

**the UN firearms protocol:  
considerations for the UN 2001 conference**

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Briefing 4

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# the UN firearms protocol: considerations for the UN 2001 conference

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## Executive Summary

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Since April 1998, the Vienna-based UN Economic and Social Council (ECOSOC) Commission on Crime Prevention and Criminal Justice has been negotiating the draft Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (hereafter referred to as the Firearms Protocol). This Protocol will be the first global measure regulating international transfers of small arms and light weapons, and should have a tremendous impact on both the legal and the illicit manufacture and trade in firearms.

The draft agreement seeks to combat and criminalise trafficking in firearms, through the development of harmonised international standards governing the manufacture, possession and transfer of commercial shipments of these weapons. While the final outcome of the Protocol relies on the outcome of negotiations in February 2001, the draft agreement contains provisions which commit states, among other things, to:

- Adopt legislative measures to criminalise the illicit manufacture, trafficking, possession and use of firearms;
- Maintain detailed records on the import, export and in-transit movements of firearms;
- Adopt an international system for marking firearms at the time of manufacture and each time they are imported;
- Establish a harmonised licensing system governing the import, export, in-transit movement and re-export of firearms;
- Exchange information regarding authorised producers, dealers, importers and exporters, the routes used by illicit traffickers, best practice in combating trafficking in order to enhance states ability to prevent, detect and investigate illicit trafficking;
- Co-operate at the bilateral, regional and international level to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms; and
- Consider developing systems to require arms brokers, traders and forwarders to register and obtain licences for their transactions.

The Protocol places a premium on international co-operation, information exchange and transparency. The provisions in the Firearms Protocol are an important complement to those being developed for the UN 2001 Conference. Issues such as improving the ability to trace small arms and light weapons through effective marking systems, regulating the activities of arms brokers and building international norms on the responsible disposal of surplus small arms are common to both initiatives.

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# Executive Summary

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While it is important that the 2001 Conference develop its own programme of action, it should seek to build on the international norms and standards which have been developed during the course of the Protocol negotiations. For example, states should focus on developing the following concrete measures:

- Agreeing parallel controls on marking, licensing and record-keeping for state-to-state transactions;
- Pursuing legally binding controls on arms brokers, traders and forwarders;
- Agreeing on a norm of destruction of seizures of illicit weapons; and
- Reviewing the prospects for ratification and implementation of the Protocol.

The signing of the UN Firearms Protocol will not be the panacea to all the problems associated with small arms proliferation and misuse. Complementary measures, which embed small arms control within the context of human security, security sector reform, post-conflict reconstruction and long-term sustainable development must be pursued. The UN 2001 Conference thus will be an important opportunity to add another element to the comprehensive framework necessary for effective global action to combat the proliferation and misuse of small arms and light weapons.

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# Introduction

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The UN 2001 Conference on the *Illicit Trade in Small Arms and Light Weapons in All Its Aspects* has become a primary focus for international action on small arms proliferation and misuse, attracting widespread attention from policy-makers and NGOs alike. However, since April 1998, another UN body has been negotiating a legally binding international agreement on preventing the illicit trafficking of firearms in relative obscurity.

In the past two years, the Vienna-based UN Economic and Social Council's (ECOSOC) Commission on Crime Prevention and Criminal Justice has been busy negotiating the *Revised draft Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* (hereafter referred to as the Firearms Protocol).<sup>1</sup> The Firearms Protocol, a supplement to the July 2000 *UN Convention against Transnational Organized Crime*, is expected to be finalised during 2001.<sup>2</sup> If agreed, this Protocol will be the first global measure regulating international transfers of small arms and light weapons, and should have a tremendous impact on both the legal and the illicit manufacture and trade in firearms.<sup>3</sup>

In diplomatic terms, the Firearms Protocol negotiations developed at lightning speed, quickly garnering high-level political support from a diverse group of states. Following a resolution passed at the ECOSOC Crime Commission in April 1998, an ad hoc committee was tasked with negotiating a legally binding international agreement to combat trafficking in firearms.<sup>4</sup> Thirty months on, officials close to the process remain cautiously optimistic that the Protocol will be successfully concluded in the final negotiation session scheduled for February 2001.

Given the potential impact of the Firearms Protocol, it is important that officials involved in the UN 2001 Conference are fully aware of the policy choices that need to be made as UN Member States reach the final stages of negotiation. Whatever the outcomes of the negotiations, the Protocol will have a significant impact on the illicit trafficking of firearms and it should complement the outcomes of the UN 2001 Conference. This briefing analyses common areas between the Protocol and the UN 2001 Conference, and identifies ways to ensure that the two initiatives are complementary and mutually reinforcing.<sup>5</sup>

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# The Purpose and Scope of the Firearms Protocol

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The stated purpose of the Protocol is to promote co-operation among States Parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.<sup>6</sup> The draft agreement seeks to combat and criminalise trafficking in firearms, through the development of harmonised international standards governing the manufacture, possession and transfer of commercial shipments of these weapons. While many of the articles of the Protocol have been finalised, until the Protocol is agreed in its entirety the final outcomes still hang in the balance. The draft agreement contains provisions which commit states to:

- Adopt legislative measures to criminalise the illicit manufacture, trafficking, possession and use of firearms;
- Maintain detailed records on the import, export and in-transit movements of firearms;
- Adopt an international system for marking firearms at the time of manufacture and each time they are imported;
- Establish a harmonised licensing system governing the import, export, in-transit movement and re-export of firearms;
- Prevent the theft, loss or diversion of firearms through the strengthening of export controls, export points and border controls;
- Exchange information regarding authorised producers, dealers, importers and exporters, the routes used by illicit traffickers, best practice in combating trafficking in order to enhance states' ability to prevent, detect and investigate illicit trafficking;
- Cooperate at the bilateral, regional and international level to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms;
- Exchange experience and provide training and technical assistance in areas such as identification and tracing of firearms and intelligence gathering; and
- Establishing a system to require arms brokers, traders and forwarders to register and obtain licences for their transactions.

The Protocol places a premium on international cooperation, information exchange and transparency. The importance of these principles is consistently emphasised by many officials involved in the negotiations, who argue that in order to identify the *illegal* trade, states must first establish what is *legal*. By increasing cooperation and information exchange, the Protocol will enable governments to effectively identify trafficking routes, and build a clearer understanding of the nature and scope of the problem. The development of harmonised marking, licensing and record-keeping systems will help law enforcement and customs officials to distinguish legal from illegal shipments of firearms. In many regions of conflict, where the lines between legal and illegal transfers are increasingly blurred, these distinctions will be especially valuable. However, the controls outlined in the current draft of the Protocol have one central limitation – they exempt state-to-state transactions or transactions for national security.<sup>7</sup> Critics of the agreement argue that the limited mandate of the Protocol maintains the status quo and does nothing to question current government policies or practices. Its 'law enforcement' approach may have generated a high degree of international consensus but it merely reinforces and strengthens laws and procedures that already exist in many states, and does nothing to address, explicitly, the continued transfer of small arms and light weapons by governments to conflict and human-rights crisis-zones. It is imperative that this dimension is not overlooked by the UN 2001 Conference.

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# Complementarity between the Protocol and the UN 2001 Conference

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The Firearms Protocol will clarify and address many aspects of the illicit trade in small arms and light weapons. Thus, the outcomes of the Protocol negotiations will undoubtedly influence the agenda and outcomes of the UN 2001 Conference. However, whilst the draft Protocol contains many detailed and effective provisions for developing harmonised international standards for controlling trafficking in firearms, some of the most critical aspects of the agreement remain unresolved. Many of the key sticking points will affect how broad or narrow the scope of the Protocol will be. States remain divided on whether this agreement should focus tightly on illicit trafficking by organised criminals in the narrowest sense, in line with the mandate of the umbrella convention, or whether the agreement should address the impact of trafficking in conflict situations and civil society.

States that have called for a more comprehensive approach argue that these negotiations provided an invaluable opportunity to develop legally binding controls to prevent trafficking of firearms in the context of both crime and conflict. Others claimed that ECOSOC is mandated only to address trafficking within the context of organised crime. Preventing illicit trafficking in conflict situations, it is argued, is the remit of the UN 2001 Conference. However, the Crime Convention adopts a broad interpretation of an organised criminal group, defining it as “a structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences... in order to obtain, directly or indirectly, a financial or other material benefit”.<sup>8</sup> This definition therefore enables the Protocol to address many of the central dynamics of trafficking of firearms both in relation to crime and conflict, and suggests that the obstacle to far-reaching controls lies in a lack of political will rather than mandate problems.

Besides the problems of distinguishing between illicit trafficking of firearms in relation to crime and conflict, there are other areas of the Firearms Protocol that are related to those under discussion at the UN 2001 Conference; these are outlined below.

## The scope of the Protocol

It is expected that the provisions outlined in the Protocol will apply only to commercially traded firearms. State-to-state transactions and transfers for the purposes of national security will not be subject to the same standards and controls.<sup>9</sup> This exemption for state-authorised transactions raises concerns that the Protocol institutionalises a double standard as governments will not necessarily be bound by the same rules they set for their citizens. It further raises questions of the practicality of such a system.

Logic dictates that all transfers, whether destined for the commercial market or government forces, should be subject to the same standards. Indeed, many arms originally sold legally by states are diverted into the illicit market, blurring the line between the legal and illicit trade. A considerable proportion of illicit weapons have been diverted from state arsenals to the illicit market as a result of loss, theft or corruption. For example, so many weapons have been stolen from Russian military and police storage facilities that every third illegally owned firearm originates from Defence Ministry stocks.<sup>10</sup> Therefore, the same standards of marking, licensing and record-keeping should apply to both state authorised and commercial transfers in order to facilitate effective identification of weapons that are ultimately traded illicitly.

### Considerations for the UN 2001 Conference

The exemption for state-to-state transactions and transfers for the purposes of national security is clearly a fundamental limitation of the Protocol. However, the Protocol is set to establish high standards in areas of marking, licensing and record-keeping. The 2001 Conference should therefore seek to build on the consensus reached during the Protocol negotiations and develop concrete and ideally *legally binding* measures which apply the same standards to government-authorised transactions.

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# Complementarity between the Protocol and the UN 2001 Conference

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## The definition of firearms

Throughout the Protocol negotiations, the definition of “firearm” has remained a key area of controversy.<sup>11</sup> While many states have argued for the adoption of a broad definition of firearms, which would include many categories of small arms and light weapons, there is no consensus on this definition. Two main obstacles have emerged to a broad definition of firearms. Firstly, some states have raised concerns that a broad definition of firearms – including larger barrelled weapons, missile systems and rocket launchers – would extend beyond the mandate of combating trafficking in the context of transnational organized crime, arguing that “such matters [are] better left to negotiations and instruments dealing with disarmament matters”.<sup>12</sup> However, other states have argued that many organised criminal groups transfer and use these larger weapons systems.<sup>13</sup> By the same token a more restricted definition would exclude many categories of small arms and light weapons frequently trafficked by criminals in regions of conflict, thereby limiting the application of the Firearms Protocol in regions of instability or post conflict reconstruction.

Secondly, states have raised concerns that a broad definition could pose significant obstacles to the ratification and implementation of the Protocol, as it is unclear whether systems such as grenades, rocket launchers or missiles could be subject to the same marking and tracing provisions as barrelled weapons. However, as proposed by the delegation of the Netherlands, it would be possible to utilise broad definition of firearms but limit the application of certain provisions, such as marking, to barrelled weapons until an effective system was developed.<sup>14</sup>

Despite the reservations raised by some states, it is worth noting that the “Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials” agreed by the Organization of American States (OAS) in 1997,<sup>15</sup> upon which the Firearms Protocol is closely modelled, utilises an extremely broad definition of firearms. Outlining the rationale for a broad definition of firearms, the Chair of the negotiations, Mexican Ambassador Carmen Moreno, explained that “in the Hemisphere, ... there is illicit trafficking in all these weapons. We did not want to leave out of the convention certain types of weapons and thereby give the impression that it would be tolerated if they were traded illegally. We wanted to include everything.”<sup>16</sup> Less than three years after the signing of the OAS Convention, 10 Members States have ratified the agreement. This suggests that, notwithstanding certain reservations, a broad definition firearms is possible and practicable.

### Considerations for the UN 2001 Conference

It is critical that the Protocol negotiators agree as broad a definition of firearms as possible. The definition agreed by the 1997 UN Panel of Experts on Small Arms and Light Weapons should be regarded as the reference point.<sup>17</sup> A definition of “firearms” which excludes categories of small arms and light weapons will be a major stumbling block to efforts to build upon the progress made in the Protocol at the 2001 Conference. In particular, as the 2001 Conference may focus on increasing controls and standards on state-authorized transactions, there is a very real concern that *commercial* shipments of certain categories of small arms and light weapons may fall between two stools – exempt from the Protocol and overlooked by the Conference.

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# Complementarity between the Protocol and the UN 2001 Conference

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## **Marking weapons at manufacture and import**

The draft Firearms Protocol contains detailed proposals for the marking of firearms at the time of manufacture, as well as at every point of import, for the purposes of identifying and tracing weapons.<sup>18</sup> This is one of the most important provisions within the agreement, imposing accountability on manufacturers, suppliers, exporters and importers alike. However, while there appears to be an overriding consensus that there is a need to mark firearms at the point of manufacture, the proposal to mark firearms at the point of import is questioned by some states. Although many delegations support the introduction of an international system for marking firearms at import, some have raised concerns regarding the costs and practicality of such a system. Additional reservations have been raised regarding whether importer, exporters or governments agencies would be responsible for applying import marks.<sup>19</sup>

Nonetheless, import marks are very important. Firearms often change hands many times before reaching their final destination. After their original import, firearms are often re-exported either through licit or illicit channels to criminals, arms brokers or parties to a conflict. Import marks would facilitate the investigations of law enforcement officials seeking to identify when legally manufactured and exported weapons entered the illicit market. Moreover, import marks will identify second-hand firearms which have not been marked at the time of manufacture. Although marking is often regarded as a technological challenge, a recent study by the Canadian Department of Foreign Affairs suggests that an international system is feasible. Based on an assessment of the costs and durability of various marking techniques, the report recommends that firearms be marked on the “weapon frame or receiver using a combination of stamping, engraving and casting techniques.”<sup>20</sup> These methods are particularly effective in “post-production application,” such as marking at the point of import.<sup>21</sup> In addition, it appears that the firearms industry, which has been studying the issue during the course of the negotiations, now appear supportive of import marks on weapons.<sup>22</sup>

With negotiations now approaching the final hour, states must agree common standards on marking at manufacture and import. Given the fact that many of the reservations centre on practicalities rather principles, the 10 OAS Member States that have ratified their regional Convention – which has detailed provision on marking at manufacture and import – should outline clear proposals for implementing this central aspect of the Protocol.

### **Considerations for the UN 2001 Conference**

Discussions on marking and tracing are expected to high on the 2001 Conference agenda. Indeed, the Governments of France and Switzerland have proposed that a decision is made at the 2001 Conference to launch negotiations for a legally-binding international treaty to enhance the trace-ability of flows of small arms and light weapons of concern. Since the Firearms Protocol will establish legally-binding obligations for marking and record-keeping of firearms, it will be important to ensure that such a treaty complements the Protocol and builds upon its obligations rather than establishing different ones. For example, the Protocol is likely to include requirements that all firearms must be marked at manufacture (including country of manufacture and a unique serial number) and to establish a system for marking firearms each time they are imported. Once concluded, the Protocol should therefore provide clear parameters for the marking provisions of the treaty proposed in the French-Swiss initiative.

However, since the Protocol focuses on the problem of tracing firearms used in crime or trafficked by transnational criminal organisations, an additional treaty designed to enhance the tracing of arms flows that contribute to conflicts and to excessive and destabilising accumulations of small arms would be welcome. It would provide an important element of the international action programme to be established at the 2001 Conference.

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# Complementarity between the Protocol and the UN 2001 Conference

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## **Controls on arms brokers, traders and forwarders**

Arms brokers and shipping agents play a central role in the illicit trade in firearms. Arms brokering agents thrive on the lack of international controls on their illicit activities by taking advantage of the lax legislation that exists in many countries, arranging the transfer of arms from third countries into regions of conflict and human-rights crisis-zones. Therefore, the proposal to include provisions to register and license arms brokers is one of the aspects of the draft Protocol which could have the most dramatic effect on illicit trafficking in both crime and conflict situations.

However, as finalised at its eleventh session, the article on brokers and brokering in the draft Protocol only states that “States Parties that have not yet done so shall consider establishing a system for regulating the activities of those who engage in brokering” and continues by providing suggestions on the measures the system could contain. These include: requiring the registration of brokers operating within their territory; requiring licensing or authorisation of brokering; or requiring disclosure on import and export license or authorisations, or accompanying documents, of the names and locations of brokers involved in the transaction.

For states that already have a system in place, they are “encouraged” to exchange information and retain records they have on brokers and brokering. The experience of states that have introduced legislation to control arms brokers, which suggests that the administration of such systems has not been especially onerous, will be important for those states which will establish systems under the Firearms Protocol.

For example, between 1996 and 1999, the United States government is reported to have registered 137 arms brokering agents and received approximately 200 applications.<sup>23</sup> The Swiss government has registered approximately 40 arms brokers and issued 30 licences since the introduction of legislation in 1998.<sup>24</sup> In Germany around 10 license applications are received each year.<sup>25</sup>

The US provisions relating to registration of arms brokering agents, which require arms brokers “to register with their country of nationality and with any country where the person acts as a broker”,<sup>26</sup> are potentially the most effective on offer. Linking registration to the country of their nationality creates an obligation that arms brokers will find hard to evade. The US provisions requiring brokers to obtain a license for their transactions “from the country where the person acts as a broker” are, however, less stringent and are liable to circumvention by arms brokers who conduct their operations whilst continually on the move.<sup>27</sup> The Swiss proposal to register and license arms brokers in their country of residence has some merits, however the danger exists that arms brokers will evade such controls by continually changing their residence.<sup>28</sup> Analysis of known arms brokering activities suggests that arms brokers operate out of many countries and deals are facilitated across many continents and that agents could avoid controls based on residency or on country of operation.<sup>29</sup> Applying controls according to the nationality of the arms broker could restrict their ability to evade legislation.

It is also important that states adopt an inclusive definition of the activities which must be controlled under this provision. A recent UN report identified arms retailers, wholesalers, brokers and transport agents as all centrally involved in the illicit trade, thus all such activities should therefore be bound by the controls outlined in this provision.<sup>30</sup> Unlicensed and unregistered arms brokering should be further established as a criminal offence under the Protocol and states should be equipped with powers to maintain jurisdiction over nationals who commit no offence in their country of nationality but engage in trafficking abroad.<sup>31</sup>

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# Complementarity between the Protocol and the UN 2001 Conference

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## Controls on arms brokers, traders and forwarders

### **Considerations for the UN 2001 Conference**

The importance of agreeing controls on arms brokers within the framework of the Firearms Protocol cannot be overstated. While it is expected that the UN 2001 Conference will discuss the issue of controlling arms brokers, early indications suggest that an agreement on legally binding controls is considered premature. In preparation for the Conference, the United Nations Department for Disarmament Affairs (UN DDA) has commissioned a study to investigate the feasibility of restricting the manufacture and trade in small arms to manufacturers and dealers authorised by states. However, it is expected that this specially convened UN Group of Governmental Experts will only agree a definition of arms brokers and outline the nature and scope of the problem prior to the 2001 meeting.<sup>32</sup> If, however, the Protocol retains its encouragement to states to adopt effective controls on arms brokers, a further UN study could develop proposals for implementing these systems. In addition, the UN DDA could further contribute to the international effort to control arms brokers, and could assist governments in enforcing the international standards, by compiling a publicly available list of those arms brokering agents that are known to have violated arms embargoes.<sup>33</sup>

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# Relating the Protocol to the UN 2001 Conference

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## A narrow Protocol

It is acknowledged that whatever the outcomes of the Firearms Protocol, its successful conclusion represents an important milestone in the international effort to combat small arms proliferation and misuse. The prospect of developing any international standards on the illicit trafficking of firearms, let alone legally-binding controls, was inconceivable just a few years ago, yet it is now set to become a reality. The Firearms Protocol is an invaluable opportunity to secure far-reaching controls on small arms and light weapons, yet there remain concerns that this opportunity will not be seized, as states may elect to take a narrow approach to combating illicit firearms trafficking which will fail to fully address the complexity of the problem.

Many states maintain a distance between the Firearms Protocol and the UN 2001 Conference, arguing that the Protocol is a law enforcement measure whilst the Conference will address arms control and disarmament. However, these distinctions may be, in practice, arbitrary, brought about, in part, by divisions of duty between different government and UN departments. In reality the two processes are inextricably linked. The Protocol will clearly affect the UN 2001 Conference: omissions in the Protocol should be addressed; and standards and controls on commercial transactions will need to be replicated for government-authorised transfers.

A minimalist approach to the Protocol would be regrettable. If states adopt a narrow approach during the Protocol negotiations it can only be hoped that this may galvanize efforts to agree concrete and progressive controls within the framework of the UN 2001 Conference. At the same time, tough choices will have to be made to ensure that the Conference is not dominated by attempts to close loopholes or omissions with the Protocol. For instance, if the Protocol adopts a restrictive definition of 'firearms', valuable time at the Conference could be taken up with agreeing controls on exempt categories of weaponry.

While it is important that it moves beyond the controls outlined within the final Protocol, the 2001 Conference should seek to build on the international norms and standards which have been developed during the course of these negotiations. If a restrictive Protocol is agreed, states must focus on developing the following concrete measures in areas which eluded consensus within the Protocol.

### **Adopt parallel controls on marking, licensing and record-keeping for state-to-state transactions**

The draft Protocol contains detailed provisions for increasing controls on the commercial shipment of firearms; it sets high common standards for harmonising licensing systems, record-keeping and end-use certification; and it outlines concrete controls for a harmonised system of marking firearms at manufacture and import. States cannot ignore the urgent need to adopt the same standards on state-to-state transactions, they should therefore agree to develop the same legally binding standards for government-authorised transfers. Given the fact that the details of such procedures will already have been elaborated and agreed during the Protocol, this would appear to be an area where the Conference negotiators could secure a swift and concrete outcome.

### **Agree legally binding controls on arms brokers, traders and forwarders**

The Protocol has opened up international discussions on the global problem of arms brokers and shipping agents. Every effort should then be made to agree to negotiate a legally binding convention which requires arms brokering agents to register with their country of nationality and to obtain a license from these authorities for each transaction. These controls could be included as an amendment to the Firearms Protocol; alternatively controls on arms brokering agents could be adopted as a separate protocol to the UN Convention against Transnational Organized Crime.<sup>34</sup>

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## Relating the Protocol to the UN 2001 Conference

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### A broad Protocol

#### **Agree on a norm of destruction of seizures of illicit weapons**

Collection, safe storage and destruction of weaponry is expected to be a major item at the 2001 Conference. As the Protocol looks likely to establish destruction of seizures of illicit weapons as an international norm, the 2001 Conference should complement this by agreeing to ensure mandatory destruction for all illicit small arms and light weapons captured, seized or surrendered as part of broader discussions on the safe disposal of military and police surplus and weapons collected during peacekeeping operations.

The conclusion of a far-reaching Protocol, incorporating the provisions proposed earlier, would reinforce the UN 2001 Conference process. The agreement of high international norms and standards on arms brokering, destruction, marking and licensing would send an unequivocal message to the international community that efforts to control small arms have moved beyond discussions quantifying the problem to concrete international mechanisms for combating it. The UN 2001 Conference could further develop commitments such as those made in the Protocol and agree to a progressive and comprehensive package of norms, standards and controls that is so urgently required.

The aim of this briefing has not been to outline the range of controls which could be feasibly be addressed by the 2001 Conference.<sup>35</sup> Rather, it seeks to identify areas which could complement, reinforce and enhance the provisions outlined in the Protocol. Accordingly, if a broad Protocol is agreed, the 2001 Conference should consider the following measures.

#### **Review the prospects for ratification and implementation of the Protocol**

Even if the Protocol achieves a far-reaching consensus, resource constraints could hamper its full implementation. Ratification and implementation of the Protocol will undoubtedly be time consuming and costly for many states.<sup>36</sup> The Protocol depends on strong national structures to ratify, implement and co-ordinate policies. However, many developing countries lack the capacity for proper enforcement, and so implementation may be problematic. Moreover, in states in conflict or in the process of post-conflict reconstruction, introducing new legislation or institutionalising provisions on record-keeping, identification and information exchange would demand a considerable investment of human and financial resources.

In order to deal with new requirements imposed by the Protocol, states will need to ensure there is adequate capacity within their police, customs and other national law enforcement agencies and structures. This process will depend upon the provision of a significant level of technical and financial assistance to many countries. The Convention against Transnational Organized Crime does contain provisions which encourage states to provide technical and financial assistance to developing countries seeking to implement the Convention and its Protocols. It further calls on States Parties to make "adequate and regular voluntary contributions to an account specifically designated to that purpose in a United Nations funding mechanism."<sup>37</sup> However, this provision is vague and will require prompt substantiation by wealthier countries. Failure to develop a concrete strategy for providing the resources necessary for effective implementation could render the Protocol virtually meaningless, in practice. It would be a serious failure if governments were to negotiate a far-reaching agreement, only to have it fail through lack of financial commitment.

The UN 2001 Conference can play a key role in addressing these concerns. Although, at time of writing, the exact scope of the 2001 Conference agenda has yet to be agreed, issues such as marking, tracing and record-keeping, and strengthening export procedures and border controls are likely to fall within its remit. Accordingly, securing specific commitments from states to fund the implementation of the Protocol may well be an issue that can be addressed during the 2001 Conference.

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## Relating the Protocol to the UN 2001 Conference

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### **Define illicit trafficking according to international law**

As outlined earlier, the Protocol currently does not apply to state authorised weapons transfers, defining illicit trafficking as any transfer which “any one of the State Parties concerned does not authorize”.<sup>38</sup> Accordingly, governments could potentially engage in activities that are deemed illicit for private citizens. This approach may serve as a convenient avenue for securing broad agreement, but it eliminates consideration of the role that government authorised transfers of weapons play in prolonging conflicts and fostering a culture of violence. With conflict and instability pervasive in regions around the world, stricter controls on state authorised transfers are urgently required.

The 2001 Conference provides an excellent opportunity to address this concern. The Conference is mandated to address the illicit trade in small arms and light weapons “*in all its aspects*”. This should allow for discussion of illicit trafficking in its broader sense. The 1996 UN Guidelines and the 1997 UN Small Arms Panel Report defined “illicit trafficking” as “international trade in conventional arms which is contrary to the laws of States and/or international law”.<sup>39</sup> This broader interpretation provides an avenue for greater scrutiny of government-to-government weapons transfers. Under international customary law, a state cannot lawfully authorise arms transfers to a recipient if they know that the proposed transfer will be used to commit international crimes (e.g. slavery, apartheid, genocide, serious breaches of the right of peoples and nations to self-determination) or crimes by individuals covered by international law (e.g. crimes against humanity, war crimes). The responsibility of states to observe existing international law must apply equally to all transfers – including state-to-state transfers, state-to-non-state transactions or transfers for purposes of national security. Although governments may wish to exempt these transfers, international law dictates that transfers likely to be used in the commission of internationally wrongful acts, whether by state or non-state actors, are by definition illegal.

Complementing the licensing and record-keeping provisions of the Protocol for those of government-authorised transfers of firearms, as outlined, although essential, is not, in itself, enough. The 2001 Conference should agree international criteria – based on the principles enshrined in international law – to increase restraint and responsibility governing arms exports.<sup>40</sup> Establishing international norms and standards governing the authorised trade in small arms and light weapons would thus be a crucial beginning and an important achievement for the UN 2001 Conference.

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## Conclusion

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The signing of the UN Firearms Protocol will not be the panacea to all the problems associated with small arms proliferation and misuse. Complementary measures, which embed small arms control within the context of human security, security sector reform, post conflict reconstruction and long term sustainable development must be pursued, if the Protocol is to have an impact on “the well-being of peoples, their social and economic development and their right to live in peace”.<sup>41</sup> The UN 2001 Conference will provide states with an opportunity to pursue a more integrated approach to small arms control.

However, the UN Firearms Protocol does represent a significant step forward in developing international consensus on the need to combat illicit trafficking and manufacturing, and this agreement must be regarded as a central part of the global effort to combat the proliferation and misuse of small arms and light weapons. States must not draw false distinctions between the Protocol and the 2001 Conference. Although they have been negotiated separately the problems which underpin small arms proliferation and misuse are common to both. Those individuals, groups and indeed governments, which use and persistently misuse small arms and light weapons do not discriminate between a weapon from a commercial dealer or one from a state arsenal. Neither do their victims. If governments are genuinely committed to combating the devastation wrought by small arms they must work together, towards cooperative, comprehensive and integrated solutions.

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# Endnotes

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- <sup>1</sup> The analysis in this report is based on the most current available version of the draft Protocol text: “Revised draft Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime”, A/AC.254/4/Add.2/Rev.6, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Twelfth Session 26 February–2 March 2001.
  - <sup>2</sup> “United Nations Convention against Transnational Organized Crime”, 27 July 2000, United Nations General Assembly, <http://www.uncjin.org>
  - <sup>3</sup> For the purposes of this briefing, the term “firearms” is hereafter shorthand for “firearms, their parts and components and ammunition”. As outlined in this briefing, the Biting the Bullet Project advocates a broad definition of firearms to include all small arms and light weapons. See endnote 16 for a detailed definition of small arms and light weapons.
  - <sup>4</sup> “Criminal Justice Reform and Strengthening of Legal Institutions: Measures to Regulate Firearms” Commission on Crime Prevention and Criminal Justice, United Nations Economic and Social Council, E/CN.15/1998/L.6/Rev.1, 28 April 1998.
  - <sup>5</sup> This briefing is the fourth in a series of briefings being produced by BASIC, International Alert and Saferworld in preparation for the UN 2001 Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.
  - <sup>6</sup> Article 3, Purpose, A/AC.254/4/Add.2/Rev.6, footnote 28.
  - <sup>7</sup> See Annex, paragraph 3, Scope, A/AC.254/4/Add.2/Rev.6.
  - <sup>8</sup> Article 2(a) bis, Use of Terms, Revised draft United Nations Convention against Transnational Organized Crime, United Nations General Assembly, 29 June 2000, A/AC.254/4/Rev.9.
  - <sup>9</sup> Article 4, Scope, A/AC.254/4/Rev.6.
  - <sup>10</sup> RFE/RL Newsline Vol. 3, No. 121, Part I, 22 June 1999.
  - <sup>11</sup> See Article 2 (b), Use of terms, A/AC.254/4/Add.2/Rev.5.
  - <sup>12</sup> Footnote 34, A/AC.254/4/Add.2/Rev.5.
  - <sup>13</sup> Ibid.
  - <sup>14</sup> A/AC.254/L.22
  - <sup>15</sup> “Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials”, OEA/Ser.P, AG/RES. 1, XXIV-E/97, Organization of American States, 13 November 1997. The text of the Convention is posted on the OAS web site at: <http://www.oas.org/en/prog/juridico/english/wepon.html> and <http://www.oas.org/EN/PROG/Juridico/spanish/Tratados/CICTIAF.html>. For more information and analysis on this Convention see *One Size Fits All? Prospects for Agreeing a Global Convention on Illicit Trafficking by 2000*, S. Dyer and G. O’Callaghan, BASIC research Report 99.2.
  - <sup>16</sup> Ambassador Carmen Moreno, Deputy Foreign Minister of Mexico, “A Global Crackdown on Illegal Trafficking”, *Stopping the Spread of Small Arms: International Initiatives*, a seminar organized by the British American Security Information Council and sponsored by the Mission of Canada to the UN and the Mission of Norway to the UN, 25 September 1998.
  - <sup>17</sup> There are many working definitions for small arms and light weapons, ranging from technical definitions to descriptive definitions categorizing small arms and light weapons as those which can be operated by one or two persons and can be carried by one or two persons or by a pack animal or light vehicle. A 1997 report published by the United Nations provided the following definitions: **small arms** includes revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns; **light weapons** includes heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles (sometimes mounted), portable launchers of anti-aircraft missile systems (sometimes mounted) and mortars of calibers less than 100 mm; **ammunition and explosives** includes cartridges (rounds) from small arms, shells and missiles for light weapons, mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems, anti-personnel and anti-tank hand grenades, landmines and explosives. From “Report of Governmental Experts on Small Arms”, A/52/298, United Nations, 27 August 1997.
  - <sup>18</sup> Article 9, Marking of firearms, A/AC.254/4/Add.2/Rev.6.
  - <sup>19</sup> Footnote 91, A/AC.254/4/Add.2/Rev.5.
  - <sup>20</sup> Coffin, para. 3, p. vii.
  - <sup>21</sup> Coffin, para. 4, p. 11.
  - <sup>22</sup> Interview with an official close to the negotiations, October 3 2000.
  - <sup>23</sup> Interview with a US official, October 4 2000, see also “The Need to Control Arms Brokers and Shipping Agents”, Memorandum submitted by Saferworld, Appendix 13, *Strategic Export Controls: Further Report and Parliamentary Prior-Scrutiny*, House of Commons, 17 July 2000.
  - <sup>24</sup> Interview with a Swiss official, October 4 2000.
  - <sup>25</sup> Saferworld, Ibid.
  - <sup>26</sup> Page 17, Proposal by the United States of America, “Proposals and contributions received from Governments”, United Nations General Assembly, 6 September 2000, A/AC.254/5/Add.30.
  - <sup>27</sup> Ibid.
  - <sup>28</sup> See Article 18 bis, Registration and licensing of brokers [traders and forwarders] and footnotes 157 and 162, A/AC.254/4/Add.2/Rev/5
  - <sup>29</sup> See *The Arms Fixers*, B. Wood and J. Peleman, BASIC/NISAT/PRIOR Research Report, November 1999.
  - <sup>30</sup> Report by a Consultative Group of Experts on the feasibility of undertaking a study for restricting the manufacture and trade of small arms to manufacturers and dealers authorized by States, contained in Note by the Secretary General, United Nations, A/54/160, 6 July 1999.
  - <sup>31</sup> An additional clause should be added to Article 5, Criminalisation to establish unlicensed or unregistered arms brokering as a criminal offence to read; “Acting on behalf of others, in return for a fee or other consideration, in negotiating or arranging transactions involving the international export or import of firearms, their parts and components, or ammunition without registering and obtaining a licence or written authorisation in accordance with Article 18bis, Registration of brokers, retailers and transport agents, of this Protocol.
  - <sup>32</sup> Interview with a member of the UN Group of Governmental Experts on the feasibility of restricting the manufacture and trade of small arms and light weapons to manufacturers and dealers authorized by states, 6 October 2000.
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## Endnotes

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- <sup>33</sup> The precedent for undertaking such measures has already been set with the publication of the March 2000 UN Security Council *Report of the Panel of Experts on Violations of Security Council Sanctions Against UNITA*, United Nations Security Council, 10 March 2000, S/2000/203, which publicly named many parties which were involved in violating sanctions. Such a step has also been taken at the national level. For example, in July the US Bureau of Intelligence and Research took the unprecedented step of naming several East African air-cargo carriers involved in transporting weapons and military cargo into eastern Congo-Kinshasa. The United Nations could consider asking other countries to follow the US example and publish information on brokers and shippers. The United Nations could then act as a central repository for such information.
- <sup>34</sup> There is a precedent for adopting new Protocols to the Convention against Transnational Organized Crime. When the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime decided that explosives would not be controlled within the Firearms Protocol, the United Nations General Assembly directed the Ad Hoc Committee to consider the possible development of a further instrument, dealing with explosives, once a study had been completed by an expert group. See footnote 3, A/AC.254/4/Add.2/Rev.5.
- <sup>35</sup> For detailed proposals regarding the proposed agenda of the UN 2001 Conference see, "Framework Briefing, The UN 2001 Conference: Setting the Agenda", O. Greene with E. Clegg, S. Meek and G. O'Callaghan, Briefing 1, BASIC, Saferworld and International Alert.
- <sup>36</sup> UN Member States are required to ratify the UN Convention against Transnational Organized Crime before they can ratify the Protocols attached to it. 40 ratifications are required before the Convention enters into force. It is expected that 40 ratifications will also be required before the Firearms Protocol enters into force.
- <sup>37</sup> *Article 21 bis 1 (c) s, Other Measures: implementation of the Convention through economic development and technical assistance*, Revised draft United Nations Convention against Transnational Organized Crime, 29 June 2000, A/AC.254/4/Rev.9.
- <sup>38</sup> *Article 2 (d), Definitions*, A/AC.254/4/Add.2/Rev.6.
- <sup>39</sup> "Guidelines for international arms transfers in the context of General Assembly resolution 46/36H of 6 December 1991", reprinted in "Review of the Implementation of the Recommendations and Decisions Adopted by the General Assembly at its Tenth Special Session: Report of the Disarmament Commission", A/51/182, United Nations, 1 July 1996, pp. 64-69.
- <sup>40</sup> The Nobel Peace Prize Winner and former President of Costa Rica, Dr. Oscar Arias, is leading a international effort to develop an International Code of Conduct in conjunction with a Commission of Nobel Laureates. For additional information on this effort see the Arias Foundation web page at <http://www.arias.or.cr/Eindice.htm>.
- <sup>41</sup> Option 2 (a), Preamble, A/AC.254/4/Add.2/Rev.5.
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