



TOWARDS GLOBAL STANDARDS

Regional Experience In Small Arms Transfer Controls

Edited Papers from an International Seminar
Waterloo, Canada • 8 February 2007

Towards Global Standards: Regional Experience in Small Arms Transfer Controls

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About this Publication

The papers in this collection were commissioned for an international seminar to discuss the “Regional Dimensions of Global SALW Transfer Principles” held in Waterloo, Canada in February 2007. The seminar brought together international experts from civil society organizations, the Canadian government, and the Canadian defence industry to review the subregional dynamics relevant to the development of global principles for arms transfers. Following presentation and discussion during the seminar and the submission of written comments from seminar participants, the papers were revised into their current form.

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Table of Contents

Introduction **1**

Kenneth Epps

Regional Dynamics and Global Principles for Small Arms Transfers: The Case of MERCOSUR **9**

Daniel Mack

Caribbean Dynamics Related to Agreeing and Implementing Global Principles for Small Arms Transfers **25**

Women's Institute for Alternative Development

Small Arms and Light Weapons Transfer Controls in the CIS Region **38**

Bernardo Mariani

Principled Action: Advancing Regional Implementation of Small Arms Transfer Controls in the Great Lakes Region and the Horn of Africa (The Nairobi Protocol States) **55**

Ochieng' Adala

Small Arms and Light Weapons Transfer Controls in South Asia **71**

Nicolas Benton & Henry Smith

Small Arms Transfers in East Asia **86**

Alfredo Ferrariz Lubang & Marie-Christine Huard

Annex **99**

Compilation of Global Principles for Arms Transfers

Acronyms and Abbreviations **102**

Authors **104**



Introduction

By Kenneth Epps, Project Ploughshares, Canada

Despite the absence of a meaningful outcome from the 2006 United Nations Review Conference on small arms, the meeting served to identify arms transfer controls as a key topic of multilateral concern and debate. During the two-week session in New York, there was widespread discussion of small arms transfer standards: in opening statements and conference documents, in conference general debates, in breakout meetings to draft text, and in several side-meetings hosted by states and civil society. State engagement widened further only a few weeks later when UN members overwhelmingly approved resolutions in the First Committee and General Assembly calling for serious attention to the crafting of an “arms trade treaty” to govern the international trade in all conventional weapons. In both UN streams of activity — in the debate on small arms transfer standards within the UN Programme of Action process and in the more recent General Assembly attention to a treaty on the trade in all conventional weapons — there is growing recognition of a need for universal transfer principles derived from the obligations of states under international law.

As with multilateral deliberations elsewhere, the construction of universal principles for the authorization of transfers of small arms, or indeed all conventional arms, can usefully build on regional experience. To this end, the papers in this collection were commissioned for an international seminar to discuss the “Regional Dimensions of Global SALW Transfer Principles” held in Waterloo, Canada in February 2007. The seminar brought together international experts from civil society organizations, the Canadian government, and the Canadian defence industry to review the subregional dynamics relevant to the development of global principles for arms transfers.

In the papers prepared for the seminar, the authors were to review subregional instruments that relate to the transfer of conventional weapons and comment on how these emerged from the context and concerns of the region. They were to examine transfer control standards, their implementation and effectiveness in the chosen subregions, and identify possible international cooperation and assistance needs related to implementation. In each region, the involvement of civil society with small arms transfer controls was to be examined as a measure of both the transparency of transfer control processes and public awareness of, and interest in, regulation of the trade in weapons. Finally and centrally, the authors were asked to compare existing regional instruments and standards with the “global principles for arms transfers” that are based on states’ existing obligations with respect to international transfers of arms and ammunition. The global principles have been proposed by a diverse group of nongovernmental organizations, including the organizations represented by the authors of the papers (see Annex).¹ Following presentation and discussion during the seminar and the submission of written comments from seminar participants, the papers were revised into their current form.

For logistical and resource reasons, only the six subregions of MERCOSUR in South America, the Caribbean Community (CARICOM), the Great Lakes and Horn of Africa, the Commonwealth of Independent States (CIS), South Asia, and the Association of Southeast Asia Nations (ASEAN)² were examined, resulting in a selective rather than a comprehensive

study.³ A more complete discussion of transfer standards would require, at a minimum, the inclusion of the subregions represented by the members of the Central American Integration System (SICA) and the Economic Community of West African States (ECOWAS), since both are sites of recent important agreements on small arms transfer standards. The Western Europe and North America subregions were excluded, largely because the transfer standards, and to a significant degree the details of weapons transfers of these states, have been well discussed elsewhere.⁴

The selected regions include major arms suppliers, notably Russia, Ukraine, China, and Brazil. The CIS region in particular has long been a significant source of conventional weapons and currently contains large stockpiles of small arms and light weapons made surplus by the end of the Cold War. These regions also include major importers: China, India, South Korea, and Pakistan. These major supplier and recipient nations will be important actors in the development of global arms transfer principles at multilateral discussions. But all states have a stake in the international movement of conventional weapons as either exporters or importers, or as sites of transit or transshipment of arms. Such universal interest and experience will provide momentum for the construction of global norms to more effectively control the trade in conventional weapons.

Towards Global Standards

The regional studies and seminar discussions indicate that most of the regions studied have become more active in collaborative processes and instruments that respond to the political, economic, and social destruction resulting from illicit or irresponsible arms trafficking. Member states in all regions are concerned that illicit and irresponsible trafficking in arms is contributing to armed violence. This concern is illustrated in the overwhelming support for the UN General Assembly Resolution, “Towards an Arms Trade Treaty” (2006), which was approved by a vote of 153 in favour, 24 abstentions, and one opposed.

The instruments that have emerged in the regions to regulate the weapons trade reflect the particularities of regional dynamics and experience, as well as the shared political will to respond to the local impact of weapons. In other words, regional mechanisms are tailored to regional requirements and, understandably, display differences in emphasis and scope. For example, a common concern about violent crime among members of the Organization of American States (OAS) led to the CIFTA convention on firearms and the Inter-American Drug Abuse Control Commission (CICAD) model regulations, which apply to trafficking of firearms but not to state-to-state transfers of military small arms and light weapons. In contrast, the Nairobi Declaration and Protocol have both given primary attention to illicit transfers of the military small arms that are at the centre of the pervasive armed violence in the Horn and Great Lakes subregions of Africa.

Several of the papers portray regional activity aimed at improved standards for the control of arms trafficking, especially trafficking in small arms and light weapons (SALW). They also highlight a number of recent regional and subregional initiatives that are particularly relevant to building global transfer principles and have been developed in addition to, sometimes in spite of, international agreements.⁵ Among other core principles, the initiatives call for

effective national regulation, transparency, and adherence to obligations related to human rights and international humanitarian law. These instruments include:

- the MERCOSUR *Joint Mechanism for Registering Buyers and Sellers of Firearms, Ammunition, Explosives and Related Materials* (1998) and its SISME information exchange system;
- the Organization for Security and Co-operation in Europe (OSCE) *Document on Small Arms and Light Weapons* (2000);
- the *Inter-American Convention on Transparency in Conventional Weapons Acquisitions* (2002);
- *Andean Community Decision 552* (2003) (the *Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects*);
- *CICAD Model Regulations on firearms brokering* (2003) (the *CICAD Amendments to the Model Regulation for the Control of the International Movement of Firearms, their Parts and Components and Ammunition, proposed by the Group of Experts – Broker Regulations*);
- the *OSCE Standard Elements of End-User Certificates and Verification Procedures for SALW Exports* (2004);
- *OSCE Principles on the Control of Brokering in Small Arms and Light Weapons* (2004);
- *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons* (2005); and
- the *Antigua Declaration on Implementation of the UN PoA* (2006) (the *Antigua Guatemala Declaration of the Regional Preparatory Meeting of the Latin American and Caribbean States for the United Nations Conference to Review Progress Made in the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*).

Particularly noteworthy are the *CICAD Model Regulations on firearms brokering*. These call on OAS states to refuse to grant export licences if the brokering activities seriously threaten to result in acts of genocide or crimes against humanity, violate human rights, or lead to war crimes, among other considerations. Two years later the *Best Practice Guidelines* for the Nairobi Declaration and Protocol were agreed by the Foreign Ministers of 12 states in the Horn of Africa and Great Lakes subregions. Among their arms transfer criteria, the *Best Practice Guidelines* include: “state parties shall not authorize transfers which would violate their direct obligations under international law,” or “transfers which are likely to be used” for the violation of human rights or of humanitarian law.

The regions studied have not progressed equally with regard to arms transfer instruments, guidelines, and principles. For example, as Fred Lubang and Marie-Christine Huard state in their paper, “there is no regional mechanism to control small arms transfers in Greater East Asia.” They go on to note that the *ASEAN Plan of Action to Combat Transnational Crime* has subsumed the small arms transfer issue under transnational crime and consequently limited the arms transfer approach within the region to arms smuggling and its links to drug trafficking and other criminal activity. Similarly, as the Women’s Institute for Alternative Development (WINAD) shows, in the Caribbean, although all CARICOM member states voted in favour of the UN First Committee resolution, “Towards an arms trade treaty,” in October 2006, small arms fall under the jurisdiction of the CARICOM Task Force on Crime and Security, which has emphasized linkages between drug trafficking and crime. Meanwhile, in South Asia national security and other state concerns have trumped prospects for regional agreements.

The variation in regional progress underlines the need for a global agreement on arms transfers. Although negotiation of such an agreement will necessarily involve regional concerns, such as the illicit use of weapons by terrorists, organized crime gangs, or “non-state actors,” common ground can be found in the obligations of states under international law. At the same time, the regional instruments can be viewed as building blocks in the formulation of global standards to regulate trade across the full range of conventional weapons.

The papers reveal that national laws and standards affect the development of international agreements. In their paper on South Asia, the authors note that in parts of the world such as East and West Africa and the EU, regional progress on transfer controls appears to be closely linked with national progress. Despite its preliminary and limited nature in many instances, national legislation could also contribute separately to — or at least not impede — the development of global standards for the regulation of international arms transfers. Daniel Mack notes that recent analysis of the relevant national legislation of MERCOSUR member states reveals that “in none of the countries does current legislation directly conflict or need to be revoked in order to comply with the [proposed Arms Trade Treaty’s] global principles.” In the CIS region studied by Bernardo Mariani, member states lack criteria-based licensing systems; for example, no CIS government factors human rights considerations into arms export decisions. Nevertheless, CIS states have recently taken steps forward. From a situation of little or no national export control in the early 1990s, all “CIS countries have made progress in strengthening their national laws, regulations, and systems to control SALW transfers.” Some states, notably Kenya and Argentina, have provided regional leadership on arms transfer and other arms control issues.

Perhaps the most compelling point to be drawn from the papers’ findings is that, despite regional differences, there is a growing global consensus on the *key principles* that should apply to all conventional arms transfers.⁶ Indeed, the principles of many regional agreements have been drawn from the UN Charter, international humanitarian law, and human rights law. As an important recent example, the *Best Practice Guidelines* associated with the Nairobi Protocol are the most comprehensive regional guidelines to date on small arms transfers (and other SALW issues) and most closely reflect states’ obligations under international law. Basic principles common to the *Best Practice Guidelines* and other subregional agreements include the need to

- establish national procedures for regulating international arms transfers;
- respect UN embargoes;
- prevent diversion to proscribed users, such as terrorists and criminals;
- prohibit transfers that contravene international obligations;
- prohibit transfers that are likely to be used in serious breaches of human rights or international humanitarian law or acts of genocide; and
- prohibit transfers that are likely to adversely affect internal or regional security or sustainable development.

Implementation and Capacity Building

The regional and subregional challenges to the development of arms transfer principles most commonly cited by the papers include the *implementation* of agreed instruments and the creation of *greater capacity* to regulate arms transfers. For example, “almost 10 years after being signed, progress remains disappointing” in the implementation of the OAS CIFTA convention. Similarly, in the CIS region, implementation of national controls poses big challenges, “with many states still struggling to improve law enforcement capacity and effectively manage and control goods transiting across borders.” In CARICOM, many multilateral conventions agreed at the diplomatic level are not reflected in national law and practice, in part because different government departments are responsible for agreement and implementation. A recent UNIDIR global survey of the international assistance provided for implementing the UN Programme of Action on small arms has noted several problems with the estimated US\$660-million spent over five years. For example, “donors lack knowledge of the different technical and financial needs of individual states and regions to implement the PoA and affected states often lack the capacity to assess their own needs” (Maze & Parker 2006).

The UNIDIR survey and the papers in this collection identify *capacity-building* as a top priority in all regions. According to Ambassador Ochieng' Adala, “one of the biggest challenges that Nairobi Declaration/Protocol countries face is lack of capacity — for both the governmental agencies tasked with the establishment of [National Focal Points] and for NGOs — to sufficiently articulate the importance of existing instruments. Civil society, in particular, needs assistance in unpacking the various instruments to make them available at the grassroots level, and in a simplified, user-friendly version.”

Within MERCOSUR, “acquiring technology to collect and analyze data, as well as training police and military personnel in implementing regional and global legislation, would certainly help to advance transfer controls in the region.” “Most CIS countries would benefit from arms export licensing officials and law enforcement officers who were better trained in practical and technical aspects of export control.” Efforts to implement the UN PoA in CARICOM have been limited by inadequate resources; “increased bilateral cooperation in capacity-building and aid is needed.” It is apparent that building state capacity to move policy agreements into practice — as well as advancing civil society capacity to monitor and support the work of states — will remain a challenge for future agreements.

Transparency and Monitoring

Other common needs are for *transparency* as well as *monitoring* the implementation of agreed instruments. The concept of transparency is captured in the fifth principle of the proposed global principles for arms transfers, which calls for national annual reports on international arms transfers to an international registry. Important strides have been taken towards greater transparency in the trade in weapons in the past 15 years, beginning with the voluntary UN Register of Conventional Arms and its first report of transfers for 1992 and including the *Inter-American Convention on Transparency in Conventional Weapons* that entered into force in 2002 (and applies to MERCOSUR and CARICOM). Like the *Inter-American Convention*, however, many regional instruments provide for transparency only in the traditional confidence-

building manner, that is, by encouraging the exchange of information among states, but without providing information for public distribution.

Regular, reliable, and comprehensive public reporting of the details of arms transfers is essential. In democracies it is not unreasonable to expect that parliamentarians or elected legislators will exercise oversight in arms transfer decisions, for which access to arms trade data is fundamental. Yet most states are unwilling to release data on the transfer of weapons to the public or even to legislators. For example, only one MERCOSUR country, Argentina, requires that arms transfer reports be submitted to its Congress, and the regional SISME system for information exchange among member states on firearms possession and transfers has yet to function effectively. In the region subject to the Nairobi Protocol, emphasis is placed on the exchange of information among law enforcement agencies on criminal groups, not on national reports on the transfer of weapons. In the CIS region, with little public demand for transparency, the data on arms transfers that is made public, primarily through reports to the UN Register of Conventional Arms, is limited and incomplete.

The level of transparency is, of course, an important factor in any external *monitoring* of the implementation of, or compliance with, multilateral and national agreements and standards. In the context of arms transfers, the details about a weapon's type, transfer approval, and shipment are needed to effectively monitor a state's compliance with arms transfer obligations. As noted in many of the survey papers, with adequate levels of transparency *civil society* is ready and willing to play an independent monitoring role. Indeed, civil society organizations already have been central interlocutors in discussions of arms trade standards, as well as key actors in public mobilization for improved arms transfer controls. From a base of a few organizations primarily in the North only a decade ago, civil society groups in many regions in the North and the South have built an expertise on arms transfer issues to rival or even surpass that of state officials. In more than one subregion, civil society groups have successfully engaged parliamentarians in reviewing arms transfer (and other arms control) issues and in potentially monitoring transfers and transfer controls. In addition, civil society is well placed to link a monitoring role to public concerns about illicit and irresponsible transfers of arms and their impact on the daily lives of citizens.

Conclusion

As the international community pursues improved global arms transfer controls through two UN processes — the UN Programme of Action on small arms and the process arising from the UN General Assembly resolution, “Towards an Arms Trade Treaty” — the emerging challenge is to ensure policy and program coherence among initiatives addressing small arms transfers and those addressing the transfer of all conventional weapons.

There is a growing regional consensus on a number of common underlying principles, arising from existing international legal commitments, which could and should form the basis for universal standards for state approval of arms transfers. An important role for a global process would be to foster a deeper understanding of, and a broader consensus around, the urgency and nature of these standards. Moreover, the regional initiatives and instruments in place or in development are obvious steppingstones towards global instruments.

From the reviewed regional experience it is apparent that, beyond building consensus on core principles, attention must be given to the resources and methodologies required to ensure that states effectively implement, report on, and monitor the global arms transfer instrument. International cooperation and assistance among states will be important both in the preparation and negotiation of an arms transfer agreement and, perhaps more importantly, in follow-up efforts to meet obligations and standards. As identified by several papers, there are fundamental capacity issues for many states, both in developing legal and technical expertise on arms transfer issues, and also in sharing and coordinating policies and practice across government departments, especially by linking diplomatic agreements to field- and border-level activity. There are also obvious opportunities for states to share relevant national “best practices,” perhaps most immediately in the area of transparency.

NGOs also face capacity challenges if they are to continue to play an informed and independent role. Quite apart from resources needed to sustain expertise and activity, civil society organizations in many subregions require new and additional training in such areas as policy development and the monitoring and construction of relevant state legislation. With the assistance of the International Action Network on Small Arms (IANSA) and other NGO networks, such training could occur on a peer-to-peer basis, but, in most regions, would require external support.

Finally, it is important to sustain the cooperation between civil society and UN member states that has evolved from the UN PoA process. While governments must ultimately negotiate and agree to global principles and controls, civil society experts and activists can be knowledgeable and engaged partners in these processes.

Notes

¹ For a complete description of the “Global Principles for Arms Transfers” see Arms Trade Treaty Steering Committee 2007.

² The six subregions and their member states are:

- Mercado Común del Sur (MERCOSUR) — Argentina, Brazil, Paraguay, Uruguay, and Venezuela and associates Bolivia, Chile, Colombia, Ecuador, and Peru;
- Caribbean Community (CARICOM) — Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, and Trinidad and Tobago;
- Great Lakes and the Horn of Africa — Burundi, Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Sudan, Tanzania, and Uganda;
- Commonwealth of Independent States (CIS) — Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Uzbekistan, and Ukraine;
- South Asia — Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka; and
- Association of Southeast Asian Nations (ASEAN) — Indonesia, Malaysia, Philippines, Singapore, and Thailand and associates China, Japan, and South Korea (ASEAN +3).

³ The six subregions represent 70 states, or more than one-third of the UN membership.

⁴ See, for example, *The EU Code of Conduct on Arms Exports: The Current State of Play* by Holger Anders, GRIP, October 2006, available at <http://www.grip.org/bdg/g1058.html>; *US Small Arms and Global Transfer Principles* by Rachel Stohl, CDI, March 2006, available at <http://www.ploughshares.ca/libraries/WorkingPapers/wp061.pdf>; *Canada and Small Arms Exports* by Ken Epps, Project Ploughshares, March 2006, available at <http://www.ploughshares.ca/libraries/WorkingPapers/wp061.pdf>.

⁵ The survey paper on MERCOSUR notes that “progress in small arms control in South America has more to do with national policy debates and regional and subregional agreements than with the UN Programme of Action.”

⁶ This point was made by Clare da Silva, an international legal expert, who spoke at the seminar.

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Regional Dynamics and Global Principles for Small Arms Transfers: The Case of MERCOSUR

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Introduction

Glancing at the final tally of the UN General Assembly resolution vote on 6 December 2006, a casual observer might assume that Latin America is currently at the forefront of the charge towards a legally binding arms trade treaty (ATT), given that the entire region voted in favor of the ATT resolution, with only Venezuela abstaining. Such leadership would be apropos, as Latin America has the dubious honour of leading the world in firearm homicides, with 42 percent of the world's recorded non-conflict-related deaths due to guns and only 14 percent of the population (Small Arms Survey 2004, p. 176). South America has a particularly acute problem, with obscene urban violence rates in countries like Brazil and Venezuela to go along with the brutal conflict in Colombia, in addition to major importers and exporters of small arms.²

Yet, behind the seemingly overwhelming support for the treaty, a few remaining subtle obstacles and realities must be considered and overcome to render South America an actual and positive global leader in support of both the UN Program of Action on small arms and the UN Secretary-General's consultation about the "feasibility, scope, and draft parameters" of an Arms Trade Treaty, to be fleshed out by the ensuing Group of Governmental Experts. Though the regional and subregional legal instruments and political realities in force in South American countries constitute important building blocks in global control of the arms trade, persistent implementation problems threaten to derail the current slow-paced progress.

Existing Regional Commonalities and Variances with the ATT Global Principles

Global arrangements

United Nations Programme of Action (PoA). Though global in nature, the PoA highlights important steps that must be taken regionally, such as implementing legally binding instruments and enhancing transparency. Still, progress in small arms control in South America has more to do with national policy debates and regional and subregional agreements than with the UN Programme of Action (Biting the Bullet 2006, p. 93). It has been duly noted that regional instruments are essential to complement and strengthen the implementation of the PoA, as they allow regions to tackle small arms problems in the manner that is most suitable to their circumstances (Kytömäki 2006).

The PoA set of political commitments had strong rhetorical support in South America, though compliance remains spotty. For instance, two countries (Bolivia and Paraguay) still lack sufficient laws and procedures on production controls, while Bolivia and Venezuela lack the same on the export side. While all countries in Latin America are relatively well positioned with laws and procedures for import controls, they are deficient in specific

brokering controls. Chile, Colombia, and Venezuela lack efficient laws and procedures for transit controls (Biting the Bullet 2006, pp. 46-47). In 2006 all South American countries except Brazil, Bolivia, and Uruguay did present national reports on the implementation of the PoA in 2006, duly offering updated documents to the UN Department of Disarmament Affairs (2006).

International and Regional Agreements	Ratifying Countries in MERCOSUR
UN Program of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects	All countries
UN Firearms Protocol	Argentina, Brazil, and Peru
Wassenaar Arrangement's Best Practice Guidelines for Exports of SALW	Argentina
Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (CIFTA)	All countries
Inter-American Drug Abuse Control Commission (CICAD) Model Regulations for the Control of the International Movement of Firearms, their Parts, and Components and Ammunition	All countries (accepted set of recommendations)
Inter-American Convention on Transparency in Conventional Weapons	Argentina, Chile, Ecuador, Paraguay, Peru, Uruguay, Venezuela (Brazil currently in legislative process to ratify)
MERCOSUR Joint Mechanism for Registering Buyers and Sellers of Firearms, Ammunition, Explosives and Related Materials	Argentina, Bolivia, Brazil, Chile, Paraguay, Uruguay
Andean Community's Decision 552 (the Andean Plan to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects)	Bolivia, Colombia, Ecuador, Peru

Firearms Protocol. The *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime* (UNGA 2001) was the first legally binding international instrument on small arms. In South America, only Argentina, Brazil, and Peru have ratified so far, with the first two doing so only in 2006. Ecuador has signed but not ratified the instrument.

Regional agreements

CIFTA. Given the gravity of the problem in the continent, it is perhaps not surprising that the Western Hemisphere was the first region in the world to develop a legally binding treaty against illegal arms trafficking. In 1997, the Organization of American States (OAS) presented the *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials* (CIFTA), which has been ratified by all but eight countries in the hemisphere. This group of eight includes the US and Canada.

The fact that CIFTA is legally binding already positions the region favourably with regard to one of the most difficult issues facing an ATT, as it may render signatories more comfortable with the notion of legally binding instruments than countries in regions that still

lack such a precedent. However, CIFTA applies only to illegal transfers of arms, rather than the legal trade covered by an ATT or global small arms transfer principles.

Furthermore, CIFTA does not include any specific mechanisms to evaluate arms exports in light of principles at the core of the proposed ATT, such as human rights or international humanitarian law. Unlike the global principles, CIFTA makes no mention of express limitations or limitations based on probable final use; its Article IX stresses the need for transfer licenses or authorizations, its preamble notes other substantive factors (such as regional security, development, terrorism, and organized crime), and it also contains transparency (Article XIII) and national controls clauses (Article IV).³ Finally, Article XXVII notes that states “may adopt stricter measures than those provided for by this Convention” (OAS 2006).

To enforce Article XIII, CIFTA contains Article XX, which calls for an effective system for information exchange about all firearms transfers and for a contact point to augment international cooperation on issues such as training and technical and legal assistance. Such an approach accords well with the Global Principle on transparency. And while Global Principle 6 calls for comprehensive controls, CIFTA calls for criminalizing illicit trafficking, marking all firearms, the safekeeping of stocks, and control of export points, in addition to other arms control-specific mechanisms.

Although strong on paper, CIFTA faces problems in implementation, purportedly the responsibility of its Consultative Committee, the instrument’s operational body. Almost 10 years after being signed, progress remains disappointing. Though all 10 countries under discussion were original signatories and have since ratified CIFTA — Chile and Colombia the last in 2003 — only a few OAS member states have responded to questionnaires from the Consultative Committee. Unfortunately, the Committee’s decisions “shall be recommendatory in nature” and the operating verbs for its actions are toothless at best (“promoting, requesting, encouraging”), which weakens the instrument’s legally binding effectiveness. In fact, CIFTA’s First Conference of the States in 2004 still focused on the “total functioning and application” of the Convention and called for actual implementation of several of CIFTA’s mandates, such as identifying each country’s point of contact. It is hoped that more progress will have been made by the time of the Second Conference of the States, scheduled for 2008.

Another relevant instrument within the scope of the OAS is the *Inter-American Convention on Transparency in Conventional Weapons*, which, like CIFTA, is legally binding. It will be discussed in greater detail later in this paper.

CICAD. In 1998 another OAS initiative, the Inter-American Drug Abuse Control Commission (CICAD) formulated its *Model Regulations for the Control of the International Movement of Firearms, their Parts, and Components and Ammunition* (OAS 1998). The Model Regulations are designed to help states to harmonize measures, documents, and procedures for “monitoring and controlling the international movements of firearms, their parts and components and ammunition.” Though recommendatory in nature, the Regulations offer detailed models of certificates for export, import, and transit, with a separate chapter and models for ammunition. The certificates request information such as country of issuance, authorizing agency, exporter/importer identification, final recipient, and source of materials.

A potential steppingstone towards proposed Global Principle 5, CICAD's Model Regulations call for countries to maintain records of import, export, and transit of firearms, components, and ammunition, and to exchange this information with other member states.

Another relevant CICAD instrument is the 2003 *Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition*, which dovetails with several Global Principles (OAS 2003). For instance, the Model Regulations shadow Global Principle 1 (responsibilities of states) in Article 5 (f), which prohibits governments from issuing licenses when brokering activities "seriously threaten to ... result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime." Likewise, the Model Regulations ban transfers to countries under UN or multilateral embargoes (Global Principle 2, express limitations); if such transfers could result in acts of genocide, crimes against humanity, or war crimes contrary to international law (Global Principle 3, limitations based on use or likely use); and, by definition, addresses the brokering activities mentioned under comprehensive controls (Global Principle 6).

MERCOSUR. At the subregional level, MERCOSUR put forth in 1998 the *Presidents' Declaration on Combating the Manufacturing of Illicit Trafficking in Arms, Ammunitions and Related Materials in the Southern Cone*, which had as its most important consequence the creation of the *Joint Mechanism for Registering Buyers and Sellers of Firearms, Ammunition, Explosives and Related Materials*.

The binding Joint Mechanism is especially important because of its registry, the MERCOSUR Security Information Exchange System (SISME), which is intended to share information among member countries regarding the purchasing, selling, importing, and exporting of firearms. Following CICAD Model Regulations, SISME is to include information on all persons and companies within the bloc that deal commercially in or transfer arms, ammunition, and explosives. Unfortunately, progress in implementing the system has been limited. In late 2004, noting that SISME "has observed insufficient levels of progress, delaying its full implementation," the States Parties reiterated the need to truly implement the system, regulating its details (structure, administration, technology) to "render it functioning." In addition to arms information, the system will reportedly include all police and security information (warrants, crimes, etc.) for all member countries. However, it is unclear whether significant progress has been made in the past two years.

SISME could become an important steppingstone for Global Principle 5 (annual reports) and serves as a symbol of the subregion's desire to develop a more integrated approach in combating crime. However, the instrument does not speak directly to most of the ATT issues, given that its primary focus lies in preventing illicit behaviour, rather than in regulating state-to-state or commercial transfers.

Also relevant was the creation in 2000 of the MERCOSUR Working Group on Firearms, which seeks to harmonize arms legislation within the bloc and strengthen subregional cooperation on the arms trade through meetings with security, diplomatic, military, and intelligence officials from all countries every few months. In addition to information exchange, the Working Group also discusses and establishes MERCOSUR's common positions in international forums such as the OAS and the UN.

Antigua Declaration. The Antigua Declaration (2006) expounded the common position of Latin American and Caribbean countries for the UN Review Conference for the Programme of Action (PoA), noting its “unshakeable will for the effective implementation” of the PoA and commending the efforts of CIFTA and CICAD. The Declaration encourages national parliaments to incorporate “as appropriate, relevant international legally binding instruments against the illicit trade of small arms and light weapons” into domestic legislation. Further shadowing global transfer principles, the Antigua Declaration calls for a “clear prohibition” against a transfer of SALW that is “not expressly authorized by the competent authorities in the country of import, export and in-transit.” Importantly, states also agree to adopt common criteria to provide national authorities with tools to evaluate the authorization of SALW transfers.

Decision 552. The Andean Community’s Decision 552 (2003) (the *Andean Plan to Prevent, Combat and Eradicate the Illicit Trade in SALW in All Its Aspects*) calls for obligatory implementation in members countries Bolivia, Colombia, Ecuador, and Peru, which have ratified the instrument.⁴ Though a comprehensive, ambitious, and binding document, its actual implementation has been lagging severely, not least because of the governance problems of member states. Furthermore, Decision 552 lacks effective mechanisms to compel nations to implement many of its priorities and is relegated to “recommendations” to “promote” matters, without sanctions for failure to comply.

Still, at least on paper, of all the regional and subregional instruments, Decision 552 best dovetails with the proposed Global Principles, underlining transfer authorizations in its Article 4 (f), establishing express limitations, and noting limitations based on use in its preamble. It also establishes an information exchange mechanism, which would prove helpful in complying with Global Principle 5, and sets out a series of recommendations to be undertaken at the national level, in the spirit of Global Principle 6.

National legislation

A comprehensive publication by Rebeca Pérez (2007) details national arms control legislation in the MERCOSUR area and determines that in all cases they are compatible with the main principles of the proposed ATT. Though most laws need significant updates and improvements, in none of the countries does current legislation directly conflict or need to be revoked in order to comply with the global principles.⁵

Global Principle 1 (responsibility of states). All MERCOSUR-area national legislations (except Venezuela) provide for previous authorization on imports, as well as license certificates on imports. The situation is similar with exports, with all countries but Bolivia and Venezuela calling for previous authorization, and all but Bolivia, Venezuela, and Ecuador requiring a license certificate. However, only Argentina, Brazil, and Paraguay regulate transit and brokering. In general terms, Argentina and Brazil most fully comply with Global Principle 1, while the others do so partially or are still in the process of creating regulations.

Global Principle 2 (express limitations). National legislation for all MERCOSUR countries must respect all instruments of international law that each country has subscribed to, and

allows no room for incompatibility, thus rendering MERCOSUR members already fully compliant, at least on paper.

Global Principle 3 (limitations based on use or likely use). The national legislations of MERCOSUR countries do not put such conditions on international arms transfers as those demanded by this principle, even though the countries are parties to the UN Charter and international treaties on issues such as genocide. Unfortunately, the concrete measure that best averts abuse — the employment of end-user certificates — is used only in Argentina, Brazil, and Paraguay, and is not always effectively monitored.⁶

Global Principle 4 (factors to be taken into account). This principle argues that a state should not authorize a transfer if the arms are likely to be used for such ends as terrorist attacks or organized crime. The South American countries do not explicitly enumerate such factors in their legislations, but the preambles of the regional agreements they are party to (CIFTA, MERCOSUR, Decision 552) mention such factors as regional security and development.

Global Principle 5 (transparency). Except for Colombia and Venezuela, all MERCOSUR countries have some form of national registry on firearms, but few of them register international transfers. A few countries in the region are bound by the *Inter-American Convention on Transparency in Conventional Weapons*, but this agreement does not include small arms.⁷ In both cases, much work remains to be done in order to bring the national legislations up to the proposed ATT standards.

Global Principle 6 (comprehensive controls). The MERCOSUR countries have their work cut out for them. Although no domestic legislation prohibits common control mechanisms on the export, import, transit, transfer, and brokering of arms, several countries have extremely lax legislation on the books and/or ineffective implementation. Those countries must follow the lead of Brazil and Argentina, which have some of the most restrictive laws in the subregion. MERCOSUR nations must effectively move from rhetoric to action in providing law harmonization. In particular, more stringent export controls and regulation of transfers/brokering are needed.

Regional issues, influential countries, and industrial interests

Distinct regions of the world understandably view small arms issues differently, and such differences tend to be reflected in their agreements and instruments. Regional and subregional instruments like CIFTA, MERCOSUR, the Antigua Declaration, and Decision 552 clearly illustrate the main concerns of Latin American nations regarding guns: organized crime, the nexus between drug and arms trafficking, and urban violence. For example, South American countries remain intent on banning transfers to non-state actors; because of its internal conflict, Colombia usually spearheads this issue, but it is of increasing importance to other countries with more and more organized crime. Thus, these instruments focus on SALW rather than conventional arms, and on illicit trafficking rather than regulating legal commerce.

Another regional concern that could have a bearing on the discussion for small arms transfer principles and an ATT is the common fear in South America that such instruments would be

driven by, or developed to serve, solely the interests of developed nations without taking into consideration the particular needs of the developing countries. In this sense, the Antigua Declaration is telling. When describing the common criteria that should be used to evaluate transfer authorizations, the Declaration includes commonly used terms that could hinder the universal scope of an ATT: the criteria “need to be objective, non-discriminatory, transparent, adopted at the multilateral level and take into account the particularities of each region.” Thus, “subjective” principles, especially those related to human rights violations, are seen as being aimed at poor countries or unbalanced towards the region and could gain significant opposition in the road ahead. Although the ATT process is gradually being accepted as a global initiative, the prevalent leadership of governments and NGOs from developed countries participates in the preoccupation expressed by many southern governments regarding the “bias” of the initiative.

Countries also demonstrate support or resistance to certain themes depending on their internal circumstances, as can be seen with Argentina, Brazil, and Venezuela, arguably the three most influential countries in the region. As one of the seven countries that spearheaded the recent successful drive to approve the ATT resolution at the UN, Argentina is likely to continue to have a positive leadership role. Gun control legislation that was passed in Argentina in December 2006 should keep the issue on the public’s mind and the government’s priorities.

Brazil, on the other hand, often uses the aforementioned caveats when discussing a possible ATT and could put up obstacles to the global principles. Such a stand would be unfortunate, given its regional might and ability to influence smaller neighbours such as Paraguay and Uruguay. In addition to being the hemisphere’s second largest weapons producer, Brazil — together with Russia, the US, Italy, Germany, and China — is also among the world’s largest exporters of small arms and light weapons, with at least US\$101-million in foreign business in 2003 (Small Arms Survey 2006, pp. 65, 69).⁸ Brazil’s Taurus and Amadeo Rossi (as well as Argentina’s Bersa) are what the Small Arms Survey (2005, pp. 53-4) deems “household-name producers,” catering mainly to civilian markets (mainly domestic and the US) with their mass-production pistols, revolvers, rifles, and shotguns. Brazilian IMBEL (and Chile’s FAMAE), on the other hand, produce only for the military market. Brazilian ammunition producer, CBC, reportedly exports over 40 percent of its production, estimated at almost 260-million bullets in 2003 (Fernandes 2005).

Because these arms industries historically originated within the state itself, it is no surprise that their ties to the government are both powerful and influential. Thus, the Brazilian government’s rhetorical use of “non-discriminatory” and “regional differences” also serves to protect Brazil’s arms industries from the perceived “unfair” advantages given to industries of developed nations if the ATT process is driven by those countries. In fact, the common mantra among arms producers in developed countries that the ATT will level the international playing field for gun exporters is not shared by Brazil, which fears it will do just the opposite for its industry. Officials also indicate some discomfort with the fact that the ATT involves all conventional weapons.

Venezuela is another South American country that could influence the direction of discussions on global principles. It evidently has no qualms about going against the votes of its neighbours, as was demonstrated by its abstention in the recent ATT resolution vote.

And Venezuela has Bolivia and Ecuador securely in its political orbit. While Ecuador has adopted a strong position in favour of an ATT, Bolivia's currently favourable stance on the matter may be more susceptible to change.

Venezuela is also engaging in a still unclear "21st century socialist revolution," which displays an increasing hunger for arms, whether conventional for "self-defense" against "imperialist threats" or small arms to arm a popular militia. As a result, Venezuela (together with Colombia) appeared on a list of "major importers" of small arms in 2003, and reportedly has plans to become a significant producer of AK-47s. With this political scenario as a backdrop, Venezuela could actively oppose both an ATT and small arms transfer principles. Although Venezuela's staunch blocking position at the UN Review Conference was softened during the General Assembly, its strong objection to Principle 3 (limitations based on use or likely use) — especially to the term "likely" and who determines when human rights violations are committed — could mine the field ahead.

Transfer Control Standards in the Region

As previously discussed, a few countries in South America, notably those such as Bolivia and Venezuela that have older laws and are currently in different phases of developing new arms control legislation, do not yet fully comply with the requirements set by regional instruments they have signed or ratified. Because the main instruments (CIFTA, MERCOSUR decisions, Decision 552) are legally binding, these countries must harmonize domestic laws with the precepts of the regional and subregional texts, and will move in that direction, if at a slow pace.

The CICAD Model Regulations constitute the clearest example of best practices on transfer controls to which the MERCOSUR countries ascribe, though not all yet comply. Another important global arrangement, the *Best Practice Guidelines for Exports of SALW of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies* has only one state party in South America (and Latin America for that matter): Argentina.

While significant interest in subregional harmonization of national standards is expressed, countries often lack the political will to achieve these goals. At some levels, however, such work continues to move forward, as is the case with the MERCOSUR Working Group on Arms. Another noteworthy effort for the regional harmonization of transfer control standards is a recently published document by NGOs of the Latin American Coalition for the Prevention of Armed Violence (CLAVE) and the Parliamentary Forum, which seeks to inspire Latin American and Caribbean legislators desiring to draft more restrictive laws on small arms and ammunition control, including international transfers. The 160-article draft bill, entitled "Legal Framework on Small Arms and Ammunition Control in Latin America," was commissioned by Parlatino, the Latin American Parliament, which will send the approved model legislation to Congresses in hopes of gaining support for harmonizing domestic laws across the region.

It is important to note that, although many countries, including Brazil, Argentina, and Paraguay, have recently improved their national legislation, most efforts were dedicated to civilian possession, stockpile management, and ammunition control. Few measures deal with

transfer standards. Military control over arms production and transfers and the aforementioned resisting traces of the “national security doctrine” seriously weaken standards by making it very difficult to analyze data and monitor states’ behaviour. So, to implement modern existing implementation, it is more important to demilitarize transfer controls than to establish new regional standards. The recent change in Argentina, where all responsibility for arms control was given to the Federal Police (a civilian police force) — with civil society oversight, is an important step forward.

It is important to consider that more informal, often bilateral, understandings can also assist countries in controlling arms transfers while avoiding the bureaucratic stupor that sometimes plagues regional instruments. An example of such informal “best practices” is the three-year moratorium on exporting arms to Paraguay decided upon by the Brazilian and Paraguayan governments (with considerable pressure from the NGO community), after it became clear that Paraguay was being used to triangulate firearms back into the Brazilian black market. According to field research Viva Rio recently conducted between the border of both countries, the moratorium was successful in almost entirely ridding local shops of Brazilian guns, though remaining international loopholes allowed weapons from countries such as Spain and the Czech Republic to fill the vacuum (Dreyfus & Bandeira 2006).

Transfer Control Implementation Issues

As evidenced by the aforementioned discussion regarding regional and subregional instruments, the actual implementation of transfer controls remains a major difficulty in South America. While the region has some mechanisms to assist countries in developing better control standards (such as the mutual assistance promises in OAS and MERCOSUR agreements and the work of the MERCOSUR Working Group on Arms), their effectiveness and speed are still very much a matter of concern.

Financial issues are often at the core of complaints regarding the implementation problems of instruments such as CIFTA or the PoA. In the Antigua Declaration, for example, Latin American states express their “concern at the lack of progress in the implementation of the commitments in the areas of Cooperation and International Assistance” of the PoA. Lack of resources, both financial and human, are also partially responsible for the implementation problems that have plagued OAS and MERCOSUR instruments.

Acquiring technology to collect and analyze data, as well as training police and military personnel in implementing regional and global legislation, would certainly help to advance transfer controls in the region. Opportunities to share experiences not only within the region but with countries more experienced in implementing controls would also be extremely helpful.

Bridging the gap between high-level diplomatic discussions and the reality faced by law enforcement agencies in implementing new legislation would also be necessary to ensure greater adherence to instruments. It is also important to raise awareness of the rationale behind such laws to increase civil society pressure and thus government political will to move those items up the public agenda.

As noted by the Geneva Forum (2004, p. 6) while analyzing regional organizations and small arms, “donor funding, through its absence or overly-strict conditionality, can ... impede regional efforts to address the illicit small arms trade. Within some regional organisations, certain projects have been unable to commence because of the conditions imposed by donors.” Support is reportedly needed especially on the “field-level implementation” of the PoA and binding regional agreements, including to “promote greater awareness of ... agreements among lower-level implementers” (Kytömäki 2006, p. 61; von Tangen Page et al 2005, p. 32).

Compliance and Transparency Issues

Regional agreements in Latin America indicate that, without effective implementing mechanisms, plentiful resources, political will in the top government echelons, and real sanctions for failure to comply with all provisions, countries have little incentive or capacity to fulfill their obligations, even when they purportedly are “legally binding.”

Compliance also remains an elusive goal for South America because, for most of the region’s countries, specters of military regimes still complicate arms control issues. In many countries, the residual power retained by the armed forces creates a situation in which there is a power struggle or a competition of jurisdictions between civilian (police, Ministry of Interior or Justice) and military (Ministry of Defense, armed forces) in controlling arms production, export/import, and possession. Especially pointed is the problem in dealing with information about arms or their effects, which is often kept secret from civil society and researchers by military powers that deem the data a matter of “national security.” Classified information impedes not only transparency but also research and analysis that could lead to sounder public policies and better compliance with existing norms.

Civil society often has trouble accurately portraying compliance with multilateral agreements exactly because of this lack of transparency. Although Argentina, Brazil, Chile, Ecuador, and Peru have put their nation’s arms control legislation on the Internet, not all countries in South America make these laws easy to access, perhaps because of capacity issues. Intragovernment transparency is also essential to create checks and balances on decisions by the Executive branch and/or military forces. In the MERCOSUR region, only Argentina requires that its Congress be informed of the country’s international arms transfers (Pérez 2007, p. 12).

In the case of CIFTA, transparency is still a work in progress, although the existence of a website (OAS 2006) to disseminate information (with different levels of access for States Parties, other states, and the public) is a helpful tool. The private website reportedly “has published in a systematized form all the information available on legislation in the states parties regarding implementation” of CIFTA, while the public component has less information and is not up-to-date. Otherwise, although CIFTA provides opportunities for information sharing, the exchange or publication of data on small arms transfers is not obligatory.

Article III of the *Inter-American Convention on Transparency in Conventional Weapons* (OAS 1999), another OAS instrument, calls for annual reports on acquisitions (both imports and

domestic production) and exports of conventional weapons to be sent to the Secretary General of the OAS, in the same seven categories included in the UN Register — thus in practice excluding small arms (which can be reported on an optional basis). When it entered into force in 2002 the convention was considered an unprecedented regional transparency regime, even if the information passed to the Secretary General is not made publicly available. In addition to the annual reports, parties must notify the OAS no later than 90 days after incorporating a weapon system into their armed forces.⁹

The Inter-American Convention is legally binding, although, as with other OAS instruments, implementation has been challenging. While 11 states (Argentina, Canada, Chile, Ecuador, El Salvador, Guatemala, Nicaragua, Paraguay, Peru, Uruguay, and Venezuela) have ratified the convention and Brazil is in the last legislative processes for ratification, only Chile and Canada submitted reports in 2006. Unsurprisingly, the lack of an implementation mechanism or at least an active effort by the Secretary General to obtain this information has given states little reason to comply (Mason 2006).

Civil Society Participation

Although relatively new in a historical sense and downright embryonic in a few South American countries, civil society organizations have played an essential role in the battle for small arms transfer controls. Clear examples are the success stories of NGOs in Brazil and Argentina that were instrumental in shepherding the passage of more progressive and restrictive legislation on firearms.¹⁰ Where it has been successful, civil society has distinguished itself particularly in research, advocacy, and popular mobilization.

Either locally or in partnerships with international NGOs, South American civil society has published most of the relevant research on arms control issues in the region, often providing governments with previously unknown data and analysis that have inspired public security policy and legislative responses.¹¹

In addition to pressuring home governments on their position on the PoA, ATT, or domestic arms control, South American civil society has also joined with NGOs across Latin America in CLAVE (Latin American Coalition for the Prevention of Armed Violence), which has been an active voice in advocacy efforts. CLAVE has attempted to construct a common regional voice, sending representatives to UN meetings (Program of Action Biennial Meeting of States 2005, Preparation and Review Conferences 2006, and the General Assembly in 2006) and those of the MERCOSUR Working Group on Arms, which met in Brasilia in September and Rio de Janeiro in November of 2006, under Brazil's pro tempore leadership of the bloc.

Popular mobilization has also been an important aspect of civil society's work, as NGOs attempt to bring the sometimes complicated issues surrounding arms control to the public's attention. A recent example has been the South American component of the global Control Arms campaign in support of an ATT, which, through its Million Faces campaign, received 50,000 "visual signatures" from Brazil and another 5,200 from Venezuela. Moreover, South American NGOs have gained global recognition by developing some of the most creative and effective awareness-raising efforts on gun control.

Despite these advances, the impact of civil society's actions on transfer controls in the MERCOSUR region is hard to judge. Although civil society has become increasingly effective in pressuring for national gun controls, transfer controls are a new issue for organizations in South America. Moreover, decision-making is difficult to influence, as access to government officials remains limited in most of the region. With arms transfers under the purview of the military in most countries, and residual tension between the armed forces and civil society organizations that often were born fighting against military dictatorships, dialogue is often muted. Moreover, democracy as a whole is newer in South America than in Europe and North America, and civil society is still learning how to best pressure, negotiate, and hold their governments accountable. Unsurprisingly, international forums often present the best opportunities for civil society to promote global transfer principles through their advocacy work, because in such contexts (perhaps because of a "demonstration effect") officials feel compelled to dialogue with NGOs. Finally, it must be noted that an ATT that includes all conventional weapons complicates the issue for South American NGOs, as the region's problems — and civil society experiences — relate mostly to small arms.

Still, this learning process is essential, as governments tend to be more active on SALW issues when their country's civil society is organized and keeps the issues before the public (IANSA et al 2003). It remains essential that links between the government implementers of subregional, regional, and global small arms agreements and civil society watchdogs be built and fortified (von Tangen Page et al 2005, p. 31). It is also important to further involve NGOs on subregional and regional levels in ensuring transparency and compliance. While all the regional instruments and declarations contain nods to civil society — such as CIFTA's call for the Consultative Committee to "continue to weigh the input and contributions of civil society" — closer relationships would assist both sides (OAS 2004).

In making the political case for small arms transfers, civil society needs to treat the issue as part of a larger public security crisis, especially in its connections with organized crime and drug trafficking. It is essential to demonstrate how transfer controls are an integral part of the solution to a momentous problem partially caused by illicit or irresponsible transfers that contribute to arming criminal groups and gangs, to the inability of the state to guarantee security, to the flooding of uncontrolled markets with guns, and to the culture of violence where private resolution of conflict is valued over collective.

Conclusions

It is a pity that regional and subregional instruments in Latin America have been bogged down on the practical level, as their rigorous implementation could prevent many of the transfers that end up being diverted into plentiful violent illegal groups. An interesting example is provided in a Federation of American Scientists report (Schroeder 2004) that notes that an infamous Central American arms deal of 3,000 assault rifles diverted to the United Self-Defense Forces of Colombia would probably have been avoided with effective implementation of CIFTA.

Better awareness, publicizing, and streamlining of states' obligations under the different regional, subregional, and global agreements are essential, as the “technical, legal and bureaucratic requirements” of CIFTA, CICAD, PoA, Firearms Protocol, and MERCOSUR Decision 552 “have made meeting all these requirements systematically difficult, especially for poorer countries” (von Tangen Page et al 2005, p. 23).

As Elli Kytömäki (2006, p. 57) noted, “half-implemented regional instruments can in fact prove detrimental to small arms action and PoA implementation. If left under-implemented or weak, regional agreements can become only paper commitments with no real reference to the situation on the ground, and no visible impact. Such toothless instruments can create confusion over responsibilities, and result in reporting – or worse, implementing – fatigue among states.”

Indeed, the regional and subregional instruments in force for South American nations have been experiencing significant difficulties at the implementation level, even when they are legally binding on paper, comprehensive, and in full actual or potential compliance with the global principles of an ATT.

In addition to averting possible pitfalls along the “dual tracks” upon which the ATT and regional instruments are riding (i.e., licit vs. illicit trade, and conventional weapons vs. SALW), the instruments in force in South America must receive a fresh injection of political will, knowledge, resources, and sense of urgency so that agreements that shine on paper do not end up on the sidelines during the process towards implementing global principles on small arms transfers.

Notes

¹ With special thanks to Heather Sutton and Denis Mizne for their contributions.

² For the purposes of this paper, the term “South America” shall be equivalent to MERCOSUR member and associated countries. The first category encompasses Argentina, Brazil, Paraguay and Uruguay, in addition to the recent inclusion of Venezuela. In the second category, Bolivia, Chile, Colombia, Ecuador and Peru have associated status to the Southern Cone common market.

³ Article IX states in part: “1) States Parties shall establish or maintain an effective system of export, import, and international transit licenses or authorizations for transfers of firearms, ammunition, explosives, and other related materials. 2) States Parties shall not permit the transit of firearms, ammunition, explosives and other related materials until the receiving State Party issues the corresponding license or authorization.”

⁴ Chile recently joined the Andean Community as an “associate member” while Venezuela has motioned to exit the group.

⁵ The following discussion is based on findings of an advance version for comments of the paper, kindly shared by Viva Rio.

⁶ Chile, Colombia, and Peru have “end destination certificates.”

⁷ Argentina, Chile, Ecuador, Paraguay, Peru, Uruguay, and Venezuela are parties to this agreement, while Brazil is in the process of adhering.

⁸ While Argentina is the hemisphere’s third largest arms producer, it remains a regional exporter and a small player in the global arena, not giving the industry the political and economic clout its Brazilian counterpart enjoys. Chile and Colombia are also small producers, but not relevant exporters.

⁹ For more information on the Convention, see Arms Control Association 2003.

¹⁰ For an account of Brazilian civil society’s role in pressing for the 2003 Disarmament Statute and ensuing referendum see Instituto Sou da Paz 2006.

¹¹ Especially noteworthy is the research production of the following NGOs: Viva Rio (Brazil), APP and INECIP (Argentina), Aludec (Uruguay), IDL (Peru), CCJ (Colombia), as well as contributions from the national Amnesty International chapters in Chile, Paraguay, and Venezuela.

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Caribbean Dynamics Related to Agreeing and Implementing Global Principles for Small Arms Transfers

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Introduction

The Caribbean Community (CARICOM)¹ Member States clearly see that, in their efforts to combat the proliferation of small arms and light weapons (SALW), they must examine and respond to both the licit and illicit trade. This understanding and willingness to respond are signaled by the votes in favour of UN First Committee Resolution 61/89 in 2006.

CARICOM Member States are not major players in the production or export of weapons. The region is, however, a transshipment point for both licit and illicit weapons. The impact of the trade in mainly illegal weapons threatens the socio-economic development of the region.

In a recent report, the World Bank and the United Nations Office on Drugs and Crime (UNODC and World Bank 2007) finds that “high rates of crime and violence in the Caribbean are undermining growth, threatening human welfare, and impeding social development. Crime impacts business and is a major obstacle to investment. In many countries, as crime increases, access to financing declines; spending on formal and informal security measures increases; and worker productivity declines. Estimates suggest that reducing the homicide rate in the Caribbean by one third from its current level could more than double the region’s rate of per capita economic growth” (World Bank 2007).

The region’s efforts to combat the illegal trade in guns have so far been impeded by several factors, including insufficient resources to increase the number of law enforcement personnel and provide adequate training; inadequate funding for equipment; porous borders; and a reluctance to embrace the principles of the criminal justice approach. Efforts are further complicated by the nexus between narco-trafficking and illegal guns. According to the UNODC/World Bank report (2007 pp. v-vi), “Despite their diversity, one thing all Caribbean countries have in common is that they have long been caught in the crossfire of international drug trafficking.... Despite ...recent shifts, large quantities of drugs continue to transit the Caribbean. In 2005, it is estimated that about 10 tons of cocaine transited through Jamaica, and 20 tons through Haiti and the Dominican Republic.”

It is a well established fact that the current proliferation of illegal guns in the region is largely the result of the illegal drugs that are transshipped from South to North America. The guns are used to protect the drug shipments and remain in the region for use by criminal elements to protect their commodity and “turf.” The trade from north to south is smaller, but has had deleterious effects in the region, as demonstrated by the attempted coup d’état in Trinidad and Tobago in 1990. The law courts subsequently established that the guns used were

bought in the United States. The violence that was ushered in then continues to plague the society as young men increasingly perpetrate armed violence.

The trade in illegal guns has now become endemic and exists in urban as well as rural communities. Illegal gun use for interpersonal violence as well as violence against the state has its roots in the history of the region as well as the social marginalization of groups.

Recent History

Security concerns have emerged as a major threat to the global competitiveness of the Caribbean. While criminal activities based on drug trafficking were once the focus of security forces, in recent years the Caribbean has also become susceptible to terrorist acts because of its close proximity to the United States. Security in the Caribbean can therefore be seen as a multi-dimensional phenomenon. In recognition of its increased importance in the region, security has been designated a fourth pillar of the Caribbean Community, along with foreign policy coordination, trade and economic development, and functional cooperation (Conference on the Caribbean 2007).

The use of illegal guns in the region has had a political dimension since the 1970s. Following the 1970 social revolution in Trinidad and Tobago, armed groups emerged to challenge the state. The rebellion was quashed and many of the leaders were killed or imprisoned.

In 1979 Maurice Bishop and his associates overthrew the elected government of Grenada in a bloodless coup d'état. This was the first armed revolution in the region in the post-colonial era. Bishop's government became the People's Revolutionary Government (PRG) and was violently removed from office in 1983 by an international military force led by the United States and comprising several Caribbean countries.

Weapons were introduced into the Jamaican political system during the general elections of 1980, when guns were distributed to the enforcers for the two major political parties. Gun violence has plagued election campaigns in Jamaica ever since. Before leaving office in 2006, then Prime Minister and leader of the People's National Party PJ Patterson called on PNP Members of Parliament to cease colluding with, and accepting campaign financing from, known criminals.

The 1980 coup d'état led by Desi Bouterse in Suriname catapulted it into the era of gun politics. Suriname now has a civilian government but continues to be plagued by violent crime.

In 2006 politicians and Members of Parliament were victims of armed violence in Guyana, St Vincent and the Grenadines, and Trinidad and Tobago. The Minister of Agriculture and several of his family members were executed in Guyana. An advisor to the Prime Minister of St Vincent was assassinated and two local government representatives were shot, one fatally, in Trinidad.

Each situation involved the licit and illicit importation of arms. Some of the illegal importers have since been prosecuted due to the diligent tracing and collaboration between law

enforcement officers in the export and importing countries. The common factors that contributed to the growing presence of weapons have been determined to be poor surveillance systems on the part of the receiving country; inadequate or nonexistent legislation, regulations, and administrative procedures by both importers and exporters; and the absence of a global legally binding instrument to provide guidance and protection to states.

The proliferation and misuse of guns in the region has increased the level of insecurity among citizens and governments alike as violent behaviour takes root and offenders act with impunity. Some countries are more affected than others and experience mounting homicide, robbery, and kidnapping rates.

The situation of Trinidad and Tobago is consistent with patterns throughout the region. “Instances of the use of small arms and light weapons in the commission of criminal acts in Trinidad and Tobago are considered to be on the increase in a growing number of areas, among these, drug-related violence, male dominated gang warfare ..., youth violence even in schools, organized crime, insurrection, and random street crimes against private citizens” (Republic of Trinidad and Tobago 2005).

A Regional Approach

In 1982, the region responded to armed violence with the creation of the Regional Security System — a mutual defence treaty against external aggression or internal coup attempts. The Eastern Caribbean States and Barbados led this initiative since they were located nearest the Grenada Revolution. The Memorandum of Understanding between these states guaranteed action and intervention; if a member state’s security were threatened it had the right to request assistance from other members of the RSS.

Regional crime, particularly violent gun crime, is recognized as a significant problem by CARICOM governments. In 2001 the CARICOM Secretariat established the Task Force on Crime and Security. The consolidation of the work of the Task Force during the course of 2002 was an encouraging step forward in creating the necessary interregional cooperation on SALW. This work provided a clear understanding of the linkages within the region between drug trafficking and crime, with their overall impact on national and regional security.

A 2002 report of the Task Force (CARICOM 2002) provides more than 100 recommendations to CARICOM governments to take action on crime, drugs, and terrorism including national, regional, and international initiatives to counter illegal firearms. National-level recommendations related to small arms transfers include:

- “Adopt and operationalise by statute” the UN Firearms Protocol and the OAS CIFTA convention (see below);
- Provide training and equipment to enhance Customs’ capacity to interdict illegal firearms; and
- Pursue cooperative arrangements with “source countries” to assist with the training and equipment needed to tackle the illegal trade.

The Taskforce Report also called for greater regional capacity to monitor the arms and ammunition trade by “bona fide manufacturers and dealers” as well as international initiatives to:

- “Review applications for licences to export, import and transit of small arms and light weapons, in light of the domestic legislation of the exporting, importing or transit states;”
- Support the marking of firearms, improved regulation of firearms dealers and arms brokers, and better national record-keeping; and
- Pursue an international dialogue aimed at measures to “limit the production of weapons” to defence and national security needs, and to limit civilian access to military weapons.

The CARICOM Task Force has also produced a regional strategy, approved by the CARICOM Heads of Government, which highlights regional priorities and their translation to national forums. The national measures include the establishment of national crime commissions in Member States to empower communities to work with police and assist them in dealing with all aspects of crime. The forging of these new social contracts has proven to be an effective way to tackle the situation. Using systems of checks and balances, the commissions seek to ensure that there is more accountability within police forces, as well as to institute mechanisms to measure the performance of the various police forces in the region and their value to the communities. This bold move should result in a new Caribbean policing model, without which the region would be poorly equipped to handle more sophisticated trafficking schemes and criminal activities.

Efforts to develop this model are already apparent in countries such as Jamaica, Haiti, and Trinidad and Tobago although these countries still use the traditional security-related approaches to modernize and professionalize security forces and increase capacity, without ensuring accountability to other institutions and to citizens. The Development Assistance Committee (DAC) of the OECD cautions against the dangers of relabelling traditional security-related programs as Security Sector Reform without a serious review of their contents to ensure that they support a governance-oriented approach to the security sector (Hänggi & Hagmann 2006).

Indeed, the social challenges in the region may be more effectively addressed by an approach to security sector reform which improves the governance of the security sector and encourages greater parliamentary oversight and civil society partnerships.

Laws and Procedures

According to the CARICOM regional legal database (2006), there are no national laws specific to the transfer and control of small arms in the region. Several member states — Bahamas, Dominica, Grenada, Guyana, Jamaica, St Vincent and the Grenadines, and Trinidad and Tobago have firearm legislation on the supervision of importation of firearms and ammunition (CARICOM Secretariat 2006). CARICOM Member States have also participated in the regional training program of the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) on effective control of the legal firearms trade and preventing illicit trafficking.

Subregional coordination to improve national firearm legislation could make use of the CARICOM model legislation protocol. Currently there is Model Legislation on the following topics:

- Citizenship
- Domestic Violence
- Equality for Women in Employment
- Equal Pay
- Inheritance
- Maintenance and Maintenance Orders
- Sexual Harassment
- Sexual Offences.

The Model Legislation framework can provide a regional prototype and necessary standard for national legislation. Additionally, it is possible to build on the experience of the regional implementation of Conventions such as the Ottawa Convention (The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction) in which the implementation was undertaken with the technical assistance of the CARICOM Secretariat.

CARICOM members also are subject to the legal and political commitments of a number of multilateral instruments.

United Nations Firearms Protocol

The United Nations Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition supplements the United Nations Convention against Transnational Organized Crime. Article 10 (UNGA 2001) specifically refers to the “general requirements for export, import and transit licensing or authorization systems.” The Protocol has thus far been ratified by Grenada, Jamaica, and St Kitts and Nevis. Barbados has signed but not ratified.

Because the region is a transshipment point for both licit and illicit arms, in the absence of robust national legislation or regional instruments that allow for prosecution of offenders, and bearing in mind Section II, 1-2 of the UN PoA (2001), it is imperative that Member States ratify the Protocol and also implement effective measures to control international transit.

CIFTA

The *Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* (CIFTA; OAS 1997) is regional in scope and legally binding on Member States. The Convention entered into force in 1998. The following table demonstrates the level of commitment of the various CARICOM States. On 5 June 2007, Guyana ratified the Convention.

Country	CIFTA Signature	CIFTA Ratification/Accession
Antigua & Barbuda	11/14/97	03/12/03
Bahamas	04/15/98	06/05/98
Barbados	04/06/01	06/04/04
Belize	11/14/97	11/17/97
Dominica		09/14/04
Grenada	11/14/97	11/29/01
Guyana	11/14/97	
Haiti	11/14/97	02/07/07
Jamaica	11/14/97	
St Kitts & Nevis	11/14/97	05/10/04
St Lucia	06/03/98	01/23/03
St Vincent & Grenadines	11/14/97	
Suriname	11/14/97	
Trinidad & Tobago	05/12/98	01/23/04

Source: Office of International Law, OAS

The Convention calls on Member States to, among other things:

- establish as criminal offenses illicit firearms manufacturing and trafficking;
- set up and maintain an effective system of licenses and authorizations for the export, import, and transit of firearms;
- mark firearms at the time of manufacture, and when they are imported;
- share information that is needed by law enforcement officials who are investigating arms trafficking offenses;
- strengthen controls at export points; and
- ensure that law enforcement personnel receive adequate training.

Several of these measures have already been agreed to within the Community upon the recommendations of the Task Force on Crime and Security.

OAS Model Regulations for the Transfer of Firearms

CARICOM Member States are members of the OAS initiative, the Inter-American Drug Abuse Control Commission (CICAD), which, in 1998, developed the *Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition* (OAS 1998). The Regulations encourage Member States to, among other things, “adopt such measures concerning arms brokering and transit as may be necessary to combat the illicit trafficking in small arms and light weapons.”

Caribbean Heads of Government endorsed a new Management Framework for Crime and Security in July 2005; this framework establishes a Council of Ministers responsible for security and law enforcement, a Policy Advisory Committee, and an Implementation Agency

to implement CARICOM policy initiatives in this area. Steps were also taken to create mechanisms for coordination and cooperation in regional intelligence-sharing. The accompanying CARICOM Treaty on Mutual Cooperation on Fighting Crime is being passed into domestic law in various countries (e.g., it was passed into law by Guyana's parliament in May 2006) (UNODC & World Bank 2007).

Other measures aim to combat illicit trafficking in SALW by procuring equipment. For example, in November 2005 the Government of Trinidad and Tobago procured three Offshore Patrol Vehicles, six fast patrol vessels, an airship to provide aerial surveillance, a radar system, helicopters, a patrol blimp, and an extensive array of other security equipment. This security equipment bears direct costs, plus the costs for training and maintenance. The radar system will also serve the countries of the Eastern Caribbean.

CARICOM has been described as a “zone of peace.” The region prides itself on being peaceful and serene. The absence of regional tensions among Member States positions the region as a model for maintaining international peace and security and fulfilling states' responsibilities for compliance on transparency in international arms transfers.

Antigua Declaration

The Antigua Declaration (2006) outlines the perspective of Latin American and Caribbean governments on the UN Programme of Action (PoA). The Declaration addresses several critical issues for CARICOM Member States relating to the social impact of illegal transfers on the region and the ability of Member States to effectively respond.

The Declaration stresses the “importance of Cooperation and International Assistance in the implementation of the Programme of Action” and recognizes that the “laxity or absence of national, regional and international regulations on the diversion of legally acquired and/or sold small arms and light weapons to the illicit market also has a subsequent impact on civilian deaths and victim toll, accidental or criminal.”

It refers to the relevant chapters in the PoA with regard to the issue of transfers, but the Declaration differs from the PoA provisions in some important aspects. It calls for “common criteria at the international level to provide national authorities with tools to evaluate the authorization of transfers of small arms and light weapons with a view to avoiding their diversion to the illicit market, and to non-authorized uses or users.” It also recognizes that these common criteria must “take into account the particularities of each region.”

Africa Caribbean and Pacific–European Union (ACP-EU) Resolution on SALW and Sustainable Development

Other recent initiatives that have a bearing on subregional support for global transfer principles include the *Resolution on Small Arms and Light Weapons and Sustainable Development* adopted by the ACP-EU Joint Parliamentary Assembly in November 2006 in Bridgetown, Barbados. The Resolution refers to the European Union's support for an ATT within the framework of the United Nations, UN General Assembly Resolution A/RES/60/68, and

the Million Faces Campaign sponsored by Amnesty International, Oxfam, and IANSA. It welcomes “the growing international support for a legally binding International Arms Trade Treaty” and also “a set of Global Principles on Arms Transfers.” It recognizes that “due attention should be given to the link between the licit and illicit manufacture, transfer and circulation of SALW” and calls on States to “agree on a global set of principles on arms transfers.” The Resolution also urges that “existing obligations under international law with respect to arms transfers specifically covering human rights and humanitarian law criteria, should be codified.”

Unlike many similar instruments, the Resolution specifically addresses gender issues and “urges all States to take into account gender issues, as well as the specific needs of women when addressing the illicit trade in SALW,” thereby fulfilling the obligation of states under UN Security Council Resolution 1325.

Towards Global Principles

A CARICOM-facilitated process is beneficial to the promotion of global transfer principles such as those of the proposed Arms Trade Treaty because dialogue is engaged at the level of the regional Conference of Heads of Government of the Caribbean Community. The Heads of Governments is the supreme organ of the Community and determines and provides policy direction for the Community. In this forum every Prime Minister is afforded an understanding of the principles of the ATT; issues are not restricted to the Ministers of National Security. The Heads of Government is supported by the Council for Foreign and Community Relations, which is responsible for determining relations between the Community and international organizations and third states.

In 2005 a meeting of Ministers responsible for National Security and Law Enforcement approved a management framework that makes provision for a permanent Committee of Ministers of National Security and Law Enforcement for policy direction, a Security Policy Advisory Committee (SEPAC), and an Implementation Agency for Crime and Security (IMPACS).

Although regional standards for transfer controls have not been developed within CARICOM, the Community has participated in the UN-LiREC/UK initiatives intended to encourage development of transfer control standards. In 2005 UN-LiREC and the UK government convened a meeting in The Bahamas with CARICOM Member States to discuss issues related to transfer controls.

CARICOM’s strategic geographic location, the small size of its Member States and the similarity of the crime problems across the region are at the centre of its determination to enter into international relations as a collective entity. There is also a history of cooperation and assistance on security issues between individual Member States. Several countries are currently engaged in cooperative international crime-fighting efforts. Historically this engagement has consisted of advice on crime fighting strategies. In the last two years, however, there has been greater direct involvement in administration and crime scene investigations by extraregional law enforcement officers. In one country, one such officer occupies a senior position in the police force. These developments are directly in response to

the ever increasing import and transshipment of illegal weapons and the inadequacy of current legislation.

Support for the ATT Resolution 61/89 by all CARICOM countries and co-sponsorship by six Member States is the most resolute indicator to date that the region is committed to global transfer control standards. At the 2005 Biennial Meeting of States (BMS) and the 2006 Review Conference on the UN Programme of Action on Small Arms and Light Weapons (PoA), CARICOM also made strong statements about the insidious effects of the illegal gun trade on the region and the need for international cooperation to control this flow. The government of Jamaica said in its statement to the 2005 BMS (Miller 2005):

The entry of small arms and light weapons into Jamaica continues to be a source of concern as Jamaica neither produces nor manufactures these weapons. The smuggling of arms is not just restricted to the actual weapons themselves but also includes parts of weapons and ammunition.

It has been identified that these weapons have been entering Jamaica from the main manufacturers of these weapons in our region. ...

While Jamaica has been undertaking action at the national and regional levels, constraints are still faced in the implementation of the United Nations Programme of Action. These include, in large part, a limited capacity to deal with the inflow of these weapons into the country. We are appreciative of the technical and other assistance provided at the bilateral level to deal with the trafficking of small arms and light weapons.

We consider however that any real action in dealing with this phenomenon lies in addressing the real root of the problem, namely the curtailment of the sources of these weapons.

CARICOM is wary about linking development assistance to arms control. Development assistance from donor countries has not always met the agreed schedules. The Community's position on this issue was echoed in the Conference Room paper of the Non-Aligned Movement (NAM) on enhancing international assistance in the implementation of the PoA on SALW at the 2006 Review Conference. The NAM (2006) suggested that donor countries and relevant international and regional organizations need to address problems concerning their own capacity to provide appropriate assistance for all aspects of the PoA.

As Caroline Anstey, World Bank Director for the Caribbean, says (World Bank 2007), the 2007 UNODC/World Bank report on the Caribbean further enunciates the importance of cooperation and resources: "The report clearly shows that crime and violence are development issues. Donors and OECD countries need to work together with Caribbean countries to reduce the current levels in the region.... Some of the factors that make the Caribbean most vulnerable to crime and violence, mainly the drug trade and trafficking of weapons, require a response that transcends national and even regional boundaries."

CARICOM Member States

According to the report *Reviewing Action on Small Arms 2006* (Biting the Bullet 2006), after five years of implementation of the UN PoA in the subregion, seven CARICOM Member States have national focal points. No Member State reported the existence of a national coordinating mechanism. Only Belize and Jamaica reported having specific laws and procedures on transit controls.

The Community has been receptive to bilateral arrangements on security since its inception. More recent agreements include, but are not restricted to:

- the CARICOM/UK Security Cooperation Plan, developed in 2004, which focused on training for security and law enforcement officials;
- the establishment of a Regional Information and Intelligence Sharing Network;
- Maritime Cooperation and Border Security;
- revision of a proposal to the European Union for the implementation of the CARICOM/CARIFORUM initiatives in the fight against illegal drugs to be more fully reflective of the needs of member states; and
- cooperation on crime and security matters with the government of Canada.

It is important to recognize that the ratification and accession of various international conventions and agreements by Caribbean governments does not necessitate immediate enforcement of such agreements into national laws, contrary to the Vienna Convention on the Law of Treaties. The process of compliance is usually stymied by several factors including insufficient human resources and the lack of political will. And, indeed, many Conventions, although agreed to, never become law and they are, therefore, limited in their ability to affect the everyday lives of citizens in the region. Optional protocols can cause further problems and make monitoring the implementation of agreements by citizens and civil society even more difficult.

One of the major stumbling blocks in implementation is determining the various ministerial responsibilities consistent with these Agreements. To ensure that the ATT does not fall prey to such confusion, it is important to ensure that civil society organizations partner with governments. The region has a diverse, fecund, and dynamic community of CSOs. It is this community that initiated discussions on such issues as the feminization of poverty, arms control, human rights, empowerment, governance, and sustainable development.

CSOs throughout the Caribbean have advocated for participatory governance and have instituted practices within their own organizations to demonstrate the practicality and legitimacy of this system. These organizations consistently engage in joint initiatives with governments to respond to the social and economic needs of citizens. The history and success of the collaboration is evident in legislation relevant to gender equality, persons with disabilities, sustainable development, freedom of information, rights of the child, and crime and security.

CARICOM governments and peoples have engaged in a multiplicity of approaches in response to the proliferation of arms, including criminal justice reform, social programs,

citizen security, crime prevention, and intra-national and international cooperation on interdiction and training for law enforcement personnel. Research, disarmament, and legislation have not received as much attention so far. Much of the mainstream dialogue on arms control is focused on the armed violence that continues to plague the regional landscape, particularly Trinidad and Tobago, Jamaica, Guyana, and Haiti. The Eastern Caribbean and other member states have not seen as explosive a situation as has been the experience of those cited above.

This paper argues for greater investment in the areas of research, disarmament, and legislation, since arms control is a global problem demanding a global solution. The licit global trade in arms contributes significantly to the intractable situation in the Caribbean. It is imperative that the region act in tandem with its international partners to pursue the Arms Trade Treaty.

Conclusion

Guns and criminality have overwhelmed the region in the last decade and national budgets of Member States have been revised to respond to the social impact. A combination of social programming and law enforcement are expected to alleviate the pain and suffering and restore normalcy. The ongoing measures are generally not evaluated, thereby losing an opportunity to learn useful lessons.

CARICOM's efforts to implement the PoA have been stymied by a combination of factors, including inadequate resources and weak security systems. Increased bilateral cooperation in capacity-building and aid is needed.

It is also imperative that Member States build partnerships with civil society in their pursuit of security sector reform, crime prevention, crime reduction, and the control of arms transfers. The absence of civil society participation in existing national mechanisms illustrates the relationship between governments and citizens on the issue of crime. At the historic *Forward Together Conference*, a consultation between civil society organizations and the Heads of Government in Georgetown, Guyana in 2002, several broad principles for strengthening the relationship between the Caribbean Heads of Government, national governments, and civil society were adopted. This agreement should be pursued in relation to security in the region.

The Community's support for Resolution 61/89 must be viewed as a commitment to cooperate with the international community to secure the establishment of a legally binding instrument to control the trade in arms. Six Member States co-sponsored Resolution 61/89 and all Member States voted in favour of the resolution. It is imperative that Member States participate in the UN Secretary-General's consultations to determine the feasibility, scope, and draft parameters on a comprehensive, legally binding instrument establishing common international standards for the export, import, and transfer of conventional arms. It is equally important that CARICOM nominate a representative to sit on the Group of Governmental Experts that is mandated in the resolution.

This paper acknowledges the relevance of all the regional instruments to the reality of the Caribbean experience, but also recognizes that there are limitations in providing adequate responses to the “particularities” of the Community. CARICOM must pursue a regional instrument on arms control that is legally binding upon Member States within the Community and which specifically takes into account the “particularities” of the region.

Note

¹ The Community consists of 15 Member States and five Associate Member States. The Member States are: Antigua and Barbuda, the Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

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Small Arms and Light Weapons Transfer Controls in the CIS Region

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Introduction

The Former Soviet Union (FSU) region includes 15 countries (Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan). Twelve of these states (excluding Estonia, Latvia, and Lithuania) are aligned through a loose confederation known as the Commonwealth of Independent States (CIS). Within the framework of the CIS, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Russia, Tajikistan, and Uzbekistan are members of the Collective Security Treaty Organization (CSTO). Estonia, Latvia, and Lithuania became members of the European Union and joined the NATO alliance in 2004.

In different measures, CIS countries are still coping with the painful political, social, and economic transitions caused by the break-up of the Soviet Union. The region has long been a major source of armaments, including small arms and light weapons (SALW). Russia and Ukraine ranked among the top six suppliers of major conventional weapons in the period 2001-2005, while Uzbekistan and Belarus ranked 13th and 14th respectively (Hagelin, Bromley & Wezeman 2006, p. 477). Several CIS countries face serious internal problems relating to ongoing conflicts, such as those in Chechnya and Ingushetia; frozen territorial disputes over Abkhazia, South Ossetia, Nagorny Karabakh, and Transdniestria; as well as post-conflict challenges in Tajikistan. Huge stockpiles of SALW were left in the region when the Soviet Union collapsed and, in some countries, there are risks that weapons, ammunition, and explosives leaking from stockpiles might enter the black market.¹ The storage of weapons and ammunition often falls below international standards.

This paper provides an overview of arms transfer controls and their implementation across the CIS region, examining regional and multilateral mechanisms for compliance and transparency, and presents the position of some CIS governments in relation to international arms control initiatives, particularly efforts towards an arms trade treaty (ATT).

Progress at the Regional and Multilateral Levels

While subregional cooperation among CIS states on arms transfer controls is not well developed, all CIS countries have been involved in concerted efforts to develop common understandings of how to deal with international arms transfers, especially those related to SALW. They have also made important commitments to avoid transferring arms that are likely to be used *inter alia* for violations of human rights and humanitarian law, for example, through initiatives pursued by multilateral forums such as the Organization for Security and Co-operation in Europe (OSCE) and the Wassenaar Arrangement.

Table 1: Conventional weapons agreements/treaties relevant to CIS countries

Treaty/convention/agreement	Year	CIS Country
OSCE Principles on Conventional Arms Transfers	1993	All countries
UN Guidelines for Conventional Arms Transfers	1996	All countries
Mine Ban Treaty	Agreed 1997 Entered into force 1999	Belarus, Moldova, Ukraine, Tajikistan, Turkmenistan
Wassenaar Arrangement's Elements for Analysis on Destabilising Accumulations of Conventional Weapons	1998	Russia, Ukraine
OSCE Document on Small Arms and Light Weapons	2000	All countries
UN Firearms Protocol	Adopted 2001 Entered into force 2005	Ratified by Azerbaijan, Belarus, Moldova, Turkmenistan
UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects	2001	All countries
Wassenaar Arrangement's Best Practice Guidelines for Exports of SALW	2002	Russia, Ukraine
Wassenaar Arrangement's Elements for Export Controls of Man-Portable Air Defence Systems (MANPADS)	2003	Russia, Ukraine
Wassenaar Arrangement's Elements for Effective Legislation on Arms Brokering	2003	Russia, Ukraine
OSCE Decision on End-user Certificates	2004	All countries
OSCE Decision on MANPADS	2004	All countries
OSCE Principles on the Control of Brokering in SALW	2004	All countries

OSCE initiatives

The OSCE has offered an important stimulus for SALW control to the CIS region. As members of the OSCE, CIS countries have agreed to the 1993 OSCE *Principles Governing Conventional Arms Transfers* and the *OSCE Document on SALW*, adopted in November 2000. The latter is one of the strongest multilateral agreements to tackle the spread of SALW and has also made a substantial contribution to the UN SALW process. As part of this initiative, the 55 OSCE countries, including CIS states, agreed to a number of criteria to govern exports of SALW, including respect for human rights and fundamental freedoms in the recipient country; the internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts; legitimate domestic security needs; and the objective of the least diversion of human and economic resources to armaments.

Each participating state agrees to avoid issuing licences for exports where there is a clear risk that the small arms in question might:

- Be used for the violation or suppression of human rights and fundamental freedoms;
- Threaten the national security of other states;
- Be diverted to territories whose external relations are the internationally acknowledged responsibility of another state;
- Contravene the exporting country's international commitments, in particular in relation to sanctions adopted by the UN Security Council, decisions taken by the OSCE, or other arms control and disarmament agreements;
- Prolong or aggravate an existing armed conflict, or threaten compliance with international law governing the conduct of armed conflict;
- Endanger peace, create an excessive and destabilizing accumulation of small arms, or otherwise contribute to regional instability;
- Be either re-sold or diverted within the recipient country or re-exported for proscribed purposes;
- Be used for the purpose of repression;
- Support or encourage terrorism;
- Facilitate organized crime; or
- Be used other than for the legitimate defence and security needs of the recipient country.

Important additional decisions have been made by the OSCE's Forum for Security Cooperation (FSC) on different areas of export control of SALW to complement and reinforce the commitments that already exist in the OSCE Document. These have placed added emphasis on the risks posed by the potential diversion of SALW into the illegal market, especially in the context of preventing and combating terrorism.

Decision No. 3/04, adopted in May 2004, on *OSCE Principles for Export Controls of Man-Portable Air Defence Systems (MANPADS)*, is designed to strengthen export controls over MANPADS. OSCE countries agreed to incorporate into their national policies and regulations the Wassenaar Arrangement's *Elements for Export Controls of Man-Portable Air Defence Systems* (see below).

Decision No. 5/04, adopted in November 2004, on *Standard Elements of End-User Certificates and Verification Procedures for SALW Exports*, set out a list of common standard elements for end-user certification (including the transfer of SALW-related technology and SALW manufactured under licence) and verification procedures for SALW exports.

In recognition of the importance of brokering for the control of SALW, Decision No. 8/04 on the *OSCE Principles on the Control of Brokering in Small Arms and Light Weapons* commits participating countries to establish systems of licensing, registration, authorization, record-keeping, and exchange of information relating to brokering activities that take place within their territories. The Decision also requires participating states to consider controlling brokering activities outside their territories if they are carried out by their nationals or by brokers established in their territories.

Wassenaar Arrangement's initiatives

Russia and Ukraine are members of the Wassenaar Arrangement (WA) and are politically bound by the agreed export control standards elaborated in this framework. In December 2002, the Wassenaar Arrangement's Plenary adopted the *Best Practice Guidelines for Exports of SALW*. This agreement reflects the Wassenaar Arrangement's concerns that SALW can exacerbate regional conflicts and are among the weapons of choice for terrorists. The Guidelines commit participating states to take into account a number of factors when authorizing a SALW transfer. Moreover, countries are committed to avoid issuing licences for exports of SALW where there is a risk that the transfer in question might, among other possibilities:

- Support or encourage terrorism;
- Threaten the national security of other states;
- Be diverted to other territories;
- Contravene international commitments, such as arms embargoes;
- Prolong or aggravate existing armed conflicts;
- Be used for the violation or suppression of human rights; or
- Facilitate organized crime.

In December 2003, the WA Plenary adopted the *Elements for Export Controls of Man-Portable Air Defense Systems (MANPADS)*, through which member states recognize “the threats posed by the unauthorized proliferation and use of MANPADS” and commit to apply strict national controls on the export of this type of weapon. The agreed Elements set out the principles to guide decisions on MANPADS exports. These state that:

- Only exports to governments are to be permitted;
- Each transfer should be subjected to an individual licensing decision; and
- Nongovernmental brokers should not be used.

The document also specifies export control guarantees, which include assessing the potential for diversion or misuse in the recipient country; the recipient government's ability and willingness to protect against unauthorized re-transfers, loss, theft and diversion; and the adequacy and effectiveness of the physical security arrangements. Recipient governments have to guarantee not to re-export MANPADS without prior consent of the exporting government.²

In the December 2003 Plenary, the participating states of the WA also adopted *Elements for Effective Legislation on Arms Brokering*, which aim to control the activities of those who engage in the brokering of conventional arms through laws and regulations. Member states are committed to assess applications for licences or authorizations of brokered transactions in accordance with the principles and objectives of: the WA's *Initial Elements*; *Elements for Objective Analysis and Advice concerning Potentially Destabilising Accumulations of Conventional Weapons*; the *Best Practice Guidelines for Exports of Small Arms and Light Weapons*; and the *Elements for Export Controls of Man-Portable Air Defense Systems (MANPADS)*.

The above OSCE and WA instruments reflect the growing realization by CIS countries and their multilateral partners that the problem of arms proliferation can be addressed effectively only through collaboration between states. Overall, they address a similar range of concerns, including the need to:

- Prevent and combat illicit arms transfers;
- Respect UN embargoes;
- Prevent the diversion of conventional arms to proscribed users, such as terrorist groups;
- Refuse transfers that are likely to be used in serious breaches of human rights and international humanitarian law; and
- Refuse transfers that are likely to adversely affect internal or regional security.

There is no doubt that both the OSCE and the Wassenaar Arrangement have produced some significant documents as the result of initiatives to combat the proliferation and misuse of arms. There is also much in common between the concerns contained in the OSCE and Wassenaar documents and those that have been raised by nongovernmental organizations, which, with the support of legal advisors, have proposed a set of core Global Principles for Arms Transfers. The OSCE *Document on SALW* and the Wassenaar Arrangement's *Best Practice Guidelines* appear to contain an even more extensive range of concerns, for example when they refer to the need to take into account the risks of proposed transfers vis-à-vis fundamental freedoms in addition to human rights, or the risks of diversion and re-export.

However, they also have some significant limitations. Most importantly, they are only politically, and not legally, binding. Other problems relate to the scope of the documents, as well as a lack of effective monitoring and enforcement mechanisms. Some CIS countries have reportedly argued that the provisions of the OSCE documents, including in the area of SALW imports and exports, apply only between OSCE states (Faltas & Chrobok 2004, p. 3). Although this restrictive interpretation is rejected by the majority of OSCE countries, it may affect the policies of some CIS governments when they try to implement commitments. Moreover, the information exchanges between governments that should assist in monitoring the practical implementation of the OSCE Document and relevant Wassenaar Arrangement initiatives vary greatly in scope, content, and quality and are usually classified (see below). Thus, it is often difficult to make an informed judgement on whether and how these multilateral commitments are being implemented.

CIS initiatives

Preventing the spread of MANPADS has become a priority in SALW transfer controls for many CIS countries. In the context of the fight against terrorism, Russia has been at the forefront of international efforts to establish tighter controls over the export of MANPADS since 2001. In 2003, it took the lead on a CIS initiative devoted to this issue. This led to an agreement between 11 CIS members to provide notification on MANPADS transfers (see below).

EU initiatives

None of the CIS countries are directly bound by the 1998 EU Code of Conduct on Arms Exports and its operational mechanisms. However, the EU Code, which contains detailed export criteria to be used in the assessment of export licence applications for all categories of conventional weapons including SALW, has had some influence in developing better dialogue and information exchange on export control standards between EU countries and the Western CIS countries of Ukraine and Belarus. Ukraine, which has expressed an aspiration to join the European Union, has made positive statements in relation to the EU Code. Although Ukraine has not yet formally aligned itself to it, the EU-Ukraine Action Plan for 2005-2007 states that Ukraine will take “due account of the contents and principles of the EU Code of Conduct on Arms Exports” (Point 2.1). Ukraine has also committed itself under the Ukraine-NATO Target Plan for 2006 to make necessary improvements to its arms transfer control procedures, “including by adapting national legislation in accordance with the EU Code of Conduct” (Objective I.1.B.5). In an important development in its efforts to promote cooperation with EU countries on arms export controls, in April 2004 Belarus declared adherence to the EU Code of Conduct on Arms Exports by committing itself to use the Code to inform national export control policies and practice.³ Unfortunately, in reaction to internal political developments in Belarus, no EU country has tried to build on this achievement, in particular by sharing information on the practical implementation of the EU Code’s criteria. The isolation of Belarus has also meant that the EU has turned a blind eye to an arms export control system and nonproliferation culture that are still under development.

International Initiatives

As UN members, all CIS countries are committed to the 2001 UN Programme of Action (PoA) on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. Among others, the PoA requires states “to assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade” (II, 11).

The issue of SALW transfer controls was subjected to extensive debate during the PoA Review Conference (26 June–7 July 2006) and there was some optimism before the Conference that a substantive outcome would elaborate on the commitments under Section II, 11 of the PoA and, possibly, result in the adoption of global guidelines for SALW transfers. However, while many governments, including Moldova and Ukraine, supported calls for common standards on SALW transfers, a minority, including Russia, were opposed or created obstacles to any real progress. Russia made it clear in its official speech that the Conference should focus only on the illicit trade because it had no mandate to discuss the government-sanctioned trade in SALW, which was described as a “controversial matter” beyond the framework of the Programme of Action (Litavrin 2006). Eventually, the Conference failed to agree on any future UN actions on SALW controls, including transfer controls.

There is a close link between the control of the illicit trade in SALW and the fight against organized crime through the United Nations Firearms Protocol, which came into force in 2005. The fact that most CIS countries have yet to ratify the Protocol illustrates the gap between rhetorical commitments to combat illicit trafficking in SALW and the political priority that is accorded to being legally bound by a global instrument that sets out minimum standards to control the movement of firearms.

As members of the United Nations, all CIS countries are politically bound to the guidelines for international arms transfers that were agreed in 1996 by the United Nations Disarmament Commission and later endorsed by the UN General Assembly in Resolution 51/47[B] on 10 December 1996. According to these Guidelines (UNGA 2006a), all states “should establish and maintain an effective system of export and import licences for international arms transfers” (Para 26) and they have a responsibility to ensure that the quantity and level of sophistication of their arms imports and exports are commensurate with legitimate self-defence and security requirements and these imports and exports do not contribute to instability and conflict or to illicit trafficking in arms (Paras 20-21). Countries also pledge to use a number of guiding principles in their efforts “to prevent, combat and eradicate illicit arms trafficking”⁴ that offer a basis on which to build explicit criteria for decisions on the international transfer of conventional arms.

Towards an ATT

Countries in the CIS region are divided on the issue of global principles or guidelines on arms transfer controls, in particular the ATT initiative. The majority of governments have expressed varying levels of support in principle for an ATT. In December 2006 Azerbaijan, Armenia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, and Ukraine voted at the UN General Assembly in favour of working towards a legally binding ATT. However, other CIS countries, in particular Russia, remain sceptical about the initiative. During the UN General Assembly vote, both Belarus and Russia abstained, while Turkmenistan and Uzbekistan did not attend the session. Among the four ‘sceptics’, Russia has been the most forthcoming in trying to explain its position.

In March 2005, the Russian Foreign Ministry issued a cautious but positive statement regarding the speech made by then UK Foreign Secretary Jack Straw. They recognised the problem of the “spread of weapons,” but called for “careful study and broad international discussion with the participation of all major exporters and recipients of arms” before an international convention on the regulation of arms transfers could be agreed upon and implemented (ITAR-TASS 2005). They also supported the UK’s decision to conduct discussions on the topic within the UN. Some Russian experts argued in unofficial discussions that Russia might be willing to support the initiative, as long as a number of Russian concerns were met, such as the need to control technology transfers, including the unlicensed production of weapons of Soviet or Russian design, and assurances that the ATT would not damage Russia’s arms industry (Kozyulin 2006).

Later, however, Russian officials adopted a more cautious ‘wait-and-see’ approach to the UN Resolution, out of concern with the overall nature of the ATT and in response to pressure from domestic interests. They were concerned about the lack of information by

governments sponsoring the ATT initiative, procedure, the hasty pace of the process, and the difficulties in achieving a global consensus. Russia abstained during the UN vote.

On numerous occasions, Russia has stated that international efforts should concentrate on combating the illicit arms trade and has not heeded arguments that, to curb the illicit trade in arms, the 'legal' trade must also be clearly defined and properly regulated. Russian representatives to the UN General Assembly's First Committee discussion on the ATT draft resolution stated that, while Russia understood the humanitarian aspects of the uncontrolled spread of conventional weapons, the problem was not the need for greater controls on the legal trade but rather greater efforts to tackle the illegal trade (UN 2006). At an international workshop in Helsinki in 2005 Dr. Vladimir Kozin of the Russian Embassy expressed concerns about the ability of states to reach a universal agreement on criteria that could be used to distinguish between legitimate and irresponsible transfers; others worried about the challenges of fully implementing, monitoring, and enforcing such a treaty. A senior official asked if "it is possible to operate a mechanism for monitoring and controlling compliance with an ATT" and raised the issue of naming and treating 'problem states' (Kozyulin 2006, pp. 25-26).

It remains to be seen whether the Russian arms industry, which welcomed the government's decision to abstain on the UN vote, will accept the opinion that an ATT would not damage its legitimate defence business. At a roundtable debate on "Russia and the ATT" in December 2006, Dr. Vladimir Kudashkin, a senior representative of Russia's arms trading company, Rosoboronexport, described Russia's current stance on the ATT and its abstention from the UN vote as a "positive signal" of Russia's willingness to have dialogue on the issue. Even if the Russian government retains significant influence over the industry and its only arms exporter,⁵ the implications of the ATT for the Russian arms industry will remain a strong factor in future developments of Russia's position. Russia will participate, as a permanent member of the UN Security Council, in the Group of Governmental Experts and the process towards an ATT that has been set in motion by the UN Resolution. Therefore, the initiative will continue to face a number of Russian demands that are likely to influence other CIS states.

National Standards and Implementation

Over the last 15 years, CIS countries have made progress in strengthening their national laws, regulations, and systems to control SALW transfers. At the start of the 1990s virtually no export control system existed in the region. Currently, most countries — including all those that have an independent capacity to produce and supply arms (Russia, Ukraine, Belarus, Kazakhstan, and Uzbekistan) — have developed both the normative basis for transfer controls and licensing procedures.

The Russian legislative and executive authorities have developed legislative and statutory acts that relate to manufacture, stockpiling, import, export, transit, and re-export of arms, including SALW. The 1998 *Federal Law on the Russian Federation's Military Technical Co-operation with Foreign States* established strict state controls on the export of Russian military SALW, while the *Federal Law on Arms* (adopted in 1996, subsequently amended) regulates possession, use, and internal transfers of SALW, as well as licensing requirements for the production and

export of SALW. State control over transfers of military SALW are also covered by various legal acts and government resolutions that detail licensing procedures.⁶

In 2003 Ukraine, the second most important arms exporter in the region, took action to strengthen its national export controls by adopting a law⁷ that provides a new legal base for arms export regulations. Belarus has also tightened its legislation and export and import control regulations.⁸ Kazakhstan, Kyrgyzstan, Tajikistan, and Uzbekistan have arms export control legislation. Kazakhstan, the only SALW producer in Central Asia, with significant arms stockpiles inherited from the Soviet Union, has developed an export licensing system organized through the Ministry of Trade and Industry that involves consultations with the Ministry of Defence and the Ministry of Foreign Affairs (Biting the Bullet 2005, p. 115). In 2003 Georgia introduced new legislation that covers transfer, possession, and use of SALW.⁹

Despite undeniable progress in setting up national norms and regulations and the political commitments made by CIS countries at the regional and multilateral levels to better control the arms trade and improve international cooperation and information exchange, weaknesses and loopholes remain in most national export control systems. These allow arms transfers from the region to continue to reach human rights abusers, countries in conflict, and regions of instability.

A crucial challenge for all CIS countries is the lack of effective criteria-based licensing systems that ensure that factors such as national and international policies, commitments, and responsibilities under international law are reflected in export licensing decisions. Neither laws nor official statements by CIS governments on their foreign policy goals and national export control systems refer to the need to control international arms transfers in light of human rights considerations, the internal situation in the country of destination, or the compatibility of arms exports with the country's technical and economic capacity.

In the *Federal Law on Military-Technical Cooperation of the Russian Federation with Foreign States* (Russia 1998), which regulates arms exports, the general principles governing arms exports refer to the “observance of the international commitments of the Russian Federation in the field of control of the exports of military products and dual-purpose goods and procedures and techniques” (Art. 4.1), without any specific elaboration of human rights norms or other criteria. SIPRI researchers have highlighted the fact that Russia's arms export policy “can be understood as ‘commercial pragmatism’: as long as a country is not under a United Nations (UN) embargo, Russia will in the national interest permit arms exports” (Hagelin, Bromley & Wezeman 2006, p. 455).

Similarly, Ukrainian legislation (2003) sets out the underlying principles governing arms export controls (including the interests of Ukraine to protect national security; Ukraine's international commitments to nonproliferation and preventing the use of weaponry and dual-use technology “for terrorist and other illegal purposes”; and collaboration with international organizations and foreign states to strengthen international security and stability), but makes no reference to specific transfer control criteria.

In Belarus, the Law on Export Control of 1998, Government Decree No 133 (2003), Presidential Edict No 94 (2003) “On Measures Regulating Military and Technical Cooperation of the Republic of Belarus with Foreign States,” and Governmental Decree No

522 (2002) set out general objectives, principles, and procedures governing the import and export of military goods and services, including the responsibilities of different government agencies involved in the export control system. They refer to the protection of Belarus national interests and the fulfilment of its international commitments and agreements, but do not define the exact conditions or criteria under which arms transfers can be authorized or denied.

The fact that neither laws nor government policies require the withholding of arms transfer licences if, for example, there is a danger that the transfer will contribute to violations of human rights or humanitarian law, or undermine sustainable development in the recipient country, shows that CIS countries do not properly operate within a criteria-based system of transfer controls. Therefore, consistent application in arms transfer decisions of the multilateral initiatives listed above is not guaranteed and there is a constant risk that commercial preferences or other considerations could overpower the political commitments to export controls. The problem is often compounded by the lack of effective and clear parliamentary oversight of government decisions and an overall lack of public transparency.

The implementation of national controls related to arms transfers also poses big challenges, with many states still struggling to improve law enforcement capacity and effectively manage and control goods transiting across borders. Often, a general lack of financial, technical, and human resources undermines a state's ability to implement and enforce effective export and border controls, as well as other measures such as stockpile management and destruction. Most CIS countries would benefit from arms export licensing officials and law enforcement officers who were better trained in practical and technical aspects of export control, but they sometimes lack the experienced officials and resources to provide adequate training programs. And, while officials in Western countries often have access to computerised systems, embassies and consulates that provide them with information on prospective end-users and end-users, CIS countries often do not have such resources. Although CIS licensing officials and their Western counterparts have had exchange visits, and customs authorities have been provided with equipment (Embassy of the USA to Ukraine 2003), these efforts have only begun the process to implement effective mechanisms for international cooperation and assistance.

Transparency and Government Accountability

A general lack of transparency cuts across all the problems and is often maintained by low public interest in SALW control issues. Although some countries, such as Belarus, Russia, and Ukraine, have made important commitments to increased information exchange through their participation in regional and international arms control initiatives within the UN, the Wassenaar Arrangement, and the OSCE, developing public transparency remains a key challenge for all CIS countries. Some states, especially those that produce weapons, are concerned that increased transparency of production and transfers of SALW may compromise their defence and security capabilities and/or undermine their legitimate defence business. Therefore, they are not easily prepared either to increase public transparency or to consider what the optimal level of public disclosure should be.

CIS countries have made some progress in developing confidential information-sharing between governments on arms transfers. At the regional level this has taken place *inter alia* within the framework of the Wassenaar Arrangement (for Russia and Ukraine) and the OSCE information exchange mechanisms on SALW. Since 2001, CIS countries have shared information with other OSCE countries on several different issues related to SALW, including data on exports and imports within the OSCE region. As part of the CIS initiative on MANPADS, Russia and its CIS partners have tried to improve information exchange over the export of MANPADS. Since 2003, Russia has signed bilateral agreements on information exchange about MANPADS transfers with all other CIS countries except Turkmenistan. In February 2005 Russian Defence Minister Sergei Ivanov and US Secretary of State Condoleezza Rice signed an agreement that allows the USA and Russia to cooperate on stricter control over MANPADS, including sharing information on MANPADS supplies to third countries (Biting the Bullet 2005, p. 108).

Such information exchanges are important because they can contribute to better cooperation between law enforcement agencies and can improve the capacity to prevent diversion to unauthorized users. But most of these exchanges are confidential to the state parties concerned and, although some mechanisms are becoming more elaborate, they are usually fairly modest, both in the scope and specificity of the information exchanged. Public information concerning the production and trade of armaments, especially SALW, is often difficult to obtain, inaccurate, or shrouded in excessive secrecy.

Although the majority of CIS countries provide some information on arms transfers for inclusion in the UN Register of Conventional Arms (UNROCA 2006), the information submitted is often incomplete. Some countries only submit data on those transactions about which they feel comfortable. Others, such as Uzbekistan — which according to SIPRI plays an important role in the international arms trade (Hagelin, Bromley & Wezeman 2006) — have never provided any information to the UN on their arms exports and imports (UNROCA n.d.). Moreover, the seven categories of armaments covered by the Register are restricted to major weapons systems, such as battle tanks, combat aircraft, heavy artillery, and naval vessels, and, with the exception of MANPADS,¹⁰ do not include SALW.

Another tool for international transparency on the arms trade is the UN COMTRADE (2007) database, which is administered by the UN Statistical Division and, since 1962, has provided global data on the trade in commodities (including arms) based upon reports from customs authorities. However, like UNROCA, COMTRADE relies on voluntary submissions and many CIS countries withhold information on some or all of their arms transfers. For example, Russia provides only limited customs data on SALW exports and imports to COMTRADE, notably excluding information on military SALW (Small Arms Survey 2004, p. 105). COMTRADE reporting by other CIS countries is even more erratic and inconsistent, with limited data often transmitted to COMTRADE over a year after the transactions have occurred.

Belarus (2005) and Ukraine (2006) are the only two CIS countries that have published official government reports on arms transfers. The Belarusian report provides information on national norms and procedures regulating arms export controls and some limited data on actual exports.¹¹ The first Ukrainian report, published in January 2006, covered activities during 2004. It provides information on arms exports, including SALW, broken down by

category and destination country. Other countries, including Russia, make regular statements about arms exports through official news agencies such as RIA Novosti and ITAR-TASS. But such statements are never comprehensive and appear to be promotions of Russian weapons rather than examples of transparency. Usually, they touch only briefly on issues such as quantity, value, or destination of arms shipments and it is not possible to independently verify the information.

Parliaments of CIS countries potentially have a variety of mechanisms to oversee the arms transfer policies and practices of their governments. But the political will to make these mechanisms effective is often lacking and members of parliament exert little or no pressure on governments to become more transparent; nor do they challenge the bureaucratic culture that treats arms trade issues as a government prerogative. The most effective tools at the disposal of parliamentarians — raising public awareness through speeches, lobbying with other members of parliament, and using the press to support or raise objections to particular imports and exports — are hardly used. It appears that CIS parliamentarians are satisfied to leave control over the imports and exports of arms to the discretion of their governments.

Civil Society Participation

The involvement of civil society in SALW transfer controls has been modest, even in countries such as Georgia, Kyrgyzstan, and Ukraine that have relatively liberal political systems. There is an overall lack of public interest and open public discussion in the region regarding arms transfer controls and, consequently, SALW control is not perceived as a priority by civil society organizations. The result is an insufficient level of NGO oversight.

However, several organizations, especially in the Western CIS subregion, have been involved in conducting research and advocating and promoting transparency with regard to SALW. In Russia, the PIR Center (2007) and Saferworld are currently working on a two-year project, funded by the European Commission, on “Building civil society capacity to engage with government to tackle small arms in Russia.” In Ukraine, NGOs such as the Razumkov Centre have mostly concentrated on researching the problem of surplus SALW and ammunition, trying to identify the areas on which international cooperation and assistance should focus. Currently, the Kiev-based International Centre for Policy Studies and Saferworld are preparing a detailed analysis of Ukraine’s export controls system and working on a project to develop parliamentary oversight. In Belarus, Voluntas has been active in the promotion of domestic and regional initiatives on SALW, especially transparency in the arms trade, stockpile security, and the decommissioning of surplus arms (Saferworld & Voluntas 2003). The Moldovan Institute for Public Policy has been involved in research projects on various aspects of the SALW issue in the country (Wood 2006a). In Georgia Saferworld has worked with the Caucasus Institute for Peace, Democracy and Development (CIPDD) in promoting international transfer controls and the ATT (Wood 2006b).

In highly authoritarian states like Uzbekistan and Turkmenistan, the conditions for civil society oversight or strong investigative journalism are almost nonexistent.

Conclusion

The CIS region has made some progress in developing international consensus on effective arms transfer controls. However, significant challenges remain. Relatively new national nonproliferation norms and decision-making procedures, which often had to be created from nothing after the collapse of the Soviet Union, show some of the deficiencies and shortcomings of systems that require further development and consolidation. All CIS countries should introduce and implement effective transfer control criteria to make good on the political commitments made within multilateral forums. CIS states must also recognize the need for transparency in arms transfers and actions to prevent and combat illicit arms trafficking, especially the monitoring and implementation of any future ATT.

Because it is unlikely that CIS civil society will mobilize in support of stringent transfer controls, progress will be largely dependent on the building of a more constructive international dialogue and common understandings with those CIS countries that are sensitive about stricter arms transfer controls. The arms industries of Russia and Ukraine remain dependent on exports. Particularly in these two countries, the continued development, implementation, and enforcement of nonproliferation export control policies and practice must be sustained.

Notes

¹ In Russia, as of 2003, 57,000 firearms were officially registered as missing, while experts have estimated that over 200,000 firearms were in illegal possession (*Rossiiskaya Gazeta* 2004).

² In May 2004 the OSCE Forum for Security Co-operation (FSC) incorporated the principles developed under the Wassenaar Arrangement initiative on MANPADS into the OSCE Principles for Export Control of MANPADS.

³ “The Republic of Belarus shares the objectives of the EU Code of Conduct on arms exports formally approved by the European Union on 8 June 1998. We consider it to be an important achievement of the European community aimed at strengthening control over arms transfers thereby enhancing security in Europe and worldwide. Belarus will use this document in its national export control policies and practices.” Welcome address by the Deputy Head of the International Security and Arms Control Department, Ministry of Foreign Affairs of the Republic of Belarus, Aliaksandr Khainouski, at the Non-proliferation Export Control Workshop: Regional and International Initiatives for Belarus and Its Neighbours (Minsk, 22 April 2004).

⁴ “States should respect the principles and purposes of the Charter of the United Nations, including the right to self-defence; the sovereign equality of all its Members; non-interference in the internal affairs of States; the obligation of Members to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State; the settlement of disputes by peaceful means; and respect for human rights; and continue to reaffirm the right of self determination of all peoples, taking into account the particular situation of peoples under colonial or other forms

of alien domination or foreign occupation, and recognize the right of peoples to take legitimate action in accordance with the Charter of the United Nations to realize their inalienable right of self determination. This shall not be construed as authorizing or encouraging any action that would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States conducting themselves in compliance with the principle of equal rights and self determination of peoples and thus possessed of a Government representing the whole people belonging to the territory without distinction of any kind.” (UNGA 2006a, para 14)

⁵ On 7 December 2006 the Commission for Military Technological Cooperation decided that Rosoboronexport should be the sole exporter of Russian military equipment. This decision was followed by a presidential decree granting Rosoboronexport a monopoly of Russian arms exports from 1 March 2007 (*Kommersant* 2006).

⁶ *Federal Law on Government Regulation of Foreign Trade Activities* (1995); *Federal Law on the Russian Federation’s Military Technical Co-operation with Foreign States* (1998); *Federal Law on Export Control* (1999); *Government Resolution on the Transit of Armaments, Military Hardware and Military Property across the Territory of the Russian Federation* (2000); *Presidential Decree No. 1083 Concerning the Federal Service on Military-Technical Cooperation* (16.08.2004). For further information regarding the Russian arms control normative framework see the SALW Resource Centre hosted by the PIR Center.

⁷ *On State Control of International Transfers of Goods Designated for Military Purposes and Dual-Use Goods*, 2 February 2003 #549-IV// The Supreme Rada Record, 2003, #23, p. 148. Additional information regarding Ukraine’s arms control laws and regulation can be obtained, in Ukrainian, from the website of the Scientific and Technical Center on the Export and Import of Special Technologies, Hardware, and Materials (STC).

⁸ These include Governmental Decree 133 (2003) *On Fulfilling Measures of State Regulation of Export (Import) of Specific Goods*, which aims to enact a unified procedure for licensing the import and export of specific goods and technologies; Presidential Edict 94 (2003) *On Measures Regulating Military and Technical Co-operation of the Republic of Belarus with Foreign States*, which lists the categories of military goods and services subject to export controls and defines the principles governing state policy in the field of military-technical co-operation; and Governmental Decree 522 (2002) *On Adopting the Regulation on the Transfer of Goods for Military Purpose through the Territory of the Republic of Belarus*, which defines the modalities of transfers of military goods through the customs border of the country.

⁹ *The Law on Firearms*, passed on 8 May 2003, includes provisions on arms export, import, and transit and rectifies the absence in the old legislation of any provisions governing the trade in arms.

¹⁰ In 2003 a Group of Governmental Experts made recommendations, later endorsed by UN Resolution 58/54, to expand the Register to include transfers of man-portable air defence systems (MANPADS) and artillery between 75 and 100 mm.

¹¹ This includes data submitted to the UN Register of Conventional Arms and to the OSCE, as part of the OSCE document on SALW (SIPRI 2007).

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Africa Peace Forum

Principled Action: Advancing Regional Implementation of Small Arms Transfer Controls in the Great Lakes Region and the Horn of Africa (The Nairobi Protocol States)

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Introduction

The Great Lakes and the Horn of Africa subregion comprises 11 states: Burundi, Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Somalia, Sudan, Tanzania, and Uganda, with a total population of over 290 million. The subregion has been characterized in the past 50 years by civil wars and violent interstate as well as intrastate conflicts involving Sudan, Somalia, Ethiopia, and Uganda, the worst affected. Political instability in Somalia following the October 1969 coup resulted in the collapse of state institutions nearly two decades later, with adverse security implications for Somalia's neighbours, Kenya and Ethiopia.

Conflicts in the subregion can be attributed to a number of factors, such as the arbitrary demarcation of boundaries during the colonial era that engendered animosity among states and encouraged the acquisition of arms to stake claims on 'lost territory'. Big Power rivalry also saw the introduction of large quantities of conventional arms, including small arms and light weapons, into the subregion to further ideological supremacy. It is important to note that conflicts in the subregion also have revolved around issues of governance, lack of accountability, extreme poverty due to mismanagement of available resources, corruption, poor economic performance, ethnicity, and politics of exclusion.

A common denominator in all the conflicts in the subregion, whether short-lived or protracted like the civil war in the Sudan, is small arms and light weapons (SALW). With the exception of the Ethiopia-Eritrea war in the mid-1990s, all conflicts in the subregion have been facilitated by the easy availability of SALW. However, evidence suggests that, even if accurate figures on imports of SALW in sub-Saharan Africa are not readily available and are notoriously incomplete when they exist, excessive importation of arms is not the norm in the subregion. It is extremely difficult to identify definite subregional import trends using customs data, even in countries like the Democratic Republic of Congo, Sudan, and Ethiopia, which maintain relatively large armies. At the same time, none of the countries in the subregion are significant manufacturers of small arms, except for Kenya, Uganda, and Tanzania, which have ammunition factories.

Arms move freely across the porous borders of the states, particularly from war-torn states like Somalia and Sudan into Kenya and from the DRC into Uganda, Tanzania, Rwanda, and Burundi. It is not uncommon for states to accuse each other of responsibility for the proliferation of illicit arms into their territories.

Objectives

This paper aims to:

- Review existing subregional agreements, particularly the Nairobi Declaration, Nairobi Protocol, and their Best Practice Guidelines, and examine how these advance regional implementation of small arms transfer controls;
- Address transfer control implementation and standards in the subregion, and the extent to which existing standards for small arms transfers meet the standards required by the legally binding Nairobi Protocol;
- Refer to existing regional commonalities or variances with the global principles of the proposed Arms Trade Treaty (ATT);
- Examine the role of civil society in the region in supporting the ATT; and
- Examine whether additional mechanisms and resources are needed.

This paper will also refer to National Focal Points (NFPs) established by States and to the National Action Plans (NAPs) for the Control and Management of Small Arms and Light Weapons. Operational in Kenya, Tanzania, and Uganda, they serve as commendable examples of functioning national mechanisms developed by governments with the participation of civil society organizations for the practical implementation of the regional agenda.

Regional Agreements and Progress on Transfer Controls

The Nairobi Declaration

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 signed on 15 March 2000 by Ministers for Foreign Affairs of 10 countries: Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Uganda, and Tanzania. The Nairobi Declaration was the first subregional initiative in war-ravaged Africa to recognize the menace of illicit small arms and light weapons and to comprehensively prescribe a sustainable means to address it.

The political declaration defines a framework for collaboration among States Parties for the promotion of human security and to “ensure that all States have in place adequate laws, regulations and administrative procedures to exercise effective control over the possession and transfer of small arms and light weapons.” The Declaration urges the source countries “to ensure that all manufacturers, traders, brokers, financiers, and transporters of small arms and light weapons are regulated through licensing.”

To implement the Declaration, States Parties agreed on a coordinated agenda for action and an implementation plan that called for the establishment of National Focal Points by each state “to deal with the problem of small arms and light weapons in all its aspects” in the subregion (Implementation Plan 2000, 1.2).

The States Parties also decided to:

- “Establish or enhance national databases and communication systems, and acquire specialised equipment for the monitoring and control of movement of small arms and light weapons within the country and across borders”;
- Cooperate and coordinate a regional agenda to “ensure long-term sustainable commitment towards the achievement of the objectives as enshrined in the Nairobi Declaration”;
- “Promote legal uniformity and minimum standards to govern the manufacture, possession, import, export, transfer, transit, transport and control of small arms and light weapons”;
- “Enhance the capacity of the state to control and account for arms in its possession by, inter alia, verifying their stock of small arms and light weapons,... ensur[ing] the safe storage... [as well as] strict accountability and effective control of all weapons owned by private security companies and dealers” (Implementation Plan 2000).

States Parties also agreed to “publicise their policies, regulations and laws relating to small arms and light weapons; enhance exchange of information and transparency in relation to national databases, ... [and] promote a culture of peace [by] undertak[ing] education and awareness raising programmes on the problem of illicit small arms ... [and] responsible management, storage and use of firearms.” The Ministers for Foreign Affairs recommended creation of a Regional Secretariat “to co-ordinate the regional agenda for action” (Implementation Plan 2000). The Nairobi Secretariat, established in 2002, has since been upgraded to a Regional Center on Small Arms (RECSA).

The Nairobi Protocol

Whereas the Nairobi Declaration was an expression of political will of the 10 states, the Nairobi Protocol, signed by 11 states (including Seychelles) in June 2004 is a legally binding agreement whose primary objective is the prevention, control, and reduction of the proliferation of small arms and light weapons in the subregion. The Protocol came into force in May 2006 after ratification by eight members — Burundi, DRC, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, and Uganda. Yet to ratify the Protocol are Seychelles, Sudan, and Tanzania. Somalia signed the Nairobi Declaration but has yet to sign the Protocol.

The other objectives of the Protocol (2004, Art. 2) are to:

- “prevent the excessive and destabilising accumulation of small arms and light weapons in the sub-region”;
- “promote and facilitate information sharing and cooperation between the governments in the sub-region, as well as between governments, inter-governmental organisations and civil society, in all matters relating to the illicit trafficking and proliferation of small arms and light weapons”;
- “promote cooperation at the sub-regional level as well as in international fora to effectively combat the small arms and light weapons problem, in collaboration with relevant partners”; and
- “encourage accountability, law enforcement and efficient control and management of small arms and light weapons held by States Parties and civilians.”

Best Practice Guidelines

RECSA, in collaboration with civil society partners and National Focal Point Coordinators, held a series of workshops between September 2004 and April 2005 on Best Practice Guidelines on SALW as defined by the Nairobi Declaration and Nairobi Protocol. The outcome document represents the most progressive and detailed set of guidelines on arms transfer controls that have been agreed at State level to date.

The Third Ministerial Review Conference held in Nairobi in June 2005 approved the document. The Executive Secretary of RECSA formally presented the Guidelines to the Chair of the Second Biennial Meeting of States in New York in July 2005.

The Best Practice Guidelines (2005) cover, in an elaborate and detailed manner, five major areas:

- Stockpile Management, Record Keeping, Marking, Collection, and Disposal;
- Import, Export, Transfer, and Transit of Small Arms and Light Weapons;
- Tracing and Brokering;
- Public Awareness Raising and Public Education; and
- Legislative Measures, Operational Capacity, and Mutual Legal Assistance.

Chapter 2, “Import, Export, Transfer and Transit of SALW,” is of particular interest as it spells out in detail the set of guidelines to be used to develop compatible transfer controls, based on Articles 10, 11, and 16 of the Nairobi Protocol. These refer to:

- The institutional roles of RECSA (“co-ordinator and sub-regional clearing house, fostering transparency and the exchange of information” [p. 22]) and National Focal Points (“responsible for monitoring the ratification, the implementation, the execution and evaluation of this protocol at the national level, in liaison with law enforcement agencies, and ensuring adherence to the standards set out therein and informing Secretariat on a regular basis of progress” [p. 22]) as implementing agencies at regional and national levels;
- A licensing requirement, based on Article 10 of Nairobi Protocol, calling on each state “to establish and maintain an effective system of export, import and transit licensing or authorisation, for the transfer of small arms and light weapons” (p. 22);
- A “clear and uncomplicated” procedure for applying for a licence and for issuing a licence (p. 23);
- “Revocation, suspension and withdrawal of licences” if “false information has been supplied in order to obtain the licence/permit,” “details contained in the licence have changed,” there has been “entry into force of an arms embargo,” “the situation in the recipient country has changed significantly,” “one of the parties included in the transaction has been charged with an offence, which impacts on their suitability to conduct such a transaction,” “one of the parties has been declared bankrupt or insolvent,” or “there is increased risk of divergence” (p. 23);
- End-user certificates, as required by Article 12 of the UN Programme of Action;
- Record keeping, “in a uniform manner,” for 25 years by governments and 10 years by industry (p. 24); and

- “Information exchange and oversight,” as stipulated in Article 16 of the Nairobi Protocol, in which “member States undertake to develop measures in support of transparency, information exchange...between licensing authorities and customs authorities,... [and standardization of] all relevant laws, regulations, procedures and documentation, relative to import, export and transit” (p. 24).

By approving the Best Practice Guidelines, Ministers adopted its provisions and agreed to their implementation by States Parties.

The arms transfer criteria of section 2.2.3 of the Guidelines clearly follow the six global principles of the proposed ATT (see below). In addition, states are urged to take into account the recipient’s record on compliance with end-use undertakings and diversion, stockpile management and security procedures, ability and willingness to protect SALW against unauthorized transfers, loss and theft. As well, States Parties must not authorize transfers if the arms have not been marked according to requirements under the Nairobi Protocol.

Regional Commonalities and Similarities with Global Principles for Arms Transfers

It is important to note that, whereas the proposed Arms Trade Treaty (ATT) seeks to address the international transfer of conventional arms, the existing subregional instruments under consideration in this survey; the Nairobi Declaration, the Nairobi Protocol, and the Best Practice Guidelines were developed to address the specific problem of proliferation of illicit small arms and light weapons in the Great Lakes region and the Horn of Africa.

It is a daunting task, therefore, to address in tandem other arrangements dealing with arms control and transfer, such as the UN Programme of Action and the Arms Trade Treaty, as well as the six Global Principles. These global instruments are referred to in this paper as benchmarks for the purpose of drawing similarities, commonalities, and/or variances with the above three subregional instruments. References to the Nairobi Protocol are numerous because it is the anchor for the subregion. The successful implementation of all other instruments depends, to a great extent, on the adherence of Member States to the provisions of the Protocol. This cross-referencing will also serve to highlight the shortcomings of the Protocol and thus underline the need for States Parties to strengthen it.

Principle 1: Responsibilities of states

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

The Nairobi Protocol does not define “transfer” but mentions it in its definition of “illicit trafficking” as “the import, export, acquisition, sale, delivery, movement or **transfer** of small arms and light weapons from or across the territory of one State Party to that of another

State Party if any one of the State Parties concerned does not authorise it in accordance with the terms of this Protocol or if the small arms and light weapons are not marked in accordance with Article 7 of this Protocol” (Art. 1).

Article 10 of the Nairobi Protocol (“Import, Export, Transfer and Transit of Small Arms and Light Weapons”), elaborates on steps required of each state party, particularly in establishing and maintaining an “effective system of export and import licensing or authorisation, as well as of measures on international transit, for the transfer of small arms and light weapons.”

As stated earlier, this Article resonates with Chapter 2 of the Best Practice Guidelines and stipulates that:

- (a) Each State Party shall establish and maintain an effective system of export and import licensing or authorisation , as well as of measures on international transit, for the transfer of small arms and light weapons.
- (b) Before issuing export licenses or authorisations for shipments of small arms and light weapons, each State Party shall verify:
 - (i) that the importing States have issued import licenses or authorizations;
 - and
 - (ii) that, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, the States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit.
- (c) The export and import licence or authorisation and accompanying documentation together shall contain information that, at a minimum, shall include the place and the date of issuance, the date of expiration, the country of export, the country of import, the final recipient, a description and the quantity of small arms and light weapons and, whenever there is transit, the countries of transit. The information contained in the import licence must be provided in advance to the transit States.
- (d) The importing State Party shall inform the exporting State Party of the receipt of the dispatched shipment of small arms and light weapons.
- (e) Each State Party shall, within available means, take such measures as may be necessary to ensure that licensing or authorisation procedures are secure and that the authenticity of licensing or authorisation documents can be verified or validated.
- (f) States Parties may adopt simplified procedures for the temporary import and export and the transit of small arms and light weapons for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

Principle 2: Express limitations

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

The Nairobi Protocol does not refer to express limitations under Article 10, but to export/import licencing procedures and information to be included in the documentation. The Best Practice Guidelines are more explicit in Section 2.2.3 – Arms transfer criteria:

State Parties shall not authorise transfers which would violate their direct obligations under international law, including:

Obligations under the Charter of the United Nations – including

- (i) decisions of the Security Council such as those imposing arms embargoes
- (ii) the prohibition on the use or threat of force
- (iii) the prohibition on intervention in the internal affairs of another State
- (iv) Any other treaty or legal obligations, to which a State is bound, including binding decisions, including embargoes, adopted by relevant international, regional and sub-regional bodies, such as the African Union Peace and Security Council
- (v) Prohibitions on arms transfers, that arise in particular treaties which a State is party to, such as:
 - 1980 Convention on the Use of Certain Conventional Weapons, Which May Be Considered Excessively Injurious, including its protocols
- (vi) Universally accepted principles of international humanitarian law: Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering
- (vii) Prohibition on weapons that are incapable of distinguishing between combatants and civilians.

Principle 3: Limitations based on use or likely use

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

This Principle also is in line with Section 2.2.3 of the Best Practice Guidelines;

State Parties shall not authorize transfers which are likely to be used:

- (i) for the violation or suppression of human and peoples' rights and freedoms, or for the purpose of oppression;
- (ii) for the commission of serious violations of international humanitarian law;
- (iii) in acts of aggression against another State or population, threatening the national security or territorial integrity of another State or threatening compliance with international law, governing the conduct of armed conflict;
- (iv) to worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts or aggravating existing tensions;
- (v) to carry out terrorist acts or support or encourage terrorism;

- (vi) other than for the legitimate defence and security needs of the recipient country.

Principle 4: Factors to be taken into account

States shall take into account other factors, including the likely use of the arms or ammunition, before authorising an arms transfer.

Once again, the Nairobi Protocol is silent on this subject, despite the fact that the Nairobi Declaration specifically makes reference to the role of SALW in fuelling acts of terrorism, in facilitating the commission of violent or organized crime, in affecting regional security or stability, and in adversely affecting sustainable development. Article 10 of the Protocol addresses mostly procedural issues pertaining to the issue of import/export licences. Perhaps this important Article needs to be aligned with Chapter 2 of the Best Practice Guidelines to strengthen it. The Guidelines themselves are explicit:

State Parties shall take into account other factors, before authorizing an arms transfer. States should not authorize the transfer if it is likely to:

- (i) be used for or to facilitate the commission of violent crimes;
- (ii) in the commission of serious violations of international humanitarian law, applicable in international or non-international armed conflict;
- (iii) in the commission of genocide or crimes against humanity;
- (iv) in acts of aggression against another State or population, threatening the national security or territorial integrity of another State;
- (v) adversely affect regional security; to endanger peace, introduce destabilizing accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability;
- (vi) adversely affect sustainable development, through the excessive or unjustifiable diversion of resources from social expenditure, to military expenditure;
- (vii) involve corrupt practices at any stage – from the supplier, through any middlemen or brokers, to the recipient;
- (viii) contravene other international, regional or sub-regional commitments or decisions made, or agreements on non proliferation, arms control and disarmament.

Principle 5: Transparency

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

Article 16 of the Nairobi Protocol — “Transparency, Information Exchange and Harmonisation” — is less than comprehensive. Emphasis is placed on encouraging “the exchange of information among law enforcement agencies on criminal groups and their associates,” and also on the establishment of “a sub-regional system to facilitate intelligence exchange on small arms and light weapons violations and trafficking.”

This looks like a serious omission and deviation from the Implementation Plan wherein States Parties agree to:

- 6.1 Publicise their policies, regulations and laws relating to small arms and light weapons.
- 6.2 Enhance exchange of information and transparency in relation to national databases.

Article 16 does stipulate that States Parties are required to “develop and improve transparency in small arms and light weapons accumulations, flows and policies relating to civilian-owned small arms and light weapons, including serious consideration to the development of a sub-regional small arms and light weapons register on civilian possession.” However, there is no mention of the submission of comprehensive national reports to an international registry as stipulated in Global Principle 5.

Principle 6: Comprehensive controls

States shall establish common standards for specific mechanisms to control:

- A All import and export of arms and ammunition;
- B Arms and ammunition brokering activities;
- C Transfers of arms and ammunition production capacity; and
- D The transit and trans-shipment of arms and ammunition.

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

Article 6 of the Nairobi Protocol — “Control and Accountability of State-owned Small Arms and Light Weapons” conforms to Principle 6 above, and is also amply elaborated in Chapter 1 of the Best Practice Guidelines — “Stockpile Management, Record Keeping, Marking, Collection and Disposal.” In both cases, States Parties agree to undertake to “establish and maintain complete national inventories of small arms and light weapons held by security forces and other state bodies, to enhance their capacity to manage and maintain secure storage of state-owned small arms and light weapons”; and “ensure strict national accountability and the effective tracing of all small arms and light weapons owned and distributed by the state.”

Article 11 of the Nairobi Protocol, “Dealers, Brokers and Brokering,” requests: “State Parties, that have not yet done so, shall establish a national system for regulating dealers and brokers of small arms and light weapons. Such a system of control shall include:

- (i) regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing;
- (ii) registering all brokers operating within their territory;

- (iii) ensuring that all registered brokers seek and obtain authorisation for each individual transaction taking place;
- (iv) ensuring that all brokering transactions provide full disclosure on import and export licenses or authorisation and accompanying documents of the names and locations of all brokers involved in the transaction; and
- (v) licensing, registering and checking regularly and randomly all independent manufacturers, dealers, traders and brokers.

Progress towards Global Principles — The Nairobi Conference

The Nairobi Conference of 20-21 April 2006 was convened with the UN Review Conference of July 2006 in mind.¹ Its aim was to develop a non-paper to assist in advancing negotiations on agreed minimum common guidelines for the transfer of small arms and light weapons. The final conference document can be found at the end of this paper.

Kenya presented the text of the outcome document at the Extraordinary Meeting of Nairobi Declaration/Nairobi Protocol Ministerial Meeting in Addis Ababa, Ethiopia, convened two days after the Conference. Ministers endorsed the text and called upon the international community to develop common guidelines on SALW transfers.

The guidelines that emerged from consultations were a reflection of the participating countries' understanding of existing commitments under international law and their support for the purposes and principles enshrined in the Charter of the United Nations, including the right to self-defence, the sovereign equality of States, territorial integrity, the peaceful resolution of international disputes, non-intervention and non-interference in the internal affairs of States, and the right to self-determination.

It was a positive and important step forward when participants agreed to recommend the text of the outcome document to their capitals, and to secure inclusion of the language on applying global guidelines for national controls governing transfer of small arms and light weapons in the draft outcome document of the 2006 UN Programme of Action Review Conference. The express objective of this approach was to sustain negotiations at the Review Conference based on the draft text in order to achieve a consensus on the outcome document at the July Conference. Unfortunately, disagreement among states ensured no final agreed text emerged from the conference.

However, Kenya, one of the key states championing the ATT, joined Argentina, Australia, Costa Rica, Finland, Japan, and the UK in June 2006 in co-authoring a draft resolution adopted by an overwhelming vote in the First Committee in October and later by the General Assembly in December 2006 on the ATT.

Eight of the 11 Nairobi Protocol Member States (Burundi, DRC, Djibouti, Eritrea, Ethiopia, Kenya, Tanzania, and Uganda) voted in favour of Resolution 61/89 in the General Assembly and made strong statements of support for the ATT in their interventions. Sudan

abstained while Seychelles and Somalia did not participate in the vote. Seven of the eight NP countries voting in favour, with the exception of DRC, co-sponsored the resolution.

Strengthening Small Arms Control in the Subregion

In 2004 audits of small arms control legislation were undertaken in 10 of the 12 countries in the sub-region — Burundi, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Sudan, Tanzania, and Uganda. All countries have some national legislative controls on transfers (Flew & Urquhart 2004). A number of the audited countries are now in the process of updating legislation in an attempt to create harmonization in the region.

The Nairobi Protocol requires the establishment of National Focal Points and, eventually, National Action Plans to address the problem of small arms at the national level. To date, only Tanzania, Uganda, and Kenya have developed national action plans; Tanzania is currently in its fifth year of implementation. An important provision was the involvement of civil society in all aspects of addressing the problem.

Progress is slow. RECSA, which has the mandate to coordinate with National Focal Points, is doing its best to solicit help for the other eight (minus Somalia), which claim to have established NFPs but not yet developed their NAPs.

One of the biggest challenges that Nairobi Declaration/Protocol countries face is lack of capacity — for both the governmental agencies tasked with the establishment of NFPs and for NGOs — to sufficiently articulate the importance of existing instruments. Civil society, in particular, needs assistance in unpacking the various instruments to make them available at the grassroots level in a simplified, user-friendly version.

The states that have not yet established viable NFPs and will, therefore, find it extremely difficult to operationalise their NAPs, are in particular need. Without outside assistance they could impede implementation of the Nairobi Protocol and possibly slow down the adoption and domestication of the Best Practice Guidelines. The Regional Secretariat describes other challenges to the implementation of the existing instruments:

- Low operational capacity and lack of resources exist both at RECSA and the NFPs. Successful mapping exercises have been carried out only in Tanzania, Uganda, and Kenya. Consequently, reliable information on the extent, effects, and dynamics of the proliferation of illicit SALW in the subregion is not readily available.
- A shortage of adequate information and communications technology among member states has hampered the exchange of information on trade, smuggling, and trafficking trends within and across borders.
- The geographical vastness of the subregion; ongoing conflicts; cultural, linguistic, and social diversity among groups within the subregion have imposed limitations on educating the public.
- Good governance is lacking.

- Cultural, economic, political, and territorial diversity have also hampered RECSA's efforts and attempts at collaborating with research institutions as well as individual researchers in all member states.

As noted above, the Implementation Plan calls on States Parties to “establish or enhance national databases and communication systems, and acquire specialised equipment for the monitoring and control of movement of small arms and light weapons within the country and across borders.” The first two challenges mentioned above apply here, since there is no evidence that communication systems and specialised equipment for the monitoring and control of movement of SALW exist in any country.

Conclusion

The political declaration of March 2000 has been translated into a legally binding Protocol and reinforced by Best Practice Guidelines and a strong Regional Centre on Small Arms. However, weaknesses are evident in certain member states which, due to internal constraints, have not provided an enabling environment in which civil society can engage meaningfully in arms control measures. Countries like Kenya, Uganda, and Tanzania have made progress because of close working relationships with NGOs and other civil society organizations engaged in peacebuilding and conflict resolution. This is particularly so in Kenya where the government shares arms information with civil society, and includes NGOs in its delegation to small arms meetings.

One would say that additional mechanisms are not a priority of the subregion. It appears that a need remains to revisit the Nairobi Protocol and harmonize relevant Articles with the Best Practice Guidelines. One may conclude that the standards for small arms transfer outlined in the BPG are far more advanced than those which exist in the Protocol. It is evident that states in the subregion have embarked on, and are committed to, the implementation of comprehensive guidelines on transfer controls that are in line with the concept of an ATT and global arms transfer principles. However, a majority of them need motivation, even in the face of the obvious problems.

Note

¹ The Nairobi Conference of April 2006 was attended by representatives of the governments of Austria, Canada, Costa Rica, Finland, Ireland, Kenya, Mali, Mexico, New Zealand, Nigeria, and the United Kingdom as well as representatives of international and local civil society organizations.

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Appendix

Nairobi Conference on Transfer Controls, 20/21 April 2006

Suggested global guidelines for national controls governing transfers of small arms and light weapons

The guidelines contained in this document reflect our existing commitments under international law and support the purposes and principles enshrined in the Charter of the United Nations, including the right to self-defence, the sovereign equality of States, territorial integrity, the peaceful resolution of international disputes, non-intervention and non-interference in the internal affairs of States, and the right to self-determination.

Recalling that the UN Programme of Action requires that States assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons, and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into illicit trade. (*para II.11*)

Recalling also that the UN Programme of Action requires that States establish or maintain an effective national system of export and import licensing or authorisation, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons. (*para II.11*)

Adhering, where applicable, to obligations under the UN Firearms Protocol and taking into account the obligations in The International Instrument to Enable States to Identify and Trace in a Timely and Reliable Manner Illicit SALW;

Recognising the importance of the role played by Regional and Sub-Regional processes in developing common understandings on transfer controls, and noting the similarities in key principles between regional approaches.

Recognising also that global guidelines would make a fundamental contribution to national decision-making processes by helping to avoid cross- regional inconsistencies and by including states outside the geographical scope of existing regional processes.

Emphasising that effective control of legal transfers of SALW is an essential component of efforts to prevent, combat and eradicate illicit SALW trafficking in all its aspects, since many SALW enter illicit circulation or use through diversion from legal transfers and since SALW that have been transferred legally can be misused.

Reaffirming our commitment to strengthening national controls on SALW transfers in accordance with the UN Programme of Action in particular ensuring effective licensing, end use control, safe storage, marking and record keeping and information exchange by relevant national authorities of all countries involved in any SALW transfer to prevent diversion of SALW to unauthorised end- users.

Recognising the need for enhanced cooperation and assistance to strengthen the capacity of states to effectively develop and implement the UN Programme of Action including SALW transfer controls.

Section 1

We will only authorise SALW transfers with the official approval of all states directly concerned (including the exporting, importing, transit and transshipment states) in accordance with relevant and adequate national laws, regulations and administrative procedures to control SALW transfers and brokering activities.

We will not authorise international transfers of SALW where there is a clear risk that the transfer in question is likely to violate our obligations under:

- a) international law, such as the Charter of the UN, including the prohibition on the threat or use of force and the non-intervention and non-interference in the internal affairs of States;
- b) any other treaty or legal obligations by which we are bound;
- c) arms embargoes of the UNSC, or other multilateral embargoes to which we adhere;
- d) prohibitions on SALW transfers that arise in particular treaties to which we are parties, including for example, the Convention on Certain Conventional Weapons and its Protocols;
- e) universally accepted principles of international humanitarian law.

Section 2

We will not authorise international transfers of SALW which are likely to be used:

- a) to commit grave or persistent violations of human rights or fundamental freedoms;
- b) to commit grave breaches of international humanitarian law;
- c) to commit acts of genocide or crimes against humanity;
- d) to contravene bilateral or multilateral commitments on non-proliferation, small arms or other arms control and disarmament agreements to which we adhere;
- e) to support or encourage terrorist acts or to facilitate the commission of organised or violent crime.

Section 3

In considering proposed transfers of SALW, we will take into account:

- a) The requirements of the State to enable it to exercise its inherent right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
- b) The requirements of the State to meet its legitimate self-defence and security needs, and to enable it to participate in peacekeeping operations in accordance with the Charter of the United Nations or relevant regional organisations with a peacekeeping mandate;

- c) The internal and regional situation in and around the recipient country in the light of existing tensions or armed conflicts;
- d) The requirement not to transfer SALW that have not been adequately marked in accordance with the international instrument on marking and tracing;
- e) The risk of diversion or re-export in conditions incompatible with these guidelines;
- f) State's efforts to prevent corruption and bribery in connection with the transfer of SALW;
- g) State's adherence to these guidelines.

Section 4

We undertake to:

- a) Ensure that all transfers of SALW are subject to effective national licensing or authorisation procedures in order to prevent their diversion to any party other than the declared end-user;
- b) Make every effort, in accordance with national laws and practices, without prejudice to the right of States to re-export SALW that they have previously imported, to notify the original exporting States, in accordance with their bilateral agreements, before the retransfer of those weapons;
- c) Ensure that, in accordance with Article 26 of the Charter of the United Nations, we take into account the nature and cost of the arms to be transferred in relation to legitimate security and defence needs and the principle of the least diversion of human and economic resources and armaments;
- d) Exchange information and review progress relating to the implementation of these guidelines.

Agreed in Nairobi on 21 April 2006



Small Arms and Light Weapons Transfer Controls in South Asia

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Introduction

In South Asia it is very difficult to assess either the scale and nature of conventional arms transfers, or the scope and efficacy of arms transfer controls. There are many reasons for this, not least the very real lack of information publicly available at the national level in all countries of the region, as well as the almost complete absence of any initiative at the regional level, which in other parts of the world appears to be closely linked with national progress.¹ Using the information that is publicly accessible, and drawing on interviews conducted by its authors, this paper aims to outline the current situation regarding arms transfer controls in South Asia as a contribution to increased public dialogue and discussion on the issue.

Whilst most official information relating to transfers of conventional arms and ammunition (including SALW) remains out of the public realm, the human impact of conflicts and armed violence, which are both a cause and an effect of arms proliferation, is well documented. All states in South Asia face significant challenges relating to proliferation and misuse, with problems often cutting across borders and national jurisdictions. For example, instances of armed conflict recently experienced in India, Pakistan, Nepal, and Sri Lanka have generated high levels of official arms imports (from the region and beyond) to supply government forces, and driven the illicit transfer of weapons for use by opposition armed groups. In both cases the human impact of conflict has been significant and the challenges daunting.

More specifically, in Sri Lanka the war fought between Government forces and the Liberation Tigers of Tamil Eelam (LTTE) has resulted in the deaths of more than 65,000 people, internal displacement of 1,000,000, and fleeing abroad of many thousands (Gov't of Sri Lanka 2005, p. 219). Despite a ceasefire agreement in 2002, substantive peace talks have stalled and an upsurge in violence since the end of 2005 has inflamed relations between the conflicting groups and led to serious violations of the ceasefire agreement on both sides. Despite commitments from the Government of Sri Lanka to address SALW proliferation, arms have fuelled and intensified the violence and provided a means to intimidate non-combatants.

In Nepal, the 10-year conflict was brought to a close in November 2006 with the signing of the Comprehensive Peace Agreement (Gov't of Nepal 2006). This conflict between Maoist rebels and government forces had claimed the lives of approximately 13,000 people (FCO 2007). Relations between the government and the rebels remain productive. Combatants from the People's Liberation Army have submitted around 3,000 arms and associated ammunition to secure storage and interned themselves in cantonments. The government has reciprocated by keeping its armed forces confined to their barracks, and by securing an equal number of weapons. Yet the country continues to face serious and long-term developmental and social problems that must be tackled to avoid a return to conflict. In the Terai region,

for example, irrespective of the commitments made between the Government of Nepal and the Maoists, communal violence and organized strikes by Madhesi protestors demanding greater political autonomy continue to devalue peace and stability.

In Bangladesh, the causes and impact of arms proliferation are different. Rather than catalyzing violent conflict, SALW have contributed to increased instances of violent crime and political intimidation. In addition, the domestic failure to address the availability of SALW and improvised explosive devices has had an impact on South Asia as a whole; the perceived decline in law and order in the country over recent years has resulted in its being viewed as a relatively safe haven for armed groups operating in neighbouring countries and as a primary trafficking route of SALW into the wider region (*Daily Star* 2006).

Notwithstanding the destructive nature of conflict and tension in Bangladesh, Sri Lanka, and Nepal, relations between the two major regional powers are likely to have contributed most significantly to increases in weapons procurement and proliferation within South Asia. Despite current progress in the ongoing peace process, India and Pakistan have been embroiled in sporadic hostilities for over half a century; with the dispute over the territory of Jammu and Kashmir providing a catalyst for two of the three wars between the countries.² The resulting tension has effectively crippled political and security cooperation in South Asia, significantly on issues relating to security, including the regulation of international transfers of convention weapons and ammunition (and specifically SALW).

However, while there is substantial information on the impact of SALW proliferation in South Asia, data relating to production, procurement, and transfers is very difficult to access. This in itself indicates the sensitivity of the issue, and illustrates the scale of conflict, tension, and distrust that is manifested across the region.

The records that are publicly available indicate that the primary recipients of conventional weapons in South Asia are India and Pakistan. Between 1976 and 2005, the two countries imported arms worth \$55,869-million and \$16,344-million respectively (SIPRI 2007). These imports, combined with domestic production, have helped India to accumulate a military SALW arsenal estimated at approximately 6,300,000 weapons; and Pakistan 2,900,000 weapons (Small Arms Survey 2006, p. 57).

This paper provides an overview of existing arms transfer controls at the regional and multilateral levels, discusses the role of South Asian states in international initiatives, and assesses existing policy and practice at the national level. It then discusses the transparency and accountability of transfer control decision-making and concludes with an outline of engagement to date by civil society groups on this issue.

Progress at the Regional and Multilateral Levels

To date there has been no discernable progress towards agreeing controls on conventional arms transfers at a regional level in South Asia. In part this is because of enduring tensions between and within states, but it is also due to limitations in the scope and capacity of the sole regional forum, the South Asian Association for Regional Cooperation (SAARC). SAARC is primarily a trade organization, and is therefore not directly invested with a

mandate on security.³ However, in 2004 the member states of SAARC illustrated that when there is a willingness to address mutual concerns regional dialogue can be extended to include issues pertinent to peace and security. Through the ratification of the Additional Protocol to the SAARC Convention on Suppression of Terrorism (2004), the Heads of State and Government adopted measures designed to empower greater unity and commitment to counter subregional terrorist activities.

The objective of this protocol is to increase dialogue among law enforcement authorities and enable greater technical cooperation and information exchange. In Article 10 it is stated that:

State Parties, consistent with their respective domestic legal and administrative regimes shall promote co-operation and the exchange of information in order to improve... customs control measures to detect and prevent the international movement of terrorists and ...trafficking in arms... or other materials for terrorist activity.

This Protocol is potentially of significant interest to those supporting the development of regional cooperation on arms transfer control issues. Experience of the development of relevant and comprehensive regional initiatives in other parts of the world suggests that initial cooperation and information-exchange agreements among law enforcement agencies in different countries can be a vital first step in regulating the movement of all arms and ammunition.

In the case of both the Horn and Great Lakes of Africa and the Southern African Development Community, political progress was preceded by cooperation between regional and national law enforcement agencies: the East African Police Chiefs Cooperation Organisation and the Southern Africa Police Chiefs Coordination Organisation, respectively. A review by States in South Asia of progress in implementing the 2004 Additional Protocol may well provide an opportunity to discuss cooperation to address transfers of weapons that contribute to terrorism and breaches of international commitments and obligations.

Aside from the formal discussions and commitments aimed at combating terrorism, there has been only limited success in developing dialogue on the issue of SALW transfer controls. Those events that have either been planned or that have taken place tend to have been supported by parties from outside the region, and when they have taken place at all there has not been high-level representation from all states in the region. For example, a workshop on SALW in Bangladesh commissioned by the Government of Canada in 2002 was cancelled. In 2005 the governments of Sri Lanka and the United Kingdom hosted a meeting on international transfer controls as part of the Transfer Controls Initiative, which was intended to support the elaboration of the UN Programme of Action on SALW, but which failed to attract senior representation from Pakistan.

At the more informal level, the Biting the Bullet Project⁴ organized a meeting of the Consultative Group Process in 2004 in Colombo in partnership with the Government of Sri Lanka to discuss options for addressing SALW transfer controls and controls on transfers to non-state actors as part of the development of the UN PoA. Although this meeting featured contributions from South Asian states, it did not focus substantively on transfer controls in a South Asian context.

States from South Asia have actively participated in discussions with states from South East Asia on international SALW transfer control issues. In May 2006, for example, the UN Regional Centre for Peace and Disarmament in Asia and the Pacific, in cooperation with the United Nations Development Programme and the Governments of Canada, Japan, and Thailand, convened a workshop entitled *Towards the Review Conference on the Implementation of the UN Programme of Action (PoA)*. During the event members from SAARC came together to discuss the concept of international guidelines for national decisions on SALW transfer controls and to evaluate implementation of the PoA.

After plenary seminars with members from the Association of Southeast Asian Nations (ASEAN), a Working Group Session with representatives from Bangladesh, Bhutan, Maldives, Nepal, Pakistan, and Sri Lanka met to formulate recommendations for a non-paper that was to be circulated during the PoA Review Conference (UN 2006). However, the meeting failed to acknowledge many of the challenges that the region faces and to identify any crucial steps for strengthening regional cooperation. Coupled with the absence of India from the workshop, this significantly reduced the likelihood of any forward momentum.

Commonwealth Heads of Government Declaration

Despite the disappointing progress at the regional level, in 2005 all states except Bhutan and Nepal (which are not Commonwealth members) gave their support to a very significant commitment to common arms transfer standards. During the 2005 Commonwealth Heads of Government Meeting (CHOGM), all parties, including Bangladesh, India, the Maldives, Pakistan and Sri Lanka, endorsed a final statement that expressed “their deep concern over the illicit production, illegal trade and uncontrolled availability of small arms and light weapons, which prolong conflict, increase levels of armed violence and undermine development” and “urged all member states to support the strengthening of the UN Programme of Action on Small Arms and Light Weapons” (para 39). They also “noted the proposal for the development of common international standards for the trade in all conventional weapons and added their support to calls for work on such a treaty to commence at the UN” (para 41).

In a region such as South Asia, where a combination of historic and current tensions effectively precludes much chance of progress at the regional level, this commitment is of added importance. Taken in the context of other progressive contributions made by individual states in international fora, it suggests that progress at the international level may be possible.

International Initiatives

South Asian countries have engaged in international discussions on a range of initiatives and agreements that cover aspects of arms transfer control. In addition to the wide range of international instruments, including international treaties, declarations and resolutions of the United Nations which reflect both customary and treaty law, South Asian states are committed to the following specific conventional arms control arrangements:

Table 1: Conventional weapons agreements/declarations/treaties relevant to the countries of South Asia

Agreement/declaration/treaty	Year	South Asian Country
UN guidelines for Conventional Arms Transfers	1996	All countries
Mine Ban Treaty	1997 ⁵	Bangladesh, Bhutan, Maldives ⁶
UN Firearms Protocol	2001 ⁷	India ⁸
UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects	2001	All countries
UN International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons	2005	All countries

UN guidelines on international arms transfers

As members of the United Nations, all countries of South Asia are politically bound by the guidelines for international arms transfers that were endorsed by the UN General Assembly in its resolution 51/47 B of 10 December 1996. According to these guidelines, “limitations on arms transfers can be found in international treaties, binding decisions adopted by the Security Council under Chapter VII of the Charter of the United Nations and the principles and purposes of the Charter” (Paragraph 8). Moreover, the activity of “illicit arms trafficking is understood to cover that international trade in conventional arms, which is contrary to the laws of States and/or international law” (Paragraph 7). To give effect to such international obligations, the guidelines call upon all states to “establish and maintain an effective system of export and import licences for international arms transfers with requirements for full supporting documentation” (Paragraph 26) and urge that, “in order to help combat illicit arms trafficking, States should make efforts to develop and enhance the application of compatible standards in their legislative and administrative procedures for regulating the export and import of arms” (Paragraph 36).

UN Programme of Action on SALW

All South Asian states participated in the process that led to the agreement in 2001 of the UN Programme of Action (PoA). In addition, the majority — Bangladesh, India, Pakistan, Nepal, and Sri Lanka — delivered national statements on progress towards implementation of the PoA variously to the 2003 and 2005 Biennial Meetings of States and the 2006 PoA Review Conference.

Furthermore, certain states have also been significantly involved in aspects of the development, implementation, and review of the PoA. For instance, in 2002, following the decision to develop an international instrument on marking and tracing SALW, India, through Ambassador Rakesh Sood, serving as Chair of the Group of Governmental Experts on Tracing Illicit Small Arms and Light Weapons, and supported by the Government of Pakistan, led UN discussions that contributed to the agreement on 8 December 2005 of the *UN Instrument to Enable States to Identify and Trace, in a Timely Reliable Manner, Illicit Small Arms and Light Weapons*. Despite this positive engagement, the final outcome was very disappointing to the large majority of states, including India, which had advocated for a legally binding instrument that covered SALW ammunition as well as SALW (the final agreement is not legally binding and ammunition falls outside its scope). In addition, Prasad Kariyawasam, the Permanent Representative of Sri Lanka to the United Nations in New York, presided over the 2006 UN PoA Review Conference.

In other areas of PoA development and implementation, such as the development of global guidelines for national decision-making on SALW transfers, there has been less positive engagement from South Asian states. The PoA requires states

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

In the period between the agreement of the PoA in 2001 and the 2006 Review Conference, debate on the development of international guidelines for SALW transfers continued. By June 2006, there was some optimism that a substantive outcome from the Review Conference would elaborate the existing relevant PoA commitments (specifically those contained in Sections 2:11 and 12), and result in the adoption of global guidelines for SALW transfers. However, ultimately a failure to agree to any form of substantive outcome document dashed the ambitions of a large majority of states, many of which had worked hard since 2001 to develop more effective national and regional control and had participated in a range of informal processes in the intervening years to build consensus. South Asian states including India and Pakistan played leading roles in opposing progress in this area during the Review Conference.

Towards an arms trade treaty

On 7 December 2006 the United Nations General Assembly voted overwhelmingly in favour of Resolution 61/89—*Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms*. The resolution represents a significant first step toward establishing common international standards on conventional arms transfers, and requests that the UN Secretary-General

1) ...seek the views of member states on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, and...submit a report on the subject to the General Assembly at its sixty-second session [2007];

and

2) ...establish a group of governmental experts...commencing in 2008....to examine the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms, and...transmit the report of the group of experts to the General Assembly for consideration at its sixty-third session.

In a departure from the consensus-based method of decision-making used during the PoA process, the arms trade treaty resolution was adopted following a vote in the General Assembly. Of those states present, 153 voted in favour, 24 abstained, and one voted against. During debates as well as in the final vote, South Asian states were split in their support for the resolution, with Bangladesh, Bhutan, Maldives, and Sri Lanka supporting its adoption and India, Nepal, and Pakistan abstaining. Despite the very positive positions taken by the Governments of Sri Lanka and Bangladesh in particular, the abstention of India and Pakistan, both leading members of the Commonwealth, disappointed progressive Governments and civil society groups alike.

However, the final vote was in many ways unsurprising as it represented an expression of the positions that both India and Pakistan had taken during the negotiations prior to the vote, and reflected long held views that had been articulated frequently since at least 2001. During the negotiations on the resolution, India protested at the inclusion of the provision for a group of governmental experts, apparently on procedural grounds, as it maintained that the request prejudged the outcome of the report to be submitted by the Secretary-General to the General Assembly in 2007. In addition, concerns were voiced over the risk of eroding existing international obligations by pursuing an instrument that would be the result of compromise.⁹

Subregional insecurity and strategic concerns are likely to play important roles in the positions taken by both India and Pakistan. Although Resolution 61/89 clearly reaffirms the inherent right of all states to self-defence under Article 51 of the Charter, and acknowledges the right “of all States to manufacture, import, export, transfer and retain conventional arms for self-defence and security needs,” both India and Pakistan appear unconvinced that a treaty would not impinge on their ability to procure conventional arms for self-defence or for their legitimate security and law enforcement needs.

Those wishing to engage India and Pakistan on the development of an arms trade treaty must grapple with these questions. The key to the success of the arms trade treaty initiative in South Asia would appear to be the ability of the process to provide the vehicle for states across the region to articulate and address concerns related to conventional arms transfers. In particular, the oft-stated desire on the part of South Asian governments to more effectively prevent transfers of weapons to unauthorized non-state actors should be addressed.

National Standards and Implementation

All South Asian countries have legislation relevant to controlling arms transfers. However, in most cases states continue to base significant elements of their current arms control procedures on old normative frameworks, in some cases dating back many decades. (Of particular relevance here is the 1878 Arms Act, which was first introduced to the territories of British India and Ceylon for the purpose of limiting the manufacture, import, export, sale, and ownership of SALW.) As a consequence, legislation is often ill-equipped to address contemporary challenges posed by the globalization of the arms trade and by growing domestic arms and ammunition production, which depends in part on exports to remain viable.

Bangladesh continues to use the 1878 Arms Act as its primary legislative tool (Arputharaj et al. 2003, pp. 67-74). The Act includes provisions for a limited list of prohibited arms, but fails to address a number of key requirements, including criteria by which case-by-case decisions on arms transfer authorizations should be made, regulation of arms brokering, and the establishment of effective procedures to ensure parliamentary and public scrutiny of both relevant policy and decision-making.

In other states legislation, while still weak, is a little more current. For example, India consolidated its transfer controls with the adoption of the Arms Act (1959) and the enactment of the addendum Indian Arms Rules (1962) (Arputharaj et al., 2003, pp. 75-140). Pakistan tightened its legislation and export and import control regulations with the implementation of its Arms Act (1965) (Arputharaj et al., 2003, pp. 149-158). In Sri Lanka, the Firearms Ordinance No. 33 (1916) (Arputharaj et al., 2003, pp. 159-184) and subsequent amendments (the most recent occurring in 1996) cover the various aspects of SALW control. And in Nepal, the Arms and Ammunition Act 2019 (1962) (Arputharaj et al., 2003, pp. 141-148) regulates arms transfers and possession.

Despite some recent efforts by civil society organizations, obtaining a clear picture of the full range of legislative and regulatory instruments that apply to conventional arms transfers at a national level in South Asia remains difficult. This is due to a combination of poor open-source information, the occasional lack of willingness by officials to provide “privileged” information, and a lack of capacity within ministries to effectively bring together relevant commitments and requirements. Each of these factors is problematic for different reasons and each is applicable to the states of South Asia to different degrees. From information that does exist in the public realm, it is clear that across the region, legislative and regulatory improvements would require ensuring that:

- The scope of legislation is broad enough to cover conventional weapons transfers in light of the changing nature of the arms trade. For instance, to be effective, national legislation should cover
 - i. The import and export of all arms and ammunition
 - ii. All arms and ammunition brokering and transportation activities
 - iii. All transfers of arms and ammunition production capacity and
 - iv. The transit and transshipment of all arms and ammunition;

- Emerging issues, including the transfer of component parts for incorporation, the transfer of intangible information and services, and the transfer of dual-use goods are incorporated into national laws and regulations;
- Transfers are authorized through the issuance of licences agreed on a case-by-case basis only after applications have been assessed against a set of clearly elaborated risk assessment criteria.

As part of the UN PoA process, states agreed to conduct reviews of legislation and relevant procedures to ensure that they were consistent with the content of the PoA as well as with their existing commitments and responsibilities. In places where action at the regional level has been significant over recent years, a key feature of progress has been the agreement to undertake legislative reviews and discuss legislative harmonization, partly to assist with cross-border cooperation and enforcement of regional agreements. It appears that since 2001, such a review has not been conducted openly in any country in South Asia. In fact, to date, only Sri Lanka has commissioned a full legislative review, which is currently being finalized; as the process is confidential, the scope and nature of the resulting document are unknown. Without such reviews — which should be periodic in nature and include broad consultations to ensure that all those with a legitimate stake have the opportunity to contribute — assessing the appropriateness of current legislative requirements and the process of identifying areas in need of development will be particularly difficult.

A further PoA commitment, which is echoed in most progressive regional agreements (including, for instance, the Nairobi Protocol), is for states to establish national bodies or focal points to coordinate implementation. While most South Asian states report (Biting the Bullet 2006, p. 40) that they have appointed focal points within lead ministries, only one state (Sri Lanka)¹⁰ has taken the important step of establishing a coordination body¹¹ featuring representatives from all core ministries as well as from civil society, with responsibility for the coordination of national policy and action on a range of SALW control issues. Interdepartmental discussion and collective decision-making are features of most well developed transfer control regimes but it is difficult to assess if decision-making in South Asian states features consultation between different departments. However, it is unlikely that consultation exists in every case or that it is institutionalized.

The legislative and regulatory arrangements for controlling transfers of SALW and other conventional arms and ammunition at the national level across South Asia are far from clear. Clarification from states would enhance and promote common understanding of the process by which states ensure that their arms transfer control practice is consistent with their existing international responsibilities.

Transparency and Government Accountability

The availability of information on the implementation of arms transfer controls in South Asia is generally limited. Governments are concerned that detailed public information on imports, exports, and transit of armaments may compromise their security.

All South Asian states have provided to the UN some information on their arms imports and exports for inclusion in the UN Register of Conventional Arms (UNROCA). In the

latest submissions Bangladesh, India, and Pakistan indicated that they had imported weapons, including battle tanks, combat aircraft, and missiles from a variety of states. India also reported that it had transferred a large-calibre artillery system to Sri Lanka. But because the register is limited to major conventional armaments, the information submitted is often incomplete and sometimes contradictory. For example, Sri Lanka has only submitted data for the years 1992–1995. And, while Pakistan did not report any exports for the year 2005, Bangladesh indicates that in 2005 it imported from Pakistan three Baktar Shikan Missile (BS8A) Launching Units.

The voluntary UN COMTRADE database (administered by the UN Statistical Division)¹² also provides some public information on weapons transfers in South Asia. The database provides records on the trade in commodities (including arms) based upon reports provided by customs authorities. However, as with UNROCA, the information available from COMTRADE is limited; many countries withhold particular data on their arms transfers and there is no clear differentiation of the types or intended recipients of the arms being imported.

The PoA has helped to promote greater transparency. As provided by Section 2: 23, states are required “to make public national laws, regulations and procedures that impact on the prevention, combating and eradicating of the illicit trade in small arms and light weapons.” Bangladesh, India, Pakistan, and Sri Lanka have all provided at least two reports to this effect to the UN Department of Disarmament Affairs. However, the reports contain differing levels of detail and the overall value of the information provided should not be overstated.

Aside from these mechanisms, with the exception of the much maligned Additional Protocol to the SAARC Terrorism Convention, there are no regional processes for confidential information-sharing between governments on arms transfers and none of the countries in the region has made available to the public additional information concerning production and trade of armaments (Biting the Bullet 2006, p. 81). Only Nepal has submitted data to the United Nations Instrument for Reporting Military Expenditures.

In addition to transparency and information sharing between governments, international best practice demonstrates the importance of domestic transparency as an important contribution to the review of policy and to ensure accountability in decision-making. However, no country in South Asia produces reports covering arms exports and there appear to be no specific statutory requirements for governments to share information on transfer practice with parliament or wider civil society.

Civil Society Participation

In 2006, the Biting the Bullet project documented the scale of cooperation between governments and civil society organizations working on SALW issues. It was noted that, while there had been some interaction in India, Pakistan, and Sri Lanka, the overall scale of this partnership was modest (Biting the Bullet 2006, p. 81).

National civil society movements have had varying degrees of success in accessing and lobbying governments on SALW controls. Sri Lanka provides the most encouraging example of civil society involvement in the region. A newly established civil society network has regular meetings with government officials and civil society is represented on the National Commission on SALW. Civil society organizations have also conducted nationwide community consultations on SALW and have been able to communicate recommendations from communities to the Government.¹³

Recently in Bangladesh, civil society organisations have been increasingly engaged in arms control issues. In September 2006 a National Dialogue on small arms was attended by a diverse cross-section of interested parties and media, and allowed for the discussion of SALW concerns.¹⁴ While arms transfers were not discussed, the Forum did highlight perceived national problems relating to SALW and recommended the strengthening of both the capacity of law enforcement agencies and national border security.

In India, the Working Group on Arms Control was created in 2004 and has since (in the form of the Control Arms Foundation of India) conducted research into SALW and advocacy work to encourage the implementation of the PoA. The extent of engagement in the remaining countries of South Asia is unclear but appears to be modest.

In 2003, following a regional meeting of civil society representatives, the South Asia Small Arms Network (SASA-Net) was created to bring together NGOs, academics, and independent journalists to facilitate engagement and coordinate awareness-raising of the human impact of small arms across the region. So far, the productivity of the network has been limited (in 2003 a 'training of trainers' was organised¹⁵ and in 2004 a workshop on developing strong international arms transfer controls was held).¹⁶ However, the network has worked to develop strong national chapters, which in Bangladesh and Sri Lanka in particular have been very active and have contributed to progressive statements on key issues by their respective governments.¹⁷

Organizations that are active on SALW issues generally have a strong activist approach and have, in most countries of the region, been able to demonstrate the human impact of SALW proliferation and misuse with skill and imagination. However, there is still an urgent need in each case for civil society to engage governments in more in-depth dialogue, to develop and promote workable and effective policy options, and to provide independent support for progressive government officials and others in their efforts to address SALW and particularly transfer controls. At present, the combination of weak technical capacity and the real difficulty of discussing issues that are seen as the preserve of the military and law enforcement agencies can limit actions to addressing illicit civilian SALW possession, without addressing the means by which arms move into the illicit market.

South Asia needs a strong independent voice, particularly at the national level, to urge that the challenges of arms transfer control be addressed more effectively and openly. Although the region boasts a very strong community of policy-focussed organizations that work on security-related matters and are often able to engage very effectively with governments, with some exceptions, these organizations have not yet fully engaged the issue of arms transfer control.

Given the experiences of civil society engagement on arms transfer issues in other parts of the world, it appears that there is a strong link between the willingness of government to prioritize policy and practice change and the ability of civil society to demonstrate public concern. While the impact of SALW is felt acutely across the region and governments are beginning to act on some aspects of SALW control, it is very difficult to detect in the general public any current interest in the specific issue of arms transfers. Many other more personally affecting issues compete for the attention of the public, the media, and other civil society groups.

Conclusion

In recent years there has been little discernable progress in South Asia in developing or implementing effective controls on conventional weapons, and almost none in international arms transfer controls. However, because access to information on this subject remains difficult, it is hard to assess comprehensively the nature of existing arrangements or to suggest specific future additions or revisions to existing laws and procedures.

There are some examples of progress at all levels. Active and progressive engagement by specific states in the development of an international instrument on tracing illicit SALW, as well as in the development of the proposed Arms Trade Treaty, is important. At the multilateral level, a major statement by Commonwealth Heads of Government on international transfer controls is a hugely important rhetorical commitment. While there have been very few positive developments at the regional level, the Additional Protocol to the SAARC Terrorism Convention provides an opportunity for law enforcement cooperation and information-sharing, and the willingness of certain states to host regional meetings should be applauded. At the national level, Sri Lanka's attempt to develop a more coordinated response to SALW challenges, while still at an early stage, is very positive.

Although the obstacles to progress in South Asia are significant it would be wrong to discount the possibility of positive engagement in future discussions and initiatives. The challenge for those states seeking to develop and promote effective international transfer controls is twofold: to engage with counterparts in South Asia seriously, by understanding the nature and dynamics of the environment as well as the views and priorities of government; and to work with states and civil society organizations as equal partners in the process of change. With rapidly expanding economic power and a population twice the size of the combined population of the EU, USA, and Canada combined (or three times the size of the EU) South Asia's importance for all areas of conventional arms control can not be questioned.

Notes

¹ For example, national progress in the Great Lakes and Horn of Africa is closely linked to the Nairobi Protocol, in West Africa with the ECOWAS Convention, and in the EU with the EU Code of Conduct on Arms Exports.

² The third war between India and Pakistan occurred in 1971 and resulted in the creation of Bangladesh, formerly East Pakistan.

³ Interview with H.E. Mr. Chenkyab Dorji, Secretary General of SAARC, Kathmandu, 22 February 2007.

⁴ Biting the Bullet is a joint project between Bradford University, International Alert, and Saferworld.

⁵ The Treaty was agreed in 1997, but it entered into force on 1 March 1999.

⁶ To date, these are the countries from South Asia that are parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction.

⁷ The Protocol was adopted in May 2001, but it entered into force in 2005.

⁸ India is the only country from South Asia to have signed the protocol; however, it has not ratified it yet.

⁹ Interview with Senior Indian official, Geneva, 29 March 2006.

¹⁰ The National Commission Against the Proliferation of Illicit Small Arms (NCAPISA) was established on 25 October 2004.

¹¹ The NCAPISA is responsible for the facilitation of a number of objectives, including identifying sources of supply of illicit SALW and suggesting ways to effectively curb such traffic. To date, it has achieved only limited success.

¹² Since 1962 the Commodity Trade Statistics Database (COMTRADE) has provided commodity trade data for all available countries.

¹³ For more on the civil society consultations in Bangladesh and Sri Lanka see Saferworld's website.

¹⁴ For more on the civil society consultation in Bangladesh see Saferworld's website.

¹⁵ The "training of trainers" was facilitated by Saferworld.

¹⁶ This workshop was supported by both Saferworld and Amnesty International.

¹⁷ SASA-Net Sri Lanka, for example, has lobbied policymakers, facilitated public awareness programs, and, in partnership with Saferworld, undertaken research on the impact of SALW on communities in Sri Lanka. For more on the civil society consultations in Sri Lanka see Saferworld's website.

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Small Arms Transfers in East Asia

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Introduction

The main regional organization in Southeast Asia is the Association of Southeast Asian Nations (ASEAN) comprising Brunei Darussalam, Burma/Myanmar, Cambodia, Indonesia, Lao PDR, Malaysia, Philippines, Singapore, Thailand, and Vietnam. ASEAN (1967) envisions active cooperation “towards peace, stability, progress and prosperity in the region.” As the only regional bloc, ASEAN has provided a framework for regional political and economic cooperation among member states, its dialogue partners, and international organizations. ASEAN is currently working towards the adoption by November 2007 of a Charter (ASEAN 2007a) that will make it more responsive to emerging and sensitive issues and generate further cooperation among its members by providing legal status and an efficient structure.

This paper covers the 10 ASEAN member states and the neighbouring states of China, Japan, and South Korea (ASEAN+3 or Greater East Asia). These last three states have considerable significance in regional and global arms transfers and security.

This region includes a diverse range of population densities, landscapes, levels of development, cultures, religions, languages, and state regimes. According to the *Human Development Index* (HDI) of 177 countries, this region has countries that rank from 7th (Japan) to 133rd (Lao PDR) (UNDP 2006, pp. 283-286). Such diversity may prove to be a great obstacle to constructing common regional standards. Currently, there is no regional mechanism to control small arms transfers in Greater East Asia.

East Asia is the site of some of the most protracted and intractable armed conflicts in the world. Currently, armed conflicts exist in Burma/Myanmar, Indonesia, Philippines, and southern Thailand. Also, there are tensions between the two Koreas, North Korea and Japan, and China with Taiwan and Tibet. Furthermore, the emerging global “war on terror” is leading the world — including this region — to greater militarization. Thus, the need for common international arms trade standards is crucial not only for the region but for the world as well.

This paper will provide an overview of the region’s perspectives, accomplishments, and undertakings on small arms transfers control and will present the challenges that will be encountered during the drafting of an international Arms Trade Treaty (ATT). More specifically, we will take a closer look at what has been accomplished at the regional level as well as what ought to be done to advance support for global arms transfer principles and an ATT in East Asia.

This study is partly drawn from the national reports submitted through the UN Programme of Action (PoA) framework from 2001 to 2006. There is little information available from

countries such as Brunei Darussalam, Lao PDR, and Singapore, however, because they have never submitted a national report. Thus, it is most relevant to address issues of implementation, compliance, and transparency in this region. Finally, the role of civil society will be examined, particularly how states have engaged civil society and how civil society has addressed states on the issue of arms proliferation. Civil society participation, although limited in most East Asian countries, can be a means to make governments more accountable and transparent and, eventually, to make the issue of small arms transfer controls a priority at the national and regional policymaking levels.

In December 2006 the UN General Assembly (UNGA) voted in favour of taking the initial step towards a legally binding international Arms Trade Treaty. This could be considered a “big leap” compared to the results of the earlier biennial meetings and review conference on the non-legally binding UN PoA. UNGA Resolution 61/89 was welcomed not only by 153 governments but also by NGOs and civil groups, which see this achievement as the result of a successful campaign to lobby governments to control the arms trade. An ATT would be a vital mechanism for stopping irresponsible transfers of conventional weapons from fuelling conflict, poverty, and grave human rights abuses around the world. It would develop common international standards on the “legal” state-sponsored export, import, and transfer of conventional weapons.

Seven of the 10 member states of ASEAN voted in favour of the UNGA resolution, as did neighbouring countries such as Timor Leste¹ and the Republic of Korea (South Korea). Among the 24 countries that abstained were China and Lao PDR, while Myanmar, the Democratic People’s Republic of Korea (North Korea), and Vietnam did not attend the vote.

While the vote results may indicate a proactive position on irresponsible SALW transfers, East Asia has been rather inactive in institutionalizing a response to the problem. Although a slim majority of states submitted national reports within the UN PoA framework, it can be argued that ASEAN has adopted a narrower perspective by not taking into consideration human rights and international humanitarian law. The main challenge to regional arms transfer controls in the region lies in the way ASEAN has interpreted and responded to the issue: small arms transfer analysis and responses in the region have been considered integral to the transnational crime framework and not as separate issues in themselves.

Arms Transfer Activity

According to the Stockholm International Peace Research Institute (SIPRI), since the end of the Cold War, there has been a shift in arms import markets from the Middle East to Asia (Hagelin, Bromley & Wezeman 2006, p. 449). Since the region is now a major end destination for weapons, the importance of a regional discussion of arms transfer control has grown.

The known legal weapon exporters in this region are China, Indonesia, Japan, South Korea, Malaysia, Philippines, Singapore, and Thailand. According to the UN COMTRADE, the core ASEAN states tend to sell within the region, while Japan, South Korea, and China export more broadly. China, for instance, extends its market to Latin America and North

America, and there have been reports of important transactions to Africa and many European countries.

Cambodia, Japan, and South Korea prohibit the importation of military small arms. For instance, the Custom Tariff Law in Japan “prohibits the import of handguns, military rifles, machine guns, guns and their ammunitions and parts.” Violation is liable to penalties of up to five years’ imprisonment or a fine of up to 30-million yen (Japan 2007). However, according to UN COMTRADE data, there have been exports from China, Philippines, Malaysia, and South Korea to Japan of parts and accessories of shotguns or rifles and small arms and light weapons. Furthermore, South Korea in 2005 imported shotgun cartridges and sporting and hunting shotguns from Indonesia and Japan, and parts and accessories for small arms and light weapons from China and Indonesia (NISAT 2007). These countries argue that parts and accessories do not count as arms trade. Thailand reported in 2004 that it didn’t have the capacity to export arms, but mentioned the export of arms parts, raw materials and ammunitions belts, which other countries considered arms exports.

It should be noted that Japan and South Korea are arms exporters. Despite Japan’s “no arms trade” policy, *Small Arms Survey 2006* points out that, in 2003, Japan exported US\$72- million worth of small arms which, in monetary terms, ranked Japan among the top exporters (p. 71). “The Japanese government evades this issue by contending that ‘hunting guns and sport guns are not regarded as “arms,”’ and therefore the self-imposed ban on arms exports only applies to guns of a military specification” (Ballantyne 2005). Yet, according to Japan’s export laws (Japan 2007), “machines used for weapons production” are classified as weapons.

Singapore, meanwhile, reported no exports of military weapons and small arms. Rather, it reported exports of air gun pellets, lead shot, and parts of shotgun cartridges and sporting and hunting shotguns and rifles. However, custom data of other countries stated that Singapore exported significant amounts of bombs, grenades, ammunition, mines and others, parts and accessories for small arms and light weapons, military weapons and grenade launchers, and flame throwers to Australia, China, Colombia, Indonesia, Italy, Mexico, the Netherlands, Pakistan, Switzerland, and the United States (NISAT 2007). Thus, in the region, there is a need to discuss and define what constitutes trade in conventional arms. Under the proposed ATT, a broad definition of conventional weapons is accepted, including parts and accessories.

A chronic lack of transparency provides little information on some countries in the region. Nevertheless, it is possible to identify other areas of concern related to arms transfers.

China: Controversial export recipients

China has been notable for its exports of major weapons to countries that are considered by European countries and the USA to be controversial recipients. Although during the period 2001 to 2005, China accounted for less than two per cent of global major arms transfers, it has a growing market. “China’s arms sales policy, which in the cold war period was at least partly geared towards supporting revolutionary movements, is today a means of strengthening strategic relations with, for example, Pakistan, Iran and Egypt, the three largest

recipients of exports from China in 2001–2005” (Hagelin, Bromley & Wezeman, p. 461). According to SIPRI, China’s arms exports can be explained by an economic growth with increasing dependency on imported resources, especially oil and gas. Recent arms sales to Cambodia, Nigeria, and Sudan are seen as part of a policy to secure access to these needed raw materials.

Cambodia: Poor management and storage facilities

After the civil war ended in 1991, Cambodia was left with large numbers of weapons, especially small arms. Hundreds of thousands of surplus weapons were collected under various disarmament and demobilization programs, but, with poor weapons storage facilities and weapons management, Cambodia became the most important source of leaked weapons in the region. An EU-funded initiative for the collection and destruction of surplus weapons, EU Assistance on Curbing Small Arms and Light Weapons in Cambodia (EU-ASAC), has documented the poor quality of weapons storage facilities in the country (Capie 2004).

Indonesia: Leakage from legally owned weapons

Leakage from security forces has been a serious problem in Indonesia. During civil violence in Maluku in 2000, hundreds of military weapons were stolen from overrun police stations and military armories. In just one incident in July 2000, more than 800 military-style rifles were stolen, along with thousands of rounds of ammunition. There have also been allegations that weapons and explosives have gone missing directly from the country’s national arms producer. This problem is not Indonesia’s alone. Militant groups have tried to acquire weapons from military camps and armories in Malaysia and Thailand (Capie 2004).

Japan: Increasing militarization

Recently Japan changed its established defence policy that, since World War II, had emphasized pacifism and effectively banned all arms exports. A review of this policy began in the 1990s, with Japan’s increasing international engagement and the growth of regional tensions created by the policies and conduct of China and North Korea. In December 2004 Japan decided to allow exports of military components to the USA in support of the development of US missile defence systems. Japanese military deliveries are now permitted to countries beyond the USA (Hagelin, Bromley & Wezeman 2006, p. 458).

In December 2006, Japan approved the change of its defence agency, previously controlled directly by the Prime Minister, into a Defence Ministry headed by a minister with control over the budget. Overseas activities like peacekeeping, disaster relief, and other international cooperation operations will be upgraded from their current subordinate positions into the essential duties of the Self-Defence Forces (SDF) (*People’s Daily Online* 2007). The SDF now has a political voice as Japan slowly becomes more militarized. And Japan is just one example among the countries of this region.²

Example of National Legislation and Controls

The following is an overview of arms control policy in East Asia based on the submitted national reports under the framework of the UN PoA from 2001 to 2006 (see Table 1). Countries such as Brunei, Lao, Singapore, and Myanmar have never submitted a report and Vietnam submitted its first and only report in 2006.

All countries, except Cambodia, have production, import, and export quotas. Regulation includes appropriate licensing, approved by either the defence ministry or national police. Quotas are a common way to regulate the weapons trade.

The Government of Thailand (2007) has made important progress in efforts to increase transparency by publishing some SALW-related statistics online. Currently, imports and exports statistics for the years 2001–2006 are available on the Customs Department’s website. The information is divided into several subgroups such as: military weapons, revolvers and shotguns, firearms and similar devices which operate by the firing of an explosive.

China, Japan, South Korea, and Malaysia have mechanisms to penalize violators of arms trade laws regarding illegal production and license ownership. As well, China, Japan, and South Korea consider peace and security when approving exports, although they provide no details on how such considerations are applied. For instance, it is not apparent how China determines when a specific arms export could “interfere with internal affairs of the recipient country.” However, it should be noted that the UN PoA does not require states to provide more detailed definitions or illustrations. Moreover, none of the countries of the region that provided a national report mentioned human right abuses as a concern for prohibiting arms export (Legaspi 2005). A more comprehensive and legally binding agreement on the arms trade could compel states to describe implementation and require that they meet international commitments to human rights law.

Because military, security forces, and government officials in many East Asian states are involved in illegal arms brokering, and because states refuse to acknowledge this situation, the issue of brokering is difficult to address. National legislation and administrative procedures on arms brokering includes registration, licensing, and authorization of transactions and imposing penalties on violators.

Brokering controls ensure transparency. They also address leakage of SALW to “illegal” users or diversion to third countries. However, Singapore and Japan are the only states in the region to have specific control over small arms brokering activities. Most countries insist that brokering is already covered by national import/export regulations (Legaspi 2005). For example, Thailand and Malaysia reported to the UN Department of Disarmament Affairs in 2005 that they had no legislation to control arms brokering (IANSAs 2006).

Table 1: Summary of National Reports data on Export, Import and Transit Controls³

Cambodia
Bans the importation and manufacture of SALW because of proliferation of weapons. Policy not to export or traffic weapons.
China
Enacts laws to regulate export and import of arms, and introduced amendments in 2002 to enhance existing laws. These include regulations on Administration of Arms Exports, which establish a unified administration system for arms exports. Existence of state principles governing arms exports: conduciveness to legitimate self-defence capability of the recipient country; non-negative impact on the peace and security of the region/world; and non-use of weapons to interfere with internal affairs of recipient countries. Requires “business operation rights” to and specification of “approved scope of business” of arms exporters. Individuals prohibited from conducting export and import of arms. Export requires licensing and imposes punishment for violations. Signed in 2002 the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing UN Convention Against Transnational Organized Crime.
Indonesia
Arms purchases, both imported and locally manufactured, require licenses from police. Department of Defense authorizes purchases of weapons for military use.
Japan
As a nation dedicated to peace, Japan does not export arms. Prohibits importation of handguns, military rifles, machine guns, and guns and imposes punishment on violations, including stiffer penalty for importation for profit. Foreign trade law controls and coordinates external trade to a “minimum extent only,” provided exports meet permission requirements from Ministry of Trade. Penalties for violations. Follows three principles prohibiting arms exports to countries that are communist, under UN arms embargo, or “likely to be involved in international conflict.” Further restrictions in keeping with Constitutional principle as a nation dedicated to peace, foreign trade laws, and the treatment of equipment used in arms production as arms. Signed in 2002 the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing UN Convention Against Transnational Organized Crime.
Korea, South
Ministry may consider further restrictions and/or adjustments to export permissions issued when necessary for maintenance of international peace and security or national security; and if exports will create “diplomatic friction.” Prohibition of exporting SALW to countries facing arms embargoes. Law prohibits the import of handguns, military rifles, machine guns, guns and their ammunition and parts, and provides penalties for violation. The manufacture and export of arms for civilian use requires permission from police authorities; approval is determined on a “case-to-case basis.” Imposes penalties for violation of laws or engaging in manufacture, export, and import through “fraudulent means.” Reports that there are “no cases of organized illegal production or transfer” as well as punishment of individuals found to have illegally modified weapons.
Malaysia
Arms Act regulates exports and imports of weapons by regulating quantities, marking cases of imported/exported weapons and issuance of notices; canceling unlawfully imported weapons; specifying ports of entry and exit and sources; case-to-case prohibitions; and punishing criminal acts violating controls. Licences/permissions required for transfer of weapons, except for licensed dealers and to police officers.

Philippines
Imposition of production quotas on firearms producers. Approval of head of national police required for importation.
Thailand
No capacity to manufacture arms for exports, except for raw materials, ammunition belts, and parts of arms. Specific act prohibits unlawful import, production, and possession of munitions and requires permits from defence ministry to do so legally. Importers must possess licence and need to declare licence at the (Customs) checkpoint. Quotas imposed on number of weapons sold by importers to gun shops. Gun shops also have limits on the number of specific weapons at any given time. Does not check containers declared as a SALW transit container, provided there is advance notice and prior customs check.

Regional Agreements on SALW

The issue of SALW was first discussed during the crucial 1997 ASEAN Ministerial meeting that set the tone for the ASEAN approach by strongly emphasizing the need for regional cooperation to address transnational crimes. The meeting also defined ASEAN's current position on small arms transfer issues. Small arms and the smuggling of these weapons were recognized as integral to the larger concerns of terrorism, drug trafficking, human trafficking, money laundering, and piracy. Consequently, the ASEAN Ministers of Interior and Home Affairs adopted the *ASEAN Declaration on Transnational Crime* in that same year.

In 1998 the *Hanoi Plan of Action* was adopted by the ASEAN heads of state, reiterating the need to build regional capacity to address transnational crime. The following year, the *ASEAN Plan of Action to Combat Transnational Crime* was formulated and became politically binding. The general objective of the Action Plan is "to encourage ASEAN Member Countries to expand their efforts in combating transnational crime by strengthening regional commitment and capacity to combat transnational crimes which include terrorism, drug trafficking, arms smuggling, money laundering, trafficking in persons and piracy" (ASEAN 1999).

The specific objectives are to:

1. Develop a more cohesive, regional strategy aimed at preventing, controlling and neutralizing transnational crime;
2. Foster regional cooperation at the investigative, prosecutorial, and judicial level as well as the rehabilitation of perpetrators;
3. Enhance coordination among ASEAN bodies dealing with transnational crime;
4. Strengthen regional capacities and capabilities to deal with sophisticated nature of transnational crime; and
5. Develop sub-regional and regional treaties on cooperation in criminal justice, including mutual legal assistance and extradition. (ASEAN 1999)

The *ASEAN Plan of Action to Combat Transnational Crime* subsumed the small arms trade/transfer issue within the context of transnational crime by simply referring to it as an "arms smuggling" issue instead of separately and directly tackling the issue on its own. The Plan of Action avoids sensitive security issues such as the policy of noninterference and the friction arising from alleged support of neighbours for enemies of states. This could partly

explain why there is no regional agreement on arms transfers of SALW proliferation in Southeast Asia, despite calls from civil society for concrete action (Sovannasam 2005).

East Asia has provided little practical action on small arms transfers within a human security framework for a number of reasons. Because ASEAN is organized on the principle of “sovereignty-enhancing regionalism” and the fundamental norm of noninterference, it is unable to effectively address what are deemed to be internal issues in member states (Capie 2004). ASEAN has also been criticized as being more rhetorical than practical; responses to small arms proliferation are largely in the form of statements and declarations (Acharya 2003). And finally, individual states refuse to make small arms control a national priority.

At the Summit meeting in Cebu in January 2007, ASEAN member states were able to agree to the *ASEAN Convention on Counter Terrorism* (ASEAN 2007b). The draft was presented by the Philippines and Indonesia governments in September 2006. According to many, this “constitutes a record in the history of ASEAN, given its members' preponderance not to give in or give way on anything they do not agree with” (Chongkittavorn 2007).

The Convention (ASEAN 2007b) provides a framework for regional cooperation “to counter, prevent and suppress terrorism in all its forms and manifestations and to deepen cooperation among law enforcement agencies and relevant authorities of the Parties in countering ‘terrorism.’” There is, however, no mention of arms or weapons transfers.

Table 2: Regional and Multilateral Agreements

Activity/Agreement/Convention	Year	States involved
ASEAN Declaration on Transnational Crime	1997	ASEAN member states
Agreed on a “Plan of Action to Combat Transnational Crime”	1999	ASEAN member states
UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects	2001	Cambodia, Indonesia, Malaysia, Philippines, Thailand, Vietnam, China, Japan, Korea (South) (No national reports yet from Brunei, Burma/Myanmar, Laos, and Singapore)
UN Firearms Protocol ⁴	2001	Cambodia, Laos (ratified) China, Korea (South), Japan (signed)
Work Programme to Implement ASEAN Plan of Action to Combat Transnational Crime	2002	ASEAN member states
Biannual ASEAN Ministerial Meetings on Transnational Crime (AMMTC)	1 st meeting 1999	ASEAN Seniors Officials on Drug Matters (ASOD) and the ASEAN Chiefs of National Police (ASEANAPOL)
ASEAN Convention on Counter Terrorism	2007	ASEAN member states

That the Convention was signed before the ASEAN Charter (ASEAN 2007a) shows the priority given by ASEAN to resolving transnational issues that concern national sovereignty

and integrity, while issues of human rights are often left behind. The Charter, meant to mark ASEAN's fortieth anniversary, would be legally binding. "If all goes according to plan, the ASEAN secretariat will be given more of a mandate to speak on behalf of member countries on issues related to counter-terrorism, including filing an annual report to the UN on behalf of ASEAN" (Chongkittavorn 2007). Again, the Charter contains no mention of common standards on arms transfers.

Table 3: Highlights of Regional and Multilateral Action

Cambodia
Cooperates with EU and Japan on weapons collection and destruction programs.
China
Attends regional and international seminars. Signed Fire Arms Protocol of UN Convention Against Transnational Organized Crime. Exchanges views with other governments on implementing PoA, specifically public security, and customs measures. Contributes experts to an international instrument to identify and trace illegal SALW. Police cooperation with Interpol and assistance to identify and trace arms.
Indonesia
Signed International Convention for the Suppression of Financing Terrorism, and Convention against Transnational Crime. Ratified four international conventions on terrorism. Co-organized with Japan the Asia Pacific Regional Seminar on SALW. Works with ASEAN on Transnational Crime.
Japan
Observes UN arms embargoes. Signed Fire Arms Protocol of UN Convention Against Transnational Organized Crime. Ratified all 12 international treaties on terrorism. Carries out DDR programs in Afghanistan and Sierra Leone. Cooperates with judicial and law enforcement authorities of other countries and Interpol. Offers technical assistance on police system operation, investigation, and criminal identification. Organized Tokyo follow-up meeting on PoA in 2002. Financial support for UNDDA and UNIDIR. Cooperates with Cambodia on small arms collection project. Offers and assists in capacity building in DDR.
Korea, South
Participates in regional seminars, meetings and workshops. ASEAN Regional Forum (October 2000), submitted country report on SALW misuse and illicit transfer. Observes UN arms embargoes. Maximum restraint on regions of tension and where risks in transfers exist. Acceded to eight out of 12 international treaties on terrorism Cooperates with other countries through Interpol.
Malaysia
Exchanges information and cooperates through bilateral and multilateral arrangements (ASEANAPOL, Interpol, Europol), subject to national security measures. Supports ASEAN Plan of Action to Combat Transnational Crime, including arms smuggling. Participates in dialogues, workshops on transnational crime. Ratified three of 12 international conventions, and one protocol on terrorism. Signed the UN Convention against Transnational Organized Crime.
Philippines
Participates in regional and international conferences, meetings, and seminars.

Cooperates with governments of Indonesia, Japan, and Taiwan.
Thailand
<p>Exchanges information through ASEAN Association of Heads of Police.</p> <p>Cooperates with other countries through Interpol.</p> <p>Participates in regional and international seminars and conferences.</p> <p>Ratified four of 12 conventions on Terrorism.</p> <p>Signed International Convention for Suppression of the Financing of Terrorism.</p> <p>Considering signing Firearms Protocol.</p> <p>Follows sanctions imposed by UNSC.</p> <p>Provides training and operation assistance to neighbouring countries.</p> <p>Works to prevent arms trafficking along borders with neighbouring countries.</p>

Civil Society Participation

Civil society involvement in the region is limited by the level of democratic space the state provides. There are network members of the International Action Network on Small Arms (IANSA) in Cambodia, Indonesia, Japan, Korea (south), Malaysia, Philippines, Singapore, and Thailand.

Nonviolence International Southeast Asia and the Philippine Action Network on Small Arms (PhilANSA) have initiated a more proactive project to engage parliamentarians in the region in discussions on small arms transfer controls. The Inter-Parliamentarian Union (IPU) and the Parliamentarians for Global Action (PGA) are discussing and raising the level of understanding of small arms transfer issues in the region and should help to expand the narrow perspective of the issue beyond transnational crime. In Cambodia, the Working Group for Weapons Reduction is leading in SALW work. It has worked on public awareness and mobilizing people to collect and destroy weapons. The Japan Action Network on Small Arms (JANSA) has advocacy programs supporting the Control Arms campaign. In Indonesia, a growing number of organizations are showing interest in SALW issues.

Civil society faces the dilemma of whether to “control” or “stop” the arms trade, given the fact that in situations of armed conflict there is a strong clamour to end arms transfers at the local level rather than to adopt mechanisms to control the trade at the international level. Despite this dilemma, there is recognition of the many tracks and approaches needed to address the issue, including efforts related to both demand and supply. Addressing the root causes of arms proliferation and misuse should run parallel to building mechanisms and norms to regulate the supply of weapons.

Civil society engagement on arms transfer controls has been limited to advocacy and public awareness work in the region. The Control Arms campaign has been the rallying point around which groups in the region have mobilized support and built constituencies. The Million Faces Petition of the Control Arms campaign has shown that there is indeed a “constituency” for arms transfer control work. Expanding and mobilizing the constituencies to press states to be accountable and to act towards a mechanism on arms transfers should be explored further.

Conclusion

East Asia has the goodwill to take action on the issue of small arms transfers. However, there are a number of issues that have to be challenged. One is the narrow perspective that ASEAN took in addressing the issue of small arms transfers. As long as ASEAN keeps the issue within the frame of transnational crime, it will always be overwhelmed by the larger issues of human trafficking, drug trafficking, and terrorism. The proliferation of small arms has to be tackled directly. The issue is far more complex than “illicit” arms smuggling.

Recent developments have shown that ASEAN is going through rethinking and reforms. An ASEAN Charter is in the making. The non-interference policy will definitely remain the backbone of ASEAN. However, this should not preclude recognizing and addressing issues of regional and international concern such as small arms transfers. Furthermore, the Charter should uphold respect for human rights and international humanitarian law principles.

There is still much work to do at all levels. Irresponsible small arms transfers are not often viewed as a problem. It has yet to be generally accepted that the analysis of the problem of small arms transfers must be comprehensive, and that a regional or international mechanism should protect people rather than institutions. Civil society should have a larger role in constituency building and strengthening a people’s movement towards building norms and mechanisms to control the arms trade.

Notes

¹ East Timor has had observer status in the ASEAN since 2006. Likewise, Australia pushed for its application to be a member at the last ASEAN Summit in Cebu City, Philippines.

² Thailand military coup, 19 September 2006, BBC News, <http://news.bbc.co.uk/2/hi/asia-pacific/5361512.stm>; Cambodia votes for conscription, BBC News, <http://news.bbc.co.uk/2/hi/asia-pacific/6083882.stm>.

³ Brunei, Laos, Myanmar (Burma), Singapore, Timor Leste, and Vietnam have not submitted any report on national implementation of the Program of Action as of 31 December 2004.

⁴ Cambodia and Laos are the only states that have ratified the United Nations Firearms Protocol while China, South Korea, and Japan have signed it. States that have neither signed nor ratified the protocol include: Brunei Darussalam, Indonesia, Vietnam, Malaysia, Myanmar, Philippines, and Thailand. The protocol, which complements an existing UN convention on crime, is the only legally binding global small arms treaty. It calls on states to mark each legally produced, exported, and imported weapon with identifying information and to set up proper licensing and authorization procedures for the commercial export of firearms. The measure focuses on organized crime and will not apply to government-to-government transactions. It is considered a law enforcement measure rather than arms control.

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Annex

Compilation of Global Principles for Arms Transfers

The following Principles bring together States' existing obligations in respect of international transfers of arms and ammunition. The Principles are proposed by a diverse group of non-governmental organizations.¹ The Principles reflect the content of a variety of international instruments including: international and regional treaties, declarations and resolutions of the United Nations and other multilateral and regional organizations, and model regulations intended for national legislation. Some of the Principles reflect customary and treaty law, while others reflect widely accepted emerging norms. The compilation indicates the best general rules for effective control of international transfers of all conventional arms and ammunition. The rules reflect States' obligations under international law while also recognising States' right to legitimate self defence and law enforcement in accordance with international standards.

Principle 1: Responsibilities of states

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

Principle 2: Express limitations

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

These obligations include:

A. Obligations under the Charter of the United Nations — including:

- a. Binding resolutions of the Security Council, such as those imposing arms embargoes;
- b. The prohibition on the threat or use of force;
- c. The prohibition on intervention in the internal affairs of another State.

B. Any other treaty or decision by which that State is bound, including:

- a. Binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional organizations to which a State is party;
- b. Prohibitions on arms transfers that arise in particular treaties which a State is party to, such as the 1980 UN Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious

or to Have Indiscriminate Effects, and its Protocols, and the 1997 Convention on the Prohibition of Anti-Personnel Mines.

- C. Universally accepted principles of international humanitarian law — including:
 - a. The prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering;
 - b. The prohibition on weapons or munitions incapable of distinguishing between combatants and civilians.

Principle 3: Limitations based on use or likely use

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

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

Principle 4: Factors to be taken into account

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

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

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

Principle 5: Transparency

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

Principle 6: Comprehensive controls

States shall establish common standards for specific mechanisms to control:

- A. all import and export of arms and ammunition;
- B. arms and ammunition brokering activities;

- C. transfers of arms and ammunition production capacity; and
- D. the transit and trans-shipment of arms and ammunition.

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

¹ This group of non-governmental organizations includes: Africa Peace Forum, Amnesty International, Arias Foundation, Caritas International, Friends Committee on National Legislation, Non-Violence International, IANSA, Oxfam International, Project Ploughshares, Saferworld, Schweitzer Institute, Sou da Paz, Viva Rio, and Women's Institute for Alternative Development (WINAD). Additional legal advice to the group has been provided by the Lauterpacht Centre for International Law, University of Cambridge.

Acronyms and Abbreviations

ACP-EU	Africa Caribbean Pacific–European Union
ASEAN	Association of Southeast Asian Nations
ATT	Arms Trade Treaty
BPG	Best Practice Guidelines
CARICOM	Caribbean Community
CARIFORUM	Caribbean Forum
CHOGM	Commonwealth Heads of Government Meeting
CICAD	Inter-American Drug Abuse Control Commission
CIFTA	Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials
CIPDD	Caucasus Institute for Peace, Democracy and Development
CIS	Commonwealth of Independent States
CLAVE	Latin American Coalition for the Prevention of Armed Violence
CSO	Civil society organizations
CSTO	Collective Security Treaty Organization
ECOWAS	Economic Community of West African States
EU	European Union
FCO	Foreign and Commonwealth Office (UK)
FSC	Forum for Security Co-operation (OSCE)
FSU	Former Soviet Union
IANSA	International Action Network on Small Arms
IMPACS	Implementation Agency for Crime and Security
IPU	Inter-Parliamentarian Union
JANSA	Japan Action Network on Small Arms
LTTE	Liberation Tigers of Tamil Eelam
MANPADS	Man-Portable Air Defence Systems
MERCOSUR	Mercado Comin del Sur (South America)
NAM	Non-Aligned Movement
NAP	National Action Plan
NFP	National Focal Point
NGO	Nongovernmental organization
NISAT	Norwegian Initiative on Small Arms Transfers
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
PGA	Parliamentarians for Global Action
PhilANSA	Philippine Action Network on Small Arms
PNP	People’s National Party (Jamaica)
PoA	Programme of Action (on small arms)
RECSA	Regional Center on Small Arms
RSS	Regional Security System
SAARC	South Asian Association for Regional Cooperation
SALW	Small arms and light weapons
SASA-Net	South Asia Small Arms Network
SEPAC	Security Policy Advisory Committee

SIPRI	Stockholm International Peace Research Institute
SISME	Security Information Exchange System (MERCOSUR)
STC	Scientific and Technical Center on the Export and Import of Special Technologies, Hardware, and Materials
UN COMTRADE	United Nations Commodity Trade Statistics Database
UNGA	United Nations General Assembly
UNIDIR	United Nations Institute for Disarmament Research
UN-LIREC	United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean
UNODC	United Nations Office on Drugs and Crime
UNROCA	United Nations Register of Conventional Arms
UNSC	United Nations Security Council
WA	Wassenaar Arrangement
WINAD	Women's Institute for Alternative Development

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