

Reinforcing Disarmament: Combating Illicit Trade in Weapons and Materials

Workshops' Rapporteurs: Philipp Annawitt and Marc Finaud

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Introduction

Illicit trade in weapons and materials poses serious challenges to states and disarmament regimes. Although small arms and light weapons (SALW) are quite different from weapons of mass destruction (WMD), both categories are in increasing demand by violent non-state actors, often in relation to organized crime and terrorist activities.

For those reasons, the Geneva Centre for Security Policy (GCSP), the United Nations Institute for Disarmament Research (UNIDIR), and the German Friedrich Ebert Foundation (FES) convened, with the support of the Swiss Federal Department of Foreign Affairs, two workshops to explore this issue.

The first workshop took place on 1-2 February 2010 on the topic: “Reinforcing Disarmament: Combating the Illicit Trade in Weapons and Materials – Actors – Synergies – Challenges”. It was designed to map the field and identify possible areas of cooperation among various practitioners.

The second workshop was organized on 6 April 2011 around the theme: “Reinforcing Disarmament: Combating Illicit Trade in Weapons and Materials – Regional Challenges”. It addressed inter-related aspects of the illicit arms trade issue: the need for acquiring and managing reliable information; the requirement for effective legal and law-enforcement systems; and the challenge of implementing and operationalizing the existing legal and political instruments.

Both workshops brought together experts and practitioners from the field of small arms and light weapons control and the field of nuclear, biological, and chemical weapons control: academics and researchers, government officials, military officers, and representatives of civil society organizations from various regions, including some fifteen participants from Africa.

The common aims of the workshops were:

- To develop an integrated perspective on how to improve practices in preventing the illicit trade in weapons and materials;

- To identify possible synergies between the small arms and nuclear, biological, and chemical domains; and
- To come up with concrete options for coordinated action in Geneva and beyond.

The present *Geneva Paper – Conference Series* summarizes the findings of both workshops, which appear to the organizers particularly relevant to the on-going discussions relating to a future Arms Trade Treaty (ATT).

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Part I

Actors – Synergies – Challenges

Workshop Rapporteur: Philipp Annawitt

Executive Summary

The workshop on the Illicit Trade in Weapons and Materials brought together experts and practitioners from the fields of small arms and light weapons control, and the field of nuclear, biological, and chemical weapons control to address the challenges posed to states and disarmament regimes by the illicit trade in weapons and materials, to identify possible synergies between the small arms and nuclear, biological, and chemical domains, and finally, to come up with concrete options for coordinated action in Geneva and beyond.

Small arms and nuclear, chemical, and biological weapons are quite different in their characteristics and the risks they pose to societies. What they have in common, however, is that they are increasingly in demand by violent non-state actors, often as a source of income. While small arms and light weapons are mass killers, and their unregulated supply has undermined societal structures in the past, there have been few incidents of nuclear, biological, and chemical weapons use by non-state actors. On the other hand, it is the high potential impact of nuclear, biological or chemical attacks that warrants the international effort to combat the illicit trade in these substances.

The institutional capacity of regulation regimes varies across the nuclear, chemical, and biological, and the small arms and light weapons domains, as well as across regions. There exist a host of legally binding instruments governing the production and use of nuclear, chemical, and biological weapons and materials: the nuclear non-proliferation regime, the Chemical Weapons and Biological and Toxin Weapons Conventions, and the regime aimed at preventing proliferation of weapons of mass destruction to non-state actors pursuant to UN Security Council Resolution 1540 (1540 regime). These are supplemented by Western-dominated export control regimes for precursors and dual-use items. In the small arms and light weapons domain, the chief international instruments are of a political nature, notably the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its

Aspects (UNPoA), and the International Tracing Instrument (ITI). Here too, there is a much greater focus on regional approaches to weapons control. Regulatory gaps exist in both domains. Neither missiles nor small arms and light weapons ammunition are subject to adequate arms control measures, and still suffer from a deficit of policy attention. Regime effectiveness, however, does not hinge upon the formal status of a regime. Assessing impact requires focusing on implementation by states, and the role of parliaments, civil society, and the private sector in this process.

Drawing a variety of different backgrounds, participants identified major challenges to the regimes combating illicit trade. They agreed on the importance of universal implementation of the Nuclear Non-Proliferation Treaty (NPT), and on the urgent need to continually update the NPT safeguards system forty years after the treaty entered into force. In the field of conventional weapons, negotiations towards an Arms Trade Treaty will be critical. Regionally, an effective strategic instrument for control of small arms and light weapons in all of Africa should be created under the auspices of the African Union. Venturing beyond these regime-specific challenges, participants strove to identify cross-cutting issues. They came to the important conclusion that the Western prioritisation of the nuclear, biological, and chemical problem over the small arms and light weapons issue, and the African focus on small arms and light weapons at the expense of the nuclear, biological, and chemical problem, are both reductionist approaches. We need only look at recent developments in South Asia to realise that the illicit trade in small arms and light weapons has the potential to destabilise nations, and hence also to trigger nuclear proliferation to non-state actors. The illicit trade in weapons and materials in all its aspects is therefore a global strategic challenge.

Illicit trade in weapons and materials is linked to smuggling in drugs and human beings. It corrupts societies and hampers development. Both conventional arms control regimes and regimes controlling weapons of mass destruction are confronted with a lack of funding. At the same time, donors cannot gauge effectiveness of these regimes due to a lack of reliable data.

Yet where there are common challenges, there also exist potential synergies across regime boundaries in addressing them. Such synergies exist with regard to tackling trafficking, notably in customs and border cooperation – where outside

actors, such as the World Customs Organization, need to be brought in – notably in tracing mechanisms, the sharing of information across regimes, and the development of best practices.

Finally, workshop participants examined the impact of recent technological progress on the prevention of illicit transfers. They agreed that technological advances pose challenges to transfer regimes. Globalization in economics and communications undermine the technology denial approach to non-proliferation, which underlines the role of intelligence agencies in anticipating proliferation threats. Advances in nanotechnology blur the distinction between biological and chemical materials underlying the Chemical and Biological and Toxin Weapons Conventions. Advances in weapons technology create new gaps in arms control, notably with respect to unmanned vehicles, nanotechnology, and cyber-warfare. But progress also yields new opportunities, for instance in terms of technologies for substance detection. Civilian use of outer space is another field of opportunity for regimes combating the illicit trade. Satellite imagery holds strong potential for detecting and identifying traffickers.

Workshop participants were not satisfied with developing general ideas alone but proceeded to propose options for immediate action. Among other things, they expressed the desire that this workshop initiate a process of outreach beyond the group of participants, leading to cross-stakeholder meetings that would contribute to realising synergies towards combating the illicit trade in weapons and material.

The Illicit Trade in Weapons and Materials – Mapping the Field

The purpose of this workshop was to develop an integrated perspective on how to improve practices in preventing the illicit trade in weapons and materials. The notion of “transfers and materials” is deliberately broad and was understood by workshop participants to encompass a wide range of goods and technologies: nuclear, radiological, biological, and chemical materials, weapons, and technologies, dual-use goods, missiles and missile technologies, and conventional weapons including small arms and light weapons (SALW). A major step towards developing such an integrated perspective is to chart the domain of illicit transfer prevention in terms of regimes and actors. This first chapter constitutes a comprehensive if not exhaustive charting exercise that was inspired by the discussion and put the participants’ deliberations in an institutional and geographical context.

Discussions focused predominantly on the illicit trade in SALW and on the illicit trade in nuclear, biological, and chemical weapons or materials and common challenges and synergies. The threats, though related overall, have quite different immediate consequences. Illicit trafficking in SALW is far from minor in terms of frequency, turnover and impact. Although it is difficult to assess the share of the illicit trade in SALW in these figures, the annual death toll due to SALW use is staggeringly high: 740,000 deaths are caused by SALW use, directly or indirectly. A new estimate puts the global supply of SALW at around 4 billion weapons. By contrast, incidence of the use of nuclear, biological and chemical weapons is fortunately very low to date. There are, however, a handful of spectacular incidents of terrorist use of nuclear, radiological, biological, and chemical materials on the record, including a nerve gas attack at the Tokyo underground and the 2001 US anthrax mailings. Of particular concern are the 120 to 150 instances of trafficking in these materials annually for the last couple of years. Low incidence combines with potentially high damage that goes beyond the immediate physical impact of these weapons. A dirty bomb that might be set off in a major popula-

tion centre would trigger mass panic that could incur high costs both in terms of lives lost and of economics.

Not only are there differences in the types of impacts of SALW and nuclear, biological, and chemical weapons use, but also in the likely geographical distribution of these instances. This is reflected in the priorities that different countries have in terms of combating trafficking. Despite the simplification of this issue, it is probably fair to say that SALW is widely regarded as an issue of the South, while trafficking in chemical, biological and nuclear materials is viewed as an issue of the North. To a certain degree, this dividing line has determined the global and regional institutional structures combating the illicit trade.

A. Multilateral Regimes

The field of illicit transfer prevention and prohibition is host to a variety of mutually autonomous and rather specialised instruments and institutional structures that are designed to combat unauthorised transfers of specific goods across state borders by both state and non-state actors. A distinction should be made between programming instruments that create obligations, and operational instruments that strengthen implementation. Secondly, and more importantly, one can distinguish between legally binding instruments and those that are of a political nature.

The role of programming institutions is to define the boundaries determining what is considered licit, what is illicit, and what is outright illegal in weapons and materials trading. The earliest of these norms, that of non-proliferation in nuclear weapons and weapon-related materials, was outlined in the Nuclear Non-Proliferation Treaty (NPT). The NPT specifies the prohibition of inter-state transfers of nuclear weapons and equipment (Art. I & II) to non-nuclear weapon-states, reinforced by the acceptance of safeguard requirements by non-nuclear weapon states to ensure this (Art. III), notwithstanding the right of all states to research, production and use of nuclear energy for peaceful purposes (Art. IV). The safeguards system administered by the IAEA under Article III, while being far from perfect, has played a crucial role in preventing an escalation in the proliferation of nuclear weapons over the last forty years. Had the safeguards system not existed, nuclear suppliers might have competed in a race to the bottom in the terms of export standards to capture market share. The safeguards system worked

to assuage fears of a global multipolar nuclear race, and assumed the function of a confidence-building mechanism between rival states across the globe.

The Biological and Toxin Weapons Convention (BTWC) and the Chemical Weapons Convention (CWC), by contrast, are prohibitive disarmament instruments that ban the development and production of biological, toxin and chemical weapons. This included agents and precursor materials, except if they are to be used for what could be called “peaceful purposes”. By implication, they also prohibit the transfers of such weapons, agents, and precursors.

However, neither the NPT, nor the BTWC or the CWC are concerned with transfers to non-state actors of nuclear, radiological, biological or chemical materials, or production equipment, including dual-use materials that are allowed for use in pursuit of “peaceful purposes”. In the aftermath of the attacks of 11 September 2001, the threat of such materials falling into the hands of terrorists propelled the United Nations Security Council into action. Security Council Resolution 1540 was adopted under Chapter VII of the United Nations Charter, making the resolution’s provisions legally binding for all UN member states. Resolution 1540 requires member states to prevent the development, production, transport and transfer of “nuclear, biological, chemical weapons and related material” by non-state actors. To this end it obliges states to keep record, stockpile security-sensitive nuclear material and to introduce effective export control mechanisms and border control measures. States are obliged to submit reports on implementation to the 1540 Committee that was established by the resolution.

Among operational instruments, export control regimes feature prominently. These regimes are typically set up by groups of like-minded, mostly industrial, countries to deny the proliferation of sensitive weapons, materials, and technologies to those deemed irresponsible recipients. These regimes are not strictly arms control regimes, they are limited in membership and their existence is often politically contested by less-developed countries. The oldest of these instruments was created in the aftermath of the entry into force of the NPT and concerns nuclear materials: the Zangger Committee (ZAC) was informally established by 37 NPT states parties to define the obligations under Art III. 2 of the NPT, according to which states parties capable of supplying nuclear material and equipment must provide such material or equipment only under the umbrella of the NPT safe-

guards regime, i.e. only to a fellow NPT party. The ZAC codified these items in a list, called the Trigger List, and imposed certain requirements for the export of the listed items. The ZAC procedures also provide for notification and information-sharing among members on exports of listed items. In 1978 the Nuclear Suppliers Group (NSG) was founded with the aim of expanding the ZAC (and especially to bring France into nuclear export control mechanisms). Like the ZAC, the NSG is an informal arrangement but it is also open to non-NPT parties capable of supplying nuclear material and equipment. It expands the ZAC Trigger List by adding dual-use goods to it, and tightens the conditionality of supply that the ZAC guidelines imposed. In particular, it adds a no-undercutting provision¹ which is designed to avoid a race to the bottom in terms of conditionality, expands information-sharing to include notification of export denials, and adds a requirement for physical protection of material and equipment. The regime has evolved significantly: in the wake of the Iranian nuclear crisis, conditionality was tightened to the point where supply was prohibited to all countries non-signatory to the International Atomic Energy Agency's (IAEA) Additional Safeguards Protocol. However, the regime was dealt a significant blow by the recent US-initiated agreement between the NSG and India, opening the way to transfers of nuclear technology and materials by the United States (and other suppliers in the future) to nuclear-armed India – which is not an NPT member. Owing to their informal nature, neither regime features a monitoring mechanism. Members do meet annually, however, on a voluntary basis, mostly to update the item lists at the heart of these instruments.

These two nuclear export control regimes are supplemented by a series of more recent specialised instruments providing for heightened protection of stockpiles of nuclear material. These include the Convention on the Physical Protection of Nuclear Materials, establishing legally binding standards on nuclear stockpile security, including the security of materials in transport; the International Convention for the Suppression of Acts of Nuclear Terrorism, requiring states parties to prosecute and extradite terrorist suspects, including in the field of nuclear terror; and an informal Global Initiative to Combat Nuclear Terrorism.

¹ "No undercutting" refers to a rule that prevents an NSG member from providing materials and equipment to a receiving country in case the receiving country has been denied this equipment and materials by another NSG member.

The equivalent of the ZAC and the NSG in the domain of biological and chemical weapons and materials is the Australia Group, an informal arrangement of 41 members of the CWC and the BTWC that seeks to harmonise export controls on a “Common Control List” of more than 50 chemical weapons precursors and biological agents and organisms, including dual-use items. The Australia Group’s regulatory framework is more basic than that of its equivalents in the nuclear domain; however, like the ZAC and the NSG, the Australia Group does not feature any formal mechanism to enforce compliance.

The production of and trade in missiles – a key means of delivery of nuclear, radiological, biological, and chemical weapons – is not subject to any regulation. The sole existing export control regime is the Western-dominated Missile Technology Control Regime (MTCR). The MTCR was established to prevent the proliferation of missiles and missile technologies capable of providing nuclear-weapons delivery capabilities to those states deemed irresponsible by the largely Western signatories. Controls are limited to missiles and Unmanned Aerial Vehicles (UAV) capable of carrying a payload of 500kg over at least 300km. It resembles other informal exports control regimes in that it seeks to harmonise export control measures and features a no-undercutting of denials clause that has in the past been comparatively successful in preventing this harmful practice. An offshoot of the MTCR, the 2002 Hague Code of Conduct (HCOC) is a politically binding instrument that commits its members to restraint in the supply of ballistic missile systems capable of delivering weapons of mass destruction (WMD). Unlike the MTCR, however, the HCOC is not an export control regime but a confidence-building regime, which is open to signature by all states. Its effectiveness, however, is open to question.

The illicit transfer prevention regime in weapons of mass destruction and missiles features a recent operational instrument that is quite unique. The Proliferation Security Initiative (PSI) is an informal instrument introduced by the United States meant to disrupt illicit transfers of weapons of mass destruction in shipment to states as well as non-state actors. Participants share information on suspicious cargo and participate in prohibiting entry of such cargo, including by searching vessels, planes, and land-based freight vehicles, where national and international law so allows. Members also agree to search of their own vehicles. In the first 6

years of its existence, 30 prohibitive exercises were recorded, 20 of which were successful, including a high profile case where centrifuges from Dubai headed for Libya where diverted to Italy. This instance is considered to have contributed to persuading Libya to renounce its nuclear programme.

Compared to transfer control in nuclear, chemical and biological weapons and materials and their delivery vehicles, both programmatic and operational regulation for preventing illicit transfers in conventional weapons is rather feeble: some conventional weapons systems have been outlawed by the international community in what are legally binding disarmament instruments – the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction; the Convention on the Prohibition of Certain Conventional Weapons; and the Convention on Cluster Munitions.

On the other hand, a universal norm governing transfers in conventional weapons exists only regarding illicit transfers of SALW. This norm is embodied in the UNPoA, as well as the UN Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (Firearms Protocol).

Inter-state trade in SALW, like trade in conventional arms more generally, remains essentially unregulated at the global level. This is first and foremost due to the fact that SALW have legitimate uses around the world, both as basic weaponry of state security forces, and as a means of self-protection for civilian holders. Consequently there exists neither a blanket prohibition – as is the case with biological, chemical and certain conventional weapons – nor a qualified prohibition, as is the case with nuclear weapons. There is furthermore no explicit definition of what constitutes an illicit transfer of a SALW. Most basically, transfers may be considered “illicit” when they occur in violation of a UN arms embargo or when they are considered illicit under national legislation of either the sending or receiving country. In the UNPoA, the international community of states declared their political commitment to a series of measures aimed at preventing the illicit trade SALW at the national, regional, and international levels. Governments deliver annual voluntary reports on the implementation of the UNPoA to the United Nations Office for Disarmament Affairs for compilation and distribution. Several Biennial Meetings of States, and one review conference so far were held to further develop the instrument and rally support for its implementation. The

UNPoA is flanked by the Firearms Protocol, which shares some core provisions with the UNPoA, notably the criminalization of trafficking in weapons, obligations for record-keeping of stocks and the establishment of import, export, and transit licensing systems. Importantly, the Firearms Protocol renders these obligations legally binding for its almost 100 states parties and requires periodic state reporting on implementation.

A recently concluded operational instrument, the International Tracing Instrument (ITI), was designed to enshrine the provisions on marking and tracing laid out in both the UNPoA and the Firearms Protocol. The ITI is a political instrument which commits its members to adequately mark SALW in their country, to undertake record-keeping of weapon stocks, and to provide assistance in tracing requests by other members. The ITI envisages reporting on implementation of these measures to be included in state reports under the UNPoA.

The only global operational instrument for the prevention of illicit transfers in other conventional weapons is the Wassenaar Arrangement. Wassenaar commits its 40 members to respecting voluntary guidelines and procedures for exports of conventional arms and dual-use goods. It is an export control arrangement that covers 22 categories of weapons, from military aircraft to SALW. The goal here is not so much weapon system or technology denial, but the intention to prevent accumulation of destabilising arms that may occur in a country, especially in situations of serious concern. Compared to the ZAC or NSG, the Wassenaar Arrangement has remained rather ineffective. It is, after all, inherently difficult to establish the threshold at which arms accumulations become a destabilising factor and at what point a situation becomes one of serious concern. Hence, despite the existence of Wassenaar, conventional arms transfers have continued unabated. To date, it seems, Wassenaar members remain satisfied with the information-sharing and notification procedures the regime provides.

B. Regional Organizations

At the regional level, there are many more institutional instruments combating the illicit trade of SALW than there are combating illicit trade in nuclear, chemical, and biological weapons and materials. Programmatic instruments comparable to the regional SALW instruments do not exist in the WMD domain. The only regional approach having direct relevance for illicit WMD transfers are nuclear weapon-

free zones, in so far as they refer to receipt or transfer of nuclear weapons or material. There are currently five such treaties in existence, establishing five nuclear weapon-free zones, in Latin America, the Pacific, Central Asia, South-East Asia, and Africa. Four of these, the South Pacific Nuclear-Weapon-Free Zone Treaty (Treaty of Rarotonga), the South-East Asia Nuclear-Weapon-Free Zone Treaty (Bangkok Treaty), the African-Nuclear-Weapon Free Zone Treaty (Pelindaba Treaty), and the Central Asia Nuclear Weapons-Free-Zone Treaty (CANWFZ) establish norms on transfer control of nuclear material. In each case parties to the treaty commit to not transfer any nuclear material or equipment to non-nuclear weapons states except under NPT safeguards. In addition, the Pelindaba Treaty and CANWFZ, feature a prominent commitment to nuclear stockpile security procedures. Despite the fact that most of the southern hemisphere is covered by NWFZ, the nuclear-weapon-free zone approach has evident regional gaps, including, of course, those regions with *de jure* and *de facto* nuclear weapon states. These regions include North America, Europe, South, Central, and East Asia, North Africa, and the Middle East. Not surprisingly, one region, the Middle East, has also been identified with an institutional gap in illicit SALW transfer prevention.

By contrast, as regards SALW, regional organizations play a prominent and increasing role. Regional clusters of states shaped the drafting processes of the UNPoA. It is thus no surprise that the UNPoA explicitly calls for measures to be implemented at the regional level, including the conclusion of regional SALW conventions, regional transfer moratoria, and regional cooperation agreements.

Arms traffickers are quick to adapt their transfer routing towards weakly controlled areas where regional cooperation in law enforcement and border controls are lacking.² States coordinate their cooperation through regional organizations on a variety of operational measures regarding law enforcement, customs, and border controls, tracing of weapons, information-sharing, training, and many more. Regional cooperation helps states build capacity and save on scarce resources.

Regional organizations are, however, of widely varying depth and intrusiveness. The most thoroughly institutionalized regions are Europe, Sub-Saharan Africa and Latin America, which boast a variety of both legally binding and political

2 See Elli Kytömäki, "Regional approaches to small arms control: vital to implementing the UN Programme of Action", *Disarmament Forum* 4/2005, pp. 55-64.

instruments. Europe's SALW regulation practices are embodied in the politically binding Code of Conduct on Small Arms and Light Weapons of the Organization for Security and Co-operation in Europe (OSCE), and a set of European Union common foreign policy positions and actions on the issues of export controls, brokering and international assistance.

Africa is the region arguably most affected by illicit transfers of SALW, demonstrated by the high institutional density, with many countries being party to multiple instruments.

The most important instruments are the Economic Community of West African States (ECOWAS) Convention on Small Arms, Light Weapons, their Ammunition and Other Associated Material in West Africa; the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region; the Horn of Africa and Bordering States in East Africa; and the South African Development Community's Protocol on Control of Firearms, Ammunition and Other Related Materials in Southern Africa. Each of these imposes a comprehensive set of legally binding obligations on their members. The African regional instruments substantiate the provisions of the UNPoA, but characteristically place a focus on harmonization of national weapons laws which the UNPoA lacks. Likewise, Latin America features a comprehensive regional instrument, the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials. Here the emphasis has been on the links between illicit SALW transfers, drug trafficking and organized crime.

All these instruments created treaty bodies mandated with implementation support and yet implementation of commitments by member states has been identified as the major deficiency. Nonetheless, Sub-Saharan Africa and Latin America compare favourably with other regions of the world. In North Africa, the Middle East, South and South East Asia, regional instruments are either feeble or entirely absent.

Illicit transfers in SALW contribute to the estimated 740,000 deaths that are a consequence of armed violence. Most of these deaths occur in the Southern Hemisphere. Homicide rates are higher in the Latin America and Africa than they are in Europe or North America. On the other hand, the institutional regime to combat illicit trade in nuclear, chemical, and biological weapons and related

materials is being driven forward primarily by industrial countries, with little active participation of the global South. One need only look at the composition of the various export control groups in this domain to substantiate this. This might suggest that WMD is primarily a “Northern” issue, while SALW is a “Southern” problem. But this would be a misleading geographical oversimplification and an artificial segmentation of problems that are intrinsically global in their scope. Efforts to combat illicit transfers need to be cross-regional and to stretch globally across interconnected illicit networks of supply and demand of conventional and non-conventional weaponry, technology and materials alike.

C. The State, Civil Society, and Non-State Actors

States take the leading role in the international effort to ensure illicit transfer prevention. They regulate transfers through national legislation, implementing their international treaty and political commitments. It is state intelligence officials to whom falls anticipation of such transfers, and it is the job of state law enforcement agencies, police, customs and border control officers to detect and prohibit illicit transfers. A special challenge to implementation is the fact that the state itself is in many cases the source of the weapons and materials that are trafficked illicitly. With the rise of the non-state share in trafficking, states need to give more attention to minor radiological sources that are found in hospital equipment, or even old-fashioned smoke detectors. This is a daunting task for state stockpile management.

Preventing illicit transfers of SALW is similarly difficult for they are marked by high durability and have the advantage of being easily concealed. In the course of their life cycle individual arms easily enter the global illicit supply after becoming surplus in state inventories or after having been diverted from state stockpiles. In yet other cases they may be diverted from legally held civilian stocks. In extreme cases the state is an active participant in illicit trafficking. One need only think here of the role played by Charles Taylor’s Liberia in equipping military groups in West Africa. Other countries in the same region are still active in illicit SALW transfers, despite the fact that they have signed up to the ECOWAS Convention on Small Arms and Light Weapons, their Ammunition, and Other Related Materials, which combats illicit transfers in SALW in the West Africa region. In the overwhelming majority of cases, SALW begin their life-cycle as fully legitimate prod-

ucts before they leak out into illicit networks, fuelling conflict, crime and terror alike. Illicit arms manufacturing is but a minor source of global illicit supply in comparison to arms diverted from licit stocks. Nonetheless, it may have destabilising effects on a regional basis, notably if the business is tolerated or even encouraged by the host state, as is the case in one West African country.

While this may sound obvious, it is important to realise that arms control efforts do not end with the ratification of an instrument. Hence a ratified treaty is not inherently more substantial than a political commitment. In some countries, constitutionally, a treaty might be ratified without coming into immediate legislative effect, due to a lack of implementing legislation. This illustrates the importance of not reducing the notion of “state” to its government. Implementation of international instruments involves the identification of a variety of roles and mandates beyond the national executive. For example, experience derived from the implementation process of regional SALW instruments has shown that parliaments have a vital role to play in bridging international commitments made by governments and implementation into national legislation and bureaucratic practice. Surprisingly, disarmament actors seem to have realised this only recently. There is therefore a need to mainstream participation of all stakeholders within a country through targeted involvement in information-sharing and capacity-building programmes on all aspects of the illicit trade in weapons and materials. In addition to parliamentarians, such a mainstreaming effort would include involvement of civil society in non-proliferation policy-making more broadly, and programmes of awareness-raising, as well as capacity-building among police and customs and border officials.

On the other hand, experience derived from the implementation of the UNPoA and the ITI indicates that a political regime may have certain advantages over a legal one, notably in terms of flexibility and comprehensiveness. All UN member states participated in the adoption of the UNPoA. With the political commitment made, they could immediately proceed towards implementation without waiting for the conclusion of a potentially cumbersome ratification process. That of course supposes the political will to go beyond a declaration is there in the first place. But while there is no denying that some states will not take declared political commitments seriously, their making the commitment can still be useful

if these countries are then “socialised” into compliance by a strong regime development mechanism. For the UNPoA, such a mechanism exists in the form of a state reporting system, in conjunction with a review system, the Biennial Meeting of States, and the Review Conferences. Finally, political regimes often function as a precursors of a legally binding commitment, rallying support for legally binding ones to follow.

Governments have limited leverage to galvanise their reluctant peers into action on their commitments, regardless of the nature of the regime. States failing to honour their obligations cannot be taken to court. With political just as with legal regimes, governments and other interested actors can only work public pressure to convince their peers of the desirability of norm-conformist behaviour. One should therefore refrain from judging the functionality of regime types prior to having a good impression of the actual implementation by member states. International instruments should hence be thought of more in terms of process, rather than in terms of formal status. One conclusion the Geneva community should draw from this is that there needs to be more thinking in depth about ways of improving government records in implementing commitments that have been made. This would complement the more prominent efforts toward regime development for which Geneva-based organizations pride themselves.

On a similar note, there is a need to bring civil society into both the process of regime development and the monitoring of implementation. This can be illustrated with a practical example with regard to SALW. The ECOWAS moratorium was a rather loose political instrument to begin with, but it functioned to set up national commissions. The commissions brought representatives of government ministries and civil society together. This created national ownership and harnessed the resources – including grassroots information and participation – that civil society actors had to offer for the process, while allowing these same actors to exert their role as overseers. The empowerment of national commissions is work in progress. Public visibility of these commissions is still lacking and needs to be strengthened through enhanced civil society empowerment.

In these efforts to strengthen civil society it is important not to be biased by ethnocentric conceptions of what civil society ought to look like. In parts of West Africa, for example, traditional rulers are the custodians of border communities

and exert control over arms circulating in their communities. Arguably, disarmament achieved better results in Liberia than in neighbouring Sierra Leone because the former recognised traditional rulers as important civil society actors and took care to involve traditional rulers in the process.

The function of civil society is not limited to the national level. The Regional Centre for Small Arms (RECSA), for example, seeks to involve civil society representatives in the African Union Regional Organizations Steering Committee on Small Arms and Light Weapons, in order to create momentum for greater harmonisation of SALW programming across regional regimes. At the global level, the prominence of the International Action Network on Small Arms and their flagship *Biting the Bullet* Report, for example, attests to the role of civil society in regime development.

Interestingly, civil society participation seems to be much more pronounced in SALW issues, and questions of humanitarian law more broadly than in the domain of nuclear, biological, and chemical trafficking. More generally, the interest of NGOs in WMD issues has dwindled as the Cold War ended and the focus within the disarmament community shifted from nuclear disarmament to questions of stockpile security, WMD trafficking, and WMD terrorism.

Private business is another non-state actor that increasingly needs to be taken into account by illicit trade regimes. The role played in illicit transfers by weapons producers, brokers, and traders of weapons and materials has long been recognised. Beyond this, however, there is a need to look harder at the part of the commercial private sector in illicit transfers, as well as a need to investigate possible resources for combating trafficking that the sector may be able to offer. The West African transport sector, for instance, is strongly integrated and concentrated, which means that a few big companies navigate the whole region. More effective oversight over this sector would probably allow governments to weed out the black sheep among these few companies. Also the concentration of the sector allows governments to retrieve the companies' freight data rather easily, which would make sector oversight less costly. Finally, it has become increasingly clear that traffickers, who are themselves private sector agents, are ambiguous factors as well. There is a certain overlap between legitimate trade, arms trafficking, drug smuggling, and organized crime. The business model of a well-known arms trafficker is a case in point. Infamous arms smuggler Victor Bout, for instance, used his commercial airlift capacity to both smuggle arms and deliver

humanitarian aid, the latter in the service of the United Nations at times. This haziness certainly complicates the matter, but it gives rise to synergies as well: often, one and the same actor might be involved in the trafficking of a variety of illicit goods, SALW and nuclear, biological, chemical and radiological materials. By implication, there exist certain established routes that exploit weak links in law enforcement and customs and border controls. This creates imperatives rather than opportunities for regimes active in different domains to cooperate on this so-called pipeline phenomenon. As we have learned from the example of West Africa, the pipeline phenomenon is one of escalation. Illicit trade started to be dominated by trafficking in cigarettes. This business was then diversified to include trafficking in SALW, and finally it absorbed the Europe-bound trade in cocaine. Recently, cocaine trafficking linked up with the North African hashish trade.

If traffickers are flexible both in their routing and the goods they trade in, it may be helpful then to look at the issue from a different perspective focusing on end-users, on who they are, and what drives their demand. In the small arms field, researchers have modelled the demographics of weapons abuse. Small arms are used predominantly by “under-employed young men” who are economically disadvantaged and typically live in underdeveloped societies. Addressing demand therefore bridges the fields of disarmament and development. Such an endeavour poses a wide range of challenges, but might also yield yet unknown synergies in addressing them.

Challenges and Synergies

This chapter presents challenges and potential synergies encountered by actors seeking to combat and prevent illicit trade in weapons and materials, beyond the few that have already been mentioned in the mapping exercise that was the subject of the first chapter. Challenges arise due to a variety of factors. One such factor is institutional gaps. Gaps in regulation, and needs and opportunities for further institutional development are the subject of the first part of this chapter. Other issues go beyond any single regime or even beyond the disarmament field itself. These cross-cutting challenges, synergies and options are discussed in the second part of the chapter. Finally, technological progress presents new challenges but also new opportunities for combating the illicit trade. The third and final part of this chapter is devoted to shedding a light on this factor.

A. Institutional Development of Transfer Regimes

Although some transfer regimes, like the nuclear non-proliferation regime, have worked reasonably well in the past, there is need for significant improvement overall, not least to keep up with changes in the field which these regimes regulate, to close gaps and loopholes. The way to address illicit transfers is through expanded regulation of the legal trade. The margin that illicit traffickers have at their disposal can only be narrowed by defining as clearly as possible what is legal.

The low incidence of attacks with nuclear, chemical, and biological weapons and materials shows that the transfer control mechanisms in this field have worked rather well so far. They can, however, still be improved. The NPT remains the backbone of transfer control and illicit transfer prevention in nuclear materials. With a view to the NPT review conference of 2010, it should be stressed that Article III concerning the safeguards system needs to be strengthened: the problem is that the system is so far neither universal, nor sufficient. While the more immediate priority is to render the Additional Protocol more universal in nature, there is also a need to modernise it. The Additional Protocol dates back to 1997. Pressing

issues include strengthening the rights of access by inspectors to nuclear sites, the notification of transfer system, an update of the Trigger Lists, and an increase of the IAEA operational budget. Art. VI, which binds states parties to eventual nuclear disarmament, has experienced renewed prominence through declaratory commitments made by representatives of nuclear weaponstates in 2009. As a first step in that direction, nuclear weaponstates might harmonise reporting practices on their fulfilment of Art. VI to NPT conferences by using a common template, instead of relying on national statements that have been of minimal consistency.

Reporting under the 1540 regime has remained feeble on the part of many developing countries, despite the requirements imposed by this Chapter VII mandated regime. This reflects prioritising of SALW control over issues of nuclear, biological and chemical trafficking in terms of resource allocation. There are possible synergies in terms of reporting between 1540 and the UNPoA regime that might be realized by developing countries to balance the quality of their reporting across the field of illicit trafficking.

As regards SALW, there remains significant room for improvement on the broad ground covered by the UNPoA. The UNPoA is vague on many issues and it is for the Arms Trade Treaty (ATT) under negotiation to fill remaining regulatory gaps in export, import, and transit controls for SALW, and conventional weapons more generally. Fortunately, these are not politically sensitive issues and it should be fairly easy to build consensus around them. The second set of issues for the ATT will be more contentious politically: it will establish a new norm prohibiting transfers to states engaged in widespread violations of human rights. This would be a leap forward in SALW transfer regulation, since for the first time state-to-state transfers in SALW would be regulated by a global regime (other than in specific cases of UN arms embargoes). Furthermore, the regulation would be legally binding upon its members. A third issue area to be addressed by an ATT could be the regulation of brokering activities, though as of yet it remains unclear whether this will be taken up in negotiations. Another issue that has not been addressed at all by the SALW regime is that of control of ammunition transfers. The case for focusing on ammunition is intuitive for without ammunition, small arms are useless. Ammunition usually has a shorter life cycle than the weapon itself and is also more vulnerable to environmental influences. One operational

challenge to ammunition control is the question of marking of ammunition: this could prove to be a technical challenge for developing countries. It is, however, already being done by Brazilian producers, at the comparatively low cost of USD 0.01 per cartridge. The ATT to be negotiated may eventually also address trade in ammunition.

At the level of regional cooperation there are also several gaps to bridge. Workshop participants identified the need for greater transcontinental partnership between Europe and Africa in terms of security and links to development. These issues should be accentuated in future partnership agreements. Secondly, there is an institutional gap SALW control in Africa. The strategic perspective on SALW control for the whole of Africa is still lacking. Issues to be addressed include the lack of cooperation on SALW control, data-sharing, and border management across the four African sub-regional organizations. A second concern is duplication of efforts by actors in the same region, a problem arising from the significant cross-membership that marks Africa's regional blocs. This calls for a continent-wide coordination mechanism, a role that could be filled by the African Union. To this end, the African Union's SALW Steering Committee should be strengthened.

Finally, the difference in priorities and investment that is behind the North-South divide on illicit trade needs to be addressed. Both Northern and Southern actors must recognize that there is no valid reason to prioritise any specific dimension of illicit trafficking (whether SALW or WMD) systematically over the other, let alone at the expense of the other. The clear reality is that both aspects are significant to international, regional, and human security, and that progress on either dimension can also assist the other, even if only indirectly. Africa must realise that, having achieved the largest nuclear-free zone in the world, it has a major role to play in the newly invigorated quest for nuclear disarmament. Southern states should seek Western assistance to build capacity in addressing questions of non-proliferation of nuclear, chemical and biological weapons and the illicit trade in materials. Western States need to realise that they cannot tackle SALW and nuclear, chemical and biological weapons and materials separately. The case of Pakistan is a formidable example of how a fragile state awash with small arms is in danger of becoming an involuntary nuclear proliferator to radical non-state actors.

Hence the disarmament community should recognise the need for a comprehensive North-South strategic dialogue on the illicit trade in weapons and materials in all its aspects.

B. Common Challenges Across and Beyond Transfer Regimes

Beyond the gaps and the options to fill them that have been identified for specific regimes, challenges and possible synergies are to be found across transfer regimes in nuclear, biological and chemical materials and the SALW control regime.

The first challenge that affects all regimes at all levels is a lack of resources, especially pronounced in developing countries. The ECOWAS region, for example, is a striking example of the mismatch between trade deregulation and the lack of resources to ensure that this new freedom of movement for goods is not exploited by traffickers. Insufficient funding is not restricted to the domain of SALW, however. Despite the fact that the IAEA is mandated to monitor an ever-growing civilian nuclear complex across many countries, its annual safeguards budget remains a mere USD 150 million.

Two additional challenges to both regimes are weak cooperation in border controls and the challenges of establishing an effective export-, import-, and transit-licensing system. These lead to control gaps that are skillfully exploited by traffickers. Both effective border controls and effective licensing systems hinge on the performance of border control officials. There are obvious synergies to be found here: improved customs and border controls for SALW should automatically improve them for nuclear, chemical, and biological materials. The challenges to end-user licensing are similar in nature. Again, falsification of end-user licenses affects both the SALW and nuclear, chemical and biological domains. Both issues call for technical assistance, capacity-building and training.

The recent introduction of modern electronic licensing systems and electronic commodity identification tools could significantly improve the performance of customs agents. Electronic licensing systems are built around comprehensive databases that are accessible to the various state agents concerned. They yield strong benefits in terms of record-keeping, expedite the licensing process and improve information flow between exporters, licensing authorities and customs officials. This significantly increases the chances of detecting forged licences.

Based on searchable databases that include information on various characteristics of dual-use goods, including materiel, weight, and physical appearance, electronic identification tools are designed to help customs and border officials identify dual-use goods. The practice of such controls should not be entirely new for customs officials since many countries have similar controls in place in other fields, such as health hazards.

While there is no doubt that such systems are helpful if adequately operated, two caveats are evident. First, these systems are costly both to procure and maintain, and beyond the means of most developing countries. Second, they may be beyond the operational capacity of many of the world's customs services. Hence, while these types of systems carry promise for the future, they have been introduced by only a handful of industrial countries so far.

More immediate opportunities for improving the performance of customs and border agencies lie in awareness-raising among customs agencies of the challenges posed by illicit transfers. So far there has not been any sustained dialogue between customs organizations and transfer control regimes. The World Customs Organization has remained enmeshed in a traditional role, more concerned with improving and streamlining and revenue collection, and has shown little interest in trafficking of SALW and nuclear, chemical, biological weapons and materials. A practical first step would therefore be for the disarmament actors to reach out to the World Customs Organization. In a second step, where gaps remain, capacity for detecting illicit transfers has to be created at the national and regional levels. Technologically less demanding, simple-to-use systems should be devised, to be improved with add-ons, in a parallel training effort of customs and border officials progress. It would be useful to draw on the expertise of the United Nations Interregional Crime and Justice Research Institute (UNICRI), which is involved in capacity-building for customs officials on issues of nuclear, chemical, and biological trafficking.

In the field of tracing SALW, a simple system called E-trace has recently been successfully introduced in the Caribbean. Similarly, the Regional Centre on Small Arms (RECSA) has started a project to develop an electronic tracing system for Nairobi Protocol members. One question remaining is whether there are possible synergies in tracing between the SALW and the nuclear, biological and chemical

domains. Intellectual parallels exist on the SALW tracing and nuclear forensics approaches. Experts on SALW marking and nuclear forensics could work together to that end.

Control efforts in both the SALW and nuclear, biological, and chemical domains are undermined by a lack of data. In both fields it is necessary to improve and harmonize data collection it being currently impossible to formally assess the impact on trafficking of existing instruments.

With respect to nuclear, biological, and chemical weapons and materials there is an additional need to improve data on trafficking incidents, trafficking routes and on the motivations of traffickers. The IAEA database on trafficking incidents could be drawn upon to improve knowledge on incidents and smuggling patterns. In addition, there exist informal systems based on data provided by national focal points, especially in terms of chemical and biological incidents. For the purpose of data improvement – and weapons detection, for that matter – it would also be advisable for transfer control regimes to reach out to the news media. Most reports of major incidents of nuclear, biological, and chemical and SALW smuggling originated with the media, suggesting that there is good reason to partner with the media on data generation.

Bearing in mind the potentially devastating effects of nuclear, chemical or biological terrorism in major population centres, it would be wise to invest in early-warning systems. Moreover, regimes in both domains have developed their own best practices documents, showing that they are remarkably similar in many respects. An exchange or possible joint development of best practices would hence be desirable.

Finally, combating illicit trafficking calls for the pipeline phenomenon to be addressed. Disarmament actors need to think strategically beyond the confines of their mandate and tackle cross-cutting issues. One way to stop SALW trafficking would be to harness the financing of trafficking, and to liaise with the experts in this field. Also, if drug trafficking and SALW are increasingly elements of the same business model, then perhaps combating the illicit small arms trade demands innovative approaches to how society deals with illicit drugs. Perhaps attention ought to be shifted from prohibiting supply to reducing demand.

Finally, the effects of illicit trade in weapons and materials is not exclusively a disarmament issue. As with the drug trade, it fuels armed violence, empowers organized crime, corrupts society and endangers good governance, and sometimes even statehood itself. From this perspective it is important for the disarmament actors community to reach out to a wide variety of expertise actors. From a Geneva perspective especially, it is important to optimise the links between efforts in combating the illicit trade in weapons and materials and the Geneva Declaration on Armed Violence and Development.

C. Challenges and Opportunities for Arms Control as a Result of Recent Technological Advances

Technological advance levels both challenge and bring opportunities to the field of disarmament.

It is a well-known fact that technological advances occur at an accelerating pace and its achievements are available to an ever wider public as globalisation in communication, logistics, and economics progresses. The institutional structure of the international system mirrors the geopolitical and technological state of the last century. Geopolitically, new challengers to the current multilateral order arise. Economically, we see an erosion of the industrial monopoly of the West, which entails a diffusion of technology throughout the international system. In terms of arms technology, developments have created new gaps in the institutional structure governing arms control and non-proliferation.

Diffusion of technology undermines the technology denial paradigm on which export control is based: it is striking that a state like the Democratic People's Republic of Korea (DPRK), which has virtually no modern industrial base, can nevertheless master the difficulties associated with the production of nuclear weapons and ballistic missiles. This is a cautionary note on the importance of diffusion of knowledge for arms control more broadly: the physics of nuclear weapons is publicly available today. The more difficult aspect, the engineering of a weapon, can be mastered by talented engineers. The scientist who sold weapons blueprints to the DPRK acquired his knowledge through education at a German university. Much of what he learned there is today available in libraries or on the Internet, to be picked up by the talented and motivated. While university access denials remain an option, they cannot entirely stem this tide. Crucially

therefore, technology denial needs to be supplemented by sound intelligence work on possible proliferators and end-users.

One possible consequence of all this is that the disarmament and arms control regime moves from a strategy of technology denial to a more norms-based status. This could imply heightening the confidence-building function of arms control on the one hand, and on the other, raising awareness among scientists about the moral consequences of their actions.

Restructuring of industrial production poses a second challenge to arms control and transfer prevention: the production of chemical materials has changed fundamentally. Chemical reactors have become significantly smaller in size, and the production process has fragmented due to specialisation and niche production. Where formerly giant industrial complexes held a monopoly, a range of smaller independent industries specialising in only one step of the production process have become technologically and economically viable. For the CWC, this complicates the monitoring and verification process considerably, since it has to cover the activities of an increasing number of players. Still more saliently, the very definition of chemical industries to be monitored – at the heart of the CWC verification mechanism – is becoming outdated, which undermines the mechanism's overall effectiveness. To counter this, and similar developments in the production of biological materials, the major controlling institutions, the CWC and the BWC have to be equipped with effective sub-systems to track these developments, similar to what the IAEA has in place.

The diffusion of production technology and the restructuring of the production process combined with the rise of non-state players such as traffickers and end-users of weapons and materials create an explosive security threat. Here the crux of the matter is not so much denying non-state players access to fully fledged nuclear, chemical or biological weapons for military use. To design a nerve-gas-based chemical weapon still requires formidable technological capabilities. Agents need to be stabilised so that the weapon can be stored; dispersal and penetration need to be enhanced and so forth. But against civilian targets, it would often be sufficient to use agents such as phosgene, thousands of tons of which are produced industrially every year. In essence, the issue of controlling these materials is one of stockpile security, becoming ever more difficult as

production capabilities diffuse to less developed countries with fewer resources to maintain stringent security measures. The problem outlined above is, structurally, the same for the control of biological agents. Only the threat involved is still more salient, for two reasons: the higher security threat posed by a biological terrorist attack over a chemical attack, in terms of the possible breakout of epidemics and the weakness of the BTWC which, unlike the CWC, features no effective verification structures. In the face of the overwhelming task of international verification of stockpile security, here again a case is to be made for a strengthening of international chemical and biological weapons regimes, for capacity-building in stockpile security and for a prominent role for intelligence in the prevention of non-state trafficking.

Technological progress has created new weapons systems which are not yet – or not yet sufficiently – regulated by existing instruments. Unmanned Aerial Vehicles (UAVs), for example, are only included in the MTCR, a mainly Western export control group that is far from universal in membership and insufficiently developed. Also, unmanned maritime vehicles and small military robots currently being developed would not be covered by any controls at all. Future development of increasingly self-guided weapons systems also poses the question of human control and has unclear implications in terms of the current state of international humanitarian law. Further examples of as yet unregulated weapons systems are new direct energy weapons, including lasers for battlefield use, and microwave weapons and Fuel Air Explosives. The latter cause concern in terms of international humanitarian law because their use would violate the principle of discrimination. Cyber-warfare, the assault by computer hackers on a country's infrastructure, remains unregulated. Cyber-warfare is a major challenge to arms control because of a high potential incidence rate coupled with high potential consequence. Furthermore, neither the knowledge nor the equipment required for a cyber-attack can possibly be denied. Hence the proliferation of attacks on the computer infrastructure of countries, as witnessed in Estonia, will likely be a fact of the future.

Evolution in the military application of nanotechnology erodes the boundaries between physics, chemistry, and biology, and hence meets a gap in arms control, since neither the biological nor the chemical weapons regimes addresses this.

The possible military applications of nanotechnologies are numerous, and include micro-sensors, human body manipulation and the design of metal-free SALW. Some of these realizations or innovations may be only a few years away. All of these new weapons systems and technologies need to be addressed by arms control. To this end, the Conference on Disarmament should urgently be revived as the legitimate – and effective – venue for designing arms control agreements.

Alongside these challenges, recent technological advances also offer new opportunities for fighting illicit trade and proliferation. Technological advances have in the past been important facilitators of regime development and regime improvement: for example, the invention of seismic detection for underground nuclear tests in the 1950s heralded the conclusion of the Partial Test Ban Treaty in 1963, and eventually – after the refinement of its method – the Comprehensive Test Ban Treaty. The Soviet Union developed a device that allowed detection of a nuclear warhead onboard a vessel at a distance. Bearing in mind the costs of tracking and searching ships at high sea, such technology would considerably facilitate the surveillance work of maritime forces and coast guards. This technology should, by all means, be available today.

The challenge then to the disarmament community is to identify appropriate technologies capable of improving monitoring capacity of illicit trade in weapons and materials, and to harness them for their purposes. On a promising note, the design of detection equipment for various substances has been a growth industry since 11 September 2001, producing, among other things, multi-purpose devices that allow the screening of large freight containers for a range of different substances. Some of these new devices are developed in areas that are distant from arms control and non-proliferation. In the field of pharmaceuticals, UNICRI, for example, has developed a system of electronic identification devices that allows the tracking of a product from producer to end-user. UNICRI is in the process of harnessing this technology for a larger range of products. The value of these new technologies with a view to prohibiting weapons trafficking is obvious. It would therefore make sense for disarmament and arms control actors to take stock of which detection devices exist in the world of customs control and counterfeiting prevention, and to explore whether they can be used for SALW detection, or the detection of other weapons and materials. New detection technologies cannot,

however, be a panacea for the problem of illicit trade. Prohibition of both SALW trafficking and the smuggling of radiological and chemical materials needs to be supplemented by sound intelligence measures, to cope with the quantity of cross-border transactions that occur. Sheer presence at a country's entry points is not sufficient. It is incumbent upon intelligence agencies to focus on the high-risk trade and to profile accordingly.

The recent proliferation of commercially available satellite imagery is another promising development for illicit trade detection and prohibition. Even though major players in the non-proliferation field, such as the IAEA and the Organization for the Prohibition of Chemical Weapons (OPCW), already use space imagery, use of this promising resource has remained controversial. In one instance, a state protested the use of satellite imagery of a plant site by OPCW inspectors, even though inspectors had retrieved the imagery from the website of the company to be inspected, where it was freely available. Since space is a common, its commercialisation has continued unabated in recent years. While this may allow disarmament stakeholders to acquire access to imagery more easily, the use of private imagery raises questions in terms of credibility, neutrality, and multilateralism. It may therefore be worthwhile to revisit a former French proposal for the creation of a multilateral space observation agency. While space imagery has been used by multilateral regimes for monitoring and surveillance purposes, disarmament actors have not yet employed it for the detection of trafficking. Strikingly, United Nations Office on Drugs and Crime (UNODC), an agency mandated to assist states in combating abuse of illicit drugs, has relied on satellite imagery to monitor the development of poppy cultivation in Afghanistan but it has not yet looked at border crossings or trafficking routes. Technically this would be viable, since sub-metre imagery – sufficiently accurate to allow identification of trucks, boats, and airplanes – is commercially available. The difficulty here is knowing which areas to monitor, assessments of which, again, have to be intelligence-based. But this challenge could possibly be overcome by drawing on the resources of INTERPOL, an agency that knows by and large where the major trafficking routes run, or to rely on information delivered by states.

Individual countries are already using satellite imagery to look at their borders. The US National Geospatial Agency, in collaboration with the National Security

Agency, has calibrated civilian and military satellites to cover the Mexican border in order to detect narcotics traffickers and traffickers of human beings. Similarly, in 2009 the European Union launched a project entitled Sea Horse which uses a satellite to detect movements of people in North Africa in order to identify potential illegal immigrants and drug traffickers. The Costa Rican government has recently announced it will build and launch a satellite exclusively for the purpose of monitoring movements of possible drug traffickers at sea within its exclusive economic zone.

There is hence a clear opportunity for the disarmament community to use satellite imagery for detection of trafficking in weapons and materials. UN agencies like UNODC or UNICEF, which employs space imagery in its humanitarian work, do have the institutional knowledge to operate these tools.

In the face of these strong potential synergies, the disarmament community should explore how to apply this technology to combat trafficking. This will require some research in that although satellite imagery may allow detection it is more difficult to use it for tracking purposes. Also, an immediate response by law enforcement agencies to detection of a suspicious vehicle requires resource investments in standby capacities that might be hard to come by, particularly so for poorer countries that are disproportionately targeted by traffickers.

Conclusions and Recommendations

The purpose of this workshop was to discuss pressing issues in combating the illicit trade in weapons and materials, and their consequences for the Geneva international community. Participants proposed practical ideas, options and recommendations, in response to the issues that arose. In lieu of a conclusion, this last chapter lists the most important recommendations for action to come out of this workshop.

Participants repeatedly stressed two shortcomings in the activities of the Geneva disarmament community: a lack of action-oriented research on synergies between the different domains of the illicit trade regimes; and a need for the Geneva community to facilitate cross-stakeholder meetings of national officials, illicit trade regime officials and officials from relevant organizations outside the disarmament community to facilitate information-sharing and the exchange of best practices. Specific partners for immediate outreach efforts by Geneva-based stakeholders have been identified as follows:

1. The World Customs Organization and UNICRI on the question of mainstreaming the combat against the illicit trade in weapons and materials in customs and border protection;
2. The World Intellectual Property Organization (WIPO), on the question of how to deal with intangible transfers;
3. UNODC, UNICEF, and the IAEA, on the question of how to harness space imagery for trafficking detection purposes;
4. UNODC, and INTERPOL on the question of identification of the major arms and drugs pipelines.

Beyond these immediate outreach priorities, workshop participants highlighted a variety of other options and imperatives to be addressed.

To improve the functioning of instruments to combat the illicit trade, including their implementation by states:

1. The role of parliamentarians in implementation of state commitments should be strengthened through mainstreaming parliamentary participation in illicit trade-related capacity-building and information-sharing programmes;
2. Disarmament stakeholders, and the Geneva community specifically, have to focus more on the record of individual government's implementation of their commitments, and should develop tools to that end. UNIDIR's practice in monitoring of state-reporting on the UNPoA could be a useful role model;
3. Disarmament stakeholders should address the private sector on the illicit trade in weapons and materials. In particular, drawing on data from private transport companies may be valuable for the purpose of combating illicit trade;
4. To improve the quality of reporting, disarmament stakeholders should explore synergies on state reporting between various illicit trade regimes. For instance, officials from the UN Office of Disarmament Affairs and officials from the 1540 Committee could come together to discuss synergies;
5. Disarmament stakeholders should focus on the regulation gap in SALW ammunition and missiles;
6. In terms of SALW, Africa lacks an integrated strategic perspective allowing for coordination of activities by regional blocs and prevention of duplication of efforts causing waste of scarce resources. This role should be filled by the African Union. The African Union's SALW Steering Committee should be mandated and equipped to fulfil this task;
7. There is an urgent need for the disarmament community to bridge the North-South divide in illicit trade. To this end, the South should seek Northern assistance to build capacity in matters of non-proliferation of nuclear, chemical and biological weapons and the illicit trade in materials. And Northern states should be made aware of the fact that they cannot tackle nuclear, chemical and biological weapons separately from SALW.

To make use of synergies across regimes combating the illicit trade:

1. Disarmament stakeholders should raise awareness about the illicit trade with customs and border protection agencies, and facilitate capacity-building in

combating the illicit trade in conjunction with the World Customs Organization, possible drawing on the expertise UNICRI has developed in this field;

2. They should explore potential tracing synergies that may exist between the regimes in SALW and the in the nuclear, biological, and chemical domains;
3. Disarmament researchers need to address the lack of systematic data on patterns of the illicit trade, and on the effectiveness of the regimes addressing it. In the nuclear field, researchers could draw on the IAEA database trafficking incidents;
4. For the purpose of data collection, disarmament stakeholders should reach out to the news media which have proved to be a good source on trafficking incidents in the past;
5. Officials from regimes in both the SALW and nuclear, biological, and chemical fields should exchange experience on best practices from their respective fields, and possibly develop best practices jointly;
6. Disarmament stakeholders need to think strategically beyond the confines of their field to address the pipeline issue. They should pay greater attention to the financing of trafficking and seek to identify leading experts in this matter for possible outreach activities;
7. In the face of linkages between trafficking in SALW and drugs, states should think creatively about their approaches to combating the illicit drug trade. Perhaps a shift from prohibiting supply towards controlling supply, coupled with demand reduction, would be in order.

To address the implications of recent technological progress:

1. The CWC and the BTWC need to be endowed with effective sub-systems to track the implications of advances in nanotechnology, and of the advances in the production processes of chemical industries;
2. States should make urgent investments in nuclear, biological, and chemical stockpile security, and developed countries should make available funds to developing countries for capacity-building in stockpile management;
3. Arms control instruments need to address the new developments in weapons systems and weapons technologies, in particular unmanned vehicles and military applications of nanotechnology. The international community should outlaw the use of Fuel Air Explosives. To these ends, the Conference on Disarmament should

urgently be revived as the legitimate venue for negotiating arms control agreements. Finally, the disarmament community needs to think about possible ways to control cyber-warfare;

4. For purposes of prohibition, states and disarmament actors should seek to identify detection technologies in use in areas such as customs control and counterfeiting prevention, and to harness these technologies for SALW detection and the detection of other weapons and materials;

5. Disarmament stakeholders should work to harness space imagery for the detection of trafficking in weapons and materials. To this end they should draw on the expertise of those agencies already use this technology, the IAEA, UNODC, and UNICEF.

Options for Further Work

This workshop touched upon a wide range of topics, all too often dealt with in isolation. For all the diversity, however, there emerged throughout the deliberations and in the discussion of recommendations a converging cluster of issues that effective policies against illicit trafficking will need to address.

Whether with specific reference to trafficking in SALW, WMD-related materials and technologies, delivery vehicles or other sensitive equipment, three broad areas for further work can be identified as capacity-building, exchange of information, and border controls.

Each set of activities involves national authorities, regional bodies, as well as multinational cooperation usually through specialised organizations. In addition, the perspectives and possible contributions of the private commercial sector and of NGOs need to be integrated into future discussions.

Future workshops could thus examine each of these three cross-cutting priority areas, with the participation of representatives of a variety of national and international authorities. This could facilitate a focused discussion on various priority areas identified in the course of this workshop, such as the role of customs services, training of officials, role of civil society monitoring and the importance of public awareness, enhanced use of databases, use of satellite imagery as appropriate and the role of the private sector, to name but a few.

Looking at illicit trafficking across the board from each of these three perspectives with the participation of organizations such as the IAEA, INTERPOL, the UN

Office on Drugs and Crime, the World Customs Organization, the 1540 Committee, the OSCE and others, would be an opportunity to compare notes and identify gaps, and to further investigate the requirements for enhanced effectiveness, as well as options for cooperation to reinforce existing activities and perhaps, stimulate new initiatives.

Part II – Regional Challenges

Workshop Rapporteur: Marc Finaud

Executive Summary

On 6 April 2011, the Geneva Centre for Security Policy (GCSP) hosted an international workshop on the topic: “Reinforcing Disarmament: Combating Illicit Trade in Weapons and Materials – Regional Challenges”. This event was jointly organized with the United Nations Institute for Disarmament Research (UNIDIR) and the German Friedrich Ebert Foundation (FES), with the support of the Swiss Federal Department of Foreign Affairs. It was attended by some forty participants (academics and researchers, government officials, military officers, representatives of civil society organizations) from various regions, including some fifteen participants from Africa.

This was the second workshop on this topic convened by the same institutions, following the first which took place on 1-2 February 2010 (“Reinforcing Disarmament: Combating the Illicit Trade in Weapons and Materials: Actors – Synergies – Challenges”). It addressed some inter-related aspects of the illicit arms trade issue:

- The need for acquiring and managing reliable information;
- The requirement for effective legal and law-enforcement systems; and
- The challenge of implementing and operationalizing the existing legal and political instruments.

The experts and participants highlighted the main difficulties in those areas:

- Coping with insufficient resources, especially in developing countries and conflict-torn regions;
- Matching the needs of developing countries and the assistance offered by donor countries; and
- Improving coordination between national, regional, and international actors.

They also discussed a holistic approach of how to better integrate the fight against the illicit arms trade into: Security Sector Reform (SSR); prevention of transnational organized crime; export control and non-proliferation regimes, etc.

In Africa, in particular, social inclusion was seen as a remedy against desperate youth and marginalized parts of a nation's population that otherwise would be dragged into the trafficking business. Participants also described and compared experiences in various regional initiatives, principally in Latin America, in the African sub-regions and at the level of the African Union (AU). Most of the discussion focused on small arms and light weapons (SALW) but trafficking in radioactive and nuclear materials was covered as well.

The main purpose of this series of workshops was to identify and develop possible synergies between the various regimes already in place or to be developed, in particular by an Arms Trade Treaty (ATT). Several recommendations in this respect were formulated, such as:

- Including a reference to the existing legally and politically binding instruments such as the International Tracing Instrument (ITI) into the ATT;
- Appointing national points of contacts dealing with the various instruments;
- Increasing the response to information requests within international or judiciary cooperation mechanisms;
- Promoting, through awareness efforts and training, better coordination between national security agencies, including customs, with regard to investigations on firearms used in criminal activities;
- Allowing civil society organizations, thanks to proper capacity building, to play an active role in advocacy and the fight against corruption, and share information in order to complement and support the action of government agencies;
- Making better use of and contributing to existing databases such as the ones maintained by the International Criminal Police Organization (INTERPOL), the International Atomic Energy Agency (IAEA), or the United Nations Office on Drugs and Crime (UNODC);
- Considering some methods used by UNODC and other organizations to promote compliance with existing commitments, such as peer review or self-assessment.

Opening of the Workshop

The workshop was officially opened with welcoming addresses by representatives of the organizing institutions.

One speaker underlined the objectives of the workshop: to explore and develop synergies taking into account both commonalities and differences of views; and to bridge gaps and promote cooperation for the common good. He mentioned the three basic issues to be addressed: information gathering; legal framework and law enforcement issues; and operational work.

Another speaker considered that the aim of the workshop was to identify common challenges faced by nations, regions and the international community in combating the various forms of illicit trade and trafficking from small arms to nuclear materials. On the political, legal, and institutional levels, the problems range from weak state structures to insufficient capacity for export control. The speaker analyzed the key element in resolving these issues: to bring together a variety of stakeholders to discuss integrated solutions. Indeed, there would be a need for cross-stakeholder, multidisciplinary approaches, comprehensive dialogue on disarmament and security challenges as well as creative thinking. “Today’s problems are not solvable without integrated and holistic approaches”, it was said. With respect to the upcoming negotiations on the Arms Trade Treaty (ATT), implementation was qualified as the most important factor and most difficult part of the plan, leading to the need to address this challenge during the workshop.

The last speaker referred to the famous quotation: “Peace and security are too important to be left to governments”. Indeed, the role of non-governmental organizations (NGOs) was highlighted to promote platforms of discussion, especially on “soft security” issues, where civil society was directly concerned.

The Challenge of Acquiring and Managing Reliable Information on Arms and Related Material Trafficking

The theme of this panel was the following: like for transnational organized crime in general, the issue of the collection, analysis and processing of relevant data related to illicit trade in conventional or non-conventional arms and technology is critical as a necessary step to understanding, preventing, and fighting this worldwide phenomenon. How have various regional or global organizations dealt with this challenge?

One speaker analyzed the exchange of information within the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Material (CIFTA in the Spanish acronym).¹ This 1997 convention led to the first legally binding regime in the world against illegal trafficking and manufacturing of firearms for the Americas (considered the second most violent region in the world after Africa). Trafficking in small arms and light weapons (SALW) across the Latin American and Caribbean Region has had and continues to have devastating ramifications due to related crime and violence. It is estimated that there are between 45 and 80 million SALW in circulation in Latin America. Most are purchased legally, but many have been used for unlawful purposes such as drug trafficking and criminal activities. The speaker highlighted the importance of the “ground-breaking nature of this convention” as universally recognized. It did create a precedent that inspired the United Nations Programme of Action (UNPoA)² and the Palermo Protocol.³ Many

1 See the full text of the Convention at <http://www.oas.org/juridico/english/treaties/a-63.html>.

2 See United Nations Office for Disarmament Affairs, Conventional Arms, UN Programme on Small Arms and Light Weapons, 2001 (http://www.un.org/disarmament/convarms/SALW/Html/SALW-PoA-ISS_intro.shtml).

3 There are three protocols that are referred to jointly as the Palermo Protocols (or sometimes referred to individually as the Palermo Protocol). They have been adopted by the United Nations in 2000 in Palermo, Italy, together with the Convention against Transnational Organized Crime. They are: The Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; The Protocol against the Smuggling of Migrants by Land, Sea and Air; and The Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (see <http://www.unodc.org/unodc/en/treaties/CTOC/index.html>)

arms control regimes are rooted in the notion that states have the right of self-defence and, therefore, possess the right to acquire weapons for themselves and to transfer them to other states. Under this perception, states see the freedom to acquire SALW as beneficial to their own security. States also recognize that criminals and rebel groups use the trade and manufacturing of SALW to threaten state security and stability. Therefore, states play the major roles in the implementation and interpretation of treaties. From his point of view, this convention is not a disarmament treaty nor an arms control treaty, but a regulatory instrument that recognizes the widespread availability, mobility, and use of SALW.

The Convention only seeks to combat illicit SALW trade and manufacturing, and it does not deal with the lawful trade or ownership of SALW. The UNPoA, the Palermo Protocol, and CIFTA seek to combat these issues in different ways. The primary purpose of the Palermo Protocol is to reduce organized crime, not focus on SALW trafficking. Agreements in this field can range from hard law (treaties, conventions) to soft law (political pacts, codes of conducts, recommendations, etc.). CIFTA uses the advantages of hard law to combat illicit trade and trafficking of SALW by creating obligations to which states are legally bound and have to abide by. Under the CIFTA regime, states are responsible to fulfil specific obligations: they are required to mark firearms at the time of production or import; they are required to confiscate illegally obtained SALW and establish procedures to maintain security; they must maintain records of actions for a “reasonable period of time”. Furthermore, they must cooperate and exchange information and settle dispute through diplomatic means. CIFTA has established a Consultative Committee to promote cooperation and information sharing. The decisions of this Committee are not binding but are only recommendations. However, the Convention has created model legislation in the criminalization of illicit manufacturing and trafficking of SALW, the marking of firearms, security measures, export points, record-keeping, etc.

The speaker highlighted the importance of legislative models to ensure the effective application of CIFTA and facilitate cooperation in information sharing between states parties. What is important is that it addressed states’ conflict of interests concerning the rivalry between the concepts of confidentiality and trans-

parency. The Convention recognized the fact that states have legitimate concerns for national security in keeping confidentiality with regard to the manufacturing, procurement, sales, and transfers of SALW. Issues of national security and economic interests must be treated in a confidential way (this was kept in Article 12 of the Palermo Protocol). A way to respect confidentiality, being transparent at the same time, is through the submission of the information on a voluntary basis. Some 60 countries report regularly to the United Nations Register on Conventional Arms (UNROCA).⁴ These countries are involved in the legal export of SALW, like almost all countries are. Therefore, it should be assumed that a vast majority of these countries are reporting on the international transfer of SALW. However, only 42 states provide systematic public information on both the value and the volume of SALW being transferred across their borders. And yet, the benefits of transparency and information exchange are clear: they improve the capacity of trade and the capacity to monitor the transfer of SALW; they enhance mutual confidence among states that are committed to combat illicit trade or manufacturing of SALW and they stimulate the development of appropriate international financial record-keeping and management systems. Both dimensions, transparency and confidentiality, must be addressed in a complementary way. It is possible to exchange information on SALW without compromising the national security of states or commercial and economic interests. National security can in fact be enhanced through the use of appropriate levels of transparency and information exchange.

Regarding the exchange of information within CIFTA, the two essential purposes outlined in the Convention are the promotion of the exchange of reliable information, and the promotion of record-keeping policies to trace the trade of illicit firearms. The information under CIFTA is confidential, but states are obliged to share relevant information: who are the actors (producers, sellers, exporters, etc.); what is the origin of the acquisition of illegal firearms by criminal organizations; what is the legislative experience in the region; what are the techniques and strategies employed to combat money laundering; etc.?

In conclusion, the speaker noted the lack of a compliance mechanism being the main weakness of CIFTA. The only way to raise concerns about compliance

4 See United Nations Office for Disarmament Affairs, Register on Conventional Arms, <http://www.un.org/disarmament/convarms/Register/HTML/RegisterIndex.shtml>

is through the Consultative Committee's recommendations. Another weakness is that states parties are only asked to share information at specific occasions or appropriate times. No effective action is in fact possible against political will to abstain from cooperation. The speaker also addressed the possible contribution of CIFTA to a future ATT. He mentioned the use of the record-keeping mechanism and the question of transparency vs. confidentiality, including information on denial of sales.

Another expert addressed the lessons learned from the Illicit Trafficking Database (ITDB) on trafficking in nuclear and radioactive material of the International Atomic Energy Agency (IAEA).⁵ He recalled that this programme is meant to collect information on trafficking in nuclear and radioactive material which is out of regulatory control. This system was established in 1995. It is a voluntary reporting system consisting of 111 member states of the IAEA, i.e. about two thirds of the membership of the Agency. Of 54 states in Africa, 11 are not members of the IAEA. The system relies on points of contact in each of the member states. If the nuclear or radioactive material gets out of control, the contact should learn about it and report the uncontrolled activity through a specific reporting system. The system also collects data at its own initiative (reading of newspapers, blogs, Internet sources, etc.). It operates only on the basis of open source information. Once the data about an incident is compiled, the IAEA turns to the country of origin and asks for verification of the event. As a result, the system can store confirmed information, and, as a matter of fact, only reports on events confirmed by member states. The information is then circulated to all other national points of contact within the Agency, and forwarded to some international organizations. This is followed by the drafting of periodic reports and the carrying out of relevant analysis.

As the database shows, almost every other day a confirmed incident is reported where some nuclear or radioactive material has gone out of control. Fortunately, mostly radioactive and not nuclear material (i.e. plutonium or uranium) is reported. Large amounts of such radioactive material can be found in Africa, for instance, through different kinds of gauges, medical material (isotopes), etc. This information is used for analysis in the database. The main problem with such a

⁵ See International Atomic Energy Agency, Illicit Trafficking Database, <http://www-ns.iaea.org/security/itdb.asp>.

system is the inherent delay in reporting data. One cannot identify a downward trend in reported uncontrolled nuclear or radioactive material, but rather a flat trend. The principal source of concern is the fact that most incidents are caused by criminal actors. The database focuses on individual cases and groups of cases. Now there is a predominance of “hostage-taking” cases (seizures, thefts of radioactive material with serious threat and ransom). There are many reports on border crossings of material. Radiation detection equipment has been installed at borders with the support of the United States and the European Union (EU), and this leads to increased reporting. The problem lies with the fact that many reports consist of alarms being triggered at borders, whereupon the suspect vehicles are stopped and directed to turn around. The vehicles, the source of the trigger, and the destination of the material are unidentified. The expert stressed the need for cooperative agreements between the Agency and member states so that these issues can be avoided.

Highly enriched uranium (HEU) or plutonium is needed to manufacture improvised nuclear devices; therefore all measures must be taken to deprive unauthorized actors of these materials. There should be a tighter focus on this type of material. HEU qualifies only above the 20-percent level threshold of enrichment (90 percent being “weapons grade”). Plutonium is naturally weapons-grade and dangerous. It is possible to draw conclusions from the level of enrichment and place of seizure of the material. Some 16 seizures that occurred took place in Europe (Balkans, Caucasus), probably from a common source. This is very important to consider with nuclear forensics.

The expert listed some points of concern: buyers, repeat offenders, links between cases, large quantities being available for sale (kilogramme amounts are incredibly dangerous). He summarized the situation by saying, “we don’t know where most of it came from”. He mentioned the 1994 Prague case, when material from Russia travelled through the Czech Republic with many “middlemen” and actors. The people involved were usually petty criminals and groups. These sales of materials have been “seller-driven”: sellers looking for buyers (which often run into sting operations or informants, much to the Agency’s benefit). The expert addressed the experience of the IAEA in Africa where large amounts of lost and stolen (industrial) sources have been reported. There were also many hoaxes and

scams involving the sources of material, and many incidents of poacher mining in the Democratic Republic of the Congo (DRC). Incidents were also often recorded with people finding radioactive material (improperly discarded medical devices with radioactive isotopes, etc.) in scrap metal. This can lead to a tremendous economic, environmental or public health impact.

The expert summarized his point saying that dumping of radioactive sources is a real threat to all nations that can lead to social disruption in the public domain and involve clean-up costs, fatalities, public image damage, etc. There is a need to strongly support improvements in local capacities (monitoring equipment, detectors, training, etc.) as well as to share information about illicit trafficking which can help develop measures to lessen risks.

Another expert addressed the question of the “lens” applied more generally to understanding problems related to arms trafficking: the transformation of the scene, changing contexts, challenges brought by new types of actors, and difficulties that they raise between states and within international organizations. He focused in particular on the Sahara-Sahel region. Indeed, one should understand the mutating scene of the activities of armed non-state actors so that one may adapt existing tools and skills. There is a new phenomenon characterized by transnationality, which is clearly linked to globalization, and requires more research for a better understanding of the illicit arms trade. The deriving problems can be addressed at the military level, at the economic level, and/or as a security issue. This new condition is fundamentally affecting everything, including the data being gathered and its processing. With respect to the context of such trafficking, it can be addressed in a programmatic way: first, there is an increased presence of civilians at all stages; second, there is a process of privatization, involving groups and organizations (economic entities, cartels, etc.) and tying the privatization of these groups with the individual level; third, there is a hybridization of these categories, which shift from one concept to another.

The context is marked by: geographical indeterminacy (field of operations, porous borders, difficulty in tracking data); an obliteration of categories: actors include terrorist groups, criminal actors, and corrupt government agents; borders between these categories or groups becoming increasingly blurred; finally, a phenomenon of dispersion and open-endedness of groups and contexts, which

makes it difficult to track them. As a result of this context, the challenges include: stretched resources; and difficulties in sharing information between states, while information itself may exist across many states.

The implication is that the actors engaged in SALW trafficking are untraceable. This makes it difficult to collect and follow the data because issues and actors are “stateless”. There is a fundamental contradiction between international or regional organizations based on states and the actors being unconcerned with the notion of state. For instance, Al Qaeda moved to global design and is unconcerned with true boundaries. Their illicit business has a global focus and they have become empowered by their global success. States are “playing catch-up” with these stateless global actors that function within a network system rather than a hierarchical system. The components that allow them to act in this way are: technology, migration, and information. These are objective categories whose components or evolutions push for adapted responses.

The expert focused on the Sahara-Sahel Region (North Africa, West Africa, and the Sahel desert itself), which is historically a very important strategic area with regard to the availability of weapons. Because of the size and relative emptiness of the territory, securing it seems impossible. Over the past three to six years, one has witnessed the emergence of the North African version of Al Qaeda (AQMI – Al Qaeda in the Islamic Maghreb). It has been increasingly expanding its domain of action, therefore expanding the availability of weaponry. Some 54 kidnappings have been attributed to it since 2000, with ever-increasing ransoms (from €7.8 million to 90 million). These AQMI groups have managed to penetrate Libya since the beginning of the uprising, and are transporting weaponry from there to the Sahel region. This represents a high level of threat because of the increased level of lethality of weaponry (from AK-47s to rocket-propeller grenades and missile launchers). There are blurred borders between “terrorist activity” and “criminal activity”. The “political economy of terrorism” shows that terrorist action is pursued through large-scale financial activities (drug trafficking routes, etc.) with changing targets and locations under threat (civilian government offices, oil company sites, UN offices, etc.). The growing multiplicity of targets is a sign of an evolving set of actors and context. Those groups are able to send representatives

to gatherings of similar groups (“conventions”) to exchange data. There is clearly a political economy developing, with increasing sophistication.

Addressing in conclusion the possible responses to this phenomenon, the expert mentioned the challenges of cooperation: there would generally be improvisation on a national level (such as centres for data sharing with other states), and too often the approach would be politicized with the interference of other problems between states. The number one priority should be to coordinate security measures and law enforcement, and to share intelligence data. The Economic Community of West African States (ECOWAS) has been the most active in this context (with SSR, a SALW Convention, national commissions, information collection), though it was the least affected by illicit trade. The panellist considered that the AU was weak and often only produced declaratory policies which were not adapted to the transnational nature of the challenges.

During the discussion, it was felt that more cooperation was needed on model legislation, e.g. on marking, as well as technical assistance on confiscation of illicit weapons. Regarding the possible impact of the unstable situation in North Africa, especially Libya, on the most fragile states of Africa, the risks of uncontrolled transfer of weaponry were qualified as a major source of concern.

The Requirements for an Effective Legal and Law-Enforcement System to Combat Arms and Related Material Trafficking

The main issues of this Panel were the following: when relevant data on arms trafficking becomes available, governments and international organizations need a proper legal framework, both domestically (including for export control and end-use certification) and internationally (for transborder cooperation), in order to empower law-enforcement agencies to act either preventively or in prosecuting suspects. Countries lacking the necessary resources require assistance not only in legislation and regulation but also manning, training, and equipment of security forces, as provided for by the relevant international instruments (1540 Committee, UN Programme of Action on SALW, etc.). How can such countries in need obtain this support?

One governmental expert focused on assistance from developed countries to developing countries in combating trafficking in weapons. She stressed that assistance should only be provided upon request by the countries in need of such assistance, which must define their own priorities. Thus, assistance can be adapted to the concrete needs of the requesting state. Assistance may also come from another government, from an international organization, or from an NGO. The type of assistance may vary and include: legislative and administrative assistance provided through conferences and workshops; secondment of national and international experts to assist with drafting legislation on arms control; technical advice or legal assistance to eradicate illegal arms networks. She mentioned the example of France, which created a Multinational Small Arms and Ammunitions Group to improve the security and safety of stocks of small arms and ammunitions especially in Mali and Ethiopia. Assistance can also take the form of training of military forces, or awareness-raising programmes related to arms control and SALW trafficking.

The expert addressed the improvements needed to the current practice. There is a lack of coordination which leads to two main problems. Firstly, there are increased needs met by limited resources: it is difficult for states to coordinate an appropriate procedure to request assistance. The second problem is the lack of

effectiveness: a 2006 study by UNIDIR⁶ concluded that states often complained that “the assistance received to date had been insufficient” or that “assistance was not on track with [recipient countries’] priorities”. In fact, there is a need to improve both interagency coordination and coordination at the national level.

With respect to the future ATT, the expert considered that the treaty would definitely have an impact on arms trafficking, but that it would not address the whole problem. It will not have an impact on the black market, on non-state actors, on storage mismanagement, or on porous borders. It will mainly contribute to legislative and administrative assistance in order to help countries fulfil their obligations according to the treaty, including mutual assistance for prosecution. More action is needed to match the needs and resources to combat illegal SALW production and trafficking in line with the universal political goals of the UNPoA.

An African practitioner addressed the ATT as a potential instrument to fight against trafficking in SALW. He first considered that there were asymmetric priorities between the attention given to the problems of trafficking in, or manufacturing of, conventional arms versus nuclear weapons. He alluded to an article on how North Africa looked like a pipeline with regard to drug trafficking. It was the first indication of a serious threat existing right near the borders of Europe. Drug traffickers turning towards the south can use weak states to threaten international security. This pipeline can become a transport system for any illicit trafficking (drugs, weapons, human beings, etc.). The speaker assessed that what is important is the pipeline, not what is put in it. As for SALW, he recalled that former UN Secretary-General Kofi Annan called them “the Third World weapons of mass destruction”. He referred to the existing legislation and the different protocols for different regions and sub-regions, but considered that such norms are not implemented in North Africa. Although acting protocols in the different sub-regions of Africa are legally binding, their weaknesses come from the lack of harmonization of legislation and limited resources for coordinating anti-trafficking policies. There is concern about international obligations with regard to the weapons that states are selling themselves. From the African perspective, this is very important. The perceived threat is the flow of weapons coming from the rest of the world

6 E. Kytömäki and V. Yankey-Wayne, *Five Years of Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Regional Analysis of National Reports*, UNIDIR, 2006 (http://www.unidir.org/bdd/fiche-ouvrage.php?ref_ouvrage=92-9045-181-5-en).

where most of the legislation is not legally binding. Too many actors are still permitted to hide in the grey areas of the legal and the illegal, including brokering and lack of common definitions.

The expert addressed the important issue of ammunition. If people have a thousand AK-47s but lack ammunition, they merely possess sticks. An AK-47 can last 30 to 40 years, however, ammunition cannot. An internal framework is needed to fill the gap between all of the weaknesses of existing legislation. How can regulations be formulated to deal with these gaps? If the ATT answers these questions, then the ATT is something that is definitely needed. An ATT is necessary, but is it sufficient? Only if it answers these important questions properly. But if one looks at a system analysis, an ATT does not really cover the human security approach that insists on all actors, not just sellers. There are also the buyers and middlemen. Also worth considering are the motivations for the purchase: crime, poverty, protection, etc. Those extra dimensions must be managed and it can be assumed safely that an ATT cannot address all of those issues. Therefore, other issues such as SSR must be examined. A good security framework that is democratically governed is needed. Through SSR, states will become better at combating crime; it will make law enforcement agencies more effective; it will also raise security and ensure that those who legally seek weapons for protection may have them.

The speaker mentioned the AU Charter on Democracy, Elections, and Governance,⁷ which is considered important because it addresses part of the demand. Regarding Disarmament, Demobilization, and Reintegration (DDR) processes, traumatized people after conflict must be cared for so that they will not be recruited for criminal or violent purposes. If education and employment are not provided to those people they will have no interest in the system. Consequently, they will be available for any organization that will provide for them occupationally or economically. Thus, the ATT alone cannot solve all of the problems. It needs to be associated with other measures. A holistic approach for the ATT is needed to work to improve the environment for the actors involved with weapons trade and/or manufacturing.

Another governmental expert, speaking personally, addressed several issues regarding an ATT. First, he discussed the sort of legal framework that was needed.

7 See the full text of the Charter at <http://www.un.org/democracyfund/Docs/AfricanCharterDemocracy.pdf>.

The pre-requirement is to determine the objectives. For example, UN Security Council resolution 1540 (2004) against access of non-state actors to weapons of mass destruction can be used against trafficking in nuclear material because of its legally binding provisions. The UN Programme of Action (UNPoA) against the illicit trade of SALW is only a politically binding agreement and does not require member states to adopt any legal measures to uphold these objectives. Despite its universal nature, one could argue that its impact on the ground has been minimal. In the case of the ATT, the aim should be a legally binding treaty as near to universal as possible. The ATT seeks to impose regulations on the legal trade and therefore, hopefully, to make illicit trade more difficult. The scope would cover all conventional weapons and would not be limited to SALW. There is hope to include ammunitions, parts, and components.

The expert underlined the need to enforce global norms. Industries need a level playing field, and law enforcement needs proper legal norms and instruments. The aim should be to prevent unauthorized users from gaining access to these weapons and protecting the legitimate and responsible arms trade and the sovereign right of states to import arms for self-defence. It is true that the ATT will not be the sole solution to the world's problems in the area of illicit arms trafficking. It will, however, provide the legal basis for states to control exports, imports, and transfers in conventional arms. If implemented properly, the treaty could take on a moral focus with regard to the trade of conventional weapons. The obligations of an ATT would cover export, import, and transfer licenses. Penal sanctions would need to be established. Reporting mechanisms would have to be put into place (requiring legal training, model legislation, etc.). Training would have to be given to those working with import/export licenses (as with customs/border control). An International Cooperation Assistance model would be used within the ATT: states parties in the position to do so and in the appropriate situation may provide assistance to states in need. States can receive assistance if they know what assistance they need, and where and from whom they can get this aid. However, these processes are not easy for states in need. There is a requirement to match needs and resources. There could be an on-line model listing states and their capacity to give and also hopeful states in need. On-line matching of needs with resources could be improved via the ATT. There is however a potential

problem of waning support for the ATT and a need to reshape how assistance is given. Matching needs and resources could be the task of a properly coordinated Implementation Support Unit (ISU). In any case, a regulatory mechanism would be necessary, as well as a place for donors to advertise what they can provide for assistance.

Another African speaker stressed the fact that the availability of illicit SALW in Africa is essential to sustaining armed conflict on the continent. It also leads to diverting resources from development needs (health, education, social and economic development). The member states of the AU have adopted a number of provisions in addressing the various aspects of illicit trafficking of SALW. The AU Executive Council decided in 2006 to create a legally binding instrument to combat the illicit trade of SALW aimed at enhancing the capabilities of the AU with regard to SALW on the African continent. What is also needed is an increase in cooperation between the AU and other regional organizations. The AU developed strategies to improve coordination at regional, continental, and international levels. It is a first step towards a legally binding instrument. There is an AU-EU pilot project in the area of peace and security entitled: “The Fight against Illicit Trafficking of Firearms in Africa” Project.⁸ It is in its implementation phase. One of the challenges is to raise awareness of the civil society sector in this area. The AU continues to engage member states and the international community in the combat against illicit SALW trafficking in Africa. Following the elaboration of a common ECOWAS position, the AU is working towards an African common position on the ATT.

In the discussion, the importance of the role of civil society organizations (CSOs) in the implementation of national and international strategies was highlighted. Without such an involvement, governments will not find any incentive for implementing legislation and cooperation agreements. Pressure from civil society for implementation by governments is considered useful. Within the AU, the SSR Strategy has been scrutinized by CSOs. But in most African regimes, the executive maintains a quasi-monopoly on security forces and tends to reject interference from civil society.

Regarding the insufficient matching of national needs and the assistance offered, it was noted that the approach until now has been too bilateral (except in

⁸ See http://ec.europa.eu/development/icenter/repository/EU_project_against_illicit_firearms_africa_en.pdf.

the case of UNSC resolution 1540 (2004)), and that a more multilateral approach would help make progress, especially to ensure predictability and continuity. The efforts of the international community have been proportional to the security threat perceptions: initially they focused on nuclear terrorism and increasingly on the “bio-risk”.

On the financing of arms trafficking, it was stressed that the nexus with Transnational Organized Crime (TOC) made it difficult to trace funds. It is a vicious circle: funds to buy arms come from criminal activities, and arms trafficking also generates funds. This is why it is more efficient to stop access to arms than access to funds.

Operationalizing Action against Traffickers

The main issues discussed in the Panel were the following: even equipped with proper data, legal backing, and adequate law-enforcement resources, governments and regional or global organizations engaged in the fight against illicit arms trafficking also need operational expertise and international cooperation in order to tackle a transborder phenomenon with complex financial, political, social and other ramifications. How can all the interested stakeholders mutually benefit from each other's experience?

An expert from an international organization addressed the link between transnational organized crime and firearms. She regretted that policy-makers at the analytical level had not given sufficient attention to this concept. Firearms can be considered as both a means for perpetrating crime and a trafficking commodity like any other one (drugs, diamonds, cigarettes, human beings, money laundering, etc.). This trafficking is a complex transnational crime that often involves the participation of an organized crime group. Firearms trafficking (FT) must be seen in the context of the involved criminal organizations. One cannot look at this phenomenon in an isolated way: one must also look at the *modus operandi*, actors, etc. The financial aspect (money laundering) is very important to look at within this broad context. One cannot think of these issues as individual problems. FT must be addressed in an integrated manner in connection with other forms of crime. Until now, FT has been addressed as a de-contextualized issue, while expertise from the fight against other criminal activities (e.g. narcotics) could be useful also in combating FT.

The expert also addressed the changing patterns of Transnational Organized Crime (TOC). It has become increasingly global and increasingly diverse. Groups adapt to new challenges and opportunities in changing routes, commodities, flows, etc. Some criminal groups are specialized in both drugs and firearms. This interconnectivity of crime needs to be taken into account. A 2010 study also demonstrated that the regulation of licit trade of goods could undercut demand for contraband goods.⁹

9 United Nations Office on Drugs and Crime, *Globalization of Crime: A Transnational Organized Crime Threat Assessment*, June 2010 (www.unodc.org/...and.../TOCTA_Report_2010_low_res.pdf).

Regarding international responses, the United Nations Firearms Protocol (FP), which entered into force in 2005, comes coupled with the United Nations Convention against Transnational Organized Crime (UNTOC),¹⁰ which entered into force in 2003. According to its Article 1,¹¹ it supplements the Convention. The FP has been ratified by 83 states (including two thirds of the African countries). The Convention addresses many types of trafficking and promotes cooperation between states parties, especially when they do not have assistance agreements on lists of crimes to prosecute. It is a broad convention that may be used by states as a legal basis for action against illegal trafficking. The FP makes a distinction between legal and illegal firearms with specific protocol provisions. International cooperation is thus promoted by a global instrument that is legally binding. Indeed, regional instruments are not sufficient to deal with a global phenomenon. In this framework, the exchange of evidence acceptable to courts (Mutual Legal Assistance) and the development of self-assessment checklists for states are very important. Also, a Review Mechanism should be negotiated by 2012.

Another expert commented on the International Tracing Instrument (ITI).¹² This instrument is not a treaty but a politically binding document, which entails some disadvantages. However, it has the advantage of being universally applicable, i.e. by all UN member states, and containing straightforward language. It builds upon the UN Firearms Protocol (FP). The ITI is complementary to, and not inconsistent with the FP. It applies to both crime and conflict, civilian and military SALW, and defines “small arms”, but excludes ammunition. The ITI is based on three pillars: Marking, Record-keeping and Tracing (MRT):

- Marking: it is required at the stage of manufacture and at the stage of import (which may be more recent and easier to preserve); it provides for a unique identity (serial number) for each weapon, with an import mark from the country of origin; it is applicable to governments stocks in order to make theft or diversion more difficult;
- Record-keeping: this is a critical factor; records are to be kept for a minimum of 30 years after manufacture and 20 years after the import; this aims at helping to

10 See note 3 above.

11 Article 1: “1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention. 2. The provisions of the Convention shall apply, *mutatis mutandis*, to this Protocol unless otherwise provided herein. 3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention”. (http://www.unodc.org/pdf/crime/a_res_55/255e.pdf).

12 See the full text of the Instrument at <http://www.poa-iss.org/InternationalTracing/InternationalTracing.aspx>.

reconstruct the weapon's history; one can tell at what point it left the legal sphere;

- Tracing: applying the agreed cooperation rules, states send, and respond to tracing requests.

Marking at the time of import is very important because the data is much more recent: the older the weapon, the more likely it is that the record-keeping chain was broken. Marking of government stocks is also critical because governments do lose weapons: if the weapons have not been marked, they cannot be traced after they leave the government stockpile. There is a need to distribute marking machines to the less developed states.

The expert underlined the value of the ITI which derives from the cooperation in tracing weapons: if a state cannot provide the information for security reasons, it must explain why. This protects confidentiality while maintaining some level of transparency. States may restrict or refuse tracing cooperation, but they must explain their reasons for doing so. With respect to the implementation of the instrument, the expert mentioned the useful role played by the UN and INTERPOL with regard to exchange of information promoting the use of the ITI. However, among the challenges, the expert mentioned the fact that many states have not responded to tracing requests or provided the relevant information. The implementation is, in general, not being taken seriously. Only 23 states parties have published information on their points of contact. There is a need for harnessing the potential for unilateral implementation with international cooperation. The ITI only has a value when it is effectively implemented. There is little evidence that this has happened worldwide.

Another firearms expert from an international organization referred to the INTERPOL Firearms Programme,¹³ which provides tools and technology to combat firearms violence. This programme uses four powerful tools:

- The INTERPOL Firearms Tracing System (IWeTS): it is a communications platform handling bilateral or multilateral requests. The firearms tracing requests are formulated with standardized basic communications forms, which go to the National Central Bureau (NCB) for each country (country of origin and legal importer). They include data on five categories: the make or brand; the

13 See <http://www.interpol.int/Public/Weapons/default.asp>.

model; the serial number; the calibre; the country of origin or legal importer. Many regional instruments do not make that information mandatory while each category is essential. The mere serial number is not sufficient. The same serial number may be used by a manufacturer for various weapons;

- The INTERPOL Firearms Reference Table (IFRT): firearms tracing requests fail 70 percent of the time. The IFRT is used to look up missing pieces of information for firearms. It is a Web-based tool, i.e. a sort of on-line encyclopaedia of firearms, recording the information provided to INTERPOL daily. It provides baseline knowledge of firearms in circulation used for crime;
- The INTERPOL Ballistic Information Network (IBIN): it promotes international sharing of information, tying national ballistic networks to INTERPOL so that information can be shared on an international level. The next step will be an “IBIN Best Practices Guide”;
- The Firearms Identification Training: these are basic series of modules created to give uniformed standard for identifying firearms. There is also an on-line firearms identification training to assist law enforcement officers on how to properly identify firearms and fill out tracing requests properly.

INTERPOL’s increased priority will be to work towards the inclusion of more states without the necessary technology. This will include focused programmes, in particular on wildlife poaching and serial crimes. The organization will focus on the harnessing of the capacity of tools already in place such as the Stolen and Lost Arms Database (SLARM), or the Stolen or Lost Travel Document Database (SLTD), which include over 25 million entries, and on improved communications with national authorities. The problem lies in the lack of coordination of the various national law-enforcement agencies: if narcotics police seize firearms, those are not always transferred for investigation; records seized by customs are not always communicated to the police; in anti-piracy operations, some firearms have been thrown overboard from seized ships; there is seldom cooperation between civil police and the military.

In the discussion, it was considered that, since the United States opposed the inclusion of ammunition in the ATT because it was not traceable, ammunition could be added to the scope of the ITI and that instrument turned into a legally binding one. Another recommendation was that the ATT urge all states to apply the UNPoA fully and join all other relevant instruments.

Conclusions: Identifying Synergies and Opportunities for Cooperation

An expert offered his own conclusions from the discussions. He identified the main levels at which this multi-dimensional issue needs to be addressed:

a) The general political-security level: there is a race to get hold of resources, and a demand of weapons generated by potential suppliers or producers for use in Africa or in transit through that continent. One should focus on how the demand is being generated; it often is related to questions of political stability in a given country or region; demand may also be generated by supply. Even in the licit trade, some transactions made public have included unclean practices, and suppliers usually refuse to investigate;

b) The need for SSR, highlighted by the “pipeline” metaphor: along this pipeline, there are “compressor stations” related to TOC, trafficking in any profitable commodity, and taking advantage of weak states, and often connecting with terrorists groups;

c) The complex relationship between transparency and confidentiality, and the need to find the proper balance between national and international security interests;

d) The discrepancy between existing or potential national or international legal norms and their actual implementation, often weak due to the absence of compliance mechanisms: one solution could be a comprehensive country-by-country analysis of compliance by independent international organizations, peer-reviews or a mechanism similar to the one in the Human Rights Council; UNIDIR could be asked to study the methodology applicable by such a mechanism;

e) The necessity of developing common platforms to tackle transnational phenomena escaping the traditional state approaches: indeed the competency and coverage of each institution are limited, but loopholes can be covered by other institutions, developing synergies between several instruments;

f) The practical level: there is a need to improve the control of individual weapons, as well as a potential for more research on the scientific and technological aspects of such control systems.

Another expert gave a perspective from Africa and advocated approaching arms trafficking in a more holistic way based on the concept of Human Security. He suggested that progress could be made by answering the following questions:

a) How can SSR be used to democratize government agencies involved in anti-trafficking and promote the role of civil society? Do governments not need to be more transparent for their own citizens? This should apply both domestically and internationally: a good ATT will only be as good as its members;

b) How can bridges be built (between the civilians and the military, between peoples and countries) to improve security and create virtuous circles instead of vicious ones?

c) How can the current instruments be used in a better and more effective way? How are problems of implementation dealt with? Data is needed to make those numerous instruments function properly; concepts are centralized but execution has to be decentralized;

d) Ultimately, is social exclusion of people not the first form of violence? Social and political factors must be taken into account. Educating young people will help them find attractive alternative employment and avoid their recruitment by criminal networks.

In the final discussion, it was suggested to look more into what technology could offer to arms control and preventing proliferation (microchips to neutralize weapons once they fall out of control?). The view was also expressed that lessons could be learned from other areas of law enforcement such as the fight against counterfeit goods, and that the training of border-guards or customs officials was essential. Regarding the low rate of response to the tracing requests, it was recommended to “name and shame” the states which are the most reluctant to transparency. On compliance with existing instruments, it was felt that a starting point could be the self-assessment software made available by UNODC, and that eventually, one single mechanism could be designed for all instruments. Another option was that the UN Security Council would make cooperation mandatory or that national legislation would force manufacturers to cooperate.

Workshop Programme

Wednesday, 6 April 2011

Opening

Panel I: The Challenge of Acquiring and Managing Reliable Information on Arms and Related Material Trafficking

Like for transnational organized crime in general, the issue of the collection, analysis and processing of relevant data related to illicit trade in conventional or non-conventional arms and technology is critical as a necessary step to understanding, preventing, and fighting this worldwide phenomenon. How have various regional or global organizations dealt with this challenge?

Discussion

Panel II: The Requirements for an Effective Legal and Law-Enforcement System to Combat Arms and Related Material Trafficking

When relevant data on arms trafficking becomes available, governments and international organizations need a proper legal framework, both domestically (including for export control and end-use certification) and internationally (for transborder cooperation), in order to empower law-enforcement agencies to act either preventively or in prosecuting suspects. Countries lacking the necessary resources require assistance not only in legislation and regulation but also manning, training, and equipment of security forces, as provided for by the relevant international instruments (1540 Committee, Programme of Action on SALW, etc.). How can such countries in need obtain this support?

Discussion

Lunch

Panel III: Operationalizing Action against Traffickers

Even equipped with proper data, legal backing, and adequate law-enforcement resources, governments and regional or global organizations engaged in the fight against illicit arms trafficking also need operational expertise and international cooperation in order to tackle a transborder phenomenon with complex financial, political, social and other ramifications. How can all the interested stakeholders mutually benefit from each other's experience?

Discussion

Conclusions: Identifying Synergies and Opportunities for Cooperation

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