

International Legal framework on Small Arms and Light Weapons

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Armed violence is a global problem with local and national origins. The solution to the proliferation and misuse of small arms must also operate at both global and national levels – and of course regionally.

We often hear the problem described in global terms – 300,000+ people killed, millions more affected by injury, trauma, displacement, denial of economic opportunities and of health care, etc. The global impact is felt locally, within countries, but even so, each incident of armed violence may involve several countries. Citizens of one country are threatened with a gun made in another country, imported through a third country by an arms dealer whose nationality is that of a fourth country. A community is terrorised and forced to flee, often over the border into a neighbouring country. The assistance provided to them is funded by yet another country. This is just one type of common scenario that illustrates the need for a legal regulatory framework that will operate within a country, between countries and above countries. In order to be effective the framework must be (a) comprehensive, (b) legally binding, and (c) enforceable.

In terms of being **comprehensive**, the global effort against the trafficking, proliferation and misuse of small arms is full of holes.

- The one legally binding global instrument on small arms in existence, the UN Firearms Protocol, covers only some aspects of the problem and does not apply to State-to-State transfers, which is a huge loophole.
- The UN Program of Action on Small Arms attempts to be more comprehensive, and yet makes no mention of the need to address the problem of guns circulating among civilian populations – even though 60% of small arms are in the civilian population. So the UN PoA ignores most of the problem.
- In addition, the UN PoA is short on specifics – for example, in paragraph 2 section 11, the PoA commits States to assess applications for arms exports authorisations in a manner ‘consistent with the existing responsibilities of States under relevant international law’, and taking into account in particular the risk of diversion of these weapons into the illegal trade. Unfortunately the PoA does not specify what is meant by those ‘existing responsibilities of States under relevant international law.’ In order to clarify that commitment and make it more specific, a coalition of hundreds of civil society organisations around the world has created a list of global principles which encapsulate just what are those existing responsibilities of States under relevant international law – the obligation not to supply guns into situations where they will be used for violations of UN arms embargoes, of human rights or of international humanitarian law, or to undermine sustainable development or facilitate violent crime or corruption.

We are pushing for the Small Arms Review conference in June-July to acknowledge and incorporate these principles into implementation guidelines to say – you’ve committed yourselves to abide by international law, now here is what that means.

- Then we have UN Arms embargoes, and as my colleagues will describe, arms embargoes are frequently and easily violated, partly because they only have force at an international level and not at national level. This means that when an individual or company is involved in violating an embargo, they very frequently cannot be prosecuted in the country where they live, or in the country of their nationality, because the national laws do not specify that breaking a UN Arms embargo is a crime. Again, all countries support arms embargoes, but very few are prepared to put in place the legal structures to make those embargoes meaningful in reality.

My second point is that the legal framework needs to be **legally binding**. Sometimes the UN language can make us forget, so when we hear the term ‘proliferation and misuse of small arms’ it sounds boring and bureaucratic. This seems obvious, but apparently many Member States have forgotten it so it is worth repeating. We are talking about murder, torture, rape, kidnapping, child slavery, corruption, destruction of homes and property, theft of private property, theft of government revenues... all of these are crimes. They have been defined as crimes under national laws, because governments realise that it is not enough to ask

citizens voluntarily to abstain from doing these things. Now, these same national governments, UN Member States, have recognised the critical contribution that gun suppliers are making to these crimes. So why should only this one aspect of these crimes be regulated by voluntary agreement? And yet that is what the UN small arms process has so far accepted – a voluntary Program of Action, a voluntary instrument on marking and tracing --- and we may have to settle for a voluntary instrument on regulating arms brokers too.

We need an international legal framework based on legally binding instruments – whether on Marking and Tracing, whether on Brokering, and especially on international arms transfers. It is heartening that several regional organisations are showing the way in this regard with the OAS Convention, the Nairobi Protocol and the SADC Protocol on small arms.

Thirdly, we need frameworks at global, regional and national levels that are **enforceable**. This is partly a question of resources, and though we understand that resources are in short supply, we maintain that it is principally a question of priorities. The current priorities for the allocation of resources suggest that the world is not taking the wellbeing of people very seriously. For example, in 2002, the world spent US \$1.7 billion on dealing with HIV-AIDS. That same amount was spent in 18 days on authorised arms exports.

Enforcement capacity is also affected by geographic loopholes and inconsistencies – for example, if a State with strong regulation is located next to a State with weak laws, then the strong laws will be undermined by traffickers who buy the guns in the weak State and bring them across the border for sale to criminals. Likewise, if a State that is under an arms embargo is located next to a State that is not enforcing the embargo, then the embargo is undermined. It is not enough to rely solely on border controls – that is totally unrealistic. The UN small arms process need to lead States to implement strong and consistent national laws across regions and around the world.

In addition, enforceability is also a quality that must be considered in the design of legislation itself. For example, many countries have laws specifying that certain categories of persons are not allowed to own guns - convicted criminals, for example. (We are pushing for countries to include domestic violence offenders in the list of people to be denied.) However, it is impossible to enforce this legislation if the country has no firearm registration system. So national laws must be designed to be enforceable, and again the UN small arms process should provide guidance on this.

Recommendations:

- a) The Security /council should endorse the proposed global principles linking the authorisation of arms transfers to the obligations of States under international law and support the inclusion of those principles in the UN Program of Action on Small Arms at the Review Conference on Small Arms
- b) The Security Council should discuss and recommend that States adopt the proposed Arms Trade Treaty as a legally binding global convention.
- c) The Security Council should recognise that efforts to prevent the proliferation and misuse of small arms must be comprehensive and take into account the need to regulate these weapons in all circumstances – whether the guns are in the hands of governments, civilians, brokers, corporations or other non-State actors. The UN Small Arms process should provide guidelines and assistance for governments to strengthen and harmonise their national firearm legislation