



**Council for Security Cooperation in the Asia-Pacific**

## MEMORANDUM 9

### TRAFFICKING OF FIREARMS IN THE ASIA PACIFIC REGION

#### Executive summary

The impacts of firearms trafficking in the Asia Pacific region are wide-ranging, affecting not only regional security and law enforcement, but also impacting on human security, education, economic development, and public health. Illicit arms, their parts and components, and ammunition have caused a breakdown of law and order in some countries and represent a great challenge to sustainable development in some parts of the region. Weapons — particularly illegal weapons or weapons obtained illegally — are a lucrative commodity and therefore one of many commodities trafficked by organised criminal operations. Likewise, some criminal groups have a greater need for weapons to carry out their criminal activities and therefore they become their own customers for these weapons.

Discrepancies in law and law enforcement ensure that these effects are felt and shared throughout the region. No country in the Asia Pacific is untouched. Even if weapons do not originate in a particular country, they may be sold, financed, trafficked, or used there. The many inconsistencies among domestic laws relating to arms manufacturing, brokering and possession leave the region vulnerable to 'gun-running'. Wide variations in firearms laws and regulations dealing with manufacturing, marking, record-keeping, import/export laws and criminal sanctions for violating these laws, create loopholes for arms smugglers to exploit.

Existing national legislation needs to be reviewed to close loopholes and to promote greater harmonisation at regional level. The reform of national laws and regional harmonisation needs to be accompanied by a focus on the enforcement of existing arms control laws, with all countries identifying the equipment, human resources and judicial infrastructure required for effective implementation. Opportunities for cooperation at a practical level also need to be identified, with an emphasis on providing assistance to those countries lacking the necessary capacity to implement existing legislation.

The purpose of this paper is to show the way ahead for future action against arms smuggling in the Asia Pacific region. Recognising the transnational nature of illicit arms transfers, the particular emphasis is on cooperative, harmonised action at regional and international levels. This paper offers a range of proposals for mechanisms that, in combination, seek to provide a comprehensive approach to prevent, control and suppress arms smuggling. These proposals must not be seen as purely normative and regulatory principles; they are intended to serve as a general framework for future law reform and policy change, providing a set of best practice guidelines.

These proposals include:

- (1) universal definitions of relevant terms, including 'firearm', 'parts and components of firearms', 'ammunition', 'illicit trafficking';
- (2) regulation of licit arms transfers, including:
  - Licensing and registration of manufacturers, exporters, importers, arms brokers;
  - Uniform, stringent ownership laws;
  - Control and record-keeping of legally held stocks;
  - Marking and identification of weapons and ammunition upon manufacture and import;
  - Record-keeping in national and regional databases, preferably in electronic format;
  - Limiting the availability and access to ammunition;
  - Secure storage of lawfully held stocks.
- (3) measures against illicit arms transfers, including:
  - Consistent criminalisation of illicit production, trafficking, and unauthorised possession of arms and ammunition;
  - Confiscation and seizure of illicitly manufactured, trafficked, and held weapons and ammunition;
  - Tracing of firearms and cross-border information sharing.
- (4) law enforcement and judicial cooperation, including
  - Cross-border cooperation between law enforcement personnel, joint training;
  - Designation of national coordination agencies;
  - Support and enhance international databases, including UNCAR (United Nations Conventional Arms Register) and IWETS (Interpol Weapons and Explosives Tracking System);
  - Judicial cooperation, including extradition, transfer of proceedings and offenders, mutual legal assistance;
  - Strengthen international and regional organisations, such as the UN, World Customs Organisation, Interpol, ASEAN, Pacific Islands Forum;
  - Broader accession to relevant conventional measures, especially the UN *Protocol against the Illicit Manufacture of and Trafficking in Firearms, their Parts and Components, and Ammunition*;
  - Strengthening of non-binding initiatives, including the UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, and the Pacific Islands Forum *Nadi Framework*;
  - Financial aid to assist developing nations;
  - Further research, intelligence gathering, and data collection.

Only very slowly, and primarily at the international level, have countries come to understand the true dimensions and causes of arms smuggling and have commenced the elaboration of universal tools to combat its criminal aspects. The initiatives taken at regional and global levels, are steps in the right direction and need strong support at all levels of government. These instruments have initiated a regional and international dialogue on matters that have traditionally been national concerns only. Now is the time to take these initiatives further and work towards cooperative, harmonised, and enforceable solutions for arms smuggling in the Asia Pacific.

This paper offers a range of proposals for mechanisms that, in combination, seek to provide a comprehensive approach to prevent, control and suppress arms smuggling. These proposals must not be seen as purely normative and regulatory principles; they are intended to serve as a general framework for future law reform and policy change, providing a set of best practice guidelines.

The proposals made here are differentiated between (1) definition of terms, (2) regulation of licit transactions, (3) measures against illicit arms transfers, (4) law enforcement and judicial cooperation.

## 1. Definition of terms

To prevent and suppress arms smuggling more successfully, it is important that the countries of the Asia Pacific region work towards common standards in defining and differentiating different kinds of small arms, weapons and their components, and ammunition.

The *United Nations Protocol against the Illicit Manufacture of and Trafficking in Firearms, their Parts and Components, and Ammunition*<sup>1</sup> provides a set of definitions of the central terms “firearm”,<sup>2</sup> “parts or components”<sup>3</sup> and “ammunition”<sup>4</sup> as well as “illicit manufacturing”<sup>5</sup> and “illicit trafficking”<sup>6</sup>. Once implemented by the Signatories to the Protocol, these definitions will have universal application and thus should also be used as a platform for other regional measures to combat arms smuggling in the Asia Pacific.

Those aspects and arms not covered by the existing instruments, too, need to be based on universally acceptable and applicable definitions. Where necessary, clear distinctions need to be drawn between privately owned arms and ammunition and military stock, and between different kinds of weapons their parts and components, covering the whole spectrum from small arms to weapons of mass destruction.

## 2. Regulation of licit arms transfers

### 2.1 Licensing and registration

To reduce the illicit transfer of small arms, the enforcement and regulatory emphases should be placed equally on the supply (original producers of the weapons as well as the suppliers along the various ‘routes’) as well as on the demand (criminals using the weapons). Domestic gun control legislation needs to make clear who is and who is not authorised to produce, trade in, and possess arms and ammunition. Applications for licences to manufacture, export, import, own or deal in firearms need to be assessed carefully and need to be subject to stringent national regulations and procedures.<sup>7</sup>

#### **Producer**

To prevent the illicit manufacturing of firearms and the circulation of hand-made weapons, all countries should adopt adequate regulations to exercise effective control over the production of arms, their parts and components, and ammunition.<sup>8</sup> All

<sup>1</sup> UN General Assembly, UN Doc A/RES/255 (8 June 2001), hereinafter *Firearms Protocol*. See the full text of the Protocol in Appendix 1.

<sup>2</sup> Article 3(a) *Firearms Protocol*.

<sup>3</sup> Article 3(b) *Firearms Protocol*.

<sup>4</sup> Article 3(c) *Firearms Protocol*.

<sup>5</sup> Article 3(d) *Firearms Protocol*.

<sup>6</sup> Article 3(e) *Firearms Protocol*.

<sup>7</sup> Cf UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.11.

<sup>8</sup> UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all*

countries should move to outlaw the manufacturing of arms and ammunition and restrict the production of weapons and their components to a limited number of licensed operators. Stringent control needs to be exercised over applications for licences, over the production process, supply and distribution channels, as well as over the financing of the arms industry.

### **Brokers, importers and exporters**

The basis of arms smuggling is that weapons, their components, or ammunition are transferred across borders without proper authorisation of the sending, transit and/or receiving countries. Better regulation of exporters, importers and arms brokering is essential if any measures against the illicit transfer of arms and other lethal technologies are to have meaning.

It is crucial that all countries adopt comprehensive national systems for the licensing and registration of authorised arms dealers,<sup>9</sup> exporters and importers.<sup>10</sup> Moreover, documents which identify the arms, parts and ammunition and other relevant information about sender and recipient need to accompany the cargo at all times and need to be passed on directly from government to government.<sup>11</sup> The licensing and documentation system must go hand in hand with the criminalisation of all illicit brokering and trafficking activities.<sup>12</sup>

### **Possession**

Uniform ownership laws should be adopted throughout the region. Moreover, countries need to remove special ownership rights that permit certain groups such as VIPs, senior government officials and politicians to hold military-style arms and ammunition. Clear lines must be drawn between arms that are permissible for individual ownership and military equipment that have no place in the hands of untrained civilians.<sup>13</sup>

## **2.2 Control of legally held stocks**

Improving controls over stockpiles is another important step to prevent arms smuggling. In particular, leakage from military stockpiles, armouries and magazines is a serious problem in some countries in the region and is regarded as 'the single most important source for illegal weapons reaching unauthorised actors in the region.' Further, a glut of weapons is often left in regions following wars and skirmishes, and often peace support operations fail to undertake comprehensive disarmament.

Countries need to maintain control and accurate records over their arms and ammunition stockpiles, including military and civilian agencies. Responsibilities over stock-control and management should be set out clearly. Obsolete arms, parts thereof, and ammunition need to be identified and subsequently destroyed to prevent it from falling into the hands of criminals or insurgents.<sup>14</sup>

## **2.3 Marking and identification**

A central part of any strategy to counteract arms smuggling more effectively must be the creation of requirements that arms, their components, as well as ammunition can

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*its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.2; cf Katherine Kramer, *Legal Controls on Small Arms and Light Weapons in Southeast Asia* (2001) 13.

<sup>9</sup> Cf art 15 *Firearms Protocol*; UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.14; David Capie, *Small Arms Production and Transfers in Southeast Asia* (2002) 108.

<sup>10</sup> Cf art 10(1), (2) *Firearms Protocol*; UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.2, 12, 13.

<sup>11</sup> Cf art 10(3), (5) *Firearms Protocol*.

<sup>12</sup> Cf art 5(1)(b) *Firearms Protocol*.

<sup>13</sup> David Capie, *Small Arms Production and Transfers in Southeast Asia* (2002) 104.

<sup>14</sup> David Capie, *Small Arms Production and Transfers in Southeast Asia* (2002) 104-105.

be uniquely identified. The marking or stamping of weapons and ammunition with a serial number or a distinguishing symbol helps foster greater accountability on the part of states for their weapons transfers. This, too, aids law enforcement personnel in their work. Equally, all countries should take appropriate steps to prevent the manufacture, stockpiling, transfer and possession of any inadequately marked arms.<sup>15</sup>

The UN *Firearms Protocol*, for instance, requires that the marking of firearms must identify the manufacturer, the place of production, a serial number or alternative symbols or codes.<sup>16</sup> It is further required that firearms are marked upon importation and upon transfer from government stocks to civilians.<sup>17</sup> The UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, too, requires that licensed manufacturers apply an appropriate and reliable marking on each small arm and light weapon.<sup>18</sup>

#### **2.4 Record-keeping**

The development of national, and — insofar as possible — international registers of government-held and privately held arms, components and ammunition in all countries should be priority. The marking of arms and licensing of producers, brokers and arms-owners need to be accompanied by a record-keeping system and information sharing mechanisms, so that suspect arms and ammunition can be checked against official records of legally owned and transferred arms. These records should be kept as long as possible and should be recorded and stored in electronic form, so it can be easily accessed and shared among law enforcement, border control and customs agencies.<sup>19</sup>

#### **2.5 Ammunition control**

Limiting the availability and access to ammunition can reduce the physical danger posed by firearms. All countries in the region should introduce regulations to limit the stock of ammunition that people can have in their possession at any one time. Moreover, special licences for the purchase of ammunition for licences firearms should be introduced.<sup>20</sup>

#### **2.6 Storage**

It is important that all countries ensure the security of those arms lawfully in circulation and those held by government agencies and the military, so that these arms do not leak from government arsenals, security forces, and private owners and reach unauthorised actors. All countries need to establish adequate and detailed standards and procedures to manage and secure any weapons stock, including the location of storage facilities, their physical security, inventory records, and sanction in the event of theft and loss.<sup>21</sup>

<sup>15</sup> Cf David Capie, *Small Arms Production and Transfers in Southeast Asia* (2002), 107; UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Paras II.8.

<sup>16</sup> Article 8(1)(a) *Firearms Protocol*.

<sup>17</sup> Article 8(1)(b), (c) *Firearms Protocol*.

<sup>18</sup> UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Paras II.7.

<sup>19</sup> Cf UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.9; David Capie, *Small Arms Production and Transfers in Southeast Asia* (2002) 107-108.

<sup>20</sup> Cf Katherine Kramer, *Legal Controls on Small Arms and Light Weapons in Southeast Asia* (2001) 11.

<sup>21</sup> UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.17; cf David Capie, *Small Arms Production and Transfers in Southeast Asia* (2002) 106; Herman Kraft, "Small Arms Proliferation and the Philippines" in Philips Vermonte (ed), *Small Arms Proliferation in Southeast Asia: Human and State Security* (2004) 16; Katherine Kramer, *Legal Controls on Small Arms and Light Weapons in Southeast Asia* (2001) 14.

### 3. Measures against illicit arms transfers

#### 3.1 Criminalisation

A central part of any strategy to combat the trafficking of firearms in the Asia Pacific region more successfully is the consistent criminalisation of the illicit production, trafficking, and unauthorised possession of arms and ammunitions.

##### **Production**

It is essential that all countries in the region prohibit and penalise the illicit manufacturing of weapons, their components and ammunitions. Equally, it is necessary to criminalise the unlawful re-activation of dismantled or otherwise deactivated arms.<sup>22</sup> The UN *Firearms Protocol* obliges Signatories to criminalise any illicit manufacturing of firearms as well as any assembly from illicit parts, and any manufacturing without marking as required by the Protocol.<sup>23</sup> The UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, too, calls for the criminalisation of the illicit manufacturing of small arms and light weapons.<sup>24</sup>

##### **Importation + exportation; transfer + trafficking**

Unauthorised transfers of arms and ammunition need to be criminalised consistently throughout the region. To that end, the UN *Firearms Protocol* requires State Parties to make the illicit trafficking — i.e. the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one country into another — domestic offences.<sup>25</sup>

##### **Possession**

To ensure that weapons and ammunition are held only by those authorised to own them, it is essential that unauthorised possession and stockpiling be made criminal offences.<sup>26</sup>

#### 3.2 Confiscation and seizure

In the absence of corruption, policing services in most parts of the Asia Pacific region appear to be sufficiently viable to make the utility of physically large and/or difficult to conceal weapons unattractive for traffickers and criminals. Hence, small arms rather than large and/or more sophisticated military-type weapons are the greatest concern for governments in the region.

To reduce the circulation of illicit weapons, it is important that law enforcement agencies have adequate powers to forfeit arms and ammunition and ensure that they do not fall back into the illicit trade or into criminal possession. All countries should adopt appropriate measures to enable the confiscation and seizure of weapons, their components and ammunition that have been illicitly manufactured, trafficked, or are held unlawfully.<sup>27</sup>

Special provisions are needed under domestic law to allow the use of special investigative techniques, such as electronic and other forms of surveillance and

<sup>22</sup> Cf art 9 *Firearms Protocol*.

<sup>23</sup> Article 5(1) *Firearms Protocol*.

<sup>24</sup> UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.3.

<sup>25</sup> Article 5(1)(b) *Firearms Protocol*. Cf Herman Kraft, "Small Arms Proliferation and the Philippines" in Philips Vermonte (ed), *Small Arms Proliferation in Southeast Asia: Human and State Security* (2004) 16-17.

<sup>26</sup> UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.3.

<sup>27</sup> Cf art 6 *Firearms Protocol*.

undercover operations, and allow bilateral and multilateral cooperation to enable joint investigations and the cross-border use of special investigative techniques.<sup>28</sup>

Moreover, those weapons that have been seized need to be deactivated<sup>29</sup> or destroyed,<sup>30</sup> unless other methods of disposal have been authorised and properly recorded.<sup>31</sup> Deactivation and destructions of arms also need to be properly verified and recorded.<sup>32</sup>

### 3.3 Tracing

The marking and identification of arms and ammunition enables law enforcement agencies to determine the manufacturer, owner, broker and whereabouts of a weapon. This tracing of firearms should be accompanied by cross-border information sharing, including the prompt handling of requests from foreign law enforcement agencies.<sup>33</sup>

## 4. Law enforcement and judicial cooperation

### 4.1 Law enforcement cooperation and training

The discrepancy between existing laws and their enforcement, the lack of adequate resources for sophisticated investigation techniques in developing nations, insufficiently trained personnel, inadequate coordination of law enforcement agencies at national and supranational levels, along with the dangers of corruption and bribery are among the main obstacles for effective action against arms smuggling.

The geographical location of a give country, too, has a direct impact on the arms problem of some states. Borders tend to be porous to firearms trafficking, and the policies and practices of neighbouring countries can have a negative impact. Therefore, policies and the accessibility of firearms on one side of a border may impact the other side and render domestic policies much less effective. However, large-scale campaigns aimed at 'sealing the border', to the exclusion of attacking the root causes of arms smuggling and addressing the wider human security issues, may ultimately waste limited resources.

Cooperation between law enforcement personnel is especially important in preventing and suppressing arms smuggling in the region, particularly in matters concerning the identity, whereabouts and activities of suspects, the proceeds of crime and the movements of arms and equipment for the use in the commission terrorist activities and of organised crime.<sup>34</sup> Regular contacts and exchanges need to be established between law enforcement and judicial officials. These links also need to be matched by better exchanges of information about export controls and small arms transfers. Furthermore, sub regional or regional mechanisms need to be established to create trans-border customs cooperation and networks for information sharing among law enforcement, border and customs control agencies.<sup>35</sup>

<sup>28</sup> Cf UN General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime*, UN Doc A/55/383 (2 Nov 2000) Annex I, art 19, 20; reprinted in 40 ILM 335 (2001) [hereinafter *Convention against Transnational Organised Crime*].

<sup>29</sup> Article 9 *Firearms Protocol*.

<sup>30</sup> Cf UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.16; UN Secretary-General, *Report on Methods of Destruction of Small Arms, Light Weapons, Ammunition and Explosives*, UN Doc S/2000/1092 (15 Nov 2000).

<sup>31</sup> Cf art 6(2) *Firearms Protocol*.

<sup>32</sup> Cf art 9(b), (c) *Firearms Protocol*.

<sup>33</sup> Cf art 12(4) *Firearms Protocol*; UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.11.

<sup>34</sup> Cf art 27(1)(a), (b) *Convention against Transnational Organised Crime*.

<sup>35</sup> Cf UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.27; David Capie, *Small Arms Production and Transfers in*

The lack of know-how, trained personnel and advanced equipment, and the lack of resources to obtain those, is another obstacle to effective action against the trafficking of firearms. Law enforcement and border control agencies in developing nations need to obtain financial and technical assistance to keep pace with the growing sophistication of trafficking organisations. Additionally, the exchange and training of personnel is essential for effective counteraction and also contributes to confidence building in the region. Specialist training for law enforcement, customs, border control and other relevant partners to combat arms smuggling should be provided and strengthened in cooperation with appropriate national, regional, and international organisations and non-governmental bodies.<sup>36</sup>

Moreover, each country should establish and designate a national coordination agency to oversee policy developments, to monitor the licit and illicit weapons markets, and act as an access point for international cooperation.<sup>37</sup> Equally, regional and international organisations should designate contact points to act as liaison on matters of arms and ammunitions smuggling.<sup>38</sup>

#### 4.2 Databases

International databases on the licit and illicit trade in weapons, their parts and components, and ammunition are important tools to monitor the movements of licit stock as well as to trace stolen and lost weapons and ammunition. Consequently, all countries should contribute consistently to the existing databases maintained by the United Nations and Interpol.

UNCAR, the United Nations Register of Conventional Arms, which is currently limited to military holdings, should be extended to also include light weapons and weapons of mass destruction and their components.<sup>39</sup> IWETS, the Interpol Weapons and Explosives Tracking System, currently the only international analytical database designed to collate information on illegal firearms trafficking, needs further input from Asia Pacific nations to give it greater relevance in the region and make it a truly global database.

#### 4.3 Judicial cooperation

One of the main obstacles in the fight against arms smuggling is the lack of judicial cooperation in the region.

##### **Extradition**

In order to close loopholes that enable offenders to escape criminal prosecution, it is important that countries have the ability to seek extradition of offenders from abroad. All countries should allow foreign requests for extradition of persons engaged in arms smuggling even in the absence of dual criminality.<sup>40</sup> The extradition provisions under international criminal law and anti-terrorism conventions, too, enable extradition in the absence of other bilateral or multilateral extradition agreements. In order to prevent offenders from escaping prosecution, the obligation to extradite or prosecute (*aut dedere aut judicare*) must be adhered to.<sup>41</sup>

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*Southeast Asia* (2002) 109.

36 Cf UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para III.7, 8; David Capie, *Small Arms Production and Transfers in Southeast Asia* (2002) 108-109.

37 Cf UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Paras II.4, 5; art 13(2) *Firearms Protocol*.

38 UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.24.

39 Cf Edward Laurence, *The United Nations Conventional Arms Register (UNCAR): Present Challenges, New Directions* (2001).

40 Cf art 16 *Convention against Transnational Organised Crime*.

41 Cf art 16(10) *Convention against Transnational Organised Crime*.

### ***Transfer of proceedings and offenders***

Further bilateral and multilateral arrangements that allow the transfer of sentenced and imprisoned persons are needed to facilitate the prosecution of offenders.<sup>42</sup> Where several jurisdictions are involved in criminal proceedings, the prosecution and trial should be transferred to a single jurisdiction.<sup>43</sup>

### ***Mutual legal assistance***

All countries should provide the widest range of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to arms smuggling.<sup>44</sup> Countries need to cooperate more closely in gaining evidence through witness statements and testimony, seizures, identifications, examinations and expert evaluations, and in information exchange.<sup>45</sup> To facilitate and accelerate mutual legal assistance, countries should designate a central authority to deal with such requests and to formalise the requests and their execution.<sup>46</sup>

## **4.4 Regional and international cooperation**

To encourage multinational cooperation and negotiations, the role of regional and international fora addressing the issue of arms smuggling needs to be strengthened. Insofar as possible, these fora should work towards concluding legally binding instruments aimed at preventing and suppressing the illicit trade in arms, their components, and ammunition.<sup>47</sup> Further networks for information sharing between law enforcement, border control and customs agencies need to be established.<sup>48</sup> Moreover, national governments and regional organisations need to work more closely with international organisations such as the United Nations, the World Customs Organisation, and Interpol.<sup>49</sup> Governments should be fully committed to the implementation of and adherence to international conventions and need to report about the implementation processes as required by the relevant conventions and programmes.

## **4.5 Accession to international conventions**

It is desirable that the specific instruments and organisations addressing arms smuggling in the Asia Pacific region obtain more recognition, further support and greater enforceability. It is crucial that more countries in the region ratify the *Convention against Transnational Organised Crime* and the *Firearms Protocol* and in the longer-term attempt to eliminate the shortcomings of these instruments. Global initiatives and other regional initiatives, including in particular the United Nations *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, the UN General Assembly's 2003 resolution on illicit trade in small arms and light weapons in all its aspects,<sup>50</sup> and the Pacific Islands Forum *Nadi Framework*,<sup>51</sup> need further recognition and endorsement. The role of

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42 Cf arts 17, 21 *Convention against Transnational Organised Crime*.

43 Cf art 21 *Convention against Transnational Organised Crime*.

44 Cf art 18 *Convention against Transnational Organised Crime*.

45 Article 18(3) *Convention against Transnational Organised Crime*.

46 Cf art 18(13)-(18), (24) *Convention against Transnational Organised Crime*.

47 Cf UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.25.

48 Cf UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Para II.27.

49 UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, UN Doc A/CONF.195/15 (2001) Paras II.32, 38, III.9.

50 UNGA Resolution 58/241 (20 Dec 2003).

51 South Pacific Chiefs of Police Conference Working Group Report: *Towards a Common Approach to Weapons Control*, signed at Nadi, Fiji, 10 Mar 2000 [hereinafter *Nadi Framework*].

international and regional fora dealing with arms smuggling needs to be strengthened in order to make their work more effective and, insofar as possible, enforceable.

#### 4.6 Financial aid

Additional arrangements are needed to help developing nations with technical equipment, personnel exchange and better know-how to fight the causes and consequences of arms smuggling, transnational organised crime and terrorism more effectively.<sup>52</sup> Furthermore, the regional powers must assist the developing nations in the Asia Pacific with personnel and financial aid to allow these nations to escape the circle of crime, violence and corruption.

To overcome the discrepancies in law enforcement and investigation techniques in different nations, countries should provide technical assistance and enhance financial and material assistance through voluntary donations and by donating some of the confiscated proceeds to developing nations.<sup>53</sup> Moreover, developed nations should provide training programmes and modern equipment to developing nations, and explore options for bilateral and multilateral arrangements on material and logistical assistance.<sup>54</sup>

Furthermore, areas that are dependent on arms production for their livelihood will need assistance and investment to help the region develop alternative industries. Using loans and aid to secure weapons stockpiles, to destroy weapons deemed surplus to national requirements, or to improve the professionalism and salaries of specific civilian law enforcement personnel, are other ideas worth considering.<sup>55</sup>

#### 4.7 Research, intelligence, and data collection

The lack of comprehensive and profound knowledge on arms smuggling is another obstacle in combating illicit manufacturing and trafficking more effectively. One of the most immediate responses to growing levels of arms smuggling around the world must be the collection of information and intelligence on this phenomenon, the causes of the demand for illicit weapons, the structure and operations of trafficking organisations, the role played by national governments, regional organisations and the international community, and the legal frameworks that exist at domestic and multilateral levels. More work needs to be done on the many aspects associated with arms trafficking and the persons engaged therein. Academic knowledge needs to be combined with the findings of law enforcement investigations. Further fieldwork should be undertaken, and more complete and comprehensive data should be collected to explore the motivation of individual offenders, trafficking patterns in countries of origin, transit and destination, and the results need to be woven into a more coherent strategy as part of future policy change and law reform.<sup>56</sup>

### Conclusion

The problem of arms smuggling in the Asia Pacific region is complex, multifaceted and defies single or simplistic solutions. It is important that the phenomenon is looked at from different angles. A criminal approach is just one of many possible ways to deal with arms smuggling. Changing the gun culture, too, may be one of the most important strategies to reduce the use and circulation of firearms.

Only very slowly, and primarily at the international level, have countries come to understand the true dimensions and causes of arms smuggling and have commenced the elaboration of

<sup>52</sup> See generally John McFarlane, *Transnational Crime and Illegal Immigration in the Asia-Pacific Region: Background, Prospects and Countermeasures* (1999) 16.

<sup>53</sup> Cf art 30(2) *Convention against Transnational Organised Crime*.

<sup>54</sup> Cf art 30(2)(d), (4) *Convention against Transnational Organised Crime*.

<sup>55</sup> David Capie, *Small Arms Production and Transfers in Southeast Asia* (2002) 103.

<sup>56</sup> Cf UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects, UN Doc A/CONF.195/15 (2001) Para II.6.

universal tools to combat its criminal aspects. The initiatives taken at regional and global levels, including the *Convention against Transnational Organised Crime*, the *Protocol against the Illicit Manufacture of and Trafficking in Firearms, their Parts and Components, and Ammunition*, UN *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects*, the UN Development Programme's (UNDP) *Capacity Development in the Reduction of Small Arms*,<sup>57</sup> the ASEAN cooperation,<sup>58</sup> and the Pacific Islands Forum *Nadi Framework*, along with other initiatives are steps in the right direction and need strong support at all levels of government. These instruments have initiated a regional and international dialogue on matters that have traditionally been national concerns only. Now is the time to take these initiatives further and work towards cooperative, harmonised, and enforceable solutions for arms smuggling in the Asia Pacific.

The countries of the Asia Pacific region have no choice but to work together to meet the challenges of arms smuggling and improve regional security in the 21<sup>st</sup> century.

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<sup>57</sup> Cf UNDP, *Strategy and Framework for Capacity Development in the Reduction of Small Arms and Light Weapons* (2003).

<sup>58</sup> See further Philips Vermonte, "Tackling the Problems of Small Arms in Southeast Asia: State and Non-State Perspectives" in Philips Vermonte (ed), *Small Arms Proliferation in Southeast Asia: Human and State Security* (2004) 16-21.