

## U.S. POLICY ON SMALL ARMS AND LIGHT WEAPONS

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**T**his article reviews the development of U.S. policy on controlling the proliferation of small arms before, during, and after the 2001 United Nations Conference on the Illicit Trafficking of Small Arms and Light Weapons in All Its Aspects. It chronicles the policy's evolution from the formulations of the William J. Clinton administration to those of its successor. It argues that despite this changing of the guard, the main tenets of the policy have remained largely unchanged, and that the United States has failed to take leadership on this issue, adopting instead a minimalist approach—and correspondingly small expenditures. This policy choice has disappointed allies and partners, as well as large sectors of the nongovernmental community, affecting their views and weakening their confidence that major weapons producers will invest what is necessary to control the spread and misuse of small arms in areas of conflict, where it matters most. In this regard, the article points out aspects of U.S. law and practice that could have offered rallying points and models but were instead obfuscated by U.S. pugnacious rhetoric. This discussion also assesses how the aftermath of the 11 September 2001 attacks largely stalled, rather than stimulated, global progress and suggests that the connection between small arms proliferation and

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*Naval War College Review, Winter 2006, Vol. 59, No. 1*

transnational threats, such as terrorism, has not been properly addressed. The article then turns to areas in which active U.S. involvement has, in contrast, proved fertile and yielded concrete results, including proposals aimed at fostering effective and enduring change—measures that, if properly developed and expanded, may offer a viable blueprint for a 2006 UN

Review Conference on this issue. The article goes on to weigh the role and resonance of American domestic policies on gun control and to examine how the new national security doctrine is affecting, and will likely affect, the international debate on small arms. Finally, it looks at how the influence of American interest groups and policy circles has shaped and may continue to underpin U.S. perspective and interaction at the multilateral and bilateral levels.

### ATTITUDES AND MAGNITUDES

At around midnight on 20 July 2001, the president of the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects “stopped the clock.”<sup>1</sup> This action allowed the mammoth, ten-day-long negotiations a chance to hammer out the many controversial issues that, on the very last day of the first global consultation on small arms, were still unresolved.

#### *The UN Conference*

At stake were measures to curb the spread and misuse of small arms and light weapons, identified by the United Nations as the weapons of choice in forty-seven out of forty-nine conflicts that had erupted during the preceding decade.<sup>2</sup> The massive human toll in lives and livelihoods exacted by assault-rifle-toting military forces, militia, and gangs needed a commensurate and global response. As the UN noted, “small arms are responsible for over half a million deaths per year, including three hundred thousand in armed conflict and two hundred thousand more from homicides and suicides.”<sup>3</sup> However, the document the conference finally delivered—*Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*—was heavy on rhetoric and light on actual commitment.<sup>4</sup>

The primary merits of the conference’s outcome resided in the fact that it put the dangers posed by the proliferation and abuse of small arms on governmental radar screens and created a consultative framework for the next five years. Indeed, its most important legacy is that for the first time it framed this issue, which had been long neglected as a minor disarmament topic, in terms beyond those of arsenal reduction and destruction. The conference had sidestepped human rights and international humanitarian law considerations, but the debate would now embrace a wide spectrum of concerns, from intrastate conflict to sexual violence and the devastation of communities.

The multilayered aspects of small arms proliferation and their implications for national and international policy had induced countries to negotiate the *Programme of Action*—a political document—with a fervor, attention to semantics, and rigidity of parameters usually reserved for treaties and legally binding agreements. As a case in point, the American delegation drew up and fiercely

defended a set of “red lines,” thresholds that Washington would not allow the conference to trespass and that remain central to U.S. policy on small arms today. The final document and subsequent initiatives, the United States insisted, were not to include:

- Any definition encompassing any non-military-style weapons or lethal weapons of war
- Any restriction on civilian possession of arms
- Any clause banning transfers to nonstate actors
- Any calls for negotiations on legally binding international instruments.<sup>5</sup>

The then Under Secretary of State for Arms Control and International Security Affairs (and now U.S. Representative to the United Nations) John Bolton also took issue with the involvement of large sectors of international civil society. “We do not support the promotion of international advocacy activity by international or nongovernmental organizations, particularly when those political or policy views advocated are not consistent with the views of all member states,” Bolton asserted. “What individual governments do in this regard is for them to decide, but we do not regard the international governmental support of political viewpoints to be consistent with democratic principles.”<sup>6</sup> These words might have soothed American pro-gun lobbyists, who in fact exulted, but activists of the International Action Network on Small Arms (IANSA)—a coalition of hundreds of human rights, humanitarian, democracy, community, church-based, and arms control organizations—found them unduly peremptory.<sup>7</sup>

Many countries resented the notion that the narrow interests of U.S. pro-gun groups should prevail at an international forum and supersede global concerns.<sup>8</sup> A result was widespread scrutiny of the American posture on small arms and comparison with other expressions of U.S. “unilateralism,” as reflected in Washington’s stands on the land mines treaty, the International Criminal Court, and the Kyoto Protocol.

### *Setting the Stage*

If the stark articulation of the American small arms policy made jaws drop at the conference, the approach itself should not have come as a surprise. Save for some notable differences in levels of engagement, style of presentation, and choice of interlocutors, U.S. policy on small arms has been remarkably consistent since its original formulation in the mid-to-late 1990s.

That period witnessed the convulsions of the African Great Lakes region, triggered by the Rwandan genocide, and the exacerbation of violent strife elsewhere in Africa (as well as in Latin America and Asia) over control of natural resources, drugs, and contraband.<sup>9</sup> Virtually all these conflicts were fought mainly

with small arms and light weapons, and they illustrated the extent to which perpetrators, enablers, and targets had become “privatized.”<sup>10</sup> Ruthless nonstate actors were increasingly joining the ranks of belligerents and acquiring weapons from government-held arsenals; fresh arms supplies were also procured in the illegal market.

Further, in the 1990s the downsizing of the military forces of former Warsaw Pact countries released a cascade of excess weapons to warring parties in Africa

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*In these arenas U.S. law has much to teach, and it would seem to be in the interest of the United States that others follow the same path.*

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and elsewhere. In their quest for hard currency and market niches, ex-Eastern bloc governments and private sellers were less than fastidious about the human-rights

credentials of buyers. For their part, buyers accepted weaponry that, while hardly state of the art, was efficient, cheap, and abundant.<sup>11</sup>

In such ways, commercial considerations consistently took precedence over the need to discipline a trade that, by its international nature, increasingly chipped away at the ability of governments to control exports of military equipment and technology, verify the bona fides of recipients, or identify end users. On this fertile ground private traffickers mushroomed, trading in arms, endangered animal species and products, gemstones, minerals, and other valuable commodities.<sup>12</sup> Such operators often acted on their own, but they also offered their services to governments and official agents.

Tragically, the victims of those conflicts fueled by such arms transfers were also increasingly nonstate actors, usually the most vulnerable elements in a society. These included civilians, who were deliberately targeted, and child soldiers, who became a feature of violent confrontations and massive human-rights abuses.<sup>13</sup> The ubiquity and lethality of small arms and light weapons in the battlefield, in villages, and on streets from Johannesburg to Mexico City also highlighted the contiguity of the legal trade with the illegal market, as well as the inability or unwillingness of governments to establish or enforce controls to stem the flows.<sup>14</sup>

As the world’s largest holder of small arms stockpiles and their largest exporter and importer, the United States bore, and bears today, a major responsibility for controlling the possession and transfer of these weapons.<sup>15</sup> The Small Arms Survey, a nongovernmental think tank, calculated that as of 2003, with more than 270 million civilian and police firearms and similar military holdings, the United States was the most armed country in the world. It now accounts for almost half of all known firearms in the world, with annual imports of a million firearms and domestic production of four million units.<sup>16</sup> As of 2001, the survey noted, authorized U.S. exports were valued at \$741.4 million.<sup>17</sup>

Domestically, during the 1990s Washington faced mounting concern about the misuse of firearms. The 1993 Brady Handgun Violence Prevention Act required licensed firearms dealers to conduct background checks on purchasers.<sup>18</sup> Further progress was achieved a year later with the ban of so-called assault weapons, prohibiting domestic sale and holding of nineteen types of semiautomatic assault weapons. (That ban expired in September 2004, on which more below.)<sup>19</sup>

Internationally, President Clinton voiced a heightened awareness of the problem of small arms proliferation before the fiftieth UN General Assembly in October 1995, presciently illustrating a link between, on one hand, the “gray market” that fueled terrorism and criminality and, on the other, the availability of firearms.<sup>20</sup> In 1996, on the basis of this realization and in response to congressional and public pressure, the United States pioneered a statute on arms brokering that brought a significant but previously unregulated portion of the arms market under control (discussed below).<sup>21</sup> During the same year, in a move to expand transparency and accountability, Congress amended the Foreign Assistance Act of 1961 to require a detailed annual report on commercial arms exports below the previous reporting threshold for arms transfers, which traditionally had captured only major weapons sales.<sup>22</sup> On the multilateral stage, the Clinton administration signed the seminal 1997 Convention against the Illicit Manufacture and Trafficking of Firearms, Ammunition, Explosives, and Related Materials. Mexico had spearheaded this Organization of American States (OAS) agreement, designed to control the illicit flow of arms from the United States across the border.<sup>23</sup> This convention, in turn, offered the basis upon which to negotiate a global firearms agreement; it later became a protocol to the 2000 Convention on Transnational Organized Crime.<sup>24</sup> (To date, the United States has ratified neither of these conventions.)

As this movement toward international action gathered traction in 1996–99, the U.S. government began to formulate for itself a comprehensive approach to small arms. The policy that emerged included a set of priorities and “no-go areas” that, by and large, stand today. Presenting a “U.S. Initiative on Small Arms” before a UN Security Council ministerial meeting on 24 September 1999, Secretary of State Madeleine K. Albright gave priority to such actions as:

- Adopting a voluntary moratorium on arms sales to regions of conflict not already covered by arms embargoes, particularly in Africa
- Committing the United States to work with other states to crack down on illegal brokering activities
- Mobilizing allies and partners to develop principles of restraint and a joint action plan on small arms transfers

- Devoting resources, training, and expertise to the destruction of weapons stocks worldwide.<sup>25</sup>

In parallel, red lines were defined along the parameters previously mentioned, in order both to accommodate domestic constituencies, such as the arms industry and the pro-gun lobby—known as the “equities”—and to respond to pressure for action by arms control and human-rights nongovernmental organizations (NGOs), a group of which in 1998 contributed to creating and subsequently launching IANSA.<sup>26</sup> Some of these red lines were refined over time. Accordingly, U.S. reluctance to negotiate any additional treaty to control small arms grew apace not only with failure to ratify existing international pacts but also with progressive NGO research and focus on the areas that lend themselves to such legally binding agreements—brokering, marking and tracing weapons, and arms-export criteria respectful of human rights and international humanitarian law.<sup>27</sup> These were areas that neither the OAS convention nor the firearms protocol covered in sufficient detail and in which national legislation was direly lacking or unenforceable.<sup>28</sup>

A similar inadequacy emerged when the havoc wrought by brutal nonstate actors in Afghanistan, Angola, Colombia, Congo, Liberia, Sierra Leone, and elsewhere made it apparent that after-the-fact international arms embargoes and other sanctions, as well as voluntary moratoria on exports, had failed either to deny these forces the tools of abuse or to restrain their actions. Consequently, activists in civil society and governments like that of Canada started to advocate preventive measures, in the form of a blanket ban on the supply of assault weapons to nonstate actors.<sup>29</sup> The United States would have none of this, fearing, as Bolton explained, that “oppressed” freedom fighters would not be able to defend themselves against genocidal aggressors.<sup>30</sup> An additional aspect of this proposal that alarmed U.S. interest groups and officials alike was the possibility that such a nonstate-actor ban might become a Trojan horse, ultimately impairing possession of weapons by civilians—who are, by definition, nonstate actors.

#### *A New Course?*

The policy was altered only at the margins by the first George W. Bush administration as it sought its own bearings on an issue for which the newcomers felt no particular affinity.<sup>31</sup> A perceptible, if not substantive, shift did occur, however.

The immediate casualties of the changing of the guard were the sense of urgency and whirlwind activism the outgoing administration had displayed. According to a Department of State official, the senior Clinton bureaucrats who had shaped its small arms policy had felt a deep sense of commitment and had been commensurately engaged. “The policy was personality-driven and hands-on, but [that quality] did not effectively percolate to the lower ranks of

the bureaucracy,” this official observed.<sup>32</sup> Clinton’s secretary of state herself had addressed the issue in two pace-setting and passionate speeches.<sup>33</sup> Her successor did not seem inclined to tackle the issue head-on, however. Expectations that Colin Powell would bring insights from his military past to bear on this subject were disappointed. Powell did mention the problem of small arms proliferation during a meeting with President Yoweri Museveni of Uganda in 2001, but their discussion barely touched upon it.<sup>34</sup> Subsequent pronouncements on this issue (discussed below) lacked both vision and innovation. As a result, just before and after the 2001 UN conference the U.S. policy on small arms followed a path of least resistance, when it did not seem to be utterly adrift.

Gone was the interagency process that had bolstered coherence and leadership. Instead, policy articulation and evolution was caught up for a while in a tug-of-war between the State and Defense departments, both claiming leadership on the issue.<sup>35</sup> In 2003 the State Department gained the upper hand, when then assistant secretary of state Lincoln P. Bloomfield took charge of the small arms portfolio and launched the Office of Weapons Removal and Abatement (OWRA). Even a cursory look at the OWRA website reveals scant information on small arms and a disproportionate focus on land mines.<sup>36</sup> Officials claim that this imbalance is due merely to the relative newness of the former concern and fierce competition for scarce resources within the bureaucracy.<sup>37</sup> Nonetheless, such a paucity of information is not only regrettable but indicates that the issue of small arms has been given a low priority.

Gone were also regular consultations with the U.S.-based NGOs of the Small Arms Working Group (SAWG), most of which were affiliated with IANSA. In contrast, the pro-gun lobby, which boasted of having an office in the Oval Office,

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took solace in the Bush administration’s ascent to power.<sup>38</sup> Civil servants who had been active on the issue in both administrations

remained available for information sharing and comment when approached by SAWG members. But these ad hoc contacts represented an inadequate substitute for the process that had previously underpinned government and NGO interaction.

Moreover, the consultative process with other governments was hampered by the general depreciation that the Bush team had repeatedly voiced concerning multilateral initiatives, particularly those that centered upon or were led by the United Nations. If President Bush in his national security strategy pledged to work with allies and partners and called upon their active engagement, his doctrine of the right of the United States to act preemptively in an open-ended war against the ill-defined threat of “terror” left such partners in no doubt that

Washington would regard cooperation as optional and nonbinding.<sup>39</sup> The acrimonious debate over Iraq at the UN Security Council was perceived as a further indication that the United States would invoke and pursue its security interests even at the cost of a deep rift with its historical allies.<sup>40</sup>

#### THE MISSING LINK: SMALL ARMS AND TRANSNATIONAL THREATS

The areas that suffered from, and continue to be affected by, the Bush administration's outlook concerning small arms were those in which progress—through cooperative security action—was most badly needed, namely, preventing weapons from reaching unstable areas and tackling the connection between the licit and illicit trade in small arms and transnational threats, such as terrorism.

The failure to draw such linkage in the September 2002 *National Security Strategy of the United States of America* was particularly regrettable and may be undermining the ability of partners and allies to respond to global challenges jointly. Two of the main thrusts of the strategy were raising awareness of the unfathomable dangers posed by terrorists acquiring weapons of mass destruction, particularly in failing states, and rallying support for counteraction. However, in the African, Latin American, Central Asian, and Middle Eastern contexts, the real weapons of choice are assault rifles and explosives, while potential participants in “coalitions of the willing” continue to be challenged by armed opponents and to undermine their own governmental legitimacy by egregious state-enforced human-rights abuses.<sup>41</sup> Thus, an opportunity to define an enduring problem and its emerging implications for counterterrorism was lost.

Although the linkage was made in later administration pronouncements, there is no indication that the main rationale of the American approach has been substantially revised.<sup>42</sup> John Bolton had spelled out that rationale: “We do not support measures that would constrain legal trade and legal manufacturing of small arms and light weapons. The vast majority of arms transfers in the world are routine and not problematic.”<sup>43</sup> Yet past U.S. interventions and a series of studies had demonstrated that weapons were routinely diverted by intended end users for unsavory purposes and that governments continued to contravene their own stated policies and international commitments by transferring weapons irresponsibly.

For example, in 1996 the U.S. government instituted a ban on firearms exports for commercial purposes to Paraguay and subjected sales to that nation's government and police to heightened scrutiny, because Paraguayan diversion of arms and ammunition to other countries in Latin America had reportedly become a major regional concern.<sup>44</sup> Two years later, in an unprecedented move, Washington publicly reprimanded Bulgaria, the Czech Republic, Poland, Russia, and Ukraine for selling arms to warring Ethiopia and Eritrea. It was not clear

whether these transfers included just small arms or major weapons systems as well. In either case, they had occurred despite calls for restraint by the United Nations and the Wassenaar Arrangement for Export Controls over Conventional Arms and Dual-Use Goods (an institution comprising thirty-three major weapons-producing states).<sup>45</sup> The ability of the United States either to prevent or stop such diversions remains severely constrained, while its own record in monitoring end-user behavior is lackluster at best.<sup>46</sup>

Moreover, private commercial sales in the United States have proven to be a source for the illegal market.<sup>47</sup> The extent of the risk involved in the ready availability of guns became all too apparent when the Government Accountability Office (GAO) reported in January 2005 that “a total of 44 firearm-related background checks handled by the FBI . . . resulted in valid matches with terrorist watch list records. Of this total, 35 transactions were allowed to proceed because the background checks found no prohibiting information, such as felony convictions, illegal immigrant status, or other disqualifying factors.”<sup>48</sup> However, these evident perils do not appear to have given pause to the pro-gun lobby and its supporters, like the National Rifle Association. In March 2005, the *New York Times* observed that “the NRA and gun rights supporters in Congress have fought—successfully, for the most part—to limit the use of the FBI’s national gun-purchasing database in West Virginia as a tool for law enforcement investigators, saying the database would amount to an illegal registry of gun owners nationwide.”<sup>49</sup> To make matters worse, it is estimated that theft from legitimate owners alone injects up to half a million firearms into the black market each year.<sup>50</sup>

## AREAS OF PROGRESS

American leadership or active participation has been limited to areas where the United States either has a pressing national interest in achieving progress or already has in place, or is in the process of developing, comprehensive measures. As a result, Washington’s approach has been cautious and incremental. It is marked by neither vision, great burden, nor leadership.

### *Controlling MANPADS and Destroying Weapons*

In the context of the antiterrorism fight, one category of light weapons has received particular attention from the United States—MANPADS, or man-portable air-defense systems. Such a weapon was used in 1994 to down the airplane carrying President Juvenal Habyarimana, an attack that triggered the Rwandan genocide. MANPADS were also used by terrorists in a failed 2002 attack against a charter plane in Mombasa; a weapon from the same stock had previously been retrieved near the Prince Sultan Airbase in Saudi Arabia. The Congressional Research Service reports that “since 1973, nearly half of all air losses in combat

have been attributed to IR [infrared]-guided SAMs [surface-to-air missiles] many of them launched from MANPADS.”<sup>51</sup> GAO estimates that since the 1950s, twenty countries have produced and developed at least thirty different types of MANPADS.<sup>52</sup> Unlike other categories of light weapons, MANPADS are produced only by countries with sophisticated defense industrial complexes, but they are stockpiled by 105 countries, according the Small Arms Survey.<sup>53</sup> These numbers are likely to grow, as developing states seek to acquire these weapons as a cheap alternative to larger anti-aircraft systems. It is not by coincidence, the survey notes, that MANPADS are appearing “in regions where conflict is widespread” and that at least thirteen nonstate groups, some of which are considered terrorist organizations, may already possess them.<sup>54</sup> Although the United States believes that the vast majority of the more than one million MANPADS manufactured in the world are in national inventories or have been safely destroyed, it acknowledges that many systems are yet to be accounted for and may be outside of government control.<sup>55</sup>

The United States has long sought to mop up these weapons in Afghanistan, from where, of the thousand Stingers transferred in the 1980s in support of the anti-Soviet war, only between two and six hundred have reportedly been returned to the United States.<sup>56</sup> After the Taliban regime collapsed, the United States managed to retrieve a number of them, and in Iraq it has reportedly offered five hundred dollars in payment for each system surrendered.<sup>57</sup> As of February 2005, the United States had destroyed 10,500 MANPADS in twelve countries.<sup>58</sup>

Responding to the threat posed by MANPADS to civil aviation, the U.S. government has asked the private sector to study the feasibility of adapting available military defense technology to civilian planes.<sup>59</sup> The RAND Corporation, however, concludes that it is not cost-effective to spend billions of dollars equipping America’s 6,800 commercial airliners against attack from shoulder-fired missiles. RAND argues that the investment might be justifiable later if antimissile systems become more economical and reliable.<sup>60</sup>

Multilaterally, the United States has worked with allies and partners of the Organization of Security and Cooperation in Europe (OSCE), the Group of Eight,\* the Wassenaar Arrangements, and the twenty-one APEC (Asia-Pacific Economic Cooperation) states to implement an action plan aimed at preventing terrorists from acquiring these weapons.<sup>61</sup> It has spearheaded a NATO Partnership for Peace Trust Fund to help Ukraine destroy excess munitions, small arms, and light weapons, including MANPADS.<sup>62</sup> However, as GAO notes, “multilateral forum members’ compliance with their commitments is voluntary, and the

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\* Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States.

forums lack mechanisms to verify that members implement their political commitments or to analyze participants' reported data on arms transfers."<sup>63</sup> A February 2005 bilateral agreement signed with Russia to foster cooperation in the control of MANPADS may present similar challenges.<sup>64</sup>

American initiatives on MANPADS dovetail with two long-standing American priorities for controlling the spread of small arms: destruction of excess or illicit stocks to hamper weapons recirculation and stockpile management to prevent leakage from arsenals. Since 2001, the United States has spent eleven million dollars to destroy 841,277 weapons (including MANPADS) and more than seventy-five million rounds of ammunition in at least thirteen countries, including Angola, Guinea, Liberia, Lesotho, Mozambique, and Senegal.<sup>65</sup> Moreover, the budget for surplus weapons destruction has increased to seven million dollars for 2005 from three million allocated in the previous fiscal year.<sup>66</sup> To facilitate progress, the United States—in concert with Canada and the Netherlands—has also drafted an OSCE best-practice guide for destruction of weapons. Washington has extended similar assistance to discourage theft and leakage and to account for and secure weapons in government stockpiles of such countries as Ecuador and El Salvador, as well as former Warsaw Pact members.<sup>67</sup>

### *Enhancing Transparency*

The U.S. arms export system is one of the most sophisticated and transparent in the world. Since the 2001 UN Conference, the United States has implemented or taken the lead on three important initiatives that may enhance accountability, information sharing, and confidence building in small arms and light weapons transfers.

The first involved provisions related to small arms and light weapons in the 2002 Security Assistance Act, which was promoted by Senator Dianne Feinstein and advocated by SAWG members.<sup>68</sup> Sections 206 and 241 lower the reporting requirements on exported small arms and light weapons from fourteen million dollars to one million. This innovation is of particular importance, because most small arms exports fall below the former threshold. The act also mandates, among other provisions, annual reporting of the activities of registered arms brokers, implementation of end-user monitoring, and investigations by the Bureau of Alcohol, Tobacco, and Firearms (ATF), in order that the United States not be a source of hardware for criminal and terrorist activities. These unprecedented measures may serve as a model for other countries, and they allow a considerable degree of public scrutiny.

Internationally, the United States has been instrumental in including certain categories of light weapons in the UN registry of arms transfers, which previously covered only seven major weapons types.<sup>69</sup> The registry is compiled

exclusively, however, from voluntary inputs; willful holdouts need not provide detailed information, or any at all. Nor is it clear what leverage Washington could have to encourage recalcitrant governments to report fully to the registry. Nonetheless, this initiative—long advocated by arms-control NGOs—has the potential to enhance state cooperation, as well as accountability, through peer pressure.

Moreover, in December 2002 the United States led other members of the Wassenaar Arrangement to agree on nonbinding guidelines concerning exports of small arms and light weapons, including MANPADS. These voluntary guidelines list the criteria for states to use in assessing transfers; they detail grounds upon which transactions ought to be refused, including considerations of human rights, fundamental freedoms, and international humanitarian law.<sup>70</sup>

### *Reining in Arms Brokers and Tracking Weapons*

The United States has also achieved progress in an area where its legislation had pioneered international efforts and stimulated attention—the control of brokers, transportation agents, and financiers involved in arms transactions. These middlemen are largely unregulated, and they have taken advantage of this lack of control to conduct transactions with a variety of unsavory clients in Africa and elsewhere, often in violation of arms embargoes.<sup>71</sup>

In 1996, the United States enacted a comprehensive brokering statute as an amendment to the 1976 Arms Export Control Act.<sup>72</sup> This amendment was an effort to address critical aspects of the arms brokering problem and end the impunity with which illegal traffickers were operating. The new statute requires American brokers living anywhere and foreign nationals residing in the United States to register and obtain licenses for all arms deals they transact. The law not only empowers U.S. agencies to keep tabs on the number of brokers and their operations but subjects violators to American jurisdiction wherever an offense has been committed.

To date, however, only twenty-five states have enacted similar laws regulating arms middlemen, and these controls vary widely in the range of activities covered. This enfeebles the extraterritorial reach of the U.S. statute, since absence of, or variations in, definitions and statutory scope in other countries can hamper investigations and extradition of offenders. However, Washington has consistently resisted efforts to realize the full potential of its own law, failing in particular to support an international treaty that would offer uniform and enforceable standards.<sup>73</sup> Due in part to American opposition, the UN Programme of Action is notably weak on this crucial issue.

The United States instead has chosen to take an incremental and region-oriented approach—for example, by promoting, in concert with Canada, model

regulations at the Organization of American States. Other regional organizations and groupings have followed a similar path. U.S. engagement in this effort is crucial, but so limited a framework is rife with pitfalls. Regional arrangements do not cover enough territory to counter a phenomenon that knows no national or regional boundaries. Moreover, enforcement that is not shored up by the force of law or by formal mechanisms for verification faces a variety of hurdles. Absent a mutually agreed legal basis, judicial cooperation in conducting investigations overseas, obtaining extradition of suspects, and initiating prosecutions are problematic.<sup>74</sup> Further, the American approach on brokering risks diluting international focus by creating an illusion of action and follow-through where in reality there is none.

Finally, in an attempt to tackle the connection between licit and illicit transfers, the United States has actively participated in a UN Open Ended Working Group, designed to create consensus on an international instrument in time for a UN Conference review scheduled for 2006, to mark and trace small arms and

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light weapons. The consensus document that emerged from these consultations is expected to be adopted by the UN General Assembly in late 2005. This too is an

area where the United States excels. All American-licensed manufacturers and importers are required to mark weapons.<sup>75</sup> Since the UN Conference, the U.S. agency for the control of alcohol, tobacco, and firearms (ATF) has established specific height and depth marking requirements for licensees to import and manufacture firearms. In addition, commercial manufacturers are required to maintain permanent records on their production or acquisition of firearms; and records of licensed importers and exporters of defense articles must remain available for six and five years, respectively.<sup>76</sup> However, as an observer pointed out, the substance of this agreement is disappointing in several respects. For example, the document is “politically rather than legally binding; it does not include ammunition within its scope; and the mechanisms for promoting implementation and further development of the instrument are weak.”<sup>77</sup> Regrettably, the United States has resisted a legally binding and more comprehensive outcome.<sup>78</sup>

#### THE WAY FORWARD

By its very nature, small arms trafficking is a phenomenon that involves more than one state; in fact, it has global repercussions. Consequently, a multilateral approach—comparing experiences, strengthening government responses where they are weak, and bolstering controls where they are inadequate—is eminently

sued to addressing small arms proliferation and its consequences. Thus far, however, states, including such major weapons producers as the United States, China, and Russia, have chosen a minimalist and largely rhetorical approach to the problem, steering clear of legally binding commitments that would bolster international responses, the legitimacy of state action, and the sustainability of governmental and nongovernmental effort.

Moreover, the United States has reportedly contributed to the weakening or scrapping altogether of important language on small arms and light weapons in the outcome document presented at the September 2005 world summit of leaders.<sup>79</sup> IANSA registered its disappointment by noting that an earlier draft of the document “represented some progress towards an international Arms Trade Treaty and a legally binding agreement controlling arms brokers. The U.S. proposed huge cuts in the draft agreement on many issues, and in the following frantic negotiations the opportunity to make progress on reducing gun violence was lost.”<sup>80</sup>

The UN Review Conference in 2006 will offer participants an opportunity to overcome differences and devise action, particularly regarding brokering, marking and tracing, and criteria for arms exports. The pressing matters lend themselves to international codification that, in turn, may stimulate and channel cooperation as well as promote enforcement effectiveness.

Because it is the world’s largest exporter of small arms and light weapons, what the United States does domestically in this area influences, informs, and often guides international action. In contrast, U.S. neglect discourages and possibly undermines multilateral initiatives. Congressional failure to renew the assault-weapons ban in 2004 did nothing to reassure allies and partners that the United States has a genuine commitment to putting its own house in order. Such weapons, when misused, are no less lethal on the domestic scene than they are elsewhere. Moreover, absent stringent restrictions, they spill over national borders. Yet Congress chose to allow the ban to expire, and the White House, not following up its initial signals in favor of the ban, remained silent.<sup>81</sup> This occurred despite the fact that, according to a survey conducted by the Consumer Federation of America and the Educational Fund, a majority of gun owners in all but two states, as well as a majority of current and former military personnel and law enforcement officials, supported a renewal of the ban.<sup>82</sup>

Failure to extend the assault-weapons ban was undoubtedly interpreted outside the United States as yet another example of self-invoked exceptionalism, by which Washington exempts itself from rules that it would like to see applied elsewhere. The U.S. emphasis on weapons destruction, the centerpiece of American international small arms policy, is predicated on the notion that the risk of the misuse of weapons is directly proportional to the ease of their availability. The expiration of the ban undermined that notion and its self-evident rationale.

To many observers and many of its partners, U.S. resistance to codifying in international treaties the best and most innovative aspects of its own law is equally puzzling. IANSA and the communities it represents around the world advocate immediate action on three specific fronts of the struggle against small arms proliferation: establishment of arms export criteria based on human rights and international humanitarian law; more stringent controls on arms brokering; and a universal regime to track weapons. In all three arenas U.S. law

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*The massive human toll in lives and livelihoods exacted by assault-rifle-toting military forces, militia, and gangs needed a commensurate and global response.*

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has much to teach, and it would seem to be in the interest of the United States that others follow the same path. Global application of American laws and norms in this area would not only strengthen the

nation's enforcement capacity but minimize the adjustments required to existing U.S. statutes. On arms exports criteria, for example, the Arms Export Control Act and its implementing regulations, the International Traffic in Arms Regulations, and section 502(b) of the Foreign Assistance Act of 1961 contain the kind of provisions for human rights, peace, and security that NGOs would like to see in an international arms exports treaty.<sup>83</sup> These principles were reiterated in the 1999 International Arms Sales Code of Conduct Act, which was part of the 2000 State Department Authorization Act, requiring the president to support negotiations of a multilateral regime on arms transfer criteria.<sup>84</sup>

By the same token, the U.S. statute on arms brokering and practice in weapons tracking should also be incorporated in legally binding international commitments. Granted, and as noted above, regional organizations have already taken steps in this direction, in Africa, the European Union, and the Organization of American States. In 2001, countries of the Southern Africa Development Community signed a legally binding protocol with strong and expansive controls on arms brokering.<sup>85</sup> Similarly, in April 2004 countries in the Great Lakes region and the Horn of Africa agreed on a protocol encompassing wide-ranging measures to prevent, deter, and reduce illicit arms trafficking, including requirements for the transaction and mediation of arms deals.<sup>86</sup> At other latitudes, the European Union has passed a "common position" concerning arms brokering.<sup>87</sup> However, if regional solutions are reasonable first steps, they need to be expanded globally. History has shown that illegal operations are easily relocatable to places where controls are lax, and regions are just as porous as the nations that regional barriers were conceived to protect. Wider international cooperation and coordination, then, enhances both domestic and interstate efforts. Moreover, a binding international legal framework would not prevent stricter

domestic or regional standards, should states or regional groupings wish to enact them.<sup>88</sup>

The reluctance of the U.S. administration to pursue such treaties stems in part from fear that failure of the Senate to ratify them would undermine international action. Officials point out, for example, that the Senate has still not given the green light to the 1997 OAS Convention or to the 2000 Firearms Protocol, exposing the United States to criticism and questioning of the seriousness of its commitments.<sup>89</sup> As a result, the U.S. administration prefers to “foster good behavior” through peer pressure and norm building rather than legally binding agreements. However, officials admit that there is no proof that such measured and gentle prodding has yielded meaningful results or that the persuasion and leadership alone have changed the minds of willful holdouts.<sup>90</sup> Also, and despite what Washington maintains, it is equally doubtful that voluntary agreements have prompted the timely action that might have been delayed by lengthy ratification processes. Moreover, absent minimum legally binding standards, progress might evaporate, since successive administrations in signatory nations might not feel compelled to adhere to commitments undertaken by their predecessors.

Norm building has been an important component in a debate that for too long was treated as the Cinderella of arms control. After a decade of discussion, however, it is high time to back up national and international commitments with enforceable obligations, a declaratory intent with accountability that can come only through the force of law.

U.S. policy to prevent and control the spread of small arms and light weapons has changed little over the past ten years and is unlikely to evolve dramatically in the foreseeable future. Incremental and parsimonious since its inception, the policy has hinged upon discreet limited interventions, such as destruction of weapons in regions of conflict, as well as capacity building and norm development. The Bush administration has showed little enthusiasm for multilateral initiatives under the aegis of the United Nations, which has taken the lead in confronting the problem of small arms proliferation. The sheer magnitude of this phenomenon in Africa and elsewhere has, however, grave implications for U.S. security, particularly when a nexus forms between arms trafficking and terrorism. Although the United States has recognized the perils of this nexus, it has not devoted commensurate resources, focus, or expertise to tackle it. The influence of the pro-gun lobby, which has many allies in the White House and Congress, has increased over the past four years. Such influence has ensured that the United States does not deviate from its minimalist path either at home or abroad. Failure to renew the domestic assault-weapons ban has cast doubts on

commitment to weapons reduction in a nation that contains half of the world's small arms and light weapons. Both abroad and at home, prevention is preferable to injecting more weapons in areas of instability, where belligerents (be they government forces or nonstate actors) can perpetrate human rights abuses and criminal networks can wreak havoc upon entire communities. This is why it is crucial to control and keep track of arms supplies.

American leadership and example in fostering and supporting legally binding commitments aimed at keeping transfers in check, and in tracing weapons throughout their itinerant lives, is essential but long overdue. Finally, failure of the United States to build on the United Nations Conference has the potential to undermine the collaboration and support of allies and partners in an array of other fields of security cooperation.

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#### NOTES

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3. *Ibid.* See also "Secretary-General Calls for Redoubled Efforts to Curb 'Global Scourge' that Kills 60 People an Hour, as Biennial Meeting Opens on Small Arms," Press Release, UN Document DC/2872, 7 July 2003, available at [www.un.org/News/Press/docs/2003/dc2872.doc.htm](http://www.un.org/News/Press/docs/2003/dc2872.doc.htm).
4. *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, UN Document A/CONF.192/15, available at [disarmament2.un.org/cab/poa.html](http://disarmament2.un.org/cab/poa.html).
5. "Statement by John R. Bolton, United States Under Secretary of State for Arms Control and International Security Affairs, UN Conference on Illicit Trade in Small Arms and Light Weapons in All Its Aspects," Plenary, 9 July 2001, available at [usinfo.org/wf-archive/2001/010709/epf103.htm](http://usinfo.org/wf-archive/2001/010709/epf103.htm).
6. *Ibid.*
7. See Loretta Bondi, "Disillusioned NGOs Blame United States for a Weak Agreement," *S AIS Review* 13, no. 1 (Winter–Spring 2002), pp. 229–33.
8. *Ibid.*
9. On the connection between arms, conflict, and illicit trafficking see, on Angola, UN Security Council, letter dated 14 October 2002 from the chairman of the Security Council Committee established pursuant to Resolution 864 (1993) concerning the situation in Angola, addressed to the president of the Security Council (transmitting the Additional Report of the Monitoring Mechanism on Sanctions against UNITA, S/2002/1119, 16 October 2002); and on Liberia, letter dated 28 October 2003 from the chairman of the Security Council Committee established pursuant to resolution 1343 (2001) concerning Liberia, addressed to the president of the Security Council transmitting the report of Panel of Experts on Liberia in accordance with paragraph 25 of resolution 1478 (2003), S/2003/037, 28 October 2003, available at [www.un.org/Docs/sc/committees/INTRO.htm](http://www.un.org/Docs/sc/committees/INTRO.htm). See also Douglas Farah, *Blood from Stones: The Secret Financial Network of Terror* (New York: Broadway Books, 2004), esp. pp. 47–62.
10. See Loretta Bondi and Elise Keppler, *Casting the Net? Implications of the U.S. Law on Arms*

- Brokering* (Washington, D.C.: Fund for Peace, 2001).
11. See Loretta Bondi, *Arsenals on the Cheap: NATO Expansion and the Arms Cascade*, Short Report, vol. 11, no. 4(D) (New York: Human Rights Watch, April 1999), and “Arms Embargoes: In Name Only?” in *Smart Sanctions: Targeting Economic Statecraft*, ed. David Cortright and George A. Lopez (Lanham, Md.: Rowman & Littlefield, 2002).
  12. See UN Security Council, letter dated 10 March 2000 from the chairman of the Security Council Committee established pursuant to Resolution 864 (1993) concerning the situation in Angola, addressed to the president of the Security Council, S/2000/203, 10 March 2000.
  13. International Committee of the Red Cross, *Arms Availability and the Situation of Civilians in Armed Conflict: A Study Presented by the ICRC*, ref. 0734 (Geneva: 1999), available at [www.icrc.org](http://www.icrc.org).
  14. “Counting the Human Cost: The Legal-Ilicit Link—Global Small Arms Transfers,” *Small Arms Survey Yearbook 2002* (Oxford, U.K.: Oxford Univ. Press, 2002), available at [www.smallarmssurvey.org/publications/yb\\_2002.htm](http://www.smallarmssurvey.org/publications/yb_2002.htm). See also Loretta Bondi, *South Africa—A Question of Principle: Arms Trade and Human Rights* (New York: Human Rights Watch, 2000), and *Beyond the Border and across the Atlantic: Mexico’s Foreign and Security Policy Post September 11th* (Washington, D.C.: Center for Transatlantic Relations, School of Advanced International Studies [SAIS], Johns Hopkins University, 2004), p. 80.
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  16. “Fewer Blanks: Global Firearms Stockpiles,” *Small Arms Survey Yearbook 2003* (Oxford, U.K.: Oxford Univ. Press, 2003), p. 61; Ian Davis, “United States,” in *Disposal of Surplus Small Arms: A Survey of Policies and Practices in OSCE Countries*, ed. Sami Faltas and Vera Chrobok (Bonn: Bonn International Center for Conversion, British American Security Information Council, Saferworld, and Small Arms Survey, 2004), p. 17.
  17. “Rights at Risk,” p. 106.
  18. *An Act to Provide for a Waiting Period before the Purchase of a Handgun, and for the Establishment of a National Instant Criminal Background Check System to Be Contacted by Firearms Dealers before the Transfer of Any Firearm*, Public Law 103-159, HR 1025, 103d Congress.
  19. *An Act to Control and Prevent Crime*, 103d Congress, 13 September 1994, HR3355, available at [thomas.loc.gov](http://thomas.loc.gov). The federal law banning the sale of semiautomatic assault weapons, known as the Federal Assault Weapons Ban, was passed as part of the Violent Crime Control and Law Enforcement Act of 1994. President Clinton signed it into law on 13 September 1994. Domestic gun manufacturers were required to stop production of semiautomatic assault weapons and ammunition clips holding more than ten rounds except for military or police use; see [www.bradycampaign.org/facts/faqs/?page=awb](http://www.bradycampaign.org/facts/faqs/?page=awb).
  20. “Remarks by the President to the U.N. General Assembly,” 22 October 1995 (Washington, D.C.: White House, Office of the Press Secretary), available at [clinton4.nara.gov/WH/New/other/unspeech.html](http://clinton4.nara.gov/WH/New/other/unspeech.html).
  21. *An Act to Amend the Foreign Assistance Act of 1961 and the Arms Export Control Act to Make Improvements to Certain Defense and Security Assistance Provisions under Those Acts, to Authorize the Transfer of Naval Vessels to Certain Foreign Countries, and for Other Purposes*, Public Law 164, 104th Congress, 2d sess., 21 July 1996, sec. 151; *Arms Export Control Act*, U.S. Code, vol. 22, sec. 2778(b)(1976).
  22. The “Section 655” report requires that the State and Defense departments include a breakdown of weapons each country imported from the United States through the government-negotiated Foreign Military Sales (FMS) program, as well as a highly specific listing of the quantity and dollar value of weapons that the State Department Office of Defense Trade Controls has authorized manufacturers to export directly. Since 1999, due to an act of Congress, the report has been available on the Internet. See Maria Haug, Martin Langvandslien, Lora Lumpe, and Nicholas Marsh, *Shining a Light on Small Arms Exports: The Record of State Transparency*, Small Arms Survey Occasional Paper 4 (Oslo: Norwegian Initiative on Small Arms

- Transfers, January 2002), available at [www.nisat.org/publications/shining/transparency.pdf](http://www.nisat.org/publications/shining/transparency.pdf).
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  28. See Bondi, *Expanding the Net*; and IANSA, "Key Issues," [www.iansa.org/issues/index.htm](http://www.iansa.org/issues/index.htm).
  29. See Bondi, "Disillusioned NGOs Blame United States for a Weak Agreement."
  30. "Statement by John R. Bolton."
  31. Interview by author with a U.S. official, Washington, D.C., 18 July 2004.
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  33. Madeleine K. Albright, "Remarks on the Occasion of Receiving the International Rescue Committee Freedom Award," New York, 10 November 1998, available at [secretary.state.gov/www/statements/1998/981110a.html](http://secretary.state.gov/www/statements/1998/981110a.html); and Albright, "Remarks at the UN Security Council Small Arms Ministerial."
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  37. Interview by author of a U.S. Department of State official, Washington, D.C., 14 July 2004.
  38. John Mintz, "In Bush, NRA Sees White House Access," *Washington Post*, 4 May 2000, available at [www.washingtonpost.com/](http://www.washingtonpost.com/).
  39. See Loretta Bondi, *Legitimacy and Legality: Key Issues in the Fight against Terrorism* (Washington, D.C.: Fund for Peace, 2002), pp. 3–23.
  40. See Bondi, *Beyond the Border and across the Atlantic*, pp. 9–23.

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43. “Statement by John R. Bolton.”
44. Lora Lumpe, “U.S. Policy on Small/Light Arms Exports,” paper prepared for the American Academy of Arts and Sciences Conference on Controlling Small Arms, 11–12 December 1997, Washington, D.C., available at [www.fas.org/asmp/campaigns/smallarms/AAAS.html](http://www.fas.org/asmp/campaigns/smallarms/AAAS.html).
45. See Loretta Bondi, “Externalities of the Arms Trade,” in *It’s Legal but It Ain’t Right*, ed. Nikos Passas and Neva Goodwin (Ann Arbor: Univ. of Michigan Press, 2004), p. 58. For a discussion of weapons transfers from former Warsaw Pact countries to regions of conflict, see *ibid.*, pp. 56–61, and Loretta Bondi, *Arsenals on the Cheap: NATO Expansion and the Arms Cascade* (New York: Human Rights Watch, 1999).
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50. IANSA/Biting the Bullet, *International Action on Small Arms 2005: Examining Implementation of the UN Programme of Action* (London: IANSA/Biting the Bullet, 2005), p. 70.
51. Library of Congress, Christopher Bolkom, *Military Suppression of Enemy Air Defenses (SEAD): Assessing Future Needs*, CRS Report to Congress (Washington, D.C.: Congressional Research Service, Library of Congress, updated 24 January 2005), p. 3.
52. GAO, *Non-Proliferation: Further Improvements Needed in U.S. Efforts to Counter Threats from Man-Portable Air Defense Systems*, Report to Congressional Committees, GAO-04-519 (Washington, D.C.: May 2004), p. 2. See also U.S. State Dept., “The MANPADS Menace: Combating the Threat to Global Aviation from Man-Portable Air Defense Systems,” U.S. Department of State Fact Sheet, 20 September 2005. According to this document, the countries that have produced or have licenses to produce MANPADS are Bulgaria, China, Egypt, France, Germany, Greece, Iran, Japan, the Netherlands, North Korea, Pakistan, Poland, Romania, Russia, Serbia and Montenegro, Sweden, Turkey, the United States, and the United Kingdom.
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54. *Ibid.*, p. 83.
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65. Author correspondence with the U.S. Department of State, 27 July 2004.
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69. Interview by author with a U.S. State Department official, Washington, D.C., 14 July 2004. The UN Register of Conventional Arms is a voluntary arrangement established on 1 January 1992 under “Transparency in Armaments,” General Assembly Resolution 46/36 L of 9 December 1991. The resolution called upon all member states to provide annually by 31 May of each year to the secretary-general relevant data on imports and exports of seven conventional systems, including battle tanks, armored combat vehicles, large-caliber artillery systems, combat aircraft, attack helicopters, warships, and missiles or missile systems. Resolution 58/54 endorsed the recommendations of the 2003 Group of Governmental Experts, *inter alia*, to expand the register to include transfers of man-portable air defense systems and artillery between 75 and 100 mm. Information on the register is available at [disarmament.un.org:8080/cab/register.html](http://disarmament.un.org:8080/cab/register.html).
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84. *International Arms Sales Code of Conduct Act of 1999*, part of HR 3194, *Consolidated Appropriations Act*, 106th Congress, 1st sess.
85. "Protocol on the Control of Firearms, Ammunition and Related Materials in the Southern Africa Development Community," adopted at the SADC summit in August 2001, available at [www.smallarmsnet.org/docs/saaf09.pdf](http://www.smallarmsnet.org/docs/saaf09.pdf).
86. "The Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa," Nairobi, 21 April 2004. The relevant provision binds parties to the protocol to "establish a national system for regulating dealers and brokers of small arms and light weapons." Such a system of control "shall include: (1) regulating all manufacturers, dealers, traders, financiers and transporters of small arms and light weapons through licensing; (2) registering all brokers operating within their territory; (3) ensuring that all registered brokers seek and obtain authorisation for each individual transaction taking place; (4) ensuring that all brokering transactions provide full disclosure on import and export licenses or authorisation and accompanying documents of the names and locations of all brokers involved in the transaction; and (5) licensing, registering and checking regularly and randomly all independent manufacturers, dealers, traders and brokers." The full text is available at [www.saferfrica.org/DocumentsCentre/nairobi-protocol.asp](http://www.saferfrica.org/DocumentsCentre/nairobi-protocol.asp).
87. Council of the European Union, "Acts Adopted Pursuant to Title V of the Treaty on European Union: Council Common Position 2003/468/CFSP of 23 June 2003 on the Control of Arms Brokering," *Official Journal of the European Union*, L 156/79, available at [europa.eu.int/comm/external\\_relations/cfsp/sanctions/468.pdf](http://europa.eu.int/comm/external_relations/cfsp/sanctions/468.pdf).
88. See Bondi, *Expanding the Net*.
89. "Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials of 1997"; and author interviews with U.S. officials, Washington, D.C., 18 July 2004.
90. Author interviews, Washington, D.C., 18 July 2004.