

Effective implementation of existing instruments on Small Arms and Light Weapons: an analysis of the OSCE Document

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Abstract

Despite numerous existing instruments of controls on small arms and light weapons (SALW), today, their implementation remains weak. Indeed, since the UN Firearms Protocol, the States Parties provided normative improvements to try to regulate these weapons, but the means used on the field are insufficient for an efficient implementation. Today, the States should study how the existing practices could be effectively applied on the field, just as they should go beyond the existing provisions and take complementary actions to achieve a better control on the SALW. After eight years of existence, the Document of the OSCE deserves to be analyzed from this point of view.

Résumé

Mise en œuvre effective des instruments existants sur les armes légères et de petit calibre : analyse du document de l'OSCE

S'il existe aujourd'hui divers instruments de contrôles sur les armes légères et de petit calibre (ALPC), leur mise en œuvre reste faible. En effet, depuis le Protocole des Nations Unies sur les armes à feu, les États parties ont fourni des améliorations normatives pour tenter de réglementer ces armes, mais les moyens qu'ils mettent en œuvre sur le terrain ne permettent pas de les appliquer efficacement. Aujourd'hui, les États devraient étudier comment les pratiques existantes pourraient être efficacement appliquées sur le terrain, de même qu'ils devraient aller au-delà des dispositions présentes et prendre des mesures supplémentaires pour parvenir à contrôler les ALPC. Après huit années d'existence, le Document de l'OSCE mérite d'être analysé sous cet angle.

Introduction

The present note will assess rapidly how the OSCE Document on Small Arms and Light Weapons (SALW)¹ could be better implemented and if some additional provisions could be introduced in the process. The note examines the OSCE Document mainly from a point of view of marking and tracing, and control of SALW transfers in order to prevent their deviation to the illicit market.

1. State of the implementation of some existing instruments on SALW Control and comparison with the OSCE Document

At the global level, presently, the UN Firearms Protocol² is being actively prepared to be efficiently implemented by States Parties. This legally binding instrument entered into force since July 2005 but its implementation has been rather weak. United Nations Office on Drugs and Crime (UNODC) has developed very complete Legislative Guides for the Protocol³ but it was not sufficient to activate interest on the field. Therefore, UNODC has decided to develop Guidelines on the main articles of the Protocol for its effective implementation. These Guidelines will be released end of 2008 and will be followed by a Model Law that will help States Parties to introduce the Firearms Protocol in their national legislation.

Guidelines of the Protocol are more detailed than the existing Best Practices Guides of OSCE⁴. Indeed, there will be complementarities because the scope of the Protocol is not military but include States transfers in their commercial capacities, and the OSCE Document aims only SALW manufactured to military specifications. After 8 years of existence, it would be interesting for the OSCE Document to check how existing practices could be effectively implemented on the field. It would be desirable that further actions should be taken other than destruction of obsolete or surplus SALW, such as the verification of markings of SALW stockpiles or at time of transfer, and the existence of accurate registers on SALW transactions and stocks.

These proactive actions could have a direct effect on the field where trafficking and uncontrolled accumulation of SALW is still ongoing despite the existence of several regional instruments. The main problem is that all these documents are not yet implemented effectively, and the organization on the field is far from being satisfying. States are making efforts on the normative side but the application of documents is still very weak. The means, such as human resources and capacity building that are at disposal of States in conflict regions are very limited. The ECOWAS Convention on SALW and ammunition⁵, i.e., is a strong document that would really have effects on the field, but since June 2006 things are going slowly, and the Small Arms Unit of the ECOWAS Commission is still composed from three people despite the huge work that should be done. Ratifications by Member States are also being very slow.

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1. OSCE. 2000. *OSCE Document on Small Arms and Light Weapons*, November 24. Available at: http://www.grip.org/bdg/pdf/20001124-OSCE_SALW.pdf
 2. United Nations, 2001. *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts, Components and Ammunitions, supplementing the United Nation Convention against Transnational Organized Crime*, A/RES/55/255, June 8. Available at: <https://www.grip-publications.eu/bdg/pdf/g1880.pdf>
 3. UNODC. 2005. "Legislative Guide for the implementation of the Protocol against the illicit manufacturing of and trafficking in Firearms, their parts and components and ammunition, supplementing the UN Convention against transnational organized crime", in *Legislative Guides for the implementation for the UN Convention against transnational organized crime and the protocol thereto*, February 2005, pp.397-526. Available at: http://www.unodc.org/pdf/crime/legislative_guides/Legislative%20guides_Full%20version.pdf
 4. OSCE. 2003. *Handbook on Best Practices on Small Arms and Light Weapons*. Available at: http://www.osce.org/publications/fsc/2003/12/13550_29_en.pdf
 5. Economic Community of West African States. 2006. *ECOWAS Convention on small arms and light weapons, their ammunition and other related materials*, June 14, Abuja. Available at: http://www.grip.org/research/ECOWAS_convention_ENG.pdf

Importance of ammunition

One important problem is the lack of political will to address all parameters of the SALW issue. Advances that are made on numerous questions are undermined because of other parameters that are frozen. One of the main problems is non regulation of SALW ammunition at the international and national levels. Ammunition is considered as if it were a separate entity from weapons, but causing continuous damages on people. Ammunition is even more important than weapons from a point of view of tracing because thousands are being used by the same arms that are in criminal hands. Tracing ammunition will certainly help tracing SALW that are in the illicit market since tens of years.

Finally, the international community has decided to address ammunition issue despite important resistance of some actors. The OSCE has just released Best Practices on Ammunition Stockpiles⁶, which is an important document. But without follow-up on the field by pushing States to implement effectively these guides, we might await 8 years more before seeing some results.

What are the problems?

The Nairobi Protocol⁷ is one of the most advanced regional instruments on its application, but there is still no effective impact on the region where several countries are still in war. In SADC region the Protocol adopted in 2001 is far from being implemented⁸. Even in the western regions, existing documents are not correctly implemented. The EU is still researching to introduce the UN Firearms Protocol in the community legislation. The OAS Convention⁹, despite being the oldest instrument and having its Model legislations, still couldn't impose its provisions to American States. For instance, the only country that is marking ammunition cartridges with lot numbers is Brazil, and the reason was not the OAS Convention but the huge diversion from governmental stocks with theft and corruption.

Recent instruments are not correctly implemented neither. The Third Biennial Meeting of States on the application of the Programme of Action on SALW¹⁰ showed that States are not using tools of the UN International Tracing Instrument (ITI) on SALW¹¹.

Problems on SALW transfer controls are very important. The recent work of the UN Group of Governmental Experts on Arms Trade Treaty stressed that only around 60 countries have national legislations regulating arms transfers¹². This is one of the most important reasons that other provisions such as marking, registration, tracing are not being implemented correctly because manufacturers and people from the field know that even if they have the best techniques there will still be irresponsible transfers undermining their efforts.

The Legislative Guide of the UN Firearms Protocol suggests in several points that States should go on beyond of existing provisions of the Protocol because despite the political resistance that did not permit in

6. OSCE. 2008. "OSCE Handbook of Best Practices on Conventional Ammunition", September. Available at: http://www.osce.org/publications/fsc/2008/09/32978_1178_en.pdf

7. *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*, 2004, April 24. Available at : <http://www.grip.org/bdg/g4552.html>

8. Southern African Development Community. 2001. *Protocol on the control of firearms, ammunition and others related materials in the Southern African Development Community (SADC) Region*, August 14. Available at : <http://www.grip.org/bdg/g2010.html>

9. Organization of American States. 1997. *Inter-American Convention against the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials*, November 13. Available at: <http://www.grip.org/bdg/g1659.html>

10. See the « Report of the Third Biennial Meeting of States to consider the implementation of the Programme of Action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects», A/CONF.192/BMS/2008/3, August 20, 2008. Available at: <http://www.grip.org/bdg/pdf/20080820-A-CONF192-BMS-2008-3-EN.pdf>

11. United Nations. 2005. *International instrument to enable states to identify and trace, in a timely and reliable manner, illicit small arms and light weapons*, A/60/88, June 27. Available at: <http://www.grip.org/bdg/pdf/g4306.pdf>

12. See the report « Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional weapons», A/63/334, August 26, 2008. Available at:

2001 to go further in the text, experts have seen 6 years after that for an effective implementation, States Parties should go further than the proposed text. That is how States can finally arrive to control SALW circuit in practice and diminish the impact of illicit transfers. This should remain in mind while implementing all existing SALW instruments.

One another important issue is that the existing tools and data are not being assessed and used. There are national reports to several UN and other institutions but often there is no rapid evaluation of reports and data. One can demand why all these reports are being transferred if there is no interested party to use them? The UN Register on conventional arms, although incomplete, can be an efficient tool, at least as an Early Warning parameter. The recent war in Caucuses showed that there were sufficient red lights based on the data of the UN Register prior to the hostilities.¹³ Experts should continuously use and evaluate existing tools on arms to prevent conflicts.

On the other hand, several existing best practices guides on SALW, often going on beyond of the documents, should be implemented at a large scale by States.

2. OSCE Document and the implementation of some of its provisions

The present chapter analysis the OSCE Document and some of its provisions in order to ameliorate the implementation of the Document.

Marking:

Physical inspections should be done at time of shipment and reception to verify markings; OSCE Document, Section III. B.7 stipulates «no transfer of unmarked SALW», only uniquely marked SALW will be transferred.

Section II. B.1 requires verification of unique markings on SALW produced in the OSCE States: this could be done by Proof Houses and existing organisms on the control of the transport of dangerous goods, where ever possible.

Section II. B.2 requests regular update of the information on marking systems: instauration of specialized technical committees in each country to this effect would be useful. Section II.D requires also exchange of information on national procedures for the control of the manufacture of SALW.

Record-keeping:

States agree to ensure comprehensive and accurate records of SALW transactions are kept as long as possible in view of tracing, OSCE Document, Section III. C.2: existence of these records should be verified by participating States.

Section II.C requires from States establishment of adequate records of their SALW holdings: the best solution would be to open a file in the register for each weapon and keeping information permanently.

Tracing:

Section III. E.3 and E.4 concern investigations and cooperation with intergovernmental organizations, such as Interpol, in tracing illegal SALW; these provisions are in relation with the application of UN International Tracing Instrument (ITI) and are mandatory under this document: States should apply ITI which is not yet effectively done, and the possibility of collaboration with Interpol on SALW tracing is not used.

Transfers:

Section III.F concerns exchange of information on SALW transfers through Conflict Prevention Centre (CPC) that should be done every year; member States should complete the exchange of information using national points of contacts on SALW: States should consider if it would be useful to create a specialized centre or agency on SALW for OSCE countries.

13. See at: <http://www.grip.org/bdg/pdf/g0908.pdf> : « Les pyromanes du Caucase : les complicités du réarmement de la Géorgie » Note d'analyse du GRIP, Luc Mampaey, 26 September 2008

Section III. B.6 is on the use of physical inspections of the shipment of SALW at point of delivery and procedures to secure the delivery of arms; Section III. B.2 is on the adequate control over transfers to prevent diversion of SALW: creation of a specialized agency might be more efficient.

Section III. C.1 is on the authentication of end-user certificate (and of International Import Certificate, IIC) that should be explored by participant States; OSCE member States could be involved in the development of common minimum standard on this purpose.

Section III. A.3 is on the criteria on the SALW export and technology related to their design: there should be additional criteria on the technology to produce SALW other than on the transfer of the finished items because the production lines are designed to function for tens of years.

To ensure the provisions in Section II.A on the control over manufacture of SALW, on site checks of the manufacture and markings should be effected by States or a specialized agency.

Ammunition:

Section II on production, marking and registration do not include ammunition which is not also explicitly present in the OSCE Document: taking into consideration the newly developed Best Practices Guides on ammunition, Section II should also apply to ammunition and States should introduce this provision in the Document. All regional instruments include ammunition with SALW.

Stockpiles:

According to Section IV (introduction), management and security of stockpiles of SALW is central to the reduction of destabilizing accumulations: national inventories in order to reduce surplus are necessary. Existing Best Practices Guides on arms (2003) and new Guides on ammunition (2008) should be applied by participant States. Section IV.A.1 and 2 on the indicators of a surplus should also be considered within the framework of the Best Practices Guides.

Section A.3.iii on the modernization of SALW stocks is particularly important to verify because still States are buying old stocks from other States, even within the OSCE countries. Recent Caucuses conflict has shown this tendency which is also verified by the UN Register.

Section IV.B.1 establishes procedures and measures for the stockpile management in order to prevent theft and corruption: regular inventories and accounting are important to this effect and existing best practices on SALW and ammunition should be used by States. The Brazilian practice¹⁴ to mark cartridges and arms with lot and serial numbers and also marking the end-user are of most importance for tracing in the future. States should consider introducing this practice in national laws.

Section IV.C.2 indicates that “destruction should be generally used to dispose of illicitly trafficked weapons”: destruction should also be systematically used for all surplus and obsolete SALW.

It should also be verified if participant States are sharing information on stockpiles management of SALW and ammunition according to Section IV.E.1 – 3.

Section V on early warning is of most importance “for each participating State to identify potentially destabilizing accumulations or uncontrolled spreads of SALW linked to its security” (Section V.A.1), and also from the point of view of conflict prevention and post-conflict situation (Section V.C.1). FSC and Permanent Council should make an assessment on this purpose and a follow-up should be established. Rapid Expert Assistance and Cooperation Teams (REACT) should be used (Section V.C.2).

Sections V.D.2 and E concerning post-conflict situations and eventual peacekeeping missions should be realized in consultation with other international organizations and institutions. Priority should be given to stockpile management and participating States should verify these actions in a proactive manner.

14. Law 10.826/03 - Army Regulation 14-DLOG, October 20th, 2005 and Army Regulation 16-DLOG, March 15, 2004

Follow-up:

Section VI aims to establish points of contact in delegations to the OSCE and in capitals. It would be preferable to designate specialized persons on SALW questions and establish in the future a team or unit on SALW issues.

Section VI.3 concerns “further development of the OSCE Document in the light of its implementation”. States could consider an assessment of the implementation in order to make eventually some changes such as the introduction of ammunition in the Document.

Section VI.6 stipulates that norms of the Document are politically binding which means that they are mandatory and the correct implementation of the instrument should be assessed after 8 years of existence. Member States should therefore make the assessment of the implementation of the OSCE Document latest in 2009 and bring necessary changes for its effective application

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Mots clés :

Instruments, control, SALW, OSCE, United Nations, Firearms Protocol

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