
Small Arms and Brokering Activities

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This presentation highlighted the link between small arms proliferation and brokering activities, by providing the context of the small and light weapons (SALW) problem internationally and in Southern Africa. He then presented the need to regulate brokers, and discussed possible roles for SADC and SARPCCO in this endeavour.

The Problem of Small Arms and Light Weapons

The development of controls on arms brokering activities has long been a priority emphasised by governments and civil society organizations concerned with the illicit trade in SALW. While brokers may have a legitimate role to play in the legal arms trade, illicit brokering often plays an important part in violations of UN Security Council arms embargoes and in facilitating access to arms by transnational organized crime syndicates and groups intent on exacerbating political conflicts.

According to UN estimates, there are over 600 million small arms and light weapons (SALW) in circulation worldwide: almost one for every 10 people on the planet. In the 1990s, 47 of the 49 major conflicts were waged with small arms. These weapons kill over half a million people every year, including 300,000 people – men, women and children - who are killed in armed conflict and 200,000 who are killed in homicides and suicides.² The trade in, easy access to, and use of small arms and light weapons destabilizes regions, exacerbates conflicts and facilitates violent crime, thwarts post-conflict reconstruction and undermines long-term sustainable development. To quote Kofi Annan, the UN Secretary-General, SALW “exacerbate conflict, spark refugee flows, undermine the rule of law, and spawn a culture of violence and impunity. In short, small arms are a threat to peace and development, to democracy and human rights.”

While at relative peace for the first time in many years, the legacy of small arms proliferation has slowed progress in the development of the SADC region, exacerbated by several factors: rising criminal violence, weak health and education services, the wide displacement of people, and declining economic activity.³ The greater cost of policing leads governments to divert funds from development purposes.⁴ In addition, foreign investment for development is less

² Small Arms Survey, 2002, p. 155.

³ Robert Muggah and Peter Batchelor, “Development Held Hostage: Assessing the Effects of Small Arms on Human Development”, (New York: United Nations Development Programme, April 2002), 6-7.

⁴ Anatole Ayissi, ed. Cooperating for peace in West Africa : an agenda for the 21st century (Geneva : United Nations Institute for Disarmament Research, 2001), 79.

likely in insecure environments, as investors are less willing to risk the distribution of funds where little predictability and profitability are ensured.⁵

The long and porous natures of our borders, the relatively easy ability to conceal SALW, and the high demand for such weapons, have all been compounded to present a daunting challenge. The borders are generally lacking the necessary control, resources, and technology to effectively control the transit of weapons from country to country. Most significantly, the relevant agencies responsible for border control generally lack the required capacity to effectively and efficiently control the transit of weapons from one country to the next.

In the context of Southern Africa, the real weapons of mass destruction are small arms and light weapons. International awareness of the need to take measures to combat the proliferation of small arms and light weapons developed rapidly in the late 1990s – giving rise to the UN Programme of Action (UNPoA) and other protocols, treaties and declarations. Global military expenditure dropped dramatically at the end of the Cold War but is now on the increase again as countries take up the challenge to counter terrorism and arms suppliers relax their controls in order to support their newfound allies.⁶ Thus even before these ‘disarmament’ protocols and declarations can be effectively implemented in their entirety and at the national or regional levels, we are again witnessing global re-armament.

The demand for SALW stems also from economic and physical insecurity. Thus supply-related issues such as production, and better marking and tracing and legal regimes are not the only means to stop the flow of weapons. By reducing poverty and crime and by facilitating and encouraging sustainable development, one can counter people's perceived need for small arms.

Why The Regulation of Arms Brokering is Essential

Transactions on the margin of the law, although not technically illegal, contribute to excessive and destabilizing accumulations of weaponry. Illicit brokering often plays an important part in the diversion of SALW into the illicit trade and in violations of UN Security Council arms embargoes or in facilitating access to arms by transnational organized crime syndicates. There is also an increasing recognition that a significant proportion of grey and illicit market weapons used in conflict zones are transferred by arms brokers.⁷ In

⁵ Ibid.

⁶ Small Arms Feed Big Conflicts, M&G Online 10 March 2004.

⁷ This is not to deny that there were significant divisions over the need to regulate arms brokering during the run-up to the first UN Conference in July 2001 on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, or that what appears in the Programme of Action is not a watered down version of what some states were calling for, namely the negotiation of a legally binding instrument on brokering. See, Loretta, Bondi,

addition, there is now a general recognition (certainly in Southern Africa) that greater control over legal transfers and increased transparency in the legal arms trade will enable the illicit trade to be better constrained.

Implications for the SADC Countries

At present, because South Africa is the only arms producer in the region there is an unjustified view that it is only necessary for that country to control brokers and brokering activities.⁸ However, "arms brokers often operate in one country while arranging trade between entities in others. As a consequence they often operate beyond the reach of national laws".⁹ It is therefore imperative that regional and common approaches be developed. In addition, other Southern African states may in the future also develop an arms industry. For example, a recent press report suggests that Skonkwane, the rural hardware franchisor, had submitted a bid to the Swazi government to build a factory for the manufacture of ammunition, including long and short-range projectiles.¹⁰

At the African Conference on the Implementation of the UN Programme of Action on Small Arms: Needs and Partnerships, held in Pretoria in March 2002, it was suggested that, in the implementation of recommendations to review and harmonize national legislation, "[s]pecial attention should be given to new regulations governing brokering, money laundering and organized crime".

In the African context, the Bamako Declaration recommends that Member States should:

"Encourage the codification and harmonization of legislation governing the manufacture, trading, brokering, possession and use of small arms and ammunition. Common standards should include, but not be limited to, marking, record-keeping and control governing imports, exports and the licit trade" [B (ii)].

At a Southern African level, the SADC Protocol commits member states to standards relating to, inter alia:

- The coordination of procedures for the import, export and

"Expanding the Net: A Model Convention on Arms Brokering: A Briefing Paper for the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects", 29 June 2001.

⁸ Peter Cross, Rick de Caris et al, *Law of the Gun: An Audit of Firearms Control Legislation in the SADC Region* (London: Saferworld, 2003).

⁹ Global Trade in Small Arms: Health Effects and Interventions, International Physicians for the Prevention of Nuclear War (IPPNW), March 2001.

¹⁰ James Hall, "Skonkwane Moves into Munitions Industry", *Business Day* 11 August 2003.

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- transit of firearms shipments;¹¹
 - The regulation of firearms brokering;
 - A review of national firearms legislation.

It thus commits member states to incorporating into their national laws as a matter of priority, “provisions that regulate firearm brokering in the territories of State Parties” [Article 5 (3m)].

The SADC and SARPCCO secretariats have a special responsibility to ensure that the SADC Protocol as well as other agreements such as the UNPoA and the Bamako Declaration are implemented at a national level and that laws and regulations are harmonized as much as possible in the Southern African region. The current international debate on brokering needs to be discussed at the sub-regional level and an approach that suits Southern Africa’s unique context needs to be developed. At the same time, SADC with the only legally binding Protocol on the African continent dealing with all aspects of small arms proliferation, has a special responsibility to take its views to the continental level and put brokering firmly on the agenda of the African Union (AU).

¹¹ The word “firearm” in the SADC Protocol means (a) any portable lethal weapon that expels or is designed to expel, a shot, bullet, or projectile by the action of burning propellant, excluding antique firearms or their replicas that are not subject to authorization in the respective State Parties, (b) Any device which may be readily converted into a weapon referred in paragraph (a), (c) Any small arm as defined in Article 1 of the SADC Protocol, (d) Any light weapon as defined in Article 1 of the SADC Protocol.