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Seton Hall Journal of Diplomacy and International Relations

Volume II, Number 2

Summer/Fall 2001

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Foreword

by Jayantha Dhanapala

Civil wars and other forms of civil conflict have been taking place with alarming frequency and intensity in recent years, causing the loss of hundreds of thousands of lives, displacing many millions of innocent people, and bringing economic ruin and social disaster for numerous societies. Such conflicts have been fought largely with small arms and light weapons (SALW).

SALW have proliferated around the world to such an extent that they are easily available in many societies for a modest price. In some parts of the world, for example, an AK-47 semiautomatic rifle can be purchased for merely six dollars. Such easy availability has contributed significantly to the prolongation of many civil conflicts, where the vast majority of victims have been civilians, mainly women and children.

The problems posed by the global proliferation of SALW extend beyond the role that such weapons play in exacerbating civil wars. Their easy availability can undermine peace-building efforts in postconflict situations by creating a general climate of insecurity and by enabling armed and ambitious groups to pursue their violent and self-serving agendas.

Even in nonconflict situations, the proliferation of SALW can be a major cause of concern because the ease with which such arms can be acquired can contribute directly to an increase in social crime and political violence, and even terrorism. A culture of violence, buttressed by SALW proliferation, can be found in many areas of the world.

The task of combating SALW proliferation is not an easy one. Such weapons are easy to carry and conceal, and their clandestine transfers are therefore hard to detect. This has enabled large quantities of arms to move with relative ease and secrecy from one conflict or postconflict zone to another. To add to the problem, the scale of international trade and commerce in a globalized world offers opportunities for illegal shipments and transfers of arms to slip through normal customs control and monitoring procedures.

Illicit trafficking poses a bigger problem in situations where large and difficult borders separate arms-infested societies or where an incipient social unrest offers an opening to arms merchants. In such geographical areas, effective monitoring is inherently difficult and requires resources that are not usually available.

The global spread of organized crime, together with the nexus between drug traffickers and terrorists, has made combating illicit trafficking a daunting task. To make matters worse, political and bureaucratic corruption, which are rampant in many societies, have made illicit trafficking that much easier.

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It is equally important to focus attention on the demand side of the problem, complex as that is. The causes of conflict and organized violence within societies and between states are varied. They can be political, economic, ideological, ethnic, religious, territorial, or historical in nature.

Despite these enormous challenges and complexities, the urgency of dealing with the misuse of small arms and light weapons cannot be overemphasized, given its highly negative impact on the social, economic, and political development of affected societies.

SALW proliferation is a global problem that calls for sustained and internationally supported actions, backed by strong political will and adequate resources. It must also be pursued in tandem with other global actions to address issues of poor governance and underdevelopment, which are primary causes of civil conflict and social strife in many societies.

International expectation is currently focused on the first United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, which will be held in New York in July 2001. It is my hope that, with all the preparatory work that has been done, this important event will prove to be landmark in the incipient global effort to protect international society from the violence associated with SALW.



Light Weapons and Israeli-Palestinian Peace

by Jeffrey Boutwell

On January 17, 2001, the director of the Palestinian television network, Hisham Miki, 54, was gunned down while dining in a Palestinian restaurant in Gaza City. Murdered in a style reminiscent of the heyday of the Chicago mob, Miki was shot repeatedly in the head and chest with a silencer-equipped pistol by three masked gunmen.

Reports that followed listed various motives for Miki's killing. Some attributed it to corruption within the Palestinian Authority (PA), others to anger over the way Miki was running the Palestinian broadcasting operation. Whatever the reason, the killing in broad daylight in Gaza symbolizes a sober new reality for the Palestinian Authority and the Palestinian people: the very peace process that might someday lead to true self-determination for the Palestinians has in the meantime let loose a flood of illegal weapons into the West Bank and Gaza Strip that threatens to undermine the very peace for which the Palestinians are fighting.

The surge in Israeli-Palestinian violence that began in September 2000 not only has resulted in hundreds of deaths and injuries on both sides; it also led to the fall of the Labor government of Ehud Barak, the holding of new elections and the formation of a national unity government under Likud head Ariel Sharon, and a freeze on further progress in the peace process. By March 2001, more than six months after the start of what the Palestinians call the *Al-Aqsa intifada*,¹ the West Bank, Gaza Strip, and Israel itself were caught up in a daily cycle of shootings, bombings, and massive civil unrest. In figures provided to the international fact-finding committee headed by former U.S. senator George Mitchell, Israeli authorities cited more than 2,700 live fire attacks by Palestinians on Israelis in the first one hundred days of fighting.² For their part, Palestinian officials accused Israel of using excessive force, including extra-judicial assassinations, to smash the *intifada*, noting that the 350 Palestinians killed during the struggle (by early March 2001) outnumbered by almost ten to one the number of Israeli deaths.³ Proposals for more active international involvement to stop the fighting, including sending two thousand unarmed UN peacekeepers to the region, have thus far come to naught (indeed, the Mitchell commission was a compromise effort by the Clinton administration, in support of the Barak government, to forestall UN action).⁴

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In terms of domestic politics, the Likud-Labor national unity government (led by Prime Minister Ariel Sharon and Foreign Minister Shimon Peres) is certain to have a difficult time reconciling party differences over the Oslo peace process in seeking a way out of the impasse. Similarly, Palestinians remain deeply divided over the wisdom of continuing the Oslo process, with important elements of Fatah (the largest faction of the PLO), the Tanzim (an armed militia of Fatah), and other organizations within Palestinian civil society operating either as armed militias of the PA or, at times, independently of PA control.

Underlying the grim near-term prospects for revitalizing the formal peace process is the reality that Arab-Jewish communal relations have deteriorated sharply since the outbreak of fighting in September 2000. Wanton and vicious violence on both sides has claimed thousands of killed, wounded, and displaced and has made any prospects for reconciliation seem illusory. When one factors in the large numbers of small arms and light weapons held by both Arab and Jewish civilians in the territories, and the inability of either the Israeli army or Palestinian security forces to effectively police their respective populations or confiscate illegal weapons, future prospects are grim indeed.

PROLIFERATING LIGHT WEAPONS

"If I call my clients and say I've got 100 guns, they come running," says Palestinian gun dealer Khalil Abu Ali of Nablus in the West Bank.⁵ During the relatively peaceful days of the Oslo process in the 1990s, when Palestinian-Israeli violence in the territories dropped markedly, an estimated tens of thousands of illegal weapons were making their way into the West Bank and Gaza Strip from Egypt, Jordan, Iraq, and even Israel itself.⁶ Today, Israeli government sources talk of as many as 70,000 such illegal weapons, ranging from automatic pistols, submachine guns, and assault rifles to hand grenades, mortars, Katyusha rockets, and anti-tank missiles. No longer are Palestinian attacks on Israelis confined to individual drive-by shootings of Jewish settlements or ambushes of Israeli cars traveling through the West Bank. Increasingly, Fatah and Tanzim militants, Islamic terrorists from Hamas and Islamic Jihad, and even Palestinian police and security personnel are carrying out paramilitary operations, in squads of ten or more fighters, against Israeli military outposts using hand grenades, mortars, and rockets.⁷

Violence on the part of militant Jewish settlers against Palestinian civilians has increased as well. During the 1990s, settler attacks against Palestinians were most often carried out in retaliation for Palestinian shootings and terrorist attacks against Israelis. Beginning in 2000, however, even before the outbreak of the new *intifada*, settler leaders spoke of increased violence as a way of attempting to derail the peace process. In June 2000, when it appeared that a summit meeting of President Clinton, Prime Minister Barak, and Palestinian Authority chairman Yasir Arafat might produce a last-minute agreement, settler leader Pinchas Wallerstein warned that Jewish settlers would "react with the greatest harshness" to what they considered "immoral, illegitimate, and illegal" concessions on the part of the Israeli government in giving

up West Bank and Gaza territory.⁸ One need only think back to Yigal Amir's rationale for assassinating Israeli prime minister Yitzhak Rabin in 1995 to take such talk seriously. In the end, the summit collapsed with no agreement, paving the way for Palestinian frustrations to erupt. Once full-scale violence did break out, the more militant Jewish settlers, armed with government-issue Galil and M-16 assault rifles, contributed to the escalating cycle of violence with both unprovoked and retaliatory attacks against Palestinians.

PEACE FROM THE BARREL OF A GUN?

The Oslo peace accords signed by Israel and the Palestinians in 1993 and 1995 contained a wide range of measures for promoting both Palestinian self-government and Jewish-Arab reconciliation. One of the most important components of those accords was the right of the Palestinian Authority to raise and equip a strong domestic police and security force that could enforce order in the West Bank and Gaza Strip while also cooperating with Israeli security forces to thwart terrorist attacks against Jews. Specifically, the 1995 Oslo II accord (and later, the January 1997 Hebron Protocol) provided for a Palestinian police force of some 30,000 personnel, equipped with 15,000 automatic rifles and pistols, 240 heavy machine guns, 45 armored vehicles, lightly armed shore patrol vessels, and associated communications and transportation equipment. Oslo II also set limits on the number of armed Palestinian police and security personnel that could be deployed in individual towns and villages.

The peace process let loose a flood of illegal weapons into the West Bank and Gaza Strip.

In addition to limiting authorized weaponry to one for every two Palestinian police and security personnel, the Israeli government insisted on the creation of an Israeli-Palestinian Joint Security Coordination and Cooperation Committee (JSC) to oversee "arrangements for entry of the Palestinian Police and the introduction of police arms, ammunition, and equipment."⁹ Initially, most of these weapons were Kalashnikov AK-47 assault rifles (standard issue of the Palestine Liberation Army), brought by Palestinians returning from abroad. In addition to keeping an updated register of any and all firearms in its possession, the Palestinian Authority was also required to pass legislation and strictly control small arms and light weapons in the civilian population.¹⁰

Almost from the beginning, however, the issue of illegal weapons in the Palestinian community was a major stumbling block to further progress in the peace process. In October 1996, the Israeli government published a list of "Major PLO Violations of the Oslo Accords," which noted that while "the PA is obligated to disarm and disband all militias operating in the autonomous areas," it has "failed to undertake a systematic crackdown on illegal weapons, and has confiscated just a few hundred of the tens of thousands of weapons circulating in the autonomous areas."¹¹ In addition to describing how Palestinians were smuggling illegal weapons across the Jordan River and

Dead Sea and through underground tunnels linking Egypt to the Gaza Strip, the Israeli government accused the Palestinian Authority itself of complicity in organized smuggling by capitalizing on the VIP status of PA limousines and aircraft entering the Gaza Strip and West Bank.

In turn, Palestinian officials consistently note that Israelis themselves are heavily involved in running guns into the territories. Israeli underworld figures coordinate shipments of black market M-16s and Uzis into the West Bank and Gaza, while Israeli soldiers have been caught stealing weapons from army depots and selling them to Palestinians.¹² A more recent import are M-16s sporting the cypress tree of Lebanon, stolen from weapons stocks of the South Lebanese Army when it was disbanded as Israel withdrew from Lebanon in May 2000.¹³ As is common elsewhere around the world, weapons smuggling from Israel to Palestinian areas is heavily intertwined with narcotics, stolen cars, and other contraband.

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Despite the profits to be made in weapons smuggling (an M-16 can command up to \$5,000), the main motivations among Palestinians for acquiring small arms and light weapons are political and cultural. For many individuals, according to Palestinian legislator Hussam Khader, "buying a gun is a priority . . . it comes before buying a house, or marriage. Palestinian women will sell their gold to buy guns for their husbands or sons."¹⁴ For groups like Fatah and Tanzim, weaponry ensures political power and independence, whether in relation to the Israeli army or rival militias or the Palestinian Authority itself. For Arafat and the heads of his security forces, the stockpiling of illegal weapons, in excess of the 15,000-plus allowed by Oslo II, likewise represents a lever of control over an increasingly divided Palestinian community.

MILITANT JEWISH SETTLERS

An additional stimulus for Palestinian acquisition of weapons, of course, is the constant friction and violence between Arab and Jew in the West Bank and Gaza Strip. For more than 30 years, since Israel took control of the territories following the 1967 war, Palestinians living in the West Bank and Gaza have daily witnessed well-armed Jewish settlers, as well as Israeli soldiers, living and traveling among them. Armed with government-issue M-16s, Galil assault rifles, and Uzi submachine guns, the Jewish settlers are a constant reminder to the Palestinians that complete sovereignty and control over their lives remains a distant dream. While only a small minority of the more than 170,000 settlers living in the territories is considered extremist (with an even smaller percentage belonging to such outlawed organizations as Kach and Kahane Chai), the settlers do have wide autonomy over their own affairs and considerable political influence in the Israeli Knesset. As often as not, the well-organized settlers tangle with the Israeli government as much as with the Palestinians among whom they live. The same is true for the often uneasy relations between the

settlers and the soldiers of the Israel Defense Forces (IDF) who are deployed in the territories in part to protect the settlements. Despite the fact that the settlements themselves are part of the IDF communications network and territorial defense structure in the territories, many settlers feel that the Israeli army does not do enough to protect their security. As Arab-Jewish relations have grown even more tense at the prospect of additional transfers of West Bank territory to the Palestinians, friction between the settlers and the army has increased. This is especially so in and around such right-wing settlements as Hebron and Kiryat Arba, where settlers have clashed openly with the soldiers.

The sense of vulnerability felt by Palestinians living among well-armed Israeli civilians in the territories was brought home as never before by the Baruch Goldstein massacre of twenty-nine Palestinians at the Tomb of the Patriarchs in Hebron in February 1994. Goldstein, a physician who often treated both Jewish and Arab victims of sectarian violence, was also an IDF reservist (as are most settlers, male and female) and thus was allowed to carry his Galil assault rifle past the IDF troops ostensibly guarding the Arab worshippers that early February morning. Despite the outrage felt by many Israelis following the massacre, Goldstein's grave outside Hebron was made into a shrine by many settlers, and fears have been expressed by more moderate settler leaders about another "Goldstein incident" carried out by settler extremists.¹⁵ The most extreme supporters of greater Israel (Eretz Israel) also applauded the tragic assassination of Prime Minister Yitzhak Rabin in 1995, carried out by Yigal Amir precisely to stop the peace process and the return of the West Bank to the Palestinians.

The inability of successive Israeli governments to adequately control the actions of the more militant settlers in the territories continues to be a grave concern for the future of the peace process. In June 1998, the Likud government of Benjamin Netanyahu actually solidified the settlers' position in the territories when it approved the creation of settler civil guard units in Ma'ale Adumim, Ariel, and other large West Bank settlements, a move long opposed by previous governments, Israeli military commanders, and police officials. As criticized by then member of the Knesset Dedi Zucker, such units could evolve into "armed militias of extremist settlers serving as a private army of the Yesha (Jewish settler) Council."¹⁶ This has indeed happened at times, with armed settlers operating independently of, or even in direct opposition to, army and police authority in the territories. Despite the prohibitions on militant organizations like Kach and Kahane Chai, supporters of the late Rabbi Meir Kahane have formed new groups, such as the Committee for Safety of the Roads, that act as little more than vigilantes in mounting armed patrols on the roads and byways of the West Bank.

WEAPONS, PEACE, AND CIVIL SOCIETY

The widespread availability of small arms and light weapons among Palestinians and Israelis in the West Bank and Gaza Strip poses a significant challenge on three separate but related levels.

First, of course, are the ramifications of the daily gun violence between Arabs and Jews that has characterized the *Al-Aqsa intifada* from September 2000 to the present. It is unclear whether Israeli-Palestinian reconciliation is remotely possible in the near term because of the nature of the violence and the number of victims it has claimed. Even if a formal peace treaty is concluded—one that is acceptable to a majority of both Palestinians and Israelis—how stable will such a peace be when individual security is based so strongly on the carrying of weapons and the use of deadly force?

How stable can a formal peace be when individual security is based so strongly on the carrying of weapons and the use of deadly force?

Second are the implications of the flood of weapons for a stable Palestinian government and civil society, one based on democratic principles and a tolerance for criticism of authority. In addition to the host of political, economic, and social challenges faced by the Palestinians, can a pluralist, democratic society take root in Palestine in the face of multiple, heavily armed political militias and official police and security personnel operating outside the rule of law?¹⁷

Third are the implications for Israel itself at a time when the country faces the most contentious and existential issue of its fifty-year history. Will a majority of Israelis ultimately decide not to be politically blackmailed by a small militant core of settler and religious supporters of Eretz Israel? Will they accept the hard reality that there can be no coexistence with the Palestinians unless the settlers are removed from the West Bank and Gaza Strip and brought back behind the Green Line?

The ability of just a few individuals to disrupt and even block the peace process has already been demonstrated by Amir's assassination of Rabin in 1995 and the outbreak of terrorist attacks inside Israel just prior to Shimon Peres' failed bid for prime minister in 1996. For his part, Arafat is ever mindful of the staunch opposition to peace with Israel on the part of Hamas and Islamic Jihad. More than once during Hamas demonstrations in Gaza against Arafat's policies has been heard the chant, "Arafat, Arafat, remember what happened to Sadat," a reference to the Islamic militants who assassinated Egyptian president Anwar Sadat in 1981.

WHAT CAN BE DONE?

In light of the poisoned atmosphere enveloping Israeli-Palestinian relations, what should, and can, be done to prevent violence from escalating still further and to resume some semblance of the peace process?


Despite visceral Israeli opposition to any form of substantive international involvement, the time has come for a strong international peacekeeping presence in the West Bank and Gaza Strip. Under the leadership of the United Nations, and with full support from the five permanent members of the Security Council, the UN should insert an armed peacekeeping force into the West Bank and Gaza Strip to separate Palestinians and Israelis. While such a mission entails great risks, not least for the

international peacekeepers who likely will find themselves targets of both Jewish and Arab extremists, one must ask: if Kosovo, Bosnia, and East Timor, why not the West Bank and Gaza Strip? Following more than one hundred years of Arab-Jewish communal violence in Palestine, and with the Oslo peace process all but dead, the international community has a responsibility and a moral duty to act.

Such an international intervention, however, will succeed only if positive, unilateral steps are taken by both the Israeli government and the Palestinian Authority to reduce the threat of armed violence, whether aimed at each other or at an international peacekeeping force.

For its part, the Israeli government should affirm the existence of a new Green Line, as previously discussed with the Palestinians, that would bring a large number of existing settlements along the current Green Line into Israel proper. A number of different border alteration proposals have been advanced that would incorporate 70 to 80 percent of the settlers at a cost to the Palestinians of 10 to 15 percent of total West Bank territory. In return, Israel would agree to disband all remaining settlements in the West Bank, and all of the Gaza settlements, and to turn over all housing and infrastructure to the Palestinians (with immediate compensation paid to Israel by the international community). Only by removing Jewish settlers from the heart of the Palestinian community can there be a chance for peace.

Lastly, international pressure (including the withholding of international aid) must be brought to bear on Yasir Arafat and the Palestinian Authority to crack down on the armed militias of Tanzim and Hamas, to resume joint security cooperation with Israel to thwart terrorist acts, to seize illegal weapons from civilians, and to enact a civil constitution for Palestine that safeguards political dissent and due process. As noted in March 2001 by the European Union's commissioner for external relations, Christopher Patten, "In order for us to go on and provide substantial assistance to the Palestinian administration, we will need to see a tough realistic budget, some real transparency, and measures to ensure complete anti-corruption."¹⁸ Given losses to the Palestinian economy of \$1 billion (25 percent of GDP) in the first six months of the *Al-Aqsa intifada*, the international community should use whatever economic leverage it can muster. In the absence of positive reforms, Arafat must be made aware that neither continued international support (in the form of either money or peacekeeping troops) nor a viable resumption of the peace process with Israel will be possible.

Are such developments at all possible? Very likely not. Are they genuinely needed for there to be peace in Israel/Palestine? Unfortunately, yes. A mere picking up where Barak and Arafat left off in the summer of 2000 is unlikely, especially if there is no resolution of the threats posed by militant Jewish settlers and Palestinian rejectionists (whether secular or religious). Only by separating the two peoples, and removing the weapons they carry, can the international community provide the assistance that will be needed for Israel and Palestine to focus on devoting their domestic resources to where they are most needed and for Arabs and Jews to escape the endless cycle of demonization and violence in which they are now trapped. 

Notes

1 The violence that began on September 28, 2000, was precipitated, according to Palestinians, by the provocative visit to the Al-Aqsa mosque on the Haram al-Sharif (Temple Mount) by Ariel Sharon; many Israelis claim the Sharon visit was only a pretext for massive violence that had already been planned by the Palestinian Authority.

2 See "Israel Submits Statement to Mitchell Committee," *IsraelLine* (distributed by the Israeli Consulate, New York), February 1, 2001.

3 See "Palestinian Memo to the Mitchell Committee of Inquiry," Palestine Negotiation Affairs Department, Ramallah, January 13, 2001. According to Israelis such as Knesset member Naomi Chazan, former prime minister Ehud Barak admitted that Israel was carrying out targeted assassinations of Palestinian activists, a measure that Chazan condemned as immoral and "totally illegal according to any international criteria or law" (quoted in *The Washington Post*, January 8, 2001).

4 A point made by Israelis as well, such as Meron Benvenisti, who has criticized the Mitchell Committee as "one more instrument for stifling any initiative for examining the actions of Israeli security forces and for uncovering the truth lurking behind the propaganda smokescreen." Quoted in Cheryl A. Rubenberg, "The Clinton Years: US Policy Toward Israel and Palestine, Part Two," Palestine Center for Policy Analysis, Washington, DC, January 10, 2001 (available online: <http://www.palestinecenter.org/frames.html>).

5 Quoted in "Smugglers from all sides arm intifada," *Toronto Star*, December 17, 2000.

6 See Jeffrey Boutwell, "The Wild West Bank," *The Bulletin of the Atomic Scientists*, January/February 1999.

7 See "Palestinians Use Anti-Tank Grenades for First Time," *IsraelLine*, November 1, 2000.

8 Quoted in "Settlers Escalate Resistance to Peace Process," *IsraelLine*, June 23, 2000.

9 Oslo II, Annex I, Article III (#1.h).

10 Article XIV of the Oslo II accord states that "no one but Palestinian police may manufacture, sell, acquire, etc., firearms, ammunition, weapons, explosives, unless otherwise provided for in Annex I," while Annex I (Article II) allows the PA to "issue permits in order to legalize the possession of and carrying of arms by civilians."

11 "Major PLO Violations of the Oslo Accords," Government Press Office, Jerusalem, October 25, 1996, item 4.

12 See Khaled Abu Toameh, "Partners in Crime," *The Jerusalem Report*, December 25, 1997, pp. 28–29.

13 See Suzanne Goldberg, "Guns for sale—how stolen Israeli weapons arm Fatah's fighters," *Guardian*, December 16, 2000.

14 Quoted in "Smugglers from all sides arm intifada."

15 Gideon Alon, Nadav Shragai, and Mazal Mualem, "Settler-rabbi warns: Another Goldstein incident could be coming soon," *Ha'aretz* (EIE), November 1, 1998.

16 Quoted in Amos Harel and Nadav Shragai, "Army approves civil guard in West Bank settlements," *Ha'aretz* (EIE), June 12, 1998.

17 In April 1999, the chair of the legal committee of the Palestinian Legislative Council, Abdel-Karim Abu Saleh, criticized the lack of action on passing a Palestinian constitution, noting in particular how "the presence of state security courts is a real danger to the freedoms of our people." See "Palestinian Lawmaker Urges Reform of Courts, Arms," Reuters, April 19, 1999.

18 Quoted in "EU to Monitor PA Funds," *IsraelLine*, March 14, 2001.

The Urgent Humanitarian Concern

by Peter Herby and Lena Eskeland

Sometimes, we are asked why the International Committee of the Red Cross (ICRC) is concerned about the proliferation and availability of small arms. Is this not a crime-related issue, or a political disarmament issue, which has mostly to do with the legitimate rights of sovereign states to defend themselves? To a certain degree it is, but the problems caused by small arms go far beyond this.

A single shot from a standard rifle fired into a crowded market is normally a criminal incident. The unloading of dozens of bullets a minute from an automatic weapon into that same market can unleash a bloodbath. An artillery shell landing in such a situation can arouse passions that render violations of the laws of war virtually inevitable. The proliferation of, and easy access to, these weapons give people—including children—an incredible power. As one woman in Sierra Leone said, “People who hold the guns have all the power. The rebels who killed my children and my husband, they raped me. They raped me openly in the town square.”¹

In recent years, these types of incidents have become all too familiar to delegates of the ICRC and their partners from National Red Cross and Red Crescent Societies in war-torn countries. The unregulated availability of weapons, in particular small arms, combined with their frequent use in violation of the most basic humanitarian norms, poses a direct challenge to the dual mandates of the ICRC—to assist the victims of conflict and to promote respect for international humanitarian law.² Both of these missions are today undermined by the uncontrolled spread and abusive use of arms. The increasingly devastating effects for civilian populations, and the difficulties of providing humanitarian assistance in an environment where arms have become widely available to many segments of society, are well known to most humanitarian relief agencies today. The high levels of civilian death and injury in recent conflicts are no longer being seen simply as an inevitable by-product of these conflicts. Rather, they are increasingly viewed as a result of inadequate or nonexistent control of the flow of weapons—both internationally and domestically. Only recently, however, have the relationships among the availability of weapons, the worsening situation of civilians during and after conflict, and the challenges of providing humanitarian assistance been addressed directly.

ARMS AVAILABILITY AND THE IMPACT ON CIVILIANS

In recognition of the trends described above, the Twenty-Sixth International Conference of the Red Cross and Red Crescent (1995) called upon the ICRC “to

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examine, on the basis of first-hand information available to it, the extent to which the availability of weapons is contributing to the proliferation and aggravation of violations of international humanitarian law in armed conflicts and the deterioration of the situation of civilians."³

In fulfillment of this mandate, the ICRC has, since 1996, attempted to distill its experience with the impact on civilians of high levels of arms availability. It carried out two case studies, analyzing information drawn from its sizeable medical database on patients treated in the organization's hospitals and elsewhere by its medical staff. The objectives of these two case studies were to examine the circumstances in which weapon injuries were inflicted and to assess the levels of weapon casualties (death and injury) during and after periods of conflict, in the absence of disarmament. This work provides unique insights into the nature of arms-related injuries in two situations in which the ICRC has been involved. To our knowledge, these are among the few systematic studies that have been published on the nature of arms-related casualties suffered by the local population in war-torn societies. Following are some of the specific findings from these case studies.

1. One might expect a dramatic drop in arms-related death and injury in a postconflict period. In one war-torn area of Afghanistan where high levels of arms remained in circulation, however, the annual incidence of weapons-related casualties decreased by only 33 percent during the eighteen months following the end of hostilities. The mortality rate from injuries actually increased over the same period.
2. In a region of northwest Cambodia, civilians accounted for 71 percent of noncombat weapon casualties and 42 percent of combat-related casualties (death and injuries inflicted as a direct result of interfactional fighting or by landmines). Weapons-related casualty rates were reduced during the UN's presence but increased to levels comparable to those preceding the peace accord following the UN's departure in 1993.

Both of these case studies indicate that to civilians, the threat of arms-related death or injury in noncombat settings can approach or exceed that during conflict periods if weapons are not removed.

The ICRC also carried out a survey among senior delegates with a collective experience of forty-one assignments in conflict and postconflict settings on four continents during the 1990s. The objective was to gather the *perceptions* of ICRC staff on the degree of arms availability within various segments of given populations, the nature of arms-related incidents involving civilians, and the direct impact of arms availability on ICRC field operations.

There was general consensus among respondents that arms were regularly used against civilians for criminal or coercive purposes. The respondents also indicated that ICRC operations were interrupted more than once per month by armed security threats, impeding access and denying war victims the assistance and protection pro-

vided for by the Geneva Conventions. In all contexts, assault rifles were seen as the principal weapon type responsible for civilian death or injury.

The threat to civilians in noncombat settings can approach or exceed that during conflict periods if weapons are not removed.

In 1999, the results of these two case studies, and the survey among ICRC delegates, were published in the study “Arms Availability and the Situation of Civilians in Armed Conflict.”⁴ The ICRC study came to the following main conclusions.

Civilians often are the primary victims of unregulated arms availability. Civilian casualties outnumber those of combatants in many internal conflicts and have increased throughout the century in parallel with the development of new military technologies. Weapons previously available primarily to organized armed forces are now in the hands of a wide variety of people involved in conflict and postconflict situations. These include highly destructive weapons such as automatic rifles capable of firing hundreds of rounds per minute, rocket-propelled grenades, mortars, and landmines.

Lack of access is a serious danger. Disease, starvation, and abuse increase when humanitarian agencies, including the ICRC, are denied access to the victims due to attacks on humanitarian workers, mined transport lines, or the threat of armed violence. In a large number of recent conflicts, specific regions or even entire countries have become “no go” areas for humanitarian workers because of attacks or the credible threat of attacks on them. Indeed, ICRC field staff themselves experienced a growing number of casualties through the mid-1990s. Although this may have been due to the changing nature of conflict, increased proximity to front lines, and perceived politicization of humanitarian aid, the availability of small arms undoubtedly also played an important role. In addition to the impact on the safety of personnel, weapons availability increases the financial cost of humanitarian operations. Where relief supplies have to be transported by air because of security concerns, an operation’s cost can increase ten to twenty times.

The end of conflict is not really the end. Suffering can continue for years after the fighting ends, since easy availability of weapons engenders a culture of violence, undermining the rule of law and threatening efforts at reconciliation between the former warring parties.

Arms availability presents an urgent humanitarian concern. In addition to its assistance mandate, the ICRC is charged with helping states to promote knowledge of, and respect for, international humanitarian law (IHL). Widespread availability of small arms undermines the very fabric of that law—one of the principal means of protecting civilians in times of conflict. IHL assumes that military-style arms are in the hands of forces with a certain level of training, discipline, and control. When such weapons become available to broad segments of the population—including undisciplined groups, bandits, mentally unstable individuals, and even children—the task of

ensuring basic knowledge of humanitarian law among those in possession of arms becomes difficult if not impossible.

Compared with distributing arms, creating an understanding and acceptance of humanitarian rules is a profoundly difficult and time-consuming task. It should come as no surprise that as highly lethal weapons spread throughout a given population, the potential for violations of international humanitarian law in times of conflict increases.

Although the ICRC study does not suggest that excessive availability of weapons is the *cause* of IHL violations or deterioration in the situation of civilians, it indicates that the unregulated transfer of weapons and ammunition can facilitate such violations, increase tensions, heighten civilian casualties, and prolong conflicts. Among the central conclusions is that because it is largely free of international control, the current pattern of transfers of small arms, light weapons, and related ammunition should be a matter of urgent humanitarian concern.

POSSIBLE WAYS FORWARD

The trade in light weapons is a complex phenomenon, involving many types of actors; existing knowledge of the dynamics involved is far from comprehensive. It is also evident that traditional arms-control approaches are not well suited for the control of small arms and light weapons. Thus, much creative effort—involving the participation of many types of experts, including representatives of governments, industry, police and customs services, humanitarian aid organizations, and human rights groups—will be needed to develop successful approaches and strategies.

Focus on Munitions and Ammunition. It is important to consider controls on the transfer of not only arms but also munitions and ammunition. The shelf life of many of the tens of millions of small arms and light weapons now in circulation may be measured in decades if the weapons are properly maintained. By contrast, it appears that factories for the production of munitions and ammunition can be far more easily identified. The reliable shelf life for these items is said to be shorter than for the weapon itself, and their stocks need to be replenished regularly. As a result, efforts to limit the availability of munitions and ammunition could, in the short term, yield significant results.

The Importance of IHL in Arms-Transfer Norms and Policies. While the ICRC considers that the primary responsibility for compliance with international humanitarian law falls upon weapons users, states and private companies engaged in production and export bear a degree of political, moral, and, in some cases, legal responsibility before the international community for the use made of their weapons and ammunition. The ICRC has encouraged governments, regional organizations, and nongovernmental organizations involved in bringing about arms-transfer limitations to recognize that IHL is the body of law most relevant to the ultimate use of transferred arms and ammunition. Indeed, the stated purpose of most such transfers is to enable recipients to engage in armed conflict.

Specifically, the ICRC has called on states urgently to review their policies concerning the production, availability, and transfer of arms and ammunition in light of their responsibility under common Article 1 of the Geneva Conventions to “respect and ensure respect” for international humanitarian law. In 1999, states party to the Geneva Conventions committed themselves (in the Plan of Action adopted by the Twenty-Seventh International Conference of the Red Cross and Red Crescent) to “examine the establishment of means to integrate consideration of respect for international humanitarian law into national decision making on transfer of arms and ammunition.”⁵

It is important that states convert this commitment into reality by promoting criteria based on humanitarian law and human rights for arms transfers in norms adopted at the national, regional, and international levels. These measures would be a means of reinforcing Article 1 common to the Geneva Conventions and of improving the implementation of the whole fabric of IHL. As a step toward limiting the availability of arms and ammunition among users likely to commit violations of international humanitarian law, states could develop codes of conduct for arms transfers that contain clear references to, and indicators of, respect for international humanitarian law, or add such references and indicators to those existing standards (laws or policy) that do not include them.

IHL Norms in Recent Regional Initiatives. In the last two years, governments, regional organizations, and NGOs have begun to develop new mechanisms, laws, and codes of conduct to limit small-arms proliferation. Nevertheless, it is regrettable that among the existing body of export codes and national legislation known to the ICRC, few mention respect for international humanitarian law by recipients of arms as a central element in decisions on arms transfers. We discuss here some of the regional initiatives that do include such language.

European Union (EU). The European Union adopted in 1998 the EU Joint Action on Small Arms and the EU Code of Conduct on Arms Transfers. The latter stipulates eight criteria on arms exports. Specifically, member states should take into account, *inter alia*, the record of the buyer country with regard to “its compliance with international commitments, in particular on the non-use of force, including under international humanitarian law applicable to international armed conflicts.”⁶ Although this reference to international humanitarian law perhaps could have been better formulated (as international humanitarian law regulates the use rather than the nonuse of force), it reflects the intention of EU states to take respect for IHL into account in arms-transfer decisions.

Organization of African Unity (OAU). In November 2000, the OAU held a preparatory expert meeting on the illicit proliferation, circulation, and trafficking of small arms and light weapons, followed by a ministerial meeting in Bamako, Mali. The meetings resulted in the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, which highlighted the importance of international humanitarian law when addressing the small-arms issue.

Organization for Security and Cooperation in Europe (OSCE). The OSCE's Document on Small Arms and Light Weapons, adopted in November 2000, seeks to reduce and prevent the excessive accumulation and uncontrolled spread of small arms by articulating norms regarding manufacture, marking, record keeping, export control, border and customs mechanisms, and cooperation and information exchange among law-enforcement and customs agencies in the OSCE region. Specifically, each participating state agreed to avoid issuing licenses for exports where it identifies a clear risk that the small arms in question might "prolong or aggravate existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict."⁷

North Atlantic Treaty Organization (NATO). NATO's Parliamentary Assembly adopted in November 2000 a "Committee Resolution on Small Arms Control." This resolution urges member states to "harmonise national approaches through wider acceptance and application of guidelines and codes of conduct—such as the EU Code of Conduct" and to "enhance evaluation of recipient States' records with regard to adherence to international humanitarian law and control over stocks and flows of small arms."⁸

Despite the progress implied by the existence of these regional initiatives, as yet no clear indicators have been adopted to judge a recipient's likelihood of compliance with international humanitarian law. The following indicators of respect for IHL could be incorporated into codes of conduct and national laws and policies on arms transfers (exports) as an aid in assessing whether the potential recipient is likely to comply with humanitarian law:

1. Has the potential recipient adhered to the relevant IHL treaties?
2. Are the potential recipient's forces trained in IHL?
3. Are there mechanisms to punish violators?
4. Are authority structures able to ensure compliance with IHL?
5. Is the potential recipient the actual end-user?
6. Will the potential recipient maintain control over the arms and ammunition transferred?

Other International Measures. In addition to the above measures specifically relating to respect for humanitarian law, the ICRC study urges states to consider measures of a more general nature aimed at strengthening transparency and accountability in arms transfers. In particular:

1. Establish an international system for the marking of small arms, light weapons, and related munitions and ammunition. Marking with data on the date, country and company of manufacture could make it easier to monitor arms flows and lead to greater accountability and responsibility among arms suppliers.
2. Establish or reinforce surveillance and enforcement mechanisms to ensure respect for UN and regional arms embargoes.

3. Extend the scope of the existing UN Register of Conventional Arms Transfers to cover small arms and light weapons, beginning with specific weapons such as assault rifles and rocket-propelled grenades, which have been used to inflict high levels of civilian death and injury.

National Measures. As regards national controls on the availability of arms, the following measures should be considered.

1. Reinforcement of the ability of states to identify and put an end to illegal cross-border transfers of arms and ammunition.
2. Establishment of mechanisms for ensuring that military-style arms and ammunition are available only to authorized users and that such weapons in the possession of others are collected and destroyed.
3. Provisions in postconflict settlements to ensure that states, with the assistance of the international community, will maintain or acquire direct control over arms and ammunition and destroy surplus weapons at the earliest possible time.
4. Vigorous efforts to ensure that weapons and ammunition rendered surplus by the modernization of arsenals are kept under strict surveillance and destroyed rather than exported. As compared with many other long-term measures proposed for addressing the problem of small arms and light weapons, such steps can have an immediate and beneficial impact. On the other hand, failure to address the issue of surplus arms as a matter of urgency could undermine most other current efforts.

Reducing Violations of International Humanitarian Law. In addition to limiting access to arms for those likely to violate international humanitarian law, a number of complementary steps could contribute to the reduction of civilian casualties in conflict and postconflict situations.

1) *Instill humanitarian principles in the general population and young people in particular.* In many societies, acts such as the killing, torture, and rape of civilians and the execution of prisoners are accepted as a matter of course in conflict situations, even though they violate basic humanitarian principles and the law of armed conflict. Such acts are often presented as normal and acceptable in film, television, and news portrayals of armed conflict, thus contributing to a “culture of violence.” Passive acceptance of this type of behavior means that violators of international humanitarian law do not incur the legitimate revulsion of the societies on which they depend for support.

Increased efforts are needed to ensure that all segments of society are aware of the limits—grounded in their own cultures as well as in international law—on the use of weapons even in times of armed conflict. An emphasis on influencing the attitudes of young people is particularly important in light of the widespread use of young combatants in internal armed conflicts. The International Movement of the Red Cross

and the Red Crescent, of which ICRC is one component, has recently committed itself to using its network of Red Cross and Red Crescent Societies to promote a culture of nonviolence—in addition to promoting public awareness of the human costs of unregulated arms transfers and widespread arms availability.

The failure of states to provide secure living conditions for their citizens creates a vicious cycle.

2) *Increase training of armed forces in international humanitarian law.* In peacetime, a great deal more must be done to ensure that potential combatants not only understand the fundamental rules applicable in war but are also aware that compliance with these rules is expected by their commanders and that violations will be punished. This will require political will and provision of adequate resources. It will also require, where possible, enhanced efforts at dialogue with nonstate groups on the part of all those who have access to them—whether financial supporters, leaders within their own societies, or external actors.

3) *Ensure personal security by means other than weapons.* A vicious cycle of insecurity fuels a demand for arms, which in turn creates a demand for yet more weapons. The trend towards the privatization of security and the failure of states to assume their responsibility to provide secure living conditions for all citizens is an issue that needs urgently to be addressed. Clearly, this will require resources not only for police and criminal justice systems but also for economic and social development. It also implies renewed determination among political and social leaders to resolve conflicts without resorting to force and the support of the international community for efforts to that end.

CONCLUSION

The international community in recent decades has adopted wide-ranging prohibitions and limitations on the transfer of chemical, biological, and nuclear weapons, missile systems, and certain components of these technologies. States in some regions have established controls on the transfer of major conventional weapons systems. However, until recently, little attention has been given to the transfer of small arms and light weapons, which have inflicted most of the death and injury in recent conflicts.

Recent small-arms initiatives on the national, regional, and international levels are encouraging. Nevertheless, much work still remains to be done, both within and outside of the UN process. Both governments and civil society have important roles to play.

In the short term, the challenge will be to raise awareness of the human costs of arms availability and to put the issue squarely on the international agenda. It will be necessary to challenge the fatalistic acceptance of daily news reports of armed attacks on civilians for which no one is held responsible. It will also be necessary to recognize the fact that a large proportion of all illicit transfers begin with weapons that were

originally transferred legally, and that few problems will be solved without addressing both licit and illicit aspects of arms transfers.

As a part of this, the ICRC believes it is of utmost importance to ensure that the “human cost” of the widespread proliferation of arms is at the forefront of the debate before, during, and after the July 2001 UN Conference on Small Arms. The link between unregulated arms availability and the detrimental consequences for civilians in conflict and postconflict situations should be recognized in any documents coming out of the UN conference. Furthermore, governments should recall their obligation to respect and ensure respect for international humanitarian law.

In the long term, the principle needs to be established that those who supply arms in situations where violations of international law can be expected share responsibility for the use of their weapons. Success in reducing the human cost of unregulated arms proliferation will depend on creating a sense of responsibility and accountability among those who produce, those who distribute, and those who use arms. Weapons serve as tools for implementing life-and-death decisions and are instrumental both in enforcing and in undermining the rule of law. They cannot be considered as simply another form of commercial goods to be governed by the law of supply and demand.

An evaluation of the likely respect for international humanitarian law by the recipient should be an integral part of all decisions by governments and arms manufacturers on the supply of weapons and ammunition. Codes of conduct for arms transfers are one promising approach to developing agreement on what constitutes responsible practice, but they need to be strengthened to include specific criteria, and to be implemented in order to be effective.

The ICRC strives to ensure that general and special protections to which civilians are entitled by international humanitarian law become realities in each and every armed conflict. Improved protection of civilians in situations of armed conflict *can* be achieved, through better *implementation* of and *respect* for existing humanitarian law and other international norms. However, addressing the current unregulated availability of small arms and light weapons is also an indispensable element in improving respect for IHL.

The ICRC considers that by requiring respect for humanitarian law from those who seek to arm themselves, states will make a major contribution to the protection of civilians from the type of unspeakable suffering that the world saw in conflicts throughout the last century. In so doing, states will not only strengthen the basis for the rule of law but also promote reconstruction of war-torn societies and long-term social and economic development.



Notes

1 ICRC, “Women and War,” *People on War* radio series, March 2000.

2 International humanitarian law is a set of rules that, for humanitarian reasons, seeks to limit the effects of armed conflict. In particular, it protects those who are not, or are no longer, taking part in fighting and restricts the means and methods of warfare. International humanitarian law is also called the “law of war” and the “law of armed conflict.” Its principal instruments include the Geneva Conventions of 1949 and their Additional Protocols of 1977.

3 Meeting of the Intergovernmental Group of Experts for the Protection of War Victims, Geneva, January 23–27, 1995; Recommendation VIII(c), endorsed and adopted by the 26th International Conference of the Red Cross and Red Crescent, 1995.

4 “Arms Availability and the Situation of Civilians in Armed Conflict,” ICRC, June 1999.

5 “Plan of Action,” Final goal 1.5 (23), 27th International Conference of the Red Cross and Red Crescent, 1999.

6 *EU Code of Conduct*, Criterion Six.

7 *OSCE Document on Small Arms and Light Weapons*, Section III, (A), 2(b), (v).

8 NATO Parliamentary Assembly, *Resolution on Small Arms Control*, Art. 8 d.

Ballots and Bullets in East and West Timor

by Teresa Hutsebaut

INTRODUCTION

Small arms that linger in the aftermath of conflict have riddled the prospects for peace first in East Timor and now in West Timor. The International Committee of the Red Cross has reported that “the widespread availability of arms engenders a culture of violence, undermines the rule of law and threatens efforts at reconciliation among former warring parties.”¹ To this list, one could add that small arms enable the terrorizing and intimidation of internally displaced persons and those exiled in refugee camps.

The violence infecting West Timor is an aftereffect of the contagion of terror that swept through East Timor in 1999 following its August vote for self-determination. Despite the favorable outcome for the proindependence East Timorese on the ballot, an “overwhelming majority were brought to West Timor against their will, usually at gunpoint.”² Today, 100,000 of those East Timorese remain stranded in camps under the “protection” of armed and menacing pro-Jakarta militiamen hostile to East Timorese independence.³

It is clear that the removal of small arms from East Timor may have averted the current crisis in cross-border refugee camps. Needless to say, disarmament and the demobilization of militias should be accelerated as a necessary precursor to peace. Although the number of encounters with small arms are few in relation to past scenarios like Cambodia or the present one in Sierra Leone, it must be recognized that the Timorese are significantly traumatized, and small arms play a role. Countless news reports include statements by the UN territory’s administrator, Sergio Vieira de Mello, stressing that disarmament has not been taken seriously by the Indonesian government, the custodian of the process. After more than two decades of suffering, even one more incident is too many. As such, at the dawn of this newly independent state, it is necessary to embark on a comprehensive program of disarmament—otherwise, community peace will remain cursory and short-lived.⁴

There are precedents for such efforts. A program for small-arms reduction in Mali was a rare example of successful disarmament. In a 1997 report, the British American Security Information Council (BASIC) suggested that lessons can be extracted from the Malian disarmament experience that are applicable both on the African continent and beyond.

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While the circumstances and preconditions for peace differ somewhat from country to country, the general conceptual approach applied in Mali can provide lessons applicable to the current scenario in East Timor and the troubled camps on the western half of the island. This paper interchangeably reflects on experiences with small arms in East and West Timor. It is believed that the precursors of violence in one are the same as the other—small arms in the control of unfettered militias.

MALI'S SMALL-ARMS REDUCTION

A civil conflict in Mali smoldered for ten years between the autonomy-seeking Tuareg nomads and the Malian government until a peace accord was agreed upon in 1992. However, despite this proposed reconciliation, the flow of small arms was unremitting and civil conflict persisted. Ultimately, its inability to rein in the violence prompted the Malian government to seek the disarmament advice and assistance of the United Nations.⁵

The Mali mission was undertaken at the request of the government of Mali and with the cooperation of the opposing Tuareg group. It was a smooth operation because it slid nicely into the basic paradigm of peacekeeping, which urges the consent of parties and impartiality. In the end the majority of the rebels came forward to retire their weapons.

Mali's successes offer lessons for East Timor.

Of indisputable importance in Mali was the government's commitment to remedying the small-arms problem, demonstrated by its asking the United Nations to provide support to deter violence within Mali's sovereign domain.⁶ Secondly, Mali employed a "security first" method, urging general societal security with the police or the national guard firmly in place and prepared to defend the personal security of inhabitants.⁷ Lastly, while the government collected and destroyed the arms that littered the country, it also heralded the necessity of regional measures, which would halt the seeping of arms through porous borders.⁸

Mali's successes are attributed not only to arms reduction but also to efforts to reform and reintegrate soldiers capable of maintaining a secure environment. President Konare stated that it was integral to peace-building efforts for armed factions to be disarmed, demobilized, and given constructive roles in society.⁹ Once militias lost their weapons, it was important to disarm or dismantle their existing norms of behavior. The conceptual underpinning was that "disarmament and human development are linked."¹⁰

According to Conciliation Resources, "the agreement to disarm must be universal and the process supervised by a neutral body that is acceptable to all parties."¹¹ In the Mali case, not only was the supervisor of the process neutral, but also the entire population was encouraged to take a stake in and ownership of it.¹² In addition to the neutrality of the custodian of the process, there were three major components to the Malian success: 1) the participation of traditional community-based organizations,

which ensured confidence in the process; 2) the cooperation of surrounding states (Niger and Burkina Faso were engaged, ensuring that new cross-border shipments of arms were derailed); and 3) development initiatives that accompanied the removal of arms.¹³

The achievement is also due to the incorporation of a broad approach to conflict management, which tackled the root causes of strife, including poverty, development issues, and social disorder.¹⁴ The Brahimi Report on UN peacekeeping operations suggests that “demobilized fighters (who almost never fully disarm) will tend to return to a life of violence if they find no legitimate livelihood, that is if they are not reintegrated in to the local economy.”¹⁵ In Mali, reintegration efforts included personal economic security with funds made available to former militiamen to begin microenterprise projects.¹⁶

Three components identified by UNIDIR as integral to the establishment of stability in postconflict situations were present in the Mali small-arms reduction program:

- 1 the implementation of a comprehensive, systematic disarmament program as soon as the peace operation is set up;
- 2 the establishment of an arms-management program that continues into the postconflict reconstruction processes; and
- 3 the encouragement of close cooperation on weapons control and management programs between countries in the region where the peace program is being implemented.¹⁷

Rarely, if ever, were these elements present during the process of disarmament undertaken by Indonesia within West Timor and on its border with East Timor. Disarmament was not initiated successfully, nor were sufficient attempts made by Indonesia to engage the international community in its disarmament plans.

The successful comprehensive disarmament program undertaken in Mali provides an acceptable model for emulation in West Timor and in some areas in East Timor. While underscoring that circumstances are quite different—namely, cooperation was present at all levels in Mali—it remains that there are lessons to be learned from the model that Mali’s actions provided.

SMALL ARMS: EAST TIMOR

Portugal vacated East Timor shortly after a civil war raged out of control between independence and integration militias in 1974. In the power vacuum that ensued, Indonesia snatched East Timor through military intervention. Soon after, in 1976, East Timor was annexed against the will of its people and made a province of Indonesia.

Since that time, movements against the Indonesian government have pushed for independence. Under President Suharto, those initiatives were suppressed with force by Indonesia throughout the 1980s.¹⁸ Finally in 1999, after Suharto’s downfall,

Indonesia's interim president B.J. Habibie agreed to a referendum that would address the question of independence.

Prior to the August 1999 referendum, the prointegration factions—supported and controlled by elements of Indonesia's military—assaulted the population with complete impunity, pushing their corresponding political agenda and leaving a general atmosphere of insecurity.¹⁹ Considering the perilous climate before the vote, UN secretary-general Kofi Annan implored the Indonesian authorities to first remove weapons from militias and then allow a neutral international force to monitor the referendum.²⁰ His plea fell on deaf ears.

On August 30, 1999, East Timor held its referendum, with an overwhelming 78.5 percent of the population voting in favor of severing relations with Indonesia.²¹ Unfortunately, their celebration was short lived. From as early as two days to one week after the vote, the International Federation for East Timor (IFET) Observer Project reported that militia members armed with automatic weapons were terrorizing the population, with “extreme bursts of gunfire” and exploding hand grenades.²² Needless to say, the wishes of the East Timorese as expressed in the referendum were not respected. Quite the contrary: the prointegration factions demolished almost everything in sight after the referendum, including the immediate hope for a peaceful community. The magnitude of the disaster was captured in the UN secretary-general's report, wherein the situation in East Timor was referred to as a “humanitarian crisis of massive proportions.”²³ In the end, the systematic destruction by the pro-Jakarta militias left “three quarters of the population displaced, and three quarters of buildings burned or razed.”²⁴

How was it possible for this violence to spread like brushfire? Action in Solidarity with Indonesia and East Timor (ASIET) reported that “unwittingly the role of the maintenance of peace and security was delegated to Indonesia (consequently the Indonesian police and military) in a May 5 agreement signed by Indonesia and Portugal under UN auspices.”²⁵ It is important to underscore that, according to the United Nations, “large elements of Indonesian military and police” were behind the violent actions of the prointegration militias.²⁶ Unlike in Mali, the importance of security was not stressed enough in this potentially explosive situation. Indonesia's complicity and entanglement in militia violence left little room for the prospect of a secure environment.

One might conclude that since a situation of war was not present in early August 1999, security was a secondary notion. But Indonesia was well armed and could supply vast weaponry to prointegration militias. As such, it was somewhat predictable that a noxious situation would erupt after the vote for independence. It was known that guns were ever present in East Timor, and that the potential for destruction lurked prior to the vote. On August 17, 1999, IFET issued a statement that described “widespread reports of arms shipments entering the territory.”²⁷ However, in the fear of losing the long sought-after opportunity for a referendum, the United Nations and the international community accepted that Indonesia would be responsible for security.²⁸ Disarmament as a component of an overall security scheme appears to have been nudged to the side. In retrospect, the elements of a disaster were in place: a

prevalence of arms combined with an array of internal problems, including political grievances and inevitable tensions no matter what the outcome of the vote.

SMALL ARMS: WEST TIMOR

There has been a deluge of small arms in Indonesia throughout the past two decades. The danger, as Michael Renner has stated in general, is that "the easy availability of small arms has made recourse to violence more likely."²⁹ Acts of violent crime have been documented in West Timor for more than one year. Since militias moved from East to West, the problems of weaponry and violence simply shifted geography. Karen Orenstein of East Timor Action Network visited the camps in September 2000, noting that militias guilty of rape and mass murder "have access to modern weapons" and exist shoulder to shoulder with the East Timorese refugees.³⁰ The effects of small arms and militia activity on the civilian populations in West Timor camps call for a reexamination of the approach to cleaning up and controlling the weapons following the vote. Although East Timor has stayed out of the news in terms of reports of violence, the same militias, with the same guns, are wreaking havoc elsewhere on the island. As Secretary-General Annan said in a recent report on the protection of civilians in armed conflict, citing the example of West Timor, "failure to separate armed elements from civilians has led to devastating situations in and around camps."³¹

It is critical that security and then the humanitarian presence be restored.

The intimate relationship of guns to civilian harm was portrayed in the 1997 study by the International Committee of the Red Cross. Recalling the years of Indonesian rule, Medical Aid for East Timor notes that women were sexually abused, assaulted, and made sexual slaves by prointegration militiamen during Indonesia's twenty-five-year reign of terror. Understanding the context of their fear and following decades of such intimidation, it is easy to appreciate the concerns of the East Timorese in the camps. Lamentably, nearly one-eighth of the East Timorese population rests uneasily in a hostage-like situation across the border in West Timor, under the uncertain care of Indonesia. Their attempts to leave have been blocked by armed militiamen.

In a thorough examination of the situation in East and West Timor, Hainsworth and McCloskey list two priorities for the island: the disarming of militants followed by the assured safe return of refugees home to East Timor.³² The murder of UNHCR aid workers by pro-Jakarta armed forces was followed by the flight of 400 aid workers.³³ This led to a further deterioration in the security and health of the refugees in camps. Since humanitarian workers have left West Timor due to the precarious security situation, it is critical that security and then their presence be restored. The violence eroding the physical and also mental health of East Timorese makes a persuasive case for Indonesia and the international community to invest in a timely solution.

Recalling Mali, it is evident that the policing of the region with neutrality and persistence and the removal of small arms are inescapable priorities.

Complicating the control of weapons in the hands of militias and paramilitaries in places like West Timor is their legitimate presence under state law.³⁴ Restraining the flow of weapons from the military to paramilitaries and civilians must compete with a culture of tolerance for guns and their presence in everyday life. In East Timor, and now in West Timor, Indonesian authorities have not made a suitable effort to outlaw the holding of military-style weapons by rogue groups.³⁵ The former head of the Jesuit Refugee Service, Mark Raper, lamented that "there is no process of accountability for the perpetrators of violence."³⁶

COMPREHENSIVE MEASURES

Removing arms from the hands of the instigators of conflict is only one element of a vast, long-term, and intense project. On a superficial level, it seems that the munitions cause the atrocity. Yet the malice with which a weapon is fired is also an articulation of internal decay in society. The need for a comprehensive approach is apparent, as the issue of disarmament must address not just the presence of weapons in West Timor but also a lack of security systems and uncertain justice.

The idea of comprehensive disarmament was expressed by small-arms expert Edward J. Laurance of the Monterey Institute of International Studies, who highlighted that "solutions will require a broad scope of policy options involving such areas as development, human rights, refugees, judicial systems and police work."³⁷ Understanding this reality, "the root causes of conflict, issues of structural instability . . . need to be addressed concurrently to the small arms reduction process."³⁸ Herein lies the success of the Malian process.

Simply removing weapons without concurrent rehabilitation of warring societies is insufficient. Sergio Vieira de Mello urged that beyond retrieving the weapons, it is also vital to "dismantle the militias—otherwise it won't take long for them to reorganize and rearm."³⁹ Consequently, in the absence of meaningful livelihoods after conflict, former combatants aim their weapons toward criminal uses (theft) or for senseless civilian attacks. Pro-Jakarta militiamen, for example, have been making a living by looting shops, robbing locals, and redirecting the few humanitarian supplies to themselves as leaders.⁴⁰

Once militias are dismantled, the Indonesian authorities should be prepared to rehabilitate the bulk of soldiers, prosecute offenders, and reintroduce the others into society. Studies have shown that demobilization of thousands of soldiers, guerrillas, or police without adequate structures to occupy them and to provide them with a sustainable means to earn a living can cause immediate chaos and intensified crime.⁴¹

In September 2000, under the pressure of the UN Security Council, Indonesia undertook a half-hearted weapons collection program.⁴² At this point it has not moved beyond a sporadic collection of weapons. Participation in the gun buy-back program remains voluntary, and "Timor militiamen are unwilling to give up their guns . . . as the weapons come in handy to extort and bully East Timor refugees."⁴³

Apart from the monetary, there is no incentive for an important behavioral change. The program is not truly enforced with adequate incentives or the law. Militias dig in their heels and continue to tote weapons. Even the monetary incentives are not so great: although the weapons can be turned in for a one-time sum of money, the holders of the weapons can make more money in the long run by seizing goods from humanitarian sites or by looting stores on a regular basis.

Outlawing military-style weapons and enforcing the approach undertaken in Mali can pave the way for militia members to move on with their lives. Although the pro-Jakarta players are not compliant thus far, it can be said that the principles articulated by the Malian president—that armed factions must be disarmed, demobilized, and given constructive roles in society—still apply and should be sought after as an ideal.

LOOKING BACK, STEPPING FORWARD

Disarmament on the island is creeping forward at a slow pace. Well over a year ago, the Indonesian government issued an assurance that they would secure the environment for the East Timorese.⁴⁴ However, the intimidation of refugees continues in West Timor and the threat of violence looms.

There is no incentive for the militias to undertake an important behavioral change.

UNIDIR noted in the aforementioned study that “arms must be managed early in the mission.”⁴⁵ Such was the case in Mali. Conversely, “last year (in East Timor) they were armed with pipe guns and machetes and now they carry automatic rifles and hand grenades.”⁴⁶ Recalling the points in the UNIDIR study listed previously, it is essential first that a disarmament program be set up swiftly. Secondly, an arms management or reduction program must be continued into the reconstruction phase. In late September 2000, Indonesia’s security minister Yudhoyono said that the collection of firearms would soon be under way. Unfortunately, there was no mention of “disbanding militias, raised and trained by the Indonesian military during their 24 year occupation with East Timor.”⁴⁷ One should note that a “comprehensive” disarmament program never really lifted off. Besides collecting weapons, human rights abuses must be addressed, and the rule of law must be enforced.

Part of developing the community should be the establishment of immutable boundaries to acts of violence with weapons. In the Report of the Security Council Mission to Jakarta and Dili, it was noted that pro-Indonesian militias were undertaking atrocities and threatening the population with complete impunity.⁴⁸ The political push for punishment to counter the atrocities has not been implemented despite the reports of human rights abuses noted in several UN documents. Human rights violations continued for a year after the vote, and “2000 saw a steady decline in Indonesia’s willingness and or capability to achieve justice.”⁴⁹ Even Indonesian vice air marshal Graitto Usodo said in an interview that in order for disarmament to be successful, “the

disarmament process had to be seen as part of the framework of the rule of law in Indonesia.”⁵⁰

The last and essential point must be the encouragement of cooperation of countries in the region. In this case, because East/West Timor is an island, the responsible and most influential party is Indonesia. Yudhoyono acknowledged that “some military officers still feel kinship towards the militias”⁵¹—causing uncertainty in how to deal with them. Yet this is no excuse for allowing their behavior.

Suppliers of arms too have a responsibility to curb the infusion of arms to situations where human rights are not regarded. After all, “much of the supply and acquisition of small arms and light weapons is legitimate trade which occurs among governments or among legal entities authorized by governments.”⁵²

CONCLUSION

The pernicious effects of small arms first in East and then in West Timor beleaguer the process of building a safe and independent East Timor. The escalation of local crime following major conflict has been widely documented to be injurious to the reconstruction of any state.⁵³ Aside from the imperative to remove arms, the comprehensive concept of disarmament introduced by the United Nations and undertaken successfully in Mali should be implemented. There is no other case precisely like that of East and West Timor. However, as a point of departure, it should be noted that there are models of successful disarmament, as in Mali.

The occasion of the UN 2001 Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects offers the opportunity to look at one fatal aspect of small arms—the illicit transit of weapons. Will it result in an answer to the problem of reluctant sovereign states entrusted with weapons removal? Will it tell us what to do now with existing weapons in places like West Timor?

The example of Mali offers some answers. As for the rest, it is up to the international community of small-arms activists (IANSA) and like-minded governments to put such issues onto the international agenda. States sharing responsibility for the outcome of the forthcoming conference should reflect on the East Timorese civilians still running from bullets long after having their say at the polls; and they might also consider why those who fled remain in the fragile security of a West Timor camp.



Notes

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Toward a Convention on International Arms Transfers

by Oscar Arias Sánchez

The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (July 2001) provides the international community with an excellent opportunity to reflect on all sorts of arms transfers in light of today's realities. The line between licit and illicit arms deals is often so thin as to be invisible. We must begin to ask ourselves what is more important: legalistic definitions or principles? When civilians are massacred by a paramilitary member, rebel group, or army in a civil war, does it matter if the weapons used were acquired legally? When a woman is murdered by her ex-soldier husband with his service weapon, does it matter whether he had a permit to own it?

In principle, I am sure we would all agree that the answer is "No." Yet, in the real world, we do need legal definitions, as the power of judgment is vested in our courts, which depend on those definitions, and their interpretations, to do the business of justice. How, then, shall we define legal transfers of weapons? Which transfers are illicit? These questions are so far without a convincing answer from the community of states embodied in the United Nations.

The July conference should be taken as an opportunity to explore these questions and build consensus around clear and definitive answers. In particular, I would like to see the UN member states seriously consider the Framework Convention on International Arms Transfers described in this article. I believe it presents a potential solution to the problem of definitions and, more importantly, a viable way of getting the "legal" arms trade under control. Any death from gun violence is one too many. There is no time to lose.

THE EXTENT OF THE PROBLEM

In the last decade alone, more than 380 companies in 64 countries manufactured small arms and light weapons (SALW), ammunition, and associated equipment. Due to the lack of transparency in the arms trade in most countries around the world, the actual figure may even be higher. The United Nations estimates that in the 1990s, conventional weapons were used to kill more than 5 million people and force 50 million to flee their homes.² Millions more lost their property, their livelihood, or their loved ones.

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Since 1945, around 26 million people have died as a result of the impact of SALW. As a result of today's "conflict demilitarization," the large majority of victims are civilians, not soldiers. Many of these are women and children.

Since the Kalashnikov (AK-47) was invented in 1947, more than seventy million of these weapons, the small arm *par excellence*, have been used in seventy-eight countries and produced in fourteen. There are around eight million units of the U.S.-made M-16 rifle, seven million units of the German G-3 rifle, and between five and seven million units of the Belgian-made FN-FAL. Also, there are approximately ten million units of the Israeli-made Uzi pistol. In the United States alone, more than four million light weapons (a million of which are imported) come onto the market every year.

It was the deaths of first-world soldiers, rather than third-world civilians, that put the topic of controlling the arms trade on the international agenda.

We know that in some cases, these weapons have been used against the interests of those who made and sold them, creating what has been deemed a "boomerang effect." For instance, U.S.-made weapons have been turned against U.S. troops in Somalia, Iraq, Panama, and Haiti, where unaccountable military leaders replaced former allies and inherited the arsenals acquired courtesy of the United States. Other arms-manufacturing countries, such as Great Britain and France, have experienced the boomerang effect as well. Ultimately, it was these deaths—deaths of first-world soldiers, rather than third-world civilians—that put the topic of controlling the arms trade on the international agenda.

It is not just gun deaths that ought to make us think twice about the legitimacy of the arms trade. In a world where 1.3 billion people live on less than one dollar a day, unrestrained commerce in weapons perpetuates this poverty. Each year, around \$20 billion is spent on conventional weapons transfers worldwide. Yet we know that just \$8 billion a year (the amount of money the world spends on military equipment and training in four days) would be enough to ensure that all children around the world had basic education. It is time that the world's arms merchants and their customers realize that the children of the world urgently need schools and health clinics, not machine guns and grenades.

The frequent use and misuse of weapons simply mirrors other deep-rooted problems of a more structural nature. The problem is not just the easy availability of weapons but also social and political circumstances—social fragmentation, exclusion of youth, unemployment, poverty, corruption, etc.—that generate a demand for means of violence and confrontation. Taking action to address these root causes is therefore essential to stemming the tide of increasing violence in the world. This means improving judicial systems, tackling corruption, overcoming the heavy burden of the geopolitical manipulation carried out during the cold war in many countries, adopt-

ing measures to put an end to economic exploitation, improving democratic governance, and regulating the role of private security companies, among other things.

DEFINITIONS: FROM LICIT TO ILLICIT IN THE BLINK OF AN EYE

The UN conference to be held in July 2001 in New York is a major opportunity for the international community to agree upon a truly comprehensive, proactive action plan to prevent the spread and misuse of small arms and light weapons. For this plan to be truly comprehensive, it will have to reexamine the typical definition of an "illicit arms transfer." A commonly used definition of "illicit" covers those transfers that are not authorized by exporting, importing, and transit states. However, many arms deals that begin with the requisite authorizations are later diverted to illicit markets and end-users. In 1999, the UN Group of Governmental Experts on Small Arms clearly signaled the interconnection between legal trade and illicit transfers:

Illicit arms supply networks often involve legal arms purchases or transfers which are subsequently diverted to unauthorized recipients, or leakage from arms storage facilities. Arms brokers play a key role in such networks, along with disreputable transportation and finance companies. Illicit arms trafficking can sometimes be helped by negligent or corrupt governmental officials and by inadequate border and customs controls. Smuggling of illicit arms by criminals, drug traffickers, terrorists, mercenaries or insurgent groups is also an important factor. Efforts to combat illicit arms trafficking are in some cases hampered by inadequate national systems to control stocks and transfers of arms, shortcomings or differences in the legislation and enforcement mechanisms between the States involved, and a lack of information exchange and cooperation at the national, regional and international levels.³

There are a large number of case studies that reflect this reality. Let us examine just one of them. On June 5, 1998, the UN Security Council passed a resolution prohibiting the sale of arms and related material to nongovernmental forces in Sierra Leone. Despite this embargo, small arms continued to reach the Revolutionary United Front (RUF), which subsequently used them to commit massive and brutal human rights violations against the civilian population in Sierra Leone. UN secretary-general Kofi Annan appointed a panel of experts to investigate alleged violations of the embargo and the role of the trade in diamonds from rebel-held areas. The panel's report, released on December 20, 2000,⁴ details how 68 tons of weapons from Ukraine were transferred into the hands of the RUF. As an illuminating case study of how arms that originate in the legal market make their way into the illegal market, it deserves some examination here.

A shipment of 68 tons of weapons, including SALW, arrived at Ouagadougou, Burkina Faso, on March 13, 1999. The weapons were part of a contract between a Gibraltar-based company representing the Ministry of Defense of Burkina Faso and the Ukrainian state-owned company Ukrspetsexport. A Ukrainian license for sale of the weaponry was granted after Ukrspetsexport received an end-user certificate from the Ministry of Defense of Burkina Faso. The end-user certificate authorized the

Gibraltar-based company to purchase the weapons for the sole use of the Ministry of Defense of Burkina Faso. The document also certified that Burkina Faso would be the final destination of the cargo and the end-user of the weaponry. The weapons, however, were not retained in Burkina Faso. They were temporarily off-loaded in Ouagadougou, and some were trucked to Bobo Dioulasso. The bulk of them were then trans-shipped within a matter of days to Liberia, whose government is known to be collaborating with the RUF in Sierra Leone and has been the subject of UN sanctions for doing so. A few days after these events, the RUF rebels started a major offensive that eventually resulted in the destructive January 1999 raid on Freetown.⁵

CONTROLLING THE LEGAL TRADE

As an important element in combating illicit trafficking, therefore, governments must strictly control the “state-sanctioned” or “legal” trade. Such measures as import/export controls, end-use certification systems, postdelivery authorization, and controls on the activities of arms brokers are all necessary. Aside from combating the risk of diversion, however, there is a second reason why legal transfers must be controlled. Certain governments have defined the illicit trade as strictly those international transactions that are not authorized by either one or both of the states concerned in the transfers. In other words, only those arms transfers that take place on the “black market” are illicit. However, the United Nations, in the form of the UN Disarmament Commission, defines illicit trafficking more broadly as “that international trade in conventional arms, which is contrary to the laws of States and/or international law.”⁶ Under this definition, many arms transfers considered licit by the states involved are actually illicit under international law. So-called legal transfers of small arms have facilitated human rights violations and breaches of international humanitarian law, fueled conflict and violent crime, and undermined development and regional stability.

Principles of international law do support checks on legal arms transfers; however, the world’s governments have yet to codify these principles and turn them into practical reality. While states cling to their right to self-defense in order to acquire conventional weapons, they often disregard their obligations to international commitments and to limiting arms acquisition to legitimate security needs. More than fifty years ago, those countries that signed the UN Charter committed themselves to creating a mechanism for regulating arms transfers worldwide. Today, Article 26 of the UN Charter remains an unfulfilled promise.

REGULATING INTERNATIONAL ARMS TRANSFERS

Many SALW have been obtained through international arms transfers that could have been stopped. Since 1945, the international community has developed a number of binding agreements concerning human rights, humanitarian law, and peaceful coexistence. But when it comes to the international arms trade, such agreements seem to take a backseat to politics and profit-making.

Under the 1948 Geneva Conventions and its 1977 Protocols, governments are bound to respect and ensure respect for international humanitarian law. However, states often proceed with an arms transfer even when there is a clear risk that it could contribute to serious violations of these internationally agreed-upon, binding standards.

Article 26 of the UN Charter remains an unfulfilled promise.

The proposed International Criminal Court may prosecute perpetrators of war crimes, crimes against humanity, genocide, and serious human rights violations once the necessary sixty states have ratified its statute. But there is no equivalent international mechanism to prevent these individuals from receiving arms in the first place. States have yet to complement this effort against impunity with the obligation not to authorize arms transfers that would contravene the limitations imposed on them by international law.

The vicious cycle of arms sales, conflict, and human rights abuse can and must be stopped. With this goal in mind, a group of Nobel Peace Laureates, which I had the honor to lead, developed in 1997 the International Code of Conduct on Arms Transfers, which establishes a set of principles to control the legal arms trade. It is endorsed by eighteen individuals and organizations that have been honored with the Nobel Peace Prize.⁷ Drawing on existing international law, we called on all states to abide by a restrictive Code of Conduct on arms transfers, based upon the following principles:

- respect for human rights and international humanitarian law;
- commitment to promote regional peace, security, and stability;
- compliance with international arms embargoes, military sanctions, and transparency measures;
- opposition to terrorism; and
- the promotion of sustainable development.

A coalition of nongovernmental organizations (NGOs) has joined the Nobel Peace Laureates in this effort. For several years now, we have promoted the code and discussed it with governments. In order to make progress on this issue, in late 2000, this group⁸ joined with lawyers from the Lauterpacht Research Centre for International Law at Cambridge University to transform the principles endorsed by the Peace Laureates into a Framework Convention.

Once adopted, the Framework Convention will be a legally binding agreement that codifies states' obligations under existing international law. It sets out core principles and mechanisms relating to international transfers of arms, which at a later stage could be supplemented by protocols dealing with specific issues such as licensed production, end-use monitoring, transparency, and arms brokering. Like any other treaty, the Framework Convention would enter into force and become a binding international instrument once signed and ratified by the requisite number of states.

The basic obligation under this convention would be for states that have ratified it to adopt national mechanisms for the explicit authorization of international transfers of arms. As a minimum, each application for authorization would have to be analyzed on a case-by-case basis. States would not allow a transfer if:

- it violates the state's obligations under international law;
- there is a risk that its contents may be used to violate human rights and international humanitarian law or to commit war crimes, genocide, or crimes against humanity; or
- it undermines sustainable development, political stability, or regional security or facilitates crimes.⁹

The convention spells out the different types of limitations to which states must subject their arms exports, according to international law. These include express limitations, such as already existing treaties regarding specific classes of weapons (i.e., the Chemical Weapons Convention) and UN-established embargoes. It also includes limitations based on the anticipated use made of weapons by the final recipient, which is based on a state's obligation not to participate in the wrongful acts of the recipient state. The final class of limitations on weapons transfers includes those arising from the potential effects of the transfers on violent crime, political stability, regional security, or sustainable development.

The time has come for responsible measures to rein in the unchecked sale of death and misery on the international market.

Although based on sound principles of international law, the Framework Convention on Arms Transfers is not likely to be established overnight. The financial stakes for arms-exporting countries are high, and therefore many do not want voluntarily to slow down this prosperous industry in their countries. In addition, many arms-producing countries argue against refusing to sell weapons to human rights abusers with the logic that, "If we don't sell, someone else will." It is precisely because of this reality that a binding international agreement is called for. The community of nations must agree to a minimum set of standards for arms transfers, and each arms-producing country must then write these provisions into law. This is the only way to slow, and eventually stop, the current flood of SALW to dictators, rebels, and militias who show absolute disregard for humanitarian law and human rights.

Because of the scope and complexity of the problem that the Framework Convention seeks to address, and because of the powerful political and economic interests that sustain the international arms trade, a broad and dynamic campaign will be necessary to move forward on this issue. This campaign needs to be truly international in character and to benefit from the experience, perspectives, and expertise of NGOs from around the world. It will be a concerted and coordinated effort from global civil society based upon equal partnership, solidarity, and a common commit-

ment to alleviating the devastating consequences of irresponsible weapons sales. This movement is in the works, and it is my hope that more and more like-minded individuals, organizations, and governments will come on board to promote this logical, just, and humane effort.

CONCLUSIONS

There is much work to be done. The situation is daunting, and yet we have hope, because thousands of individuals, groups, and community leaders have already expressed their faith in an International Code of Conduct on Arms Transfers as both morally sound and politically necessary. It is these people, and the force of their convictions, that will turn possibility into progress, and this “impractical idea” into reality. Victor Hugo once said, “There is one thing stronger than all the armies in the world; and that is an idea whose time has come.” I am convinced, as are many others, that the time has come for responsible measures to rein in the unchecked sale of death and misery on the international market. To those who die at the hands of SALW, it does not matter whether the weapons were acquired legally or illegally. To courts of law, the definitions matter, and it is the job of all those concerned with human life and dignity to ensure that the definition of illicit transfers used by the international community encompasses the true scope of the problem. The Framework Convention on International Arms Transfers sets out a clear and comprehensive standard that all states should have the courage to adopt.



Notes

1 United Nations Development Programme, *Human Development Report 2000*, p. 36.

2 Report of the UN Group of Governmental Experts on Small Arms A/54/258, August 19, 1999.

3 Report of the Panel of Experts appointed pursuant to UN Security Council Resolution 1306 (2000), para. 19 in relation to Sierra Leone, December 2000.

4 For further details on this and other case studies, see “Combating the illicit trade in small arms and light weapons: Enhancing controls on legal transfers,” Briefing 6, British American Security Information Council (BASIC), International Alert, Saferworld, London, March 2001.

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6 Amnesty International, Adolfo Perez Esquivel, The American Friends Service Committee, Aung San Suu Kyi, Betty Williams, Rev. Desmond Tutu, His Holiness the Dalai Lama, International Physicians for the Prevention of Nuclear War, Jody Williams, John Hume, Jose Ramos Horta, Joseph Rotblat, Lech Walesa, Rigoberta Menchu, Mairead Maguire, Norman Borlaug, Elie Wiesel, and Oscar Arias.

7 American Friends Service Committee, Amnesty International, the Arias Foundation for Peace and Human Progress, BASIC, the Federation of American Scientists, Oxfam, Project Ploughshares, and Saferworld.

8 For further information and to read the full text of the Framework Convention, see www.armslaw.org.

Combating the Black-Market Trade

by Michael T. Klare

In recent years, the international community has devoted considerable attention to the problems posed by illicit transfers of small arms and light weapons. Although such sales represent a small share of the total trade in conventional weapons (when measured in dollars), the black-market weapons trade has a disproportionate impact on world security affairs because it is the main source of munitions for insurgents, warlords, ethnic militias, death squads, brigands, and other nonstate actors. Given that most of the violent conflict now taking place is occurring within, rather than between, states, belligerents of these sorts have assumed a central role in contemporary warfare. Controlling the global flow of illicit arms, therefore, is seen as an important component of international efforts to curb the incidence and intensity of internal warfare.

BACKGROUND OF THE JULY 2001 UN CONFERENCE

The critical role of illicit arms sales in sustaining internal violence was first given prominent attention in the 1997 report of the United Nations Panel of Governmental Experts on Small Arms. In a section on “illicit trade in weapons,” the report observed that “Illicit trafficking in [conventional] weapons plays a major role in the violence currently affecting some countries and regions, by supplying the instruments used to destabilize societies and governments, encourage crime, and foster terrorism, drug trafficking, mercenary activities, and the violation of human rights.”¹ In light of this assessment, the panel called on UN member states to intensify their own efforts to combat illicit arms trafficking and to work with their neighbors and the international community in developing more robust measures for this purpose.²

In its 1997 report, the Panel of Governmental Experts also proposed the convening of an international conference on the illicit arms trade in order to focus greater attention on this problem and facilitate the adoption of new international controls. Subsequently, on December 9, 1997, the UN General Assembly voted to request a study by the secretary-general on the feasibility of convening such a conference. The secretary-general subsequently reported on the potential utility of such a meeting, and on December 4, 1998, the General Assembly voted to authorize the convening of an “international conference on the illicit arms trade in all its aspects.” After further consultations, this conference was scheduled for July 9–20, 2001, at UN headquarters in New York City.

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The stage has now been set for a major international effort to eradicate or at least constrain the illicit trade in small arms and light weapons. To be successful, this effort will have to address the distinctive characteristics of the black-market trade. Almost by definition, such transfers are conducted in secrecy, making it that much more difficult to monitor and block them. By the same token, black-market sales usually entail many small, easily hidden transactions, further complicating the task of control. Adopting new constraints on this trade will not, therefore, prove an easy task.

DYNAMICS OF THE TRADE

Ultimately, it will not be possible to devise effective measures for combating the illicit commerce in small arms without first developing a clear understanding of the nature and dynamics of this trade.³ This is so because the illicit arms trade operates in a very different fashion from the legal arms trade, and so measures that are designed to regulate the legal trade may not prove effective in curbing the illicit trade. To fully appreciate this point, it is necessary to further consider the differences between the two forms of commerce.

The *legal* arms trade involves a direct relationship between two sets of factors: suppliers and recipients. In a typical arms-transfer relationship, the prospective recipient approaches likely suppliers and arranges for the exchange of money or some other goods for the desired weapons. Efforts to control or regulate this trade can occur on either side of the relationship, by restricting supply or by curbing demand.

Black-market weapons trade has a disproportionate impact on world security affairs.

The *illicit* arms trade, by comparison, involves three sets of factors: producers, recipients, and traffickers. The two outer sets in this relationship, the producers and recipients, rarely have any direct contact with one another; rather, the relationship is mediated by the middle party to these transactions: the arms traffickers. This is so because the intended recipient is an insurgent group, ethnic militia, warlord, or other such entity and is therefore (in most cases) barred from acquiring arms through legal channels. Typically, the recipient approaches the trafficker for assistance in obtaining arms and ammunition. Then the trafficker employs various forms of deception or thievery to obtain the desired weapons from the (presumably) unknowing supplier. Once the arms are acquired, moreover, the trafficker arranges for delivery to the intended recipient, usually with the assistance of complicit shippers.⁴

As in the case of legal sales, one could seek to control the illicit trade by addressing the supply and demand sides of the equation. And, to the degree possible, this should be the aim of the July 2001 conference. This could entail the adoption of strict, uniform controls on the transfer of arms so as to exclude illicit transactions; and the crafting of programs to reduce demand by encouraging economic development in troubled areas and the peaceful resolution of disputes. The conference should also

adopt measures for the successful collection and destruction of weapons made surplus by the end of war, thereby preventing their recycling into new areas of conflict.⁵

Such measures could have a significant impact in reducing the level of illicit sales. But they are not likely to prove fully effective unless steps are taken to eliminate the third component of the illicit-trade relationship, the trafficker. This is so because these actors have become very adept at circumventing existing national and international controls on arms transfers in their efforts to satisfy the demand in areas of conflict. We see this clearly in such existing conflict situations as those in Angola, Burundi, Colombia, Congo, Sierra Leone, Sudan, and Sri Lanka, where the various belligerents have proven relatively successful in obtaining significant supplies of arms and ammunition despite ongoing efforts by the international community to prevent them from doing so.⁶

Like international drug traffickers, those who engage in the illicit commerce in arms have established sophisticated transnational networks for the procurement, financing, and delivery of illicit materials. Unless we can identify, monitor, and disable these networks, we will not succeed in curbing the illicit trade in small arms and light weapons.

Unless we can identify, monitor, and disable transnational networks, we will not succeed in curbing the illicit trade.

At present, however, the international community has a very limited capacity to perform these functions—that is, to identify, monitor, and disable illicit arms-trafficking networks. Some states do, of course, employ their police and intelligence services to keep watch on suspected traffickers who operate in their territory, or otherwise threaten their national interests; but many states—especially those in the developing areas—lack the resources to do this effectively. Moreover, aside from INTERPOL, there is no international body that has this as one of its primary responsibilities—and INTERPOL currently possesses a relatively limited capacity to monitor and suppress illicit arms networks.

It appears, therefore, that any future drive to curb the illicit trade in small arms and light weapons must include as one of its major components an effort to strengthen the international capacity to identify, monitor, and disable transnational trafficking networks. This will require cooperation between those who study the arms trade and those whose responsibility is the effective enforcement of law, and by officials at every level of governance. Ideally, the United Nations should play a central coordinating role in these efforts.

A PROGRAM OF ACTION

Given the complexity of the illicit arms trade, it is apparent that no single law or measure will successfully address all aspects of this problem. Rather, a comprehensive approach is needed, entailing coordinated efforts at the national, regional, and global

levels. This approach should encompass the following steps, each of an increasingly vigorous and focused character.

1. *A comprehensive study of the illicit arms trade in all its aspects.* Although some research has been conducted on the illicit arms trade by specialists in this field, we still know very little about how international arms-trafficking networks operate on a day-to-day basis—to procure arms, to secure financing, to obtain the necessary documentation, and to transport weapons from their point of origin to the point of delivery. Without knowing more about these processes, we cannot devise effective methods for attacking them at the appropriate place and time. As a first step in combating this trade, therefore, the United Nations should conduct a comprehensive study of the dynamics of the illicit arms trade, aimed in particular at illuminating the methods by which such transactions are usually carried out. This study should be based on a systematic examination of police and intelligence data on illicit trafficking operations.

Ideally, the United Nations should appoint an international panel of experts to conduct this study and call on member states to provide the panel with information gleaned from their investigation and prosecution of known traffickers. To the extent possible, this information should be filed in a computerized form, so that analysts could identify frequently used trafficking routes, transshipment points, ports of entry and egress, sources of illicit documentation, and so on. Once available, this information should be provided to those responsible for crafting policies for curbing the illicit arms trade at all levels. Ultimately, this information should form the basis for an on-line database of known and suspected illegal traffickers, financiers, shipping agents, and so on.

2. *Establish a clearinghouse for information on known and suspected illicit arms dealers.* The next step should be to establish a central point of contact for the collection and dissemination of precise information on known and suspected illicit traffickers, financiers, and shippers. This information should be stored in computer form and made available on a real-time basis to authorized governmental agencies—police, customs agents, bank inspectors, and so on—around the world. Police and customs agents and others who oversee arms exports and imports should be encouraged to consult this on-line service when dealing with suspicious transactions, and to continually update the database with new information gleaned from their own investigations and seizures.

The idea for such a clearinghouse first appeared in a speech given to the UN Security Council by U.S. secretary of state Madeleine Albright on September 24, 1998.⁷ Speaking specifically of the situation in Africa, she said, “We should move now to curb arms transfers to zones of conflict.” Such efforts, she declared, should include a “voluntary moratorium” on arms sales to these areas, along with moves aimed at “strengthening the capacity of African governments to monitor and interdict arms flows.” To this end, she added, the UN could “develop a clearinghouse for technical information [on regional arms flows] and for rapid exchange of data on possible violations.”

Provisions for the exchange of information on illicit trafficking operations and for the establishment of a point of contact for the collection and dissemination of such information are also incorporated into the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials. Under Article 13, parties to the convention are obliged to exchange information on such matters as “the means of concealment used in the illicit manufacturing of or trafficking in firearms” and “routes customarily used by criminal organizations engaged in illicit trafficking in firearms.” Also, under Article 14, the parties are obliged to establish “a national body or a single point of contact to act as a liaison” in facilitating the exchange of relevant information.⁸ These provisions could provide a useful model for the adoption of similar measures at the global level.

No single law or measure will successfully address all aspects of this problem.

3. Establish uniform, easily authenticated documentation for arms transfers. From what is currently known of illicit arms transactions, it is clear that traffickers often use false end-user certificates to obtain government approval for sales to nonpermitted recipients, or bribe officials in allowable recipient countries to lend their name to illicit transactions. (It is now believed, for example, that senior Peruvian military officials, including former intelligence chief Vladimiro Montesinos, supplied false end-user certificates for the planned delivery of thousands of surplus Jordanian AK-47 assault rifles to guerrillas in Colombia.⁹) It is imperative, then, that the international community devise a uniform end-user certificate that is difficult to counterfeit and require importers and exporters to employ these certificates in all arms transactions. It should also be possible for government officials to authenticate the validity of certificates presented to them by importers and exporters, ideally by consulting a real-time information-exchange system linking police and customs officials around the world.

4. Enhance the capacity of developing nations to monitor the flow of arms into, through, and from their territory. While many developing countries have expressed their desire to participate in international efforts to curb the illicit trade in small arms and light weapons, they often lack the resources and expertise to effectively monitor the flow of arms into, through, and from their territory. This makes it that much easier for traffickers to circumvent UN arms embargoes and other international curbs on illicit arms deliveries, even when the states involved have pledged to abide by such measures. It is essential, then, that the international community—and especially the wealthier and more developed nations—provide such states with the equipment and training they require to effectively carry out their international obligations in this regard. This could include the provision of computers, communications links, devices for detecting explosives, and so on, along with training in customs inspection and investigation procedures.

In fact, the provision of such assistance is called for in a number of the recent initiatives taken by the international community to address the problem of illicit

arms trafficking. For example, the Inter-American Convention cited above calls on the states, in Article 15, to “cooperate in formulating programs for the exchange of experience and training among competent officials” and to “provide each other assistance that would facilitate their respective access to equipment or technology proven to be effective for the implementation of this convention.” Likewise, the EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms calls on member states of the European Union to take “concerted action to assist other countries in preventing and combating illicit trafficking in arms,” specifically by assisting other countries in adopting “an adequate body of laws and administrative measures for regulating and monitoring effectively transfers of arms” and in deploying “an adequate number of appropriately trained police and customs officials.”¹⁰ Again, these measures could provide the model for similar initiatives at the global level.

5. *Declare known and suspected illicit arms traffickers persona non grata throughout the world.* From our research on the illicit arms trade, it has become apparent that illicit arms traffickers move from country to country to carry out their activities. Typically, a trafficker located in one country acquires arms from a second country, obtains false documents in a third, conducts banking activities in a fourth, hires shippers based in a fifth, and uses transshipment points in a sixth before delivering arms to their intended recipients in a seventh. (In 1995, for instance, a Danish national, Niels Christian Nielsen, employed the services of a British arms dealer, Peter von Kalkstein-Bleach, who bought a plane in Latvia, had it flown to Bulgaria, loaded it there with 300 AK-47 assault rifles and other weapons, and then flew the loaded plane to India, where he air-dropped the weapons to antigovernment insurgents in an area near Calcutta.¹¹) Clearly, it will not be possible to curb the illicit trade in small arms and light weapons unless steps are taken to prevent traffickers from operating in this fashion.

To accomplish this, appropriate legal means must be found to declare known and suspected traffickers *persona non grata* in every country that might be used as a base for one or another facet of the illicit arms trade. People who have been convicted of selling arms illegally in one country should not be allowed to set up business in another country, or to use banks and shipping agencies in other countries for potentially illegal arms transactions. How, exactly, these proscriptions are to be framed and implemented will require further study, but it is quite evident that some measures of this sort are needed to prevent traffickers from circumventing steps taken by the international community to curb the illicit trade in small arms and light weapons.


6. *Establish mechanisms for collaborative multilateral efforts to track and disable illicit trafficking networks.* Ultimately, all of these other efforts will only prove fruitful if concerned states employ the measures described above as the basis for joint action to identify, monitor, and disable illicit arms-trafficking networks. A major goal of the July 2001 UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects must, therefore, be to establish mechanisms for cooperation between member states in efforts to actively combat the illicit arms trade.

Ideally, this should entail cooperation between intelligence services in monitoring the activities of known and suspected traffickers, plus joint efforts by law-enforcement personnel to apprehend and bring to trial those found to be engaged in illegal trafficking activities. As in the case of anti-narcotics efforts, moreover, cooperative action is needed to prevent traffickers and their clients from using the international banking system to finance their illicit transactions.

Again, we find that authorization for such cooperative action is embodied in a number of recent international initiatives, notably the Inter-American Convention. Under Article 14, we find, "States parties shall cooperate at the bilateral, regional, and international levels to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials." To this end, provision is made for consultation and information exchange among the appropriate law-enforcement bodies in OAS member states. These provisions should provide the model for global efforts of this sort.

CONCLUSION

Participants at the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects will have a historic opportunity to take concrete action to curb the illicit flow of arms and ammunition to areas of conflict and civil violence. As has been argued above, these efforts must include measures aimed not only at suppliers and recipients of illicit arms but also at those who manage the flow of weaponry from one to the other. Without such measures, efforts to curb the illicit trade are likely to fail.

In addressing this aspect of the trade, moreover, it will be necessary to adopt a comprehensive approach aimed at identifying suspected traffickers, mapping their modes of operation, and taking steps to terminate their activities. As noted, this will require cooperation between officials and specialized personnel at every level—local, national, regional, and global. This is a demanding requirement, but, with sufficient political will, the international community can lay the groundwork for such an effort at the forthcoming UN 2001 conference. 

Notes

1 UN General Assembly, "General and Complete Disarmament: Small Arms, Report of the Panel of Governmental Experts on Small Arms," UN Doc. A/52/298, August 27, 1997, p. 17.

2 For background on UN efforts in the small arms field, see Graciela Uribe de Lozano, "The United Nations and the Control of Light Weapons," in Jeffrey Boutwell and Michael T. Klare, eds., *Light Weapons and Civil Conflict: Controlling the Tools of Violence* (Lanham, MD: Rowman and Littlefield, 1999), pp. 161–72.

3 For background on the illicit arms trade, see "The Covert Arms Trade," *The Economist*, February 12, 1994, pp. 21–23; Michael T. Klare, "The Thriving Black Market for Weapons," *Bulletin of the Atomic Scientists*, April 1988, pp. 16–24; Klare, "The Subterranean Arms Trade," in Andrew J. Pierre, ed., *Cascade of Arms* (Washington, DC: Brookings Institution Press, 1997), pp. 43–71; Edward J. Laurance, "Political Implications of Illegal Arms Exports from the United States," *Political Science Quarterly*, vol. 107, no. 3 (Fall 1992), pp. 109–40; Lora Lumpe, ed., *Running Guns: The Global Black Market in Small Arms* (London: Zed Books, 2000); UN General Assembly, "Illicit Traffic in Small Arms," Report of the Secretary-General, UN Doc. A/54/404, September 24, 1999.

4 For information on the mechanics of illicit arms trafficking, see the essays in Lumpe, *Running Guns*, especially those by Brian Johnson-Thomas, Brian Wood and Johan Peleman, and R.T. Naylor.

5 For discussion of such measures, see Jeffrey Boutwell and Michael T. Klare, "Light Weapons and Civil Conflict: Policy Options for the International Community," in Boutwell and Klare, eds., *Light Weapons and Civil Conflict*, pp. 217–30. See also Klare, "Stemming the Lethal Trade in Small Arms and Light Weapons," *Issues in Science and Technology*, Fall 1995, pp. 52–58.

6 For background and discussion, see Kathi Austin, "Light Weapons and Conflict in the Great Lakes Region of Africa," and Tara Kartha, "Controlling the Black and Gray Markets in Small Arms in South Asia," in Boutwell and Klare, eds., *Light Weapons and Civil Conflict*, pp. 29–48 and 49–61, respectively. See also Human Rights Watch Arms Project, *Stoking the Fires: Military Assistance and Arms Trafficking in Burundi* (New York and Washington, DC: Human Rights Watch, 1997).

7 Madeleine Albright, "Statement to the UN Security Council Ministerial on Africa," United Nations, New York, September 24, 1998 (available: <http://secretary.state.gov/www/statements/1998/980924.html>).

8 Organization of American States, General Assembly, "Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials," AG/RES. 1 (XXIV-E/97), November 13, 1997. For discussion of this treaty, see James P. McShane, "Light Weapons and International Law Enforcement," in Boutwell and Klare, eds., *Light Weapons and Civil Conflict*, pp. 173–82.

9 Tim Golden, "C.I.A. Links Cited on Peru Arms Deal That Backfired," *The New York Times*, November 6, 2000.

10 "European Union Programme for Preventing and Combating Illicit Trafficking in Conventional Arms," December 10, 1996 (available: <http://www.prepcom.org/low/pc2/pc2a6.html>).

11 Raymond Bonner, "The Murky Life of an International Gun Dealer," *The New York Times*, July 14, 1998.

Enhancing Controls on Legal Transfers

by Michael Crowley and Elizabeth Clegg

INTRODUCTION: SCOPE AND CONTEXT

A prerequisite for effective international action to prevent and combat the illicit trade in small arms and light weapons (SALW)¹ is that states develop a common understanding of what constitutes the “legal” trade, and therefore what is “illicit.” Failure to exert effective control over the legal trade in SALW opens up possibilities for diversion to illicit markets and end-users and blurs the lines between the legal and illicit trade. A major concern for the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects should thus be to define clear parameters and to agree on a comprehensive mechanism for controlling the legal trade in these weapons.

All governments are potential suppliers of SALW, since even those with no manufacturing capacity will have the potential to export surplus weapons once owned by their police and/or armed forces. The nature of the export, import, in-transit licensing, and end-use certification requirements imposed by governments, and the rigor with which they are monitored and enforced, are therefore of great international importance since they can have a significant role to play in ensuring that legitimate transfers of SALW are not diverted to illicit markets or end-users.

This article examines the external factors that governments take into account during the SALW licensing process. In particular, it assesses how governments can better control the “legal” trade in SALW so as to limit possibilities for the illicit trade in, and use of, these weapons. Ultimately the objective is, in the context of the UN conference, to explore possibilities for developing a set of universal norms or principles that could be applied to government-authorized transfers of SALW.

THE NEED TO DEFINE ILLICIT TRADE

The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (July 2001) is a historic opportunity for the international community to agree on global action to prevent and reduce the spread and misuse of these weapons.

If the conference is to fulfill its potential, it is vital that it thoroughly address *all aspects* of illicit SALW trafficking. One aspect of the trade in SALW that is clearly

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illicit concerns those transfers that are not authorized by all states in the chain, including importing, exporting, and transit states. However, there is pressure from a number of countries to define illicit trafficking narrowly—making the conference applicable only to non-state-sanctioned transfers.

There is extensive evidence that many of the weapons circulating in the illicit market originate as state-sanctioned, or legally transferred, weapons. Case studies show that legal transfers can be diverted to illicit destinations; similarly, firearms licensed to civilians are stolen and enter the black market.

Many of the weapons circulating in the illicit market originate as state-sanctioned, or legally transferred, weapons.

For example, in June 1998, the UN Security Council passed a resolution prohibiting the sale of arms and related material to nongovernmental forces in Sierra Leone. Despite this arms embargo, there is strong evidence to suggest that arms continued to reach the Revolutionary United Front (RUF), who subsequently used them to carry out widespread and brutal human rights violations on the civilian population in Sierra Leone. The UN secretary-general, as requested by Security Council Resolution 1306 (2000), appointed a panel of experts to investigate allegations of violations of the embargo and the role of the trade in diamonds from rebel-held areas. In December 2000, the UN Panel of Experts released its report,² including a detailed analysis of how sixty-eight tons of weapons from Ukraine found their way into the hands of the RUF. It is an illuminating case study of how arms that originate in the legal market make their way into the illegal market [see Box 1].

Another UN panel—the Group of Governmental Experts on Small Arms—outlined the interconnection between the legal and illicit trade in small arms in its 1999 report:

Illicit arms supply networks often involve legal arms purchases or transfers which are subsequently diverted to unauthorized recipients, or leakage from arms storage facilities. Arms brokers play a key role in such networks, along with disreputable transportation and finance companies. Illicit arms trafficking can sometimes be helped by negligent or corrupt governmental officials and by inadequate border and customs controls. . . . Efforts to combat illicit arms trafficking are in some cases hampered by inadequate national systems to control stocks and transfers of arms, shortcomings or differences in the legislation and enforcement mechanisms between the States involved, and a lack of information exchange and cooperation at the national, regional and international levels.³

As an essential element in combating illicit trafficking, therefore, governments must stringently control the “state-sanctioned” or “legal” trade. To be effective, a number of interlocking controls on the legal trade are required; for example, import/export controls, end-use certification systems, postdelivery authorization, and controls on the activities of arms brokering and shipping agents.

There is a second reason why controlling legal transfers is fundamental to combating the illicit trade in SALW. Many of the arms transfers of concern are used illic-

Box 1—How Legal Transfers Turn Illicit: Sierra Leone

A shipment of sixty-eight tons of weapons, including SALW, arrived in Ouagadougou, Burkina Faso, on March 13, 1999. The weapons were part of a contract between a Gibraltar-based company representing the Ministry of Defence of Burkina Faso and the Ukrainian state-owned company Ukrspetsexport. A Ukrainian license for sale of the weaponry was granted after Ukrspetsexport had received an end-user certificate from the Ministry of Defence of Burkina Faso. The end-user certificate authorized the Gibraltar-based company to purchase the weapons for the sole use of the Ministry of Defence of Burkina Faso. The document also certified that Burkina Faso would be the final destination of the cargo and the end-user of the weaponry. The weapons, however, were not retained in Burkina Faso. They were temporarily off-loaded in Ouagadougou, and some were trucked to Bobo Dioulasso, also in Burkina Faso. The bulk of them were then reportedly trans-shipped within a matter of days to Liberia, a supporter of the RUF in Sierra Leone.

itly in breach of international law. However, some governments have restrictively defined illicit trade as those international transactions that are not authorized by either one or both states concerned in the transfers. While such transfers are clearly illicit, a wider, global definition of the illicit trade in SALW has, in fact, been articulated by the UN Disarmament Commission [UN DC]. The UN DC Guidelines on Conventional Arms Transfers⁴ have defined illicit trafficking more broadly as “that international trade in conventional arms, which is contrary to the laws of States and/or international law.” Years of research by nongovernmental organizations and the UN have shown that some SALW legally exported by states have ultimately been used to violate international law, through their use in human rights violations and breaches of international humanitarian law, by fuelling conflict and violent crime and by undermining development and regional stability. Some state-authorized transfers have contributed directly to such violations; others have been reexported or diverted to unauthorized end-users who have used them for such purposes.

There is therefore a clear need to take a holistic view of what constitutes the illicit trade in SALW, and by so doing to initiate a more comprehensive approach to combating its proliferation and misuse. This analysis will then allow the international community to develop tools to combat the illicit market more effectively by utilizing mechanisms required for more rigorous control of the legal trade.

CONTROLS ON GOVERNMENT-AUTHORIZED TRANSFERS

The UN Charter states that all governments have the right to self-defense. As a direct consequence, most governments claim that they have a commensurate right both to acquire the means of self-defense and to transfer them to other states. Indeed, the primary rationale (if not motivation) for the international trade in SALW is the right of states to acquire the means of self-defense. While it is incumbent upon states

to ensure that they only acquire arms in accordance with their legitimate internal and external security needs and their commitments in the context of international peace-keeping missions,⁵ difficulties in arriving at a common definition of a state's legitimate security requirements have led governments to use significant discretion in the application of this principle.

There is a clear need to take a holistic view of what constitutes the illicit trade in SALW.

Nevertheless, a free market in SALW is far from existing. In general, governments do not allow the transfer of arms to all prospective recipients, since not all potential recipients are regarded as legitimate or desirable end-users. Indeed, unregulated arms trading could lead to arms' entering into the hands of those who may seek to use them in a manner that conflicts with the interests or wider concerns of the exporting state.

*Prohibitions under International Law.*⁶ International prohibitions on transfers of arms can take the form of arms embargoes and trade sanctions (see below), imposed by the UN Security Council or some other international body, banning the export of some or all categories of arms to particular end-users. It also expressly prohibits transfers of certain specific weapons, such as antipersonnel mines; blinding laser weapons; and the mines, booby traps, and other devices addressed in Protocol II (as amended) to the 1980 convention on Certain Conventional Weapons.⁷

International law also curtails states' freedom to authorize transfers in situations where the use by the recipient would be unlawful. While states bear primary responsibility for breaches of international law that they, themselves, commit, there are also circumstances where a state may bear "secondary" or indirect responsibility for violations committed by other states.⁸ The International Law Commission has identified the transfer of arms as a case in point and has stated that for this indirect responsibility to arise, the state transferring the arms does not need to intend to support the recipient in the illicit use of the arms.⁹ Rather, the exporting state need only be aware of the relevant circumstances—that is, that the arms *may* be used for the commission of an internationally wrongful act by the recipient state or an actor under its direct control.

On the basis of this principle, states should not transfer arms that they know could be used to violate the following rules.

- *Prohibition on the threat or use of force.*¹⁰ While governments often invoke the right of self-defense, this right is subject to limitations that flow from the prohibition on the threat or use of force. Accordingly, if it appears likely that a recipient of arms will use them to violate the prohibition on the threat or use of force, then the arms transfer should be considered illicit under international law.
- *Nonintervention in internal affairs of other states.* If a state exports arms without ensuring that the transfer complies with the laws of the recipient state and without the state's authorization, the supply

could constitute unlawful interference in the recipient state's internal affairs.¹¹ Accusations of unlawful interference are all the more likely if the weapons are supplied to opposition forces within the recipient state. The prohibition also applies if the weapons are used by the recipient state to intervene in the affairs of a third state.

- *International humanitarian law.* International humanitarian law prohibits the use of weapons intrinsically incapable of distinguishing between combatants and civilians or of a nature to cause serious injury or unnecessary suffering.¹² Some of these weapons have been the subject of specific conventions. For those that are not the subject of a specific convention, a prohibition on transfers can be inferred from the obligation in common Article 1 of the Geneva Convention "to respect and ensure respect" for international humanitarian law.
- *Human rights law and standards.* It is also the case that states cannot legally transfer arms that are likely to be used for serious violations of international human rights standards, as set out in the International Convention on Civil and Political Rights and numerous other regional instruments.¹³ In addition, the duty of states to protect the right to life could also be interpreted as meaning that it is illegal for states to supply arms to private actors in another country when the actors are operating outside the control of the host country and committing violent crimes.
- *Prohibition on genocide.* The 1948 Convention on the Prevention and Punishment of the Crime of Genocide prohibits and criminalizes acts of genocide as well as conspiracy to commit and complicity in genocide. Accordingly, provided it has the necessary intent to destroy a group in whole or in part, a state that provides weapons to another state or actor that uses them to commit genocide will be guilty of genocide. Even absent that intent, if it is apparent that the weapons will be used for these ends, the transfer will be considered illicit.
- *Prevention of terrorism.* On a number of occasions, the General Assembly has asserted states' duty to refrain from giving assistance, whether direct or indirect, to terrorist groups.¹⁴ Furthermore, the 1988 version of the International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind states that "fomenting subversive or [armed] terrorist activities by organising, assisting or financing such activities *or by supplying arms for the purpose of such activities*, thereby [seriously] undermined the free exercise by that state of its sovereign rights" [emphasis added], thus representing a crime against the peace. Accordingly, transferring arms that may be used in the commission of acts of terrorism is considered illicit under international law.

Beyond the restrictions that are laid down in international law, there are a number of other factors that governments, to a greater or lesser extent, take into account when deciding whether to grant or refuse an export license for SALW. While their impact varies, there is increasing recognition of the need to take into account concerns such as the following.

- *The threat of use of SALW in conflict.* The potential use of arms in a conflict situation is also an important consideration. A number of governments, including Italy and Belgium, are prohibited, by their domestic legislation, from transferring arms that could be used in a conflict situation, regardless of whether the recipient is the aggressor or the subject of aggression.
- *Potential effect on international/regional stability.* In certain regions of the world that are prone to conflict at a particular time, the unregulated transfer of arms can exacerbate tensions or upset a delicate balance of power. The destabilizing accumulation of conventional arms in the Middle East region is widely regarded as having been a contributing factor to the 1991 Gulf War. The flurry of initiatives that emerged in the aftermath of this conflict—including the UN Register of Conventional Arms—demonstrated a desire on the part of the international community to learn lessons from this period.
- *Undermining of economic development.* Governments are becoming increasingly aware of the potential for arms expenditures to divert resources from social development projects. While SALW have a comparatively low unit cost, large shipments could have the effect of undermining development in a recipient country, particularly when part of a large-scale procurement exercise. The lack of transparency in many countries' arms export and procurement programs, however, makes it difficult to identify situations when the acquisition of SALW is part of such a concerted military buildup.
- *Risk of diversion or transshipment to an illicit end-user.* Exporting states also assess the risk of the diversion or transshipment of the arms to an unauthorized entity. In their assessment, states need to take into account factors such as the international good standing of the recipient and its record in complying with international treaties, international and regional arrangements, and UN sanctions and resolutions.

The main problem with seeking to elaborate on principles for the purposes of controlling arms exports is that, while states may agree on defining their main concerns, they nevertheless find it difficult to agree on what the application of the criteria means for arms transfers in the quantitative and qualitative sense. Some of the above concerns may lead one government to institute a unilateral embargo on the transfer of

SALW to a recipient, while other states may take a different view and license the transfer of such weapons to a recipient of potential concern. Therefore, until there is broad agreement on the course of action in such a case, states may not consider it in their interests to act unilaterally.

LEGAL CONTROLS AND THE UN 2001 PROCESS

The development of regional declarations has gathered pace as governments, as well as subregional and regional organizations, have developed initiatives to bring to the 2001 conference. Despite natural differences reflecting regional priorities, resources, and established control structures, there are many areas of commonality. The regional development of accepted norms and standards on legal transfers should pave the way toward the articulation of internationally agreed-upon norms and standards at the UN conference. The following initiatives give an indication of the breadth of activity that is forming around the conference process.

OSCE Document: November 2000. An important initiative in the development of harmonized regional controls is the recent Organization for Security and Co-operation in Europe (OSCE) Document on Small Arms and Light Weapons.¹⁵ Throughout this document, there is a clear acknowledgement that legal export controls are crucial elements in combating the illicit SALW trade. Since the OSCE now includes 55 countries, among them many of the leading SALW manufacturers and exporters, this is an important development.

Among a number of detailed measures outlined in the document, member states have agreed to:

- exchange information on exports and imports of SALW within the OSCE region;
- combat illicit trafficking of SALW by prosecuting illegal manufacture, marking SALW, and destroying or marking any unmarked weapons;
- control the legal trade by adopting:
 - commonly agreed standards, building on the 1993 OSCE criteria, for licensing SALW exports; and
 - common OSCE-wide standards for documentation for import, export, and transit of SALW.

Bamako Declaration: December 2000. The Organization of African Unity (OAU) adopted the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.¹⁶ This declaration presented a multilateral plan of action for both exporting and recipient countries.

At the national level, the declaration called on exporting states to “take appropriate measures to control arms transfers by manufacturers, suppliers, traders, brokers, as well as shipping and transit agents, in a transparent fashion.” This demand was rein-

forced by a call at the regional level to “encourage the codification and harmonization of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition.”

Furthermore, the OAU appealed to the international community, and particularly “arms supplier countries,” to enact “appropriate legislation and regulations to control arms transfers by manufacturers, suppliers, traders, brokers, shipping and transit agents” and “stringent laws, regulations and administrative procedures to ensure the effective control over the transfer of small arms and light weapons, including mechanisms with a view to facilitating the identification of illicit arms transfers.”

EU Plan of Action: December 2000. The European Union (EU) addressed the need to strenuously control the legal trade in SALW in order to effectively combat the illicit trade throughout the EU Plan of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.¹⁷ The Plan of Action recognizes that action to combat illicit trafficking cannot be restricted to national controls. At subregional, regional, and international levels, the participating states undertake to:

- adopt and implement regional or subregional moratoria on the transfer and manufacture of SALW, and to respect such moratoria and cooperate with the countries concerned in the implementation thereof, including through technical assistance;
- consider additional regional or subregional instruments or codes of conduct to improve control over and restraint in the legal transfer of SALW, as well as to combat illicit trafficking; and
- control the production, transfer, acquisition, and holdings of SALW in accordance with states’ legitimate defense and internal security interests in connection with surplus weapons.

TOWARD DEVELOPED INTERNATIONAL NORMS AND STANDARDS

The foregoing declarations issued by regional and subregional groupings in advance of the UN conference show, in clear terms, that the need to control effectively the legal trade in SALW is a major concern for many states. The OAU, the OSCE, and the EU have asserted the inextricable link between the illicit and legal trade in SALW. The elaboration of what legal controls should constitute, however, does vary across these documents. A major challenge for the UN conference, therefore, is to agree upon and articulate a set of clear, comprehensive, and detailed norms and standards relating to the legal trade in SALW.

Significant progress has already been made. The Preparatory Committee “Draft Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects”¹⁸ of January 2001 articulated a range of measures that are necessary at the national, regional, and global level to prevent and reduce “the diversion of the legal manufacture and transfer [of SALW] to illicit chan-

nels” and with a view to fostering “responsible behavior with regard to the transfer of SALW and thereby reduc[ing] the opportunities to engage in the illicit trade in SALW.” The measures stipulated can be summarized as follows.

National:

- laws, regulations and administrative procedures to exercise effective control over the export, import, transit, or retransfer of SALW;
- applications for export authorizations of SALW to be assessed according to strict national criteria;
- the use of authenticated end-user certificates and enhanced legal and enforcement measures to safeguard against unauthorized retransfer of SALW;
- holdings of SALW to be limited to levels consistent with legitimate self-defense and security interests, including the ability to participate in UN peacekeeping operations;
- the establishment of rules, regulations, and procedures for national collection of information on production, stocks, and transfers of SALW;
- the supply of arms only to governments, either directly or through entities authorized to procure arms on behalf of governments;
- control over and criminalization of illicit arms brokering activities; and
- prohibition on the transfer of SALW to arms brokers as end-users.

Regional:

- harmonization of measures, procedures and documents for monitoring and controlling the export, import, transit or retransfer of SALW; and
- development of regional information exchange on arms brokers engaged in illicit activities.

Global:

- establishment of export criteria applicable to all states;
- development of a common understanding of the role and definition of arms broker;
- collection and publishing of “best practice” for national legislation and procedures for the control of arms brokers; and
- a legally binding agreement on arms brokers.

These principles and measures represent minimum standards, but they nevertheless provide a solid foundation for the establishment of effective international con-

trols on the legal trade in SALW in order to prevent the illicit trade and misuse of these weapons.

Accordingly, the removal from the Second Draft Program of Action (February 2001) of the need to establish “export criteria applicable to all states” should be considered a retrograde step. The UN conference should reinstate this important commitment and should seek to build upon the above principles and measures through the articulation of a comprehensive and detailed set of norms and standards governing the international trade in SALW.

Based on the foregoing discussion of international principles governing the legal trade in SALW and current government practice in this area, these norms and standards can be divided into two categories: 1) those principles that are based in existing international law and 2) those that are increasingly recognized as important factors in the international regulation of the trade in SALW.¹⁹

Those norms or principles that are based in existing international law include:

- the need to ensure adherence to UN embargoes and other limitations placed upon the transfer of SALW by the UN Security Council;
- the need to respect international treaties prohibiting the transfer of specific types of SALW;
- the prohibition on transfer of arms that are banned by international humanitarian law because they are incapable of distinguishing between combatants and civilians or because they may cause excessive injury or suffering;
- the prohibition on transfer of SALW that would be used by the recipient to violate the prohibition on the use of force or to interfere in the internal affairs of another state (as set out in the UN Charter);
- the prohibition on transfer of SALW that would be used to commit serious violations of human rights or international humanitarian law;
- the prohibition on transfer of SALW that would be used in the commission of acts of genocide or crimes against humanity;
- the prohibition on transfer of SALW that would be used to commit acts of terrorism;
- the necessity of ensuring that transfers of SALW are not diverted for any of the above purposes.

Those areas of emerging international consensus include the need to avoid transfers of arms that would:

- undermine the social and economic development of the recipient state;

- lead to the destabilizing accumulation of weapons in a region or contribute to existing regional instability;
- contribute to internal instability in the recipient state;
- be used for the violent suppression of democratic rights; and
- be diverted for any of the above purposes.


The UN conference should elaborate on each of these principles with the view to arriving at a common understanding among all states regarding what each of these principles means for the transfer of SALW. Priority areas for in-depth consideration should include enforcement of embargoes; observance of international human rights standards and international humanitarian law; regional destabilization as a result of the excessive accumulation of SALW; and risk of diversion to unauthorized end-users.

In addition, the UN conference should agree upon a comprehensive set of legal, administrative, and practical measures to ensure that the elaborated norms and standards are enforced rigorously by all states. A number of such measures are set out in the January 2001 Draft Program of Action. Minimum standards should, however, include:

- an agreement on effective measures for certifying and monitoring the end-use of SALW post-export with a view to preventing the diversion or misuse of legal SALW transfers;
- provisions for regular information exchange between all states on SALW transfers;
- provisions for regular public reporting by each state on transfers of SALW;
- model regulations governing SALW import, export, and in-transit licensing and certification;
- an international agreement on the registration of arms brokering agents and on licensing of their activities in accordance with elaborated norms and standards (as set out above).

To ensure consistent application and progressive development of the above norms and standards and of the associated legal, administrative, and practical measures, the UN conference should also agree to provisions for follow-up in these areas. An “ad hoc mechanism,” such as that referred to in the Draft Program of Action (or other appropriate international body), should be charged with conducting an annual review of the application of the norms and standards based on the provision of comprehensive information on transfers of SALW on the part of all states. Beyond this, the progressive development of the elaborated international norms and standards should be included in a formal review of the implementation of the UN Conference Program of Action, which should take place no later than 2004. Moreover, this review conference should explore the development of a legally binding international agreement on the regulation of SALW transfers.

CONCLUSION

Despite the development of national and regional arrangements that elaborate on the necessity of controlling legal transfers of SALW, the illicit trade and misuse of these weapons has continued. The absence of an explicit agreement at the international level on a comprehensive set of norms governing the legal trade in SALW is a significant obstacle to the promotion of global restraint and responsibility in this area. Many governments still trade on the assumption that “if we don’t sell, someone else will.” The UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects provides a crucial opportunity for addressing this damaging preconception. Only through the establishment of a detailed and comprehensive set of internationally agreed-upon norms and standards governing the legal trade in SALW will effective progress in tackling the illicit trade in SALW be achieved. 

Notes

- 1 The acronym SALW is from here on used to describe all types of small arms and light weapons and their ammunition.
- 2 Report of the Panel of Experts appointed pursuant to Security Council Resolution 1306 (2000), para. 19 in relation to Sierra Leone, UN Document (S/2000/1195) December 2000.
- 3 Report on the UN Group of Governmental Experts on Small Arms A/54/258, August 19, 1999.
- 4 UN Disarmament Commission, “Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991,” 51st sess., supp. 42 (A/51/42), 1996, para. 17.
- 5 See *Ibid.*
- 6 Section drafted in collaboration with Emanuelle Gillard of the Lauterpacht Research Centre for International Law, University of Cambridge.
- 7 “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 Protocols),” 1980.
- 8 According to the International Law Commission (the UN body established to promote the progressive development of international law), “A state which aids or assists another state in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if: a) that state does so with the knowledge of the circumstances of the internationally wrongful act; and b) the act would be internationally wrongful if committed by that State.” International Law Commission, 52nd sess., May 1–June 9 and July 10–August 18, 2000. Draft articles provisionally adopted by the Drafting Committee on Second Reading, UN Doc. A/CN.4/L.600.
- 9 *Yearbook of the International Law Commission 1978*, vol. II, pt. 2, p.103.
- 10 The prohibition on the threat or use of force is laid down in Art. 2(4) of the UN Charter.
- 11 The question of interference in the domestic affairs of another state was also addressed by the International Court of Justice in “Case Concerning Military and Paramilitary Activities in and against Nicaragua,” *ICJ Reports*, 1986, p.14.
- 12 Art. 51(4) and 35(2) Additional Protocol to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of June 8, 1977.
- 13 Such instruments include the European Convention on Human Rights, the American Convention on Human Rights, and the African Charter on Human and Peoples’ Rights.
- 14 See, for example, General Assembly Resolution 42/22, March 17, 1988, para. I.6.
- 15 OSCE Document, UN Doc. A/Conf.192/PC/20, December 28, 2000.
- 16 Bamako Declaration, UN Doc. A/Conf.192/PC/23, January 10, 2001.
- 17 EU Plan of Action, UN Doc. A/Conf.192/PC/21, December 28, 2000.
- 18 UN Doc. A/CONF.192/PC/L.4.
- 19 See Oscar Arias Sánchez, “Toward a Convention on International Arms Transfers,” this issue, pp. 35–41.

Demand Dimensions of Small-Arms Abuse

by Alejandro Bendaña

International humanitarian attention has underscored the importance of confronting the proliferation, accumulation, and misuse of small arms. The humanitarian imperative, however, often tends to sideline, purposefully or not, the more contentious political issues involved. Three questions have to be placed squarely on the table. First, are we avoiding a deeper (and much needed) consideration of the supply and production dimension? Secondly, have we decided not to address the underlying and systemic causes of violence? As Bobi Perseyedi notes, “it could . . . be argued that the growing international interest in small arms is due, to a large extent, to the lack of political will on the part of the international community to address the underlying causes of internal conflicts.”¹ Thirdly, should we address the demand side of the problem from a security or a development/peacebuilding perspective?

WHICH DISCUSSION FRAMEWORK?

Before addressing these questions, there is a more general concern that requires acknowledgement. Not only the content of but also the very framework for discussion can be problematic or partial. This refers to the very decision to organize single-issue campaigns that, in and of themselves, may deflect political attention and organizational resources away from a broader understanding of (and action upon) direct and economic violence.

Civil society campaigns argue that a well-defined focus and specialization is critical to effective advocacy and policy reform. But is this policy at the expense of politics (let alone power and paradigms)? Governments have their own reasons for compartmentalizing the issue—the more “independent” the demand problem, the smaller the embarrassment over the lack of political will to address the production dimension and the causal factors.

Of course, the silence of arms producers is explainable. However, by extension, corporate investors in certain industries may not wish to be reminded of how their decisions exacerbate the social problems that create crime—for example, poverty and joblessness—and transform the workings of the global economy to make it easier for arms pushers to move their money. Expanding the parameters of our analysis (and action) may well reveal that many of the rich countries do not stand above the problem but indeed are a part of it. The point, therefore, is not to expand but to contract those parameters.

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Most of us would agree that it is better to address an issue such as small arms in a compartmentalized and partial way than not to address it at all. What is problematic is that so long as we deal with such problems at the level of symptoms and not their essence, we may be simply legitimizing, and thereby reinforcing, the macro power structures and thinking that produce violence.

BLAME THE VICTIM

Does weapons availability help trigger violent behavior? The question is academic in regions such as Central America or Central Asia, where it seems that weapons, like the poor, shall always be with us. The cold war made small arms and light weapons widely available, and technology has made them cheap, maintainable, and easy to transport—ensuring that they will remain instruments not simply of the military but of militarized crime and economic survival or rebellion.

Small arms are not merely symptoms of the loss of “values.” Governments often prefer to blame crime on the criminals rather than to address another discernible component of the small arms problem: namely, the relationship between small arms proliferation and the character of economic, social, and political development. The law-and-order and security approach tends to reduce to police actions pitting “good guys” against “bad guys.” The national security “guns and thugs” approach can be as narrow as it is opportunistic. Proliferation and abuse are linked, of course, but, as the examples of Switzerland or Texas would show, the first does not necessarily lead to the second.

Small arms are not merely symptoms of the loss of “values.”

Widespread gun ownership and use raises important questions about fundamental relationships between state and society. It is more than a question of “governance”—a blanket term often used to blame national governments for conflict. The character of the state helps to shape social behaviors. Where repression is the official norm, and where people are seeking to build more democratic societies and movements and wish to gain access to power, the implications regarding gun supply and demand are obvious: people’s guns against government thugs.

Drugs, Thugs, Greed, and Grievance. One must be wary of the recent trend to analyze the economic agendas of competing factions in violent conflicts. Once again, the policy prescription should focus on affecting the behavior of national elites and their regional networks.² However, the analysis and responses should also examine how globalized privatization creates new opportunities for particular groups to multiply their capital by engaging in multifaceted national and international trade that includes weapons. In certain countries, these are private-sector firms that under the rules of liberalized banking and diminished capital controls can freely move the money that moves the weapons (or drugs, diamonds, etc.).

Conflict entrepreneurs are more of a by-product of wars, although they may feature prominently in a war’s perpetuation. People do learn new means of survival in

militarized economies, and sometimes it is difficult to unlearn the use of weapons as instruments of economic subsistence. Development aid conditionality and international police repression are not the answers. Effectively contesting the pain produced by war and weapons will be the product of a long-term and incremental process of organizing social energy, referred to by some as “social capital” or “civil society.”

State and Security. Citizen insecurity (and with it gun proliferation) may be as much the product of a repressive and corrupt authority as of a nonexistent or ineffective one. We must examine the contentious connection between a so-called failing or failed state on the one hand and the need of a community to assume its own security on the other.

Where police and courts are ineffectual, where impunity is the norm, citizens will assume their own security. Security becomes privatized and security agencies proliferate, along with the demand and supply of weaponry. There are now abundant reports of criminal elements’ being better armed in quality and quantity than the legitimate forces of the state. While such a situation is, in part, the result of excessive availability, it is also the result of diminished capacity on the part of local security authorities.

There are abundant reports of criminal elements’ being better armed than the legitimate forces of the state.

Capacity, in turn, cannot be divorced from privatization, budget-constricting frameworks, and state-debilitating consequences of global rules set down by the lending countries and institutions. In other words, the failure of a state in its elemental duties to provide security—let alone other human rights and equity—is also the failure and responsibility of the global rulemakers. Donors call for demand-side action with one voice, yet with another demand structural adjustment programs and external debt repayment, suspiciously oblivious to the connection between the two.

New Conditions and Interventions. What the South does not need is new conditions on rapidly diminishing aid flows. Many in the South, at both the national and local levels, feel that linking development assistance or debt relief to political behavior is in general a bad idea. Over and above the implications for domestic democratic processes, and whether “aid” is a matter of charity, self-interest, or justice, there is the question of whether the donors have the competency to impose or justify the imposition of governance- or security-related conditionalities.

MEANS OF ADDRESSING DEMAND

It is easy to point out the negatives of a demand-side focus, but we must also address the potentially positive ways to influence that focus.

Assuming a Development and Justice Perspective. Conceptual and policy horizons regarding gun abuse must be expanded to positively engage the external possibilities of affecting the demand dimension. Examples and research now abound showing how humanitarian assistance may have profoundly negative impacts on the dynamics

of conflict and small-arms demand. But the refrain “do no harm” is not enough. The question is how to do some good from the outside. Campaigns, particularly in the North, working from a development and justice perspective should raise fundamental questions about development assistance and humanitarian aid as a complement for efforts in the legal and normative realm.

Review Aid Policies Instead of Security Policies. There is a need to respond to small-arms abuse in a more coherent and coordinated manner with a view to long-term sustainability and capacity-building. Demand-side discussions and recommendations could benefit from ongoing reviews of the application of development assistance to violence prevention.³ It has been argued that in certain national and regional contexts, aid projects could be designed to contribute to conflict prevention, resolution, or reduction by building either the will or the capacity of the state and civil society to create an environment in which differences could be resolved without recourse to violence. Diminishing available stockpiles and restricting supply avenues is insufficient, at least from a humanitarian perspective.

Peace and Weapons Abuse Control—The Indispensable Linkage. In countries like Sri Lanka, Colombia, or Sierra Leone, the problem of small arms cannot be addressed without an understanding of the phenomena of “militarized violence.” Past or ongoing conventional military engagements between organized forces spill over, in time or geography, into abuses and paramilitarism. Perpetrators, not always men in uniform, or potential victims are both sources of “demand,” as institutions and society itself make all social, political, and economic problems a security problem as well.

There Is No Magic Bullet. That being said, the temptation should be resisted to make categorical statements or, worse yet, to devise programs drawing on “expertise” or experience from another conflict zone in another part of the world. Approaches should be situation-specific, as weapons proliferation affects different sectors in different ways in different regions, within and among countries.

Which Way Forward? Donors must come to grips with the gap—or, perhaps, the incompatibility—between addressing the small-arms problem in a comprehensive fashion and the workings of current structures, processes, and operating procedures regarding development and security policy. It may well be that many of the “givens” of market-driven corporate globalization are part of the problem. Gun abuse or violence prevention may therefore be less a question of methodologies or “tools” than a matter of approaches and genuine commitment to empowerment. We perhaps would do well to lend as much support to building local and national containment and prevention capacities as we do to international conferences and international conventions.

CONCLUSIONS

At the academic as well as practical levels, we need to understand and tap indigenous, grassroots sources of arms abuse and violence prevention. This means enhancing local capacities for community-building, the tapping of social energies, commu-

nication and coalition networking, and peacebuilding in general. It just may be that the most effective means of controlling gun abuse will take the form of strengthened norms and networks of national civic engagement on the one hand, and democratic expansion of the national public sector diminished by financial entities on the other.



Notes

1 Bobi Perseyedi, *The Small Arms Problem in Central Asia: Features and Implications* (New York: UNDIR, 2000), p. 5.

2 See, for example, Mats Berdal and David M. Potter, *Greed and Grievance: Economic Agendas in Civil Wars* (New York: Lynne Rienner, 2000).

3 See, for example, UK Overseas Development Administration (ODA) "Conflict Reduction Through the Aid Programme: A Briefing for Agencies Seeking Support for Conflict Reduction Activities (briefing paper), 1996.

The Historical and Asia-Pacific Perspective

by Mitsuro Donowaki

GLOBALIZING DISARMAMENT

During the cold war, conventional weapons seldom were a major disarmament issue. Nuclear disarmament, or the control of missiles and other delivery means of nuclear weapons, always topped the disarmament agenda, followed by other weapons of mass destruction, such as chemical and biological weapons. When I arrived in Geneva in the fall of 1989 as a newly appointed ambassador of Japan to the Conference on Disarmament, the cold war was ending, with the fall of the Berlin Wall in November of that year and the Bush–Gorbachev Summit Meeting in Malta in December. Still, disarmament representatives in Geneva, including myself, were to be kept fully busy for several more years with the negotiations of the Chemical Weapons Convention, and then of the Comprehensive Test Ban Treaty. In the meanwhile, the collapse of the Soviet Union in 1991 prompted world leaders in the capitals of the northern hemisphere to deal hastily with the possible threat of nuclear proliferation.

Against this background, the Iraqi invasion of Kuwait in the summer of 1990 had the unexpected effect of suddenly making conventional weapons one of the priority disarmament issues. It was estimated that from 1983 to 1989, arms imports made up a staggering \$53 billion of the total \$92 billion of Iraqi imports.¹ During those same years, the world average of arms imports as against total imports was less than 3%. At the same time, about 85% of the total arms imports by the Middle East originated from the five permanent member states (P-5) of the UN Security Council. If the P-5 could have exercised some restraint in their zeal to sell arms to Iraq, the latter certainly would not have become a regional military giant so easily. It was with this sobering reflection that the P-5 undertook several rounds of talks on the restraint of conventional arms exports in 1991 and 1992, but without much success. After all, the control of trade in conventional arms is easy to talk about but hard to realize, for a number of good reasons—the inherent right of states to self-defense, including their right to import arms; the principle of free trade; sales competition among major exporters of arms; and loopholes for illicit trafficking, to name just a few.

It was in light of such circumstances that Japan and the European Community (the European Union [EU] of today) established the United Nations Register of Conventional Arms in 1992. Member states were called upon to report in the register, on

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a voluntary and annual basis, the export and import in seven categories of conventional weapons such as battle tanks, armored combat vehicles, large caliber artillery, combat aircraft, and attack helicopters. Only the number of such major weapons imported or exported, together with the names of the exporting or importing countries, was required.

Thus, the Conventional Arms Register was established not as an export control measure but as a transparency and confidence-building measure. With such a global reporting mechanism, states could avoid unwarranted fears about secret military build-ups on the part of their neighbors. The usefulness of such a transparency and confidence-building measure came to be recognized through the experience of the negotiations that led to the conclusion of the Treaty on Conventional Armed Forces in Europe in 1990.

However, when Japan and European states introduced a draft resolution to the UN General Assembly in 1991 aiming to establish the register, it took an enormous amount of time and effort to persuade the rest of the international community. We had on our side the fact that the initiative came from Japan and the European states rather than the superpowers. Consequently, although a number of countries outside Europe, and particularly their militaries, still tended to believe that military secrecy served their security interests best, the resolution came to be adopted by an overwhelming majority in December 1991.²

In a sense, this was a turning point in disarmament history. I recall a diplomat from a nonaligned country's once confiding in me, "In the old days we used to be onlookers or demanders of disarmament that had to be carried out by superpowers and developed nations, but now they are more and more leaning on us demanding us to do this and that." In fact, the so-called "globalization of disarmament" in its true and nondiscriminatory sense started to take place around this time. This was because we were no longer talking only about the weapons of mass destruction held by a handful of countries, but about the conventional weapons held and traded by almost all countries. Approaching its ten-year anniversary in 2002, the UN Register of Conventional Arms has fared reasonably well—with an average of more than 90 states participating every year, 146 out of the 186 member states of the United Nations reporting at least once as of August 2000, and the data thus registered covering most of the global trade in conventional weapons.³

ENTER SMALL ARMS

The issue of small arms, which was to occupy the center stage of disarmament activities in subsequent years, did not attract much attention at the time that the UN Register of Conventional Arms was established. Indeed, it was only from around 1992, with the brutal civil wars of Somalia, Angola, and Rwanda, that the problems of small arms and light weapons (SALW) came to be recognized as a matter of serious concern to the international community. The number of lives lost was staggering: more than 2.5 million in these three conflicts alone. If we consider that the number of

deaths caused by the atomic bombs dropped on Hiroshima and Nagasaki was about 210,000, it seems reasonable to declare small arms to be de facto weapons of mass destruction in today's world.

Considering the number of deaths caused by the atomic bombing of Hiroshima and Nagasaki, it seems reasonable to declare small arms today's de facto weapons of mass destruction.

Hundreds of thousands of civilians, mostly women and children, are being killed or forced to become refugees as a result of subregional and intrastate armed conflicts. In these conflicts, fought mostly in Africa but also in many other parts of the world, SALW are the weapons of choice because they are easy to obtain, carry, and use in irregular warfare, where noncombatant civilians can be made targets.

As far as I can recall, the first time the United Nations was formally asked to take up the serious problems of SALW was in October 1993, when the president of Mali requested Secretary-General Boutros Boutros-Ghali's assistance in the collection of weapons widely circulating in his country even one year after a successful cease-fire. At a meeting of the secretary-general's Advisory Board on Disarmament Matters in January 1994 in Geneva, he informed the board about this request and his intent to send an advisory mission to Mali.

Also, in his opening address to this meeting, Boutros-Ghali stated, "Regional registers of conventional arms should now be the next step. They have the advantage of allowing the categories of weapons to be registered to reflect the security concerns felt in the region."⁴ This statement, however, reflected an incomplete grasp of the real nature of the problem. The UN Register was, as described above, for larger conventional weapons easy to identify and to count, and for greater transparency and confidence-building among countries. Small arms, in contrast, are too numerous to identify and count and too easy to conceal and smuggle, making transparency measures difficult to implement, particularly in underdeveloped regions. What was needed, as was evident from the request of the president of Mali, was immediately to collect and destroy these weapons rather than to count them.

In January 1995, in his "Supplement to an Agenda for Peace," Boutros-Ghali made a more formal appeal to the international community to deal urgently with what he called "micro-disarmament"—the problems of small arms and antipersonnel landmines. "Progress since 1992 in the area of weapons of mass destruction and major weapons systems must be followed by parallel progress in conventional arms, particularly with respect to light weapons."⁵ In response to this appeal, the General Assembly established the Panel of Governmental Experts on Small Arms. The panel, which I had the honor to chair, held regular sessions plus three regional workshops in Pretoria, San Salvador, and Kathmandu. We also encouraged input from about six-dozen experts from academia, civil society, and regional security authorities.⁶

The panel's 1997 report⁷ included twenty-four measures "to prevent and reduce the excessive and destabilizing accumulation and transfer of small arms and light weapons," as was specifically mandated by the General Assembly. Some of these recommendations were further refined or developed in the 1999 Report of the Secretary-General prepared with the assistance of the follow-up Group of Governmental Experts.⁸ The reports of both the 1997 panel and the 1999 group were presented to Secretary-General Kofi Annan, and through him to the General Assembly.

Prevention Measures. The panel recommended norms and guidelines to prevent the excessive accumulation and transfer of small arms and light weapons. Most important among them was the recommendation that all states implement the 1996 United Nations Disarmament Commission Guidelines for International Arms Transfers,⁹ with particular emphasis on the need to have in place adequate national laws and regulations concerning the legal possession, manufacture, and transfer of such weapons.

In response to the panel's recommendation that "the United Nations should consider the possibility of convening an international conference," the General Assembly decided to convene a UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects in July 2001. The rationale behind the conference was that prevention of the excessive accumulation and transfer of such weapons could not succeed without an attempt to eradicate the illicit arms trade, and that in turn such an attempt could not succeed without the concerted efforts of the entire international community. Thus, the illicit trade in small arms was from the beginning treated as a problem closely linked with that of the excessive accumulation and transfer of such weapons.

Reduction Measures. The 1997 report recommended that the regions or subregions affected by SALW strengthen cooperation among police, intelligence, customs, and border control officials and establish networks of information sharing for this purpose. In a sense, this was an answer to the suggestion that regional registers of small arms be established. On the other hand, it was evident that such efforts by the affected regions and subregions alone would not solve the problem. Therefore, the panel recommended that the United Nations develop guidelines so that peace agreements and peacekeeping mandates would clearly provide for the collection and disposal of such weapons in a postconflict situation.

INTEGRATING SECURITY AND DEVELOPMENT

Drawing on the reports of the secretary-general's advisory mission to Mali and other countries in West Africa, the panel recommended that the United Nations and all others engaged in development assistance activities adopt and promote a "proportional and integrated approach to security and development" in order to reduce the excessive number of small arms and light weapons circulating in such regions. This integrated approach reflects the finding that people in postconflict regions will not readily give up their weapons unless they feel that local authorities are competent enough to protect their lives and property. Hence a comprehensive approach to secu-

rity and development would include security-sector reforms and the establishment of good governance mechanisms.

These recommendations came to be implemented rather well. After a series of studies and workshops organized by the Department of Peace Keeping Operations (DPKO), the secretary-general submitted to the Security Council a report entitled "The Role of United Nations Peacekeeping in Disarmament, Demobilization and Reintegration" in February 2000.¹⁰ "DDR," the acronym for "disarmament, demobilization and reintegration," is now popularly used in relation to the issue of small arms in postconflict regions.

Most donor countries also endorsed the security and development approach. For example, both the Joint Action of the European Union of December 1998 and the OSCE Document on Small Arms of November 2000 refer to the need to assist DDR programs in postconflict regions and to adopt a comprehensive approach to security and development.

The problems associated with the excessive accumulation and transfer of SALW can only be resolved through the two-pronged approach of "prevention" and "reduction." On the one hand, excessive accumulation and transfer of small arms and light weapons has to be "prevented" by establishing norms or guidelines for all members of the international community in controlling the supply of such weapons. On the other hand, the amounts of such weapons have to be "reduced" in the regions of the world already seriously suffering from excessive accumulation.

THE UN CONFERENCE

The 1999 Report of the Group of Governmental Experts on Small Arms recommended that the 2001 UN Conference on small arms aim to 1) strengthen or develop norms at global, regional, and national levels to prevent and combat illicit trade in small arms and 2) develop agreed international measures to reduce the excessive and destabilizing accumulation and transfer of such weapons, with particular emphasis on the most affected regions. Mobilization of political will for this purpose and the adoption of substantive documents, including an international action program, were also recommended.

It is generally along the lines of these recommendations that the Preparatory Committee (Prep Com) of the conference has been carrying out its work. During the course of its second and third sessions, held in New York in January and March 2001, a draft program of action was carefully prepared and deliberated under the able chairmanship of Ambassador Carlos Dos Santos of Mozambique.¹¹ In addition, a number of regional entities have been preparing for the conference to varying degrees.

Regional Preparation. The recommendations contained in the 1997 panels and 1999 group's reports have been well received and vigorously followed up in Europe and North America through the adoption of the EU Joint Action of December 1998 and the OSCE Document of November 2000. In Africa, the region most seriously affected by the problems of small arms and light weapons, diverse subregional and continent-wide initiatives have been taken in the past few years. For example, in Oc-

tober 1998, the members of the Economic Community of West African States declared a three-year moratorium on the imports, exports, and manufacture of small arms and requested the cooperation of other states both within and outside of Africa. The following month, a ministerial meeting of the Southern African Development Community and the EU approved an action program concerning the proliferation of and illegal trafficking in small arms. In March 2000, at a regional meeting in Kenya to discuss the issue of small arms, the foreign ministers of ten countries signed the Nairobi Declaration on the Problem of Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa.

As a continent-wide initiative, the Assembly of Heads of State and Government of the Organization of African Unity (OAU) decided in July 1999 to take a coordinated African approach to the problems of small arms. Following this decision, after a preparatory conference of continental experts held in May 2000 in Addis Ababa, the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons was issued on December 1, 2000. The declaration, which is fairly comprehensive and detailed, called for "a realistic and implementable program of action" to be adopted by the UN conference. It also appealed for international financial and technical support for initiatives and programs aimed at eradicating the illicit trafficking of small arms and light weapons, the reintegration of demobilized youths, and so forth.¹²

Governments are wary of attempts to restrict their right to import small arms and light weapons needed to maintain internal order.

The Latin American and Caribbean region, also seriously affected by the problems of small arms, concluded an Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials in 1997. The convention provided for national legislative measures to establish as criminal offenses the illicit manufacturing of and trafficking in firearms, as well as requirements for marking and export/import licenses.

In November 2000, the Brasilia Declaration of the Regional Preparatory Meeting of the Latin America and Caribbean States was adopted. The relatively short declaration reiterated the importance for the UN conference to take into account the specific needs and experiences in individual regions, subregions, and countries, stating that in their region the illicit trade in small arms was mainly related to drug trafficking, terrorism, transnational organized crime, mercenary activities, and other criminal acts and conduct.

In comparison, the Asia-Pacific region may appear to lag behind in its preparation for the UN conference on small arms. There are several possible reasons for this. First, this region as a whole is not besieged by regional or internal armed conflicts, which may account for a relative lack of interest in the problems related to small arms and light weapons. Secondly, this region is neither a major supplier of small arms, as

are North America and Europe, nor a major recipient of such arms, as are Africa, Latin America, and the Caribbean. Thirdly, in most Asia-Pacific countries, governmental authorities are in good control of internal order and security, including criminal and terrorist use of such weapons. Lastly, the Asia-Pacific region comprises subregions and countries with diverse cultures, interests, and concerns, making it difficult to find a common approach on almost any issues. For example, the Asia-Pacific does not have a regional organization comparable to the OAU, OAS, and OSCE: the Association of South-East Asian Nations (ASEAN) Regional Forum (ARF) is not much more than an informal forum for dialogue created only seven years ago.

Of course, this does not mean that the Asia-Pacific region can remain indifferent to the problems related to small arms. In today's world of globalization, a matter that is of great concern to three other continents cannot fail to be a matter of great concern to this region as well. Therefore, several attempts have been made during the course of the last year to look at the issue of small arms from regional or subregional perspectives. In May 2000, the government of Indonesia hosted, with the cooperation of the UN Regional Centre for Peace and Disarmament in Asia and the Pacific, the Jakarta Regional Seminar on Illicit Trafficking in Small Arms and Light Weapons, in which all the ASEAN countries participated. Then, in June 2000, the government of Japan hosted the Asia Regional Workshop on Small Arms in Tokyo with the participation of representatives from about a dozen countries of the Asia-Pacific region as well as eighteen countries from other parts of the world. Also in June 2000, the Regional Centre for Strategic Studies in Colombo hosted the Conference on Small Arms and Light Weapons Proliferation in South Asia in Kandalama, Sri Lanka. Five months later, the first ARF Experts Group Meeting on transnational crime was held in Seoul, Republic of Korea, and included discussion of small arms and light weapons. Lastly, the Pacific Island Forum (called the South Pacific Forum until last year) has been organizing the South Pacific Chiefs of Police Conferences for the past few years to discuss the control of firearms, ammunition, and other related materials.

As these meetings were held, it became clear that some Asia-Pacific subregions do suffer from the acute problems of small arms and light weapons. Indeed, at least three subregions have expressed their strong interests to be actively engaged in the efforts to prevent and reduce the excessive and destabilizing accumulation and transfer of such weapons.

1) *Cambodia*. In Cambodia, where prolonged civil wars came to an end several years ago, the government has been making efforts to collect and destroy weapons since 1997. In 1998, the Working Group for Weapons Reduction, a group of local and international NGOs, started to cooperate with such actions. The international community also joined these efforts. In March 2000, the European Union Assistance in Curbing Small Arms and Light Weapons in Cambodia (EU ASAC) began to conduct a feasibility study on pilot projects that may be called "weapons for development" projects. Japan also started to send several missions to Cambodia to discuss weapons issues, after a promise made by the late Prime Minister Keizo Obuchi during his visit to Cambodia in January 2000. Then, in July 2000, at the Japan-EU Summit

meeting held in Tokyo, it was announced that “Japan and the EU will assist Cambodia in its efforts to resolve the issues related small arms in the country.”¹³ This was followed by a UN mission sent by Secretary-General Kofi Annan in January 2001 to study the role that may be played by the United Nations in assisting DDR programs in Cambodia.

The strong wish of the Cambodian government to tackle the problem of excessive availability of small arms was evident at the ARF CBM Seminar on Conventional Weapons Transfers hosted in Phnom Penh in February 2001 with the cosponsorship of the governments of Canada and Japan. I remember well the speech made by Mr. Uch Kiman, Secretary of State of the Ministry of Foreign Affairs and International Cooperation, in which he said, “We need your help to consolidate peace, to demobilize our armed forces—not to send them to the front lines—to collect weapons and to destroy them—not to ask for military assistance or military hardware to fight any war.”¹⁴ This was followed by another international symposium on “Culture of Prevention” organized by the Foreign Ministry of Japan in Tokyo one month later. At this symposium, attended by a wider international audience, Lt. Gen. Hok Lundy, Director General of the Cambodian National Police, made a strong appeal for assistance to “train the Cambodian police force in professionalism” and for “enhancement of the standard of living of local people . . . aiming at the implementation of weapons in exchange for development.”¹⁵


2) *ASEAN*. In other ASEAN member countries, mainly consisting of archipelagos such as the Philippines and Indonesia, the issue of small arms poses slightly different but nonetheless serious problems. As was manifested by the recent turmoil in East Timor, the primary concern for those countries in South-East Asia is how to maintain their territorial integrity while accommodating the diverse interests of numerous ethnic and religious groups. Though it may be true that there is some room for security sector reform and improved governance, national authorities in these countries invariably are anxious to stop the illicit influx of small arms and light weapons into their territories. Therefore, they have an interest in closer cooperation among regional police, border control, and customs officials and are in need of financial and technical support for the establishment of such regional networks of information sharing and cooperation.

On the other hand, since they are not the major producers of weapons, these governments are very wary of any attempts to restrict their right to import small arms and light weapons needed for the maintenance of internal order. Strict export criteria involving humanitarian criteria on the part of supplier countries might adversely affect their national interests.

For these reasons, from about the time of the Jakarta Regional Seminar of May 2000, the ASEAN countries began taking greater interest in the UN conference. As a result, during the latest Prep Com in March 2001, the Vietnamese delegation spoke on behalf of the ASEAN countries to set out the group's basic position. This was followed by unprecedented and active interventions by the delegations of the ASEAN member countries, which can be generally characterized as thoughtful and constructive.

3) *Pacific Islands.* The Pacific island countries also are starting to show strong interest in the UN conference on small arms, since the uncontrolled possession and inflow of such weapons, even though modest in number compared to other seriously affected regions, could have extremely destabilizing effects. During the January and March 2001 Prep Com sessions, the delegations of Solomon Islands and Vanuatu, respectively, spoke on behalf of the Pacific Island Forum (PIF) to express its commitment to making a constructive contribution to the conference. As mentioned, the PIF Chiefs of Police Conference has been held the past few years, and model legislation for the control of firearms, ammunition, and other related materials is being developed. Furthermore, a workshop for the PIF countries to consolidate their approach to the UN conference is scheduled for May 2001 in Brisbane under the sponsorship of the government of Australia.

CONCLUSIONS

It is not too late for any region or subregion of the world to join the struggle to resolve the problems of small arms and light weapons. Inevitably, it will take the concerted efforts of the entire international community to address these problems in a comprehensive way. The UN conference of July 2001 should be understood not as an end but as the beginning of a process that has to be pursued vigorously in order to make the world a safer and better place to live. 

Notes

1 U.S. Arms Control and Disarmament Agency, *World Military Expenditures and Arms Transfers 1993–1994* (Washington, DC: GPO), p. 115.

2 UN General Assembly Resolution 46/36, “Transparency in Armaments,” was adopted on December 9, 1991, with 150 votes in favor, none against, and two abstentions (Cuba and Iraq).

3 “Report on the continuing operation of the United Nations Register of Conventional Arms and its further development” (A/55/281).

4 “The Disarmament Agenda of the International Community in 1994 and Beyond—Statements of the Secretary-General,” United Nations.

5 “Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations,” UN Doc. A/50/60, January 3, 1995, para. 63.

6 Nearly half of the presentations made have been published in *Small Arms Control: Old Weapons, New Issues*, ed. Jayantha Dhanapala et al. (Burlington, VT: Ashgate, 1999).

7 “Report of the Panel of Governmental Experts on Small Arms” (A/52/298).

8 “Report of the Group of Governmental Experts on Small Arms” (A/54/258).

9 “Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991” [Official Records of the General Assembly, Fifty-First Session, Supp. 42 (A/51/42)].

10 “The Role of the United Nations Peacekeeping in Disarmament, Demobilization and Reintegration” (S/2000/101).

11 “Draft Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” A/Conf.192/PC/L/4/Rev.1, February 12, 2001.

12 For more on the Bamako Declaration, see Virginia Gamba, “African Contributions to the International Debate,” this issue, pp. 79–85.

13 “Japan-EU Summit Joint Conclusions,” Tokyo, July 19, 2000.

14 "Toast Delivered by H. E. Mr. Uch Kiman, Secretary of State, Ministry of Foreign Affairs and International Cooperation at the Reception in honor of participants to the ARF CBMs Seminar on Conventional Weapons Transfers," Phnom Penh, February 21–22, 2001.

15 Keynote address delivered by Lt. Gen. Hok Lundy, Director General of Cambodian National Police, "International Symposium on Conflict Prevention, Culture of Prevention: Multi-Actor Coordination from UN to Civil Society," Ministry of Foreign Affairs, Tokyo, Japan, March 13–14, 2001.

African Contributions to the International Debate

by Virginia Gamba

INTRODUCTION

In 1995, UN secretary-general Boutros Boutros-Ghali acknowledged the impact of small-arms proliferation on the security of people and made a general call for “microdisarmament,” or the reduction in the level of small arms and light weapons world-wide.¹ As a result of this call, the United Nations created a Panel of Experts on Small Arms and Light Weapons, which commenced a two-tier process to analyze the extent and scope of the problem of small-arms proliferation and its potential for control and reduction.

The recommendations of the Panel of Experts² led to many regional efforts to understand, control, and stem proliferation. The first to bear fruit was the Inter American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other related materials undertaken by the Organization of American States (OAS) during 1997. Since then, many other regional processes and debates have engaged the attention of the international community in preparation for a United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects (July 2001).

In parallel, the United Nations during 1998 also embarked on an attempt to reduce illicit manufacturing and trafficking in firearms. The General Assembly directed that an International Instrument (Convention) Against Trans-National Organised Crime,³ which was being negotiated in Vienna, should include a protocol explicit to firearms and ammunition. That protocol, on the Illicit Trafficking and Manufacture of Firearms and Ammunition, has been a work in progress and has only been finalized during March 2001. The protocol aims at introducing measures that will be binding internationally and that will improve international cooperation to, *inter alia*, prevent and combat the illicit trafficking of firearms. Some of the aspects of the draft protocol that are of relevance to the small-arms discussions are being entertained at the UN Conference on Illicit Trade. These include obligations for governments to:

- 1) make it a criminal offense to illegally traffic, manufacture, possess, or use a firearm; to remove the markings on a firearm; or to illegally reactivate a deactivated firearm.

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- 2) adopt strict measures that require the registration and licensing of firearms brokers.
- 3) introduce legislation for the confiscation and forfeiture of firearms that have been illegally trafficked;
- 4) ensure that firearms are appropriately marked as stipulated in the protocol;
- 5) keep detailed records on firearms, including the markings at the time of manufacture, particulars of import or export licenses, and particulars of the final recipient of the firearm; and
- 6) establish an effective system of import and export licensing.

Since the Vienna firearm protocol has been in progress for so long, it follows that it has influenced the draft agenda of the UN conference. That draft agenda, for example, looks at national, regional, and global measures to improve transparency, tracing, and record-keeping; improve import and export controls; and criminalize illicit firearm offenses, among other issues. All of these recommendations echo the dimensions of the Vienna process.

Given the topicality of the small arms debate, it is fitting to concentrate here on a) the way Africa has managed this process and b) the impact of African subregional debates at the national and international level.

AFRICAN SUBREGIONAL INITIATIVES

African subregional initiatives on small arms and light weapons commenced in 1996 and have yielded a number of positive results.

1) *ECOWAS Moratorium on the Import, Export and Manufacture of Small Arms and Light Weapons (1998)*. In West Africa, member states of the Economic Community of West African States (ECOWAS) declared a three-year renewable moratorium on the import, export, and manufacture of light weapons and adopted a Code of Conduct governing its implementation. ECOWAS has also established a regional project administered by the United Nations Development Program called the Programme for Coordination and Assistance for Security and Development (PCASED). Since its establishment in 1999, the activities planned under the PCASED have reflected a growing concern with the linkages between arms availability and a culture of violence in West Africa; revision of legislation; training of law-enforcement agencies; weapons collection and destruction; and improvement in record-keeping and transparency.

2) *The Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa* was concluded in draft form in November 2000. The implementation mechanism is entitled "Draft Coordinated Agenda for Action and its Implementation Plan" (2000). This draft, formally launched by the Minister for Foreign Affairs of Kenya in March 2001 in New York, consolidates regional agreement on a common institutional framework of

coordination and ensures regional cooperation. The Agenda for Action focuses on:

- 1) legislative measures;
- 2) operational and capacity-building measures;
- 3) measures for the control, seizure, forfeiture, distribution, collection, and destruction of small arms and light weapons;
- 4) information exchange and record keeping;
- 5) public awareness programs with a strong link and coordination with civil society and nongovernmental organizations.

Thus, the Nairobi Initiative focuses on the harmonization of legislation, on the improved controls over government stocks, on accountability of all stocks, on public awareness, and on improved border controls. The recommended controls affect producers, intermediaries and users.

3) *The Declaration Concerning Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC)*. This declaration was signed by heads of state in Namibia on March 9, 2001. Fourteen countries in southern Africa committed themselves to taking all necessary steps to prevent, combat, and eradicate the trafficking in and illicit proliferation of firearms, ammunition, and other related materials in the SADC.⁴ They committed to undertaking reviews of national legislation; prohibition on unrestricted possession; regulation of central registration; regulations and controls over manufactures, imports, exports, transfer, possession, and use; standards for marking; regulations over brokers; legislation to comply with sanctions on violation of embargoes; improvement of operation capacity to combat the illicit trade; promotion of national and regional public education programs to reduce demand; improved controls over state-owned small arms and light weapons; development of effective programs for collection, storage, and destruction of surplus and redundant stocks; joint and combined regional operations to locate, seize, and destroy caches; development of programs to reduce legal firearms possession and availability; provision of mutual legal assistance to suppress illicit manufacturing, trafficking, possession, and use of arms; information exchange and transparency; and institutionalization of measures for cooperation between law-enforcement agencies in order to rub out corruption.

All of these commitments were expressed in the announcement that a legally binding instrument in the form of an SADC regional protocol will be developed along these lines, with signature and ratification expected before the end of 2001.

4) *The Southern African Police Chiefs Cooperation Organization (SARPCCO) Declaration on Small Arms and Light Weapons (1999)*. The police agencies of Africa have also been engaged in discussions on small arms and illicit trade, and it is important to note progress in their deliberations. In 1998, SARPCCO issued the first formal declaration of its kind on the issue of the negative impact of arms availability on crime and human security. Since then, SARPCCO has been involved through its legal subcommittee in providing assistance to the SADC secretariat on the drafting of the

Regional Protocol on Firearms. Furthermore, it has begun a police process leading to the creation of a regional database on seized and captured arms.

5) *The Eastern African Regional Police Chiefs Cooperation Organization*. In Eastern Africa, during 2000, the regional police organization (EARPCCO) engaged in discussion and workshops leading to the creation of an Action Programme to combat small arms proliferation in the region. These discussions have focused on:

- the urgent need to strengthen legal controls on weapons possession and transfer;
- the need to enhance operational capacity to combat illicit arms trafficking;
- an emphasis on the removal and destruction of surplus weapons and on the development of education programs.

An interesting and strong recommendation from this body is the immediate need to enhance the capacity of subregional institutions for implementation of any policy on arms prevention, control, and reduction.

With the more practical input of those most affected, the discussion at the global level has become enriched and strengthened.

There have been other international efforts with direct impact on the way African subregions address the problem of small arms and light weapons. Of these, the most important is the European Union (EU)-SADC collaboration on an Action Programme for the control and reduction of illicit small arms trafficking. In 1999, an EU/SADC Working Group on Small Arms was created; it met for the first time in early 2000. Its usefulness is best expressed in terms of the Joint Communiqué of the Ministerial Conference between SADC and EU of November 2000 in Gaborone, Botswana, which states:

The Conference noted the common wish expressed by both the SADC Council of Ministers and the Council of Ministers of the EU to continue to collaborate in tackling the problems associated with the destabilising accumulation and proliferation of small arms and light weapons, with the aim of reaching further common positions and substantive results at the UN Conference on the Illicit Trade of Small Arms and Light Weapons in All its Aspects, to take place in New York on 9-20 July 2001. The Conference considered that close consultation between the EU and SADC was likely to contribute also, after the recent failure of negotiations in Vienna, to the finalising of the Protocol on the fight against manufacture and trafficking of illicit firearms and their component parts and ammunition, which was additional to the Convention against organised cross-border crime. This collaboration should be undertaken mainly through the EU/SADC Working Group on Small Arms.⁵

All of these subregional initiatives in Africa share a broad and comprehensive approach. Thus, most countries in Africa have found that any resolution of small-

arms proliferation must include measures that would address the prevention, reduction, and control of the problem. In so doing, the emphasis is both on improving the quality of controls and in reducing the availability of arms. This is why different subregions have arrived at similar conclusions and recommendations without necessarily having started from a broad mandate for action. Despite this being the case, the similarity in scope and character of subregional recommendations makes implementation very easy to coordinate as well as lays the grounds for improved information exchange from subregion to subregion. Thus, one of the recommendations of the OAU Ministerial Declaration of 2000 (discussed below) particularly calls on the OAU to assist in coordination of subregional program implementation.

This extensive African subregional debate has necessarily had an impact on the continental level. This was evidenced at the OAU Ministerial Meeting of December 1, 2000, in Bamako Mali, where the member countries agreed on a Common African Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons.⁶ In fact, the key issues taken up at the African continental level, as expressed in the Bamako Ministerial Declaration of December 2000, include many of the elements identified at the subregional level, such as the need to:

- create national coordination agencies on all aspects of the control of arms,
- enact stronger legislation with more prohibitions on possession (civilian and state);
- create programs for destruction of surplus arms and action programs for recovery and destruction,
- improve and standardize record keeping and transparency (nationally and regionally);
- ensure effective implementation of decisions through the creation of follow-up mechanisms that are mostly police-centered;
- improve coordination between civil society and government officials.

NATIONAL AND INTERNATIONAL IMPACT

In Preparatory Committee meetings in advance of the July 2001 UN Conference, it became clear that there is a strong correspondence between the African regional processes and the ongoing international debate. This makes the potential impact of Africa on the creation of an international agenda in 2001 enormous, for three reasons.

- 1) Because the African subregional initiatives and the nature and scope of the OAU Bamako Declaration of 2000 recognize the links between the licit and illicit markets and emphasize the need for practical and feasible plans of action, the international debate will have

little choice but to consider broadening the scope of the July 2001 conference to cover the full extent of the problem.

- 2) Likewise, since African subregional and regional initiatives are concentrating on practical plans of action for their implementation, the need for a substantial follow-up process to the UN conference has already been identified.
- 3) All African initiatives so far, including the OAU Bamako Declaration, have recognized the role of NGOs and civil society in stopping the small-arms trade and in reducing its impact. This has set a precedent that will enlarge the role of NGOs during the 2001 UN Conference—a role that has already produced assistance in the identification of primary issues of concern in the drafting of the preparatory papers to the UN conference.

The elements of the African subregional initiatives, adequately reflected in the Bamako Declaration, have also acquired a strategic importance because they shed light on the basic pillars of a strategy that can ultimately unite international political will behind a common objective. For example, the link between licit and illicit trade, and the need to strengthen legal controls and the manner in which they are enforced, are on par with the need to contain and reduce illicit trafficking in arms through, *inter alia*, enhanced border control and improved exchange of information and capacity among specialized agencies.

None of these basic elements was seen in a clear-cut way in the previous discussions that the international community entertained on this subject. Before the African processes were under way, the international dialogue had two defects: 1) it looked at supply and demand issues only and 2) it was based on input and information from a very specific sector of the international community: that of weapons suppliers. With the more practical input of victims of violence and those most affected by the proliferation of arms, the discussion at the global level has become enriched and strengthened.

CONCLUSION

The way that Africa is managing the small-arms proliferation debate should be of interest to the international community because it demonstrates that regions most affected by a problem also have a better understanding of what is needed to find permanent solutions. Since the small-arms agenda is a very real one in Africa, the solutions that are favored by Africans are much more pragmatic and comprehensive than those offered by interested members of the international community, such as the weapons-producing states. Thus, it is not surprising that, in clear recognition of the linkages and responsibilities in preventing, managing, and reducing small-arms proliferation, African initiatives are also assisting international efforts to look at a problem in a comprehensive, feasible, and long-term manner.

Lastly, by recognizing that arms proliferation and its impact on people is a collective problem that requires collective solutions, African countries are also embarking on a protracted discussion within the continent that cannot but become in itself a trust-building exercise leading to an integrated approach to human security in Africa.



Notes

1 "Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations," UN Doc. A/50/60, January 3, 1995, p. 14.

2 UN General Assembly, A/52/298, August 27, 1997.

3 The UN Convention against Transnational Organised Crime and the two ancillary protocols, one against trafficking in women and children and the other against smuggling migrants, were signed in Palermo in December 2000. Agreement by this time could not be reached on the aforementioned protocol on firearms.

4 Letter dated March 16, 2001, from the permanent representative of Namibia to the UN under-secretary-general for disarmament affairs, UN Doc. A/CONF.192/PC/35.

5 Article 60 of the Joint Communiqué of the Ministerial Conference between the Southern African Development Community (SADC) and the European Union (EU) Gaborone, Botswana, November 29–30, 2000.

6 "OAU Ministerial Declaration on the Common African Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons," Bamako, Mali, December 1, 2000, reproduced in *Agreements, Resolutions, Initiatives and other Documents on Small Arms and Related Issues*, 3d ed. (ISS, 2001).

