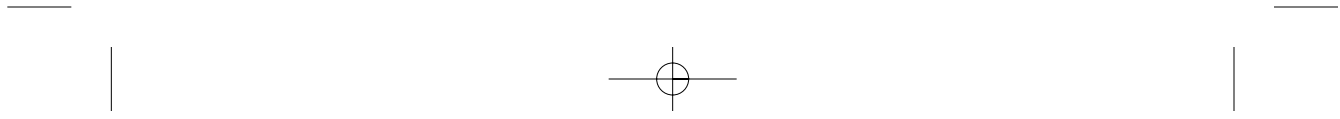
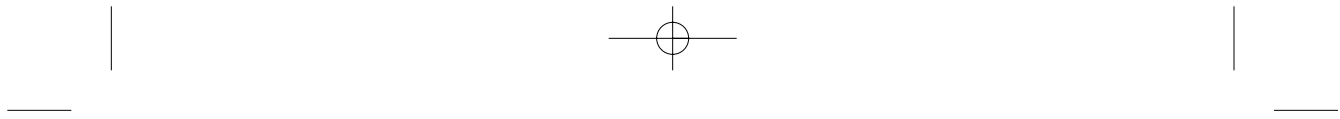


**Building  
Cultures of  
Peace - Pan  
Commonwealth  
Issues**



## **Policing Reform on the Human Rights Agenda**

Small arms cannot be properly regulated or surpluses removed from society without those in possession having confidence in the state's ability to guarantee public safety and security. This in turn cannot be achieved if security forces act in arbitrary and unaccountable ways contrary to agreed international standards on law enforcement, and if police and customs lack resources to carry out their duties of public service. In the words of the UN Code of Conduct on Law Enforcement Officials, those doing policing tasks need to be responsive and accountable to, and representative of, the whole community if they are to gain accurate information and the voluntary cooperation of local communities whom they are supposed to protect. In regions where violent conflict and gun-related crime have taken root, these prerequisites are missing. There, it is usually the case that governments, security forces and police have attempted in vain to use brutal strong-arm tactics to "strengthen" the state, while actually undermining its long-term viability.

All too often in recent public policy discussions and research on small arms, policing is ignored, and the focus is put primarily on military, juro-political and socio-economic solutions. One scholar has written that, "when police are discussed, it is usually in relation to the military, compared to whom they are seen academically as the poor relation: lower in status, educational level, resources and discipline, and less prone to political intervention."<sup>1</sup> Even when the problem of policing does enter international discussion on small arms, it is usually presented only as a technical issue – for example, that law enforcement agencies need better equipment and training, skills to investigate and prosecute offenders, x-ray machines to check cargo, and training in the use of small arms.<sup>2</sup> One subject that has received some attention is the role of police in international peace operations. In this regard, many basic problems remain to be addressed because of the failure to understand the nature of policing compared to military operations (see below).<sup>3</sup>

#### Policing Reform on the Human Rights Agenda

The neglect of humane and professional policing is widespread and deeply institutional. Amongst many poorer countries, public expenditure on police and customs by governments has long been inadequate or squandered on misguided paramilitary style operations and military prestige projects, while national and local structures to ensure respect of human rights are neglected.<sup>4</sup> The net result, put very simply, has been that (a) police and paramilitaries have committed serious abuses with small arms, (b) firearms and associated equipment have too easily spread into the hands of criminals or sometimes civilians with deeply felt sense of injustice, and (c) local cultures of gun violence have become entrenched in many areas.

Most Commonwealth countries adopted, at least formally, a variation of the British model of policing during the era of colonial rule. In order not to use soldiers to deal regularly with the public and to legitimise law and order, the Metropolitan Police Force was established in London in 1829 and consolidated nationwide from the 1850s, after which this formal system gradually spread through the Empire. However, the colonial police forces did not modernize by fully adopting the evolving practices of “policing by consent”.<sup>5</sup> This involved the development of the rule of law, the minimal use of force, political non-partisanship, an ethos of service to the public, the growth of a police bureaucracy, an emphasis on crime prevention and the provision of law enforcement to all classes in society.

In contrast, colonial police forces tended to remain detached from civil society, working mainly in defence of the interests of colonial settler elites, their indigenous allies and foreign-based companies. For this purpose, they sometimes co-opted long-standing indigenous policing arrangements that existed amongst local native communities. But rarely did they live and work amongst poor communities. The colonial authorities required the police to be a symbol of British power and to enforce blatantly discriminatory and often repressive laws, prepared to deploy paramilitary and politically partisan methods when the need arose. When political independence was achieved, this system of policing was changed only superficially in most ex-colonies. The new prevailing focus of security reform became the expansion of the national armed forces under presidential rule.<sup>6</sup>

Today in many poor Commonwealth countries, police services bear the scars of their colonial birth. They are often extremely distrusted by the general public and by

particularly vulnerable groups. Police suffer under austerity programmes not applied to their counterparts in the military, and are expected to enforce arbitrary laws at variance with modern international standards. Uniformed police officers are often just a symbolic decoration of the post-colonial state, without the transport and means of communications to work amongst communities. It is common in outlying areas for most arrests to be carried out by authorised citizens rather than uniformed officers. In its overall context, the proliferation and unlawful use of small arms for political and purely criminal violence in many aid recipient countries has become a depressing indicator of the failure of states to provide modern policing services which are accountable to democratic institutions and subject to judicial and executive authorities based on the rule of law. An attempt is made below to illustrate these processes and to identify factors that contribute to this problem, as well as to identify new approaches to solve them.

### **I. The policing and security crisis in Africa**

Few will doubt the ongoing crisis of military, security and police relations in sub-Saharan Africa – the least developed region of the world. The World Bank estimates that armed conflict in Africa is responsible for poverty of at least 250 million people, nearly half of the population of the continent.<sup>7</sup> This grim reality is replicated to a lesser degree in other regions that also face chronic problems of economic underdevelopment, armed conflict and violent crime.

Since World War II, Africa has experienced around sixty coups d'état. Fourteen of the continent's 53 nations suffered from armed hostilities in 1996 alone and over 30 wars have broken out since 1970. In these conditions, arms trafficking has become a well-rooted and highly profitable business.<sup>8</sup> The vast majority of these wars have been internal in origin, but with significant international involvement and consequences, accounting for the deaths and wounding of millions. In sub-Saharan Africa, less than half of African countries have avoided armed conflict in the 1990s. In other countries such as Nigeria, military juntas clung to political power in spite of popular elections. In countries such as Kenya, Ghana and Zimbabwe, the government authorities have exonerated police and army personnel who used excessive force against peaceful demonstrators. In countries that have emerged from armed conflict, such as Mozambique, human rights protection by the security forces and an adequate criminal justice system remain to be consolidated. Even in South Africa, with its considerable

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resources, the post-apartheid police and justice reforms have yet to make a significant impact on curbing violent crime.<sup>9</sup>

In the wake of major political and economic change, African nations are currently facing an upsurge in crime. Higher crime levels have become a major hindrance to development, particularly in southern Africa. Burglaries and violent crimes like murder, rape and child abuse have risen considerably, while economic crime, including corruption, have become endemic in some nations. Crime syndicates in Africa previously concentrated on black market business crimes, including West African diamond and cattle smuggling, southern African coffee smuggling and poaching. Many syndicates have now branched out into economic crimes, such as loan and credit card fraud, cheque forgery and insurance fraud, as well as trafficking in vehicles, guns, human beings and more recently, illicit drugs.<sup>10</sup>

A common thread has been the failure of governments with the help of aid donors to adequately reform the police and the criminal justice systems in line with international standards on law enforcement (see Appendix 2 for a summary of such standards). Whatever the variations, far too many police in African conflict zones have been unaccountable, corrupt, poorly trained and militarised. Repressive colonial laws and practices remain. All too often, civilian police are turned into paramilitaries or become sidelined. Military forces assigned to maintain internal security have little or no police training. The spectrum of police functions barely touches on crime prevention.

These failures to “police by consent” cannot be understood in isolation from factors shaping the exercise of political power and socio-economic development. It would also be a mistake to assume a simple correlation between the level of socio-economic development and the capacity of states to provide basic security. The relationship is more complex. In the case of Africa, no one can deny that underlying factors include, first and foremost, the devastating impact of colonial rule and Cold War rivalry, as well as the ruthless economic exploitation of much of Africa’s natural and human resources. Current international development aid, debt relief, trade agreements, emergency assistance, and other unilateral or multilateral economic measures are clearly insufficient to redress this legacy. However, such assistance has usually not been designed by recipients or donors to have a significant impact on Africa’s endemic security crises, and it is doubtful there will be some magic ‘trickle up’ effect. In most places, states inherited from the colonial powers are still not rooted in functioning civil societies.

*Security means principally regime security. Governments usually appropriate state organisations. Police and military functions are not properly separated...the control of resources, patronage, and the means of coercion come into the hands of privileged individuals and are methods of political reward.*<sup>11</sup>

### ***Nigeria's mislead police***

The cycle of police (and paramilitary) repression fuelling small arms proliferation is clearly evident in Nigeria, especially in the oil-rich Niger Delta. There, civil war left a legacy of guns. Increased unemployment since the mid 1980s has provided the context within which violent crime has been fuelled by police brutality and corruption, while international oil companies have enjoyed rich pickings while devastating the Delta environment. Despite the recent move towards democratic rule in Nigeria and the announcement of a truth commission to investigate past abuses, youths in ethnic communities in the Delta have refused to surrender arms to the authorities out of fear and distrust for the police and each other.<sup>12</sup> When one understands the brutal history of policing in the Niger Delta region this is hardly surprising.<sup>13</sup> According to the Deputy Inspector General of the Nigerian Police:

*the police were conceived, not as a service organisation for natives, but as an instrument of oppression of the natives...Because of the use to which the colonial masters put the police, i.e. harassing and arresting tax defaulters, brutalising trade unionists and other nationalists, and torturing persons accused of criminal offences, nobody wanted to have anything to do with the police.*<sup>14</sup>

When Nigeria became independent in 1960, hopes that the police would be reformed under a democratic system of governance were dashed. Little changed except that the crest of the police bearing the British crown became the Federal Coat of Arms. A detailed study of policing in Nigeria concluded:

*...in the training of the senior police officers, the model was not Scotland Yard, but the Northern Ireland police – because of the kind of situation of rebellion against the British presence obtaining in Northern Ireland was what the British colonialists anticipated in Nigeria. Today, there is no evidence that the training and orientation practices bequeathed by the colonial authorities have been discarded or even modified significantly.*<sup>15</sup>

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The 1943 Police Act is still in operation. This, the Criminal Procedure Code, and subsequent decrees gave the police wide powers of search, arrest, detention and prosecution. Nigerian police officers cannot refuse to obey superior political orders even when they violate fundamental human rights. The 1968 Nigeria Police Regulation focused on internal discipline rather than the duties of officers towards the public. Like so many ex-colonial regulations, it is completely at variance with the United Nations Code of Conduct on Law Enforcement and other international standards applicable to the police.

When the military leadership seized political power in 1966, the army was barely 11,000 strong, and in order to retain power using the much larger Federal police, the police authorities were co-opted into the military-dominated Federal Executive Council. The result was a massive program of expansion. In contrast, the civilian police service was denied resources and lowered in status. Police chiefs participated in enacting the draconian laws that have alienated the police from the population and thus endangered the lives of ordinary uniformed officers.

Starved by government of budgetary allocations, appropriate equipment and proper training, and demoralised without pay and living in overcrowded barracks, many of Nigeria's 150,000 police officers resorted to corruption, especially by extortion at roadblocks.<sup>16</sup> Police made the abuse of suspects for forced confessions and the excessive use of force against public protests a routine practice. Meanwhile, large private companies and the Nigerian elite resorted to privatised security.<sup>17</sup> As the situation worsened, Nigeria's military governors thought they could get rid of armed criminals by public executions of suspected robbers and by using a shoot to kill policy in specially designed joint police-military crime-fighting operations.<sup>18</sup> Some police chiefs began in 1998 to complain about the enormous cost of such operations in relation to sustainable results and also of the abuse of civilians by task force soldiers supposedly carrying out police duties.<sup>19</sup>

In this context, it is hardly surprising that the detection of illegal firearms possession in Nigeria has been very low, as has the detection of illicit transfers of small arms from Nigeria's neighbouring countries.<sup>20</sup> Traditional policing methods, such as the collection of evidence to apprehend and prosecute criminals, have been neglected. Police patrols are irregular because transport and communications are so poor. The public has little confidence in the police to secure their safety and to provide them with tip-offs on gun running. It remains to be seen whether the announcement in August 1999 by newly-



elected President Obasanjo that he will cut the army by half and sack 150 top officers will create an opportunity to reverse the historic decay of the police in Africa's most populous country.<sup>21</sup>

## II. The failure of traditional security assistance

Since the end of the Cold War there has been greater recognition amongst Western donors that many aid recipients have bloated or over-resourced military forces. Some powerful aid donors have realized (rather belatedly) that traditional international military and police assistance programs in many dependent countries had implicitly encouraged this process.\*

Far from helping to enhance the security and safety of ordinary inhabitants, the military and police "train and equip" programs of powerful aid donors ignored or neglected projects to promote respect for human rights and international humanitarian law amongst recipient forces. In this way, they added to poor governance and insecurity – the most deep-rooted structural impediments to sustainable development. From small farmers to international companies, few were sure they could safely invest. Now, donors are attempting to impose more strict accounting procedures for public expenditure on military forces. Nevertheless, proposals for military force reduction rarely integrate with proposals for better policing and crime prevention.

### *International training programmes for military and police forces*

Providers of international military assistance to Africa have included all the Permanent Members of the United Nations Security Council – China, France, Russia, the UK and the USA – as well as other states such as Belgium, Canada, Germany, Italy, Portugal, the Netherlands, Israel, Brazil and Saudi Arabia. Although the scale and type of security assistance has varied considerably, one common feature has been that almost no meaningful information is given about the details of the assistance or the human rights considerations of such assistance by these donor states, even where they profess to respect international human rights standards. This is a serious failure given that many military and police officers have been taught to understand the law as entirely separate from their personal integrity and morality and to place their conduct above issues of morality in favour of narrow notions of national security.<sup>22</sup>

\* See for example, statement by Clare Short, UK Secretary of State for Development on security sector reform and development assistance, London 1999, and Canadian Ministry of Foreign Affairs, policy discussion paper on small arms proliferation and peacebuilding, Ottawa, December 1998.

#### Policing Reform on the Human Rights Agenda

Historically, international assistance to train and equip armed forces, police and other law enforcement agencies in Africa, has been guided more by the narrow commercial and political interests of the donor governments than an overall recognition of the international scale of the crisis. Not surprisingly, the proliferation of armed conflicts and the abuse of human rights by recipient military personnel have cast public doubt on the continuation of such military aid from Western states. Even donor assistance with rapid deployment joint exercises to prevent violent conflicts spreading further are viewed with suspicion. Consider, for example, the following overall impression of US military aid in Africa:

*...Of the eight largest recipients of US arms and training in sub-Saharan Africa in the 1980s, five (Angola, Liberia, Somalia, the Sudan, and Zaire) were all engulfed at tremendous human and economic cost by civil wars that this support fuelled. The other three (Cameroon, Nigeria and Uganda) are all ruled by authoritarian regimes. .... US policy still seems locked in its Cold War policy of strengthening the armed forces of non-democratic African rulers. An astonishing 94 percent of all nations in Africa received US military assistance from 1991 to 1995. Of the 3,408 African officers trained during this period, 71 percent came from authoritarian regimes of dissolving nation-states. The number of African countries conducting joint combat exercises with US forces has risen from 20 in 1995 to a proposed 33 in 1998.<sup>23</sup>*

Where donor governments profess to promote respect for human rights and humanitarian law in their assistance programmes, evidence of translating this into practical exercises for military personnel has been lacking. For example, the UK government provided military training to the new Mozambican army following the October 1992 peace accord, ending 15 years of civil war. When asked about the human rights content of the training, the UK Minister responsible replied that:

*We fully agree on the need to promote human rights as an integral part of the training programme. All trainees in Mozambique receive at least one lecture devoted to human rights questions. The instructors course at Nyanga [in neighbouring Zimbabwe] included instruction in the laws of armed conflict and the terms of the Geneva Convention.<sup>24</sup>*

The provision of a *single lecture* human rights to army trainees is surely inadequate for a new army made up of former opponents, many of whom committed grave war

crimes and live in a fragile democracy. It should be recalled that at the time, United Nations police monitors in Mozambique were being denied access to sites where the Mozambican army was suspected of transferring military equipment to the police, and especially the Presidential Guard, and training police in the use of military weapons. The Mozambican government refused to allow such UN police inspections apparently because it wanted to reserve the right to deploy heavily armed “police” in rebel-held territory.<sup>25</sup>

The UK alone provided military training in 1995 to the armed forces of 106 countries.<sup>27</sup> However, the UK Ministry of Defence has traditionally been reluctant to reveal any details about the extent of its training to encourage respect for international human rights and humanitarian law, as if this should be a hard-held state secret and not a matter of legitimate concern for ordinary citizens. The French and a number of other Western governments have also been singularly reluctant to disclose elementary information about human rights safeguards in their extensive military training programmes in Africa.

A similar failure pertains in the area of international assistance for police training, although very few donors are willing to risk such official assistance, probably because of its high public relations risks and its low returns on selling police equipment. The colonial powers undoubtedly laid some of the basis for many of the current problems with policing, which have since been exacerbated by post-colonial governments.

Between 1991 and 1995, the UK government provided training for police forces from 64 countries, sometimes by sending British police trainers abroad while at other times hosting training courses for foreign officers in the UK.<sup>27</sup> One country receiving such training was Nigeria (this included training in crowd control techniques), but there is little evidence that this had a positive impact in Nigeria itself. Certainly no information was made available to the UK Parliament or public about the human rights elements of the training when the Government was questioned about it. Even if official reference had been made to human rights in such training, one would be entitled to doubt the claims after a report by the UK Audit Commission in 1996, which showed that expenditure marked for human rights training for the Indonesian police was not really carried out. The new UK Government has since 1998 been conducting a review of foreign police training programs. One senior retired UK police officer with enormous experience in international police training recently made the following remark:

*...my impressions from having conducted seminars and workshops on human rights for police in many states in Europe, Africa, the Middle East, Central America and Asia [is that] most national training programs do not address human rights as a separate and significant topic, and that the international dimension of human rights protection is not covered to any great extent. Furthermore, there is fairly widespread resistance to the notion of human rights amongst the police and that many police officials feel that they are entitled to violate, or are justified in violating, human rights in the course of their duties.<sup>28</sup>*

### ***The supply of military and security equipment***

One of the prime motivations of large foreign military and police training programmes has been the opportunity for governments to market defence and security equipment from their home companies. This works against the efforts of some donors in controlling arms and other military equipment transfers.

When, for example, the European Union declared that tough restrictions would apply to arms for Nigeria following the annulled 1993 elections, the UK Government stated that it would examine export licences for security equipment on a case-by-case basis with a "presumption of denial". However, in June 1995 it was revealed that the UK Department of Trade had granted at least 30 licences for arms and security equipment to the Nigerian army and police, including firearms, rubber bullets, CS gas and spare parts for weapons and military vehicles. Nigeria's paramilitary Mobile Police in the Delta used British supplied armoured vehicles and the Shell Oil company\* in Nigeria was negotiating an order for the supply of automatic rifles, pump action shot guns and riot control equipment via a local company who used a UK arms supplier. When challenged, the UK Government said the EU arms embargo did not apply "*where military equipment is to be used by the police, or forces taking part in international peacekeeping operations*". The UK did not comply with its own export policy guidelines prohibiting such exports where there is a clear risk that these would lead to serious human rights violations.<sup>29</sup>

Similar examples of the failure to establish effective arms export controls could be given for other countries, including in the European Union where these were in breach of the

\* Royal Dutch Shell, a British-Dutch oil multinational with its global headquarters in London. (Ed.)

1991-92 guidelines on arms exports. The French Government's military cooperation with the Rwandan armed forces in 1993-94, just prior to, and even after the start of, the genocide is a tragic reminder. It should have been a warning to the Belgian

Government not to allow the establishment of an ammunition factory in Kenya as well as to the Italian Government to prevent small arms exports to Algeria, Turkey and other countries where recipients are likely to commit serious human rights violations.

*Tragically, some Western governments are contributing to desperately needed arms collection and destruction programmes and other peace-building measures while individuals domiciled in their countries at the same time have the right to broker international arms deals from third countries to the same crisis regions outside the framework of the law.* Moreover, Western governments permit the export of licences for arms production arrangements abroad often without requiring that recipient countries prohibit the resulting exports to third countries likely to commit serious human rights violations (whether from surplus second-hand arms created through displacement by new products, or directly from the new production itself). With hindsight, more governments are now recognizing that they grossly underestimated the process of dissemination particularly of small arms and the destructive impact this would have on development programmes in poor countries.

### **III. Failure to control and collect weapons in peace operations**

During international peace operations, international police monitors have usually been deployed late, lack relevant skills and policing experience, lack cultural and human rights awareness, fail to interpret their mandate creatively, and are subject to lack of cooperation between contributing agencies.<sup>30</sup> Experience has shown that even where weapons collection and removal schemes are part of the international mission it has usually not been possible to sustain a high level of weapons removal from the distrusting civilian population, let alone from all the combatants. International military forces are mandated to separate local warring parties within a limited timeframe, and local police and other law enforcement agencies as well as judicial and penal institutions are invariably dysfunctional and lack the confidence of the local population.

#### ***Mozambique, weapons removal and policing***

In Mozambique, after the cessation of conflict in 1992, the demobilization of the warring parties and the collection of weapons were seen as essential to achieving stability and security. However, disarmament procedures were not fully spelt out in the UN mission's operational guidelines. International peacekeeping efforts of the UN force ONUMOZ during 1994 were much more successful than the various UN

efforts in Angola, probably due to the greater commitment of the opposing parties to end the war. However, ONUMOZ failed to secure complete disarmament or adequate control of weapons.<sup>31</sup>

Both the Government armed forces and Renamo (the rebel force) withheld arms from the UN and hampered inspections of arms depots. Only a fraction of the estimated 1.5 million AK-47 assault rifles and other munitions were handed in to the UN, and this was of mixed quality. No one was sure of the total number of light weapons existing in Mozambique. In the end, UNOMOZ handed back about 180,000 weapons to the new Mozambican army, and 24,000 of the recovered arms were destroyed. It is in fact uncertain these were all destroyed.<sup>32</sup>

The ambiguous nature of ONUMOZ's mandate, lack of equipment and specialised teams and the limited time available prevented UN personnel from inspecting arms caches outside the combatants' assembly areas. About 40% of Renamo caches were not verified. UN headquarters in New York turned down ONUMOZ's request for an additional US\$52.5 million to ensure complete disarmament. UN police monitors were initially resisted by the Government but were eventually accepted and increased considerably in numbers. However, they lacked the power to properly monitor and act upon cases of local police abuse.<sup>33</sup>

After the UN withdrew from Mozambique, weapons were abundant, and the Mozambique police were ill equipped to find caches and catch traffickers. Armed crime increased around Maputo, but the country did not become totally lawless. Many people appeared to be committed to peace, and there was little internal demand for weapons. In 1996 and 1997, local communities began to report the location of arms caches, but many still appeared to distrust the police. Internationally sponsored church-run schemes offering tools, bicycles and other goods for weapons met with some success in the areas around Maputo from 1997. The Spanish government's training support programme for the local police begun in 1996 and sponsored with help from the Netherlands has also had some success in developing a more professional police force, but this is mostly limited to Maputo and the surrounding districts. The police still lack basic equipment and resources to regularly patrol and interact with communities in many areas.<sup>34</sup> In November 1996, the Attorney General accused some police of selling, renting and lending their weapons.<sup>35</sup> The Mozambique elite and foreigners resort to private security firms for protection.

Enormous surplus stocks of weapons and ammunition not collected or properly controlled in government arsenals and police stations became a cause for concern for the security of the entire Southern Africa region. New arms flows developed from within Mozambique, particularly to South Africa, where the demand for small arms, especially pistols, was very high among criminal groups. In August 1995, the South African and Mozambican governments began joint operations to find and destroy arms caches and apprehend traffickers along the border.<sup>36</sup> The scope of these operations was expanded in 1996, but suffered from lack of funding. Police in Swaziland, Zimbabwe and Malawi have reported some progress in finding illegal caches and arresting traffickers, but it is estimated that arms caches in much of Mozambique territory remain undetected. Lack of police and customs resources has also meant that foreigners have used Mozambican territory to ferry new military-specification arms to the Unita rebels in Angola.<sup>37</sup>

#### IV. The growth of privatised security

One of the major consequences of the failure to modernize the military, security and police sectors of many poorer countries has been the rapid growth of private companies providing such services, displacing to a certain extent resources that would otherwise have been spent on the state security sector. This is sometimes described as part of globalisation in the Post Cold War period, arising from economic liberalisation and austerity in public expenditure resulting in the shedding of large numbers of state security personnel and demobilised combatants. These “demobbed” individuals are employed by international security companies or seek out means of survival by selling itinerant “security” services.<sup>38</sup>

International commercial interests, particularly in mineral exploitation, have been keen to open up further opportunities for profitable business in various parts of Africa and other outlying regions, but have been concerned at the growing instability, violent crime and threat to their staff and assets. Frustration with local security forces has led them to seek the services directly or indirectly of private security companies and, in a few cases, this demand has contributed to the creation of new corporate armies.<sup>39</sup> In response to growing reluctance to become engaged in overseas military operations, officials of powerful governments such as that of the United States and the UK have viewed private military forces as possible substitutes.<sup>40</sup> It is argued that such soldiers can be quickly deployed and can carry out flexible operations, and are less expensive than maintaining

a large standing army. In opposition, the United Nations Rapporteur on Mercenaries recently stated that:

*...The African countries are those which have suffered most directly from the presence of mercenaries on their territory. Mercenary activities have been primarily aimed at preventing, disrupting or in some way modifying the exercise of the right of peoples to self-determination. Activities of this type have also been reported as having a political-military character, aimed at undermining the stability of constitutional Governments in the region...<sup>41</sup>*

In most cases it is “constitutional governments” in Africa which themselves contract mercenaries or private military companies. As unbridled market forces have taken over, the legal obligations of private military and security companies have been left unclear, not only in recipient countries but also in their home countries (South Africa, Israel, the United Kingdom and the US).

In their marketing and public relations efforts, private military firms tend to emphasize the “training” element of their business rather than combat in order to make the operations seem more legitimate. However, there is a fine line between training and combat, or private military training in war situations and mercenarism. Even with regard to training, teaching security forces more effective ways of killing people in states where there is little effective accountability can easily contribute to serious human rights violations and make the security situation worse in the longer term. Sadly, Western donor governments have neglected the promotion of improved accountability and transparency, as well as regulation, of all types of security companies. One is drawn to accuse some Western policy makers of ignorance, since they have had to provide the emergency aid when the situation in some countries that have relied heavily on privatised security has further broken down. In Angola and Sierra Leone where private military companies have been used extensively by government forces, the security situation and spread of small arms subsequently worsened or was no better than at the outset.

## V. Developing a new integrated approach

### *Recent multilateral initiatives to help reform security sectors*

Growing pressures for some sort of action in crisis zones have led to a number of international assistance initiatives from a few Western donor governments, generally



known as “security sector reform” programmes. These have included diplomatic efforts as well as direct technical and financial assistance schemes, as shown in the example of Mali (see Chapter 3) and in a few other post conflict demobilisation and disarmament programmes (for example in comprehensive peace settlements such as in Namibia, El Salvador and Mozambique). The distinguishing feature of these initiatives is a holistic and integrated approach, combining efforts to reform military, security, police, justice and penal systems with efforts to create new democratic institutions and development projects. Increasingly, the active participation of NGOs, local communities, professional associations and other civil society groups has been sought.

A wide variety of UN agencies and Departments (UNDP, UNICEF and WFP\*) and other multilateral institutions have adopted this approach.<sup>42</sup> For example, the World Bank and IMF are increasingly concerned with the analysis of military budgets and the economic cost of military spending, a subject that used to be “off limits”. The World Bank has also been supporting programmes to reintegrate demobilized combatants in war-torn societies, for example in Cambodia, Sierra Leone, Mozambique and Uganda. The Bank has now created a Post Conflict Unit and has been considering a request for micro-disarmament in Guatemala.

The Development Assistance Committee (DAC) of the Organisation for Economic Cooperation (OECD) will shortly meet to consider a greater involvement in security sector reform as a necessary strategy to help unstable poor countries establish sustained economic development. DAC became concerned with excessive military expenditure in aid recipient countries in the early 1990s, producing guidelines for good practice in 1993, and established a Task Force on Conflict, Peace and Development in 1997. The discussion in DAC has been broadening in scope from demobilization and reintegration projects, to landmine clearance schemes, and now to capacity building of security and justice systems.

Influential donor governments have been instrumental in changing attitudes and policies. For example, the Canadian and Norwegian governments have been very active in placing security sector reform on the agenda of intergovernmental agencies. The Labour government in the UK has now revised its development policy to include security sector reform in many countries as a strategic necessity for sustained development, but different UK ministries and departments are still discussing how this will be implemented.

The emerging security sector reform agenda is taking shape as follows:

- Military and law enforcement organizations should be accountable to elected civilian authorities and operate according to the rule of law – it is increasingly stated that standards of practice should be based upon human rights and humanitarian law and accompanied by judicial and penal reform;
- All security sector financial plans and reports, as well as other resources such as personnel policies and recruitment projections, should be made available to legislatures and to the wider public;
- Civil society organizations should be actively encouraged to monitor the activities of defence and law enforcement agencies – increasingly the latter includes calls for civil policing to be developed with active engagement of local communities;
- Regional institutions and arrangements should be developed to enhance security co-operation;
- International action should be encouraged to prevent armed conflict, step up demining and support peace-building and mediation efforts, including demobilization, disarmament and the reintegration of former combatants – increasingly this includes co-operation to stem the proliferation of small arms.

#### *Mali and the “Security First” approach to development*

International donors have recently adopted an innovative approach in Mali, one of the poorest countries in the world. The armed conflict between a coalition of Tuareg groups and the government armed forces ended after a peace accord in April 1992. Although the international community was not involved in mediation to achieve this accord, in October 1993, the president of Mali asked the United Nations for assistance in the collection of illegal light weapons proliferating in the country and the whole region. The peace accord was threatened in the north of Mali in 1994 and US\$200 million in aid commitments had been suspended because of insecurity in the area.<sup>43</sup>

This led to a major re-evaluation of government policy thereafter. In March 1996 the Mali government burned 3,000 collected weapons at a symbolic “Flame of Peace” ceremony in Timbuktu. The wider question of civil-military relations in Mali were then addressed at a three-day international seminar involving governmental and civil society representatives in July 1996 in Bamako. The major justification for such a seminar was the need to impress the armed forces with democratic culture in a society that has been profoundly marked for decades by military dictatorship. Also, there was a need to enrich

military training curricula at a time when about 2,000 former Tuareg rebels were being trained for subsequent integration into the uniformed forces.

The seminar was held under shared auspices of the UN and the Malian government, and included high-ranking officers of the uniformed forces, civil servants, members of parliament, representatives of women's associations and other civil society groups. The audience was briefed on foreign experiences with civil-military relations by experts from the United States, Canada, Germany and South Africa, and by representatives of the United Nations, the Organization for African Unity (OAU), *Accord de non-agression et d'assistance en matière de défense* [Accord on Non-aggression and Assistance in Defense Matters (ANAD)]\* and the Geneva-based United Nations Centre for Human Rights, as well as representatives of neighbouring countries. The discussion centred on a draft code of conduct prepared by retired Dutch Brigadier-General Hennie van der Graaf along the lines of the Code of Conduct on Politico-Military Aspects of Security adopted by the OSCE States in December 1994. (see Appendix 1 for the full text of the Code).

The underlying basis of the civil-military code is that the armed forces will not endanger the basic liberties they are meant to protect according to international human rights and humanitarian law, and that the role of the army in internal security be kept to a strict minimum, leaving this to professional law enforcement agencies. Parliament has to play a significant role in legislating on defence and security matters, such as the formulation of the national strategy, budget approval and control of spending. However, the civil government should not unduly interfere in military matters that are the professional property of the military, i.e. in their internal management. On the other hand it was stressed that civilian control over the military presupposes a sufficient degree of civilian expertise on defence and security matters, and so mutual awareness programs between the military and civil society are necessary to promote a deeper understanding of each others' obligations under the code.

In November 1996, the UNDP and other UN agencies, in collaboration with the Mali government, held an international conference in Bamako attended by delegations from 12 West African states, donor governments and NGOs, at which a range of "security first" issues, including the Mali civil-military code, were discussed. The enormity of this task was highlighted in Mali in May 1977, when it was reported that numerous incidents of excessive use of force, arbitrary arrests and torture were carried

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\* ANAD is a security umbrella organisation for francophone West African states. (Ed.)

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out by the Mali security forces against leaders and supporters of a coalition of opposition parties.<sup>44</sup>

## VI. South Africa: the challenge of community policing

Many assumed that post-apartheid South Africa would provide a promising picture of police reform, given the country's resources and general commitment to human rights and democracy, but progress there has been painfully slow and fraught with difficulties.<sup>45</sup> Apartheid policing, in the colonial pattern, was principally concerned with keeping black South Africans out of so-called white residential and business areas, unless they had legal passes to be there. Most police stations were in white areas. Very few resources were spent on responding to crime in areas where black South Africans lived. As collective resistance to apartheid escalated, the police extended their paramilitary role in black areas and the army was used on an increasingly regular basis for violently repressive actions. At the same time, private security companies mushroomed and by the end of apartheid employed about three times as many officers as the official police, mostly in white areas. Skills such as the collection of evidence were neglected in favour of racist procedures of surveillance, crowd control and interrogation. Black South Africans responded to this repression and neglect, as well as to very high rates of violent crime within black communities, by establishing whatever local dispute resolution and mediation structures they could muster. Access to small arms was widespread.

Since the democratic elections in 1994, laws were reformed and the concept of the Community Policing Forum (CPF) became enshrined in the South African Constitution. Some NGOs tried to help communities establish CPFs, and attempted to promote human rights amongst police officers to improve relations between the police and the community.<sup>46</sup> These efforts sought to educate community members on police procedures and also train police in basic community policing. The function of CPFs is to:

- promote accountability of the police to the local community;
- promote co-operation between the community and the police;
- monitor effectiveness and efficiency of the police;
- examine and advise on police priorities;
- request inquiries into policing matters;
- evaluate the provision of police services.

However, the new Government focused its resources on military reform and failed to take early steps to deprive political factions of illicit arms and properly regulate those guns that were licenced. As the old South African police service crumbled and access to the old white and business areas increased, reported gun crime increased dramatically to levels exceeding those in most countries. Organized criminal syndicates with regional and international networks grew in strength.<sup>47</sup>

Initially, the government mainly responded at the policy level, and operational improvements such as the creation of a national police firearms unit and much better police crowd control had a limited (although important) impact.<sup>48</sup> The question of shifting security expenditure to create a genuine community-based police service was not one of the outcomes of the public review of South Africa's Defence White Paper. Rather, the favoured concept of security led to a government decision to buy major conventional arms from the UK, Sweden and other European countries worth roughly US\$480 million.<sup>49</sup>

Nevertheless, a National Crime Prevention Strategy (NCPS) was proposed by the new Ministry of Safety and Security. This set out to challenge the conventional wisdom that human security was only about policing. It highlighted four priorities: (i) the development of community policing and better criminal investigations (ii) public education of the causes of crime, involving NGOs, churches, trade unions and local community bodies (iii) changes in environmental structures to prevent crime; and (iv) mechanisms to tackle organized crime and border control.

There have been numerous obstacles to the effective implementation of the NCPS and the community police concept.<sup>50</sup> Insufficient resources were made available to police and communities to pursue all of these ambitious strategies, despite some assistance from donor countries such as the UK, Belgium and the Netherlands. Resources for training, especially of criminal investigators, and improving police station and facilities were provided, but resources for wider societal programs to promote crime prevention in terms of human rights were neglected. Insufficient oversight of the police by provincial legislators compounded the lack of co-operation in the development of CPFs. Police training courses in human rights were attempted, but attendance by police officers was very low, signalling a lack of enthusiasm. In some areas, there were attempts by political factions and even criminal gangs to take over CPFs. It was reported that CPFs tended to be least successful in more rural areas affected by political factionalism and a very low police presence.<sup>51</sup>

The continued proliferation of private security in the white and new wealthy multiracial suburbs has made the fulfillment of NCPS crime prevention strategies more difficult. In addition to private security guards, large companies have begun to donate resources such as vehicles and buildings to local police in return for priority services. Such privatisation denies resources overall to the poorer areas and has little impact on the crime rates in South Africa.<sup>52</sup>

Police in South Africa at the local level, especially in black communities, still lack basic resources and training. They are demoralized and under-resourced compared to private security companies. Many talented officers have left the police service as a result. Black South Africans remain overwhelmingly the victims of violent and property crime. Furthermore, police appear to resort to excessive force that threatens human rights - it was reported that, from April to December 1997, there were more than 300 deaths in police custody. Criticisms of the police for high crime and low detection rates increasingly brings the response by officers that human rights safeguards in South Africa's constitution should be loosened. The alternative of genuinely involving local communities in crime prevention is neglected.

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These failings can also be found in crime prevention strategies in other developed societies such as the US and it is therefore problematic that US law enforcement agencies have been some of the main foreign advisers of the South African Government. It is ironic that recent data from the US has shown that community policing, which makes citizens allies of the police, is thriving in many American cities, for example Chicago, San Diego, Fort Wayne, Indiana, and Fort Worth, Texas. Based on statistics alone, several of these cities have surpassed New York City, the home of the "zero tolerance" tough cop approach, in reducing crime.<sup>53</sup>

### ***Reforms in the United Kingdom***

*The importance of police reform for the removal of weapons from society and an end to their misuse against civilians by government forces is also at the heart of current efforts by the UK and Irish governments to secure a lasting peace in Northern Ireland. The decommissioning of arms held by non state Catholic-Republican and Protestant-Royalist-Unionist forces has become a major sticking point in the process in 1999, with the IRA in particular refusing to disarm prior to other changes which would guarantee the safety and security of republicans. Human rights organisations in Northern Ireland have identified the need for radical reform of the police (which is 92% Protestant) if the Catholic communities, as well as other vulnerable persons such as women, are to regain confidence in impartial law enforcement.<sup>54</sup>*

*On 10 September 1999, the 128-page report of the Patten Commission was released in the UK. It called for structural reform of the Protestant-dominated police force in Northern Ireland (currently known as the Royal Ulster Constabulary or RUC). The Patten Commission held over 40 public meetings, attended by over 10,000 people, and received about 2,500 written submissions. The Commission members were able to see evidence of previous RUC violations, such as reports into the RUC's shoot-to-kill policy in the 1980s, and found that the human rights training of the RUC lagged behind other countries. The report stated that the RUC has been identified by Catholics "not primarily as upholders of the law but as defenders of the state...this identification of police and state is contrary to policing practice in the rest of the UK." The 175 recommendations in the report include a call to raise the Catholic composition of the police from its current 8% to 30% in the context of a reduction in the overall size of the force from 13,000 to 7,500 (if peace holds), a commitment to a human rights code of ethics for every officer, and a focus on community policing. Other recommendations include a representative police board and district police partnership boards which would include republicans, increased cooperation with the Irish Republic police, the merging of the special branch and CID branch, and a change in the name and symbols of the force to remove its Royalist identification.<sup>55</sup>*

*The UK government accepted the report's recommendations in principle and a further consultation period will continue until November. The report comes in the wake of an increasing recognition in mainland UK that community policing is the only way to genuinely police by consent and that the UK police have a long way to go to achieve this in practice. The main Royalist political leaders in Northern Ireland rejected the report, but focused mainly on the symbolic changes, while the republican Sinn Fein movement, which had called for the dissolution of the RUC, remained sceptical.<sup>56</sup>*

## Conclusion

A fundamental obstacle to tackling small arms proliferation is the lack of accountability and training of military, security and police personnel in many poorer countries. Funding is often inadequate and infrastructure chronically neglected. There is an urgent need for new approaches. Traditional analyses do not perceive security as first and foremost a human right, and a necessary prerequisite for sustainable development. Or, to put it another way, they do not perceive human security as the foundation of state security. All too often the analysis of military, security and police relations, as well as arms proliferation and the supply of other security equipment and services, is focused exclusively on one sector or agency, ignoring the question of how the combined services operate in relation to one another.

From colonial times, law enforcers in many parts of Africa were favoured by the rich and powerful. Because of poor training, they have simply not been aware of their responsibilities under international human rights standards relating to law enforcement. Low pay and appalling living and working conditions, as well as poor management and oversight, have led to corruption in many forces. Inadequate or corrupt justice systems contribute further to the abuse of police and prison powers. Prisoners are held for years without trial, and arrests and releases are subject to bribery.

Even in more developed Commonwealth countries, the armed forces have sometimes engaged in law enforcement without proper training. Often, policing could not be effective because officers were so divorced from local communities. If progress is to be made in providing security and removing small arms, governments must begin by making a very clear distinction between military and policing functions. This distinction is more difficult in countries that rely on gendarmes, national or presidential guards and paramilitary units for internal security. In any case, all forces must have clear codes of conduct incorporating international human rights standards, backed up by legal and disciplinary procedures.

A holistic approach to reform and building institutions responsible for defence and law enforcement is undoubtedly the only way to stem the tide of small arms proliferation and abuse in countries affected by violent crime and conflict. This change can be achieved at relatively low cost, provided it is firmly rooted in international human rights standards and humanitarian law. Overcoming the widespread ignorance and sometimes



deliberate disrespect for these agreed global norms is the biggest challenge to successfully promoting security sector reform. It requires large-scale education programs and NGO involvement, as well as the cooperation of authorities in charge of defence forces and law enforcement agencies. Personal security concerns of ordinary people trapped in cultures of violence need to be the starting point for any considerations of national or regional security, and of the removal of weapons from society.

The top priority for institutional reform and development should be the creation of community-based police services, firmly rooted in international human rights standards (see the basic standards summarized below in Appendix 2), and a sustained shift away from militarized policing. States should develop and incorporate into law a national civil-military code, such as the proposal agreed in Mali (see Appendix 1 below). This should be coupled with particular measures to tackle the proliferation and misuse of small arms (including ammunition) as well as other weapons, such as artillery, armoured vehicles and military helicopters, which are used for serious human rights violations. Finally, there should be a review of the extent and impact of the privatization of security services in poor countries, and concerted action taken to make any such services fully accountable to recipient and home governments.

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## Appendix 1

### A. Code of Conduct for the Armed Forces

*The following code was agreed in an international seminar on civil-military relations held in Mali in July 1996, held under the auspices of the Malian Government and the UN, involving the OAU and other governmental and civil society representatives.*

1. The military is at the disposal of political authorities. Political subordination must be understood and accepted by all.
2. The rights and duties of all armed and security forces personnel must be codified in national law.
3. The recruitment and mobilization of armed and security forces personnel will be in accordance with obligations and commitments with regard to human rights and fundamental freedoms.
4. The founding texts on human rights, international humanitarian law and the law of armed conflict will be taught and disseminated throughout the country. The content of these texts will be woven into military training programmes and into existing rules and regulations.
5. The armed and security forces personnel will receive specific instruction on the law, rules, conventions and commitments pertaining to armed conflict. They will have to be aware that they are individually held accountable for their own actions with regard to national and international law.
6. All military personnel vested with command authority will exercise such authority in accordance with the relevant laws. They will be held individually accountable under those laws. No order shall be given in contradiction with national or international law. Moreover, the responsibility of superiors does not exempt subordinates from any of their own individual responsibilities.
7. The armed and security forces personnel will be able to enjoy and exercise their human rights and fundamental freedoms as defined by international law and by relevant constitutional and legal provisions.
8. The armed and security forces personnel will be incorporated, commanded, trained and equipped in conformity with the provisions of international law and with commitments regarding the use of force in armed conflicts, including the Hague Conventions of 1907 and 1954, the Geneva Convention of 1949 and the Additional Protocols of 1977, and the 1980 Convention on the Use of Certain [Inhumane] Conventional Weapons, as well as with the requirements of the services.

9. The State will ensure that its defence policy is in accordance with international law pertaining to the use of force (including in internal conflicts) and with the provisions to be elaborated in the present Code.
10. The State will ensure that any decision to assign its armed and security forces to internal security missions is in conformity with constitutional and legislative procedures and regulations. Such missions will be carried out under the effective control of political and parliamentary authorities, and subject to the rule of law. If the resort to force cannot be avoided for preserving internal security, the State will ensure that it remains strictly commensurate with the requirements of the assigned mission. The armed and security forces will take all due care to avoid injury to civilians or damage to private property.
11. Except for cases defined by constitutional and legislative provisions and regulations, no use will be made of armed and security forces to restrict the peaceful and lawful exercise of individual and civil rights, either by individuals or by group-representatives, nor to deprive them of their national, religious, cultural, linguistic or ethnic identity.
12. The maintenance of order being essentially the task of the security forces, it is recommended that the role of the army in internal order be kept to a strict minimum.
13. The military profession must be held in high regard, with due recognition of its usefulness, competence and efficiency. Despite their high qualifications, the military are little assimilated into society, and civilians owe them all due consideration. Enhancing the image of the military in our evolving and modernizing society indispensably requires a role played by the State.
14. This evolution and modernization of society entails increasing requirements both for internal and external security. The State will thus have to carry out a modernization of the armed and security forces and provide them with effective equipment to match their new missions.
15. Such an enhancement of the military profession and the necessary modernization of the armed forces will require the State to elaborate texts defining the rights, responsibilities, incentives and advantages granted to the armed and security forces.
16. In order to preserve the political neutrality of the armed and security forces, it is advisable that the State should not nominate military personnel to political office.
17. The armed and security forces will observe the strictest political neutrality. Their individual members will exercise their civil rights within the limits of legal restrictions.
18. The whole of the armed and security forces will in all circumstances be under the effective control of the constitutionally established political authorities.
19. In order to harmonize relations between civilians and the whole of the armed and security forces, and in order to promote stability, national information and awareness programmes will be organized in pursuit of mutual confidence between the military and the civilian population.
20. By means of constitutional authorities vested with democratic legitimacy, the society will in all cases be able to exercise effective control over the armed and security forces.

## Appendix 2

**Basic Standards on Human Rights for Law Enforcement Officials** Police members and staff of Amnesty International drew up the following checklist from United Nations standards on law enforcement, criminal justice and human rights. The full text is available from Amnesty International in different languages. The police and all others performing law enforcement tasks should fully respect these basic standards under all circumstances. Exceptional circumstances such as state of emergency or any other public emergency do not justify any departure from the standards.

1. Everyone is entitled to equal protection of the law, without discrimination on any grounds, and especially against violence or threat. Be especially vigilant to protect vulnerable groups such as children, women, the elderly, refugees, displaced persons and members of minority groups.
2. Treat all victims of crime with compassion and respect. In particular protect their safety and privacy.
3. Do not use force except when strictly necessary and to the minimum extent required under the circumstances.
4. Avoid using force when dispersing unlawful but non-violent assemblies. When dispersing violent assemblies, use force only to the minimum extent necessary.
5. Lethal force should not be used except when strictly unavoidable in order to protect your life or the lives of others.
6. Arrest no person unless there are legal grounds to arrest that person and it is carried out in accordance with lawful arrest procedures.
7. Ensure all detainees have access promptly after arrest to their family and legal representative and to any necessary medical assistance.
8. All detainees must be treated humanely. Do not inflict, instigate or tolerate any act of torture or ill-treatment in any circumstances, and refuse to obey any order to do so.
9. Do not carry out, order or cover up extrajudicial executions or “disappearances”, and refuse to obey any order to do so.
10. Report all breaches of these guidelines to your senior officer and to the office of the public prosecutor. Do everything within your power to ensure steps are taken to investigate these breaches.

<sup>1</sup> A E Hills, "Policing in Fragmented States", *Low Intensity Conflict and Law Enforcement*, Volume 5 Number 3, 1996. For example of neglect, see the proceedings and papers of two recent major international conferences supported by the United Nations on light weapons removal in Stockholm in March 1999 and security sector reform in Bonn, August 1999. No law enforcement officers were invited and no conference papers or specific agenda was time devoted to the issue of failed policing or solutions to that problem.

<sup>2</sup> Ref UN Small Arms Reports

<sup>3</sup> Erwin Schmidl, "Police in Peace Operations", *Informationen Zur Sicherheitspolitik*, Vienna, 1998. See also Robert Oakley, Michael Dziedzic and Eliot Goldberg, "Policing the New World Disorder: peace operations and public security", National Defense University Press, Washington DC, 1998

<sup>4</sup> For an indication of the extent of official police and paramilitary abuses, see the annual country reports of Amnesty International, Human Rights Watch and the US State Department on human rights.

<sup>5</sup> Reiner, "The Politics of the Police", Sussex, Wheatsheaf Books, 1985, describes the process of building British 'policing by consent'.

<sup>6</sup> A description of this police history in Nigeria is given by Tamuno Tekano, "The Police in Modern Nigeria", Ibadan, University Press, 1971

<sup>7</sup> *World Bank News*, 18 July 1996

<sup>8</sup> United Nations Information Service on 3 December 1998

<sup>9</sup> Information here is drawn from a draft report written by the author on an Amnesty International seminar entitled "The Influences of Military, Security and Police Relations on Human Rights in Africa" held in London on 27-28 June 1997.

<sup>10</sup> UN Information Service, op cit

<sup>11</sup> Peter Lock, "Africa, military downsizing and the growth in the security industry", in "Peace Profit or Plunder", edited by Jakkie Cilliers and Peggy Mason, Institute of Security Studies and Canadian Council for International Peace and Security, 1999.

<sup>12</sup> "Nigeria's Delta State finds it hard to collect arms", *Xinhua*, 16 June 1999

<sup>13</sup> For the recent experience, see for example, Human Rights Watch "The Price of Oil", New York, 1999

<sup>14</sup> Quoted by Innocent Chukwuma, "Police Powers and Human Rights in Nigeria", *Law Enforcement Review*, Lagos, January-March 1998

<sup>15</sup> Clement Nwankwo, Dulue Mbachu and Basil Ugochukwu, "Human Rights Practices in the Nigerian Police", Lagos, Constitutional Rights Project, 1993

<sup>16</sup> *Ibid*

<sup>17</sup> For descriptions of oil company security see Human Rights Watch, op cit, and Amnesty International, *Nigeria: Time to end contempt for Human Rights*, London, 1996

<sup>18</sup> John Akpan, "Crime Control: the Limits of Task Forces", *Law Enforcement Review*, Lagos, January-March 1998

<sup>19</sup> Nwanguma Okechukwa, "Human Rights Abuses by Special Task Forces", *Law Enforcement Review*, Lagos, January-March 1998.

<sup>20</sup> *Guardian* on Sunday, "Tales of Assassins, Robbers and their Guns", 22 August 1999.

<sup>21</sup> *The Sunday Telegraph*, "Truth panel will call Nigeria's strongmen to account", 22 August 1999

<sup>22</sup> See Jennifer Schirmer, Harvard University Press, 1998, for a detailed study of this ideology in Guatemala.

<sup>23</sup> Extract from "Fighting Retreat: Military Political Powers and Other Barriers to Africa's Democratic Transition", (Washington, DC: Demilitarization for Democracy), July 1997.

<sup>24</sup> Letter from Baroness Chalker, Minister of State at the Foreign and Commonwealth Office, to Mr Roy Hattersley, MP, 22 June 1994.

<sup>25</sup> James Woods, "Mozambique: The CIVPOL Operation", in Oakley, Dziedzic and Goldberg, op cit

<sup>26</sup> Hansard, 2 February 1995

<sup>27</sup> Hansard, 2 February 1995

<sup>28</sup> Ralph Crawshaw former Chief Superintendent, Essex Police Constabulary, 'Human Rights and the Theory and Practice of Policing', Human Rights Centre, University of Essex, 1997

<sup>29</sup> Amnesty International [UK], "Made in Britain: How the UK makes torture and death its business", February 1977

<sup>30</sup> Oakley, Dziedzic and Goldberg, op cit

<sup>31</sup> Alex Vines, "Disarmament in Mozambique", *Journal of Southern African Studies*, Volume 24 Number 1, March 1998; Eric Berman, "Managing arms in peace processes: Mozambique", UNIDIR, New York and Geneva, 1996

<sup>32</sup> Vines, op cit. Chris Smith and Alex Vines, "Light Weapons Proliferation in Southern Africa" Centre for Defence Studies, London, November 1997.

<sup>33</sup> Chris Alden, "The UN and the Resolution of Conflict in Mozambique", *The Journal of Modern African Studies*, Cambridge University Press, Volume 33, Number 1, 1995;

<sup>34</sup> Authors interviews with Mozambique police, 1999

<sup>35</sup> Smith and Vines, op cit

<sup>36</sup> Martinho Chachiua, "Operations Rachel 1996-99", Institute for Security Studies, Pretoria, June 1999

<sup>37</sup> Information from Jakkie Potgeiter of the Institute of Security Studies, Pretoria

<sup>38</sup> Peter Lock, op cit

<sup>39</sup> Cilliers and Mason (eds), op cit

<sup>40</sup> David Shearer, "Private Armies and Military Intervention", Institute of International Strategic Studies, Adelphi Paper 316, London 1998; Herb Howe, "Private Security Forces and African Stability: the Case of Executive Outcomes", *The Journal of Modern African Studies*, Volume 36, 1998.

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<sup>41</sup> Excerpted from “*The Right of Peoples to Self-Determination and its Application to Peoples Under Colonial or Alien Domination or Foreign Occupation: report on the question of the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination*”, United Nations Commission on Human Rights, E/CN.4/1995/29, 21 December 1994

<sup>42</sup> See Nicole Ball, “Spreading Good Practices in the Security Sector: Policy Options for the British Government”, Saferworld, London, December 1998

<sup>43</sup> Joseph Smalldone, “*Mali’s proposed small arms moratorium: a West African regional arms control initiative*”, conference paper for the American Academy of Arts and Sciences, December 1997.

<sup>44</sup> “*Mali: basic liberties at risk*”, Amnesty International, November 1997 (AFR 37/01/97)

<sup>45</sup> This analysis draws heavily on discussions with members of Lawyers for Human Rights and on Mark Shaw and Clifford Shearing, “*Reshaping Security: an examination of the Governance of Security in South Africa*”, African Security Review, Volume 7, Number 3, 1998

<sup>46</sup> For the variety of initiatives, including those involving business, see Sarah Oppler, “A Practical Guide to Local

Partnership Policing”, Insitute for Security Studies and Pick and Pay Supermarkets, 1998

<sup>47</sup> Anthony Minaar, “*A Plague of Guns*”, Crime and Conflict, Issue 14, Durban, 1998; also see Smith and Vines, 1997, op cit

<sup>48</sup> Antony Altbeker, “*Solving Crime: the state of the S.A.P.s detective service*”, Institute for Security Studies, November 1998

<sup>49</sup> Victor Mallet, Financial Times, London, 8 January 1999

<sup>50</sup> Wilfred Mbhele, “*Community Police Forums: why aren’t they working*”, Crime and Conflict, Issue 14, Durban, 1998

<sup>51</sup> Discussions with Ted Legget, editor of Crime and Conflict magazine, op cit

<sup>52</sup> Shaw and Shearing, op cit

<sup>53</sup> Fox Butterfield “*Citizens as Allies: Rethinking the Strong Arm of the Law*”, New York Times, 4 April, 1999

<sup>54</sup> Mary O’Rawe and Linda Moore, “*Human Rights On Duty*”, Committee for the Administration of Justice, Belfast, November 1977

<sup>55</sup> Patten Commission, “*A New Beginning*”, HMSO, September 1999

<sup>56</sup> John Mullin, “Politics Dogs the Brave New World”, The Guardian UK, 10 September 1999

Kate Joseph

## CASE STUDY 1

### **Northern Ireland on the road to peace**

Northern Ireland has been plagued by conflict and unrest for decades. From Britain's conquest of Ireland in the seventeenth century, through the bloody partition in 1920, when the southern Republic of Ireland achieved "Home Rule", and eventually independence, to the beginning of the "Troubles" in the 1960s and terrorism in the 1970s, Northern Ireland has been a society characterized by conflict. The paramilitary forces behind the terrorist atrocities of recent years are still heavily armed and unwilling to surrender their weapons, even though Northern Ireland is now ostensibly at peace.

#### *The Good Friday Agreement*

When the Good Friday Agreement of April 1998 was signed, it was intended to bring together the Republicans – those who believe in a united Ireland – and the Unionists, who want Northern Ireland to maintain its ties to Great Britain.<sup>1</sup> Under the agreement, the right of the people of Northern Ireland to choose their government and their status was

acknowledged. Provision was made for the election of a 108-member assembly, the establishment of formal relations between Britain, the Republic of Ireland and Northern Ireland, and the early release of paramilitary prisoners. Although problems have dogged its implementation, the agreement was supported by the paramilitary groups, which had declared a ceasefire only a few months previously.

The agreement was overwhelmingly endorsed by the majority of the Irish population – 71% in Northern Ireland and 94% in the Republic of Ireland – during a referendum held on 22 May 1998. Soon after, a Northern Irish Assembly was elected, in which the Ulster Unionists won 28 seats, the moderate Republican party, the Social Democratic and Labour Party (SDLP) 24 seats, and Sinn Fein, the political wing of the Irish Republican Army (IRA), 18. It seemed that Northern Ireland was on track for a representative government and a peaceful future.

## CASE STUDY 1

***Decommissioning***

The Omagh bombing, which killed 29 people in August 1998, put paid to much of this optimism. Moreover, in spite of the momentum gained during 1998, implementation of the agreement has been blocked by fundamental differences over the decommissioning of weapons. "Decommissioning" refers to the disarmament of the Northern Irish paramilitary groups, primarily the Irish Republican Army (IRA), the Loyalist Volunteer Force (LVF) and the Unionist Volunteer Force (UVF).

Strictly speaking, the Good Friday Agreement does not require the paramilitaries to decommission their weapons. Instead, the language used requires all sides to "reaffirm their commitment to the total disarmament of all paramilitary organisations" and "use any influence they may have to achieve the decommissioning of all paramilitary arms within two years." Gerry Adams, the leader of Sinn Fein, has contended that because decommissioning was not a part of the original peace deal, he cannot make promises on weapons handovers on behalf of the IRA. The head of the Ulster Unionists, David Trimble, has refused to sit in government with Sinn Fein as long as the IRA retains its weapons.

An independent report prepared by the international decommissioning body, headed by Canadian General John de Chastelain, asserted in July 1999 that decommissioning should begin as soon as possible and could be completed by May 2000.<sup>2</sup> Although many hoped that the report might kickstart the decommissioning process, the continuing deadlock makes a May 2000 deadline unlikely.

***What are the weapons of terror in Northern Ireland?***

Guns have been a constant presence in Northern Ireland since the outbreak of the troubles in 1916. During the 1960s, the explosion of violence that followed the civil rights movement signaled the beginning of a sustained flow of weapons into the region. In the ensuing decades, more arms were brought into Northern Ireland by the Royal Ulster Constabulary (RUC), the British Army, and various paramilitary groups, both republican and unionist.

Although all the Northern Irish paramilitary groups are heavily armed, the IRA has a bigger and more impressive arsenal. Included are around 600 Kalashnikov assault rifles, hundreds of grenades, around 15 surface-to-air missiles, flame-throwers, up to 50 rocket-propelled grenades, and five RPG



launchers.<sup>3</sup> In addition, the organization is thought to have in its possession a number of high-powered Barrett M82A1 12.7mm sniper rifles, smuggled in from the United States in the 1980s.<sup>4</sup> Explosives are the most important element in the paramilitary organisation's arsenal. The IRA is believed by security forces in both Northern and Southern Ireland to have between one and four tons of the plastic explosive Semtex. Most of these weapons are under tight IRA control, although the group has admitted that security had been breached and some arms might be in the hands of splinter organizations. By contrast, the weapons held by the Unionist paramilitary groups are mostly shotguns and older weapons, although they, too, own a fair amount of explosive.

*Where do the weapons come from?*

The IRA in particular has received weapons from many different sources, ranging from the Former Soviet Union to the Middle East. For example, in 1999, The Times reported, "the IRA acquired several of the Russian-made missiles through Libyan intermediaries some years ago to attack military helicopters."<sup>5</sup> In fact, the vast majority of arms have come from Libya and the United States. Recently, three Irish nationals were arrested in the United States, after the

discovery of weapons at Coventry airport bound for the Republic of Ireland. Between late April and early May this year, they bought some 26 handguns and six Mossberg .12 gauge shotguns from an American dealer, according to the FBI.<sup>6</sup> There seems little doubt that the weapons were bound for Northern Ireland. Throughout the "troubles", the RUC, the British Army and, since 1997, the British security forces, have made exhaustive efforts to stem the flow of weapons into Ireland, to track the route of illegal weapons, and to find and confiscate caches of arms. The agencies involved work with INTERPOL, the international police organization.

There are early indications that some elements are still trying to circumvent the decommissioning process by bringing in new weapons. For example, Sunday Times recently reported that the IRA might be trying to smuggle in new weapons so that they can hand in old stocks, thereby maintaining their arsenals without halting the prisoner release programme. According to the newspaper, "The MI5 assessment... said the IRA had established a network in America to buy 'clean' guns that could be used without jeopardising the release of IRA prisoners."<sup>7</sup>

## CASE STUDY 1

*Where does the peace process go from here?*

A recent spate of Republican violence has put the peace process into further jeopardy. There have been calls for the Northern Ireland Secretary, Mo Mowlam, to cease the prisoner release programme, due to the IRA breaking the cease-fire. A meeting under the chairmanship of former US Senator George Mitchell, who brokered the original agreement, held in early September 1999, was ultimately unsuccessful.

Nevertheless, the Good Friday Agreement showed how much the present generation

desires a peaceful resolution to the conflict. Although the society is primed for peace, the one major stumbling block remaining is the volume of guns in circulation. The fate of the peace process, and the transformation of Northern Ireland into a peaceful society, rests on the success of decommissioning. If the paramilitary groups can be persuaded to give up their weapons, much progress can be made towards this goal. While it is essential that the authorities work to ensure that more weapons do not trickle into the region, efforts and energies must be focused on reviving the stalled decommissioning process.

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<sup>1</sup> The agreement can be found on the website of *The Irish Times*, at <http://www.ireland.com/special/peace/agreement/index.htm>.

<sup>2</sup> "Arms report offers new hope for peace", BBC News Online, 2 July 1999.

<sup>3</sup> "Guerilla Arsenals Haunt N. Irish Peace Talks", *Reuters*, 29 June 1999.

<sup>4</sup> "Sniper unit equipped with deadliest rifle ever made", *The Irish Times*, 20 March 1999.

<sup>5</sup> "Missile discovery adds pressure to Ulster peace talks", *The Times*, 13 April 1999

<sup>6</sup> "Guns smuggled to Ireland", BBC News Online, 28 July 1999

<sup>7</sup> "IRA smuggles sniper rifles 'to kill soldiers'", *The Sunday Times*, 29 August 1999

Wendy Cukier &amp; Tania Sarkar

## **Firearms Regulation and Human Rights in the Commonwealth**

*Criminal violence in South Africa has been defined as “the greatest threat to human rights” facing the young democracy. And much of this violence is fueled by the access to firearms*

It has been estimated that an average of more than 300,000 deaths occur each year as a result of the use of small arms in conflict. However another 200,000 deaths occur from firearms in countries which are nominally “peaceful.”<sup>1</sup> Violence fueled by firearms is not only a huge threat to the development of effective governance and lasting stability in post-conflict situations, it also undermines the security of democratic institutions in stable states. Firearms do not in themselves cause violence, regardless of the context (crime, conflict, domestic assault or suicide), but they increase its likelihood and severity. The presence and proliferation of small arms potentially affect us all, and the entire Commonwealth has a stake in controlling these weapons. While it is essential to control the accessibility of firearms, a comprehensive and integrated approach must address the conditions which create their supply and demand.

While “small arms” is the term used by those focused on conflict, while “firearm” tends to be used by those focused on crime and injury prevention, there is little to distinguish them on technical grounds. The UN Panel of Governmental Experts defines small arms as “revolvers and self-loading pistols; rifles and carbines; submachine-guns; assault rifles; light machine guns” – all of these are also firearms.<sup>2</sup> Moreover, from a public health perspective, it matters little whether the death from a weapon occurs in the context of war, crime or mental illness. Still, research, education and advocacy efforts related to “international gun control” and “small arms control” tend to run on separate tracks, despite their commonalities. Historically, domestic crime prevention experts, police and governments have been interested in international aspects of firearm controls insofar as

they affect domestic interests, for example, by fueling the illegal gun trade. International small arms control experts have recognized a strong link between peace-building and preventing the proliferation of firearms, but tend to focus on the issues related to controlling small arms in conflict or post conflict contexts.

The distinction between “gun control” and “small arms” is slowly eroding, however. The 1997 resolution of the United Nations Commission on Crime Prevention and Criminal Justice (hereafter UNCCPCJ) explicitly states that domestic firearm controls are a necessary component of an international strategy to check weapons proliferation. When we consider the deaths, injuries, and psychological harm caused by firearms, the issue is fundamentally one of human rights. Indeed, controlling firearm violence through appropriate legislative measures is part of a state’s obligation to protect its citizens’ human rights.

This chapter will discuss in **Part I** the implications of firearms for the realization of universal human rights. **Part II** will address the current reasons for and consequences of firearm violence in the Commonwealth. **Part III** will delve into legislative approaches to controlling the supply and accessibility of firearms in selected Commonwealth countries. Finally, **Part IV** will look at recommendations for an integrated approach to international cooperation.

## I. Laws, values, and human rights in the Commonwealth

In enacting firearms control legislation, states have acknowledged that in addition to its more tangible effects, law is the medium by which a society expresses its values and defines a code of conduct for its citizens. At the root of our world’s values are universal human rights, which are meant to permeate human interaction at every level, from the international to the local. The Commonwealth Heads of Government have likewise affirmed that human rights are the common foundation of the Commonwealth’s values.<sup>3</sup> Despite these core values, there is often vocal resistance to domestic controls designed to protect human beings from firearm violence by those relying on individual rights arguments. This is a difficult paradox, yet via domestic legislation, states must ensure that their own practices and policies with respect to firearms reflect a respect for universal human rights and community safety. International law is slowly evolving beyond its historical constraints so that increasingly, firearm control can be conceptualized within the realm of states’ obligations toward their citizens.

### *Firearms and human rights in the Commonwealth*

The most fundamental rights stated in the Universal Declaration of Human Rights, the principal document on international human rights, are the rights to life, liberty and security of the person. In the preamble of the Universal Declaration, freedom from fear is stated to be one of the highest aspirations of the common person. When peoples' lives are terrorized or extinguished by firearms, from stray bullets during either war or domestic conflict, the most basic of human rights are violated. Yet in the debate over gun control, a fair amount of emphasis tends to be placed on a supposed "right to bear arms," particularly in the United States, but also elsewhere in the Commonwealth.

Controversy remains over the American Second Amendment used by proponents of a "right to bear arms," and its possible origin in English common law. As in the United States, the Commonwealth legal tradition is based on English common law and it has been argued that Commonwealth countries have also inherited a right to bear arms from the English. In 1688, the English Parliament declared in the English Bill of Rights that "the subjects which are Protestants may have Arms for their Defense as suitable to their Condition and as allowed by Law."<sup>4</sup> This provision arose from the fact that centuries ago in England, keeping and bearing arms was a duty; England, lacking an army and police force,<sup>5</sup> relied upon private citizens to maintain order. During the reign of King James II, Catholics were allowed to keep arms, whereas efforts were made to disarm all Protestants; the Bill of Rights was intended to grant Protestants parity in this regard.<sup>6</sup> For contemporary relevance, the most important phrase to consider in the English Bill of Rights provision is "as allowed by Law." This means that any established right was subject to government regulation. It should also be noted that while a derivative of this 1688 pronouncement may have found its way into the U.S. Constitution, in the Commonwealth "the right to bear arms" does not have constitutional status. Notably, despite the existence of a right to bear arms in 17th century England, the English themselves have not hesitated since that time to pass strict gun control laws.<sup>7</sup>

Eleanor Roosevelt, often called the mother of the Universal Declaration of Human Rights, once posed the question, "Where...do universal human rights begin?" which she answered herself: "In small places, close to home." This statement is most ironic for the inner city resident who cannot leave his home after dark or to the battered woman whose husband keeps a shotgun under the bed. It is in the smallest places close to home that firearms interfere with the life, liberty and the security of individuals. It is also in the smallest places and the most local of contexts that the reach of international human rights has not been sufficient to provide legal protection to those at risk.

International law contains rules for states engaged in the use of force against other states<sup>8</sup> but currently does little to address the ubiquitous daily acts of violence that occur in peacetime.

The traditional concept of international human rights has been critiqued by many, especially from the feminist perspective. International human rights standards have their origin in liberal theory, which focused on the relationship between the individual and the state and inherently assumed that state power poses the primary threat to the human rights of individuals. Thus, rights standards have functioned to carve out and preserve a distinct “private sphere” free from state intervention; this was a “necessary safeguard aimed at preventing the totalitarian state from destroying the dignity of human beings.”<sup>9</sup> In maintaining the distinction between public and private, the assumption underlying international human rights law was that “...privacy was a neutral realm of human experience, and that there was no power hierarchy within the private space of the family that affected state interests.”<sup>10</sup> This conception of international human rights has been criticized because of its failure to consider the realities of vulnerable groups, particularly women. In the context of firearm controls, this has resulted in excessive emphasis upon the rights of gun owners. Allowing firearm violence to continue unchecked has not often been “problematized” because it represents extreme non-intervention in the private sphere – the essence of liberal human rights. Yet, with the domestic sphere the most likely place for women around the world to encounter violence, the distinction between the public and private spheres has left women unprotected where they are most at risk.<sup>11</sup>

## II Vulnerable populations and human rights “loopholes”

### *Women*

The costs of firearm proliferation to vulnerable populations are in particular high in both industrialized and developing contexts. Women are seldom users of firearms, but they are primary victims both in the context of war and in domestic violence. Guns figure prominently in the cycle of violence against women and children throughout the Commonwealth, from countries such as Canada and Australia to South Africa. In Australia, the most comprehensive study on homicide has revealed that nearly 35% of gun homicides occur within intimate relationships (foremost, marriage) and in most cases, women are the victims.<sup>12</sup> Firearms play a prominent role in violence against

women even where physical injury or death do not occur. Women questioned in several studies of domestic abuse have cited examples of intimidation tactics made life-threatening by the presence of a gun.<sup>13\*</sup> Patterns of violence are eerily similar from country to country. For example, domestic violence specialists in Alberta, Canada and Tasmania, Australia describe examples of abusive men cleaning their guns or shooting the family pet during the course of an argument.<sup>14</sup> In South Africa, the South African Police Service's (SAPS) crime statistics are not currently collected in a manner which allows analysis based on gender, but qualitative studies and the statements from front line women's shelters suggest that, as in other countries, firearms figure prominently in violence against women.<sup>15</sup>

### *Children*

Firearms are the third leading cause of death among 14–25 year-olds in Canada, and Canada is fifth among industrialized nations in the rate of children under the age of 14 killed with firearms. In some provinces, the rates are considerably higher.<sup>16</sup> In many developed countries, firearms are a leading cause of mortality among children and youth.<sup>17</sup> A survey of children living in women's shelters in New Zealand revealed that 50% of these children had been subjected to violence and that 22.5% of these children had been threatened or assaulted by guns.<sup>18</sup> This group also represents a large percentage of the victims of civil conflict worldwide.<sup>19</sup>

### *Victims of Poverty*

There has been a direct link made between poverty and gun-related violence. A number of studies have revealed that the poor are more likely to be victims of violence because they are more likely to live in crime-ridden areas and lack the means to protect themselves.<sup>20</sup>

These dimensions of the firearm control discussion have been under-acknowledged. It is only in recent times that "women's rights" and "children's rights" have gained recognition as "human rights". While international human rights law has recently begun to include crimes against women as war crimes, crimes against women in peacetime have historically suffered a lack of international legal recognition.<sup>\*\*21</sup>

\* These include: making direct threats at gun point, shooting the family dog as a warning, sleeping with the gun nearby and threatening to shoot the wife if she tries to sneak away, wielding the gun during discussions about custody of the children, conducting mock executions (holding the gun to the victim's head and pulling the trigger), and getting the gun out and cleaning it during or after arguments.

\*\* Catharine MacKinnon has written of the role of gender in conflict, and her work represents one aspect of the literature on this subject: "Wartime is largely exceptional in that atrocities by soldiers against civilians are always state acts. But men do in war what they do in peace, only more so. And the more a conflict can be framed as *within* a state, as a civil war, as social, as domestic, the less human rights are recognized as being violated." "Crimes of War, Crimes of Peace," in Stephen Shute & Susan Hurley (Eds.), *On Human Rights*, New York: Basic Books (1993).

The gender dimension of firearms use is, however, gaining legal recognition. In a 1998 judgment of the Alberta Court of Appeal regarding Canada's *Firearms Act*, the majority noted the following:

*Though gun control affects all Canadians, the point has been made that women tend to experience guns and gun possession differently than men. As with other legal issues, perspective is vital. Focusing almost exclusively on property rights concentrates primarily on the owners and possessors of ordinary firearms. But equally important is the perspective of those put at risk by guns. It has been argued with considerable force that characterizing the law from the latter perspective is more consistent with equality rights...And the importance of interpreting legislation in a manner which is consistent with Charter values, including equality rights, has been affirmed by the Supreme Court of Canada.<sup>22</sup>*

International human rights are slowly progressing beyond the conception of the "negative state" (the right of freedom 'from'...) and are intervening in many areas which were once beyond international scrutiny.<sup>23</sup> The feminist movement contributed to the recognition that human rights can be violated not only through state action but also through state inaction. The United Nations Declaration on the Elimination of Violence Against Women requires states to "exercise due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women."<sup>24</sup> This means that states can be considered responsible for human rights violations caused by private actors and violence caused in the home.<sup>25</sup> Against this backdrop, states have an obligation to prevent firearm violence, especially in the home, through regulatory measures. Several jurisdictions, notably New Zealand, have implemented firearm regulations and prohibitions aimed at preventing domestic violence. Yet there is still a need for firearm control to be conceptualized as an area where the intervention of the state should be embraced, where legislating becomes a positive act to promote human rights rather than an infringement upon the liberties of human beings.

### III. The human costs of gun ownership in our societies

While the problem of gun use in the United States is well known, internationally, the dimensions of the problems vary considerably with the context. In some cases, such as South Africa, the principal concern is crime. In others, such as Canada, firearm suicides,



particularly among young people, exact a tremendous toll. In most countries, it seems that firearms figure prominently in violence against women.

Data on firearms-related death and crime are incomplete and often inconsistent.<sup>26</sup> However, recent studies by the United Nations and the Center for Disease Control have provided data for many countries in the world. One study comparing regions within Canada, the US, New Zealand, Australia and Great Britain showed that 92% of the variance in gun-related death was explained by the percentage of households with firearms. As rates of gun ownership increased so did gun death rates.<sup>27</sup> Many of these deaths are preventable. For example, Canada has the highest rate of legal gun ownership and the highest rate of firearm death in the developed Commonwealth, although it pales in comparison to the United States. In Canada, firearms are a major threat to public health and safety. Roughly 1,300 people are killed with firearms each year compared to 3,200 in automobile accidents. Most of these deaths, about 1,000, are suicides, followed by murder and unintentional injuries or “accidents.” Singapore, Hong Kong\* and the United Kingdom have much more restrictive laws, and as a result a lower rate of gun ownership and lower rates of gun-related deaths.

In medium and low income Commonwealth countries in post-conflict reconstruction (contexts where policing and customs infrastructures remain weak), the rates of firearms violence are more variable. In addition, there is less information about the availability of firearms. For example, in South Africa, which has the highest rate of gun death in the Commonwealth (over 26.63 per 100,000), estimates of legal gun ownership are relatively low (5% of households), but many of the guns are handguns and rates of illegal possession are believed to be quite high. While much has been made of the decline in “political” violence in South Africa since the end of apartheid, the toll of overtly political violence is dwarfed by the costs of other forms of violence: 15,000 people were killed from 1990-98 in acts deemed “political”<sup>28</sup> while 25,000 South Africans were murdered in 1997 alone.<sup>29</sup> In contrast, countries such as Malaysia, Mauritius and Tanzania report very low rates of gun-related death. In many developing countries and post-conflict situations where socio-economic development is critical, many governments such as South Africa’s have recognized the importance of gaining control of firearms and are engaged in legislative reforms.

\* As a Dependent Territory of the UK until July 1997, Hong Kong was a member of the Commonwealth. It is now a Special Administrative Territory of the People’s Republic of China, and maintains no formal links with the Commonwealth. (Ed.)

Table I Selected Firearms Data for Commonwealth Countries<sup>30</sup>

Country	Firearm Homicide Rate (per 100,000)	Firearm Suicide Rate (per 100,000)	Firearm Fatal Accident Rate (per 100,000)	Total Firearm Death Rate (per 100,000)	Firearm robbery rate (per 100,000)	Legal Ownership rate (per 1000)	Legal Firearm Ownership Rate (% households)
<b>United States of America</b>	6.24	7.23	0.58	14.05	N/a		41
<b>High Income Commonwealth Countries</b>							
Australia	0.36	2.38	0.11	2.85	11.53	195.9	16
Canada	0.6	3.35	0.13	4.08	22.76	241.48	26
Hong Kong	0.12	0.07	0.0	0.19	N/a	N/a	N/a
New Zealand	0.22	1.8	0.29	2.31	6.43	N/a	20
Singapore	0.24	0.07	0.17	0.24	0.21	0.24	0
United Kingdom	0.13	0.33	0.02	0.18	7.72	36.58	4
<b>Other Selected Commonwealth Countries</b>							
India	N/a	0.06	0.26	N/a	N/a	N/a	N/a
Jamaica	18.23	0.36	0.12	18.72	97.69	7.35	N/a
Malaysia	0.2	0.0005	0.08	0.29	3.00	N/a	N/a
Mauritius	0.0	0.09	0.09	0.19	N/a	N/a	N/a
South Africa	26.63	N/a	N/a	26.63+	N/a	84.41	5
Tanzania	0.5	0.02	0.02	0.53	2.32	2.33	N/a
Trinidad and Tobago	3.42	0.08	0.54	4.04	102.56	6.06	3
Zambia	5.37	0.15	0.02	5.54	43.57	N/a	N/a

*Access to firearms and death rates*

When other factors are held constant, firearms death rates increase with increased firearms ownership.<sup>31</sup> In general, arming civilians for self-protection only accelerates levels of violence. One American study, for example, concluded that the homicide of a family member was 2.7 times more likely to occur in a home with a firearm than without. Keeping one or more firearms was associated with a 4.8 fold increased risk of suicide in the home.<sup>32</sup> The risks increased, particularly for adolescents, where the guns were kept loaded and unlocked.<sup>33</sup> Within singular territories, comparisons of regions with strong versus weak regulations have also tended to support the notion that gun control works

where other factors remain constant. For example, Australian states with stringent firearm registration policies have had significantly lower rates of homicide and suicide with firearms than states with weaker registration policies.<sup>34</sup>

Studies comparing Canadian and American gun control policies also reinforce this notion. Canada has always had stronger firearm regulations than the United States, particularly with respect to handguns. As a result, Canada has roughly 1 million handguns while the United States has more than 77 million. While there are other factors affecting murder, suicide and unintentional injury rates, a comparison of data in Canada and the United States suggests that access to handguns plays a vital role. While the rate of murder without guns in the US is roughly equivalent (1.3 times) that of Canada, the rate with handguns is 15 times greater.<sup>35</sup> A standardized survey of victimization in fifty-four countries also indicated that gun ownership was significantly related to both the level of robberies and the level of sexual assaults.<sup>36</sup>

Some have disputed the efficacy of stricter controls on firearms to reduce gun death and injury.<sup>37</sup> Some have even argued that increasing access to guns may even save lives,<sup>38</sup> but these claims have been critiqued<sup>39</sup> and in general, the peer-reviewed literature tends to reinforce the notion that increasing access to firearms increases gun-related deaths. Despite the challenges of measuring the effects of legislation over time, given the complexity of factors influencing death rates and crime, criminologist Neil Boyd concluded that there is more evidence to support the efficacy of gun control legislation in reducing death and injury than there is for most other criminal law reforms.<sup>40</sup>

This thesis – that increased availability of firearms increases death – is not only relevant to high income countries or countries which are at peace. Research also suggests that violence rates remain high after conflicts have ceased if weapons are not removed from societies, as interpersonal violence replaces wartime violence.<sup>41</sup> A recent field study revealed that after the cessation of conflict, injuries with firearms declined by only 30%.<sup>42</sup> While small arms do not cause violence, their widespread availability intensifies the lethality of interpersonal violence and undermines efforts to establish basic social structures.

### *Firearm violence, human rights and governance*

The post-conflict reconstruction of social and political institutions is a difficult process, yet the implementation of a criminal justice and law enforcement structure is essential

to sustain peace.<sup>43</sup> The continued availability of weapons often produces other lasting consequences, such as the breakdown of civil order and dramatic increases in lawlessness, banditry and crime. Small arms can alter the balance of power in such a context and may raise the level of violence. Even when the intended use is for self-defense, the long-term effect will likely limit other ways of addressing conflict resolution by peaceful means.<sup>44</sup> Criminal violence in South Africa has been defined as “the greatest threat to human rights” facing the young democracy.<sup>45</sup> And much of this violence is fueled by access to firearms.

***Firearm violence and sustainable development***

Firearm violence impacts on quality of life. Consider the economic value of lost productivity and related service costs, the impact on property values, the disruption of basic human services, the undermining of governance, and the effect on investment and tourism. Estimates of the cost of Southern Africa’s wars over the past two decades reach almost US\$45 billion,<sup>46</sup> arguably one of the greatest threats to its economic and social development. Even in developed countries, the economic costs of violence are staggering. In Canada, the costs of firearm death and injury including murder, suicide and unintentional injuries have been estimated at CND\$6 billion per year.<sup>47</sup> In addition to the costs measured in terms of the economic value of lost life, violence diverts health, policing and social resources from other areas in need. In arms-infested environments, people suffer more often the symptoms of post-traumatic stress disorder, such as overwhelming anxiety and a lack of motivation. In adolescents, constant fear may yield anti-social behavior and aggression. According to one study, 25% of victims of armed robbery in the banking sector are still receiving treatment 30 months after the traumatic event, with nearly half of them still exhibiting anxiety symptoms such as sleep disturbances or psychosomatic illness.<sup>48</sup> These post-traumatic stress disorders are a public health problem

that cannot be ignored.

*“The Arms Act of 1983 and its subsequent amendments do not provide an effective code for the control of firearms in New Zealand.... there is a need for radical reform of the firearms laws.”*

In South Africa, scarce hospital resources are absorbed in dealing with violence and health care personnel are increasingly becoming targets of violence. Even hospital wards are not safe. Violence in the institutions of public health provision interrupts the provision of basic services.<sup>49</sup>

#### IV. Legislating firearms control

While Commonwealth countries share common elements in their legislation, the tendency over the past ten years has been toward a progressive tightening of firearms regulations. In countries such as Britain, where there are fewer guns and lower levels of gun-related violence, legislative responses to high profile shootings have been swift and decisive.

Controlling access to firearms by reducing the overall supply,<sup>50</sup> by reducing access for dangerous individuals and controlling the ease with which individuals can obtain firearms and ammunition in a given place at a given time are all ways of reducing violence. Rather than banning guns altogether, regulation is a compromise approach, allowing products which are inherently dangerous to be used under controlled circumstances. Regulations reduce casual ownership by increasing the barriers to obtaining firearms. They are also intended to reduce the risks of firearm ownership by improving screening processes.<sup>51</sup> According to the UNCCPCJ's International Study of Firearms Regulation,<sup>52</sup> most countries allow firearm ownership and at the same time implement a wide range of screening processes in an effort to keep firearms from individuals who pose a risk to themselves or others.

Firearms legislation typically contains screening processes which provide for: background checks of potential owners; proof of genuine reason for acquiring firearms; training requirements; and requirements for safe storage of firearms. Many countries maintain central computerized information systems for owners and their firearms. Grounds for prohibiting or restricting firearms acquisition or ownership may include: citizenship, age, criminal record, mental illness, or domestic violence concerns.

##### *Recent Legislative Developments*

More than 26 countries have introduced legislative improvements in the past five years. The following is a brief overview of some of the recent significant developments seen within the Commonwealth.

- **Canada:** Canada's gun control movement intensified after a gunman walked into École Polytechnique at the Université de Montréal in 1989 and murdered 14 women. Two major initiatives were undertaken. The most recent requires licensing

Table II: Legislation in Commonwealth countries<sup>53</sup>

	License Guns	Register Guns	Safe Storage Laws	Self Protection With Guns
Australia	Yes	Yes	Yes	No
Canada	Yes	Yes	Yes	No
India	Yes	Yes		Limited
Jamaica	Yes	Yes	Yes	Limited
Malaysia	Firearms are prohibited for civilians			
New Zealand	Yes	Yes	Yes	No
Singapore	Firearms are prohibited for civilians			
South Africa	Yes	Yes	No	Yes
Tanzania	Yes	Yes	Yes	Limited
Trinidad and Tobago	Yes	Yes	Yes	Limited
United Kingdom	Yes	Yes	Handguns	No
Zambia	Yes	Yes	Yes	Yes

of all gun owners (by 2001), registration of all firearms (by 2003) and a prohibition on small barreled handguns and semi-automatic military weapons. However, Canada “grandfathers” existing owners rather than confiscating or buying back prohibited weapons. In other words, if a firearm becomes prohibited but one is in

legal possession of it at the time when the law passes, one is allowed to keep it. The law was supported by an unusual alliance of 350 groups concerned with public safety including The Canadian Association of Chiefs of Police, The Canadian Public Health Association, The Canadian Association of Emergency Physicians, The Canadian Trauma Association, the YWCA of Canada, CAVEAT and Victims of Violence International.<sup>54</sup>

In terms of rights arguments, the Supreme Court of Canada has expressly rejected the American precedent. It has stated that Canadians “do not have a constitutional right to bear arms. Indeed, most Canadians prefer the peace of mind and sense of security derived from the knowledge that the possession of automatic weapons is prohibited.”<sup>55</sup>

- **United Kingdom:** The United Kingdom has long had strict controls on firearms. Increased gun controls in the UK swiftly followed the March 1996 killings of 16 primary school children and their teacher by a local gun club member in Dunblane, Scotland. In response to the outcry following this massacre, a public inquiry was called which examined many aspects of firearm regulation in an international context. Subsequently, a new law was passed which banned 95% of handguns and required that the remainder (.22 calibre pistols) be stored at gun clubs. When Labour took power, it introduced a total ban on handguns. Other regulatory changes are under consideration.<sup>56</sup> The head of the Dunblane inquiry, Lord Cullen, declared that “‘The right to bear arms’ is not a live issue in the United Kingdom.”<sup>57</sup>
- **New Zealand:** New Zealand saw amendments to its gun laws in 1992 following the shooting of 13 people at Aramoana by a young man licensed under the regulations which existed at the time. New Zealand discontinued its paper-based registration systems in 1983; however, a comprehensive review of legislation recommended reintroducing it and tightening other aspects of the law.<sup>58</sup> Like the Dunblane Inquiry in the UK, the Review of Firearms Control in New Zealand considered a broad range of evidence and examined international experiences with gun control. Its principal conclusions were that: “The Arms Act of 1983 and its subsequent amendments do not provide an effective code for the control of firearms in New Zealand.... there is a need for radical reform of the firearms laws.”<sup>59</sup>

The New Zealand High Court has declared that “It should be emphasized that there is no general right to bear arms in this country such as is safeguarded – if that is the appropriate term for it – under the United States Constitution.”<sup>60</sup> In addition, in New Zealand’s Review of Firearms Control, Sir Thomas Thorp stated that: “The arguments are overwhelmingly against the recognition of a general ‘right to bear arms’ in this country. Indeed it would be timely to include in any new legislation a declaration that self-defense is not a legitimate purpose for the acquisition of firearms in this country.”<sup>61</sup>

- **Australia:** Gun legislation in Australia is state-controlled. Prior to 1996 all states licensed owners but only 5 of 8 Australian states registered firearms. The National Committee on Violence recommended a series of measures related to firearms regulation in its 1990 report including registration of all firearms<sup>62</sup> and the former Federal Justice Minister advocated a national system of gun registration as part of the crime prevention strategy announced in May of 1995. While Australian firearms regulation advocates had been working since 1988 to strengthen Australia’s laws, the movement was propelled forward by the April 1996 massacre of 35 people in Port Arthur, Tasmania. Public outcry was intense and the response was swift. Australian Prime Minister John Howard obtained an agreement from all 8 Australian states and territories to pass consistent legislation including registration of all firearms and a prohibition on semi-automatic rifles and shotguns, except for those farmers who can prove a genuine need. This was accomplished through a special tax levy to raise AU\$500 million dollars to buy back the banned weapons from their owners. By August 1997, over 500,000 weapons had been surrendered and AU\$259.8 Million had been paid out.<sup>63</sup> In Australia, all governments have agreed that firearm possession is not a right but a conditional privilege. Genuine reason must be shown for owning a firearm and self-protection is not a recognised reason.<sup>64</sup>
- **South Africa:** While no single event precipitated the recent move to strengthen firearms controls in South Africa, this was a major initiative of the last government and part of the recent election platform of the ANC. The government has announced its intention to strengthen domestic firearm regulation and has produced several policy papers. The proposals include stronger screening processes, restrictions on lending and stiffer penalties for misuse. In South Africa, the gun lobby sought to include a “right to bear arms” in the new Constitution when it was being drafted in 1995, but this initiative was rejected.<sup>65</sup> Again, by implication,



the fact that South Africans must show just cause in order to acquire a firearm shows that ownership is not characterized as a right in that country.

## V. Firearms and the global culture of violence

Efforts to reduce gun death and injury must also consider the complex social, economic and political inequalities which fuel conflict and crime. Primary demand for guns is shaped by what is often termed “the culture of violence.” Guns play a major role in this culture, and legislation both reflects and shapes societal values. It has been implausibly suggested that “gun culture” is largely an American construct,<sup>66</sup> although the absence of effective laws and the “normalization” of violence can be found in many other countries as well. In passing recent firearm regulations in Great Britain, Tony Blair proclaimed that it was “a rejection of American-style gun culture.”<sup>67</sup> Gartner has suggested that the effects of gun control laws are, therefore, both direct and indirect, because of the important interaction between laws and values: countries with stricter controls send a signal about the acceptability of violence in the same way legislation has been observed to have long term effects on other behaviors such as smoking, drunk driving, and drug abuse.<sup>68</sup> The Supreme Court of Canada, when considering the purposes of firearms legislation, reinforced this notion: “Even if punishing carelessness did not deter, could it still not reform and teach offenders to take more care in future, prevent further carelessness and publicly affirm the value set on carefulness?”<sup>69</sup>

The “culture of violence” is both a cause and an effect of small arms and light weapons availability. Much of the demand for guns, particularly military weapons and handguns which serve little practical purpose in peacetime, may be fueled by violent movies and television which tend to link heroism with guns and violence.<sup>70</sup> The suggestion that there is a link between values and gun violence is not new.

*By our readiness to allow arms to be purchased at will and fired at whim; by allowing our movies and television screens to teach our children that the hero is one who masters the art of shooting and the technique of killing...we have created an atmosphere in which violence and hatred have become popular past-times.*

Martin Luther King, 1963<sup>71</sup>

A culture of arms possession, created and entrenched during the militarisation of societies, can contribute to an acceptability of gun use in resolving conflicts. These effects have been observed in the militarisation of culture in South Africa.<sup>72</sup> It has also

been identified as a factor in firearm ownership in other countries such as Canada.<sup>73</sup> The unrestrained proliferation of firearms leads to a cycle of violence which is difficult to break. Fear leads to arming, which breeds violence, which leads to insecurity, which leads to further arming. Firearms undermine long term efforts to build civil society, whether in war zones or inner cities in industrialised states.

### Conclusion

The problem of firearm proliferation and misuse in the Commonwealth has many dimensions and complexities. It is clear that holistic and international solutions are required to adequately protect our societies from firearm violence, and they must address factors of both demand and supply.<sup>74</sup> Efforts to promote social and economic development and to strengthen democratic institutions will be thwarted by the proliferation of firearms in any society. Commonwealth countries should endeavor to improve firearm data collection, because the development and evaluation of effective and appropriate solutions begins with a clear analysis of the problem. In some cases, countries lack the capacity to collect and analyse relevant injury and crime data. In others it is insufficiently prioritized.

The balance of scientific evidence demonstrates that legislative efforts to control the accessibility of firearms have been effective in reducing firearm-related death and injury. States should therefore implement and strengthen legislation so as to protect the rights of life, liberty and security of the person. Commonwealth countries must avoid the entrenchment of violence, which impedes peaceful progress at many levels. A presentation by the Australian delegate to the United Nations Crime Prevention and Criminal Justice Commission emphasized that while once guns were part of Australian culture and heritage, this should not be an impediment to reform.<sup>75</sup> The recommendations of the 1997 UNCPCJC, as outlined in this chapter, should provide a *minimum* standard. *Commonwealth countries should remain at the forefront of setting international practices for strict control over civilian possession of firearms and should not be seduced by misplaced arguments that attempt to equate guns with freedom or security.*

There is no question that some developing and post conflict countries have other more pressing priorities. Some lack the institutional resources to adequately regulate firearms. Nevertheless, the evidence shows clearly that firearms control is not merely a concern

for high income, Northern countries. Rather, the process of post conflict reconstruction must include mechanisms to remove unwanted and illegal firearms from circulation. It must also develop appropriate mechanisms for regulation of firearms and enforcement of those regulations. Developing the capacity to deal with the problem of firearms through effective legislation, justice, policing and customs institutions must therefore be included among development and peace-building priorities.

We should not underestimate the impact that legislative and policy statements have in defining the values of a community. Effective legislation, which enshrines human rights, can provide a valuable antidote to the reverence for “gun culture”. It can also offer a framework for shaping international action grounded in human rights. While changes have often been precipitated by tragedy, “...aspects of culture may also be shaped by positive forces such as the willingness of States to work together in combating common threats, such as criminal violence involving firearms.”<sup>76</sup> In this regard, Commonwealth countries have the potential of championing a powerful alternative vision based on human rights.

*There is no question that some developing and post conflict countries have other more pressing priorities. Some lack the institutional resources to adequately regulate firearms. Nevertheless, the evidence shows clearly that firearms control is not merely a concern for high income, Northern countries.*

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Geraldine O'Callaghan &amp; Kate Joseph

## **The International Response to the Light Weapons Crisis: Lessons for the Commonwealth**

In the wake of the 'Ottawa Treaty' banning anti-personnel landmines, governments have begun to concentrate on light weapons proliferation.\* Some sought to build upon the treaty's success, while others feared being overrun by another global campaign. In the space of just a few years, international attention to the issue has grown so rapidly that diplomatic speeches and policy statements now commonly include references to the devastating impact of light weapons on conflicts and civil society. Many governments have clearly incorporated "light weapons" and "small arms" into their lexicons; more importantly, some have embraced control of light weapons as a crucial element in their political agendas.

In part, the governmental response reflects a genuine concern at the scale of the global small arms problem. However, most governments have a pragmatic interest in curbing the spread of these weapons. As Western military priorities change, decision-makers have seen how uncontrolled flows of small arms and light weapons compromise peacekeeping and peace-support operations. The real cost of small arms proliferation to Western economies can also be measured in terms of lost export markets, lost opportunities for new investment abroad by civilian companies, and squandered development and relief assistance. The overall loss of potential production and income is massive compared to the income from sales of low-value arms.<sup>1</sup> This chapter will outline and assess current regional and international initiatives aimed at combating small arms problems.

### **A complex problem demands a complex response**

Although previous regimes designed to limit major conventional and nuclear weapons offer a basic starting point for developing measures to control light weapons, the traditional arms control framework cannot easily be grafted

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\*In December 1997, 122 states signed the "Convention on the Prohibition of the use, stockpiling, production and transfer of antipersonnel mines and on their destruction" in Ottawa, Canada. For more information on efforts to ban landmines, see the International Campaign to Ban Landmines web site at <http://www.icbl.org>.

onto light weapons control. Unlike weapons of mass destruction, landmines or blinding lasers, it is very unlikely that the production or use of light weapons will ever be totally banned.

In contrast to heavy weapons, the manufacture and trade in light weapons is highly decentralized. With nearly 300 companies in more than 70 countries actively manufacturing light weapons, prices are competitive and suppliers are plentiful. Furthermore, although it is impossible to make an accurate assessment, illegal weapons transfers account for a significant proportion of the global trade, so control of legal exports of new weapons is bound to fall short. In addition, even if all transfers of light weapons, old and new, legal and illegal, were halted tomorrow, many parts of the world would remain awash with weapons that are already in circulation.

Thus, no one single solution will be applicable to every nation, region or aspect of the trade. A mix of practical programmes and legislation is required at a local, national, regional and international level. Any efforts at control will require long-term commitments from a broad range of policy makers, donors and non-governmental organisations working together to control the supply and reduce the demand for these weapons.

#### ***Securing agreements at the national, regional and international level***

Thus far, building consensus by increasing co-operation and controls at the *regional* level has proven to be one of the most successful approaches to implementing practical change. The Organization of American States (OAS), the European Union, the Economic Community of West African States (ECOWAS) and the Southern African Development Community (SADC) have all agreed important regional measures to tackle small arms proliferation.

Whereas consensus often eludes larger institutions, the smaller size and regional commonalities of these groups can facilitate agreement on controversial issues, thereby pushing forward the global debate. These institutions are also better placed to develop specific control and reduction measures tailored to the dynamics of weapons flows in a particular region. Regional and sub-regional institutions can also address light weapons control in the context of shared regional concerns such as violent crime, narco-trafficking or conflict; and implement cross-border issues by building on existing regional dialogue and confidence and security-building measures.



However, although regional approaches to the problems of small arms will be central to combating this problem, *global* measures are required to effectively address this *global* problem. The trade in weapons, especially illicit weapons, is truly international and therefore transcends national borders and regional agreements. Therefore, whilst it is critical to develop practical measures tailored to *regional* and *sub-regional* needs, international organisations such as the UN and the Commonwealth have a central role in developing consensus in norms and standards *worldwide*.

### The international response

International understanding of the problems associated with light weapons has grown remarkably rapidly in recent years. It is now widely acknowledged that many complex factors affect the supply of and demand for light weapons by state and non-state actors alike. Consequently, attempts to control and reduce the number of weapons in circulation must be equally complex and comprehensive if they are to have a meaningful and lasting impact on the problem.

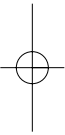
To an extent, the international community is responding to this challenge. Since 1995, when the then Secretary General of the United Nations first highlighted the devastating impact of small arms, the UN has pioneered the international effort to control small arms. In recent years, governments, regional organisations and various multilateral institutions have lined up behind the UN and stated their political support for efforts to control small arms.

Since 1997, the international community has developed an impressive array of initiatives. The Economic Community of West African States (ECOWAS), the European Union (EU), the Group of Eight Industrialised Nations (G-8), the North Atlantic Treaty Organisation (North Atlantic Treaty Organisation), the Organization of American States (OAS) and the Southern African Development Community (SADC), as well as various agencies of the UN, have all announced concrete programmes of work to combat aspects of the small arms problem. Individual governments, notably Belgium, Canada, Mali, the Netherlands, Norway, South Africa and Switzerland have initiated important discussions and accelerated action on small arms in many fora.<sup>2</sup> For instance in October 1998, Belgium brought together representatives of 95 governments to develop a “Call for Action” on small arms.<sup>3</sup> More recently, the Organisation of African Unity (OAU)<sup>4</sup>

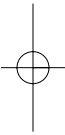
  
**The International Response to the Light Weapons Crisis: Lessons for the Commonwealth**

and the Organisation for Security and Co-operation in Europe (OSCE) and the Latin American and Caribbean states,<sup>5</sup> have also begun exploratory discussions on the issue and endorsed other regional initiatives. Furthermore, the World Bank<sup>6</sup> and Organisation for Economic Co-operation and Development (OECD)<sup>7</sup> are investigating ways to incorporate technical and financial assistance for small arms control and reduction programmes into their organisational mandates.

To a certain degree, regional organisations and various agencies of the United Nations have identified their own niches in the international control agenda, both in terms of norm-setting and in instituting and implementing practical solutions. The approach taken by organisations such as NATO, the OSCE and ECOWAS suggests that regional organisations are defining their own distinctive competencies and instituting measures which are relevant to their organisational functions and priorities. The challenge now is to convert stated political will into concrete legislative measures and practical programmes that will address the problem.



Agreements within regional organisations on action plans and programmes raise public and political awareness and create a momentum in favour of change. However, many of these multilateral initiatives provide little more than frameworks and often fail to translate into practical measures. Governments that sign up to these agreements are demonstrating their good intentions, but seldom enact changes in national policy. Participation in multilateral arrangements can even serve as a smokescreen to divert attention from failure to institute strict domestic legislation. With regard to small arms, change will be incremental unless governments match their commitments to international arrangements with revisions to domestic laws. Priorities will have to include stricter export control laws and tighter legislation regulating civilian ownership of weapons.



However, while the wave of governmental enthusiasm and the corresponding mushrooming of control initiatives are a welcome development, the scope and focus of governmental action on the issue remains in question. Of particular concern is that concrete governmental efforts, with a few notable exceptions, focus predominantly on illicit weapons trafficking thereby conveniently avoiding the question of their own responsibility for the production, supply, demand, use and misuse of these weapons.

***Controlling illicit transfers\****

Although the international focus on illicit trafficking calls governmental commitment to small arms issues into question, this focus is, in part, understandable. There is no doubt that it is easier to build regional and international consensus around control on non-state transactions than those conducted by governments. Furthermore, the illicit trade constitutes a major aspect of the global small arms problem, so the formidable progress made by the international community on this issue is to be welcomed.

Two distinct approaches to the problem of illicit trafficking have already emerged. The work of the Organization of American States (OAS), the Group of Eight Industrialised States (G-8) and the United Nations Economic and Social Council (ECOSOC) addresses illicit trafficking as an issue of law enforcement and crime control. In contrast, the premise of the recommendations of the UN Panel of Governmental Experts on Small Arms, and the subsequent work of the UN Group, the EU and SADC, is that light weapons trafficking undermines peace, structural stability and long-term development. Conceptually, the latter approach offers a more coherent and progressive framework for addressing the supply and demand for illicit weapons within the context of human security. However, without sufficient resources and implementation mechanisms, the broader framework risks being marginalised as a laudable but unattainable ideal when contrasted with the concrete and rapid progress of the law enforcement initiatives.

***OAS Convention – the model for a global convention?***

In November 1997, 29 Member States of the Organization of American States (OAS) signed the “Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials” (hereafter referred to as the OAS Convention).<sup>8</sup> The OAS Convention is regarded as a remarkable success story and is often referred to as a “groundbreaking” initiative. In many respects, this praise is merited. In just over a year, the convention was transformed from a drawing board concept into a regionally agreed convention and has now entered into force and been ratified by seven OAS Member States.<sup>9</sup>

\* For additional information and analysis of efforts to stem illicit light weapons trafficking undertaken by the UN, the OAS, the G-8 and the EU, see: Susannah L. Dyer and Geraldine O’Callaghan, *Combating Illicit Light Weapons Trafficking: Developments and Opportunities*, BASIC Research Report 98.1 (London: British American Security Information Council) January 1998.

\*\* For further analysis see S. L. Dyer & G. O’Callaghan, *One Size Fits All? Prospects for a global convention on illicit trafficking by 2000*, BASIC Research Report 99.2, April 1999.

The stated purpose of the OAS Convention is: “To prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and related materials” as well as to “promote and facilitate co-operation and exchange of information and experience among State Parties”. The 30-article convention sets out a broad set of commitments, control mechanisms, legal requirements, and co-operation procedures, including:

- instituting legislation to criminalise illicit manufacturing and trafficking;
- marking weapons at the time of manufacture and import to facilitate identification and tracing;
- establishing a harmonised system of export, import and international transit licenses;
- strengthening controls at export points;
- exchanging information on small arms producers, dealers, importers and exporters; on routes and techniques used in illicit trafficking; and on scientific and technological information for prevention, detection and investigation;
- exchanging experience and training in areas such as identification, detection, tracing and intelligence gathering;
- providing mutual legal assistance to facilitate investigation and prosecution of illicit activities and establishing illicit weapons activities as extraditable offences.

### *Strengths of the OAS approach to illicit trafficking*

- **Emphasises shared regional concerns:** Rather than pointing the finger at one particular country and censuring them for contributing to illicit weapons flows, the OAS link illicit weapons trafficking to common regional concerns, specifically drugs trafficking and transnational crime.<sup>10</sup> It focuses on increasing co-operation rather than increasing sanctions. Whereas previous bilateral efforts to control light weapons had made little headway, this uncontroversial approach generated the high level of political will necessary to move forward.
- **Is legally binding:** Unlike political declarations, statements of intent or guiding principles, the OAS states agreed a legally binding convention. It sets out clear responsibilities for states in combating trafficking through the courts, through the police and through legislation.
- **Utilises a broad definition of firearms and explosives:** Although there is no overall consensus within the international community regarding a definition of small arms and light weapons, the OAS managed to agree a broad definition,

thereby ensuring that the Convention covers many categories of small arms and light weapons.<sup>11</sup>

- **Encourages practical measures:** Concurrent to the convention negotiations, the OAS states also formulated a set of practical guidelines that can be applied to both electronic and paper-based systems. Developed under the auspices of the Inter-American Drug Abuse Control Commission (CICAD), the “Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition” were adopted in November 1997.<sup>12</sup> They establish a harmonised import/export system through clear and concrete practical measures for domestic legislation on imports, exports and in-transit movement of firearms. They also serve as guidelines for minimum standards required for harmonised licensing, and outline proposals for record keeping and information exchange on imports/exports, including the quantity, type and serial numbers of firearms.

#### *Moving from politics to practicalities*

Even in such a short space of time, the OAS Convention has already generated success stories; some states are already asserting that it has had a significant impact on trafficking. For example, Mexico claims that the number of confiscated weapons has doubled since the agreement was signed.<sup>13</sup> Much of this success lies in the series of practical measures established in the convention.

The agreement also appears to have spurred states to improve co-operation on a bilateral and sub-regional basis. The United States, for example, has increased the level of co-operation and training provided to police and customs officials throughout Latin America on weapons tracing and identification, and has increased bilateral co-operation with a number of countries severely affected by illicit trafficking problems, such as Mexico and Jamaica. For many countries, this practical assistance is necessary in order to bridge the gap between their current capabilities and the processes and procedures – both bureaucratic and technical – that they agreed to implement by signing this convention.

Co-operation at the sub-regional level is also growing. In Central America, states have begun discussing the development of a mini-OAS agreement within the sub-region. Furthermore, in April 1998, the states of the Mercado Commun del Sur (MERCOSUR)

collectively agreed not only to make their best efforts to ratify the OAS Convention but also to develop a joint registration system for firearms, ammunition, explosives and other related materials.

### *Weaknesses of the OAS approach*

Efforts to globalise the OAS Convention are progressing at lightning speed. However there are a number of limitations in the OAS convention that should be addressed to ensure the final agreement is relevant to other regions.

- **Crime control focus fails to address conflict.** The OAS Convention frames illicit trafficking as an issue of crime control and law enforcement, failing to address the linkage between arms trafficking and conflict. It is the illicit aspect of light weapons trafficking, not the easy availability of the weapons themselves, which is seen as a shared regional problem. This approach eliminates consideration of the role that weapons flows play in prolonging conflicts and fostering cultures of violence.
- **Narrow scope disregards government transfers.** The OAS Convention only addresses commercial transactions; it makes no reference to transfers by governments to other states or sub-state parties. Yet there is an urgent need for stricter controls on these weapons transfers, not least because these weapons are often diverted as the result of theft, loss and corruption.
- **Limited mandate preserves status quo.** The Convention's narrow focus on the enforcement of existing laws and the implementation of import and export procedures does little to change current policies and inherently maintains the status quo.
- **Serious loopholes.** While the principles of co-operation are clearly emphasised in the OAS Convention, the text lacks any concrete measures to improve border controls or enforcement. Furthermore, there are a number of critical omissions in the text of the OAS Convention. For example, the OAS states did not address the need to ensure the destruction or safe storage of weaponry. This is in spite of the fact that continued re-circulation of weapons from one conflict to another, and increasingly from political conflict to individual criminals, is one of the biggest challenges to international control efforts.

### *Moving the global agenda forward – the role of the G-8*

Small arms control may seem a surprising agenda item for the Group of Eight Industrialised States (G-8). However, illicit firearms trafficking first appeared on the (then) G-7 agenda during the 1994 Economic Summit in Halifax, when leaders

highlighted the economic and social costs of crime and established a working group, *the Lyon Group*, to develop policy proposals to combat trafficking. By the time of the Denver Summit in June 1997, illicit weapons trafficking had become a G-8 priority and decisions to consider a “new international instrument” and a “stronger international regime” were included in the summit’s final communiqué.<sup>14</sup> The US State Department provided G-8 states with a proposed outline for a legally binding international instrument in autumn 1997, which closely paralleled the central tenets of the OAS convention.<sup>15</sup> This initiative laid much of the groundwork for UN ECOSOC negotiations of an international convention on illicit trafficking.

The May 1998 Birmingham Summit continued to emphasise efforts to combat illicit trafficking, with the final communiqué calling for “the elaboration of a binding international legal instrument in the context of the UN transnational organised crime convention.” This restricted focus on controlling small arms within the context of combating crime re-emerged at the 1999 Cologne Summit. Despite indications from an earlier Foreign Ministers meeting, references to controlling small arms were conspicuously absent from the final communiqué of that summit, which merely called for an early conclusion of the UN Crime Convention (*see next section*).

While the G-8 statements achieved little in and of themselves, they did lay much of the groundwork for the ECOSOC negotiations. Not only did G-8 support raise the profile of efforts to combat illicit weapons trafficking; it also heightened its chances of success. By giving their endorsement to this process, the world’s richest nations, and in addition, the world’s leading arms exporters, gave a much-needed boost to the negotiations.

### **The UN ECOSOC Firearms Protocol<sup>16</sup>**

In April 1998, the UN’s Economic and Social Council (ECOSOC) passed a resolution calling for a legally binding “international instrument” to combat firearms trafficking. Progress toward an international instrument has since progressed with lightning speed. Over the past eighteen months, ECOSOC Commission on Crime Prevention and Criminal Justice has been developing the “Draft Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials” (hereafter referred to as the Firearms Protocol). The protocol will be attached to the UN Convention on Transnational Organized Crime, which is

**Table 1: Regional and International Initiatives to Control and Reduce Small Arms<sup>1</sup>**

INITIATIVES	SUPPLY <sup>2</sup>				Increasing inspections	Involving civil society groups	Enhancing regional cooperation and information exchange	Building national legislation and regulatory frameworks	Delivering small arms destruction programmes	Enhancing public awareness and education
	Control of legal trade	Control of illegal trade (smuggling, theft)	Control of stockpiles	Control of production						
OECD Convention on Arms Trafficking	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EU Arms Control Treaty	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
OSCE Arms Control Treaty	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
EU Programme on Small Arms Control	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
OSCE Programme on Small Arms Control	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
OSCE Programme on Small Arms Control	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
OSCE Programme on Small Arms Control	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
OSCE Programme on Small Arms Control	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
OSCE Programme on Small Arms Control	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓

<sup>1</sup>The table contains selected initiatives described in this chapter.

<sup>2</sup>This table draws upon the International Action Network on Small Arms (IANSA) policy framework, from the Founding Document, May 1998.



expected to be signed by the end of the year 2000. If agreed, the Firearms Protocol will be the first legally binding global measure regulating international transfers of small arms and light weapons.

The current draft of the Firearms Protocol draws heavily on corresponding articles of the OAS Convention.<sup>17</sup> Currently, there is little to distinguish the framework of the OAS Convention from that of the draft Firearms Protocol, bar the exclusion of explosives from the list of controlled items. In short the Protocol:

- promotes common international standards for the import, export and in-transit international movements of firearms, ammunition and other related materials;
- encourages international co-operation and information exchange at the national, regional and global levels, including on firearms identification, tracking and tracing; and
- furthers international co-operation on firearms ammunition and other related materials by developing an international regime for the management of commercial shipments.

#### *Strengths of the draft Protocol*

Politically, the Protocol helped keep the small arms issue high on the international agenda. The fact that the international community is on the cusp of signing a legally binding international agreement to combat illicit trafficking is a remarkable achievement, owing much to the efforts of a few OAS states. Such progress would have been inconceivable five years ago.

Beyond the political value of pursuing an international agreement on illicit trafficking, many of the strengths of the current draft of the Firearms Protocol mirror the strengths of the OAS Convention, as outlined above. There are, however, some positive new developments.

One of the promising additions is the proposal to control brokers and shipping agents within the remit of the Protocol. The proposed addition specifies, "Any person, wherever located, who engages in the business of brokering activities with respect to the manufacture, export, import or transfer of any firearms is required to register with and receive approval from his or her country of nationality".<sup>18</sup> Arms brokers and shipping agents play key roles in the illicit trade in weapons, regularly taking advantage of the lack of registration and licensing to carry out their trade through third countries. Therefore,

the proposal to include provisions to register and license brokers is a welcome development.

Furthermore, there is tremendous potential to broaden the scope of this agreement. The multidimensional nature of illicit trafficking has raised questions about the appropriateness of a Crime Convention as a vehicle for these controls. However, although the term “transnational organised crime” may conjure up images of mafias and drug cartels, the draft Crime Convention broadly defines an “organized criminal group” as a “structured group of three or more persons existing for a period of time and having the aim of committing a serious crime in order to, directly or indirectly, obtain a financial or other material benefit.”<sup>19</sup> Therefore, far-reaching controls such as those governing the activities of mercenaries and brokers are clearly within its remit. Viewed in this light, the Crime Convention has the potential to influence many of the central dynamics of light weapons trafficking.

#### *Limitations in the Protocol*

Despite the potential of this agreement to influence a broad spectrum of small arms issues, the current draft Protocol remains limited in its objectives. Just as the draft Protocol retains many of the strengths of the OAS convention, it also inherits many of its weaknesses and limitations.

At the political level, there is a serious concern that an untested regional convention has been transplanted wholesale into the international agreement. There is therefore an implicit assumption that the concerns of the Americas are the highest priority for the rest of the world. Inheriting the bias of the regional agreement, the Protocol frames the problems of illicit trafficking as one of “drugs and thugs” and fails to acknowledge the critical links between trafficking in violent crime and trafficking in armed conflict. Furthermore, it only addresses commercial sales and therefore only private misuse of weapons as opposed to government transfers, violations, abuses and crimes.

At the practical level, the draft Protocol makes many of the omissions of the OAS convention. For example, it fails to make provisions for the safe storage and the destruction of illicit seizures of weapons despite the fact that many post-conflict societies are awash with illicit weapons. By failing to reflect the dynamics of the illicit trade in regions beyond the Americas, both the relevance and the legitimacy of the Protocol could be severely restricted.

### Combating illicit trafficking within a wider context

While the OAS, G-8 and ECOSOC have been developing concrete measures to address illicit trafficking through law enforcement and crime control, the EU, SADC and other UN bodies have approached the problem from a different perspective. There is a growing consensus within these institutions that illicit trafficking in small arms can only be addressed by adopting a *holistic and integrated* approach to the problem. Underpinning this position is a tacit recognition that small arms proliferation and misuse, of both legal and illegal supplies of weapons, undermines peace and security and thwarts long term development. This comprehensive approach reflects a growing recognition of the complexity of the small arms issue.

#### *The EU Programme for Preventing and Combating Illicit Trafficking in Conventional Arms*

During its EU Presidency in the first six months of 1997, the government of the Netherlands drafted proposals to address illicit trafficking. The subsequent “Programme for Preventing and Combating Illicit Trafficking in Conventional Arms” was adopted by the EU Council of Ministers working group, COARM, on 26 June 1997.<sup>20</sup> Signed in Amsterdam in June 1997, the EU Programme marked a new departure in arms-related co-operation amongst EU Member States. Member States have made commitments to address the problems in three ways:

- **Strengthening collective efforts to prevent and combat illicit trafficking in arms from and through the European Union.** Specific measures might include instituting more effective information exchange and improving co-ordination and co-operation amongst intelligence, customs and law enforcement agencies.
- **Providing assistance to countries in regions affected by light weapons proliferation.** Assistance to these countries could focus on increasing the capacity of their legal and enforcement capabilities (e.g. customs, police, and judiciary), using international databases and promoting national and sub-regional co-operation amongst police, customs and intelligence services.
- **Assisting countries in affected regions, especially in post-conflict situations and in regions with only minimal security and stability.** These initiatives might aid in the re-integration of former combatants and removal of weapons from circulation through measures such as weapons collection and buy-back schemes.

### ***Strengths of the Agreement***

The EU Programme sets some very useful precedents for other organisations working to combat illicit weapons trafficking. In contrast to the OAS Convention, the EU Programme addresses trafficking within the broader context of capacity building and long term development.<sup>21</sup> The programme's acknowledgement that "peace and security are inextricably linked with economic development and reconstruction" is an important departure from previous policy that made clear distinctions between development aid and security assistance.<sup>22</sup> Practical measures such as weapons collection, buy-back and destruction programmes, as well as progressive education programmes, are identified as key aspects of the programme. Thus, the EU programme addresses illicit weapons trafficking within a coherent and integrated framework.

### ***Perceived weaknesses are now partially addressed***

Although the EU Programme provides a clear framework for tackling illicit weapons trafficking, it only represents a statement of intent by Member States. Unlike the OAS Convention, the Programme is a political declaration rather than a legally binding document. It makes no provisions for reviewing, reforming or harmonising regulations among Member States. Furthermore, although the "intentionally broad" mandate of the EU Programme provides ample scope for addressing the supply side of the problem, its focus remains squarely on tackling the demand for illicit weapons in developing countries.<sup>23</sup> This emphasis is despite the fact that brokers and shipping agents often use European ports as transit points for arms shipments. However, through the agreement of the June 1998 "EU Code of Conduct on Arms Exports" (*see below*)<sup>24</sup> and the December 1998 "EU Joint Action on Small Arms"<sup>25</sup> these limitations have now been partially addressed.

### **Co-operation on trafficking between the EU and SADC**

Critics of the EU Programme have been quick to point out that, thus far, this political agreement has not translated into substantive practical action. In contrast to the concrete progress made in the OAS region, the emphasis of the EU Programme is on consultation and consensus building. Since signing the agreement in June 1997, the EU has identified the Southern African Development Community (SADC) as its primary partner in furthering action under the auspices of the Programme. EU and SADC officials met in South Africa in May 1998 to explore potential forms of EU assistance to help the region tackle illicit trafficking.<sup>26</sup> The subsequent "Southern African Regional

Action Programme on Light Arms and Illicit Arms Trafficking” set out a detailed agenda for action in four key areas:<sup>27</sup>

- combating illicit trafficking;
- strengthening regulation of and controls on the accumulation and transfer of weaponry;
- promoting the removal of weapons from society and the destruction of surplus arms;
- enhancing weapons-related transparency, information exchange and consultation in Southern Africa.

There is now widespread acceptance that the Action Programme is an important framework for tackling light weapons proliferation in Southern Africa. The Programme was endorsed by the EU/SADC Ministerial meeting in November 1998, and a working group has been tasked with implementing practical programmes. The challenge is now to make effective progress through the identification of projects which the EU, the Member States and the wider donor community can support, whilst retaining a regional approach to tackling illicit trafficking in arms.

***EU support for “proportional and integrated approach to disarmament and security”***

Another promising sign for effective implementation of the EU Programme was the European Union’s endorsement of a “proportional and integrated approach to disarmament and security” in regions that have recently emerged from conflict, including appropriate assistance to internal police and security forces.<sup>28</sup> This so-called “security first” approach to external assistance has been advanced by the United Nations in co-operation with Mali and other countries in the Sahara-Sahel region. In this context, several EU states, including the United Kingdom, the Netherlands, Belgium and France, are contributing to the Sahara-Sahel states and their neighbours for demobilisation and re-integration programmes and projects tackling small arms proliferation and insecurity. EU support for the “security first” approach is an encouraging sign, as development aid agencies have been reluctant to integrate support for addressing internal security problems into their assistance programmes. Finally, the EU added practical measures to its work on light weapons by developing a Joint Action on Small Arms. The December 1998 agreement commits EU states to provide financial and technical assistance for efforts to combat trafficking. These mechanisms include national controls, such as efficient border and customs mechanisms, regional and international co-operation and enhanced information exchange.<sup>29</sup>

***The role of the UN in promoting a “proportionate and integrated approach”***

The UN Firearms Protocol is not the only initiative being pursued under the auspices of UN. Through research, consultations and, crucially, through direct experience of dealing with small arms in conflicts and in post conflict societies, much of the work of the United Nations also embeds efforts to combat illicit trafficking within the broader context. In fact, the United Nations has pioneered work on the issue of small arms since 1995 and has led the international effort to further understanding of the issue. Many parts of the United Nations system are dealing, directly or indirectly, with the problems associated with small arms, from UN headquarters in New York to the work of the UN missions and agencies in the field. The Department of Disarmament Affairs (DDA) has defined much of this work and has helped bring greater cohesion to the work of different UN departments in this field. Growing co-operation within the UN system is certain to benefit the various initiatives already underway.

**UN Group of Governmental Experts**

A vital contribution to furthering understanding of and international commitment to the issue of small arms was the establishment of the UN Panel of Government Experts, who were tasked in December 1995 with producing a report on small arms and light weapons.<sup>30</sup> The subsequent report of August 1997 provided comprehensive documentation of the problems, causes and effects associated with excessive and destabilising accumulations of small arms and light weapons, as well as the mode of their transfer to regions of conflict and tension. It also offered detailed recommendations for both reducing and preventing these destabilising accumulations of weaponry. These recommendations were overwhelmingly endorsed by the UN General Assembly in Resolution 52/38].

In 1998 the United Nations established a Group of Governmental Experts on Small Arms to review implementation of the previous Panel's recommendations, and develop further proposals for international action within a UN framework. The UN Group, which is made up of official representatives of 23 states, held a series of consultative meetings between May 1998 and July 1999 and sought the views of academics, NGOs and the small arms industry. The subsequent report for the September 1999 UN General Assembly outlines the incredible progress undertaken at the national, regional and international level and concludes that many of the

recommendations of the first UN Panel are now being undertaken.<sup>31</sup> The Group's report further elaborates on the previous recommendations and outlines specific measures for further controlling small arms within the broader context of post-conflict reconstruction and long term development.

### **UN 2001 Conference on illicit trafficking**

Similar to the work of ECOSOC, it appears that the UN Group made most significant progress in developing recommendations relating to illicit trafficking. Many of the most concrete recommendations made in the Group's report focus on measures which will address illicit trafficking, such as the marking of weapons, increasing support for INTERPOL and controls on brokering.

However, the Group's report makes a new and important departure in the international approach to illicit trafficking. Part of the Group's mandate was to consider the scope and objectives for an international conference on illicit trafficking scheduled to take place in 2001. The Group recommended that such a conference should cover illicit trafficking *in all its aspects*. This broad scope will therefore allow the international community to develop political will, norms and programmes to combat trafficking. However, recognising the explicit links between the legal and illegal trade in weapons, the Group has further recommended that this conference be used to "promote responsibility by States with regard to the export, import, transit and re-transfer of small arms and light weapons".<sup>32</sup> This recommendation offers the international community a much-needed opportunity to increase responsibility and restraint over legal transfers of weapons.

### **The UN Co-ordinating Action on Small Arms (CASA)**

In order to oversee much of the progress made within the UN system, the mechanism for Co-ordinating Action on Small Arms (CASA) was created to address the gap between political will and the allocation of resources. Set up in mid-1998, CASA established what UN Under-Secretary-General Jayantha Dhanapala called a "focal point" within the Department for Disarmament Affairs (DDA) in order "to co-ordinate on a UN-wide basis all action on small arms."<sup>33</sup>

CASA consolidates UN action on light weapons by emphasising inter-departmental communication and cross-fertilisation of ideas among the different bodies concerned

with how the various aspects of light weapons proliferation affect their own work. These departments include: the UN Development Programme (UNDP), the UN High Commissioner for Refugees (UNHCR), the Office for the Co-ordination of Humanitarian Affairs (OCHA), the Office of the Special Representative of the Secretary-General for Children and Armed Conflict, the Department of Peacekeeping Operations (DPKO) and the UN Children's Fund (UNICEF). CASA also links the efforts being carried out in these departments and agencies with the work of the UN Group of Governmental Experts on Small Arms.

However, perhaps because ECOSOC is based in Vienna, away from the UN's New York headquarters, negotiations for the Firearms Protocol often appear to fall outside CASA's consultations. While DDA emphasises that the work of the Ad-Hoc Committee developing the Firearms Protocol is "both complementary and mutually re-inforcing",<sup>34</sup> it appears that they often follow parallel paths and sometimes duplicate each other's work. In spite of this, the work of ECOSOC is central to the development of the UN agenda on small arms control. For instance, the Firearms Protocol is expected to be agreed in advance of the 2001 conference on illicit trafficking, and therefore resource implications of the Protocol should be discussed during the conference.

### **Increasing accountability over the legal trade**

Although agreement on inter-governmental initiatives to combat the international small arms trafficking has moved quickly, controls on the legal, or government-sanctioned small arms trade are developing at a slower rate. Some governments, particularly those in the European Union, have made significant strides in this area, but many have been slow to acknowledge the role that legally traded arms play in the exacerbating human rights abuses and escalating conflicts. During the last decade, weapons sold by the major arms exporting nations in government-authorized transactions have been used in conflicts in the Persian Gulf, the Central African region, Ethiopia and Eritrea and the former Yugoslavia. Legally traded weapons, sold by Western nations, have been used for oppression in East Timor, Turkey, and Colombia.

Of those weapons purchased on the illicit small arms market, most were initially manufactured and transferred in accordance with national export controls. The evidence suggests that most of the small arms available illegally begin their life as legal weapons and are stolen or diverted into the illegal market. While measures to crack down on the



illicit trade will go some way keeping weapons out of the wrong hands, the easy availability of small arms will not be reined in without increased control on legal sales. Transparency and accountability requirements are often a necessary part of control regimes. However, at present, few governments make details of their small arms sales publicly available, and those that do rarely give prior notice to national parliaments. Although there are limited transparency arrangements, notably the UN Register of Conventional Arms, these exclude information on small arms holdings, exports and imports. However, some regions have begun to investigate the feasibility of small arms registers.

Even if effective controls were established and the production and transfer of small arms tightly regulated, there are enough weapons already in circulation to keep conflicts going for decades. Many countries have vast supplies of surplus weaponry, while others fail to collect and destroy weapons once conflicts end. Efforts to control new flows of weapons must be matched by the reduction or elimination of small arms stockpiles. Multilateral institutions have undertaken limited disarmament in post-conflict peacekeeping, but these initiatives are at best ad hoc. These challenges to control further underline the need to undertake comprehensive weapons reduction programmes which engage financial support and political will from both supplier and recipient states.

***Supplier/recipient co-operation: ECOWAS and the Wassenaar Arrangement***

*Some recipient states are taking the lead in developing comprehensive measures to reduce the numbers of weapons in circulation. One of the most pioneering of recent initiatives is the three year "Moratorium on the Importation, Exportation and Manufacture of Light Weapons",<sup>35</sup> agreed by the Economic Community of West Africa (ECOWAS) in October 1998. The overwhelming endorsement of the moratorium by supplier states, in the form of the Wassenaar Arrangement, marks an important development in supplier/recipient co-operation.<sup>36</sup>*

***Background<sup>37</sup>***

*The history of the moratorium dates back to 1994 when, acting upon an initial request from the President of Mali, the Secretary-General of the United Nations established an advisory mission on the control and collection of small arms in the Sahara-Sabel region. Over the course of the*

*next year, the UN dispatched missions to eight West African countries. After an intensive investigation of national legislation, smuggling, theft and illegal sales, the mission concluded that, "The lack of security was fuelling the demand for weapons. The availability of weapons was fuelling the cycle of banditry and violence which in turn was virtually bringing structural development to a halt and preventing any progress on socio-economic problems".<sup>38</sup> The conclusions of this mission were the basis for developing a "security first" or proportionate and integrated approach to long term development which has since influenced regional and international approaches to small arms control.*

The West African states continued to pursue options for controlling small arms within the context of conflict prevention, disarmament and development through a series of regional consultative meetings between 1996-1998. In particular, the

concept of a moratorium attracted much support *among the West African states and the OAU. Critically, during these early stages, the West African states actively solicited the support and engagement of the major suppliers of small arms, in the shape of the Wassenaar Arrangement, which was quick to welcome and encourage the proposed moratorium. The rapid development of political will among both supplier and recipient states was a major factor in the swift conclusion of the moratorium by October 1998.*

#### ***The Framework for the Moratorium***

*The agreement commits ECOWAS states to a moratorium on the import, export and manufacture of light weapons, initially for a three-year period. In December 1998, Wassenaar States swiftly offered unqualified approval of the agreement, confirming that it would "undertake an appropriate collaborative role with ECOWAS member states to respect the provisions of the moratorium and will be open to providing advisory and/or technical assistance in the implementation of the moratorium."<sup>39</sup> Although it is anticipated that such collaboration will be between individual Wassenaar states and ECOWAS members, the Wassenaar Arrangement will continue to supplement bilateral contacts and developments.<sup>40</sup>*

*The politically binding moratorium is conceived as a "period of grace" which will halt small arms transfers, and give the region an opportunity to address the problems caused by small arms proliferation. At a meeting in March 1999, the ECOWAS foreign ministers agreed a plan of action to be undertaken within the framework of the moratorium, to create a secure environment*

*for development. Through co-operation between the UN, donors and ECOWAS countries, the Programme for Co-ordination and Assistance for Security and Development (PCASED) was developed in order to implement the plan of action. The following four areas were singled out for immediate financial assistance from the OAU, the UN and the donor community:*

- **Control measures:** *Improved controls at harbours, airports and border crossings were agreed to be crucial for enhancing confidence in the moratorium.*
- **J340 Security sector reform:** *reforming military, security and police forces through regional training programmes was seen as a priority.*
- **Collection and destruction of weapons:** *ECOWAS agreed to develop incentive schemes to collect and destroy illegally held weapons.*
- **Co-operation with civil society organisations:** *the West African states identified the co-operation and support of civil society as critical to the success of the moratorium.*

#### ***Strengths of the agreement***

*The moratorium is seen as a landmark achievement. By signing the moratorium, West Africa became the first—and so far the only—region in the world to announce a halt to further light weapons procurement. The approach taken by the ECOWAS states seeks to build consensus between exporters and recipients and therefore tackles both supply of and demand for weapons.*

*Furthermore, by embedding arms control within the context of security and development, the region embraced a holistic approach to the problem, which was subsequently adopted by the UN and other regional organisations such as the EU and SADC. This radical approach has attracted significant financial and political support from the donor community.*

#### ***Prospects for implementing and enforcing the moratorium***

*The political will and, to an extent, the financial support required to implement and enforce the moratorium certainly exist. The ECOWAS states have already set up a Mali office for PCASED, the body tasked with implementing the plan of action. However, the PCASED action plan is an ambitious proposal. Covering areas as diverse as border controls, security sector reform, weapons possession and transfer, and cultures of peace, the programme will require sustained international support if it is to have a long term impact on the regional small arms problem.*

## OSCE places small arms on the agenda

The OSCE recently identified the spread of small arms as an impediment to its traditional roles in crisis management, post-conflict reconstruction and democracy-building. In response, the organisation is expected to address the issue in the agenda of the forthcoming Istanbul summit in November. In preparation for this event, the OSCE's Forum for Security Co-operation (FSC) decided to establish a working group to study a variety of small arms proposals made by member states. The FSC hopes to agree a set of specific measures that would be examined during a seminar to be held before March 2000.

Although still under discussion, the OSCE has a role to play in a number of areas, including transparency regimes, the control of legal small arms sales, and the management and reduction of weapons already in circulation. During a seminar on small arms held at the OSCE in Vienna in November 1998, speakers urged the organisation to develop a comprehensive framework for small arms control.<sup>41</sup> Policy options put forward included the inclusion of weapons collection programmes in peace support operations, investment into resources for stockpile security and destruction, and the establishment of security sector reform programmes to enhance capacity within member states. Also high on the list of priorities was the establishment of regional transparency mechanisms, including the creation of a regional register on small arms and light weapons. Finally, participants proposed the incorporation of small arms control into existing OSCE frameworks, under the auspices of the Forum for Security Co-operation (FSC), including the Conventional Forces in Europe (CFE) Treaty, the 1993 OSCE Principles Governing Conventional Arms Transfers and the 1994 Code of Conduct on Politico-Military Aspects of Security.

In agreeing and implementing these proposals, the OSCE would have to meet a number of challenges. Decision-making within the organisation is made on a consensus basis, and although this is a key strength, conflicting views among member states on how best to address the small arms issue are likely to hamper rapid agreement. In addition, with organisational resources covering a broad geographical area and an extensive programme of work, the OSCE is over-stretched and under-funded. Finally, the OSCE will have to be careful to avoid the duplication of efforts already undertaken by multilateral organisations. Significantly, a clear division of responsibilities between the OSCE and NATO has yet to be agreed, and is the subject of continuing controversy among some member states.

## NATO develops a programme of work

Under the leadership of Canada, Norway and the United States, NATO's Euro-Atlantic Partnership Council has also begun to address the spread of small arms, albeit somewhat later than most other multilateral organisations. For a long time reluctant to acknowledge its potential contribution to small arms control, the Alliance only began to discuss the issue in March 1999.<sup>42</sup> One month later, the EAPC, which includes the 19 NATO member countries and the 25 participants in the Alliance's Partnership for Peace (PfP) programme, formed an *ad hoc* working group on small arms. The group was charged with setting a work programme for the Council, which was drafted by summer 1999.

The working group was formed in response to concerns that NATO's eastward expansion would trigger a cascade of weapons rendered obsolete by downsizing and modernisation of forces in the former Communist bloc. Analysis of weapons transfers to regions in conflict, primarily in Africa, already indicates that countries in central and eastern Europe and the Commonwealth of Independent States (CIS) have become a primary source of cheap weapons.<sup>43</sup>

### *The EAPC Work Programme on Small Arms*

Although not yet made public, the EAPC programme is said to focus on stockpile management and security, the provision of resources for the destruction of surplus weaponry, and the establishment of "best practice" in export controls. The group has also assessed the inclusion of small arms collection and destruction within the context of NATO peacekeeping operations. As yet, it is unclear how far the programme will detail prescriptions for action, or whether it merely aims to raise awareness of the small arms problem among member states.

### *Challenges to control*

There is no doubt that the Alliance has long been sceptical of small arms control initiatives, insisting that responsibility for stockpile security, export controls and transparency lie with member states' governments. Some EAPC members would prefer to adopt a weaker set of standards. Others, especially NATO member states, fear the implications of information sharing with countries that are perceived to be less reliable in terms of security and accountability. For the time being at least, uneven political will is likely to impede the agreement of strict common controls.

Also problematic for the EAPC is the lack of available information on small arms holdings and procurement. Most of the Council's member states do not keep accurate data about their stockpiles of small arms and light weapons, and those that do are unwilling to divulge the information. As a result, the EAPC will find it difficult to agree a common definition of surplus military equipment, regulate stockpiles and enforce management and reduction efforts.

In overcoming these challenges, the EAPC will have to establish a clear division of responsibilities with other multilateral organisations, notably with the European Union and the OSCE. Differences remain between member states over the roles for the Euro-Atlantic institutions. Certainly, the United States favours a stronger role for NATO and considers small arms control to fall firmly within the remit of a military organisation. Some European nations would prefer the OSCE to adopt a leadership role on small arms and light weapons, pointing to the organisation's consensus approach as an asset in the agreement of common controls.

NATO is commonly referred to as the most successful military alliance in history, and the EAPC's work programme would certainly benefit from the expertise and experience this entails. The Alliance has the edge over other multilateral institutions in its military and technical know-how, which enhances its capacity to address small arms control. For example, if weapons collection and destruction were to be a central function of the EAPC's small arms activities, it could utilise existing military structures. It could be argued that NATO's potential capacity to execute such practical measures, especially disarmament in peacekeeping, outstrips that of other regional organisations. Critically, the Alliance has the advantage of being a well funded organisation, and has considerable leverage over many of the countries exporting weapons to conflict zones and human rights abusers.

### **The European Union**

The EU has played a major role in developing the international agenda on small arms. In addition to the EU Programme on illicit trafficking outlined above, the Council of the European Union also adopted a legally binding Joint Action on the EU's contribution to combating the destabilising accumulation and spread of small arms and light weapons in December 1998.<sup>44</sup> The Joint Action commits the EU to honour, both financially and

politically, its stated commitments on small arms export policy, illicit trafficking and destruction of surplus weapons. Furthermore, the European Union has led the way in developing common controls on government-to-government weapons transfers by agreeing a Code of Conduct on arms exports in June 1998.

### *The EU Code of Conduct on Arms Exports*

After years of pressure from NGOs and politicians to increase responsibility and restraint of the arms sales, in June 1998, the European Union finally adopted a Code of Conduct on Arms Exports. This politically binding agreement aims to set “high common standards” under which the Member States agree to abide by certain criteria when granting arms export licences. The agreement covers all categories of weaponry. Although the groundwork for developing a common EU approach to arms exports has been in place for a number of years, the signing of this agreement in 1998 has brought into existence the first multilateral conventional arms export control regime. Reports suggest that the Code has already been effective in denying licences, and the regime has been successful in attracting the support of a number of countries outside the European Union.

### *Strengths of the agreement*

The EU Code outlines the common principles, such as transparency and accountability, which underpin future EU arms transfers. It also includes eight detailed criteria governing weapons sales, such as the human rights record of the proposed recipient or whether the final end user is in a region of tension or instability. Significantly, the EU Code also includes “operative provisions”, a basic system for all Member States to exchange information, refrain from undercutting transfers that were denied by other Member States and review the development of the Code. The Code marks a milestone in multilateral efforts towards controlling arms sales. Specifically, the EU Code has several positive aspects that should help guarantee its effectiveness:

- **High level of political commitment:** The Code indicates that EU Member States have placed arms export policy at the top of their agenda. This high profile agreement therefore goes some way to addressing the criticism that governments are framing the small arms issue as one that focuses exclusively on illicit transfers.
- **Unprecedented co-operation among arms exporters.** EU Governments are also taking their first, albeit cautious, steps towards sharing information and co-

operating on what has previously been regarded as a sensitive issue that is the preserve of each nation state. Before the Code was adopted, there was very little discussion on arms export policy, but adoption of the agreement has deepened EU dialogue on arms export controls, highlighted inadequacies in national controls and generated a willingness to address weaknesses, such as the lack of common controls on arms brokers. Now that the lines of communication are open, the information provided through denial notifications is apparently proving a revelation to many EU members, fostering reciprocal understanding of the implementation of the Code criteria.

- **Detailed criteria:** The EU Code lists eight clearly articulated criteria that members states can use when making arms export control decisions. These remain applicable regardless of the changing policies of each government. Under the criteria, EU states should not sell arms to another country if the sale would violate the Member State's international commitments (e.g., UN arms embargoes, etc.); if there is a clear risk of arms being used in human rights abuses; if the arms might exacerbate regional conflicts; if the arms are likely to be used in acts of armed aggression; if the sale might threaten the security of an EU state or its allies; if the recipient state has a poor history of cooperation on terrorism, non-proliferation, or other matters of concern to the international community; if there is a risk of diversion or re-export; or if the sale would have serious impact on the importing state's human and economic resources.
- **Transparency holds governments accountable:** The EU Code is a much promoted political agreement by which parliamentarians, the public, NGOs and the media can judge government policy against government practice.

### *Moves towards the expansion of the EU Code of Conduct*

For many officials and NGOs working to secure an EU Code, the agreement was seen as the first step in the long road to international common standards governing arms transfers. An international Code, covering all weapons exporters, embodies this long term objective, and the agreement of the EU Code has generated the level of political will required for other nations to consider such a measure. The European Union Code recognises this need for wider agreement in common standards by committing the Member States to "use their best endeavours to encourage other arms exporting states to subscribe to the principles of the Code of Conduct". The 16 EU Associated Countries - including new NATO members Hungary, Poland and the Czech Republic - have already declared their adherence to the principles of the EU Code.<sup>45</sup> The Southern



African Development Community (SADC) and Canada have further endorsed the agreement. Furthermore, in recent months the United States government has begun talks with the EU about not only endorsing the principles of the EU Code, but also participating in the Code's operative provisions. Thus moves towards agreeing an international code are progressing at a pace.

### *Weaknesses and omissions*

However, the speed with which other states and regional institutions have been lining up to voluntarily restrain their arms transfers must be called into question. Although the new move towards setting international standards governing arms exports is to be welcomed, the readiness with which other regional groupings and nations are prepared to sign up to the EU Code also exposes some of the weaknesses of the agreement.

The EU Code is shortly to be reviewed. As yet, it is difficult to make an accurate assessment of whether the Code has prevented any sales of weapons. However, critics of the regional agreement were disappointed by some of the final outcomes of the June 1998 agreement. During discussions of the proposed Code text, there were high expectations that the level of political will among the majority of Member States would result in restrictive criteria and far reaching consultation mechanisms. However, when the text was agreed, many of the more progressive proposals were rejected in favour of weaker options.

- **Status of the agreement:** The Code was adopted as a Council declaration – a political agreement – and therefore has no legally binding status. Consequently, effective implementation of the Code will depend on the political will of each Member State.
- **Loopholes in the criteria:** Although the level of detail in the Code criteria can be viewed as a major step forward, it may not be enough to guard against weak interpretation. For example, although the human rights criteria is the most developed and detailed of all provisions in the Code, some aspects remain vague. Internal repression is defined without any reference to the obligations set out in international humanitarian law, raising the possibility that EU countries might decide it does not apply to situations of internal armed conflict and violations of human rights outside the recipient's national borders. For example, Turkey could continue to receive arms that it might use to abuse the human rights of Kurds in Northern Iraq.

- **Consultation on undercutting:** The crux of the common approach through an EU Code is in deterring the practice of undercutting, the process by which one country grants an export licence which another has refused. Despite hopes that consultation would be conducted multilaterally among all countries, the final agreement only requires Member States to notify the country it has undercut. The decision to restrict consultation and notification on undercutting to bilateral exchanges carries with it certain potential dangers. Bilateral consultation is unlikely to facilitate the development of a common approach towards sensitive end-users amongst the wider group of Member States.
- **Lack of transparency:** The provisions for an annual review contained within the final text of the Code fall some way short of the level of public transparency necessary for the proper regulation of the arms trade. Although Member States will undertake an annual review of the Code, this will take place in confidence and will only be provided to the Council of Ministers, and not to national parliaments, the European Parliament, or the public. This is a major weakness in the Code of Conduct. The lack of provision for either public or parliamentary accountability suggests that the aim of achieving “greater transparency”, which is articulated so clearly in the Preamble to the Code, will not be achieved.
- **Serious omissions:** The Code also contains a range of omissions which severely limit the effectiveness of the agreement. The activities of brokers and shipping agents fall outside the remit of the agreement. Furthermore, the agreement fails to cover licensed production arrangements, whereby EU owned companies based outside the EU manufacture and export weapons to countries which might break the Code criteria.

The effectiveness of the Code will depend on how much each government considers itself bound by the code and the licence denials issued by other Member States. At the moment it remains a question of ‘wait and see’ – only time will tell if governments are taking the new criteria and information exchange seriously. However, the concept of the Code of Conduct and indeed its current framework has significant potential. If further progress is to be made, the agreement signed in June 1998 will have to be regarded as part of a *process*, the foundation for further work.

### The International Code of Conduct

The agreement of an EU Code of Conduct has undoubtedly boosted prospects for the

adoption of the International Code, a proposal put forward by a commission of Nobel Peace Laureates in 1996. Since the signing of the EU Code, the International Code has experienced a renewal of interest among experts and policy-makers. For example, the Congress of the United States has moved towards adopting legislation in favour of a multilateral arms export regime along the lines of the International Code.<sup>46</sup>

The International Code of Conduct on Arms Transfers was proposed by Dr. Oscar Arias, the former President of Costa Rica and winner of the 1987 Nobel Peace Prize. Since its inception, it has been endorsed by 17 Nobel Peace Laureates, including José Ramos-Horta, the Dalai Lama, and Desmond Tutu, and was formally launched in New York in 1997. The Code would obligate governments to uphold internationally recognized standards of democracy, human rights and peaceful international relations. More specifically, the Code would require arms suppliers to certify that all arms recipients meet a set of criteria that are significantly tighter than those adopted by the European Union. They include:

- compliance with international human rights standards and international humanitarian law;
- respect for democratic rights;
- a commitment to promote regional peace, security and stability; and
- the promotion of human development.

#### *Building on a US Code of Conduct*

The International Code built on the growing support for a national Code of Conduct on arms sales in the United States. Developed in response to the growth in US arms sales following the Persian Gulf War, the US Code has gained ground in the US Congress since it was first introduced in 1995. Like the international Code, the US Code would restrict arms sales to regimes that are democratically elected, respect human rights, refrain from armed aggression and participate in the UN Register of Conventional Weapons. It has been championed in Congress by Reps. Cynthia McKinney (D-GA) and Dana Rohrabacher (R-CA) in the House, and by Sen. John Kerry (D-MA) in the Senate.<sup>47</sup> In June 1997, the Code became the first piece of legislation curbing the proliferation of conventional weapons to pass the House of Representatives in over 20 years, when it passed by voice vote as an amendment to a larger bill. In spite of these setbacks, the US Code has helped generate interest, both in the United States government and elsewhere, for an international arms trade regime along similar lines.

### *Progress towards an international Code regime*

Because the International Code includes strictly defined criteria based on principles enshrined in international law, it would not be open to loose interpretation and abuse like other arms export control regimes. These high standards have been instrumental in generating public and NGO support for the initiative, and have helped secure the endorsement of a range of high profile figures.

The International Code's strongest asset is its proposal of universality. Most governments find it more politically palatable to adhere to international arms transfer regimes than to take a unilateral stand by changing their own national policies. By adopting high common standards, governments do not leave themselves open to the charge that a denied sale will only be fulfilled by another country's defence industry. However, although support for the Code has been growing steadily, progress towards an international agreement along these lines has been incremental. Because the Code text contains principled provisions, it is considered by some politicians to be an unrealistic goal. Nevertheless, the International Code holds considerable merit as an ideal benchmark against which other arms transfer controls can be judged. Agreement on an International Code would also represent the logical progression of regional arms control arrangements.

### **Comparative advantage of the Commonwealth**

There is no doubt that Commonwealth countries have an overwhelming interest in measures to control small arms. Many Commonwealth countries have suffered adversely from the proliferation of these weapons, either through conflict, proximity to conflict or organised crime. Violence and instability continues to engulf many Commonwealth nations, particularly in South Asia, the Central African region, West Africa and the Caribbean. Civil wars, inter-state conflicts and drug-fuelled crime have created a cycle of death and destruction and unleashed a flood of weapons into society. Even among countries nominally at peace, the easy availability of small arms has fostered increasingly violent crime.

### *Strengths of a diverse membership*

While many Commonwealth states are frequent recipients of small arms transfers, others are just as centrally involved in different aspects of the small arms trade. The organisation comprises some of the world's major arms suppliers, including the United

Kingdom, Canada, Australia and South Africa. Other Commonwealth countries, such as India and Pakistan, have become important secondary producers, while still more are transit countries through which small arms pass on their way to conflict zones. When taken together, Commonwealth members run the gamut of the arms trade and as such are in a strong position to agree common controls to address different aspects of the problem.

As an institution that is truly international in its breadth of membership, the Commonwealth is well placed to adopt global solutions to this problem. Its 54 members come from six continents and represent diverse regions of the world. Their shared experience of challenges posed by small arms would substantially deepen understanding of the issue, and could create more sophisticated and targeted responses to a complex problem. For example, the membership of more affluent nations could help create the kind of donor-recipient partnership that has helped facilitate the ECOWAS moratorium or the Southern African Regional Action Programme. The Commonwealth's advantage is that enduring partnerships already exist within the organisation itself. By harnessing the resources of Northern member states, the institution can better guarantee effective solutions. Furthermore, the organisation's uniquely Southern focus would help ensure that these solutions are firmly embedded in the context of development, economic growth and cultures of peace.

### *Global small arms leaders*

Some Commonwealth member states are among those that have acknowledged the pernicious affects of small arms and initiated many of the processes undertaken in other multilateral institutions. Some of these are more affluent, Northern countries, including Canada and the United Kingdom, while others, including South Africa, have experienced the proliferation of small arms first hand. These countries have become global leaders in the effort to control small arms, and their experience would undoubtedly benefit similar processes within the Commonwealth. Even in the national arena, many of these countries have made significant changes to their domestic policies on small arms in recent years. Crucially, several Commonwealth states, including Australia, the UK, Canada and South Africa, have made or are in the process of making changes to their own civilian weapons possession legislation that would significantly limit individual access to weapons. The Commonwealth would serve as a valuable forum for sharing these progressive gun control policies outside the politically charged atmosphere of the United States.

#### The International Response to the Light Weapons Crisis: Lessons for the Commonwealth

While many Commonwealth member states have come to realise the need for greater small arms control, the organisation as a whole has been slow to embrace the issue. However, there are some indications of political will on small arms issues among past declarations of the organisation. For example, the 1991 Harare Declaration included a recognition that the “build-up of conventional weapons must be curbed if [the] accumulation of arms exceeds the legitimate requirements of self-defence”. This focus on conventional arms sales, albeit heavy weapons, has grown out of a long-standing commitment to human rights. The Commonwealth has often taken a principled stand on human rights issues, most notably over apartheid in South Africa and the abuses of the Abacha regime in Nigeria, and this commitment has in the past extended to the weapons used to perpetrate such abuses.<sup>48</sup>

The links between arms flows and human rights abuses are well documented. Small arms in particular often become the tools of repression when they are used indiscriminately by state and non-state actors alike. By addressing the spread of these weapons and restraining their sale and use, the Commonwealth would be acting within its distinctive human rights competency. Small arms control, in line with a holistic “security first” approach to disarmament, would also fall well within the Commonwealth’s role in development and capacity building. Far from having to elaborate a new direction to facilitate a debate on small arms issues, the Commonwealth is already in a strong position to incorporate small arms control into its existing programmes and initiatives.

### Conclusion

When considering its role in the global effort to control small arms, the Commonwealth would do well to examine the activities of other organisations. With more and more organisations becoming involved in small arms control, international understanding of the problem is deepening and solutions are becoming more comprehensive and complex. However, governments and regional organisations must ensure that the recent proliferation of small arms initiatives does not translate into a corresponding duplication of initiatives and waste of scant resources. When assessing its role in contributing to the international effort, the Commonwealth must ensure that it capitalises on its assets and advantages. Crucially, the organisation’s proven record in building consensus on human rights standards among a diverse group of states should be the fundamental starting point for developing small arms initiatives.

Nevertheless, the Commonwealth can learn from other regional and international proposals. The focus on illicit trafficking found in the OAS approach and recently embraced by the negotiations towards a Firearms Protocol is certainly the most politically palatable to governments, and perhaps the most realistic in the short run. The high priority accorded to the crackdown on illicit arms has certainly heightened awareness of the dangers associated with small arms and the agreement of a global instrument on illicit weapons trafficking will have positive impact on crime. This impact will be limited, however, if it is not accompanied by corresponding initiatives to tackle the root causes of weapons proliferation, be they poverty, injustice or insecurity. Embedding programmes to combat illicit trafficking within a comprehensive framework of capacity building, weapons reduction and developmental assistance will be better able to reverse cultures of violence and guard against human rights abuses. Commonwealth states have a critical role to play in broadening the agenda on illicit trafficking.

However, efforts to limit the spread and misuse of small arms will still fall short if governments fail to restrain their own legal transfers. All states, whether manufacturers, suppliers, transit states or recipients of new or old weaponry, have a responsibility to increase accountability and restraint over legal transfers. Although the movement toward higher standards governing arms exports has begun, to date discussions have largely been confined to major Northern supplier states. Developing high international standards on weapons transfers will only be possible when Southern countries – both suppliers and recipients – are engaged in discussions. Building consensus among the Commonwealth states on common controls that incorporate the principles of human rights and humanitarian law would be an excellent starting point.

The Commonwealth has tremendous potential to advance the international agenda on small arms, both through the development of independent programmes and through contributions to other international processes. Above all, consensus in the Commonwealth, an organisation spanning six continents and many political agendas, will ensure that the small arms control agenda does not become polarised into efforts to restrain supply and those to reduce demand for weapons. Acknowledgement within the Commonwealth of the need to take a holistic approach to the problem will serve as an excellent bedrock on which to build global norms and standards. The opportunity to engage the support of this unique organisation should not be missed.

<sup>1</sup> See also *Wheeling and Dealing*, Geraldine O'Callaghan and Brian Wood, *The Bulletin of Atomic Scientists*, January/February 1999.

<sup>2</sup> The Group of Like-Minded States, a loose network of 21 countries working on small arms, agreed "An International Agenda on Small Arms and Light Weapons: Elements of a Common Understanding", 13-14 July 1998, Oslo, Norway. Participating countries were: Belgium, Brazil, Burkina Faso, Canada, Colombia, France, Germany, Indonesia, Japan, Mali, Mexico, Mozambique, Netherlands, Norway, Philippines, South Africa, Sri Lanka, Sweden, Switzerland, United Kingdom, United States, and Zimbabwe.

<sup>3</sup> The Brussels Call for Action can be found at <http://www.disarmconf.org/en/index.html>.

<sup>4</sup> In June 1998, the OAU adopted a decision on proliferation of small arms, stressing the role that the OAU should play in co-ordinating efforts to address this problem in Africa and requesting the OAU Secretary General to prepare a comprehensive report on this issue. On July 14 1999, the Assembly of the Heads of State and Government of the OAU adopted a decision on the *Illicit Proliferation, Circulation and Illicit Trafficking of Small Arms and Light Weapons* which calls for a co-ordinated African approach to the problems and called for a preparatory conference on illicit trafficking.

<sup>5</sup> In June 1999, the first summit of Heads of States and Governments of Latin America and the Caribbean and the European Union, adopted the *Declaration of Rio de Janeiro* which declared the special importance of the fight against excessive and destabilising accumulation of small arms. They further welcomed the EU Joint Action on Small Arms and the OAS Convention on illicit trafficking.

<sup>6</sup> In November 1997 the World Bank's post conflict unit has assisted in de-mining programmes and in demobilisation and reintegration programmes. In March 1999 they also held an expert meeting on security and development which investigated ways of supporting programmes aimed at controlling small arms.

<sup>7</sup> In May 1997 the OECD Development Assistance Committee (DAC) Task Force adopted new guidelines on "peace conflict and development" to promote best practice amongst donors in providing support in regions of conflict. In 1998-99 DAC embarked on further work to develop understanding on how to implement these guidelines to promote effective assistance to regions emerging from conflict where there are urgent problems associated with small arms and light weapons proliferation.

<sup>8</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> in English and Spanish, respectively. The OAS currently includes all 35 countries in the Americas. However, Cuba was barred from participation in the organization by a resolution passed in 1962.

<sup>9</sup> To date, the following countries have ratified the OAS Convention: Belize (17 November 1997), Bahamas (5 June 1998), Mexico (19 May 1998), El Salvador (8 January 1999), Bolivia (12 February 1999), Peru (4 June 1999), Ecuador (23 June 1999).

<sup>10</sup> For instance, Mexico and the US have been working on a bilateral assessment of the links between drug and firearms trafficking. The document states that between 1995 and 1996, 36 percent of the 23,841 firearms that were seized corresponded to seizures related to drug trafficking. See "The negotiations of the Inter-American Convention against Illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials", presentation by Ambassador Carmen Moreno at Oslo meeting of like-minded governments, July 1998.

<sup>11</sup> It defines firearms as: "a) 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, except antique firearms manufactured before the 20th Century or their replicas; or b) any other weapon or destructive device such as any explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system, or mine". Article I, para. 3, OEA/Ser.P, AG/RES. 1, XXIV-E/97.

<sup>12</sup> Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition," Inter-American Drug Abuse Control Commission, November 1997. Posted on the CICAD web site at

[http://www.cicad.oas.org/en/legal\\_development/legal-regulations-arms.htm](http://www.cicad.oas.org/en/legal_development/legal-regulations-arms.htm).

<sup>13</sup> 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. Minister Moreno was formerly the Ambassador of Mexico to the OAS.

<sup>14</sup> Final Communiqué of the Denver Summit of the Eight, para. 41, 22 June 1997. Obtained on the internet at: <http://summit8.gov/G-8final.htm>.

<sup>15</sup> "Denver Communiqué (G-8)", questionnaire obtained from UK Home Office, Operational Policing Unit, 28 November 1997.

<sup>16</sup> For further analysis see S. L. Dyer & G. O'Callaghan, *One Size Fits All? Prospects for a global convention on illicit trafficking by 2000*, BASIC Research Report 99.2, April 1999.

<sup>17</sup> The analysis is based the most current available version of the Protocol text at time of writing: "Draft Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials



Supplementary to the United Nations Convention against Transnational Organized Crime”, A/AC.254/4/Add.2/Rev.1, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Third Session (28 April – 3 May 1999), United Nations Office at Vienna, 8 February 1999. The full text is available in a number of different languages on the United Nations Crime and Justice Information Network web site at <http://www.ifs.univie.ac.at/~uncjin/dcatoc/3session/index.htm>.

<sup>18</sup> See footnote 149 regarding a proposed new article on Registration and Brokering, A/AC.254/4/Add.2/Rev.1, pp. 20–21.

<sup>19</sup> Article 2 bis *Use of Terms* point (a), “Revised Draft United Nations Convention against Transnational Organized Crime,” A/AC.254/4/Rev.1, Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, Third Session (28 April – 3 May 1999), United Nations Office at Vienna, 10 February 1999, p. 4.

<sup>20</sup> “The Programme for Preventing and Combating Illicit Trafficking in Conventional Arms”, a Council Declaration, 9057/97, 26 June 1997.

<sup>21</sup> See also “The European Union and the Issue of Conflicts in Africa: Peace Building, Conflict Prevention and Beyond”, SEC(96) 332 final, Communication from the Commission to the Council, Commission of the European Communities, Brussels, 6 March 1996.

<sup>22</sup> “The Programme for Preventing and Combating Illicit Trafficking in Conventional Arms”, A Council Declaration, 9057/97, 26 June 1997.

<sup>23</sup> Geraldine O’Callaghan interview with a UK Foreign and Commonwealth Office official, 26 November 1997.

<sup>24</sup> “European Union Code of Conduct on Arms Exports”, text formally approved by the General Affairs Council, Council of the European Union, 8 June 1998.

<sup>25</sup> “European Union Joint Action on Small Arms”, 17 December 1998, 14164/98, DG E PESC IV.

<sup>26</sup> The seminar was organised by the Institute for Security Studies and Saferworld.

<sup>27</sup> Saferworld and the Institute for Security Studies, “Southern African Regional Action Programme on Light Arms and Illicit Arms Trafficking”, Seminar proceedings (London and Halfway House: Saferworld and the Institute for Security Studies) May 1998.

<sup>28</sup> Submission by the United Kingdom to the UN Secretary-General on behalf of the European Union on the Report of the UN Panel of Governmental Experts on Small Arms, 29 June 1998.

<sup>29</sup> “Joint Action adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons,” 14164/98, Council of the European Union, 17 December 1998.

<sup>30</sup> UN General Assembly resolution 50/70 B of 12 December 1995.

<sup>31</sup> *General and Complete Disarmament: Small Arms*, United Nations General Assembly, Fifty-fourth session, Item 76 (f) of the provisional agenda, A/54/258, September 1999.

<sup>32</sup> *Ibid*, paragraph 124 (d).

<sup>33</sup> Quoted in Jim Wurst, “UN Lobbies for Coordination on Small Arms”, *BASIC Reports* No. 65, 14 August 1998.

<sup>34</sup> *Ibid*, paragraph 9.

<sup>35</sup> The text of the ECOWAS Moratorium declaration is reproduced in UN document A/53/763 – S/1198/1194, 18 December 1998.

<sup>36</sup> The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Technologies is effectively an information exchange regime of 33 arms exporting countries. Members states are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovak Republic, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and United States.

<sup>37</sup> For more detailed information on the ECOWAS moratorium see the Norwegian Initiative on Small Arms Transfers (NISAT) website, [www.nisat.org](http://www.nisat.org).

<sup>38</sup> “The Mali Mission”, Remarks by Mr. Goulding, Undersecretary-General for Political Affairs to the First Committee, United Nations, 26 October 1994.

<sup>39</sup> Quotation from *Chronology of Events Relating to the ECOWAS Moratorium*, Sverre Lodgaard, NUPI, [www.nisat.org](http://www.nisat.org).

<sup>40</sup> *The Wassenaar Arrangement and the Moratorium for West Africa*, Ambassador Steffan Sohlmanns, Chairman, Wassenaar Arrangement, 5 May 1999, Henri Dunant Centre, Geneva.

<sup>41</sup> The workshop was organised by the Governments of Canada, Norway, the Netherlands and Sweden, in association with the British American Security Information Council (BASIC) and was held at the Hofburg Palace, Vienna, 9–10 November 1998. See the workshop report, “Small Arms and Light Weapons: An Issue for the OSCE?”, BASIC.

<sup>42</sup> See Loretta Bondi, “NATO Ambassadors Tackle Small Arms Problem”, *BASIC Reports* #69, 29 March 1999.

<sup>43</sup> See Abdel-Fatau Musah and Robert Castle, “Eastern Europe’s Arsenal on the Loose: Managing Light Weapons Flows to Conflict Zones”, *BASIC Paper* 26, May 1998, and “Arsenals on the Cheap: NATO Expansion and the Arms Cascade”, Human Rights Watch, April 1999.

<sup>44</sup> Joint Action of 17 December 1998 adopted by the Council on the basis of Article J.3 of the Treaty on European Union on the European Union’s contribution to combating the destabilising accumulation and spread of small arms and light weapons (1999/34/CFSP), *Official*

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*Journal of the European Communities*, 15 January 1999.

<sup>45</sup> These countries are Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Norway, Poland, Romania, Slovakia and Slovenia.

<sup>46</sup> Section 589 of the Senate FY 2000 Foreign Operations Appropriations Act (Bill number) instructs the administration to begin negotiations towards a permanent multilateral arms transfer regime, which would set specific

minimum criteria for arms transfers.

<sup>47</sup> The most recent version of the Code is the Code of Conduct on Arms Transfers Act of 1999 (HR 2269), introduced in the House of Representatives on 17 June 1999.

<sup>48</sup> For example, the 1971 Commonwealth Heads of Government Meeting in Singapore debated the issue of British arms sales to South Africa.

Kate Joseph

## CASE STUDY 2

### **Gun Violence in the Caribbean Commonwealth – Jamaica**

This small Caribbean nation is experiencing a wave of crime and violent rioting, much of which has been carried out using small arms. In the first six months of 1999 alone, around 500 people were killed, most of them in the gang-dominated ghettos of Kingston.<sup>1</sup> Violent crime has become a familiar feature of Jamaican society, with 1,225 shootings recorded in 1998 and 1,419 in 1997.<sup>2</sup> Although partisan violence has dominated the Jamaican political scene for years, the emergence of youth gangs is a worrying new phenomenon in a country where 40% of the population is under 11 years of age.

A tense relationship has developed between gangs and the security forces, who have reacted with a “tough-on-crime” approach in recent months. Following the latest surge in criminal activity, accompanied by large-scale riots in mid-1999, Prime Minister Percival Patterson’s government deployed the military on the streets of Kingston and gave it new powers to conduct spot checks and searches, and enforce curfews. Meanwhile, the Government has been investigating

ways to clean up the oversupply of small arms and stop new weapons from reaching the country.

#### *Where do the guns come from?*

In Jamaica itself, civilian firearms possession is subject to certain restrictions, but guns are nevertheless in plentiful supply. Conservative police estimates put the number of illegal weapons in circulation at around 20,000.<sup>3</sup> Some of these weapons were probably originally distributed by the political parties over two decades ago, an unfortunate consequence of the armed unrest that plagued the country in the seventies and eighties. However, civilians are increasingly armed with newer, more lethal weapons that are believed to originate in the United States.

Permissive US gun laws have created an abundance of weapons that are easy to purchase in large quantities and transfer overseas. For example, in November 1998, two police seizures yielded 11,000 rounds of ammunition, found to have originated in New York City.<sup>4</sup> Arms are smuggled in,

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hidden in crates along with commonplace items such as rice or books. Some weapons deliveries are linked to the deportation of Jamaican nationals with criminal records from the United States, Canada and Britain; many are linked to the rise of Jamaica as a drug trans-shipment point for North America and Europe. Although there is little dispute over the origin of most illegal weapons in Jamaica, the inability to trace their movement hampers the success of interdiction strategies.

***What is being done?***

Jamaica has been a prominent voice in favour of stronger controls on the illicit firearms trade. With the agreement of the Inter-American Convention against illicit weapons trafficking,<sup>5</sup> it was hoped that many of the weapons flooding across borders in the Americas would be interdicted and seized. Jamaica, a long-time supporter of the Convention, urged the strengthening of the capacity of customs and border police as a way of tackling the problem. Cooperation with the United States improved following the signing of the Convention, which led to greater information exchange and increased training and technical assistance.<sup>6</sup> On 5 August 1999, the Jamaican Justice Minister met with US Attorney General Janet Reno to discuss the flow of weapons from the US "gateways" of New York, Florida and

California. The government has been investigating new methods to curb the problem and recently destroyed 4,201 weapons collected over a number of years, and which had been originally slated for sale to a US company.<sup>7</sup>

***What more can be done?***

Effective measures to stem the flow of illegal weapons into Jamaica are sorely needed, and cooperation with the United States and other arms producing countries would go some way towards achieving this aim. However, the underlying causes of high crime and violence in Jamaica will remain as long as the government and the international community fail to address fundamental issues of social exclusion.

The response of the Jamaican security forces to the growing violence has prompted accusations of police brutality and human rights violations. Recent reports have shown that Jamaica has a notably high rate of killings by police officers. According to one report, police officers have killed 125 civilians so far this year (to September 1999). By contrast, in 1998, police killed 75 people in Dominican Republic, a country with three times Jamaica's population.<sup>8</sup> The atmosphere of insecurity worsened when hundreds of law-abiding citizens were forced to flee their homes after the military was sent in to deal with riots in mid-1999.

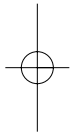
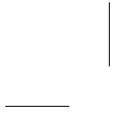
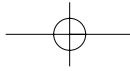
- <sup>1</sup> "Politics-Jamaica: Government Moves to Halt Bloody Crime Wave", Inter-Press Service, 14 July 1999.
- <sup>2</sup> "Jamaican government destroys 4,000 guns, nixing plan to sell them", The Associated Press, 25 July 1999.
- <sup>3</sup> "Methods of fighting and spreading crime", *The Jamaica Gleaner*, 22 July 1999.
- <sup>4</sup> "Jamaican Police Make Major Arms, Ammo Seizure", Reuters, 20 February 1999.
- <sup>5</sup> "Inter-American Convention Against the Illicit Manufacture of, and Trafficking in, Firearms, Ammunition and Explosives and Other Related Materials", OEA/Ser.P/AG/RES. 1, XXIV-E/97, 13 November 1997,

Organization of American States, Washington, DC. Full document available at <http://www.oas.org/EN/PROG/Juridico/spanish/Tratados/CICTIAF.html>.

<sup>6</sup> Tom McDonald interview with Jamaican police official, 17 March 1999, cited in "One Size Fits All: Prospects for a Global Convention on Illicit Trafficking by 2000", BASIC Research Report 99.2, April 1999.

<sup>7</sup> "Jamaican government destroys 4,000 guns", *op. Cit.*

<sup>8</sup> "Jamaican police under siege for violent crime crackdown", CNN, 29 July 1999.



**Displaced Tutsi in camp near Rwanda - Burundi border — Photo: Marc Schlossman (Panos)**

