The UN Process on Small Arms: All Is Not Lost

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Small arms and light weapons[1] are the weapons of choice for insurgents, terrorists, warlords, and crime syndicates. They undermine stability and security in places as diverse as Afghanistan, Colombia, the Democratic Republic of the Congo, and Iraq. These weapons also play a prominent role in armed crime and domestic violence in the developed world as well as the developing world.

Hundreds of thousands of people are estimated to have been killed with such arms each year, and many more are wounded or live in daily fear of armed violence from those misusing them.[2]

Unfortunately, their global availability, often at rock-bottom prices, has greatly increased since the end of the Cold War partly because of the sale of large quantities of surplus stocks from states in the former Soviet Union. More than 600 million small arms are estimated to be in global circulation, stockpiles, and private possession, and several million more are produced each year in more than 90 countries.[3] Weak national controls and a lack of international cooperation on arms control also have led to the proliferation of these weapons on illicit markets. Indeed, the great majority were transferred legally before they were diverted to unauthorized users.[4]

In 2001, more than 140 states sought to address the proliferation of illicit small arms by forging the UN Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.[5] The program does not define the “illicit” arms trade, although most understand it to refer to trade that is contrary to the law of states and/or international law. Last summer, a UN conference brought many of these states together again to review the progress made in implementing the program. Many states and arms control advocates saw the conference as a valuable opportunity to elaborate on vague recommendations in the UN program and to agree on common standards for outstanding issues in international arms controls. But, in the end, the two-week UN conference finished in a deadlock.[6]

States refused to budge on their positions for how the threat of illicit small arms should be countered at the global level. A small group of states, including China, Cuba, India, Iran, Israel, Pakistan, Russia, and the United States, opposed any further development of the UN program. They argued that states should act to implement previous commitments rather than pursuing new ones. Many states from Europe, Latin America, the Pacific, and sub-Saharan Africa disputed the claim that existing global standards on small arms control were sufficient to combat the illicit small arms trade effectively. They urged the intensification of efforts at the global level in “crucial” areas such as controls and standards on small arms transfers, on ammunition, and on civilian small arms possession.

Nevertheless, all is not lost. States did not call into question the UN program or other UN instruments on small arms at the 2006 review conference, and the implementation of the instruments remains on the international agenda. Also, recent developments allow for cautious optimism. They include the meeting of a UN group of governmental experts to consider further steps to enhance international cooperation in combating illicit small arms brokering and several resolutions that the UN General Assembly adopted in December 2006. Hope remains, therefore, for the continuation of global efforts in at least certain areas critical in combating the illicit small arms trade.

History of Disagreement
States have disagreed for years about the measures required to counter the illicit small arms trade. The small group of states that has repeatedly blocked certain developments under the UN program opposes a higher degree of international regulation on the legal arms trade as well as measures that would interfere either with their national legislation and practices or their perceived national security interests. Many other states support a comprehensive approach to small arms control that recognizes more strongly the link between the licit and the illicit sphere of the small arms trade and that also addresses small arms control in the context of human rights and international humanitarian law, public health, and sustainable development.

One contentious issue among states has been the question of export and transfer standards. The UN program commits states to assess applications for small arms exports according to national regulations that “are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade.”[7] The formulation was a compromise that does not further define the relevant responsibilities. Although there was broad support for efforts to do so at the 2006 review conference, the United States and other blocking states effectively prevented any debate on the issue. They argued that the development of common transfer standards was not part of the mandate of the conference.

Also, certain states have consistently opposed restrictions on transfers to nonstate actors who do not have an import authorization from the government of the recipient state. The United States has long opposed such a restriction because it may interfere with the “the rights of the oppressed to defend themselves against tyrannical and genocidal regimes.”[8] In contrast, a delegate from Uganda argued at the 2006 conference that “[t]ransfers to non-state actors, particularly to insurgent groups fighting governments, constitutes a major challenge...as such transfers are responsible for escalation and perpetuation of conflicts, often fuelling further proliferation.”[9]

Likewise, the United States has consistently opposed controls on small arms ammunition or restrictions on civilian arms possession. Then-Undersecretary of State for Arms Control and International Security Robert Joseph argued at the review conference that regulating ammunition “would be ineffective, prohibitively costly, and is best addressed elsewhere—if at all.” He added that the United States opposes restrictions of civilian small arms possession because it may interfere with the constitutional rights of U.S. citizens to bear arms.[10]

The UN Instruments on Small Arms

Disagreements notwithstanding, UN members have had some success in forging international small arms instruments. In May 2001, the General Assembly adopted the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, known as the Firearms Protocol.[11] The legally binding Firearms Protocol entered into force in July 2005, and 60 states are party to it at present. It stipulates measures that include the criminalization of the illicit manufacturing of or trafficking in firearms and the strengthening of capacities to detect and investigate illicit transfers in the context of transnational organized crime. The Firearms Protocol does not cover certain small arms or state-to-state transfers if one of the states’ national security interests are at stake. In addition, membership of the protocol is not universal, and it does not address small arms in the context of armed conflict and postconflict situations.

States went a step beyond the Firearms Protocol when they agreed on the politically binding UN program of action in July 2001. The program promotes measures in areas such as stockpile management, controls on exports and arms brokering activities, weapons collection and disposal, and disarmament, demobilization, and reintegration of ex-combatants.[12] Still, many states were disappointed that the program was not legally binding and did not include more explicit transfer criteria or restrictions on transfers to nonstate actors and on civilian small arms possession. Opposition from some states, particularly the United States, had stymied these more ambitious measures.[13]

One issue on which the United States did concede in the negotiations of the UN program was the adoption of follow-up mechanisms. The program stipulated the convening of biennial meetings of states, which took place in 2003 and 2005, to consider its progress and a conference in 2006 to
conducted a full review.

The program also called for a UN study to examine the feasibility of an international instrument on tracing illicit small arms. That study, presented by a group of governmental experts in 2003, led to the creation of an Open-Ended Working Group that negotiated the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.[14]

The UN Instrument on Tracing Illicit Small Arms, adopted by the UN General Assembly in December 2005, builds on the minimum standards on marking, record-keeping, and cooperation in tracing of small arms that are contained in the UN Firearms Protocol and the program of action. It encourages states to mark all legally produced small arms with a code containing a unique serial number and information that identifies the country of manufacture and the manufacturer. In addition, states are encouraged to keep adequate records on small arms production and transfers and to cooperate in the tracing of illicit small arms recovered outside their country of production. This instrument, however, has its limits as well, as the United States and certain Middle Eastern and Asian countries prevented its adoption as a legally binding treaty as well as blocked the inclusion of ammunition in its scope.[15]

Implementation

How effective these measures have been is open to question. A 2006 review by nongovernmental organizations (NGOs) indicates that progress remains patchy. Many states submitted reports to the United Nations on the national implementation of the program and established institutional points of contact and national coordination mechanisms on small arms controls. Less progress has been made in reviewing and, where appropriate, amending national regulations. According to the review, about 30-40 percent of states still do not have laws and procedures controlling the production and the export of small arms or establishing standards for the management and security of small arms stockpiles. Less than 50 percent of states have controls on the transit or transshipment of small arms.[16] Only 20 states have developed national strategies to strengthen small arms controls.[17]

Likewise, the implementation of the UN Instrument on Tracing Illicit Small Arms appears slow. In 2006, only 53 states had required that all small arms be marked as an integral part of their production process.[18] Also, states agreed in the instrument to provide the UN Department of Disarmament Affairs with the name and contact information for the national point of contact on small arms tracing and the national marking practices used to mark small arms with an identification of the country of manufacture and/or import.[19] By January 2007, only the Czech Republic had provided the UN with this information.[20]

The lukewarm level of political attention to ensuring effective small arms control and conformity to the relevant international commitments is in part a reflection of an incomplete understanding of the national small arms situation. Government officials tend to consider their country’s standards and implementation as adequate. This misperception is often sustained by the absence of mechanisms to ensure full accountability on small arms, so arms diversions from stockpiles, for example, can go undetected.

In one recent example, a U.S. government audit revealed important arms management weaknesses by U.S. forces in Iraq. The audit said that the Department of Defense had failed to establish accountability for more than 370,000 small arms it purchased between 2003 and 2005 to equip the Iraqi Security Forces. It noted that U.S. forces had failed to comply with their own guidelines when they registered less than three percent of the arms.[21] Arguably, the United States also failed to comply with its commitments under the UN program of action and the tracing instrument to ensure that the small arms that pass through its jurisdiction can be tracked. The lack of record-keeping means that the U.S. forces will not be able to identify whether any of the illicit small arms they recover in Iraq originated from the U.S.-sponsored transfers or the specific unit of the Iraqi Security Forces from which the arms were diverted.

Given that such problems occurred in a highly developed country, one can only imagine the problems faced by developing states in ensuring the responsible management of small arms, with
their shortages of technical savvy and resources.

Recent Developments

Despite the failure of the 2006 review conference to reach agreement on a consensus document, the UN process on small arms has not come to a standstill. Small arms processes that were mandated in the 2001 UN program are still ongoing, and the UN General Assembly recently mandated further processes that relate to small arms control issues.

The Group of Governmental Experts on Small Arms Brokering

The UN program of action called on the General Assembly to consider further steps to combat the illicit brokering in small arms. The General Assembly responded by mandating broad-based consultations at the UN in 2003 and by establishing a group of governmental experts in 2004. The group held the first of three one-week sessions in November 2006. Twenty-five states are represented in the group. They include Latin American, European, and sub-Saharan African states as well as China, Egypt, Israel, Pakistan, Russia, and the United States.

The group’s mandate does not define “further steps,” although many states have called for an international instrument on small arms brokering. Advocates point to the substantial number of UN investigations into arms embargo violations and research by NGOs that highlight the role of poorly regulated private brokers and transport firms in illicit arms transfers. By November 2006, only 40 states had in place legislation on at least some of the activities of intermediaries who negotiate commercial and logistical arrangements for transfers that do not originate from or transit through the state from which they operate.[22] Most of the states with this legislation are located in Europe. Others are Nicaragua, Israel, South Africa, and the United States.

The efficacy of relevant controls is demonstrated by the 2006 conviction of a Dutch businessman by a court in the Netherlands for violating the mandatory UN arms embargo against Liberia. He was sentenced to eight years in prison even though the arms were not exported from or transited through the Netherlands and the person did not operate from Dutch territory. The Dutch legislation implementing the UN sanctions on Liberia in 2002 covered the activities of any national irrespective of their place of operation.[23] By contrast, the absence of similar rules in Italy in 2002 prodded an Italian court to rule that it could not try a known arms trafficker who had arranged illicit arms transfers to Sierra Leone in 1999. The court reasoned that the activities of the accused did not fall under Italy’s national jurisdiction because the arms in question had not originated from or transited through Italian territory.[24]

Nonetheless, at the November experts meeting, some states questioned the need for an international instrument on brokering controls. Some states also questioned the feasibility of controls on individuals and firms that arrange the transportation or financing of arms transfers and on nationals who broker arms or negotiate logistical arrangements from outside their home state.[25] Despite the concerns, it is encouraging that often-neglected issues such as controls on those arranging transportation services for illicit transfers and on those operating from abroad featured on the group’s agenda. The group is expected to present its report to the UN General Assembly in September.

General Assembly Resolutions

As in previous years, the UN General Assembly in December 2006 adopted a resolution on the illicit trade in small arms in all its aspects. The resolution emphasizes the importance of implementing the UN program of action. Recalling the program’s follow-up mechanisms, the General Assembly decided that the next biennial meeting of states to consider its implementation would take place no later than 2008.[26] The General Assembly also adopted a resolution on assistance to states for curbing the illicit traffic in small arms and for collecting these weapons. The resolution encourages cooperation among states, international organizations, and civil society and support for programs and projects aimed at combating and collecting illicit small arms.[27] The resolutions do not oblige states to engage in the activities promoted therein, but they attest to the continuing and shared concern of many states about the illicit small arms trade.
Two further resolutions were adopted by the General Assembly in December 2006 that relate to small arms issues. One of these is the landmark resolution entitled “Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms.” The resolution calls on the UN secretary-general to seek the views of member states on and to establish a group of governmental experts in 2008 to examine “the feasibility, scope, and draft parameters for a comprehensive and legally binding instrument” on the trade in conventional arms.[28] An arms trade treaty has been strongly promoted by NGOs for several years and, more recently, by an increasing number of states.

The second small arms-related resolution, “Problems arising from the accumulation of conventional ammunition stockpiles in surplus,” requests that the UN secretary-general establish a group of governmental experts to “consider further steps to enhance cooperation” with regard to stockpiles of ammunition that are surplus to national requirements by 2008.[29] The resolution on an arms trade treaty and on ammunition both focus on conventional arms and their ammunition, not only on small arms and small arms ammunition. This sidesteps the debate on whether there should be a further elaboration of export criteria or the inclusion of ammunition-specific controls under the program of action.

The resolutions on the UN program, the arms trade treaty, and ammunition controls as well as the operative paragraphs on the creation of groups of governmental experts were adopted by majority voting. This prevented the United States from blocking their adoption. The United States was virtually the only state that voted against the resolutions and groups of experts, including in the vote on the resolution on an arms trade treaty. Twenty-four states abstained from voting on the arms trade treaty resolution, including China, Egypt, India, Iran, Israel, Pakistan, Russia, Saudi Arabia, Sudan, Syria, Venezuela, Yemen, and Zimbabwe. Most of these states are important suppliers and/or importers of small arms.[30] This bodes badly for the establishment of a truly universal instrument on arms transfer standards. At the same time, the states abstaining from a vote did not actively seek to block the adoption of the resolution. Some of them may also be open to persuasion and lobbying to constructively engage in the process of developing a global arms trade treaty.

**Recommendations**

The disagreement about the scope of required small arms control between the United States and some other states on the one hand and of the great majority of states from Latin America, Europe, and sub-Saharan Africa on the other is unlikely to be resolved in the near future. It may therefore not be realistic to expect that there will be developments in areas such as global standards on small arms transfers to nonstate actors or civilian small arms possession any time soon. Nevertheless, there seems scope for progress in the following areas, which have already been established at the UN level.

**Implementing the UN Instruments on Small Arms**

The comprehensive implementation of the UN small arms instruments should remain a principal focus of further efforts to combat the proliferation and misuse of small arms effectively. Officials have to take steps to remedy any weaknesses in controls at their own national levels that facilitate and contribute to small arms diversions and the illicit small arms trade. States that have not yet done so need to review their national controls and their implementation in light of their commitments under the UN instruments on small arms. Where relevant, states should define a national strategy for ensuring their compliance with the UN instruments and the responsible management of small arms.

Donor assistance can make an important contribution to building up the capacities of developing states to control small arms effectively. Between 2001 and 2005, multilateral and bilateral donors provided some $660 million to support the implementation of the UN program in at least 94 states. Most support was given to programs for the disarmament, demobilization, and reintegration of ex-combatants and the destruction of illicit small arms. The financial assistance for small arms control given over five years represents a modest annual average of $132 million. In contrast, donor support for action on anti-personnel landmines amounted to $400 million in 2004 alone.[31] A greater use of
Donor assistance for small arms control will require support for building up the capacities of requesting states to make a comprehensive assessment of their needs as well as the promotion of greater knowledge among donors about the specific technical and financial requirements of individual states to implement the UN program.

**Combating Illicit Small Arms Brokering**

Few states have established national controls on small arms brokering as promoted under the UN program. There is also little evidence of international cooperation in combating illicit brokering. The UN group of governmental experts on small arms brokering can make an important contribution by promoting further action in these areas. Ideally, the group should consider the feasibility of an international instrument that promotes common minimum standards on small arms brokering controls and defines mechanisms to strengthen effective cooperation in this area between states and with potential partners such as the International Criminal Police Organization (Interpol) and the World Customs Organization. Minimum standards should include controls on nationals who broker arms from abroad and the criminalization of arranging logistical or financial services for illicit arms transfers. Encouragingly, no state participating in the group openly opposed discussing these issues so far.

**Strengthening Controls on Conventional Arms Transfers and Their Ammunition**

The decision by the UN General Assembly to establish groups of governmental experts on an arms trade treaty and on stockpiles of surplus ammunition opens significant avenues for the development of common understandings in these areas. The focus on conventional arms and ammunition can help to bypass the stalled debate in the framework of the UN program of action. The groups of governmental experts may also help to lay the foundations for global standards that indirectly promote the responsible management of small arms. At the same time, the initiatives to strengthen controls on conventional arms and ammunition should not detract from the urgent need to implement and, ideally, develop further the standards in existing UN instruments on small arms.

**Conclusions**

Many observers justly call small arms weapons of mass destruction because it is with these tools, rather than with biological, chemical, or nuclear weapons, that hundreds of thousands of people are killed and maimed each year. Most victims are innocent civilians. The consensus-based proceedings under the UN program of action impose clear limits on what may be achieved at the global level in light of the current opposition by some states to the introduction of further standards to control the small arms trade. This does not mean that there is no scope for the strengthening of already existing standards. States should also make greater efforts at national and regional levels to address the problem of small arms proliferation and misuse. Otherwise, there remains the clear risk that the illicit small arms trade and its devastating impact will continue unabated.

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**ENDNOTES**

1. In this article, small arms and light weapons will be referenced collectively as small arms.


5. The UN program does not define small arms or light weapons, but they are usually understood as a subcategory of conventional arms that includes firearms and other small arms, such as pistols, revolvers, and assault rifles, as well as light weapons such as heavy machine guns, man-portable air defense systems, and howitzers with calibers of less than 100 millimeters. “Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” UN Document A/CONF.192/15, July 2001. A 1997 UN Panel of Governmental Experts on Small Arms also included ammunition in a generic definition of weapons used in conflicts with which the UN becomes involved.


17. “National Capacity to Implement the PoA,” Biting the Bullet Project (International Alert, Saferworld and University of Bradford), June 2006.


22. UN Institute for Disarmament Research, “Developing a Mechanism to Prevent Illicit Brokering in
Small Arms and Light Weapons,“ November 28, 2006, p. 16.

23. Ibid., p. 104.

24. Ibid., p. 4f.

25. Group of governmental experts on small arms brokering participants, telephone interviews with author, December 3-4, 2006.


31. UN Institute for Disarmament Research, “International Assistance for Implementing the Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,” December 2006, p. 20.

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