

SECURITY AND PEACEBUILDING PROGRAMME
MONITORING THE IMPLEMENTATION
OF SMALL ARMS CONTROLS (MISAC)

Small Arms Control in
Nicaragua

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Nicaragua

Introduction

Nicaragua was the first Central American country to undergo a significant peace transition process, which also included several large-scale disarmament schemes, involving the UN and the OAS, the military and support from the Italian government. The efforts brought in more than 100,000 weapons, which were destroyed publicly. The enormous proliferation of weapons that took place during the armed conflict meant that disarmament had a marginal impact on future weapons proliferation and misuse, evidenced by the reformation of armed groups in the country's northern and eastern regions, though this activity appears to have decreased in recent years. AK-47 assault rifle possession is still fairly common in the country's rural interior.

Interestingly, at present, recorded levels of violence and criminality show that Nicaragua is one of the safer countries in the region. This may in fact be true, but the data provided by the Government of Nicaragua should be scrutinized given that the incidence of firearms in crime and homicide is difficult to distill. Also, the fact that large parts of the country, particularly on the eastern Atlantic coast, lack a state presence suggests that data collection on SALW crime and proliferation is difficult to collect for the entire country.

In the past several years two events have pushed the Nicaraguan government to take SALW control more seriously. First, the illegal sale of thousands of AK-47s owned by the military and police to Colombian paramilitary groups sparked an OAS investigation.¹ These weapons were supposed to be sold to the Panamanian police via two Israeli brokers located in Guatemala and Panama, but were diverted to Colombia. The entire incident embarrassed the government as the purchase of assault rifles by the Panamanian police was questionable on the surface. Second, the US government focus on getting the Government of Nicaragua to destroy its stockpiles of surface-to-air missiles that it received from Cuba and the Soviet Union in an effort to prevent terrorists from acquiring them has created political pressure to deal with the storage and/or destruction of stockpiles.² Combined these events have led the Government of Nicaragua to take an active role in developing a regional SALW control regime in Central America and the adoption of a new arms law in November 2004.

Participation in International SALW Control Mechanisms

Nicaragua ratified CIFTA in 1999 and is in the process of adopting the CICAD Model Regulations. In relation to CIFTA and the OAS the Government of Nicaragua has established the National Police, under the authority of the Ministry of Interior, as the central point of contact with that mechanism. Nicaragua has not established a central point of contact in writing with the UN PoA though the Ministry of Foreign Affairs is generally active at the UN level. The Government of Nicaragua has neither signed nor ratified the UN Firearms Protocol.

At the level of the Central American Security Commission of the Central American Integration System (SICA) the Government of Nicaragua has taken the lead role in formulating and promoting the 'Central American Project to Combat and Prevent the Illicit

Trade in Small Arms and Light Weapons' hosting in Managua several sub-regional meetings on the topics of the creation of national commissions, transfer controls and stockpile management. Though as of yet largely unfunded, with some support from UNDP-BCPR, the coordination of the regional project will be located in Managua at the Ministry of Foreign Affairs.

SALW Control

In November 2004 the President and the Congress signed into law the 'Special Law for the Control of Firearms, Ammunition, Explosives and Related Materials.' The passage of this law took a couple of years due to a combination of political party interests that divided President Enrique Bolaño's party and the interests of arms importers and private security companies. Though the law continues to have many weaknesses it represents a major modernisation of the previous law dating back to the 1930s.

The National Police (PN), under the quasi control of the Ministry of Interior, is the entity charged with the control of SALW though the Ministry of Defence and Armed Forces play roles in specific situations and circumstances. While the PN was the de facto entity charged with SALW control prior the new law creates the Directorate for Registry and Small Arms Control (DAEN) within the agency and provides it with a clearer mandate.

The new law creates a multi-agency commission for the implementation of the law which is presided by the Ministry of Interior (Government) and also incorporates Ministry of Defence, Ministry of Foreign Affairs, Ministry of Education, Culture and Sports, Ministry of Health, Attorney General, National Customs Service, National Police, Army and representative of the national legislature's security and defence commission. The law also allows for the participation of civil society organisations focused on security and defence issues along with any other person or entity that the President views as useful. To date there are no civil society organisations directly involved in the commission though there future participation is legally facilitated by the law.

SALW Import/Export Legislation

Under the new law SALW importers and exporters must obtain licenses from the DAEN that are valid for a five year period and verified annually. Importing parties must demonstrate that they have the facilities for proper storage and security of merchandise. The importation of components and replacement parts requires additional authorisation. All imported weapons must be marked with the name of the manufacturer, model, serial number, calibre, place and date of manufacture. Individuals may directly import a maximum of two firearms with prior authorisation and presentation of merchandise receipt.

Importation can only take place via the national customs service in coordination with the PN and in some cases the Armed Forces. Importing parties must obtain third-party liability insurance before they will be granted an import permit and permits are required for each shipment to be imported. The same is true for exporting parties. In the case of exports a final user certificate must be presented as well as the identifying information of exporter, purchaser and the transportation firm shipping the merchandise. Authorisation to ship

SALW through Nicaragua to third countries requires authorisation from both the DAEN and the customs service. A guarantor must make a monetary deposit to guarantee that the goods will not enter the country without paying proper taxes or be diverted to the illicit market.

Nicaragua's new legislation is one of the few in the region to contemplate brokering as such and defines this activity as those involved in financing, negotiating deals between two parties or receiving a sales commission. It prohibits the export of SALW to countries with which Nicaragua maintains hostile relations, has a UN arms embargo placed on it, are known to systematically violate human rights or to countries known to support international terrorism. Brokers are also required to obtain a separate license for each transaction they are involved in and in addition to authorisation by the PN their activity must also be ratified by an Interior ministry resolution and is only valid for 90 days.

Domestic SALW Control Legislation

In addition to controlling international and domestic SALW commerce the DAEN is also responsible for the emission of ownership and right to carry licenses which also includes shooting clubs and firing ranges. DAEN is charged with storing all confiscated weapons unless they are called for as evidence in a judicial process.

With the new law a national civilian firearms registry was created under DAEN supervision with parallel access provided to the Ministry of Defence, Army, judicial authorities and courts and in exceptional cases to the national legislature. The registry contains ownership and carrying licenses issued to both civilians and private security companies in the name of their legal representative. Licenses are valid for five years before renewal. In the case of new weapons the licensee must show a pro forma receipt of the weapon to be purchased before the license will be granted. Private security companies may have been licensed to own a quantity of weaponry up to 120 per cent of their force meaning that if there are 100 agents the company may possess 120 firearms. When a private security company ceases operations the weapons must be turned over to the DAEN until the weapons are sold to other individuals or companies or the company reopens.

Under the modernised legislation civilians continue to enjoy access to a wide variety of weapons including .45 calibre pistols and revolvers and .12 shotguns as long as they are not automatic fire and the categories of permitted and restricted weapons will be further defined once the law's secondary regulations and directives are drafted and approved. Public carrying of weapons has more restrictions than prior under the new 2004 law.

Government-owned weapons must be marked 'República de Nicaragua' upon introduction to the country. Information on military and police weapons is considered confidential and may only be shared with the legislature. Sales or the destruction of government-owned weapons must be ratified by the majority in the legislature.

The DAEN must maintain a register for each firearm dealer or repair shop operating in the country for the purposes of controlling inventories and each store must maintain third-party damage insurance. The inventory register maintained by the store owners must also

detail the calibre and quantity of ammunition sold in addition to the information on firearms sales and the purchasing parties. Police and military institutions and dependencies are prohibited from participating and profiting in SALW sales and commerce.

The new law mandates the Ministry of Interior, the Attorney General in coordination with the supreme court to destroy all confiscated weapons that are not property of the police or military. It also calls for the voluntary surrender of all weapons considered to be illegal under the new law in the first six months of 2005 and provides a temporary decree allowing for people who hold unregistered weapons permitted for civilian use to register them with the authorities in the same time period. The law strictly prohibits providing compensation for the surrender of illegal, restricted-use weapons.

Civil Society

Several Nicaraguan civil society organisations have been active in SALW research and advocacy in recent years. The Centro de Estudios Internacionales (CEI) was a founding member of the International Action Network on Small Arms (IANSA) and has been involved in developing a critical mass of research on SALW in the country in addition to developing practical training materials on the risks and responsibilities of firearms ownership similar to other materials developed for landmine education.³ Much of this work served as primary inputs into the development of the new law and representatives of CEI did present their opinions to different government and legislative entities involved in developing the law. However, little recognition was provided for these inputs and CEI has not officially been invited to sit on the new national SALW commission even though it is a natural participant.

Another organisation that has been peripherally involved in issues of SALW control as related to security and defence sector reform is the Instituto de Estudios Estratégicos y de Políticas Públicas (IEEPP). In October 2004 IEEPP convened a forum on security and defence issues in collaboration with the national legislature to which International Alert was invited to present on the relationship between the privatisation of security and SALW control.⁴

Recommendations

The new Nicaraguan legal frameworks makes great strides in modernising mechanisms for civilian registration, export and import controls and creating a multisectorial national commission. It is one of the first countries in the region to comprehensively address brokering in its legislation. While on the face of it the role of the legislature in ratifying destruction of state-owned weapons may be good it could also threaten to politicise. Though some of these issues may be addressed via the development of the new law's secondary regulations some additional recommendations to enhance the country's capacity to implement SALW control measures include:

1. Establish clear guidelines for storage and stockpile management of civilian, private security, military and police weapons;

2. Invite the Centro de Estudios Internacionales or other civil society organisation to officially participate in the national commission;
3. Consider additional schemes and policies for removing illegally held weapons from society such as community weapons for development projects where communities benefit from their surrender rather than individuals who have broken the law;
4. The Government of Nicaragua should sign and ratify the UN Firearms Protocol so as to further strengthen its ability to prevent the illicit trade beyond the countries of the OAS; and
5. As the Nicaraguan government continues to seek a leadership role in Central American efforts to combat the illicit trade in SALW it would be useful to train a broad cross-section of government and civil society representatives in issues related to SALW control and prevention such as those offered through a variety of UN and other international governmental and non-governmental agencies.

Endnotes

1. Patricia Orozco. 2003. *Shadow Report of the OAS Report on the Diversion of Arms from Nicaragua to Colombia*. Managua: Centro de Estudios Internacionales.
2. Tom Shanker. 2005. 'Nicaragua Lagging in Pledge to Scrap Portable Missiles.' *New York Times*. 22 February.
3. For the latest CEI publication see Elvira Cuadra. 2004. *El trinomio de fuego: armas, leyes y cultura*. Managua: CEI.
4. See Instituto de Estudios Estratégicos y de Políticas Públicas. 2004. *Políticas Públicas y Participación Ciudadana en la Reforma y Modernización del Sector Defensa y Seguridad*. Managua: IEAPP.