

Contents

<i>Foreword</i>	v
<i>Acknowledgements</i>	vii
<i>Preface</i>	ix
<i>Table of Abbreviations and Acronyms</i>	xv
<i>Table of Cases</i>	xix

PART I

INTRODUCTION: FEATURES, DEFINITION AND MANUFACTURING OF SALW

1	Introduction	3
2	Features and Definition of SALW: Associated Problems	13
2.1	FEATURES	13
2.1.1	Lethal Character	13
2.1.2	Accessibility	15
2.1.3	Suitability for Use	16
2.1.4	Durability	17
2.1.5	Versatility	18
2.1.6	SALW Comprises a Vast Range of Weapons	19
2.2	DEFINITION	20
2.2.1	Why is Definition Essential?	20
2.2.2	General Definition-SALW	21
2.2.2.1	Global Efforts	21
2.2.2.2	Regional Efforts	29
2.2.2.3	Domestic Legislation	32
2.2.2.4	Firearms Industries, NGOs and Writers	36
2.2.2.5	Conclusion on a General Definition	40
2.2.3	Ammunition and Explosives	40
2.2.4	Parts and Components	45
2.2.5	Conclusions	45
2.2.5.1	Problems	45
2.2.5.2	Perspectives	46
2.2.6	Appropriate Definition	47
3	Manufacturing of SALW: Associated Problems	49
3.1	DEFINITIONAL, FACTUAL AND MORAL ISSUES	49

xii *Contents*

3.2 CONCERNS AND LEGAL ISSUES	52
3.3 SUBSTANTIVE LIMITATIONS ON SALW MANUFACTURING	53
3.3.1 The League of Nations and the United Nations	53
3.3.2 Treaties	60
3.3.3 Regional Efforts	60
3.3.3.1 <i>The West African Moratorium</i>	60
3.3.3.2 <i>The OSCE and the EU</i>	63
3.3.3.3 <i>Conclusion</i>	64
3.3.4 Domestic Legal Systems on SALW Manufacturing	64
3.3.5 NGOs	71
3.3.6 Conclusions	72
3.3 IS THERE A RULE OF SUBSTANTIVE LIMITATION?	73
3.3 CONCLUSIONS AND PROBLEMS	79

PART II

**INTERNATIONAL TRANSFERS OF SALW: SUBSTANTIVE
LIMITATIONS AND PROBLEMS**

4 International Transfers of SALW: Introduction	83
4.1 USE OF TERMS, SCOPE, FACTS AND ISSUES	83
4.1.1 Use of Terms and Scope	83
4.1.2 Facts	87
4.1.3 Issues	89
4.2 GENERAL CONSIDERATIONS FOR SUBSTANTIVE LIMITATIONS	89
4.2.1 Relevant General International Law Norms	89
4.2.2 Some Controversial Considerations	97
5 Adherence to the Peace and Security Legal Norm	99
5.1 ASPECTS OF INTERNATIONAL PEACE AND SECURITY	99
5.2 EXPRESS PROHIBITIONS: TREATIES AND RESOLUTIONS	104
5.3 EMERGING STATE PRACTICE: GLOBAL EFFORTS	112
5.4 REGIONAL INSTRUMENTS	120
5.5 DOMESTIC INSTRUMENTS	127
5.6 NGOS AND WRITERS	130
5.7 THE PEACE AND SECURITY NORM	134

5.8 CONCLUSIONS	141
6 Adherence to the Non-intervention Norm	145
6.1 TRANSFERS ONLY BY AND TO GOVERNMENTS OF STATE	146
6.1.1 Global Efforts	147
6.1.2 Regional and National Efforts	154
6.1.3 The ICJ and Publicists on the Question	159
6.1.4 Position of NGOs	165
6.2 EXCEPTIONAL GOVERNMENT-TO-NSA TRANSFERS	167
6.2.1 Transfers to NLMs	167
6.2.2 Transfers to Special Entities	173
6.2.2.1 <i>The Palestine Authority and the SALW Trade</i>	174
6.2.2.2 <i>Taiwan and the SALW Trade</i>	177
6.2.3 Other Cases	186
6.3 THE NON-INTERVENTION RULE	187
6.4 CONCLUSION	192
7 Humanitarian Law (IHL) Limitations on SALW Transfers	195
7.1 IHL IN GENERAL	195
7.2 THE OBLIGATION TO RESPECT AND ENSURE RESPECT FOR IHL VIS-À-VIS SALW TRANSFERS	199
7.2.1 IHL Standards for SALW Transfers	206
7.2.2 The Legal Background to the Standards	207
7.2.3 Actual or Potential Use Standard	208
7.2.3.1 <i>Global Efforts</i>	209
7.2.3.2 <i>Regional and Security Organisations Efforts</i>	211
7.2.3.3 <i>Domestic Efforts</i>	214
7.2.3.4 <i>Cases, NGOs and Publicists</i>	217
7.2.4 Excessive Availability Standard	221
7.2.5 Have Use and Availability Based Legal Rules Emerged?	226
7.2.6 The Martens Clause and SALW Transfers	233
7.3 CONCLUSIONS AND PROBLEMS	237
8 International Human Rights Law (IHRL) Limitations on SALW Transfers	239
8.1 IHRL IN GENERAL	239
8.2 THE DUTY OF STATES REGARDING THE USE OF FIREARMS	242
8.3 ACTUAL OR POTENTIAL USE OF SALW AGAINST IHRL: A STANDARD FOR RESTRICTING TRANSFERS	250

xiv *Contents*

8.3.1 Global Efforts	250
8.3.2 Regional Efforts	253
8.3.3 Domestic Efforts	263
8.3.4 NGOs and Writers	266
8.3.5 The IHRL Rule of Transfers	269
8.4 CONCLUSIONS	279

PART III
CONCLUSIONS

9 State Responsibility and Arms Transfers: Some Reflections	283
10 Findings and Recommendations	299
<i>Bibliography</i>	311
<i>Index</i>	343