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THE ORGANIZATION OF AMERICAN STATES AND THE 2001 UNITED NATIONS CONFERENCE  
ON THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS IN ALL ITS ASPECTS

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# TACKLING THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS

By William Godnick

The background of the lower half of the cover is a complex, abstract composition. It features a gradient from a dark, muted green on the left to black on the right. Overlaid on this are numerous thin, dark lines that form a dense, chaotic web of overlapping loops and straight paths, resembling a tangled network or a complex data visualization. The overall effect is one of complexity and interconnectedness.

## ABOUT THE AUTHOR

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## ABOUT THIS PAPER

This paper is a joint publication of the British American Security Information Council, International Alert and Saferworld (as “Biting the Bullet”), Project Ploughshares and the Arias Foundation for Peace and Human Progress, with funding from the Canadian Department of Foreign Affairs and International Trade.

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BRITISH AMERICAN SECURITY INFORMATION COUNCIL

INTERNATIONAL ALERT



First printed January 2002

ISBN 1-895722-31-4

The Organization of American States and  
the 2001 United Nations Conference on  
the Illicit Trade in Small Arms and Light  
Weapons in All Its Aspects:  
Tackling the illicit trade in small arms  
and light weapons

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# The Organization of American States and the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: Tackling the illicit trade in small arms and light weapons

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## Section 1: Introduction

This monograph is a modified version of a background paper prepared for a conference that took place in Ottawa, Canada in May 2001, bringing together representatives of the Member States of the Organization of American States (OAS), non-governmental organizations (NGOs) and civil society to discuss issues related to the July 2001 *United Nations (UN) Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (hereafter referred to as the UN Conference). This version takes into account the Programme of Action (PoA) adopted by the UN Member States as well as other emerging or consolidated initiatives in the western hemisphere.<sup>1</sup>

The UN Conference brought to urgent international attention the need to prevent the proliferation and misuse of small arms and light weapons. One of the key considerations of the conference was the PoA's interaction with the multiple regional measures and initiatives already in place, such as the *Inter-American Convention Against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials* (hereafter referred to as the Inter-American Convention) adopted by the OAS in 1997.<sup>2</sup> The Inter-American Convention had previously proved an important regional forerunner and building block towards the development of the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Components and Ammunition (hereafter referred to as the UN Firearms Protocol).

While the UN Conference did not live up to the high expectations of many governments and NGOs, it did provide the opportunity to build on regional action while establishing the need for, if not the prospect of, international action. The

failure of the Conference to agree on adequate steps at the international level has placed the onus on regional institutions and initiatives as the major driving force for addressing the small arms problem on the ground. The attention paid to the issue of the illicit arms trade by the UN and its Member States has the potential to spur new regional initiatives, advance the implementation of initiatives already underway and provide financial and technical vehicles that will support such implementation. Representatives and Member States of regional organizations were diligent during the conference proceedings in making sure that actions taken in the international arena were consistent with the unique and particular needs of the world's regions and sub-regions in terms of priorities, approaches and experience.

Ambassador Camilo Reyes of Colombia presided at the UN Conference. Following the Conference, as the chair of the UN Security Council, the Government of Colombia initiated a debate on small arms and completed a Presidential Statement on small arms policy.<sup>3</sup> In addition to Colombia, it is important to recognize the key roles played by Brazil, Canada, Mexico and the United States in the outcome of the UN Conference.

## The Brasilia Declaration<sup>4</sup>

From 22 to 24 November 2000 the representatives of the Latin American and Caribbean states, including Cuba, gathered in Brasilia to seek a common approach in order to contribute a regional perspective to the work of the UN Conference. In addition to supporting the UN small arms process and parallel work on the Firearms Protocol, the representatives agreed to seek to accomplish the following goals:

- consolidate a global and balanced approach to the issues involved, taking into consideration the specific characteristics of regions, sub-regions and countries;
- strengthen international cooperation in the following areas: judicial, technical, financial and law enforcement;
- recognize the importance of national efforts to recover small arms in post-conflict settings and of international support for such efforts;
- recommend the adoption of concrete measures;
- acknowledge that civil society has an important role to play; and
- promote constructive and pragmatic approaches within the scope of the UN Conference.

The meeting of Latin American governments and the Brasilia Declaration demonstrate that many of the OAS Member States appreciate the importance of regional approaches within the UN context. In the third meeting of the Conference Preparatory Committee in March 2001, Brazil endorsed specific proposals for follow-up to the PoA, including:

- establishing an ad hoc follow-up mechanism subsidiary to the General Assembly;
- convening regional or sub-regional follow-up meetings and conferences; and
- convening a Review Conference involving all parties no later than 2006.

The final UN Conference PoA adopted the convening of biennial meetings and a 2006 Review Conference as official follow-up to the Conference. The Government of Chile and the United Nations Department for Disarmament Affairs (UNDDA) agreed to allocate the resources for a regional follow-up meeting of the Latin American and Caribbean States for the 2001 UN Conference in November 2001.<sup>5</sup>

## The Managua Declaration

Prior to the UN Conference the Swedish Fellowship of Reconciliation, an NGO, took the initiative to gather parliamentarians from Europe, Central America and Brazil to discuss the issue of small arms proliferation and misuse and consider Central American involvement in the UN process.

The second meeting of this initiative took place in Managua in April 2001 where the Central American participants made the following commitments in anticipation of the UN small arms process:<sup>6</sup>

- to demand the active participation of missions from each Central American country in the UN 2001 Conference;
- to make a call to members of parliament of all Central American nations, including the Central American Parliament, to work with their respective ministries of foreign affairs in order to promote the most qualified participation and significant presence in the UN 2001 Conference;
- to elaborate and present a unified Central American position before the UN 2001 Conference using the Brasilia Declaration (see below) as a model; and
- to recommend that government missions participating in the UN 2001 Conference arrive informed and with the relevant information on arms proliferation, misuse and laws from their home countries.

The governments of Central America chose to adhere to and support the conference statement made by the representative of the government of Chile on behalf of the Rio Group (see below) instead of presenting a unified position for the sub-region. However, representatives of Costa Rica, El Salvador, Guatemala, Panama and Nicaragua did make individual statements on the Conference floor.<sup>7</sup>

## Section 2: Building on Existing Initiatives

The Inter-American Convention, Inter-American Drug Abuse Control Commission's (CICAD) *Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition* and several sub-regional initiatives in Central and South America provide useful points of reference for consensus building at the global level. These existing initiatives illustrate the areas where it is possible to build political consensus around combating the illicit arms trade.

## Small arms as a crime control issue: The Inter-American Convention

The Inter-American Convention is the only legally binding regional agreement in the world that deals with firearms proliferation in the context of law enforcement and crime control. All OAS Member States, with the exception of Dominica, have signed the agreement while thirteen have reached the point of ratification. By the conclusion of the UN Conference the states that have ratified the Convention included: Bahamas (1998), Belize (1997), Bolivia (1999), Brazil (1999), Costa Rica (2000), Ecuador (1999), El Salvador (1999), Mexico (1998), Nicaragua (1999), Panama (1999), Paraguay (2000), Peru (1999) and Uruguay (2001).

The Convention broadly defines firearms as “any barreled weapon which will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive – any other weapons or destructive device such as an explosive, incendiary or gas bomb, grenade, rocket launcher, missile, missile system or mine.” The breadth of this definition is a principal strength of the Inter-American Convention. While in some other fora the range of weapons covered under such definitions is much more limited, the Inter-American Convention can be applied to the range of small arms and light weapons responsible for death, injury and trauma in the western hemisphere. The aims of the Convention are to<sup>8</sup>

- criminalize illicit manufacturing and trafficking;
- mark weapons at manufacture and import;
- establish an effective export, import and transit licensing system;
- strengthen controls at export points;
- exchange information on producers, dealers, importers and exporters, routes and techniques used in illicit trafficking; and
- exchange experience and training in areas such as identification, detection, tracing and intelligence gathering.

Prior to the UN Conference, in May 2001, the Consultative Committee of the Inter-American Convention met in Washington, DC to approve the work program for 2001-2002 as well as to review

the ratifications of the Convention, discuss the case study presented by the Government of Mexico, identify points of contact within each national government as well as central authorities responsible for the legal and legislative aspects of ratification, adoption and implementation.<sup>9</sup> Some of the key activities of the 2001-2002 work program are:

- Encourage participation, by all convention signatories, in the questionnaire approved at the First Meeting of Parties to the Convention. As of 15 June 2001,<sup>10</sup> only 16 of the 33 signatories to the Convention have responded to the questionnaire that allows for bureaucratic, technical and political monitoring and follow-up.
- Update the inventory of measures adopted by States as indicated in the above-mentioned questionnaire.
- Create private e-mail lists for information sharing among national entities and central authorities.
- Develop a register of arms suppliers within the OAS region.
- Formalize contact and relationships with the UN, European Union (EU) and other international organizations interested in multilateral cooperation.
- Publish a Convention website with different levels of private and public access.
- Invite States to develop and present case studies, such as the one presented by Mexico in May 2001, regarding the illegal arms trafficking environment and the status of Convention ratification and implementation.
- Advance the development of model legislation needed to implement the Convention, but not contemplated in CICAD Model Regulations (see discussion below).

Participation in the UN Conference and the Brasilia Declaration were also discussed in the May consultation. On 11 July 2001 the representative of the Government of Mexico, as chair of the Convention’s Consultative Committee, made a presentation to the Conference on behalf of the Rio Group. In the days following this presentation, the chair met with the UN Under-secretary-General for Disarmament Affairs, the Director of the UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) and representatives of the EU to discuss future modes of cooperation.

It is clear that the parties to the Inter-American Convention took advantage of the UN Conference to bolster support for the Inter-American Convention and its implementation. These meetings and the apparent political will to move forward in a collaborative fashion build on the Memorandum of Understanding (MOU) signed between UNDDA and the OAS on 26 January 2001 that set out a legal framework for cooperation with regard to measures to reduce illegal trafficking in firearms in the region. UN-LiREC and CICAD were already established as the respective implementing institutions of this agreement when the UN Conference began.

## CICAD Model Regulations

Concurrent to the Inter-American Convention negotiations, the OAS Member States also formulated a set of practical guidelines to complement the effective implementation of the Convention. Developed under the auspices of CICAD the Model Regulations were also adopted in November 1997. These Model Regulations consist of a series of harmonized measures and procedures for monitoring and controlling the international movement of commercially traded firearms, their parts and components among OAS states that have adopted them and guidelines for minimum standards required for harmonized licensing. It also outlines proposals for record-keeping and information sharing on imports and exports, including the quantity, type and serial numbers of firearms.<sup>11</sup>

There are three key weaknesses to these regulations that make it difficult to fully prevent small arms from entering the illicit market. First, the Model Regulations are not directly connected to the Inter-American Convention and only apply to OAS Member States that adopt them.<sup>12</sup> They have no effect on other States with which OAS Member States do business or OAS States that have not adopted them. When a manufacturer or broker from an OAS Member State sells firearms to brokers and buyers from noncompliant OAS states, or non-members, with lax controls and regulations there is a danger that these arms will enter the international black market. It should be noted here that in many parts of the Americas a similar phenomenon of 'slippage' from licit to illicit markets also occurs through the sale or

export of firearms from relatively strict domestic regulation of firearms possession, use and resale to areas of relatively lenient domestic regulation.

Second, the Convention and Model Regulations are limited to commercially traded firearms, leaving state-to-state small arms transfers to a variety of military, security and police end-users inadequately regulated. A further gap in controls exists with regard to state transfers of arms to non-state actors. The end product of the UN Conference indicates that there is still a lack of political will, both inside and outside of the OAS, to take aggressive action on these two areas of government-sanctioned transfers.

Third, the adoption and the implementation of the Model Regulations are not well coordinated with other Inter-American agreements and implementing organs such as those aimed at fighting corruption. For this reason the Model Regulations do not take advantage of potential synergies with other relevant regional initiatives.

Despite its weaknesses, the CICAD Model Regulations provide a practical, hands-on opportunity for multilateral technical cooperation. In 2000 and 2001 UN-LiREC in cooperation with CIDAD held Model Regulation awareness-building workshops in Peru, Martinique and Trinidad and Tobago open to all UN Member States in Latin America, including Cuba. These seminars are scheduled to continue into 2002. Furthermore, beginning in February 2002, the EU together with the Governments of the Netherlands and Sweden have agreed to finance related training activities on a sub-regional level for police and customs officers involving UN-LiREC, CICAD and potentially INTERPOL and the World Customs Organization.

## The need for a comprehensive approach: The OAS Resolutions on small arms

OAS Member States have further recognized the multi-dimensional aspects of the proliferation and illicit trafficking in small arms and light weapons. A 1999 Resolution of the General Assembly called for "integrated action that addresses matters of security; the collection of weapons from demobilized combatants, the destruction of those weapons, and the reintegration of such persons



into civilian life; humanitarian issues; cultural and economic circumstances and the legal aspects of arms control.”<sup>13</sup> This suggests that for some time within the OAS there has been at least a minimum level of consensus for an approach that goes beyond crime control and law enforcement alone. The UN Conference PoA together with the Inter-American Convention provide OAS Member States with important international political tools to combine approaches to combat small arms proliferation according to differing national and sub-regional contexts. However, both initiatives have significant blind spots (for example, neither explicitly prohibits small arms transfers to human rights abusers) which must be addressed if they are to prove effective in tackling the problem in its entirety.

A month prior to the UN 2001 Conference at the OAS General Assembly another resolution was passed on the “Proliferation of and Illicit Trafficking in Small Arms and Light Weapons.”<sup>14</sup> This resolution took note of the UN Conference, the Brasilia Declaration, the Inter-American Convention and the CICAD Model Regulations as well as the US government’s offer of “bilateral technical and financial assistance available for destruction of surplus weapons, as well as illegal weapons seized as a result of interdicting illicit trafficking.” The 2001 OAS small arms resolution also called for the following actions, among others:

- Encourage Member States to adopt CICAD Model Regulations.
- Instruct the Committee on Hemispheric Security to undertake a study on small arms / light weapons brokering and transit.
- Encourage Member States to adopt measures relating brokering and transit in order to combat illicit trafficking.
- Request that CICAD provide assistance to Member States to build capacity and implement the Inter-American Convention.
- Request that the Committee on Hemispheric Security hold a seminar on stockpile management, destruction and identification of small arms.
- Encourage states to destroy surplus and seized small arms and light weapons as well as take measures to prevent theft and leakage from official inventories.

## Coordinating approaches

Some countries require a broader, multi-disciplinary approach to small arms proliferation as outlined in the 2001 OAS resolution. Guatemala has not yet ratified the Inter-American Convention because of legislative obstacles related to its constitution, the difficulty of passing more restrictive firearms control legislation in the present environment of insecurity and delays in the implementation of relevant aspects of the Peace Accords.<sup>15</sup> The section of the accords dealing with the ‘Strengthening of Civilian Power and the Role of the Armed Forces in a Democratic Society’ called for the transfer of power over the control of arms, ammunition and explosives from the Ministry of Defense to the newly created Ministry of the Interior.<sup>16</sup> In a May 1999 referendum with high levels of voter absenteeism, voters rejected a package of 50 amendments to the constitution approved by the congress a year earlier, which had been prepared in accordance with the UN-brokered peace plan. The rejection of the package made reforming the law on arms, ammunition and explosives difficult, in addition to hampering the progress of many other laws including that which governs private security companies.

Guatemala provides a good example of a country which, in order to adhere to a small arms control treaty in the context of crime prevention, must also deal with the issue in the context of post-conflict peace-building. The United Nations Development Programme (UNDP) “Violence in a Society in Transition Program” in neighboring El Salvador specifically focuses part of its efforts on strengthening mechanisms for small arms control.<sup>17</sup> It would be to Guatemala’s advantage to work toward a similar agreement while the United Nations Observer Mission and UNDP still have active mandates in the country. These small arms and light weapons (SALW) pilot projects should be watched carefully by OAS members and non-members alike.

## Sub-regional initiatives

Both MERCOSUR and the Central American countries have made sub-regional political commitments to control the illicit arms trade. The MERCOSUR agreement should be seen in the context of a sub-region with two important small arms-producing countries, Argentina and Brazil, as

well as Paraguay, a country challenged by a significant black market trade. All of the Central American countries have been affected by the Cold War conflicts of the previous decades, as well as the increased drug trafficking in the region, and this has led to sub-regional cooperation across a range of issues.

## **MERCOSUR**

Following the *Southern Cone Presidential Declaration on Combating the Illicit Manufacturing and Trafficking in Firearms, Ammunition and Related Materials* signed in April 1998 the interior ministers of the countries belonging to the South American Common Market (MERCOSUR) – Argentina, Brazil, Paraguay and Uruguay – and their associates Bolivia and Chile agreed to develop a joint registration mechanism for firearms, ammunition, explosives and other related materials within the MERCOSUR Security Information System to include:<sup>18</sup>

- register(s) of individuals and legal entities that buy, sell, exchange, import, export and distribute firearms;
- register(s) of ports of shipment and importation, including intermediate points; and
- national registers of individual and institutional firearms owners.

The parties also agreed to use the CICAD Model Regulations framework to establish national data processing centers to ensure compliance. The framework for collaboration between UN-LiREC and CICAD provides an opportunity to pursue and advance the development of the mechanism.

MERCOSUR decisions are obligatory and do not require approval or ratification by national legislatures. In November 2000 the MERCOSUR, Bolivian and Chilean Interior Ministers met in Rio de Janeiro where a common nomenclature was adopted establishing definitions for the following categories of firearms: civilian, conditional-use civilian, prohibited, collectable, military-exclusive and component / accessories. Since November 2000 no progress has been made in this area because of differences of opinion regarding the best software to use for implementation of the MERCOSUR Security Information System.<sup>19</sup>

In addition to the region-wide joint CICAD/UN-LiREC training for police and customs officers, UN-LiREC is in the process of developing databases on firearms, ammunition and explosives in Latin America and the Caribbean financed by the EU and in cooperation with the Stockholm International Peace Research Institute and the UN Institute for Disarmament Research.<sup>20</sup> These tools will be made available to police and customs officials and represent significant steps toward progress on the technical / bureaucratic level. What remain to be seen are substantial moves toward political and diplomatic follow-up on the part of the MERCOSUR governments and their associates.

## **Central America**

Because of the high levels of weaponry proliferating in the Central American sub-region as a result of the countries' civil conflicts and the dynamics of the Cold War, the isthmus has been host to a number of measures and proposals to control arms at the national and sub-regional levels. Recently, the Brasilia Declaration took note of the 1997 Summit of Central American Presidents that created the still unfulfilled Declaration on the Recovery of Illicit Arms in the Hands of Civilians in Central America.<sup>21</sup>

Another agreement, dating from 1995, "The Framework Agreement for Democratic Security in Central America," involves all Central American countries and is even more comprehensive and far-reaching.<sup>22</sup> It calls for the establishment of a uniform register of arms, equipment and explosives; modernization and harmonization of relevant laws; and dispute resolution systems for cases of arms trafficking involving more than one national jurisdiction. However, the Costa Rican Legislative Commission has voted unanimously to reject ratification of the treaty, citing lack of distinction between the roles of the military and civilian security forces.<sup>23</sup> A review of the treaty is now planned by Costa Rica. Panama and Belize officially support the Costa Rican position.

In addition, the OAS has already coordinated a comprehensive landmine detection and removal program in Central America involving Guatemala, Honduras, Nicaragua and Costa Rica. This demonstrates the possibilities for positive collaboration between international donors, the

OAS beneficiary countries, their governments and military institutions and technical advisors from within the region provided by the Inter-American Defense Board (IADB).<sup>24</sup> Similar structures and arrangements might be useful for tackling the illicit arms trade in Central America, particularly the trade in handguns and assault rifles bound for the conflict in Colombia.

While positive steps have been taken in national contexts, sub-regional efforts in Central America tend to be weak due to the numerous territorial disputes involving virtually all countries and a general climate of distrust. One possibility for cooperation would be for the Central American

Integration System (SICA) to sign an agreement or MOU with UN-LiREC as has been done with the Economic Commission for Latin America in the economic arena. Central American governments are already eligible for support from UN-LiREC on a national level; however, such a sub-regional agreement could foster trust and collaboration amongst Central American states in the fight against arms trafficking, without getting caught up in the existing differences of opinion related to the *Framework Agreement for Democratic Security*.

## Highlights in small arms control in El Salvador

### March 1992 – August 1993

United Nations Observer Mission (ONUSAL) oversees the surrender and destruction of weapons held by the Frente Farabundo Martí de Liberación Nacional including 10,230 small arms, 4,032,000 rounds of ammunition and 9,228 grenades.<sup>25</sup>

### 1996 – Present

The Patriotic Movement Against Crime, a private sector association, in cooperation with the Civilian National Police, Ministry of Defense, Catholic Church, Office of the President, the Legislative Assembly and the Rotary Club carry out the Goods for Guns program, exchanging vouchers for foodstuffs, shoes and pharmaceuticals in exchange for weapons. In the first four years the program succeeded in collecting and destroying 1,354 pistols and revolvers, 3,043 long arms including assault rifles, 3,180 grenades and 129,696 rounds of ammunition.<sup>26</sup>

### 8 January 1999

El Salvador ratifies the Inter-American Convention Against the Illicit Manufacturing and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials, deposited at the OAS on 18 March 1999.

### May 1999

The Central American University's Institute for Public Opinion publishes a study on cultural norms and attitudes towards violence, including the use and possession of firearms.<sup>27</sup> The study paves the way for the Central American University's further research in the area of small arms and public security.

### 1 July 1999

El Salvador's Legislative Assembly approves a new law for the control and regulation of firearms, ammunition, explosives and similar articles. While far from perfect it better reflects the nation's post-conflict reality and is a starting point for continued national debate.

## Section 3: Tackling Small Arms – The Supply Side

The OAS has been a pioneer among regional organizations to stem the supply of small arms that are manufactured and traded illegally. The signing of the Inter-American Convention and the development of CICAD's Model Regulations are evidence of this. The Inter-American Convention has served as a model and primary input for the UN Firearms Protocol.

OAS Member States have also taken unilateral steps to prevent legally manufactured and traded firearms from entering illegal and grey markets. In November 2000, the Brazilian government levied a 150 per cent export tax on handguns and ammunition bound for Central America, the Caribbean and South America, with the exception of Argentina, Chile and Ecuador because they have strict gun-control laws and effective anti-smuggling efforts.<sup>28</sup> In 1999, the US government suspended sales of handguns to Venezuelan companies out of concern that many weapons were ending up in the hands of drug traffickers and guerrilla organizations in neighboring Colombia.<sup>29</sup>

### Tracing

There is a relatively broad international consensus that firearms being sold commercially should be uniquely marked at the time of manufacture so that they can be traced, should that be necessary.<sup>30</sup> However, marking at the point of import or the marking of weapons designated for use by military or security forces are more hotly debated issues in the international arena. In the fight against the illicit arms trade, where the original importer may be several countries removed from where the illegal weapons are seized, information on the weapon that identifies more recent importation is valuable to law enforcement efforts to trace the route by which those weapons were transported and to identify at which stage the weapons crossed over from the legal to the illegal market. Marking at import has been agreed in the UN Firearms Protocol, as have measures to ensure that weapons are marked with unique serial numbers, name of manufacturer and place of manufacture. In addition, the Protocol requires countries to mark weapons that are transferred from military stocks into the

civilian market, a first step in promoting efforts towards universal marking of military weapons.

The Firearms Protocol is also a significant advance in efforts to trace seized weapons, as it promotes information sharing between countries, specifically for the purpose of tracing weapons and learning more about the methods and means by which weapons are trafficked illegally. Data exclusively from manufacturers is only of limited utility as arms may change hands legally several times before they reach the black market.

Article VI of the Inter-American Convention calls for marking at the time of manufacture, importation and confiscation, including not only firearms, but also grenades and other weapons covered by the Convention. Article XI refers to record-keeping, but is quite vague and Article XIII deals with information exchange in a fairly broad way. Unfortunately the limited number of ratifications of the Convention and the low response rate to the official convention questionnaire (see above) indicate that the OAS States have a long way to go before there will be an effective tracing regime in place.

Attempts to trace a fully and uniquely marked weapon are frequently frustrated by inadequate record-keeping.<sup>31</sup> Lack of traceability in general obstructs efforts to obtain information relating to diversion points of specific weapons. The level of information exchange necessary to identify diversion requires a level of confidence between states that can be challenging across the entire region or within sub-regions. Nevertheless, in the absence of the ability to trace weapons flows accurately with the help of official government documentation, authorities will have to place more effort on intelligence gathering activities.

While the UN Conference PoA leaves the majority of the responsibility for marking and tracing to individual states it does encourage the allocation of financial and technical support for States interested in developing such capacity and utilizing new technologies. In terms of international tracing the boldest move taken by the UN Conference PoA in this regard was the decision to undertake a study for "examining the feasibility of developing an international instrument to enable States to identify and trace in a timely and reliable manner illicit small arms and light weapons." However, the lack of international

commitment vis-à-vis the establishment of international cooperation on tracing, must, in the absence of enhanced political will, place a question mark over the prospects that any such feasibility study will yield positive results.

As well as fully implementing the Inter-American Convention provisions on marking and information exchange, the OAS Member States can play a very useful catalytic and leadership role at the international level. By sharing their practical regional experiences, OAS States can help develop international best practice, and are well placed to promote a climate where international cooperation on marking and tracing is encouraged and the process of developing an international instrument has begun.

## Brokering

Despite increasing evidence of the consequences of unregulated arms brokering and transportation, many OAS Member States lack legislation for the control of such activities. A notable exception is the United States, which does have extensive provisions for registering and licensing of arms brokers, including full extraterritorial application. However, recently questions have arisen regarding the effectiveness of the implementation of these provisions.<sup>32</sup>

Although the Inter-American Convention does not explicitly address the issues of arms brokering and transportation, a number of provisions could be regarded as applying to the control of these activities. For example, the definition of illicit trafficking as the “import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition, explosives and other related materials from across the territory of one State Party to that of another State Party, if any one of the States Parties concerned does not authorize it” could conceivably apply to the activities of arms brokering and transport agents if arms are transferred without authorization from source, transit and end-user states who are parties to the Convention. Moreover, the States Parties have agreed to exchange information that could be relevant to control illicit arms brokering and transportation, including details of “authorized producers, dealers, importers, exporters and, wherever possible, carriers of firearms, ammunition, explosives and other related

materials” and “routes customarily used by criminal organizations engaged in illicit trafficking.” Finally, the ‘controlled delivery’ of firearms where suspect cargoes are monitored as they pass through territories of one or more states parties with a view to “identifying persons involved in the commission of offenses” could yield important information on arms brokering and transport agents.

As with marking and tracing, the UN Conference PoA leaves measures to control arms brokers up to national governments, though as a follow-up activity it does agree to consider further steps to “enhance international cooperation in preventing, combating and eradicating illicit brokering.” The OAS did take some steps towards dealing with brokering and transit of small arms in the above mentioned 2001 General Assembly resolution that calls for a hemispheric study and encourages States to adopt domestic legislation to prevent illegal brokering and transit activities. At this point OAS Member States who feel not enough is done to control brokering activities can lead the way in implementing (albeit voluntarily) the provisions for registration and licensing of brokers that are contained in the UN Firearms Protocol.

## Domestic firearms regulation

The importance of effective domestic firearms regulation in reducing the proliferation and misuse of small arms and light weapons has been affirmed by the United Nations in several different contexts: the UN Security Council Resolution 1209 (1998); the Report of the Disarmament Commission considered at the General Assembly (1999); and the Report of the UN Commission on Crime Prevention and Criminal Justice (1997), which calls on all countries to introduce regulations to ensure licensing, safe storage and tracing of firearms.

The UN Conference PoA lays out 25 measures to be taken by Member States at the national level that range from putting in place laws governing production of small arms to preventing the use of small arms against children in armed conflict. One key area of contention that did not end up in the PoA was the specific issue of the civilian possession of small arms. During the negotiations some States called for a ban on civilian ownership of military-style small arms and light weapons while opponents claimed that any such action

would interfere with issues of national sovereignty. However, none of the discussion at the UN Conference resulted in action to control and influence behavior at the local level where decisions to obtain and use small arms are often made.

Domestic regulations are indispensable to combating the illicit trade in small arms. Virtually every illegal small arm was, in the first instance, a legal small arm, whether in the hands of the state, non-state actors or civilians. There is a range of ways by which such weapons are diverted from licit to illicit markets including:<sup>33</sup>

- illegal sales by dealers;
- illegal resale and purchases by surrogate parties;
- loss or theft;
- diversion from surplus; and
- falsification of documents and illegal importation (e.g., by concealment).

Countries or regions where there is little effective domestic regulation often play a major role in feeding an illicit supply of small arms and light weapons to countries where regulations may be more restrictive. The implementation of arms control treaties already signed and ratified by governments often requires the passage of new legislation. In the specific case of Canada, a major supporter of the Inter-American Convention yet to ratify that instrument, the measures contemplated in a treaty or convention must be fully adopted in national legislation before ratification can take place. This requires the passage of legislation and the development of bureaucratic procedures as well as political negotiation in national legislatures and, frequently, harmonization with state, provincial or municipal governments.

The international system of which the UN and OAS are part is based largely on national sovereignty. Curbing the illicit arms trade presents governments with the difficult task of balancing national security with public safety. This balance is increasingly referred to as human security. The Inter-American Convention and the UN Conference PoA will not be effective policy tools without parallel and complementary legislation by national governments.

## Financial regulation

Another factor contributing to the ease with which illicit arms transfers can be made in the western hemisphere is the presence of a multitude of financial and tax havens in Anguilla, Antigua and Barbuda, Aruba, Bahamas, Belize, British and American Virgin Islands, Cayman Islands, Dominica, Grenada, Netherlands Antilles, Panama, St. Lucia, St. Vincent and the Grenadines, Turks and Caicos and others.<sup>34</sup> The lack of regulation and oversight of financial transactions, which typifies the operation of tax havens, greatly assists the financial dimensions of the illicit small arms trade.

Article XII of the Inter-American Convention stipulates that States Parties will exchange information on “techniques, practices, and legislation to combat money laundering related to illicit manufacturing of and trafficking in firearms,” but does not stipulate any concrete actions to be taken in this regard. The UN Conference PoA does not make any direct reference to financial regulation though it does encourage States to ratify international legal instruments on transnational organized crime. Exploratory efforts to control arms brokering activities might be indirectly related to the issue of financial regulation, but this area continues to be one that requires more thorough treatment.

### **Linking small arms to other regional measures**

The Inter-American Convention and other regional agreements and moratoria have raised the level of discourse on the illicit arms trade exponentially. However, corruption in general and the lack of political will to adopt and implement the measures after making political agreements minimize the effectiveness of these measures. At the international level, the only OAS Member States to respond to and provide detailed information to the United Nations in Vienna’s 1997 International Study on Firearm Regulation were Argentina, Brazil, Canada, Colombia, Costa Rica, Ecuador, Jamaica, Mexico, Peru, Trinidad and Tobago and the United States. In 1999, Guatemala was added to this list. Lack of responses from the region may be due to lack of institutional capacity, data gathering practices, changes in ministerial responsibilities and bureaucratic voids left after national elections.

## Section 4: Tackling Small Arms – The Demand Side

It is generally recognized that the long-term measures to curb the demand for small arms will have to be a concert of economic, political, security sector reform and rule of law programs. Recent NGO conferences in Durban, Nairobi and Toronto emphasized that the underlying demand for arms is closely linked to the issues of gender, sustainable development and human security and that poverty alleviation must be given priority in this context.<sup>35</sup> The proliferation of private security companies and experiences with weapons collection in the OAS region are two areas that provide insights into the demand aspects of small arms proliferation, albeit from different angles.

### The privatization of public security and small arms proliferation

In Latin American in general, but most specifically Central America and Colombia, private security companies using high powered weaponry, often of military design, have proliferated where public security forces have been unable to provide citizens with a sense of security. Demand for these services is fueled by the need felt by many banks, delivery trucks, businesses and residences for armed protection. The weapons used by agencies providing these services fuel the legal firearms trade while the lack of government control over the agencies, their employees and their weapons makes it potentially easy for arms to slip into the black market and end up in the hands of criminals. Again the lack of economic opportunity and rule of law accelerates the vicious cycle of small arms demand creation.

The transition made by military-controlled police forces to civilian operations in the three Central American post-conflict countries – Guatemala, El Salvador and Nicaragua – plus Honduras has resulted in the deficient delivery of public security to the population during times of increased crime and violence outside the context of political conflict. In this environment well-armed private security companies have filled the market demand to guard and protect banks, hotels, commercial centers, government buildings and wealthy individuals. Panama and Costa Rica are

also experiencing rapid growth in the number of private security companies and agents.<sup>36</sup>

In Guatemala, for example, the Chamber of Industry reports 52 private security enterprises, while the government reports an even greater number: 116 companies employing 35,000 agents.<sup>37</sup> The figure represents more than twice the number of civilian police officials in the country since the last count of 14,800 in 1999.<sup>38</sup> As well as unease over the growing numbers of such private security companies, the lack of adequate training, regulation and accountability is also of grave concern. In El Salvador, at the beginning of 1999, only 8,118 of 17,000 private security agents had completed the five-day course required for that profession by the National Public Security Academy.<sup>39</sup> The police in El Salvador state that approximately 25 per cent of the weapons confiscated nationwide are taken from private security agents. The most common infraction is non-compliance with licensing regulations.<sup>40</sup>

In Honduras, at least a dozen private security agencies maintain AK-47s in their inventories even though assault weapons are, by law, reserved for the exclusive use of the military.<sup>41</sup> *La Armería*, a subsidiary of the Honduran military pension institute, and the Ministry of Defense are the only entities in the country authorized to import and sell firearms and have never sold AK-47s through their public outlets. Neither does the military maintain AK-47s in its inventories. In response to this situation, in October 2000 the Honduran Ministry of Security ordered all private security companies to turn in machine guns, sub-machine guns, assault rifles and semi-automatic pistols.<sup>42</sup> The first company to comply turned in 33 illegal weapons and others followed suit.

Increasingly, employees of private security companies are implicated in criminal activities including armed assault and arms trafficking. Until there is more effective control and regulation of the way these companies procure, store and distribute their firearms it is highly likely that significant numbers of private security weapons will continue to enter the black market and contribute to increased levels of violence and insecurity. Of course the pace of privatization of public security functions can be most effectively challenged by adequate investment in civilian

police forces and competent judiciaries accompanied by parallel efforts to remove corrupt officials. However, these goals are only feasible over the long term and there exists an urgent need to prevent leakage from private security arsenals in the interim. Some measures that might be appropriate in the context of private security include: reviews of current practices, the establishment of effective systems for management and accountability, ensuring adequate and detailed standards and procedures, ensuring good record-keeping and regular stocktaking, and ensuring that losses are properly reported and investigated.<sup>43</sup>

States should introduce national legislation to control these activities of private providers of military and security services who should be required to register and apply for authorization for each contract they enter into. Such applications should be assessed in accordance with publicly available criteria based on human rights standards and international humanitarian law.

States should also promote measures to ensure that the employers of private military and security companies introduce sufficient safeguards to prevent breaches of human rights norms and standards, international humanitarian law, or other aspects of international law by their employees. Such personnel should not have a record of human rights abuses and there should be strictly enforced controls governing when force and firearms can be used. These controls should be in accordance with international standards on the use of force, including the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. All personnel should be properly trained in and committed to respect such standards.

Neither the Inter-American Convention nor the UN Conference PoA makes specific statements or proposals in relation to the small arms held by private security firms though many measures could be indirectly interpreted as pertaining to them. For this reason, the control of private security companies and their resources continues to rest in the hands of national governments.

## Weapons collection and destruction

The collection and destruction of illicit weapons can be seen as both a micro-supply side issue and as a demand issue. During the UN Conference preparatory meetings the Government of Argentina suggested wording be added on the issue of voluntary weapons collection and disposal in order to promote and consolidate a culture of non-violence. The UN Conference PoA did not link weapons collection with non-violence though it did agree to “promote a dialogue and a culture of peace by encouraging, as appropriate, education and public awareness programmes on the problems of the illicit trade in small arms” at a global level. At the same time weapons collection and destruction was one of the recurring areas of consensus within the UN Conference PoA.

### **Post-conflict disarmament in the Americas**

Over the course of the last decade the countries of the western hemisphere have contributed rich experiences in the area of weapons collection and destruction, both in terms of post-conflict peace-building and crime prevention. The experience of the US Army in buying back weapons in the post-conflict environs of Panama (1989-90) and Haiti (1994), where 10,000 and 3,389 weapons respectively were collected, forewarned further collection efforts of the risk of stimulating black market transactions when cash incentives are used to motivate people to surrender weapons.<sup>44</sup>

In the period between these two experiences, the Government of Nicaragua created the Special Disarmament Brigades (BED) (1992-93) to collect weapons from ex-combatants and irregular militias. The BED collected and destroyed approximately 142,000 functional and non-functional arms.<sup>45</sup> Seventy-eight thousand were recovered through police confiscation while an additional 64,000 were bought back in exchange for cash and micro-credit loans from a fund sponsored by the Italian government.

The United Nations observer missions in El Salvador and Guatemala also carried out weapons collection efforts as part of their mandates in the demobilization and reintegration of ex-combatants. In El Salvador tens of thousands of



weapons were recovered at the end of the conflict while fewer than two thousand were turned in by the guerrilla forces in Guatemala.<sup>46</sup> While important, these efforts have proven to be incomplete as military-style weaponry continues to proliferate throughout Central America. In El Salvador, a private sector association known as the Patriotic Movement Against Crime took note of this and initiated a "Goods for Guns" program that over a five-year period has collected from civilians more than 4,000 firearms, 3,000 grenades and hundreds of thousands of rounds of ammunition. This effort has served as a model for other collection efforts around the world both in post-conflict and crime prevention settings.

An important aspect of all the above-mentioned post-conflict collection efforts was the destruction of the weapons. In Nicaragua and El Salvador weapons were destroyed publicly to symbolize the end of conflict and to ensure that those turning in weapons did not fear that they would be re-used against them or their families.

### **Weapons collection for crime prevention**

Many OAS Member States have problems with the illegal possession and circulation of small arms yet most do not fit neatly into the categories of conflict or post-conflict societies. Increasingly NGOs, local, state and provincial governments are developing their own firearms turn-in programs that integrate elements of post-conflict peace-building with those of gun buy-back programs implemented in the United States. Several municipalities carried out firearms amnesty programs in the late 1990s with a focus on the disarmament of youth gangs.<sup>47</sup>

More recently, Latin American state and provincial governments have begun to enact weapons collection programs because it has been easier to bolster support at this level than at the national. In Monterrey, Nuevo León, Mexico the state government exchanged vouchers worth 500 Mexican pesos for illegal and unwanted firearms, recovering many different types of weapons, the most common being .22 caliber pistols.<sup>48</sup> The most high profile effort of late has been the Arms Exchange Program of the provincial government of Mendoza, Argentina that collected more than 2,000 firearms, mostly revolvers and shotguns produced in Argentina, in two rounds of collection

during the first half of 2001.<sup>49</sup> The program in Mendoza focused as much effort on public awareness-raising and the development of community / government relations as it did on weapons collection and destruction.

Additionally, the Brazilian NGO Viva Rio has organized several large-scale weapons collection and destruction efforts in cooperation with the state government of Rio de Janeiro and with political support from the federal government. The latest coincided with the beginning of the UN Conference on 9 July 2001, a day coined 'Small Arms Destruction Day'. The prior year's efforts resulted in the destruction of more than 100,000 small arms recovered by the police, 73 per cent Brazilian-made. At the UN Conference the Brazilian Minister of Justice proposed that Small Arms Destruction Day be repeated on an annual basis and that every act of destruction leave behind a detailed data base of arms destroyed, so that the trade practices can be identified that made it so easy for criminals to flood society with weapons.<sup>50</sup> Viva Rio activities highlight good government / NGO partnership and the fact that weapons collection and destruction programs can not be done in isolation and need to be one strand of a strategy to increase community security.

### **Evaluating the effectiveness of weapons collection**

The jury is still out as to whether or not weapons collection programs in any context contribute to tangible, measurable reductions in the illegal proliferation and misuse of small arms. In fact it is very difficult to isolate the variables to measure their effectiveness, even in the United States where years of historical data is available.<sup>51</sup> Policy analysts in this field increasingly believe that the quantifiable benefits, in terms of crime and risk reduction, are more visible at the individual household level than at the community level.<sup>52</sup>

In El Salvador, with both UN-sponsored and civil society-initiated disarmament programs, approximately 14,000 firearms were collected along with millions of rounds of ammunition. This quantity pales in comparison with the estimated 400,000 firearms (of which 145,000 are legally registered) still circulating in El Salvador, suggesting that weapons collection must take place in the context of a more comprehensive

solution.<sup>53</sup> However, the UNDP has made an effort to develop performance indicators after their direct participation in the 'Weapons for Development' program in Albania that included measures of recovery, crime, black market trends, program cost and death and physical injury risk reduction.<sup>54</sup> Even with well developed methodologies the quality of a quantitative evaluation still depends on the quality of the statistics, a problem in many developing and post-conflict countries.

### **A global and regional consensus on weapons collection?**

The UN Conference PoA, the Inter-American Convention and the most recent OAS General Assembly resolution provide ample political support and access to the necessary technical and financial assistance for weapons collection and destruction programs dealing with voluntarily surrendered, confiscated and surplus weapons. The US did sign onto the non-binding PoA, although it did not sign the legally binding Ottawa Treaty to ban landmines. Furthermore, it does appear to be replicating the program of support for humanitarian de-mining through the above-mentioned offer to provide technical and financial assistance to OAS Member States seeking to destroy surplus and confiscated weapons. This demonstrates the more recent US history of carrying out bi-lateral programs on the ground even when it has not signed international agreements.

The UN PoA (Paragraph 17) makes several attempts at developing an international norm on weapons collection and destruction, calling on States "to ensure that all confiscated, seized or collected small arms and light weapons are destroyed," though it leaves room for interpretation when it also says in regard to the former, "unless another form of disposition or use has been officially authorized." The PoA (Paragraph 21) is a bit more positive when it goes on to encourage States "[t]o develop and implement, including in conflict and post-conflict situations, public awareness and confidence building programs on the problems and consequences of the illicit trade in small arms and light weapons in all its aspects, including where appropriate, the public destruction of surplus weapons and the voluntary surrender of small arms and light weapons, and if possible in

cooperation with civil society and NGOs...."

Additionally, there appeared to be significant consensus regarding the need to provide assistance to build the capacity to store and protect national stocks held by armed forces, police and other authorized government institutions. It would be a welcome measure for future international small arms processes to encourage or promote concrete measures on the control of private security companies, especially transnational enterprises, and their weapons inventories.

## **Section 5: Combating the Illicit Trade through State-Authorized Transfers**

### **The OAS declaration on small arms transfers**

The OAS declaration on small arms transfers is one regional initiative not discussed in Section 2. Responding to concerns that the Inter-American Convention on illicit trafficking took a narrow approach by focusing purely on crime control and commercial transactions, the OAS Committee on Hemispheric Security met in March 2000 to discuss the development of controls of state transfers of weapons. The meeting resulted in a draft proposal on "Responsible Small Arms and Light Weapons Transfers."<sup>55</sup> The draft proposal outlines the following criteria to be considered when assessing small arms and light weapons:

- the legitimate defense and security needs of the recipient country;
- the recipients' involvement in peacekeeping operations;
- the technical ability of the recipient country to ensure effective export controls; and
- the technical ability of the recipient country to ensure effective management and security of stockpiles.

Under the proposed draft, OAS Member States would also commit to

- respect international commitments such as arms embargoes;

- take into account gross violations of human rights and humanitarian law in the recipient country;
- not transfer weapons if there is a clear risk that they will be used for internal repression;
- take into account the internal situation of the recipient country, in particular the existence of armed conflict or high levels of violence;
- not transfer weapons that may provoke or exacerbate conflicts or existing tensions;
- not permit the transfer of weapons to countries undertaking international armed aggression;
- take into account the high risk of diversion; and
- consider transfers in the context of development and economic needs of the recipient country.

The proposal was discussed at the OAS General Assembly meeting in Windsor, Canada in June 2000 where a resolution was adopted giving the Committee on Hemispheric Security a mandate to develop a declaration specifically addressing the UN 2001 Conference; however, there was no mention of the proposed policy for 'Responsible Transfers' nor the above-mentioned elements of that proposal.<sup>56</sup> The UN Conference PoA does include language to address diversion and the technical ability of States to manage stockpiles. Nonetheless, the PoA lacks action on most of the points of the proposed OAS policy on 'Responsible Transfers' including a startling omission of any mention of human rights.

## Inter-regional complementarity? The OSCE document on small arms

It is worth noting that the United States and Canada agreed to a set of criteria similar to the OAS 'Responsible Transfers' proposal when they signed the Organization for Security and Cooperation in Europe (OSCE) Document on Small Arms and Light Weapons on 24 November 2000 (this also builds on the OSCE Principles for Conventional Arms Transfers of 1993).<sup>57</sup> They have also endorsed the principles of the European Code of Conduct on arms exports which embodies a comparable set of concerns. In fact the scope of the OSCE agreement is even broader than that of the OAS proposal, and includes:

- taking into account whether the transfers would contribute to an appropriate and proportionate

response by the recipient country to the military and security threats confronting it;

- avoiding transfers to countries where
  - there is a risk of threatening the national security of other States;
  - weapons might be either re-sold or re-exported for purposes contrary to those of the OSCE document;
  - weapons might support or encourage terrorism and organized crime; or
  - weapons might be used other than for purposes of legitimate defense and security of the recipient country.

## The need for legally binding export controls based on international law

While the regional and extra-regional initiatives mentioned above are important, most are only politically binding and the fact remains that state-to-state transfers are still authorized in violation of existing international commitments and obligations. There is an urgent need for a legally binding convention that explicitly ties states' obligations under international law to arms transfers. Such controls would, at a minimum, prohibit transfers under the following circumstances:

- if the transfers would violate the exporting state's direct obligations under international law, such as decisions of the UN Security Council or treaties to which the state is bound;
- if the weapons in question are likely to be used in violation of the prohibitions on: the threat or use of force, threat to the peace, breach of the peace or acts of aggression, or unlawful interference in the internal affairs of another state; or
- if the weapons in question are likely to be used to perpetrate serious violations of human rights, to perpetrate serious violations of the law of war or to commit genocide or crimes against humanity.

A model of such an agreement – a Framework Convention on International Arms Transfers – drafted by a group of NGOs and international lawyers, is currently being circulated in the UN and other international fora.<sup>58</sup>

In an encouraging step, the PoA did commit states to “assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with States’ *existing responsibilities under relevant international law* taking into account in particular the risk of diversion of these weapons into the illegal trade” (emphasis added). It is crucial that all states recognize that these responsibilities include the three categories elaborated above, and work towards the establishment of corresponding export criteria at the national, regional and international levels.

## The need for supporting transparency mechanisms

Only by ensuring transparency and accountability in the government-authorized trade in small arms and light weapons can the illicit trade be clearly identified and effectively addressed. The increasing experience of the OAS States in developing and agreeing to criteria governing state-to-state conventional arms transfers suggests that a common approach to deal with this issue in the context of small arms is possible.<sup>59</sup>

The UN Conference PoA makes no explicit mention of transparency measures at the national, regional or global levels. The document alludes to some transparency at the national level when it calls for States “to make every effort...without prejudice to the right of States to re-export small arms and light weapons that they have previously imported, to notify the original exporting State in accordance with their bilateral agreements before the retransfer of those weapons.” However, this still falls short of the expectation of many governments in this regard and some believe this to be a backward step that undermines the development of a norm of no re-exportation without the agreement of the original exporter.

In terms of transparency in state-authorized transfers, the United States could contribute a great deal to regional efforts since it regularly publishes data on foreign military sales and direct commercial sales of all types, including small arms transfers to governments, with the important exception of covert sales. Two NGOs, the Norwegian Initiative on Small Arms Transfers

and the Federation of American Scientists, make this data available on the Internet at <http://www.nisat.org> and <http://www.fas.org/asmp/index.html>.<sup>60</sup> Canada is another OAS Member State that also makes data on arms transfers available, although there is some room for improvement in the Canadian reporting system.<sup>61</sup> Unfortunately, transparency both in terms of exports and imports of commercial and government small arms sales is limited among the rest of the OAS. Other Member States need to be encouraged to publish reports not only on commercial exports and imports, but also on the acquisitions made for military and security institutions.

Colombia, an OAS Member State greatly affected by the illicit trade in small arms and light weapons, made a bold proposal to devise an international mechanism within the UN framework at the third preparatory meeting for the UN Conference in March 2001 to promote transparency and information sharing. The proposal included eleven specific types of information to be shared on a voluntary basis and used to measure progress on the UN PoA. The proposal included sharing information on the following:

1. legislation which includes the illicit trade in small arms as a criminal offense;
2. types of penalties applied to those convicted of illegal arms trafficking;
3. number of ongoing investigations into illegal arms trafficking;
4. number of persons detained for illegal trafficking by year;
5. number of persons processed and convicted for illegal arms trafficking;
6. number of small arms and light weapons confiscated by type;
7. number and description of successful operations by government authorities;
8. number of small arms collected and destroyed;
9. requests for legal and technical assistance and cooperation in arms trafficking cases;
10. number and types of small arms lost or stolen from military warehouses; and
11. sources and routes identified as used in the illegal arms trade.

The UN PoA was not as explicit in terms of follow-up as the Colombian proposal though it did call for States to convene meetings every two years to review the national, regional and global implementation of the PoA. Many aspects of the Colombian proposal could be presented in this context. At the same time, the 2001 OAS Small Arms Resolution that calls for States to produce reports on the illegal arms trafficking environment in their country as well as steps towards implementation of the Inter-American Convention provides Colombia and other OAS Member States with the opportunity for detailed follow-up. However, this mechanism does not go far enough in promoting information exchange on the legal trade or reporting official government inventories. Thus, it will have a limited impact in identifying and addressing the links between the legal and illicit trade in small arms and light weapons.

## Section 6: Conclusion

Small arms crime control initiatives are now well developed in the OAS region and significant potential is associated with these agreements. Implementation, however, lags behind for a variety of reasons, some political, some financial and some technical. The UN Conference has addressed many of these issues, helping to generate political momentum, and to support the provision of increased financing and technical assistance available to OAS Member States through CICAD, UN-LiREC, UNDP and bilaterally through the Defense and State Departments of the Government of the United States.

In order to work toward the implementation of the Inter-American Convention, for example, more than 16 of 33 signatories need to respond to the approved questionnaire identifying points of contact and responsible central authorities and move toward taking inventory of related measures and legislation already in place. Technical assistance will be of limited use and financial resources will be wasted if States do not have a clear picture of their situation and capabilities from the beginning. At the same time the OAS, NGOs and other multilateral institutions have to find ways to maintain momentum towards ratification and implementation when there are changes in national governments or transfers of responsibility from one ministry to another.

The non-governmental International Action Network on Small Arms (IANSA) points out that the UN PoA lacks any measures to commit to negotiate international treaties on arms brokering or the marking and tracing of weapons, and notes the absence of any reference to regulate civilian possession of weapons or to protect human rights.<sup>62</sup> It is up to the OAS Member States to pursue areas of regional consensus in these areas and to adopt bilateral or domestic measures.

It is also time for the OAS to alter the way in which it frames the issues and analyze measures to combat small arms trafficking and its consequences. For several reasons, many distinctions between government and commercial sales as well as military and civilian firearms need to be reconsidered and made more flexible:

- Criminals and irregular armed groups do not make these distinctions.
- Many times these distinctions are made on the basis of marketing decisions made by small arms manufacturers.
- While the potential impact of certain weapons is greater than others the real impact of certain types of weapons is important to take into consideration.
- Most illegal small arms began as legally produced and commercialized products.
- Military, police and private security forces can also misuse weapons.

For example, in Colombia, where most think of the problems related to arms trafficking in terms of assault rifles, rocket launchers, guerrillas and paramilitaries, a recent study concluded that 80 per cent of all political and crime-related homicides were committed with .32, .38 and 9 mm caliber pistols and revolvers and that approximately 80 per cent of homicides are related to crime and delinquency, and not directly armed conflict.<sup>63</sup>

Tackling the illicit trade in small arms and light weapons is more complex than the already challenging disciplines of crime control and post-conflict peace-building. It also requires interventions in the fields of public health, youth and popular culture, human rights, international law and the trade in goods and services. Internationally, many governments have protected

their interests in the trade in small arms and light weapons. Within the OAS it is in the interest of many States to protect themselves from the adverse impact of these weapons on political, economic and social development.

## Notes

<sup>1</sup> United Nations General Assembly, *Draft Programme of Action to Prevent Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, A/CONF.192/L.5.Rev.1, 20 July 2001. Available online in English at <http://www.un.org/Depts/dda/CAB/smallarms/confdoc.htm> and in Spanish at <http://www.un.org/spanish/conferences/smallarms/confdoc.htm>.

<sup>2</sup> Organization of American States General Assembly, *Inter-American Convention Against the Illicit Manufacturing of and Trafficking In Firearms, Ammunition, Explosives and Related Materials, November 1997*. Full text available online in English, Spanish, French and Portuguese at [www.oas.org](http://www.oas.org).

<sup>3</sup> UN Security Council Presidential Statement on small arms can be found online at <http://www.un.org/Docs/sc/statements/2001/prest21e>.

<sup>4</sup> *Brasilia Declaration for the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, Regional Preparatory Meeting of the Latin American and Caribbean States for the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, Brasilia, 24 November 2000.

<sup>5</sup> Author e-mail correspondence with Bjorn Holmberg, Head of the Regional Clearing-house on Firearms, Ammunitions and Explosives, United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, 16 August 2001.

<sup>6</sup> Julieta Castellanos, "El Compromiso de Managua," *El Heraldo*, Tegucigalpa, Honduras, 2 May 2001.

<sup>7</sup> Statements made by regional organizations and UN Member States can be found on the UN 2001 Conference website at <http://www.un.org/Depts/dda/CAB/smallarms/statements.htm>.

<sup>8</sup> Elizabeth Clegg, Owen Greene, Sarah Meek and Geraldine O'Callaghan, *Regional Initiatives and the UN Conference: Building Mutual Support and Complementarity*, London: BASIC, International Alert and Saferworld, February 2001.

<sup>9</sup> Author e-mail correspondence with Jessica Cascante, Office of the Director for the UN System, Ministry of Foreign Affairs, Government of Mexico, 6 August 2001.

<sup>10</sup> See Jessica Cascante. The states that have presented their completed questionnaires to the OAS are Argentina, Belize, Bolivia, Brazil, Canada, Colombia, Chile, Ecuador, El Salvador, Guatemala, Guyana, Mexico, Panama, Peru, Trinidad and Tobago, and Venezuela.

<sup>11</sup> Clegg, et al.

<sup>12</sup> According to the *Small Arms Survey 2001: Profiling the Problem*, Oxford University Press, p. 254, as of September 2000, the following OAS Member States had adopted the CICAD Model Regulations: Argentina, Belize, Canada, El Salvador, Panama and the United States. The following States had either partially implemented or were in the process of doing so: Bahamas, Barbados, Bolivia, Colombia, Costa Rica, Dominican Republic, Grenada, Guyana, Haiti, Jamaica, Nicaragua, Peru, Santa Lucia and Trinidad and Tobago.

<sup>13</sup> Organization of American States General Assembly, *Resolution on the Proliferation of and Illicit Trafficking in Small Arms and Light Weapons*, AG/RES. 1642 (XXIX-0/99), 7 June 1999.

<sup>14</sup> Organization of American States General Assembly, *Resolution on the Proliferation of and Illicit Trafficking in Small Arms and Light Weapons*, AG/RES. 1797 (XXXI-0/01), 5 June 2001.

<sup>15</sup> Author interview with Dr. Gabriel Aguilera, former Vice-Minister of Foreign Affairs, Government of Guatemala, Guatemala City, 24 November 1999.

<sup>16</sup> United Nations Observer Mission to Guatemala and the United Nations Development Programme, *La Construcción de la Paz en Guatemala: Compendio de Acuerdos de Paz*, Guatemala City: Editorial Serviprensa, 1997, pp. 311-329.

<sup>17</sup> Author telephone interview regarding UNDP activities in El Salvador with Robert Scharf, Emergency Response Division, United Nations Development Programme, 13 August 2001.

<sup>18</sup> South American Common Market (MERCOSUR), Mecanismo Conjunto de Registro de Compradores y Vendedores de Armas de Fuego, Municiones, Explosivos y otros materiales relacionados PARA EL MERCOSUR, MERCOSUR/CMC/DEC No 7/98, Buenos Aires, 7 July 1998.

- <sup>19</sup> Author e-mail correspondence with Santiago Villalba, Office for International Security and Nuclear Affairs, Ministry of Foreign Affairs, Government of Argentina, 27 August 2001.
- <sup>20</sup> Bjorn Holmberg, see note 5.
- <sup>21</sup> See note 4.
- <sup>22</sup> Central American Integration System (SICA), *Tratado Marco de Seguridad Democrática en Centroamérica*. Central American Presidential Summit, San Pedro Sula, Honduras, 15 December 1995.
- <sup>23</sup> Ministry of Foreign Affairs, Government of Costa Rica, "Costa Rica confirma no-ratificación del Tratado Marco Seguridad Democrática," Press Release, 4 April 2001.
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- <sup>32</sup> For a perspective on the U.S. government's implementation of provisions to prevent illicit brokering see the Fund for Peace report entitled "Casting the Net" available at <http://www.fundforpeace.org/resources/pubs/thenet.pdf>.
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- 60 In addition to OAS Member States Canada and the United States, the Norwegian Initiative on Small Arms Transfers Database also includes small arms export data from Belgium, Denmark, Finland, France, Germany, Ireland, Netherlands, Norway, South Africa, Spain, Sweden and the United Kingdom. Many of these countries export to other OAS Member States.
- 61 In addition to the NISAT Small Arms Transfers Database, Canadian small arms export data can also be obtained from the Canadian Military Industry Database by contacting Project Ploughshares at [plough@ploughshares.ca](mailto:plough@ploughshares.ca).
- 62 See the International Action Network on Small Arms at <http://www.iansa.org>.

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