



# Strengthening Controls: Small Arms Measures

# 6

## Introduction

Seven centuries after the invention of small arms, governments are beginning to gain control over these weapons. Efforts at regulation are as old as small arms themselves, but until quite recently have had limited reach. The present regulatory framework stands apart from its predecessors in its complexity and geographical scope. At the same time, an increasingly broad spectrum of activities is coming under scrutiny and, in some cases, effective control—for example, production, stockpiling, trade, possession, and use. As this chapter will explain, the road from producer to end-user and end use is often complex. So too are the requirements of effective small arms regulation.

This chapter examines a few, key developments in small arms control. It focuses on select regulatory regimes, which employ various norms and instruments to control small arms at specific points in their life cycles. These studies are supplemented by an examination of a specific instrument (the UN *Firearms Protocol*), region (eastern Africa), and type of actor (NGOs). This chapter has a thematic orientation and does not attempt to systematically update the review of multilateral measures contained in the *Small Arms Survey 2001*, though some updating does occur. In addition, two especially significant new initiatives—the *Firearms Protocol* and the 2001 UN Small Arms Conference—are examined separately, in this chapter and in Chapter 5 (CONFERENCE).

The requirements of effective small arms regulation are complex.

### BOX 6.1 UN definitions—a reminder

**Small arms:** revolvers and self-loading pistols, rifles and carbines, assault rifles, sub-machine guns, and light machine guns.

**Light weapons:** heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-tank and anti-aircraft guns, recoilless rifles, portable launchers of anti-tank and anti-aircraft missile systems, and mortars of less than 100mm calibre.

Source: UN (1997)

'Control' means ensuring that small arms are held for approved purposes by individuals or groups which, in the judgement of relevant authorities, can be trusted to not misuse them. Control efforts confront a series of problems. One is the remarkable longevity of small arms. If stored carefully, small arms can have a very long life cycle. Usually several decades pass before the original weapon becomes unusable, but its component parts—recycled in newer weapons—may last even longer. Small arms typically pass through many hands before the end of their lives, further complicating control efforts. This life cycle typically begins with production and moves on at some stage to possession, but does not necessarily end with first possession. Transfer, re-transfer, and stockpiling are all part of the normal small arms life cycle. The regulatory regimes examined in this chapter are designed to maintain control over small arms at various stages of this cycle. When efforts to control small arms fail, they frequently end up in the wrong hands for the wrong purposes.

The chapter's key findings are as follows:

- The UN *Firearms Protocol* is a potentially important new instrument for combating the illicit firearms trade and improving control over small arms generally.
- The harmonization of standards and systems between states will be essential to the development of effective small arms tracing.
- Harmonization is also an issue with respect to the end-use practice of exporting countries, currently a soft target for illicit traffickers.
- The regulatory spotlight is slowly shifting to the important, yet still largely uncontrolled, activity of arms brokering.
- While the need for good stockpile management is acknowledged at the international level, this remains a national responsibility, with international action focused on building capacity in newly democratic and developing countries.
- Regulation of civilian ownership at the national level remains a key component of broader international small arms control efforts.

In contrast to Chapter 5 (CONFERENCE), with its emphasis on process, this chapter focuses, wherever possible, on specific control measures. The Conference *Programme of Action* is frequently non-committal in its treatment of the various issues. The emphasis here is on specifics, including actual implementation. The legally binding *Firearms Protocol*, though focusing narrowly on illicit firearms manufacture and trade, is considerably more operational, in conception, than the Conference *Programme of Action*, and is the subject of the chapter's first section. The issues of marking and tracing, export controls, and brokering regulation—all addressed in some form in the *Firearms Protocol*—are examined in subsequent sections. A large part of the chapter is also devoted to an examination of national firearms controls in selected states which, not surprisingly, given their close connection with national sovereignty, figure in neither the Protocol nor the *Programme of Action*.

Below are some of the issues the chapter explores.

- **What control measures are in place or under development at the national, regional, and global levels?**
- **What functions do these measures perform?**
- **Where and when is the multilateral harmonization of national control norms desirable?**
- **What are the relative strengths and weaknesses of the measures examined here?**

Following the analysis of the *Firearms Protocol*, the chapter tends to a more thematic approach, examining different types of control measures. Much of this is necessarily situated at the national level, yet multilateral initiatives, whether existing or in prospect, are also part of the discussion. The review of select regulatory regimes is complemented by two short pieces, the first focusing on the efforts of East African countries to strengthen controls in their subregion, the second discussing the important roles NGOs play in small arms control efforts. We step back in the conclusion to look at the broader picture—assessing the state of efforts to bring small arms under effective control from the various perspectives outlined above.

## The UN Firearms Protocol

Just a few short weeks before the opening of the 2001 UN Small Arms Conference in New York, the UN General Assembly opened for signature a major new instrument on small arms and light weapons. Although it is the first legally binding measure on small arms to be adopted at the global level, agreement on the *Firearms Protocol* (UNGA, 2001b) attracted little attention at the time. Negotiations on the Protocol had dragged on far longer than originally intended, lagging well behind agreement on its parent convention on transnational organized crime, because a number of contentious issues held up agreement for some months, including the definition of firearms, the applicability of the Protocol to non-commercial transfers, and the marking of weapons at time of manufacture. Nevertheless, in the end consensus did prove possible on a number of measures to close loopholes in national regulations and criminalize the illicit firearms trade. The Protocol is gathering signatures in New York,<sup>1</sup> but it remains to be seen whether the delay in finalizing the agreement, and the dwindling enthusiasm that accompanied the last stage of negotiations, will have a negative impact on its entry into force and eventual implementation.

*The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* is one of three supplemental protocols to the *United Nations Convention against Transnational Organized Crime* (UNGA, 2000). The Convention itself and two of the three protocols were agreed and signed in Palermo, Italy, in December 2000, in a blaze of publicity, but the *Firearms Protocol* required an additional negotiating session to secure compromises on various thorny issues. It was finally agreed in March 2001 and opened for signature at the UN General Assembly in New York on 31 May 2001.



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*Small arms transfers to non-state actors—of prime concern to many African countries—was a hot topic at the Firearms Protocol negotiations.*

### The road to the Protocol

In the world of diplomacy, the *Firearms Protocol* was agreed very quickly. Just over two years after the General Assembly resolution which established the framework for negotiations (UNGA, 1998), the Convention and its three protocols were complete—an outcome that reflected the high priority given the issue by a large number of governments. Unfortunately, some of this momentum appears to have been lost at the end of the negotiations on the *Firearms Protocol*, while the other protocols gained in importance. For a number of governments, combating trafficking in human beings became a noticeably higher priority than tackling gun-running.

However, the idea of a convention on organized crime was mooted much earlier on. It was first proposed at the World Ministerial Conference on Organized Crime in Naples in 1994, and taken up at the Ninth Congress on Crime Prevention in Cairo later the same year. Over the next few years, a number of meetings and consultations, as well as an Inter-governmental Expert Group, moved the concept forward, so that by 1998 Poland was able to propose a first draft of a convention to the General Assembly. In response, the General Assembly established an Ad Hoc Committee to elaborate a new comprehensive international convention against trans-national organized crime along with three additional protocols dealing with specific issues related to this broad problem (UNGA, 1998).

Although all four instruments covered important and sometimes controversial issues, the firearms negotiations were probably the most difficult. Agreement between negotiating states was often elusive, as countries with very different problems proposed widely divergent solutions. Many of the proposals which fell by the wayside would have fundamentally broadened the scope and nature of the agreement.

The process also attracted considerable attention from NGOs, most of which favoured a strong agreement, although some, such as the National Rifle Association (NRA) and the World Forum on the Future of Sport Shooting Activities (WFSA), were opposed to further restrictions on gun ownership. Their participation worried many NGOs and governments, who feared an attempt to undermine agreement. In the event, these organizations did succeed in excluding regulations on domestic possession, which may create problems for the enforcement of measures which remain part of the Protocol. For example, national registries of gun possession could have helped law enforcement agencies to trace weapons after they crossed international borders. Without such registries, the chain of information is more easily broken; it becomes much harder to ascertain where the firearm originally came from. The pro-gun lobby also secured preambular language on the rights of legal gun owners, but did not obstruct other measures, in particular firearms marking. It can be argued that they are tied into the process so that any active opposition to ratification would be hypocritical.

### A narrow, enforceable approach

The drafters of the Protocol were determined to keep the language narrowly focused on a crime and law-enforcement approach, taking as their model the convention against illicit firearms trafficking agreed by the Organization of American States (OAS) in 1997, the first international convention covering firearms (OAS, 1997).<sup>2</sup> Many of the Protocol's strongest supporters, such as Canada and the United States, both of which were signatories to the OAS convention, wanted to steer the Vienna negotiations clear of issues that were considered arms control rather than crime control measures. They feared that a comprehensive agreement would be weaker and less enforceable. Towards the end of the negotiations, many countries looked to the UN Conference as a more suitable forum for discussion of the more sensitive issues.

As a result, the *Firearms Protocol* is limited in scope and content. It defines the term 'firearms' more narrowly than its OAS predecessor, including the word 'portable' so as to exclude artillery. Also unlike the OAS convention, it excludes explosives and explosive devices, such as grenades, which were deemed to require a separate agreement. In general, the Protocol focuses on just a few areas where it seeks to set standards for national systems and eliminate differences that can be exploited by international traffickers. While the Protocol does not raise prevailing benchmarks, once ratified and implemented it will nevertheless bring about a certain harmonization among states in the areas it does cover, albeit at a low level.

### Main provisions

The declared aim of the *Firearms Protocol* is 'to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition' (UNGA, 2001b, art. 2). For this purpose, it deploys two sets of instruments: a system of government authorizations<sup>3</sup> and a system of marking and tracing.<sup>4</sup> Legal transfers of small arms are to be conducted on the basis of reciprocal arrangements between the governments of the states involved. Thus, a licence to export firearms cannot be issued without a corresponding

The drafters of the Protocol were determined to keep it narrowly focused on a law-enforcement approach.

import licence from the importing country. The transaction is also dependent on the approval of any transit countries (art. 10.2). 'Illicit trafficking' is thus defined as a transfer that is not authorized in accordance with these procedures (art. 3.e).

The Protocol requires firearms to be marked at the point of manufacture, import, and transfer from government into private hands, although, as discussed below, it stops short of imposing a new system of universally recognizable markings. Marking was considered to be so vital for combating illicit trafficking that the deliberate removal of markings is also categorized as a criminal offence (art. 5.1.c). Generally, the Protocol requires States Parties to criminalize illicit manufacturing of and trafficking in firearms, their parts and components, and ammunition (art. 5).

Other measures set out in the Protocol include:

- the confiscation, seizure, and disposal of illicit firearms, their parts and components, and ammunition (art. 6);
- the verifiable deactivation of firearms (art. 9); and
- security and preventive measures, covering *inter alia* the security of manufacturers' stockpiles and effective in-transit controls (art. 11).

The Protocol also commits States Parties to co-operate in combating the illicit trade (arts 11.b and 13) and to exchange information for this purpose (arts 12 and 15.2). Provision is also made for training and technical assistance, where needed, to enhance the capacity of states to fulfil their obligations under the Protocol (art. 14).

The issue of brokering is also addressed in the text, although the relevant provisions are of a recommendatory rather than mandatory nature (art. 15). This disappointed many governments and NGOs, conscious of the key role some arms brokers play in the illicit trade (Small Arms Survey, 2001, ch. 3). However, a wide range of countries, including many European Union (EU) members, have yet to adopt national controls on this activity and were reluctant to sign up to international standards first.

### Scope

Throughout the negotiations, a debate raged as to whether the Protocol should cover state-to-state transfers as well as the commercial variety. Certain governments, led by Colombia, argued strongly for the inclusion of state-to-state transactions, pointing out that they are just as susceptible to diversion to the illicit market and should thus be subject to the same restrictions as commercial sales. The inclusion of state-to-state transfers is particularly important to ensure the adequate tracing of illicit weapons. However, the view prevailed that their inclusion would broaden the scope of the Protocol too far and risk taking the negotiations into sensitive territory linked to national security concerns. Article 4.2 of the final text thus expressly exempts state-to-state transactions from the Protocol.

A second issue relating to scope was whether to apply the Protocol to transfers of firearms from states to non-state actors. Again, negotiating states diverged sharply in their views on this question, with some seeking a clear exemption for such transfers and others wanting them to be covered by the Protocol. In the event, compromise language, making reference to the UN Charter, was proposed by the United States and eventually integrated into the final text:

The view prevailed that the inclusion of state-to-state transfers would broaden the scope of the Protocol too far.

This Protocol shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations. (UNGA, 2001b, art. 4.2)

This language, consistent with the US refusal in other forums to accept a ban on transfers to non-state actors, will in effect allow States Parties to decide for themselves whether a specific transfer from the state to a non-state actor is covered by the Protocol. The reference to the UN Charter does not appear to significantly limit the scope of the national security exemption given the broad, occasionally divergent, nature of its principles.

Several states expressed reservations with respect to the text of art. 4.2 when the Protocol was agreed. India, for example, indicated that 'the exclusions foreseen in that paragraph would be viewed only in narrow, precisely defined terms'. Other governments, notably Colombia, indicated they rejected the exceptions altogether (UNGA, 2001a, paras 16, 30). In fact, there is little doubt that the subjective language of the national security exemption will make it difficult for any judicial body called upon to adjudicate a dispute under the Protocol to reject a State Party's invocation of this provision (UNGA, 2001b, art. 16).

### BOX 6.2

#### Article 8 Marking of firearms

1. For the purpose of identifying and tracing each firearm, States Parties shall:
  - (a) At the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture;
  - (b) Require appropriate simple marking on each imported firearm, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the firearm, and a unique marking, if the firearm does not bear such a marking. The requirements of this subparagraph need not be applied to temporary imports of firearms for verifiable lawful purposes;
  - (c) Ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by all States Parties of the transferring country.
2. States Parties shall encourage the firearms manufacturing industry to develop measures against the removal or alteration of markings.

Source: UNGA (2001b)

### The marking compromise

The second area in which the text of the *Firearms Protocol* was weakened was that of marking. Article 8 of the Protocol allows countries to use 'geometric' as well as 'alphanumeric' symbols to mark their weapons. In the negotiations, China had pushed for the right to use geometric symbols, especially for purposes of identifying manufacturers. Many countries were, however, extremely reluctant to concede to China on this issue. Sole use of alphanumeric markings would have ensured a high degree of transparency, enabling governments to trace weapons back to the manufacturer without the assistance of the original exporting government.

A compromise of sorts was reached. The use of geometric symbols was allowed—but only for those countries which already use them. No others may adopt such a system in the future.<sup>5</sup> Most countries that do use geometric symbols, and are unwilling to change because of cost implications, provide their information to Interpol, so some transparency is assured (*IISS Strategic Comments*, 2001). Nevertheless, several governments expressed reservations in relation to Article 8 in the final report of the negotiating Committee (UNGA, 2001a).

### Implementation

There is no doubt that the Protocol suffered when it missed out on the collective pressure that led several countries to sign the main Convention and the two other protocols at the signing ceremony held in Palermo in December 2000. If signature of the *Firearms Protocol* is likely to be slow, ratification will be even slower; it is unlikely to enter into force in the next two to three years.<sup>6</sup> A conference of the States Parties, to be held not later than one year after the instrument's entry into force, might provide an opportunity to review some of the more contentious provisions and clarify such questions as the application of the Protocol's provisions to government transactions. The conference is also intended to boost information exchange on patterns and trends, and promote co-operation with relevant international organizations—such as Interpol and the World Customs Organization (WCO)—and NGOs. Perhaps most importantly, the conference will afford an opportunity to review national implementation.

Implementation of certain provisions will no doubt present challenges to some countries, primarily those in the less developed world. Record-keeping will probably be especially difficult for countries without sophisticated data collection systems, although in some cases they may be able to 'leapfrog' to computerized databases and other technologically advanced systems. However, considerable resources will be needed for this purpose, with assistance from wealthier countries essential. As mentioned earlier, the Protocol recognizes this, committing States Parties to make necessary training and technical assistance available (UNGA, 2001b, art. 14). The draft plans of action of the ECOSOC Crime Commission, which were agreed in September 2001, stress the importance of international co-operation in implementing the *Firearms Protocol*, and mandate the UN Centre for International Crime Prevention (CICP) to develop 'technical co-operation projects'. Subject to available resources, assistance to developing and newly democratic countries in implementation is envisaged (UN ECOSOC, 2001, para. 16). The CICP also has an ongoing pre-ratification assistance project for interested countries.

Implementation will not just depend on resources, however. Some countries might find that their national systems prove a barrier to ratification and implementation. The United States is the best example, where legislative distrust of gun control initiatives may hold up ratification in the Senate. Even if ratification is completed smoothly and the Protocol enters into force, it will put a heavy burden of implementation on the US, which does not track the movement of civilian weapons *within* the country and has no national registry of ownership.

As ever, ratification and implementation will depend heavily on political will. While the attention gained by the 2001 UN Small Arms Conference may have a beneficial effect on the ratification prospects of the *Firearms Protocol*, the trafficking of human beings has recently occupied a higher place on the political agenda. In fact, only two countries—Mali and Brazil—took the opportunity at the UN Conference to sign the *Firearms Protocol*. Without a similar high-profile event, signature and ratification may fall down the list of priorities for many countries. Nevertheless, it remains the responsibility of supportive governments to sign and ratify quickly as a sign of their good faith.

Implementation of the Protocol will not just depend on resources.



### BOX 6.3 NGO contributions to small arms control efforts

The 2001 UN Small Arms Conference helped legitimize the key roles NGOs play in the evolution of small arms control. These are more important than ever in the wake of the Conference (CONFERENCE).

Among the most critical responsibilities are *public awareness raising and constituency building*. NGOs will be essential in the immediate post-Conference period in broadening public awareness and concern, which will in turn determine the extent to which states follow up on commitments made in the *Programme of Action*. Absent strong national interest, governments shy away from decisive action on disarmament-related matters unless they feel the pressure of public opinion. Present levels of

public awareness and mobilization are patchy, with large parts of the world, including many small arms-affected regions, not yet effectively engaged. NGOs will be important not only in engaging new publics but also in sustaining public involvement where already strong. This role involves the use of the kinds of strategies employed so effectively by NGOs in other issue areas for engaging media interest—such as the anti-personnel landmines campaign. The effectiveness of a number of other NGO roles depends, to some extent, on how well NGOs fulfil this public engagement one.

Closely related to this role are *advocacy and policy development*. The development of effective control regimes requires action of various kinds by national governments. NGO advocacy and lobbying at the national level, backed by mobilized publics, are often critical to governmental action, whether strictly national in scope or conducted within a regional framework. Concerted campaigning, both national and international, will be necessary, for example, if the good intentions of the *Nairobi Declaration* (2000) are to be translated into effective action in the Horn of Africa and Great Lakes subregion. To be effective, national NGOs and regional NGO networks will need to be strengthened. NGOs can also be expected to continue to press forcefully for the development of global regimes, however tepid the commitment to these in the Conference *Programme of Action*.

NGOs will continue to be instrumental in the development of particular policy initiatives. Where government action is seen to be inadequate or even inimical to the sorts of controls required, NGOs must play an adversarial role to governments. But NGOs can often play a partnership role assisting governments in the development of specific policy initiatives, whether national, regional, or global. At the national level, they can lobby for specific legislation and define regulatory needs. At the regional and global levels, NGOs play a similar role. Prominent examples include the model conventions on tracing, arms brokering, and arms transfers, briefly described elsewhere in this chapter and in Chapter 4 (HUMANITARIAN). 'Biting the Bullet'—a project of three international NGOs, the British American Security Information Council (BASIC), International Alert, and Saferworld—has prepared policy-oriented papers on a whole series of small arms control issues as tools for advocacy and support to governments in national and international policy development. In policy development, NGOs will continue to work alongside sympathetic governments and international organizations.

Closely related to advocacy and policy development, NGOs also play an important *agenda development* role. The UN Conference *Programme of Action* essentially represents the lowest common denominator on what must be done. In countries and regions where there has been little or no action on small arms to date, NGOs can be expected to be at the forefront of agenda setting, stressing the measures set out in the *Programme*, as appropriate to the circumstances. NGOs will also be seeking to deepen and expand the global agenda beyond its narrow emphasis on the illicit trade. Trans-national NGO coalitions are forming under the general umbrella of the International Action Network on Small Arms (IANSA) to bring varying perspectives to bear on small arms work, including the impacts these weapons have on children and women, as well as their humanitarian, development, and human rights implications. In the coming period, NGOs can be expected to increasingly raise issues and, going beyond the established supply-side orientation, help give shape to a demand-side action agenda at all levels (Atwood and Jackman, 2000).



High school students calling for an end to armed violence following the death of a teacher, Freetown, Sierra Leone.

**BOX 6.3 NGO contributions to small arms control efforts (continued)**

As commitments and obligations by states expand in number and depth, the *monitoring and evaluation* role of NGOs will become increasingly important. The knowledge that there will be independent analyses by NGOs of state performance in enacting and implementing small arms control measures will be critical to ensuring that rhetoric is turned into real action, whether in relation to domestic gun control or to the trans-national effects of weapon flows. The potential importance of NGOs in this area can be illustrated by the crucial role currently being played by the annual *Landmine Monitor Report* in measuring and evaluating the behaviour of States Parties to the anti-personnel landmine convention. Similarly, the evaluation by NGOs of how well enacted policies and regimes are actually working will help provide important measures of progress in the years ahead.

NGOs can also play a useful *implementation* role, especially at the national and local levels. For example, the Christian Council of Churches of Mozambique has for several years conducted a 'Tools for Arms' collection project in which weapons can be exchanged for farm implements. Viva Rio not only campaigns for stronger state and federal gun control laws in Brazil but is also involved in a broad range of social programmes aimed at addressing the social conditions which lead to gun usage (WEAPONS COLLECTION). The Bonn International Center for Conversion (BICC) and the International Resource Group on Disarmament and Security in the Horn of Africa (IRG) are undertaking similar, capacity building work at the local level in the Horn of Africa as part of their Assessing Small Arms Issues and Developing Capacity for Peace in the Horn of Africa (SALIGAD) project. Some NGOs work alongside or as implementing agencies for international agencies engaged in post-conflict programmes aimed at disarming, demobilizing, and re-integrating ex-combatants. Others are actively involved in various aspects of security sector reform.

A major contribution to effective action on small arms issues is the *research and information* role that NGOs play. NGO research has been important to the growing understanding of the causes, patterns, and magnitude of small arms proliferation. Increasingly, the analysis they provide is also important to measuring the effects these weapons have on society. Government support for research NGOs illustrates the extent to which they appreciate and have come to rely on the policy-relevant research these NGOs are undertaking.

A further role NGOs have is that of *interlocutor and facilitator* of encounter and dialogue. A number of groups act as a bridge between governments and the NGO small arms community. Through international and regional seminars and other activities, they foster a greater understanding of participants' perspectives and special contributions along with the requirements for action. In addition, NGOs often facilitate government-to-government exchanges, playing a necessary third-party role in the development and implementation of small arms initiatives. This role, along with many others mentioned above, will probably increase in importance as efforts are made to implement the *Programme of Action* and move beyond it.

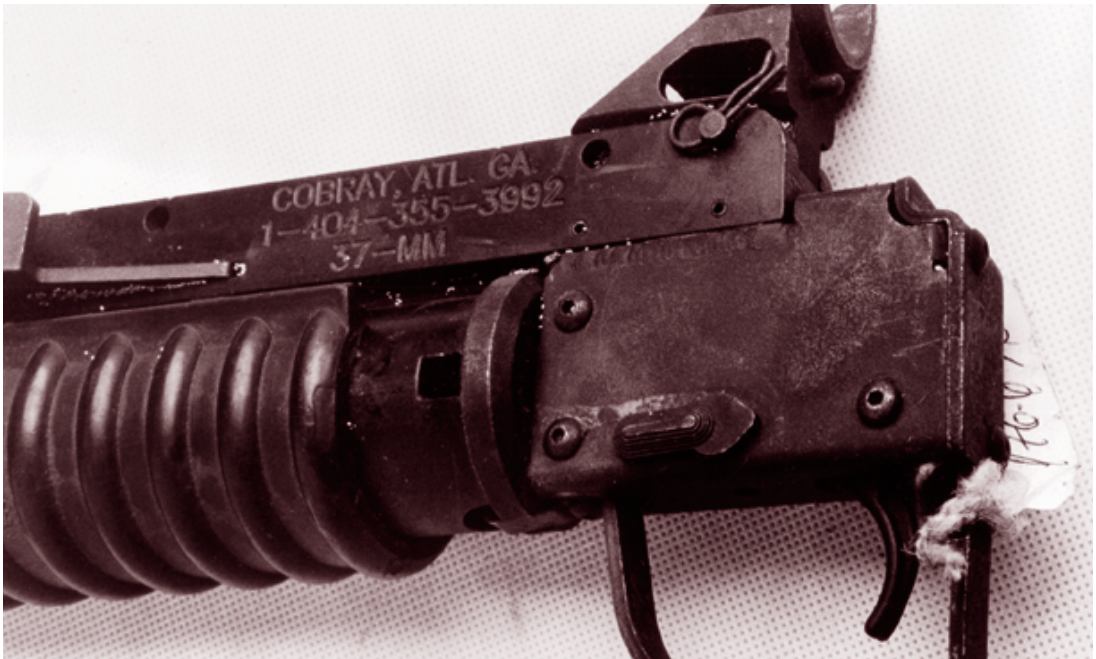
Source: Atwood (2001)

## Small arms tracing

Small arms tracing has attracted considerable attention and interest in recent years. Firearms and ammunition can be marked with simple inscriptions to show an item's type, serial number, manufacturer, and initial purchaser. These elements allow the firearm or piece of ammunition to be registered and subsequently identified. The process of reconstituting the transfer route followed by a specific weapon over the course of its lifetime is known as 'tracing'.

Successful tracing, dependent on adequate marking and record keeping, allows concerned governments and organizations to identify the producer of a particular weapon and the different intermediaries involved in its transfer to, for example, zones of conflict, criminal groups, or other undesirable end-users and end uses. Illicit trafficking networks can be uncovered and uprooted. Actors involved in the deliberate violation of international arms embargoes can be identified and punished—at least in theory. In practice, existing marking, record-keeping, and tracing arrangements are wholly inadequate to the task. These limitations prevented, for example, the Commission of Inquiry examining arms flows to Rwanda from reaching all but the most tentative and general conclusions about the individuals and arms trafficking routes involved in the violation of a UN arms embargo in the subregion (UNSG, 1996; 1998).

There is growing recognition of the importance of tracing and its link to other facets of the fight against small arms.



*The route small arms take to their final end-user cannot be consistently determined on the basis of existing systems.*

Technological advances have made the establishment of comprehensive marking, record-keeping, and tracing systems technically feasible. At the same time, as already noted, there is growing recognition of the importance of the issue and its link to other facets of the fight against small arms proliferation, especially the enforcement of UN arms embargoes. Some of the new initiatives which may begin to change this situation are described below, after a brief review of the current situation.

### **The tracing status quo**

*Firearms* are normally marked at the time of manufacture by stamping, casting, or engraving. These marks typically identify the manufacturer, model, and serial number, though the latter are not standardized between manufacturers and may not be unique. In certain cases, a number or abbreviation indicating quality standard is also marked on the firearm. No international instrument currently prescribes methods of marking. This facilitates the work of those who erase or modify marks when diverting firearms to the illicit market. Some firearms are never marked at all.

Even where marking exists, it is often not checked or recorded by an independent authority. Record keeping occurs, when it occurs, at the national level. Registers for civilian firearms are almost always incomplete and cover ownership—not import, export, or transfer within a country. While national armed forces tend to keep detailed information on their firearms stocks (STOCKPILES), it is not always shared, or promptly shared, with outside agencies—even friendly foreign governments conducting criminal investigations. While a few, new international instruments require national authorities to co-operate in tracing requests by providing relevant information, including information on official firearms stocks, they are not legally binding.

As things stand, when a firearm is inspected somewhere in the world, one can only be sure of determining its model and type—and quite often the manufacturer and country of origin—on the basis of the weapon's initial

markings and/or expert examination of its design features. Depending on the extent of national record keeping and, above all, the willingness of national authorities to co-operate, investigators situated abroad may also be able to learn where the weapon went when it left the source country. After this, the firearm enters something of a black hole. The route it takes to final end-user, the identity of intermediate owners, and, crucially, the point at which it moves from legal to illicit markets cannot be consistently determined on the basis of existing systems.

*Ammunition* is typically marked, at the base of cartridge casings, with the manufacturer's initials and the calibre. However, these elements are often insufficient to ascertain the place of manufacture of an item, and in no case allow a determination of its transfer route. Additional information, especially production batch, is usually recorded on ammunition packaging, but this is obviously lost as soon as the ammunition is taken from its packaging. This may be done deliberately in order to hide all traces of the ammunition's origin. Ammunition can also be diverted from legal to illicit markets by simulating its use: for example, in fictitious 'training exercises'. As with firearms, states do not consistently impose a marking requirement in order to facilitate ammunition tracing. What national practice exists is not harmonized internationally.

The packaging of ammunition for transport is, however, governed by a harmonized system of procedures and regulations. These are inspired by the recommendations of a UN Expert Committee on the transport of dangerous goods (UN, 2001b). Packaging is tested and marked to designate the category and type of ammunition, the country of origin, and exporter. While this system is harmonized at the global level and thus permits the tracing of ammunition packaging throughout the world, it does not apply to its contents—the partially marked ammunition. Once the packaging is lost, so too is the ability to trace the ammunition.

### Multilateral initiatives

The *Convention on the Marking of Plastic Explosives* (1991) was negotiated as an anti-terrorism measure in the wake of the bombing of Pan Am Flight 103 over Lockerbie, Scotland, in December 1988. In force since 21 June 1998, the Convention requires States Parties to use a prescribed chemical marking agent in the plastic explosives they manufacture in order to facilitate their detection. Among the first initiatives adopted with respect to *firearms* tracing was the 1992 resolution of the Interpol General Assembly. After '[r]ecognizing that police work is often hampered by the inability of police services of a country to trace the history of firearms', the resolution recommended the establishment of national firearms tracing offices (Interpol General Assembly, 1992). In 1997, in New Delhi, the Interpol General Assembly recommended the permanent marking of all firearms with specified, minimum information, along with the adoption of 'effective legislation and a registering system' (Interpol General Assembly, 1997). Yet very few countries have followed these recommendations.

The precedent-setting *Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials* (OAS, 1997) was adopted in Washington, DC, on 14 November 1997 and entered into force on 1 July 1998 after ratification by two OAS states. In a first for a multilateral instrument, the Convention establishes a binding obligation for the marking of firearms at the time of manufacture and import, as well as in cases where illicit firearms are confiscated but not destroyed (art. VI). A related provision requires States Parties to retain 'for a reasonable time'<sup>7</sup> necessary tracing and identification information (art. XI). The Convention also mandates co-operation among States Parties in tracing, including 'accurate and prompt responses to trace requests' (art. XIII.3), together with the 'adequate training' of personnel in this field (art. XV.2). As of August

2001, the implementation of the Convention was not far advanced (OAS, 2001). Yet, even when the Convention is more fully implemented, its marking provisions will have limited practical utility so long as there are no common standards at the global level.

The recently concluded UN *Firearms Protocol* is described earlier in this chapter. The Protocol's marking provisions are quite extensive notwithstanding a compromise forced by the Chinese delegation that led to the acceptance, in certain cases, of the use of geometric symbols as well as the alphanumeric variety. The Protocol requires marking at time of manufacture and import, permitting, at a minimum, identification of the manufacturing and importing countries. Imported firearms must also be given a unique identifying mark where they do not already have one (UNGA, 2001b, art. 8.1.a–b). Firearms transferred from government stocks to the civilian market also have to be marked so as to allow for the identification of the transferring country (art. 8.1.c). Article 7 of the Protocol mandates the retention, for at least ten years, of relevant tracing information, but this falls far short of the lifespan of most firearms. In contrast to the *Inter-American Convention*, the Protocol is a global instrument, open to signature and ratification by all states. However, its marking provisions will not have the impact they might have had given the absence of a universal requirement to mark serial numbers (art. 8.1.a).

The marking provisions of the Firearms Protocol will not have the impact they might have had given the absence of a universal requirement to mark serial numbers.

Another important initiative, though not legally binding, is the *OSCE Document on Small Arms and Light Weapons*. Section II of the Document, adopted by the Organization for Security and Co-operation in Europe (OSCE) on 24 November 2000, sets out various provisions for marking and record keeping at the national level in the context of efforts to combat illicit trafficking. Common standards are not established, but OSCE participating States do 'agree to ensure that all small arms manufactured on their territory after 30 June 2001 are marked in such a way as to enable individual small arms to be traced.' (OSCE, 2000, sec. II.B.1) Marks should be permanent and include information allowing identification of the year and country of manufacture, the manufacturer, and the weapon's serial number (sec. II.B.1). Unmarked small arms transferred from government stockpiles are also to be given a unique identifying mark (sec. II.B.2). OSCE participating States also undertake: to keep 'comprehensive and accurate records' of public and private small arms holdings for 'as long as possible' (sec. II.C); to co-operate with one another in the tracing of illicit small arms (sec. III.E.4); and to exchange information on national marking systems (sec. II.D.1).

The importance of marking, record-keeping, and tracing has been acknowledged in a wide range of other regional initiatives. These include the West African Moratorium,<sup>8</sup> the EU Joint Action,<sup>9</sup> and the Organization of African Unity's (OAU) Bamako Declaration.<sup>10</sup> The issue has also been addressed in a series of UN experts reports, including the 1997 Experts Panel report (UN, 1997, para. 80(l)(i)), the 1999 Experts Group report (UN, 1999c, paras 102, 115–17), the Ammunition Study of the same year (UN, 1999b, paras 104–6), and the 2001 *Feasibility Study* on brokering (UN, 2001a, paras 36–40, 51, 53–54, 57, 59, 61).

Marking, record keeping, and tracing feature quite prominently in the *Programme of Action* agreed at the end of the 2001 UN Small Arms Conference. In this document, states commit themselves to ensuring manufacturers mark small arms (UNGA, 2001c, sec. II.7) and to preventing the manufacture, stockpiling, transfer, and possession of unmarked or inadequately marked small arms (sec. II.8). Other provisions of the *Programme of Action* provide for 'comprehensive and accurate' record keeping with respect to manufacture, holding, and transfer (sec. II.9), effective tracing measures (sec. II.10), and the marking and registration of confiscated or collected weapons that are not destroyed (secs II.16 and II.21). Section III of the *Programme* contains potentially important commitments for building capacity in marking, record keeping, and tracing (secs III.6, III.10–12).

Countries such as France and Switzerland,<sup>11</sup> backed by a large number of NGOs, had argued for the inclusion in the *Programme of Action* of an undertaking to negotiate an international convention on small arms tracing. Yet the final *Programme* simply called for a UN group to study the feasibility of negotiating such an instrument (sec. IV.1.c).

Civil society was an active participant in the preparation for the 2001 UN Conference and—though not part of the negotiating sessions—the Conference itself (CONFERENCE). Seminars, workshops, and conferences were held, with tracing frequently at the heart of the discussions. The International Action Network on Small Arms (IANSA, 2001), the Biting the Bullet project (Greene, n.d.), and the Groupe de recherche et d'information sur la paix et la sécurité (GRIP) (Berkol, 2001b) all published documents analysing the issue and making recommendations for the future *Programme of Action*. GRIP has conducted extensive research on techniques for marking and systems for registration and tracing. In October 2001 it was working to develop a model convention which would set out a series of standards for marking and registration along with the establishment of a centralized tracing mechanism (Berkol, 2001c).<sup>12</sup>

The firearms community—firearms users and industry—represented by such groups as the NRA and the WFSA also sought to influence the course of negotiations at the UN. A principal objective of these groups was to exclude handguns and hunting and sporting firearms from the Conference ambit (*Workshop Report*, 2001; CONFERENCE). Parallel to the 2001 UN Small Arms Conference, the Eminent Persons Group announced an initiative which would see the firearms industry adopt a system of voluntary marking and information exchange (Mali, 2001b). Its proposals are based on the recommendations of a seminar hosted by the WFSA in Sardinia, Italy, in June 2000 (WFSA, 2000).

### Moving beyond the status quo

To summarize, only two legally binding initiatives currently regulate marking, record keeping, and tracing at the regional and global levels: the *Inter-American Convention* and the *UN Firearms Protocol*. Both instruments, however, focus on the problem of the illicit trade. The OSCE Document is more comprehensive—and covers important, related areas such as stockpile management—but is only a statement of political commitment. While discussions at the 2001 UN Small Arms Conference touched on virtually every issue relating to the small arms problem (CONFERENCE), a commitment to negotiate a legally binding agreement on tracing—as well as brokering—was purged from the final *Programme of Action*.

For the moment, the status quo described earlier prevails. Effective marking, record keeping, and tracing arrangements tend to be the exception. Where they do exist, they are not harmonized between states. To date, there has been little or no national implementation of agreed multilateral initiatives. Nevertheless, many of the countries that have signed on to these measures are taking initial steps to follow up on their commitments, including the preparation of new legislation. Further action is also on the agenda. In October 2001, Belgium, President of the Council of the EU during the second half of 2001, announced it would initiate a discussion with fellow member states on binding EU norms for marking. The Franco-Swiss initiative, described above, will likely play an important role in plans, announced in the *Programme of Action*, to examine the feasibility of developing an international tracing instrument.



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No international instrument currently prescribes methods of marking, facilitating the work of those who erase or modify such marks when diverting firearms to the illicit market.

It may also serve, more generally, to channel the efforts of states that wish to pursue and intensify efforts to develop international standards for the small arms trade. NGOs and industry representatives will continue to be closely involved in the elaboration of future norms and instruments for small arms tracing.

#### **BOX 6.4      Accountability in export controls**

Export controls are an essential point of intervention in the small arms transfer chain. Crucial decisions are taken, at this time, as to what weapons go where. Yet very often arms export policy is entirely concentrated in the hands of the executive branch of government, raising a problem of accountability in democratic nations *vis-à-vis* the legislature and society as a whole.

The US export control system is often cited as something of a model. It is also one of the few countries whose Legislature—the US Congress—has a significant oversight role with respect to arms exports. Pursuant to the Arms Export Control Act, the executive branch of the US government is required to give Congress advance notice of arms sales reaching a prescribed threshold in terms of total value: USD 14 million or USD 50 million, depending on the weapons. The Foreign Assistance Act also directs the Executive to inform legislators of certain US military stocks that are given or sold at deep discount to foreign armed forces. The US House of Representatives and Senate can act together to block or amend any arms transfer notified to them, but short review periods—15 or 30 days, depending on various factors—make this extremely difficult in practice. As of October 2001, Congress was considering draft legislation which would set a new, lower notification threshold for small arms sales—a potentially important change as these deals often fall below existing thresholds. Other formal and informal levers affording Congress a degree of influence over US arms export policy include its power to pass laws and appropriate money, and the ability of individual legislators to request and publicize information from the Executive (Lumpe and Donarski, 1998, ch. 4).<sup>13</sup>

In Sweden, an Export Control Council, composed of current and former representatives of the Swedish Parliament, advises the country's main export licensing authority, the National Inspectorate of Strategic Products (ISP), on applications for the export of war material and dual-use goods which are not easily decided on the basis of existing guidelines and precedents. The role of parliamentarians is limited to the provision of advice. The licensing decision is taken by the ISP (SIPRI, 2001b).<sup>14</sup> Elsewhere in Europe, the role of legislatures in national export systems is more limited. While parliaments at least have responsibility for adopting the primary legislation that underpins these systems, there are instances where the executive basically sets national policy in this area.

Pursuant to laws in force in October 2001, the executive branch of the UK government had broad discretion to determine the country's arms export policies, and could even change these without informing the UK Parliament. Yet new export control laws were being finalized—the last phase of a process beginning in the mid-1990s, with the 'arms to Iraq' scandal and the resulting Scott Report (Scott, 1996). Scott asserted that export policy should be bound by law and proposed setting out the purposes of export controls in legislation. He also recommended making any changes to export policy conditional on parliamentary approval and called for a greater level of disclosure with respect to individual licensing decisions. The draft legislation under consideration in October 2001 went some way towards addressing these criticisms, with Parliament to be given an enhanced role in the system and the purposes of export controls spelled out. Yet the draft also left the executive considerable freedom in a number of areas (Isbister, 2001).

In April 2001, the French Minister of Defence announced that an inter-ministerial working group would be established for the purpose of considering changes to France's legislative framework for arms exports, currently built upon a 1939 law. In the case of France, too, accountability will be a crucial issue in the reform process, with many observers arguing that the current system—controlled by the French government and armed forces—needs to be balanced by some measure of parliamentary oversight and involve civil society in its ongoing evaluation and development (Bouveret, 2001; Bouveret and Elomari, 2001).

## **End-use assurances**

Small arms control is typically weakest where the jurisdiction of one state ends and that of another begins. Export control regimes play a crucial role in preventing the diversion of small arms to unintended end-users and end uses. End-use assurances (EUAs) are vital components of these systems, offering exporting countries a means of retaining

some measure of control over their arms exports after they leave their territory. The information provided to the exporting government about where and how the weapons will be used also helps it assess whether or not a transaction is in accordance with export control regulations. End-use assurances usually contain a non-transfer pledge and facilitate the verification of delivery. As such, they are a vital link in the chain of control over military goods.

However, false end-use documentation is often used to divert arms, particularly small arms, to the illicit market. For example, UN bodies set up to assess compliance with sanctions against União Nacional Para a Independência Total de Angola (UNITA) found that large quantities of weapons had been exported from Bulgaria to the Angolan rebel movement on the basis of forged EUAs (UNSC, 2000a; 2000b). Since formats and procedures vary greatly from country to country, EUAs are especially liable to abuse and fraud. Forged statements are used to gain export licences for weapons that were never intended for their stated destination. As few countries physically verify delivery, forgery is a low-risk strategy.

False end-use documentation is often used to divert arms, particularly small arms, to the illicit market.

Recent initiatives by governments and multilateral organizations have responded to this problem by examining end-use standards and recommending minimum levels of information, limited numbers of authorized signatories, and harmonization of documentation. However, because these agreements are recent and non-binding, countries continue to pursue widely divergent end-use practices.

### No uniformity in end-use practices

EUAs are usually required for the export of all military and some dual-use equipment. Some governments, such as Denmark's, waive end-use requirements for government-to-government deals, while other countries exempt exports to like-minded or allied governments. Some governments go one step further and require them only for countries of concern. A recent questionnaire distributed by the government of Switzerland to all members of the Wassenaar Arrangement confirmed there is no uniformity in end-use practice among major arms-exporting countries, especially with regard to export destinations and the types of equipment for which EUAs are required (Switzerland, 2000).<sup>15</sup>

### Different types of end-use assurances

Governments use a wide variety of terms to describe their end-use documents, including 'undertaking', 'declaration', and 'statement of ultimate consignee'. The nature of the assurance differs depending on the type of equipment being exported; exports of combat equipment (weapons) require more stringent procedures than material designed for military support. Interestingly, some governments, such as Switzerland's, require more detailed information for dual-use items because they have various uses, including the production of weapons of mass destruction, and are often exported to private companies.

In most countries, the type of EUA will vary according to whether the importing entity is a government or a private company. Some governments will accept a copy of the contract as a substitute for an end-use assurance in a government-to-government deal. In these cases, Sweden, which has five different types of EUA, requires a traditional government-to-government declaration (Declaration by End-User) that is printed on banknote paper to reduce the risk of forgery. For exports of small arms and ammunition to private companies for sporting uses, Sweden has a different form (Sweden, National Inspectorate of Strategic Products, 2000). Some countries, such as the US, require the end-user to fill out official forms (US, US Code). Others accept a declaration on the end-user's letterhead. Some, like



the UK, provide a model form which should constitute the basis of an end-use declaration on the importer's letter-head (UK, Department of Trade and Industry, 2000). Whatever format is used, most countries require statements of non-governmental end-users to be authenticated by their governments.

Many countries require an International Import Certificate (IIC) as well as an end-use statement. An IIC provides information about the goods, the importer, and the end-user, but not the end use, and serves as a guarantee that the importer will not divert or re-export the imported goods. An IIC is in certain circumstances accepted in lieu of an EUA. Belgium, for example, requires an IIC alone for exports to NATO and some other European or Western countries.

### Minimum information

Just as the type of assurance varies according to the deal, the amount of information it contains also differs. For government-to-government deals involving military equipment, most countries require only limited information; the assurance is more a statement of good faith than a detailed description of the goods and their intended use. For example, Bulgaria requires a declaration from a foreign government that goods it imports from Bulgaria will be 'solely for the use' of the relevant ministry. In contrast, a *Statement by Ultimate Consignee*, which is used for Bulgarian exports of military and dual-use equipment—often to private end-users abroad—contains much more information, including: a detailed description of the goods; the names and addresses of the exporter, importer, intermediate consignee, and ultimate consignee or end-user; and the means of transport and route taken (Bulgaria, Ministry of Foreign Affairs).

### Signature or stamp

End-use statements or certificates are usually signed by the consignee and the end-user. When an export is made to a non-governmental end-user, most countries require its government to validate the statement. For example, an Australian EUA must be signed by the consignee, the end-user, and the end-user's government, and each signature must be validated by a seal (Australia, Department of Defence).

### Non-transfer clauses

EUAs typically serve to commit those importing weapons to not re-export them—at least not without the exporting country's consent. For example, Italy requires an importing company to undertake 'not to divert, not to transfer and not to re-export' the relevant materials, while the US makes any re-export conditional on the prior, written approval of the Department of State (Italy, Ministry of Foreign Affairs, n.d.; US, Department of State, n.d.).

### Delivery verification systems

End-use assurances have little practical effect in preventing diversion unless they are verified. Many EUAs include a commitment to provide a Delivery Verification (DV) certificate once the equipment has reached its final destination.<sup>16</sup> Yet, while DVs help ensure delivery occurs as planned, they are just as open to abuse as EUAs. Ultimately, the only way to effectively guard against diversion is to conduct end-use verification checks. Although some governments attempt to do this, usually through their embassies, they are heavily dependent on available resources and diplomatic representation. A few governments, such as the US, ask for an offer of on-site inspection in their EUAs. This can have a potential deterrent effect, though the exporting country may not always have the capacity to take up such an offer.

**BOX 6.5**

**End-Use Assurances Commonly Used  
Indicative List**

The following is a non-binding list of end-use assurances to be used by Participating States at their discretion.

**1. Parties involved in the transaction**

- 1.1 Exporter's full name and address;
- 1.2 Intermediate consignee's(s') full name and address (if applicable);
- 1.3 Final consignee's(s')\* full name and address;
- 1.4 End-user's full name and address (if different from the final consignee);

**2. Goods**

- 2.1 A detailed description of the goods which discloses their true identity;
- 2.2 Include quantities and values;

**3. End-use**

- 3.1 Describe the specific end-use of the goods;
- 3.2 Provide assurances that the goods will not be used other than for stated purposes; and/or
- 3.3 Provide an undertaking that the goods will be used for civil end-uses; and/or
- 3.4 End-user certification that the goods will not be used for chemical, biological or nuclear weapons, or for missiles capable of delivering such weapons;

**4. Location**

- 4.1 Provide certification that the goods will be installed at the premises of the end-user or will be used only by the end-user;
- 4.2 The final consignee/end-user agrees to allow on-site verification;

**5. Re-export/Diversion**

- 5.1 The final consignee's/end-user's undertaking not to tranship or re-export the goods covered by the End-use Certificate/Statement; and/or
- 5.2 No re-exports without approval from the government of the original exporting country; and/or
- 5.3 The final consignee's/end-user's assurance that any re-exports will be done under the authority of the final consignee's/end-user's export licensing authorities;
- 5.4 The final consignee's/end-user's undertaking not to divert the goods covered by the End-use Certificate/Statement to another destination or location in the importing country;

**6. Delivery Verification**

- 6.1 Provide a commitment by the final consignee to provide the exporter or the exporting government with proof of importation, upon request (e.g., provide a Delivery Verification Certificate (DV));

**7. Documentation**

- 7.1 Signature, name, and title of final consignee's/end-user's representative;
- 7.2 Signature and end-use certification by the final consignee's/end-user's government or other authority as to the authenticity of the primary details provided in the document;
- 7.3 If issued by government authority, a unique identifying Certificate/Statement number;
- 7.4 Original End-user Certificate/Statement or legally certified copies.

\* Meaning the last destination of the export (goods) known to the exporter.

Source: Wassenaar Arrangement (1999)

### Developing best practice

A number of international organizations have examined possible standards for end-use certification and verification. The Wassenaar Arrangement has endorsed an ‘Indicative List’ of end-use assurances (see Box 6.5), though, in keeping with the institution’s voluntary nature, the list is non-binding (Wassenaar Arrangement, 1999).

Other organizations have investigated common standards for end-use statements. Under the auspices of the Stability Pact for South-Eastern Europe, a number of countries agreed on the Sofia Statement, with a shorter list of minimum information. This information should include: the name and address of the foreign end-user; end use; country of ultimate destination; description and quantity of the commodity; intermediate consignees; and certification by the relevant governmental institution. The Statement also emphasized the need to minimize the number of officials authorized to issue and sign EUAs, and included a commitment to communicate to other governments the names of these officials (*Statement on Harmonization*, 1999).<sup>17</sup> The Statement, agreed *ad referendum* at the Sofia Conference, was subsequently adopted by 13 governments;<sup>18</sup> however, there seems to have been little or no follow-up.

The OSCE also addressed the issue of EUAs in its *Document on Small Arms and Light Weapons*, but stopped short of common minimum standards for these instruments. OSCE participating States did commit to minimizing the number of authorized signatories and to exploring a common minimum standard of information ‘with a view to developing recommendations based on the “best practice” among participating States’ (OSCE, 2000, sec. III.C.1).

Although little progress has been made towards the development of common minimum standards in multi-lateral forums, there does seem to be an interest in developing best practice. The Swiss government has concluded that a common end-use policy should be established, and has asked Wassenaar’s Licensing and Enforcement Group (LEOM) to examine whether a single, harmonized end-use assurance for Wassenaar members could be developed.<sup>19</sup>

The Wassenaar Arrangement, with its technical expertise, as well as other, more formal (and powerful) multilateral bodies, have important roles to play in the development of common procedures and documentation for EUAs. Any standards in this area would need to specify minimum information and establish norms with respect to signatures, validity periods, acceptance of copies, the types of exports covered by an EUA requirement, non-transfer, and verification of delivery/end use. Where standardization or harmonization is politically difficult, these organizations could help facilitate the exchange of information on existing national practice, including, crucially, those institutions and officials authorized to sign EUAs.

### Controls on brokering

Though an intrinsic part of the small arms trade, arms brokering is largely unregulated. At the national level, relatively few states control this activity, whether directly or indirectly, and there are no multilateral instruments. Independent research has shown, however, that brokers and associated actors play a crucial role in small arms proliferation—especially in some of the globe’s most strife-torn regions—exploiting gaps in national laws and focusing their activities on states with weak export controls and enforcement (Small Arms Survey, 2001, ch. 3; Wood and Peleman, 1999). These findings have helped focus attention on the need for regulation (Bondi, 2001; Bondi and Keppler, 2001; Fund for Peace, 2001; UN, 2001a), although any progress that has been achieved—for example, at the 2001 UN Small Arms Conference—has been modest. The trans-national nature of brokering activities makes multilateral co-operation essential, yet common definitions and approaches to jurisdiction and enforcement remain elusive.

### The problem of definition

A key difficulty facing national and multilateral efforts to control brokering is the lack of a standard definition. The few existing national laws differ significantly with respect to the range of activities they consider part of brokering. A UN expert study on brokering controls offers its own definitions of key terms in this area. This document and other recent literature highlight the many related activities which underpin the core brokering activity of bringing arms suppliers and recipients together. These include, most notably, the provision of transportation, insurance, and financial services (UN, 2001a, Annex 1; Wood and Peleman, 1999; Small Arms Survey, 2001, ch. 3).



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*Independent research has shown that brokers and associated actors play a crucial role in small arms proliferation.*

### Control options

Governments have a variety of options at their disposal for the regulation of brokering. In order to be effective, two minimum requirements must be satisfied:

- the effective exercise by states of control, within the limits of their territorial jurisdiction, on all arms trade activities; and
- a degree of international co-operation allowing states to identify and address violations of relevant laws (UN, 2001a, para. 63).

Specific control options include:

- *Registration and certification:* The registration of brokers may serve simply as a means of gathering, and sharing, information about them. Alternatively, registration can form part of a scheme—which can include formal certification—designed to determine eligibility to act as a broker (UN, 2001a, para. 64(a)).
- *Licensing:* If states seek to ensure proper control over brokering, they need to license transactions in addition to registering and certifying the actors. In applying for a licence, brokers would have to supply certain basic information concerning their business (para. 64(b)).
- *Disclosure requirement:* In order to fill in the picture of a particular small arms deal, governments can require applicants for export licences to disclose any brokering agents involved (para. 64(c)).

The primary purpose of registration, licensing, and disclosure requirements is to achieve transparency and accountability. These measures facilitate the identification of illegal arms transactions and enable buyers to deal with a more reliable market as transactions are open and brokers, once registered, are accountable. A licensing regime has many practical advantages. Most clearly, it enables national authorities to assess prospective brokering deals on the basis of adequate disclosure and to refuse a licence where a transaction is contrary to law or policy. At the same time, a licensing system allows national authorities to prosecute brokers who operate outside it, without them having to prove some other offence.

### National laws regulating brokering

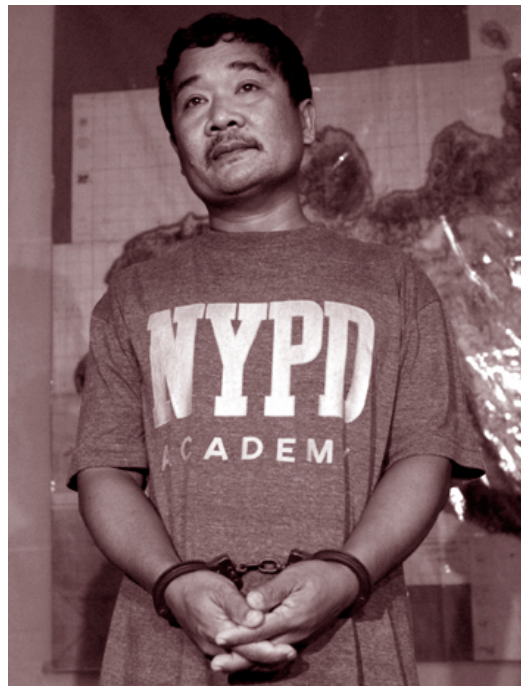
The legislative and administrative bases for brokering regulations vary according to the different traditions and situations of each country. Most states regulate the transfer of arms without a specific reference to brokering. Nearly all states maintain laws, regulations, and administrative procedures to control the export, import, transit, and re-transfer of arms and military goods and technologies. However, in many cases, these require strengthening and updating in relation to small arms and light weapons. Many states that are rarely involved in other aspects of the conventional arms trade are suppliers or recipients of used or new small arms. As noted elsewhere in this book (TRANSFERS), these weapons are susceptible to diversion to illicit markets and end-users. In many states, existing controls are manifestly inadequate to prevent this.

The US law is widely considered to be the most comprehensive effort to regulate brokering. It defines a broker as 'any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee, commission, or other consideration' (US, Department of State, 2001, sec. 129.2(a)). 'Brokering activities' means acting as a 'broker' and 'includes the financing, transportation, freight forwarding, or taking of any other action that facilitates the manufacture, export, or import of a defense article or defense service, irrespective of its origin' (sec. 129.2(b)). The brokering amendment to the US Arms Export Control Act requires all persons engaged in brokering activities to register as such and to obtain a licence for each transaction in which they are involved (US, Congress, 1976, sec. 2778(b)). As part of the registration and licensing process, brokers have to submit detailed information regarding their identity and the relevant transactions. Brokers are also required to provide annual reports regarding their activities (US, Department of State, 2001, sec. 129.8-9). Persons who violate these requirements are subject to punishment, including criminal penalties.

The US definition of 'brokering activities' is notable for its inclusion of financial services (Coflin, 2000, p. 28),<sup>20</sup> which are very difficult for law enforcement agencies to trace. The Netherlands also has regulations requiring persons financially involved in the trade of military goods to be licensed (SIPRI, 2001a). Imposing a licensing requirement on the financiers of these deals serves to enlist their help in policing them. They run unacceptable risks by participating in transactions which are unlicensed and therefore illegal. Brokers involved in the illicit trade should thus find that funding becomes scarce or much more expensive.

The Polish Law of 29 November 2000 also has a very broad definition of brokering (Poland, 2000, art. 3(8)), encompassing any activity which could be seen as relating to brokering. The Polish law lays down licensing requirements for brokers in Section 2, requiring the establishment of a register of granted licences and of enterprises which have met certain specific conditions

Most states regulate the transfer of arms without a specific reference to brokering.



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*However good the legislation, it achieves little if no attempt is made to enforce it. Enforcement of existing brokering regulations is often weak.*

laid down by the law (art. 21). The German law avoids a broad definition of brokering but, as noted below in the section on jurisdiction, is relatively broad in its application. It sets out a list of prohibited activities for which licences may never be granted, especially where the activity would endanger peace, or compromise German national interests or the fulfilment of its international obligations. A licence will also be refused if the applicant is considered unreliable (Germany, 1961, sec. 6). The Firearms Act of Kenya imposes a registration requirement on anyone dealing in firearms (Kenya, 2000), while Israeli regulation requires a 'negotiation permit' for negotiating the transfer of arms, as well as an 'export licence' for exporting defence equipment and know-how (Israel, 2000). France, South Africa, and Switzerland have varying registration and licensing requirements (France, 1995, arts 20–21; South Africa, 1998; Switzerland, 1996, art. 15.1).

Some brokering laws prohibit a particular brokering activity altogether. Examples include Canadian and UK laws completely banning the brokering of arms to countries under UN embargo. The Swiss Law on War Material forbids the brokering of certain types of arms, including nuclear, biological, and chemical weapons, as well as anti-personnel mines (Switzerland, 1996, arts 7–8). A similar example is the US law's refusal of licences where the export of the relevant article will, *inter alia*, support international terrorism, violate a US or UN Security Council arms embargo, or aid the development of weapons of mass destruction (US, Department of State, 2001, secs 120–30).

Some countries specifically regulate the transportation of arms. As already noted, the US law encompasses transportation services within its definition of arms brokering.<sup>21</sup> Other states have tackled the transportation of arms independently, without assimilating this activity to arms brokering. For example, Germany's War Weapons Control Act (1961) requires persons to be licensed if they are transporting 'war weapons' inside the national territory or if they are transporting arms outside Germany by ship flying the German flag or by aircraft entered in the national registry (Germany, 1961, secs 3–4).

Despite the relative ease with which they may elude customs inspection and tracing efforts, small arms and light weapons are not usually considered separately from other weapons or defence technologies. For example, Sweden's Military Equipment Act applies to military equipment defined broadly (Sweden, 1992; 1993). The Swedish Military List covers most of the material set out in the *List of Dual Use Goods and Technologies and Munitions List* (Wassenaar Arrangement, 2000). The scope of the German War Weapons Control Act is somewhat narrower, yet small arms and light weapons are still lumped together with a wide range of arms—including weapons of mass destruction—under the general rubric 'war weapons' (Germany, 1961, Annex).

### **Jurisdiction and extra-territoriality**

Jurisdictional scope is a key issue in the regulation of brokering given this activity's trans-national nature. One option involves the extra-territorial application of brokering laws, where states require all nationals—including those without any presence in the national territory—to comply with national brokering or foreign trade legislation. Such laws are designed to catch those citizens who engage in illicit brokering activities in third countries with weak national legislation. Yet relatively few states are willing to assert jurisdiction beyond their borders. Some do not believe they are entitled to do so, and there are significant practical problems with enforcement. However, in certain areas of special international concern—including sex tourism and the sexual exploitation of children, the international fight against drugs (UN ECOSOC, 1988), and terrorism (*Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation*, 1971)—extra-territorial jurisdiction has been accepted by the international community as necessary

and appropriate. UN arms embargoes imposed by binding Security Council resolutions also require states to control their nationals, wherever located. Such cases could, as has been suggested in the UN *Feasibility Study*, act as precedents for extending extra-territorial controls to arms brokering and related activities (UN, 2001a, para. 68).

For now, the jurisdictional scope of brokering regulation tends to be conservative, where laws apply at all. For example, Switzerland's Federal Law on War Material applies only where the broker is located in Switzerland and procures arms in that country for transfer to a recipient in another country (Switzerland, 1996, art. 15.1). France takes a similar position (France, 1939). The German law has somewhat broader scope, applying to brokering transactions which take place entirely abroad provided the broker is physically present in Germany (Germany, 1961, sec. 4a.2).<sup>22</sup>

At the other end of the spectrum, the most expansive brokering laws claim jurisdiction even where the state has no *physical* link with the activity—provided it has some other connection with the act or the broker. Thus, the South African law applies to brokering activities carried out abroad by citizens of South Africa (South Africa, 1998, sec. 9). Sweden has a different approach to extra-territoriality. It forbids 'Swedish authorities, Swedish companies and persons who are resident or permanently domiciled in Sweden' from brokering abroad without a permit (Sweden, 1992, secs 4–5). The US law takes another tack, applying to all brokers linked to the US by virtue of their nationality, residence, business operations, or the fact that they broker American weapons (Bondi and Keppler, 2001, p. 36; US, Department of State, 2001, sec. 129.2(b)). Although states have tended to avoid adopting extra-territorial jurisdiction for reasons of sovereignty, international comity, or constitutional limitations, it is in fact difficult, even impossible, to effectively regulate an activity like arms brokering—often occurring far from the broker's country of residence—without it.

### Multilateral initiatives

Efforts to prevent and combat illicit trafficking, including brokering, are typically hampered by inadequate international co-operation and co-ordination. Regional small arms initiatives have made some progress in this area. The 1997 OAS Convention is an important model for international co-operation. It makes 'illicit trafficking'—defined broadly enough to include many brokering activities—without a licence illegal (OAS, 1997, arts I.2, IX). Significantly, the Convention permits, but does not oblige, OAS States Parties to assert extra-territorial jurisdiction (art. V). It contains useful provisions on extradition (art. XIX), the exchange of information between states (art. XIII), and mutual legal assistance (art. XVII).

In late 2000, the OSCE adopted a *Document on Small Arms and Light Weapons* which recommends that governments require the registration and licensing of brokers (OSCE, 2000, sec. III.D). The protocol for the control of firearms, ammunition, and other related materials, approved by the Southern African Development Community (SADC) at its August 2001 Summit, has been praised as one of the most advanced measures in this field. EU countries have also discussed the issue of arms brokering with a view to the eventual development of a set of principles reflecting best practice. The establishment of common controls is not currently on the agenda, however. EU states differ on many of the tough questions that the regulation of brokering raises, such as the application of controls to transport agents and the question of jurisdictional scope.

A wide range of measures and approaches useful in tackling the illicit small arms trade generally and brokering more specifically were discussed in the UN *Feasibility Study*. Yet the report was short on firm recommendations,

with most of it devoted to a presentation of various ‘options’ for regulation (UN, 2001a, sec. III). Nor did the governmental experts hide their scepticism as to the possibility of achieving a legally binding international instrument on brokering, given the patchiness and diversity of existing national controls. They pointed instead to the regional level as a more promising platform for multilateral action in the short term (UN, 2001a, para. 80).

In the event, the 2001 UN Small Arms Conference was largely unsuccessful in securing commitment to effective action at the global level. A number of governments—especially those of China, Russia, and several Arab countries—refused to consider global measures on brokering. Their reasons included an alleged infringement of state sovereignty, practical implementation difficulties, and a stated preference for regional initiatives. Brokering is mentioned in the section of the Conference *Programme of Action* devoted to global measures, but in this context states merely undertook—in extremely general terms—to discuss the problem and try to address it (UNGA, 2001c, secs II.39, IV.1.d). The *Programme* was, however, somewhat more specific concerning action at the national level, with states committing themselves to ‘develop adequate national legislation or administrative procedures’ to regulate brokering, including such measures as the registration of brokers and licensing of their transactions, backed by ‘appropriate penalties’ (sec. II.14).

The 2001 UN Small Arms Conference was largely unsuccessful in securing commitment to effective action on brokering at the global level.

### Lack of enforcement

When, at the national level, brokering is adequately regulated, enforcement is often weak. However good the legislation, it achieves little if no attempt is made to enforce it. US brokering rules are widely considered the most specific in the world yet, since the US law was passed in 1986, there has not been a single prosecution under its provisions (*New York Times*, 2001). Obstacles to the effective enforcement of this law include difficulties gathering information where the brokering offence has been committed abroad, problems with extradition, and inadequate information exchange between responsible governmental agencies (Bondi and Keppler, 2001, pp. 28–45). Despite this, the law could be enforced if there were sufficient political will to do so. As of September 2001, the US law remained an empty promise.

While insufficient political will remains the rule with respect to brokering, some governments, including Bulgaria and the UK, have recently moved to strengthen and improve enforcement of their laws following public exposure of illicit brokering activity from their territory. Proposals to establish national registers of individuals and companies convicted of violating brokering rules, mentioned in the UN *Feasibility Study*, would also facilitate implementation and enforcement (UN, 2001a, paras 48, 63).

### Next steps

Weaknesses in national laws, regulations, licensing procedures, and enforcement are exacerbated by a lack of capacity and inadequate co-ordination and co-operation at the national, bilateral, regional, and global levels. Yet brokering need not remain a gaping hole in the current regulatory framework for small arms. An important first step would be agreement between states on common principles covering such areas as registration procedures, the content of licences, and the definition of offences (UN, 2001a, para. 79). Harmonization in these areas would facilitate resolution of the thornier problem of jurisdiction, and also improve enforcement.

Encouraged by the growing recognition of a need for international control measures, the Washington NGO The Fund for Peace presented a *Model Convention* on arms brokering to the 2001 UN Small Arms Conference (The



Fund for Peace, 2001). The registration and licensing of arms brokers form the core of this instrument. It also contains provisions to encourage businesses involved in brokering transactions to identify illicit activity and applies measures adopted in the *Anti-bribery Convention* (OECD, 1997) to the regulation of arms brokering—such as mutual assistance, extradition, and money-laundering measures.

While the UN Conference's *Programme of Action* does not tackle the problem of brokering with the determination that many countries and NGOs had wanted, it does at least mention the issue and encourage states to begin to address it. The events of 11 September 2001 may sharpen concerns over the lack of controls over illicit arms trafficking. Yet it remains to be seen whether more states will start to regulate brokering activities within their borders, whether those with adequate laws on the books will move to enforce them, and whether increasing recognition of the need for multilateral co-operation in this area will translate into effective action.

## Stockpile management and security

The secure management of small arms stocks is of pivotal importance in curbing small arms proliferation. In some cases, stocks greatly exceed immediate and likely future needs. This has been a particular problem for many states in the aftermath of the Cold War. Yet small arms surpluses have arisen and continue to arise for a wide variety of reasons: the end of armed conflict, changing perceptions of threat, the reduction or restructuring of armed forces, changed military doctrines, and the acquisition of new weapons. While it is increasingly acknowledged that surplus stocks are best disposed of through destruction



Children of an Afghan Mujahideen commander play with ammunition stored outside their home.

(e.g. OSCE, 2000, sec. IV.C.1), this is still the exception rather than the rule. In practice, surplus small arms that are not sold are stockpiled, where they can remain for decades.

While national armed forces, police, and other security forces hold a significant proportion of a country's small arms stocks, in quite a few countries civilians are also allowed to hold substantial numbers of small arms and ammunition (STOCKPILES). In many cases, manufacturers' stocks are also significant. Poor stockpile security is a prime means through which small arms are diverted from the legal to the illicit markets. Lax security makes theft easy. Corrupt officials may sell or otherwise transfer weapons under their care to criminal groups or rebel forces. Stockpile security is especially precarious in states suffering from violent conflict and/or weak governance. To cite one example, corrupt Cambodian military officials are known to have sold large numbers of arms to rebel forces fighting the Sri Lankan government (*Jane's Intelligence Review*, 2000). There are many others (TRANSFERS).

The basic requirements for good stockpile management include:

- properly designed, specially constructed storage facilities situated in secure locations;
- adequate procedures, including strict control of access to stocks and thorough inventory management and accounting;
- well-trained, dependable personnel;
- the protection of the transport of small arms to and from storage locations; and
- adequate resources for the continued operation of the system.

These conditions are difficult to meet in many developing countries, even those which are not at war or otherwise instable. Yet stockpile management is an issue in industrialized countries as well. Significant losses of military equipment have been reported in many such countries over the years. Whether as a result of theft or poor record-keeping, it is estimated that the United States has lost thousands of arms in the past 30 years. In Australia, military armouries were robbed 131 times between 1985 and 1989 (*Jane's Intelligence Review*, 2000). Other recent examples include important thefts in Israel and the UK (TRANSFERS).

Binding international norms in the stockpile management area are few and far between. The recent UN *Firearms Protocol* requires States Parties to ensure only that manufacturers' stockpiles are secure (UNGA, 2001b, art. 11.a), while the 1997 OAS Convention on illicit trafficking merely obliges, in general terms, States Parties to securely store illicit weapons that they seize:

States Parties shall adopt the necessary measures to ensure that all firearms, ammunition, explosives, and other related materials seized, confiscated, or forfeited as the result of illicit manufacturing or trafficking do not fall into the hands of private individuals or businesses through auction, sale, or other disposal. (OAS, 1997, art. VII.2)

Neither of these instruments regulates normal government arsenals. While a broad range of other agreements and declarations highlight the importance of secure, properly managed stocks, they are non-binding. The November 2000 *OSCE Document on Small Arms and Light Weapons* devotes an entire section to stockpile security and the related question of surplus destruction (OSCE, 2000, sec. IV). These issues are also raised in the *Programme of Action* adopted at the 2001 UN Small Arms Conference—mostly from a national perspective (UNGA, 2001c, sec. II.17–19), though with some provision also made for regional initiatives (sec. II.29). Significantly, the *Programme* also acknowledges the need to assist interested states in building capacity in these areas (sec. III, paras 6, 8, 14).

Probably of greatest practical significance at the international level are the assistance programmes offering some combination of expertise and resources for stockpile management and security. These are conducted under the auspices of various regional organizations and, in some cases, bilaterally. The following examples are especially significant.

In November 1999, the EU, acting within the framework of its December 1998 *Joint Action* (EU, 1998), launched a project to support Cambodian government efforts to combat small arms proliferation in the country. Part of the project, extended in November 2000 for an additional year, focuses on the problem of secure weapons storage and adequate record keeping (EU, 1999, art. 1.2.b; 2000). In this context, the EU has provided funds for the construction of secure storage facilities and for the establishment of a comprehensive registration system (Fawthrop, 2001).

Of greatest practical significance at the international level are the programmes for assistance in stockpile management.

NATO assistance programmes for stockpile management are conducted under the auspices of its Partnership for Peace (PfP), comprising the 19 NATO member states and 26 Partner countries. Section 9.2 of the PfP's Partnership Work Programme chapter on small arms provides for the dispatch of teams of experts to those PfP countries which request assistance in improving stockpile management and security, and also in the destruction of surplus weapons stocks. The tasks envisaged for these teams include needs assessment, technical advice, training, and potentially the provision of equipment (EAPC, 2000, Annex 2, sec. 9.2; 2001, para. 14). As of July 2001, assistance programmes to PfP countries have focused on the problem of anti-personnel landmines and surplus munitions in Albania, Moldova, and Ukraine (EAPC, 2001, paras 14, 16–17; NATO, 2000; 2001). The issue of secure small arms storage has been addressed in seminars, workshops, and training courses organized, within the NATO/PfP framework, by Bulgaria, the Netherlands, and Switzerland.

The Stability Pact serves to co-ordinate projects mounted by member countries and organizations for the purpose of strengthening political and economic reforms in the countries of south-eastern Europe and facilitating the sub-region's integration with the rest of Europe. As part of the Pact's Quick Start Package of projects, a Norway–US Joint Working Group has offered to send an assessment team to any Stability Pact member that requests one in order to evaluate needs and share expertise in stockpile management and security (Special Co-ordinator of the Stability Pact, 2001; Bollenberg, 2001). The Norway–US offer has also been extended beyond the Stability Pact to include all Euro–Atlantic Partnership Council (EAPC) and OSCE countries, as well as countries in Latin America, Asia, and Africa, with a number of visits concluded as of September 2001 (Bollenberg, 2001). Norway and the US have also offered to assist Stability Pact states in the destruction of surplus small arms. Together with Germany, these countries have lent support to the destruction, in Albania, of weapons collected from Albanian civilians, along with surplus military stocks. The US government has also assisted Bulgaria and the Federal Republic of Yugoslavia in the destruction of surplus stocks in those countries. National procedures for stockpile management vary greatly. The US provides one example of an extensive, though by no means perfect, control system.

## **Small arms inventory control in the US Army**

With a total of 1,649,646 firearms, as of 11 April 2001, the US Army owns one of the world's larger inventories, ranging from pistols to heavy machine guns, from antiques to state-of-the-art prototypes (STOCKPILES). Keeping control over this stockpile is an important task. The danger of losing even a few weapons was illustrated in 1997, when six Marines at Camp Lejeune in North Carolina were arrested trying to sell small arms and munitions to private dealers (Johnson, 1997).

Originally the inventory control system evolved to serve the needs of military preparedness, so that the US armed services would know how many small arms they had for operational planning. This straightforward priority was changed by the 1968 Gun Control Act (US, Congress, 1968). The Act, which mostly regulates the domestic trade in firearms, creates legal exceptions for the armed services (sec. 925.a). But its adoption also reflected a growing awareness of the dangers of unregulated firearms, shaping a climate to which military leaders were sensitive. Army officials realized they had to pay more attention to matters of weapons responsibility. This meant knowing exactly where their guns were and being able to trace weapons for criminal investigations. While record keeping for preparedness remains essential, accountability for criminal diversion consumes more time and effort.

Although military small arms officials do not advertise it, the result has been the development of US's most comprehensive system of gun registration. It is ironic to see that the Department of Defense has created a highly developed

version of the very system that gun control opponents fear as a threat to individual rights. Each of the armed services is responsible for tracking their own small arms (US, Department of Defense, 2000). The US Army inventory control programme is based at Rock Island Arsenal in Illinois, under its Executive Agent for Small Arms.

Because of the strong performance of the system, independent weapons auditing has not been seriously considered. Indeed, at this juncture, one can imagine acceptance of independent auditing only as part of an international arrangement on small arms security (Karp, 2001).

### Inventory control

The US Army employs multiple layers of inventory control. All Army *units* are required to record the number and condition of all their small arms and ammunition every month. Every *base* or *installation* takes inventory every six months, *depots* only annually. To minimize opportunities for false reporting, inspections cannot be conducted by unit armourers, nor can they be carried out by the same personnel twice in succession. Discrepancies must be reported immediately, without exception. Suspected losses are reported to unit and base commanders and civil authorities. Confirmed losses are reported to a central Department of Defense registry, the Unique Item Tracking (UIT), and to national law-enforcement authorities.

Soldiers are drilled into a culture in which responsibility for weapons is taken extremely seriously. Even so, some are lost now and then. Although incidents have occurred—as at Camp Lejeune in 1997—Army officials maintain that theft is difficult and rare. More typical are losses during manoeuvres and foreign deployment, especially peacekeeping and combat missions.

Any loss leads immediately to a formal investigation. Most incidents are resolved at the unit level, the weapons quickly recovered. Army officials report that virtually all of the Army's lost guns are eventually found. If weapons operators are held responsible for the loss, they are billed personally for replacements and subjected to military discipline. The number of small arms lost and not recovered is estimated at roughly ten a year (Karp, 2001).

### Weapons marking

At the 2001 UN Small Arms Conference, the US delegation would not commit the country to the negotiation of an international agreement on weapons marking and tracing. Yet, for the US armed forces, marking is critical. Within all Department of Defense agencies, record keeping currently relies on manufacturers' serial numbers. There is some dissatisfaction with this in the armed services—not with the possibility that serial numbers will be removed, but with the inherent inaccuracy of visual inspection of a number at least nine digits long. Inspectors make errors and the process is time consuming. With qualified personnel in short supply, the US Army is under pressure to release individuals from such routine tasks.

Some US Army bases have established their own bar-coding systems for internal purposes, relying on stickers. These are more convenient but less permanent than serial numbers forged on the weapon. More durable solutions are being sought. The current preference is for Contact-Memory Buttons, a commercially available technology developed by the Geneva-based firm Valtac. This permits the automatic reading of serial numbers and additional information on the manufacturer, supplier, age, and history of an item. However, even with automated reading of serial numbers and related data, errors will occur, necessitating a visual reconciliation process. Inventory control will continue to rely, to some degree, on visual inspection (Karp, 2001).

**BOX 6.6 Strengthening controls in the Great Lakes region and the Horn of Africa**

As described elsewhere, the Great Lakes region and the Horn of Africa have been hit especially hard by the small arms problem (Small Arms Survey, 2001). A turning point in attempts to address the problem came in 2000 with the launching of a series of key initiatives. The overall framework for action in the subregion was adopted by the foreign ministers of ten countries from the subregion, meeting in Nairobi, Kenya, in March 2000 (*Nairobi Declaration*, 2000). Two follow-up instruments, agreed in November of that year, set out in greater detail the steps governments intended to take to tackle small arms proliferation (*Co-ordinated Agenda for Action*, 2000; *Implementation Plan*, 2000). Pursuant to the mandate given to Kenya to co-ordinate implementation of the *Nairobi Declaration*, the Kenyan government established, also in 2000, the Nairobi Secretariat within its Ministry of Foreign Affairs and International Co-operation.

The challenge for 2001 has been to ensure that the above elements are translated into effective action. This task has seen a wide range of organizations, governmental and non-governmental, working in partnership with the Nairobi Secretariat. The subregion's key intergovernmental organizations are the Inter-Governmental Authority on Development (IGAD), the East African Community (EAC), and the Eastern Africa Police Chiefs Committee (EAPCCO). Much of the activity around small arms has been spurred and facilitated by such NGOs as Saferworld, the Security Research and Information Centre (SRIC), and the Institute for Security Studies (ISS). Other important players in the process include the United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI) and the Interpol Subregional Bureau.

*Strengthening and harmonizing legislation:* The section of the Coordinated Agenda for Action devoted to 'legislative measures' is quite comprehensive, covering most aspects of small arms regulation. Specific measures provide for the criminalization of unauthorized local production (sec. 3.3) and enforcing adherence to international arms embargoes (sec. 3.4). Perhaps most significantly, states undertake to fill existing gaps in national laws (sec. 3.2), and affirm the need for 'legal uniformity and minimum standards' (sec. 3.1). A seminar was held in Nairobi in February 2001 to discuss how states could strengthen and harmonize their small arms controls. The participants, who included senior government officials and police officers, along with representatives of intergovernmental organizations and NGOs, recommended that a legal instrument be drafted for the subregion on small arms control. The Nairobi Secretariat convened an experts group meeting for this purpose in May 2001. A draft was agreed that incorporated the commitments made by states in the Agenda for Action with respect to legislation. It drew heavily on the UN *Firearms Protocol* but included broader disarmament elements as well. As of October 2001, a revised version of the protocol was awaiting ministerial approval.

*Enhancing operational capacity and law enforcement:* Legislation serves its purpose only when implemented. For this reason, enhanced operational capacity and improved law enforcement have been identified by the countries of the subregion as essential. Important priorities include increasing cross-border co-operation between law enforcement agencies and improving police-community relations (*Nairobi Declaration*, 2000, sec. iv; *Co-ordinated Agenda for Action*, 2000, sec. 4). A seminar held in Kampala in June 2001 resulted in agreement on a series of practical recommendations in this area, including: the identification of training and capacity-building needs; the improvement of practical co-operation between customs and police; and the enhancement of border controls. Training is a key requirement in the subregion and one of the recommendations of the police officers in the seminar was the development of common subregional curricula. This initiative is being taken forward by the UN Regional Centre for Peace and Disarmament (UNREC), based in Lomé, Togo, which organized a workshop on the theme in Nairobi in July 2001 and was planning to hold a 'Training of Trainers' course for the subregion in Nairobi in November 2001.

*Establishing national focal points:* Effective co-operation between countries and within countries in the fight against small arms depends upon co-ordination between all relevant government agencies. In the *Implementation Plan*, all States Parties undertook to establish national focal points with functions that include: co-ordination with the Nairobi Secretariat and other national focal points, co-ordination and interaction with civil society, information exchange, research, and capacity building. It is clear that the establishment of these national focal points is a prerequisite for the effective implementation of the *Nairobi Declaration* and the *Co-ordinated Agenda for Action*. While, as of October 2001, progress on this had been relatively slow, national focal points had been established in Kenya, Tanzania, and Uganda.

**BOX 6.6 Strengthening controls in the Great Lakes region and the Horn of Africa (continued)**

The Kenyan national focal point is chaired by the Office of the President and includes 15 government agencies. At a May 2001 workshop, these agencies agreed to develop a co-ordinated national strategy to combat small arms proliferation and illicit trafficking. Tanzania established its national focal point at an inter-agency meeting in August 2001 and planned to establish inter-agency committees at the local level as well. Tanzania is also the first government in the subregion to carry out a comprehensive national study of the small arms problem. Police officers conducted 3,500 household surveys across the country, while workshops were held with local administration officials and community leaders in each major town. The results have been integrated into a national action plan to combat small arms that is being considered by donors. The Ugandan national focal point was created at a meeting of government departments in October 2001.

*Securing donor support:* The *Co-ordinated Agenda for Action and Implementation Plan* have laid out an ambitious programme for tackling small arms proliferation. Yet effective implementation will at least partly depend on financial and technical assistance from donors. The Nairobi Secretariat has prepared a detailed budget and proposed a timetable for activities, which have been packaged, along with the key regional agreements, in a new publication launched at the UN Small Arms Conference in July 2001 (Kenya, 2001). The creation of a new group, 'The Friends of the Nairobi Declaration', has been suggested for purposes of co-ordinating donor support. The UK's Department for International Development has taken the lead on this, with plans to organize a meeting of the 'Friends' in the first half of 2002.

*Looking ahead:* Progress in implementing the framework agreed in Nairobi in March 2000 has been significant, yet much remains to be done. The draft regional protocol needs to be agreed and ratified. The initial attempts to improve cross-border co-operation and enhance law enforcement capacity must be built upon. And new initiatives are needed to improve weapons collection and stockpile management, ensure the effective demobilization and reintegration of former combatants, raise awareness in communities of the dangers of small arms, and reduce the demand for weapons. This will require improved co-ordination between and within the governments of the subregion through the creation and effective operation of national focal points, increased support from the donor community, and the enhanced involvement of NGOs.

Source: McLean (2001)

## National firearms controls

As established in the *Small Arms Survey 2001* (Small Arms Survey, 2001, pp. 88–89), most of the world's firearms are held, not by national armed forces or police, but by civilians. It comes then as no surprise that regulation of civilian gun ownership is—on a daily basis—among the most important components of broader efforts to minimize the misuse of firearms. Domestic firearms regulation is typically seen as a form of *opportunity reduction*, limiting access to these weapons and thus the risks of violence. While the question of a link between access and misuse continues to be fiercely debated, the weight of evidence appears to point to a relationship between higher rates of firearms ownership and higher mortality and morbidity, at least in the industrialized countries (Small Arms Survey, 2001, ch. 6).

The effects of gun laws can be quite indirect. Rosemary Gartner has argued that these not only reflect but also shape prevailing social values. Strict firearms controls may send out a signal about the acceptability of violence and, over the long term, influence behaviour in much the same way as legislation governing drunk driving and drug abuse (Gartner, 1998; Archer, Gartner, and Beittel, 1983). Innovative approaches such as weapons buy-backs, amnesties, and collection and destruction programmes can play a similar role in shaping attitudes (WEAPONS COLLECTION).

There is some evidence that domestic firearms regulation also influences the ease with which legal arms are diverted to illicit markets. Chapter 3 illustrates some of the specific ways such diversion occurs. Measuring the precise effect

of domestic regulation on diversion is difficult, yet a recent study indicates that, in US States with strict controls, the majority of guns recovered in crime originate from outside the state. Where regulation is lax, a much higher proportion of crime guns originates locally (Webster, Vernick, and Hepburn, 2001, pp. 184–89).

### The state of the art: Current national regulations

Most countries have legislation governing the civilian possession of firearms, although the nature of these laws varies considerably (Cukier, Sarkar, and Quigley, 2000). The UN, through the Commission on Crime Prevention and Criminal Justice (operating under the auspices of ECOSOC), has conducted a study of the extent of such regulation in member countries.

The survey results incorporate the responses of 78 nations, representing a little over three-quarters of the world's population and spanning both industrialized and developing countries. Most require licensing of all new firearms purchases, while import and export controls are virtually universal. A significant majority register firearms, and there are storage regulations in close to three-quarters of the responding countries. A significant number of participating states also reported that they had recently amended their legislation and administration of civilian firearms ownership, possession, and use (UN, 1998; 1999a).

While the approaches vary, the underlying principles remain the same: regulate possession and use in an effort to prevent misuse and diversion. The remainder of this section outlines some of the key elements found in a global review of legislation (Cukier, Sarkar, and Quigley, 2000).

### Defining lawful purposes for possession

The reasons civilians are allowed to own firearms vary considerably worldwide. Some countries, such as Japan and Great Britain, severely restrict civilian possession and have very low rates of firearm ownership. Most countries allow firearms possession for hunting or for predator control on farms. Some allow possession of certain types of firearms for target shooting. Some permit collection of firearms. Most industrialized countries strictly control civilian access to handguns and allow the carrying of handguns for personal protection only under very restrictive conditions.

The United States is the notable exception. While most firearm regulation is at the State level and is very diverse, permits to carry concealed handguns are easily obtained in many States. Obtaining permission to carry firearms is also relatively easy in Austria, where 8.1 per cent of households have handguns and 26 per cent of firearm owners have their guns for self-protection (*International Crime Victimization Survey*, 1996). Recent polls in Switzerland reveal comparable findings (STOCKPILES). Some developing countries also allow relatively easy access to handguns, though recent trends are towards stricter controls—as in Brazil and South Africa.<sup>23</sup>

Countries responding to the UN Firearms Study reported many different conditions under which civilians may possess firearms. In China, for example, most civilian firearms ownership is strictly prohibited. Possession of 'hunting guns' is permitted for those who live on hunted animals and those who must guard their homes or businesses from animals. Germany allows firearm possession for a variety of purposes, but there are restrictions; a legitimate requirement must be proven and a firearms license usually applies exclusively to the home of the applicant. In Sweden, no licences are issued for the purpose of self-protection, though firearms ownership is permitted for hunting, collecting, and other recreational pursuits. Moreover, properly authorized security personnel may be granted firearms licences for the purpose of protecting persons or property.

The underlying principles remain the same: regulate possession and use in an effort to prevent misuse and diversion.

As a rule, countries prohibit the civilian possession of firearms where risk is believed to outweigh utility. The way they make this determination is often shaped by history and culture. Worldwide, most nations prohibit civilian possession of fully automatic military-style rifles. Many also prohibit possession of semi-automatic or convertible versions of such weapons. Access to handguns is also frequently outlawed or severely restricted given how easily concealed they are and their consequent utility in crime.

### **Regulating the sale of weapons**

Most countries regulate the sale of weapons to civilians. Some regulate gun dealers and sellers and have significant record-keeping and reporting requirements. However, the extent of regulation over resale varies. In Switzerland, individuals must keep a record of private sales but need not report them to the authorities. While most US States conduct checks on initial sales, secondary sales among individuals escape control even though these account for a substantial proportion of diversions from the legal to illicit markets. For example, as of September 2001 gun shows, where individuals sell firearms, were unregulated.

### **Screening and licensing**

Legally held firearms are often misused, particularly in suicides and domestic violence. In order to prevent this, and for purposes of tracking legal possession, most countries screen and license firearm owners (Culross, 1996, pp. 15–17). Again, however, there are significant differences. Most countries impose age restrictions and check criminal records. Some require formal safety training. Certain categories of firearms may be restricted to those with a proven need for having them—as with handguns in Canada.

Although a few countries—of which the US is the most prominent example—allow buyers without a criminal or psychiatric history to acquire guns essentially on demand, most use some kind of screening mechanism. These include the provision of references, detailed questionnaires, official interviews, and in-depth investigations. Few go so far as Austria, which requires a psychological test as well.

Licensing provisions not only perform a gate-keeping function, they also allow police to take preventive action where risks become apparent. For example, in Canada eligibility can be revoked where a licensed firearm owner commits an offence. A number of countries have specific mechanisms in place, such as spousal notification, to limit the risks of firearm use in domestic violence. Regulating sale and possession increases the effective cost of possession, making the purchase of a gun different from the purchase of other consumer items. This discourages casual ownership which, given the apparent link between accessibility and misuse, also reduces risk.

### **Controlling access to ammunition**

Most countries define the conditions under which ammunition may be held, often making its purchase conditional on possession of the appropriate licence. Others, like the US, leave retail trade in ammunition essentially unregulated.

### **Marking, registration, and record keeping**

Most industrialized countries require privately owned guns to be permanently marked. Some require registration of the firearm and the reporting of every transaction involving it—from initial manufacture through sale and resale. Others require this only at the initial sale, or not at all.



**BOX 6.7 The Zug massacre and Swiss gun laws**

On Thursday 27 September 2001, Friedrich Leibacher burst into the parliament building of the Swiss canton of Zug, murdered 14 lawmakers and government officials, wounded as many more, and then killed himself. He was armed with a civilian version of the standard Swiss Army assault rifle, the Sturmgewehr 90 (SIG 550, 5.6mm), a Remington pump-action shotgun, a SIG Sauer 232 pistol, and a canister packed with explosives. A former resident of the canton, Leibacher had a criminal record dating back to 1970 and a history of aggressive behaviour. On the basis of a letter he left behind, it appeared the shooting stemmed from minor grievances he had with the local authorities. He had never done military service and had purchased the crime guns legally.

The incident led to the immediate tightening of security at the Swiss Federal Parliament and other public buildings throughout the country. Although these measures clashed with Swiss traditions of open and accessible government, they reflected the general view that the security of public officials had to be better protected. The harder question raised by the Zug shootings was what to do about Switzerland's relatively liberal gun laws. As of November 2001, this debate had not advanced far, yet it appeared that rules allowing Army conscripts and reservists to keep military assault rifles at home were relatively safe. More at issue was the purchase of weapons by civilians such as Leibacher. While the parties and public figures traditionally opposed to the status quo argued for legislative reforms, most commentators instead emphasized the need to improve law enforcement co-operation between cantons, preventing people such as Leibacher from purchasing guns in one jurisdiction when they have clashed with the authorities of another.

Swiss traditions of civilian gun ownership are deeply rooted and powerful lobby groups resist any potential erosion of existing freedoms. Switzerland is also a favourite example of gun rights advocates outside the country, who cite its relatively low rates of firearm crime and high proportion of firearm owners as proof that guns do not beget violence. The Zug massacre is in fact unprecedented in recent Swiss history. Yet Leibacher's ability to legally acquire several firearms, despite his troubled history, has unsettled many Swiss.

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Candle-light procession in Zug, Switzerland, shortly after the shooting rampage that left 15 people dead.

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Sources include: Interview with Roland Schwyter, Investigating Magistrate (Untersuchungsrichter), canton of Zug, 3 December 2001; Bolli (2001); Buettner (2001); *The Economist* (2001); Fleck (2001); Iten (2001a; 2001b); Lezzi (2001); Meier (2001); Merki (2001); Olson (2001a; 2001b; 2001c; 2001d); Osborn (2001); *Tages-Anzeiger* (2001)

**Safe storage**

Safe-storage requirements are designed to reduce the risk that firearms will be stolen or used impulsively. Perhaps their most important function is keeping loaded firearms away from children in the home. Safe-storage measures include the disablement of firearms, their separation from ammunition, and the use of locked containers and trigger locks. In many industrialized countries, firearms must be stored unloaded in a secure container separate from ammunition. An American study found that the risk of suicide increased significantly when firearms were present in the home. The risk was greatest where weapons were stored loaded (Kellermann *et al.*, 1992).

### Reducing gun access through weapons collection and destruction

Measures have also been taken to reduce demand for firearms by publicizing the risks they pose, particularly in the home, and offering amnesties and buy-backs to encourage people to get rid of guns they do not want or need. The direct impact of these programmes may often seem modest, but, even where the absolute numbers recovered are low, other, more indirect, benefits appear substantial. Educational programmes have focused on increasing awareness of safe practices and compliance with them (Flinn and Allen, 1995, pp. 296–98). Some countries, notably Australia and Britain, have outlawed certain types of weapons and accompanied the new restrictions with buy-back programmes designed to remove banned firearms from circulation. Others, such as Argentina, El Salvador, Mozambique, and the US, have used voluntary programmes to encourage gun owners to reassess the need for firearms in their homes (WEAPONS COLLECTION).

### Law enforcement

Much of the criminology literature plays down the value of enforcement—for example, in the ‘war on drugs’—as compared with prevention. Interventions aimed at reducing demand, as well as access to such facilitators as firearms, are often regarded as more effective. Nevertheless, penalties for firearms offences—such as the use of a firearm in a crime, illegal possession, or illicit trafficking—have recently been increased in many countries. Enforcement efforts have also focused on problem areas in the illegal trade, such as the small number of firearms dealers who account for the largest percentage of illegal firearms transactions. Increased enforcement may deter some behaviour by increasing the potential cost of illegal firearms possession or trafficking (Lab, 1997). Measures such as licensing and registration also assist enforcement efforts, specifically in criminal investigations.

### Case studies: Legislative reform to narrow gun ownership

Countries have initiated changes to firearm regulation with a focus on addressing the misuse of firearms in crime. Often legislative reforms are precipitated by a high-profile shooting incident or mass murder. The best-known examples are found in industrialized countries, illustrated here by the case studies of Australia, Canada, and the UK. But pressure to tighten regulations is global, as shown by the examples of Brazil and South Africa.

#### Australia

Prior to 1996, all eight of Australia’s States licensed owners, but only five registered firearms. However, following the unprecedented murder of 35 people in Port Arthur, Tasmania, on 28 April 1996, representatives of all Australian States adopted the Nationwide Agreement on Firearms, a ten-point plan, which included:

- registration of all firearms;
- stronger licensing, including: proof of genuine reason for owning a firearm; uniform screening; a five-year prohibition on ownership for anyone guilty of domestic violence; a safety course; a minimum age of 18 for firearms purchase; a 28-day waiting period; and strict, uniform storage requirements;
- a ban on ownership of semi-automatic rifles and shotguns, except for farmers who can prove a genuine need, combined with provisions to buy back weapons from their owners; and
- improved controls on the trading of firearms, including a separate permit for each firearm and a ban on private and mail-order sales (WEAPONS COLLECTION).

It is extremely difficult to isolate the impact of a particular piece of legislation. Any serious study would have to take into account possible substitution effects as well as more long-term historical patterns. For example, while there appears to be a slight downward trend in the use of firearms in homicide in Australia in recent years, the same cannot be said of homicides generally. This would suggest that other methods have partially replaced the use of firearms in fatal crimes. It is also too early to determine whether the apparent decline in firearm homicide stems from the legislative changes or is, rather, part of a longer-term trend—as some statistics seem to indicate (Mouzos, 2000, pp. 9–10, 43; 2001a). Initial studies pointing to a decline in the use of firearms in robberies and suicides, as well as a lower incidence of accidents involving firearms, must similarly be treated with caution—as the author herself points out. Clear impact analysis must await data gathered over a longer time-period (Mouzos, 1999; 2001b, p. 5).

**Brazil**

With more than 40,000 gun murders every year (25.7 per 100,000), Brazil's problem with gun crime is especially severe. Most of the firearms recovered in crime, moreover, are Brazilian-made handguns (Small Arms Survey, 2001, ch. 1). At the national level, Brazil requires licensing of firearms owners, but applicants need establish only that they are at least 21 years old and have no criminal background. Efforts to tighten gun ownership laws have travelled a roller-coaster path in recent years, with no end in sight.

In February 1997, Brazil passed a law criminalizing the possession of unregistered firearms throughout the country. In February 1999, the State of Rio de Janeiro went considerably further, banning the sale of all firearms to civilians in that State. However, in September 1999 this law was declared unconstitutional in Rio's Supreme Court. Following a massive public outcry over spiralling rates of gun violence, the Brazilian Senate Commission on Justice approved, in June 2000, a proposal banning the possession of, and trade in firearms and ammunition nationwide. Exceptions were to be allowed for security forces, sport, collection, and rural areas, where hunting rifles would be allowed. However, a little less than a year later, in May 2001, the bill was rejected by the Senate Commission for External Affairs and National Defence, which voted instead for a substitute bill explicitly protecting the right of civilians to purchase and carry guns. As of December 2001, the Senate had not agreed on a final draft of the proposed law. Once approved by the Senate, the bill will be submitted to the national House of Representatives and voted upon.

In the meantime, the Rio de Janeiro State House of Representatives approved a new law of its own on 19 September 2001, severely restricting the sale of firearms to civilians. It establishes 16 new requirements for those wishing to purchase firearms, including a tax equal to USD 430 (over six times the monthly minimum wage), proof that the buyer requires the use of the weapon, testimony from neighbours that the purchaser is a law-abiding citizen, a psychological assessment, and a demonstration of technical training in the use of firearms. The new law was passed by an overwhelming margin of 61 votes to 9, following intense pressure from such civil society groups as Viva Rio, the women's disarmament campaign, and the Evangelical Church. The Associação Nacional dos Proprietários e Comerciantes de Armas (ANPCA, the Brazilian NRA) declared it would challenge the constitutionality of this new law.<sup>24</sup>

**Canada**

Canada has historically had relatively strict controls on handguns. Under changes introduced in the 1977 Criminal Law Amendment Act, handgun ownership was 'restricted' while ownership of fully automatic firearms and sawn-off shotguns was banned. Permits for 'restricted weapons' could be issued to individuals if required for 'lawful

occupation', target-shooting under the auspices of an approved shooting club, or collection. In exceptional cases permits were issued for 'self-protection'. Restricted weapons were also registered. Special permits were needed to transport or carry restricted weapons, specifying where and when the owner was allowed to have the firearm.

Controls on 'unrestricted' rifles and shotguns were, by contrast, limited. A Firearms Acquisition Certificate (FAC) was needed to acquire such firearms, yet did not have to be renewed for continued possession. In 1991, screening requirements for FACs were strengthened by adding a mandatory training course, a detailed questionnaire, references, a photograph, and a 28-day waiting period. The law also shifted the burden of proof on FAC decisions, requiring denied applicants to prove the refusal was the result of an error. This law also prohibited semi-automatic versions of fully automatic weapons and imposed detailed storage requirements.

Gun control in Canada was catapulted to the top of the public agenda with the December 1989 mass murder of 14 women at the École Polytechnique in Montréal. A broad coalition of more than 350 organizations—including police, legal, and public-health professional organizations, along with advocacy groups—soon emerged to lobby for stronger firearms controls (Falconer, 2001). Studies showed that rifles and shotguns were the firearms most often used to kill and the most often recovered in crime (Canada, Department of Justice, 1995). At the same time, a series of inquests into particular murders—typically involving legally acquired guns—consistently recommended the licensing of all firearm owners and the registration of their weapons. These developments culminated in the Firearms Act (Canada, 1995). Adopted on 5 December 1995, it is still in the process of being implemented. It provides for:

- the ability to prohibit, through Order in Council, firearms not 'reasonably' used in hunting, thus expanding powers to ban semi-automatic military-style weapons;
- a ban on short-barrelled and small calibre (.25 and .32) handguns;
- the licensing of all firearm owners by 1 January 2001, with renewal every five years;
- the registration of all firearms by 1 January 2003; and
- exceptions intended to accommodate the hunting rights of aboriginal peoples.

The most important challenge to the law came from the Province of Alberta, which claimed that it involved an unconstitutional infringement on provincial powers to regulate rifles and shotguns (Canada, Alberta Court of Appeal, 1998). In 2000, the Supreme Court of Canada dismissed this argument, upholding the constitutionality of the new legislation (Canada, Supreme Court, 2000).

As with the Australian, and also British, reforms, it is too early to judge the effects of the Canadian legislation. In 1998, the number and rate of firearm deaths in Canada were the lowest they had been for three decades (Hung, 2002, Table 14). Yet, Canada's largest city, Toronto, saw a surge in gun violence in 2000–01. There were 27 firearm murders in the city in the first nine months of 2001, compared with 26 for all of 2000.<sup>25</sup> Many of the crime guns were thought to have been illegally imported from the US, but it is too soon to say whether this signals a nationwide trend in which US guns replace Canadian ones in crime.

### South Africa

Violence is considered by many to represent the greatest threat to human rights in the new democracy of South Africa, where crime dwarfs political conflict as a cause of death. A total of 12,298 people were murdered with guns in 1998 (29.1 per 100,000), accounting for almost 50 per cent of all murders (Chetty, 2000).

As of September 2001, the source of South African firearms legislation remained the Arms and Ammunition Act of 1969. It required the licensing of all gun owners and the registration of individual firearms. It did not restrict the number of firearms an individual could own. Moreover, South Africa has been one of the few countries allowing the widespread carrying of handguns by civilians for 'self-protection'. During the latter half of 2000, the South African Parliament passed the *Firearms Control Bill* (South Africa, 2000). As of September 2001, relevant implementing regulations and systems were being prepared. Some parts of the bill, including the power to create and enforce gun-free zones, had already been proclaimed. Other provisions were expected to be implemented in 2002. The bill strengthens controls over firearms in a number of areas. Regulation of the storage, transport, and carrying of firearms and ammunition is improved. At the same time, stringent penalties will be imposed on firearms owners who, as a result of negligence, lose their weapons. A principal focus of the bill is acquisition. Screening of licence applicants will be strengthened, while the number of firearms individuals can own will be limited, depending on weapon type and purpose of ownership.



The owner of an arms and ammunition shop, located near Soweto, South Africa.

### United Kingdom

Although gun ownership is surprisingly common in the UK, especially in the countryside, controls on gun ownership have a justifiable reputation for being among the most restrictive in the world. The Firearms Act—adopted in 1937 and subsequently amended—required individuals wishing to acquire a firearm to first obtain a Firearms Certificate from the local police. A separate certificate was issued for each gun where the police were satisfied the applicant had a valid reason for owning the weapon—sport shooting, for example, but not self-protection. The certificate had to be renewed every three years. Following the murder of 16 people at Hungerford in August 1987, The Firearms Act of 1988 expanded the class of prohibited weapons to include most semi-automatic rifles as well as self-loading or pump-action shotguns.

UK firearms laws were further strengthened in the wake of public outrage over the murder, on 13 March 1996, of 16 primary-school students and their teacher in Dunblane, Scotland. A new law was passed which banned most handguns and required the remainder (.22 calibre or less) to be stored at gun clubs. When the Labour Party took

power in 1997, it banned public ownership of all handguns, subject to narrow exceptions. These reforms were accompanied by amnesty and buy-back programmes, resulting in the handing over of some 185,000 firearms.<sup>26</sup>

It is too early to assess the effects of this ban, especially since gun homicides are rare in the UK and the figures normally fluctuate considerably (see Table 6.1). The most consistently visible trend in the data suggests that the murder of women with firearms is declining. Although this trend pre-dates Dunblane, it has continued since. This may be partially linked to the reduction in the number of households with firearms.

While there is some evidence that gun-related violence has decreased overall, it appears to have risen in some regions. There are significant problems in assessing this phenomenon, yet the sudden rise in gun deaths in London in 2000–01 is real enough, with 25 in the first eight months of 2001 compared with 12 during the same period in 2000 (Mitchell, 2001). Even so, the incidence of firearm-related deaths in Britain is low compared with most other countries (Krug, Powell, and Dahlberg, 1998; UN, 1998).

**TABLE 6.1 Homicides by shooting in England and Wales, 1991–2000**

	1991	1992	1993	1994	1995	1996	1997	1997–98	1998–99	1999–2000
Total homicides	623	581	566	632	663	585	612	612	663	728
By shooting/rate per 100,000*	50/ 0.10	52/ 0.10	71/ 0.14	63/ 0.12	66/ 0.13	47/ 0.09	58/ 0.11	52/ 0.10	47/ 0.09	62/ 0.12
By shooting, male	32	38	51	49	55	38	52	45	43	53
By shooting, female	18	14	20	14	11	9	6	7	4	9

\* using approximate population figures for each year  
Source: UK, Home Office (2000, Tables 4.2, 4.3)

## Conclusion

This chapter has examined attempts to control small arms in a few key areas. These efforts extend from the national to the regional and global levels, and from initial production to final possession and storage. Although only selected areas are covered, these are widely recognized as crucial components of a comprehensive control strategy—as largely reflected in the UN Conference *Programme of Action* (CONFERENCE).

Effective tracing of small arms can help identify and ultimately suppress illicit trafficking networks. End-use assurances play a similar role in preventing the diversion of these weapons to unintended end-users and end uses. Brokering controls, when further developed, will fill a crucial gap in the current regulatory framework, as they will limit the freedom certain brokers now exploit when facilitating illicit arms deals. Secure stocks are equally essential in combating diversion, while the national regulation of civilian ownership is a cornerstone of efforts to minimize the misuse of small arms.

These regulatory regimes are at varying stages of development. Controls over civilian ownership are, with important exceptions, quite extensive and in recent years pressure to tighten regulations in both developed and developing countries has mounted. By contrast, arms brokering remains largely unregulated, even at the national level.

Small arms controls at national and multilateral levels necessarily reinforce one another.

In a world of sovereign states, all these regulatory regimes are inevitably rooted in national legislation and institutions. This is where the real test of the recent control initiatives in eastern Africa will come—ensuring that the political commitments made in subregional forums translate into effective action at the national level. While national regulation will remain the foundation of broader control efforts, the inescapably trans-national nature of small arms proliferation makes multilateral co-operation indispensable. As difficult as this often is for states wary of infringements on their sovereignty, the need for the harmonization of small arms controls is increasingly evident. Effective tracing mechanisms cannot be developed without some minimum level of harmonization. End-use assurances will remain open to abuse and fraud so long as state practices remain sharply divergent. The development of significant controls over brokering will require common agreement on definitions and on scope of jurisdiction.

As reflected in the UN Conference *Programme of Action* and existing practice, the two levels of activity—national and multilateral—necessarily reinforce one another. Any multilateral instrument relies on national implementation for its success. Very often, the implementation of such instruments has a significant impact on existing national systems—in both developed and developing countries. At the same time, the efforts of individual states to independently strengthen controls over small arms quickly run up against the limitations imposed by divergent state practices, creating pressure for the development of multilateral measures designed to harmonize and standardize the same.

This chapter describes the wide variety of actors that are involved, at national, regional, and global levels, in attempts to strengthen controls over small arms. It also highlights the crucial roles NGOs play in building support for such efforts and in shaping and implementing specific policy initiatives. Yet the principal role in small arms control belongs to those entities which have ultimate responsibility for the security of their citizens—states.

## 6. List of Abbreviations

ANPCA	Associação Nacional dos Proprietários e Comerciantes de Armas
BASIC	British American Security Information Council
BICC	Bonn International Center for Conversion
CICP	Centre for International Crime Prevention (United Nations)
DV	Delivery Verification
EAC	East African Community
EAPC	Euro-Atlantic Partnership Council
EAPCCO	Eastern Africa Police Chiefs Committee
ECOSOC	Economic and Social Council (United Nations)
ECOWAS	Economic Community of West African States
EU	European Union
EUAs	End-use assurances
FAC	Firearms Acquisition Certificate
GRIP	Groupe de recherche et d'information sur la paix et la sécurité
IANSA	International Action Network on Small Arms
IGAD	Inter-Governmental Authority on Development
IIC	International Import Certificate
IRG	International Resource Group on Disarmament and Security in the Horn of Africa
ISP	National Inspectorate of Strategic Products
ISS	Institute for Security Studies
LEOM	Licensing and Enforcement Group

NATO	North Atlantic Treaty Organization
NRA	National Rifle Association
OAS	Organization of American States
OAU	Organization of African Unity
OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PPF	Partnership for Peace
SADC	Southern African Development Community
SALIGAD	Assessing Small Arms Issues and Developing Capacity for Peace in the Horn of Africa
SIPRI	Stockholm International Peace Research Institute
SRIC	Security Research and Information Centre
UIT	Unique Item Tracking
UNAFRI	United Nations African Institute for the Prevention of Crime and the Treatment of Offenders
UNITA	União Nacional Para a Independência Total de Angola
UNREC	United Nations Regional Centre for Peace and Disarmament
WCO	World Customs Organization
WFSA	World Forum on the Future of Sport Shooting Activities

## 6. Endnotes

- As of 1 January 2002, 21 countries had signed the Protocol. For the latest information, see <[http://www.undcp.org/crime\\_cicp\\_signatures.html](http://www.undcp.org/crime_cicp_signatures.html)>
- An adapted version of the OAS convention formed the basis of negotiations in Vienna.
- With respect to illicit manufacture, see art. 3.d.ii. With respect to illicit trafficking, see art. 3.e. With respect to both, see arts 7.b and 10.
- With respect to illicit manufacture, see art. 3.d.iii. With respect to illicit trafficking, see arts 3.e and 15.2. With respect to both, see arts 3.f, 5.1.c, 6.2, 7, 8, and 12.4.
- The relevant section of the Protocol reads 'or *maintain* any alternative unique user friendly marking with simple geometric symbols...' (art. 8.1.a, emphasis added).
- The Protocol enters into force 90 days after the 40th instrument of ratification is deposited (art. 18).
- Given the long operational life of most small arms, certain commentators argue that tracing information ought to be retained by states for an unlimited period of time—as is the case in Italy (Berkol, 2001a).
- The principal supporting instruments for the Moratorium provide for the development of a regional arms register and database (ECOWAS, 1999a, sec. IV; 1999b, art. 6). However, as of October 2001, work on the register was suspended, though the Moratorium itself was renewed in July 2001 for a further three-year period (Mali, 2001a).
- Article 3.e calls for the establishment of regional small arms registers (EU, 1998).
- Paragraph V.3.B.ii advocates the development of common standards for marking and record keeping.
- The two countries promoted their initiative for the development of an international tracing mechanism in a series of official proposals and workshops. See France and Switzerland (2000; 2001a; 2001b).
- For the latest information concerning the model convention, see <<http://www.grip.org>>
- Additional source: correspondence from Tamar Gabelnick, Director, Arms Sales Monitoring Project, Federation of American Scientists, November 2001.
- Additional source: correspondence from Sibylle Bauer, Researcher, Institut d'Etudes européennes, Université Libre de Bruxelles, November 2001.
- Twenty-seven of the Wassenaar Arrangement's 33 Participating States responded on a confidential basis. Conversation with Mr Roland Vock, official of the Federal Ministry of Foreign Affairs, 30 July 2001.
- For example, the Italian End-use Statement requires a commitment to provide 'a statement of taking charge of goods, duly legalized... once the goods are received'.
- Agreed by Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Hungary, Poland, Romania, Slovakia, Slovenia, Turkey, and the United States.
- These were the countries listed in the preceding note plus the Czech Republic and Macedonia.
- Conversation with Mr Roland Vock, official of the Federal Ministry of Foreign Affairs, 30 July 2001.
- An important caveat is that persons engaged exclusively in the business of financing, whose activities do not also include brokering defence articles or defence services, are not required to register as arms brokers (US, Department of State, 2001, sec. 129.3(b)(3)).
- Though, as in the case of financial services, persons exclusively providing transportation services are exempt from registration (US, Department of State, 2001, sec.129.3(b)(3)).
- But see Wood and Peleman (1999, ch. 9).
- See also Kramer (2001).
- Interview with and correspondence from staff of Viva Rio, October 2001 and January 2002.
- Interview conducted by Brooks Gray, SAFER-Net, with Rob Knapper, Corporate Communications, Metro Toronto Police Service, 5 October 2001.
- For more information on the collection programmes, see Faltas, McDonald, and Waszink (2001, p. 18).



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