, technical assistance agreements, technical data, and commercial-military exports of any kind subject to the Arms Export Control Act.”⁶¹ The US arms embargo on Myanmar appears less comprehensive than its EU counterpart in that it does not specifically cover indirect transfers nor contain clear guidance on the incorporation of dual-use items into military systems such as the ALH. However, other US export control regulations specify that re-export controls apply to all US supplied military components.⁶² Therefore, before India could re-export to Myanmar, any licensable US components originally imported from the US, would require a further US export licence. Given the US arms embargo on Myanmar, such licences would almost certainly be refused.

Conclusion and recommendations

A number of lessons and recommendations arise from this case, some of which apply specifically to the transfer of ALHs from India to Myanmar, and some which can be applied more broadly. Chief among these is that the efficacy of embargoes is dependent upon the robustness of the general EU arms transfer control regimes. The EU embargo on Myanmar applies to indirect as well as direct transfers, however this requires that all Member States undertake a legally-binding obligation to include “no re-export without permission” clause in their export licences. Failure to do so runs the risk of being able to prevent indirect

⁵⁹ Guidelines, National Inspectorate of Strategic Products, <http://www.isp.se/sa/node.asp?node=548>.

⁶⁰ US Department of State Public Notice, 16 June 1993 available at: <http://www.pmddtc.state.gov/docs/frnotices/58FR33293.pdf>.

⁶¹ *Ibid.*

⁶² The US International Traffic in Arms Regulations (§123.9) explicitly requires that re-exports or re-transfers of US-origin defence articles or components must obtain written approval from the Directorate of Defense Trade Controls. Without prior written approval, India would be in breach of US regulations and potentially subject to penalties.

transfers to (in this case) Myanmar only where the ultimate destination is known at the time of the licence application. This is clearly inadequate.

Most of the following recommendations are directed to EU Member States rather than defence companies, as it is chiefly with states that the responsibility for the current situation, and for addressing, it resides. These recommendations have equal application for other states that have in place arms embargoes on Myanmar (e.g. the US).

The EU arms embargo on Myanmar

The EU should initiate consultations with the Indian Government regarding the status, extent and timing of (possible) ALH transfer(s) to Myanmar of technology to produce and maintain such equipment, and of their parts and components.

If India has indeed supplied or plans to supply ALHs to Myanmar, EU Member States should immediately:

- rescind existing export licence authorisations and refuse any new applications for any transfers of equipment, components or technology which may be used in or to facilitate the design, production or armaments of the ALH;
- discontinue all future defence production co-operation with India that might lead to transfers of embargoed controlled equipment to Myanmar; and
- attach to all future licences for transfers of controlled goods and technology to India a strict and enforceable condition, with penalty clauses prohibiting re-export to states under an embargo to which the original exporting state is party without express governmental permission.

Strong representations should then be made by the EU Member States to the Indian Government to convey their objections to the possibility of any such transfers, drawing attention to:

- any relevant re-export clauses, and the requirement that India honour such clauses;
- the content and intent of the embargo (especially as it relates to indirect as well as direct transfers), and the implications for the ongoing relationships between India and EU Member States should India fail to take account of the EU's concerns and obligations;
- the risk that military equipment might be used by the Myanmar regime to commit violations of international law including international human rights law and IHL; and
- the EU and US positions embodied in the embargoes that Myanmar is not an appropriate market for arms and related matériel of all types.

Broader recommendations

This case is a clear demonstration of the way in which assisting the development of defence industries in other countries may create additional proliferation concerns, and undermines the efforts of EU Member States to wield effective arms transfer controls. EU Member States need to take concerted and prompt action. In particular:

- all future licences issued by EU Member States for transfers of controlled goods and technology should include strict "no re-export without permission" clauses. At the very least, such clauses must apply to re-export to states under a national, EU, OSCE or UN arms embargo. Such controls should be incorporated into transfer control legislation, and be adequately monitored and enforced;
- the setting up of licensed production facilities overseas (LPO) should be subject to prior licensed approval by national government authorities.

Licensing approval should be required at the level of the licensed production agreement itself rather than seeking to control only the transfer of individual components or machine tools etc. used in such production;

- LPO agreements should contain strict limits on the quantities of products that can be produced; the lifetime or duration of such agreements and details of intended end-use and end-users should be clearly defined; and no export of goods produced under licence should be permitted without the express permission of the original licensing EU government;
- at a minimum, foreign subsidiaries of EU-based companies should be subject to EU Member States' export controls where the ultimate destination is under an arms embargo;
- Member States should reserve the right to exercise transfer controls over any item, even if not on the military or dual-use list, when this is for military end-use or for use in an item on the military list;
- Member States should also reserve the right to monitor the end-use of controlled goods and technology transferred under licence from their territory;
- EU Member States should enforce their commitment to the export criteria as set out in the EU Code of Conduct on Arms Exports to apply to components as well as complete weapons systems, taking into account the ultimate destination and end-user of the final product, and should revisit the EU Guidelines on assessment of applications for 'incorporation' and re-export⁶³ to ensure that these guidelines do not undermine the ability of Member States to enforce embargoes; and
- all EU legislation on embargoes should state explicitly that they apply to all transfers where the immediate or *ultimate* destination of the controlled goods or technology is an embargoed entity, irrespective of whether they are to receive the goods or technology by direct or indirect means.

This case also draws attention to the fact that on occasion there are different understandings regarding arms transfers among different countries and across regions, and to the way in which the ongoing globalisation of the production of and trade in military equipment can undermine national and regional arms transfer control regimes. This ultimately highlights the need for global agreement on the rules that should be followed when making arms transfer licensing decisions. Therefore, in addition to improving national and EU practice, EU Member States should give their full support to current efforts to establish an international Arms Trade Treaty (ATT), founded upon states' existing commitments under international law, including human rights and IHL. This is not only an issue for the EU: the case of the possible transfer of ALH to Myanmar also highlights the need for states such as India to be at the heart of the ATT process.

⁶³ See the User's Guide to the EU Code of Conduct on Arms Exports, 12 June 2007, section 2.2, <http://register.consilium.europa.eu/pdf/en/07/st10/st10684.en07.pdf>.

Annex

Compilation of Global Principles for Arms Transfers

The following Principles bring together States' existing obligations in respect of international transfers of arms and ammunition. The Principles are proposed by a diverse group of non-governmental organisations. The Principles reflect the content of a variety of international instruments including: international and regional treaties, declarations and resolutions of the United Nations and other multilateral and regional organisations, and model regulations intended for national legislation. Some of the Principles reflect customary and treaty law, while others reflect widely accepted emerging norms. The compilation indicates the best general rules for effective control of international transfers of all conventional arms and ammunition. The rules reflect States' obligations under international law while also recognising States' right to legitimate self defence and law enforcement in accordance with international standards.

Principle 1: Responsibilities of states

All international transfers of arms and ammunition shall be authorised by all States with jurisdiction over any part of the transfer (including import, export, transit, trans-shipment and brokering) and carried out in accordance with national laws and procedures that reflect, as a minimum, States' obligations under international law. Authorisation of each transfer shall be granted by designated State officials in writing only if the transfer in question first conforms to the Principles set out below in this instrument and shall not be granted if it is likely that the arms or ammunition will be diverted from their intended legal recipient or re-exported contrary to the aims of these Principles.

Principle 2: Express limitations

States shall not authorise international transfers of arms or ammunition that violate their expressed obligations under international law.

These obligations include:

- A. Obligations under the Charter of the United Nations – including:
 - a. binding resolutions of the Security Council, such as those imposing arms embargoes
 - b. the prohibition on the threat or use of force
 - c. the prohibition on intervention in the internal affairs of another State.
- B. Any other treaty or decision by which that State is bound, including:
 - a. Binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional organisations to which a State is party
 - b. Prohibitions on arms transfers that arise in particular treaties which a State is party to, such as the 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, and its Protocols, and the 1997 Convention on the Prohibition of Anti-Personnel Mines.
- C. Universally accepted principles of international humanitarian law – including:
 - a. The prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering

- b. The prohibition on weapons or munitions incapable of distinguishing between combatants and civilians.

Principle 3: Limitations based on use or likely use

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

- A. breaches of the UN Charter and customary law rules relating to the use of force
- B. gross violations of international human rights law
- C. serious violations of international humanitarian law
- D. acts of genocide or crimes against humanity

Principle 4: Factors to be taken into account

States shall take into account other factors, including the likely use of the arms or ammunition, before authorising an arms transfer, including the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms and munitions control, and disarmament.

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

- A. be used for or to facilitate terrorist attacks
- B. be used for or to facilitate the commission of violent or organised crime
- C. adversely affect regional security or stability
- D. adversely affect sustainable development
- E. involve corrupt practices
- F. contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non-proliferation, arms control, and disarmament to which the exporting, importing, or transit States are party

Principle 5: Transparency

States shall submit comprehensive national annual reports on all their international arms and ammunition transfers to an international registry, which shall publish a compiled, comprehensive, international annual report. Such reports should cover the international transfer of all conventional arms and ammunition including small arms and light weapons.

Principle 6: Comprehensive Controls

States shall establish common standards for specific mechanisms to control:

- 1. all import and export of arms and ammunition
- 2. arms and ammunition brokering activities
- 3. transfers of arms and ammunition production capacity and
- 4. the transit and trans-shipment of arms and ammunition.

States shall establish operative provisions to monitor enforcement and review procedures to strengthen the full implementation of the Principles.