

# Toward a Convention on International Arms Transfers

by Oscar Arias Sánchez

The United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (July 2001) provides the international community with an excellent opportunity to reflect on all sorts of arms transfers in light of today's realities. The line between licit and illicit arms deals is often so thin as to be invisible. We must begin to ask ourselves what is more important: legalistic definitions or principles? When civilians are massacred by a paramilitary member, rebel group, or army in a civil war, does it matter if the weapons used were acquired legally? When a woman is murdered by her ex-soldier husband with his service weapon, does it matter whether he had a permit to own it?

In principle, I am sure we would all agree that the answer is "No." Yet, in the real world, we do need legal definitions, as the power of judgment is vested in our courts, which depend on those definitions, and their interpretations, to do the business of justice. How, then, shall we define legal transfers of weapons? Which transfers are illicit? These questions are so far without a convincing answer from the community of states embodied in the United Nations.

The July conference should be taken as an opportunity to explore these questions and build consensus around clear and definitive answers. In particular, I would like to see the UN member states seriously consider the Framework Convention on International Arms Transfers described in this article. I believe it presents a potential solution to the problem of definitions and, more importantly, a viable way of getting the "legal" arms trade under control. Any death from gun violence is one too many. There is no time to lose.

## THE EXTENT OF THE PROBLEM

In the last decade alone, more than 380 companies in 64 countries manufactured small arms and light weapons (SALW), ammunition, and associated equipment. Due to the lack of transparency in the arms trade in most countries around the world, the actual figure may even be higher. The United Nations estimates that in the 1990s, conventional weapons were used to kill more than 5 million people and force 50 million to flee their homes.<sup>2</sup> Millions more lost their property, their livelihood, or their loved ones.

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Since 1945, around 26 million people have died as a result of the impact of SALW. As a result of today's "conflict demilitarization," the large majority of victims are civilians, not soldiers. Many of these are women and children.

Since the Kalashnikov (AK-47) was invented in 1947, more than seventy million of these weapons, the small arm *par excellence*, have been used in seventy-eight countries and produced in fourteen. There are around eight million units of the U.S.-made M-16 rifle, seven million units of the German G-3 rifle, and between five and seven million units of the Belgian-made FN-FAL. Also, there are approximately ten million units of the Israeli-made Uzi pistol. In the United States alone, more than four million light weapons (a million of which are imported) come onto the market every year.

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We know that in some cases, these weapons have been used against the interests of those who made and sold them, creating what has been deemed a "boomerang effect." For instance, U.S.-made weapons have been turned against U.S. troops in Somalia, Iraq, Panama, and Haiti, where unaccountable military leaders replaced former allies and inherited the arsenals acquired courtesy of the United States. Other arms-manufacturing countries, such as Great Britain and France, have experienced the boomerang effect as well. Ultimately, it was these deaths—deaths of first-world soldiers, rather than third-world civilians—that put the topic of controlling the arms trade on the international agenda.

It is not just gun deaths that ought to make us think twice about the legitimacy of the arms trade. In a world where 1.3 billion people live on less than one dollar a day, unrestrained commerce in weapons perpetuates this poverty. Each year, around \$20 billion is spent on conventional weapons transfers worldwide. Yet we know that just \$8 billion a year (the amount of money the world spends on military equipment and training in four days) would be enough to ensure that all children around the world had basic education. It is time that the world's arms merchants and their customers realize that the children of the world urgently need schools and health clinics, not machine guns and grenades.

The frequent use and misuse of weapons simply mirrors other deep-rooted problems of a more structural nature. The problem is not just the easy availability of weapons but also social and political circumstances—social fragmentation, exclusion of youth, unemployment, poverty, corruption, etc.—that generate a demand for means of violence and confrontation. Taking action to address these root causes is therefore essential to stemming the tide of increasing violence in the world. This means improving judicial systems, tackling corruption, overcoming the heavy burden of the geopolitical manipulation carried out during the cold war in many countries, adopt-

ing measures to put an end to economic exploitation, improving democratic governance, and regulating the role of private security companies, among other things.

#### DEFINITIONS: FROM LICIT TO ILLICIT IN THE BLINK OF AN EYE

The UN conference to be held in July 2001 in New York is a major opportunity for the international community to agree upon a truly comprehensive, proactive action plan to prevent the spread and misuse of small arms and light weapons. For this plan to be truly comprehensive, it will have to reexamine the typical definition of an “illicit arms transfer.” A commonly used definition of “illicit” covers those transfers that are not authorized by exporting, importing, and transit states. However, many arms deals that begin with the requisite authorizations are later diverted to illicit markets and end-users. In 1999, the UN Group of Governmental Experts on Small Arms clearly signaled the interconnection between legal trade and illicit transfers:

Illicit arms supply networks often involve legal arms purchases or transfers which are subsequently diverted to unauthorized recipients, or leakage from arms storage facilities. Arms brokers play a key role in such networks, along with disreputable transportation and finance companies. Illicit arms trafficking can sometimes be helped by negligent or corrupt governmental officials and by inadequate border and customs controls. Smuggling of illicit arms by criminals, drug traffickers, terrorists, mercenaries or insurgent groups is also an important factor. Efforts to combat illicit arms trafficking are in some cases hampered by inadequate national systems to control stocks and transfers of arms, shortcomings or differences in the legislation and enforcement mechanisms between the States involved, and a lack of information exchange and cooperation at the national, regional and international levels.<sup>3</sup>

There are a large number of case studies that reflect this reality. Let us examine just one of them. On June 5, 1998, the UN Security Council passed a resolution prohibiting the sale of arms and related material to nongovernmental forces in Sierra Leone. Despite this embargo, small arms continued to reach the Revolutionary United Front (RUF), which subsequently used them to commit massive and brutal human rights violations against the civilian population in Sierra Leone. UN secretary-general Kofi Annan appointed a panel of experts to investigate alleged violations of the embargo and the role of the trade in diamonds from rebel-held areas. The panel’s report, released on December 20, 2000,<sup>4</sup> details how 68 tons of weapons from Ukraine were transferred into the hands of the RUF. As an illuminating case study of how arms that originate in the legal market make their way into the illegal market, it deserves some examination here.

A shipment of 68 tons of weapons, including SALW, arrived at Ouagadougou, Burkina Faso, on March 13, 1999. The weapons were part of a contract between a Gibraltar-based company representing the Ministry of Defense of Burkina Faso and the Ukrainian state-owned company Ukrspetsexport. A Ukrainian license for sale of the weaponry was granted after Ukrspetsexport received an end-user certificate from the Ministry of Defense of Burkina Faso. The end-user certificate authorized the

Gibraltar-based company to purchase the weapons for the sole use of the Ministry of Defense of Burkina Faso. The document also certified that Burkina Faso would be the final destination of the cargo and the end-user of the weaponry. The weapons, however, were not retained in Burkina Faso. They were temporarily off-loaded in Ouagadougou, and some were trucked to Bobo Dioulasso. The bulk of them were then trans-shipped within a matter of days to Liberia, whose government is known to be collaborating with the RUF in Sierra Leone and has been the subject of UN sanctions for doing so. A few days after these events, the RUF rebels started a major offensive that eventually resulted in the destructive January 1999 raid on Freetown.<sup>5</sup>

### CONTROLLING THE LEGAL TRADE

As an important element in combating illicit trafficking, therefore, governments must strictly control the “state-sanctioned” or “legal” trade. Such measures as import/export controls, end-use certification systems, postdelivery authorization, and controls on the activities of arms brokers are all necessary. Aside from combating the risk of diversion, however, there is a second reason why legal transfers must be controlled. Certain governments have defined the illicit trade as strictly those international transactions that are not authorized by either one or both of the states concerned in the transfers. In other words, only those arms transfers that take place on the “black market” are illicit. However, the United Nations, in the form of the UN Disarmament Commission, defines illicit trafficking more broadly as “that international trade in conventional arms, which is contrary to the laws of States and/or international law.”<sup>6</sup> Under this definition, many arms transfers considered licit by the states involved are actually illicit under international law. So-called legal transfers of small arms have facilitated human rights violations and breaches of international humanitarian law, fueled conflict and violent crime, and undermined development and regional stability.

Principles of international law do support checks on legal arms transfers; however, the world’s governments have yet to codify these principles and turn them into practical reality. While states cling to their right to self-defense in order to acquire conventional weapons, they often disregard their obligations to international commitments and to limiting arms acquisition to legitimate security needs. More than fifty years ago, those countries that signed the UN Charter committed themselves to creating a mechanism for regulating arms transfers worldwide. Today, Article 26 of the UN Charter remains an unfulfilled promise.

### REGULATING INTERNATIONAL ARMS TRANSFERS

Many SALW have been obtained through international arms transfers that could have been stopped. Since 1945, the international community has developed a number of binding agreements concerning human rights, humanitarian law, and peaceful coexistence. But when it comes to the international arms trade, such agreements seem to take a backseat to politics and profit-making.

Under the 1948 Geneva Conventions and its 1977 Protocols, governments are bound to respect and ensure respect for international humanitarian law. However, states often proceed with an arms transfer even when there is a clear risk that it could contribute to serious violations of these internationally agreed-upon, binding standards.

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The proposed International Criminal Court may prosecute perpetrators of war crimes, crimes against humanity, genocide, and serious human rights violations once the necessary sixty states have ratified its statute. But there is no equivalent international mechanism to prevent these individuals from receiving arms in the first place. States have yet to complement this effort against impunity with the obligation not to authorize arms transfers that would contravene the limitations imposed on them by international law.

The vicious cycle of arms sales, conflict, and human rights abuse can and must be stopped. With this goal in mind, a group of Nobel Peace Laureates, which I had the honor to lead, developed in 1997 the International Code of Conduct on Arms Transfers, which establishes a set of principles to control the legal arms trade. It is endorsed by eighteen individuals and organizations that have been honored with the Nobel Peace Prize.<sup>7</sup> Drawing on existing international law, we called on all states to abide by a restrictive Code of Conduct on arms transfers, based upon the following principles:

- respect for human rights and international humanitarian law;
- commitment to promote regional peace, security, and stability;
- compliance with international arms embargoes, military sanctions, and transparency measures;
- opposition to terrorism; and
- the promotion of sustainable development.

A coalition of nongovernmental organizations (NGOs) has joined the Nobel Peace Laureates in this effort. For several years now, we have promoted the code and discussed it with governments. In order to make progress on this issue, in late 2000, this group<sup>8</sup> joined with lawyers from the Lauterpacht Research Centre for International Law at Cambridge University to transform the principles endorsed by the Peace Laureates into a Framework Convention.

Once adopted, the Framework Convention will be a legally binding agreement that codifies states' obligations under existing international law. It sets out core principles and mechanisms relating to international transfers of arms, which at a later stage could be supplemented by protocols dealing with specific issues such as licensed production, end-use monitoring, transparency, and arms brokering. Like any other treaty, the Framework Convention would enter into force and become a binding international instrument once signed and ratified by the requisite number of states.

The basic obligation under this convention would be for states that have ratified it to adopt national mechanisms for the explicit authorization of international transfers of arms. As a minimum, each application for authorization would have to be analyzed on a case-by-case basis. States would not allow a transfer if:

- it violates the state's obligations under international law;
- there is a risk that its contents may be used to violate human rights and international humanitarian law or to commit war crimes, genocide, or crimes against humanity; or
- it undermines sustainable development, political stability, or regional security or facilitates crimes.<sup>9</sup>

The convention spells out the different types of limitations to which states must subject their arms exports, according to international law. These include express limitations, such as already existing treaties regarding specific classes of weapons (i.e., the Chemical Weapons Convention) and UN-established embargoes. It also includes limitations based on the anticipated use made of weapons by the final recipient, which is based on a state's obligation not to participate in the wrongful acts of the recipient state. The final class of limitations on weapons transfers includes those arising from the potential effects of the transfers on violent crime, political stability, regional security, or sustainable development.

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### **The time has come for responsible measures to rein in the unchecked sale of death and misery on the international market.**


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Although based on sound principles of international law, the Framework Convention on Arms Transfers is not likely to be established overnight. The financial stakes for arms-exporting countries are high, and therefore many do not want voluntarily to slow down this prosperous industry in their countries. In addition, many arms-producing countries argue against refusing to sell weapons to human rights abusers with the logic that, "If we don't sell, someone else will." It is precisely because of this reality that a binding international agreement is called for. The community of nations must agree to a minimum set of standards for arms transfers, and each arms-producing country must then write these provisions into law. This is the only way to slow, and eventually stop, the current flood of SALW to dictators, rebels, and militias who show absolute disregard for humanitarian law and human rights.

Because of the scope and complexity of the problem that the Framework Convention seeks to address, and because of the powerful political and economic interests that sustain the international arms trade, a broad and dynamic campaign will be necessary to move forward on this issue. This campaign needs to be truly international in character and to benefit from the experience, perspectives, and expertise of NGOs from around the world. It will be a concerted and coordinated effort from global civil society based upon equal partnership, solidarity, and a common commit-

ment to alleviating the devastating consequences of irresponsible weapons sales. This movement is in the works, and it is my hope that more and more like-minded individuals, organizations, and governments will come on board to promote this logical, just, and humane effort.

### CONCLUSIONS

There is much work to be done. The situation is daunting, and yet we have hope, because thousands of individuals, groups, and community leaders have already expressed their faith in an International Code of Conduct on Arms Transfers as both morally sound and politically necessary. It is these people, and the force of their convictions, that will turn possibility into progress, and this “impractical idea” into reality. Victor Hugo once said, “There is one thing stronger than all the armies in the world; and that is an idea whose time has come.” I am convinced, as are many others, that the time has come for responsible measures to rein in the unchecked sale of death and misery on the international market. To those who die at the hands of SALW, it does not matter whether the weapons were acquired legally or illegally. To courts of law, the definitions matter, and it is the job of all those concerned with human life and dignity to ensure that the definition of illicit transfers used by the international community encompasses the true scope of the problem. The Framework Convention on International Arms Transfers sets out a clear and comprehensive standard that all states should have the courage to adopt. 

### Notes

1 United Nations Development Programme, *Human Development Report 2000*, p. 36.

2 Report of the UN Group of Governmental Experts on Small Arms A/54/258, August 19, 1999.

3 Report of the Panel of Experts appointed pursuant to UN Security Council Resolution 1306 (2000), para. 19 in relation to Sierra Leone, December 2000.

4 For further details on this and other case studies, see “Combating the illicit trade in small arms and light weapons: Enhancing controls on legal transfers,” Briefing 6, British American Security Information Council (BASIC), International Alert, Saferworld, London, March 2001.

5 UN Disarmament Commission, “Guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991,” 51st sess., supp. 42 (A/51/42), 1996, para. 17.

6 Amnesty International, Adolfo Perez Esquivel, The American Friends Service Committee, Aung San Suu Kyi, Betty Williams, Rev. Desmond Tutu, His Holiness the Dalai Lama, International Physicians for the Prevention of Nuclear War, Jody Williams, John Hume, Jose Ramos Horta, Joseph Rotblat, Lech Walesa, Rigoberta Menchu, Mairead Maguire, Norman Borlaug, Elie Wiesel, and Oscar Arias.

7 American Friends Service Committee, Amnesty International, the Arias Foundation for Peace and Human Progress, BASIC, the Federation of American Scientists, Oxfam, Project Ploughshares, and Saferworld.

8 For further information and to read the full text of the Framework Convention, see [www.armslaw.org](http://www.armslaw.org).