

Enhancing Controls on Legal Transfers

by Michael Crowley and Elizabeth Clegg

INTRODUCTION: SCOPE AND CONTEXT

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

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

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

THE NEED TO DEFINE ILLICIT TRADE

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

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

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

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

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

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

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

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

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

Box 1—How Legal Transfers Turn Illicit: Sierra Leone

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

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

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

CONTROLS ON GOVERNMENT-AUTHORIZED TRANSFERS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGAL CONTROLS AND THE UN 2001 PROCESS

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

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

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

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

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

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

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

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

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

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

TOWARD DEVELOPED INTERNATIONAL NORMS AND STANDARDS

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

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

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

National:

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

Regional:

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

Global:

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

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

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

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

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

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

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

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

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

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


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

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

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

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

CONCLUSION

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

Notes

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

Demand Dimensions of Small-Arms Abuse

by Alejandro Bendaña

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

WHICH DISCUSSION FRAMEWORK?

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

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

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

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

BLAME THE VICTIM

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

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

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

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

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

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

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

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

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

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

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

MEANS OF ADDRESSING DEMAND

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

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

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

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

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

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

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

CONCLUSIONS

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

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



Notes

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

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

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

