Implementing the Southern Africa Firearms Protocol

Identifying challenges and priorities

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INTRODUCTION

The adoption by heads of government of the Southern African Development Community (SADC)[1] *Protocol on the Control of Firearms, Ammunition and other Related Materials* in August 2001 means that countries in the region are now faced with the significant challenge of implementing its numerous broad provisions. The primary objective of the SADC Protocol is to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials. However, it also seeks to regulate the import and export of legal small arms and thus curb the transit of these weapons into, and within, the region. In addition, the Protocol aims for the harmonization of national legislation across member states on the manufacture and ownership of small arms and light weapons. Thus the SADC Protocol "marks a further significant development in the efforts of the states of Southern Africa to tackle the scourge of small arms and light weapons".[2]

The SADC Protocol is one of the only legally binding instruments on the control of small arms and light weapons

Outdated national legislation, obsolete regulatory measures, precarious peace processes, pervious borders and the lack of capacity on the part of both governments and civil society to effectively monitor the legal and illegal movement of firearms, present enormous challenges not only in effectively addressing the general problem of the trade in small arms and light weapons in the southern African region but more specifically in implementing the SADC Protocol. In addition, there is little, if any, reliable base-line data available from which to assess the improvements that may result from the effective implementation of the SADC Protocol.

This paper briefly describes the historical development of the SADC Protocol as a regional instrument to increase control over the proliferation of small arms in Southern Africa. It places the Protocol within the context of other international and continental agreements, outlines its main provisions and provides an analysis of the implementation challenges that it poses for SADC member states. The paper describes the efforts that have so far been taken to implement the SADC Protocol by member states in the region and concludes with some thoughts on the way forward in terms of assessing its effectiveness and, more importantly, its potential long-term impact.

EVOLUTION OF THE SADC PROTOCOL

By October 2003, the SADC Protocol remained one of only a few multilateral legally binding instruments on the control of small arms and light weapons. The others are the Organization of American States Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Material and the United Nations Protocol against the Manufacturing of and Trafficking in Illicit Firearms, Ammunition and Related Materials. The SADC Protocol's evolution is therefore interesting and potentially valuable for other regions in Africa.

The Southern African Development Community sets the parameters for policy action in the subregion on a range of issues. The heads of state and relevant ministers from its member states determine the direction of the organization, while a number of technical committees are responsible for implementing SADC policy. The issue of small arms was initially viewed primarily as a foreign policy objective (along with other arms control issues), although, more recently, small arms are increasingly viewed as a crime prevention issue for SADC countries.

As the small arms issue rose on the agenda in Southern Africa, the countries of southern Africa developed several complementary approaches. In the first instance, an NGO-sponsored conference adopted an *Action Programme on Light Arms and Illicit*

Arms Trafficking in May 1998, which was later endorsed by SADC and European Union foreign ministers. Subsequently, the SADC Council of Ministers made its first statement on the issue of the prevention and combating of the illicit trafficking in small arms and related crimes in August 1999 at its meeting in Maputo, Mozambique. The Council noted that the many conflicts in the region had led to a proliferation of arms, including light weapons. This in turn, had contributed to an increase in criminal activities such as armed robberies and illicit trafficking of small arms in the region.

With this in mind, the Council mandated SADC to establish a regional policy for the control of small arms and light weapons and identified the Southern Africa Regional Police Chiefs Cooperation Organization (SARPCCO) as the implementation agency for the SADC Policy on Small Arms and Cross Border Crime Prevention.[3]

SARPCCO was established in 1995 to coordinate work between the police on issues that were undermining security and stability in the sub region.[4] A legal framework for cooperation—*Agreement in Respect of Cooperation and Mutual Assistance in the Field of Crime Combating*—entered into force in July 1999. It provides a forum for subregional collaboration on issues that fall entirely or partly beyond the remit of the defence departments of southern African states, such as crime prevention and illicit trafficking. Although independent, SARPCCO works closely with SADC and its subcommittees. Following the identification of SARPCCO as the implementing agency for SADC on small arms issues, the organization has established a firearms desk and appointed an officer whose role is to oversee implementation of the SADC Protocol and act as liaison between member states and the SADC Secretariat.

A working group comprised of representatives from Mozambique, South Africa, Swaziland, Zambia, Zimbabwe and the SADC Secretariat was appointed to develop the SADC Policy on Small Arms. At its inaugural meeting in Gaborone in October 1999, the working group agreed that whatever SALW policy was developed, its key provisions should be a declaration, which would lead to the negotiation of a legally-binding subregional protocol and attendant implementation programme. This decision led to the negotiation and eventual adoption of the SADC Protocol, which was signed in August 2001 by the heads of state of Southern Africa.

COMPLEMENTARY EFFORTS TO COMBAT ILLICIT ARMS TRAFFICKING

African Union

At a continental level, the Organization of African Unity (OAU),[5] as early as 1996, agreed to conduct an in-depth study into ways reducing the proliferation and dissemination of low-calibre war arms.[6] The African leaders also committed themselves to combating the illicit proliferation, circulation and trafficking of small arms, light weapons and landmines at the subregional and continental levels.[7] These commitments eventually manifested themselves in the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking on Small Arms and Light Weapons (Bamako Declaration) adopted in December 2000. The Declaration was developed to:

> "promote measures aimed at restoring peace, security and confidence among, and, between Member States with a view to reducing the resort to arms; promote structures and processes to strengthen democracy, the observance of human rights, the rule of law and good governance, as well as economic recovery and growth; and importantly, to promote comprehensive solutions to the problem of the illicit proliferation circulation and trafficking of small arms and light weapons that, include both control and reduction, as well as supply and demand aspects; that are based on the coordination and harmonization of the efforts of the Member States at regional, continental and international levels and which involve civil society in support of the central role of governments." [8]

The Bamako Declaration emphasizes the need to "enhance the capacity of Member States to identify, seize and destroy illicit weapons and to put in place measures to control the circulation, possession, transfer and use of small arms and light weapons; promote a culture of peace by encouraging education and public awareness programmes on the problems of the illicit proliferation, circulation and trafficking of small arms and light weapons, involving all sectors of society; institutionalize national and regional programmes for action aimed at preventing, controlling and eradicating the illicit proliferation, circulation and trafficking of small arms and light weapons in Africa."[9]

To address the specific problem of the illicit proliferation, circulation and trafficking of small arms and light weapons at the national level, the Bamako Declaration recommends that:

- National coordination agencies responsible for policy guidance, research and monitoring all aspects of small arms and light weapons proliferation, control, circulation, trafficking and reduction be established;
- The capacity of national law enforcement and security agencies and officials be enhanced to deal with all aspects of the arms problem, including appropriate training on investigative procedures, border control, and that equipment and resources be upgraded;

- The necessary national legislative measures to establish as a criminal offence, the illicit manufacturing of, trafficking in, and illegal possession and use of small arms and light weapons, ammunition and other related materials be promulgated;
- National programmes for the responsible management of licit arms; the voluntary surrender of illicit small arms and light weapons; the identification and the destruction by competent national authorities and where necessary, of surplus, obsolete and seized stocks in possession of the state; the reintegration of demobilized youth and those who possess small arms and light weapons illegally, be developed and implemented;
- Public awareness programmes on the problem of the proliferation and the illicit trafficking of small arms and light weapons be developed and implemented;
- The adoption of appropriate national legislation or regulations to prevent the breaching of international arms embargoes be encouraged;
- Appropriate measures to control arms transfers by manufacturers, suppliers, traders, brokers, as well as shipping and transit agents, in a transparent fashion be taken;
- The active involvement of civil society in the formulation and implementation of a national action plan to deal with the problem be encouraged. [10]

As a political declaration, the Bamako Declaration places no binding obligations on the countries in Africa. However it is the only document that commits all the states in Africa, including those in North Africa, to a common set of principles in regard to small arms. The Declaration was used extensively in the negotiation of the UN Small Arms Programme of Action (see below), resulting in the inclusion of many issues considered especially important to countries in Africa in that document.

The Bamako Declaration commits all the states in Africa to a common set of principles in regard to small arms.

United Nations

In November 2000, the United Nations Millennium General Assembly adopted the Convention Against Transnational Organized Crime. In May 2001, the third protocol, the Protocol against the Manufacturing of and Trafficking in Illicit Firearms, Ammunition and Related Materials (hereafter referred to as the UN Protocol) was adopted by the United Nations General Assembly.

The UN Protocol was negotiated by UN member states as a supplement to the Organized Crime Convention. Under the UN Protocol, State Parties will, among other provisions, be obliged to:

- Implement laws to eradicate the illegal manufacturing of firearms, track down existing illicit weapons and prosecute offenders;
- Cooperate to prevent, combat and eradicate the illegal manufacturing and trafficking of firearms;
- Tighten controls on the export and import of firearms;
- Exchange information about illicit firearms.[11]

During the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in July 2001,[12] the Programme of Action to Prevent combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was adopted. This Programme of Action details measures that, if implemented, would realize, at the global, regional, subregional, national and local levels, the "prevention, reduction and eradication of the illicit trade" in SALW.[13]

COORDINATING INTERNATIONAL AND THE REGIONAL INITIATIVES

While it has been suggested that in Africa regional initiatives to address the proliferation of small arms built on the momentum of international efforts, such as those of the United Nations, the SADC initiative was frequently in advance of other initiatives in terms of content, while being, perhaps, slightly behind in terms of process. This led to an interesting interplay between the two efforts during which "regional initiatives developed alongside the work of UN bodies".[14]

Evidence of this is largely reflected in how the issue was viewed in the subregion. In contrast to how the UN has framed the issue, the SADC Protocol was drafted from the perspective of a post-conflict region struggling to come to terms with the negative impact that small arms were having on its stability and development. The region was also witnessing increasing violent crime involving small arms. These factors mean that there is greater solidarity in the approach to small arms control than is perhaps evidenced at the international level. In addition, the closer relations that exist between SADC member states has meant that the Protocol's development is not hampered by power plays between various groupings and blocs. Because many countries in Southern Africa have scarce resources and limited means, closer cooperation between Southern African countries is generally recognised as a necessary pre-condition for further development in the region. It is in this context that the introduction of the SADC Protocol must be seen. Furthermore, regional mechanisms are useful concrete means by which states can ensure compliance with international trends. The SADC Protocol is thus "the starting line for practical implementation that will also enable each country to comply with UN and OAU principles on SALW".[15]

ELEMENTS OF THE SADC PROTOCOL

The objective of the SADC Protocol is to prevent, combat and eradicate the illicit trade of firearms, ammunition and other related materials in the Southern African region through the mobilization of a regional commitment to policy and practice.

While the Protocol uses the term 'firearms', as opposed to 'small arms', it defines 'firearms' quite broadly as:

a) any portable lethal weapon that expels, or is designed to expel, a short, bullet or projectile by the action of burning propellant, excluding antique firearms or their replicas that are not subject to authorisation in the respective States Parties;
b) any device that may be readily converted into a weapon referred to in paragraph a);
c) any small arm as defined in this Article; or
d) any light weapons as defined in this Article.

By signing and ratifying the Protocol (see table below for ratification status), countries in the region have agreed to a number of steps. These include the following:

- Laws and regulations on the manufacture, transfer, possession and use of firearms
- Enhancing operational capacity of police, customs, border guards, military, judiciary and other relevant government departments to be able to implement the Protocol
- Control over state and civilian-owned firearms
- Marking and record-keeping of firearms
- Regulation of arms brokers
- Disposal of state-owned, confiscated or unlicensed firearms
- Harmonization of import and export documents and end use certificates
- Voluntary surrender of firearms
- Public education and awareness programmes
- Mutual legal assistance
- Law enforcement
- Transparency and information exchange

Each state party is also required to:

- Become party to international instruments relating to the prevention, combating and eradication of illicit manufacturing of, excessive and destabilizing accumulation of, trafficking in, possession and use of firearms, ammunition and other related materials;
- establish as criminal offences the illicit manufacturing, possession, trafficking and use of firearms, ammunition and other related materials;
- improve the capacity of police, customs, border guards, the military, the judiciary and other relevant agencies to fulfil their roles in the implementation of the Protocol;
- coordinate national training programmes for police, customs and border guards, the judiciary and other agencies involved;
- review national procedures and criteria for issuing and withdrawing of firearm licenses and establishing and maintaining national electronic databases of licensed firearms, firearm owners, and commercial firearms traders within their territories;
- establish national inventories of firearms held by security forces and other state bodies and to enhance their capacity to manage and maintain their secure storage;
- ensure that all firearms are marked with a unique number at the time of manufacture or import;
- adopt effective programmes for the collection, safe-storage, destruction and responsible disposal of surplus, redundant or obsolete firearms through peace agreements, demobilization or reintegration of ex-combatants and through the re-equipment of, or, restructuring of armed forces or other armed state bodies;
- develop joint and combined operations to locate, seize and destroy caches of firearms and related materials left over after conflict and civil wars;
- encourage lawful and illegal firearm holders to voluntarily surrender their firearms for destruction;
- develop national and regional public education and awareness programmes to enhance public involvement;
- develop and improve transparency in firearms accumulation, flow and policies relating to civilian owned firearms and to establish national firearms databases to facilitate the exchange of information on firearms imports, exports and transfers.

In addition, provision is made for cooperation and coordination between states parties, including legal assistance; the establishment of mechanisms for co-operation among law enforcement agencies; and information exchange.[16]

Table 1: SADC Protocol ratification status (as of 30 July 2003)

Country	Signature	Ratification
Angola		
Botswana	14.08.01	14.08.01
D R Congo	14.08.01	
Lesotho	14.08.01	27.09.02
Malawi	14.08.01	24.09.02
Mauritius	14.08.01	04.01.02
Mozambique	14.08.01	20.09.02
Namibia	14.08.01	Date unknown
Seychelles *	14.08.01	
South Africa	14.08.01	27.01.03
Swaziland	14.08.01	
Tanzania	14.08.01	24.12.02
Zambia	14.08.01	
Zimbabwe	14.08.01	

Source: SADC Legal Sector, Gaborone Botswana.
** Seychelles announced in August 2003 that it was withdrawing from SADC.*

The SADC Protocol will enter into force when two-thirds of member states in the region ratify and deposit their instrument of ratification with the SADC Secretary-General. All member states except Angola signed the SADC Protocol on 14 August 2001 and to date eight countries have ratified it: Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa and Tanzania. While Angola was not present at the time of signing, it has consented to the Protocol.[17]

IMPLEMENTATION OF THE SADC PROTOCOL

The fact that the SADC Protocol has not yet entered into force has, in terms of regional priorities, been of little consequence. The pending entry into force of the Protocol has not prevented steps being taken in the mean time to implement it.

An important aspect of any legal instrument is a strategy for its implementation to assist states parties in meeting the legal requirements to which they have agreed.

Since SARPCCO was requested by SADC to be the implementation agency for the SADC Protocol, it was the SARPCCO legal sub-committee that first undertook to develop broad guidelines for implementation. In 2001, according to Jerry Ekandjo, the Namibian Minister of Home Affairs, "a programme of activities for the prevention, combat and control of the proliferation and illicit trafficking in arms has been drafted in preparation for the launching of [the SADC Protocol]".[18] He further stated that, "one of the key features of the programme is the harmonization of legislation, exchange of information and [the] setting up [of] information technology based management for small arms and light weapons".[19] For some time, no clarity existed as to the status of any implementation strategy, although it was assumed that the SADC and SARPCCO Secretariats had been consulting and that a concrete programme would be forthcoming, which would be presented to the SADC Organ on Politics, Defence and Security for approval.[20]

What emerged in 2002 was a SARPCCO "Action Plan on [the] SADC Protocol on the Control of Firearms, Ammunition and other Related Materials". This plan lists a number of workshops for countries in the sub region that have been identified as priority areas for implementation. In some senses it restates the obligations of the Protocol, albeit with timelines and specifying which SARPCCO sub-committee is responsible for co-ordinating the particular task.

The action plan identifies the need for the development of standard operating procedures and training programmes for countries in the region in respect to, amongst other things, joint operations and the destruction of firearms. The plan also sets timelines for the amendment of national laws regulating the possession of firearms and for the promulgation of legislation to facilitate the rendering of mutual legal assistance.

At a national level, a number of states have already started to implement the provisions of the SADC Protocol. In some instances, the Protocol contains obligations that certain countries are already meeting, for example assessing border controls and entering into bilateral agreements on assistance with the location and destruction of arms caches. A few states have already identified a National Focal Point and are engaged in reviewing their national legislation against the standards set in the Protocol.[21] Through their participation in SARPCCO, practically all the countries in Southern Africa are involved in transnational police operations and investigations.

The South African government, for example, in February 1999 took a position to destroy all surplus, redundant, obsolete and confiscated small arms of a calibre below 12.7 mm in order to prevent these from ending up in the illicit small arms trade, and has instituted a systematic process within both the police and defence force to do this. It has also taken steps to improve the management of state-owned firearms. Operation Rachel, the joint co-operation between the police services of Mozambique and South Africa, continues to destroy caches of illicit small arms and light weapons in Mozambique and a number of other countries have expressed interest in establishing similar joint operations. The Kingdom of Lesotho destroyed its surplus small arms stock in November 2001. Both Swaziland and Botswana have acquired machinery from the British government that will enable it to destroy illegal and confiscated small arms.[22]

The South African government took a position to destroy all suplus, redundant, obsolete and confiscated small arms

In addition, some of the workshops identified in the Action Plan have been completed in 2003. These have often been run as partnerships between SARPCCO, a host government and local organizations. For example, meetings on cross-border operations, regional standards for the marking, tracing and record keeping of firearms, the disposal of state-owned firearms and firearms identification have taken place.

The outcomes from the workshop on marking and tracing illustrate how the provisions set out in the SADC Protocol can be implemented, but also the challenges that face countries in the region. In the case of marking and tracing firearms, workshop participants agreed that what was needed was a system whereby:

- Information would be easily exchanged across national boundaries;

- Marking systems or codes would be mutually agreed to;
- A particular national agency would be responsible for sending and receiving and responding to requests;
- Manufacturers, exporters and importers would be required to regularly submit their records to the national government.

These workshops and other meetings have provided participants (policy-makers, police officers, donors) with a unique opportunity to reflect on how each SADC member state can effectively implement the Protocol and have assisted SADC member states in identifying particular constraints and opportunities for mutual assistance and learning from the experience of other countries.

CHALLENGES IN IMPLEMENTING THE SADC PROTOCOL

It is clear that the prevention, combating and eradication of the illicit trade of small arms and light weapons is high on the African agenda both at the continental and subregional levels. Besides the SADC Protocol, other regional agreements include the Economic Community of West African States' (ECOWAS) Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons of 1998 and the Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa of 2000.

Despite the many agreements, it has been difficult to reach consensus on how best to deal with the proliferation of small arms in a pragmatic and concrete way.

A number of frameworks, which complement the SADC Protocol, exist. For example, the New Partnership for Africa's Development (NEPAD) that was endorsed by the first Summit of the African Union in 2002 as its *de facto* work programme is a continental framework that sets in place conditions and actions that need to be undertaken for sustainable development to be successful on the continent.

One of the major preconditions for this development is the "peace, democracy and political governance initiative". Key in this regard is that efforts to build Africa's capacity to manage all aspects of conflict must focus on the means necessary to strengthen existing regional and subregional institutions, especially in the four areas of prevention, management and resolution of conflict; peacemaking, peacekeeping and peace enforcement; post-conflict reconciliation, rehabilitation and reconstruction and combating the illicit proliferation of small arms, light weapons and landmines.[23]

With a legal instrument on small arms already in place, the opportunity exists for SADC to lead continentally. However certain challenges remain. First, it remains unresolved as to which organization - SADC or SARPCCO[24] - should drive the implementation of the SADC Protocol. SARPCCO, which was formed in 1995, is primarily an operational body, "with a clear focus on the running of joint operations between various regional law enforcement bodies".[25] SADC and SARPCCO have only recently started to systematically interact with one another and it is not clear how the cooperation will be extended in terms of the SADC Protocol.

The advantage of SARPCCO as the implementing agency for the Protocol is that many of the issues covered by the Protocol are policing-focused and SARPCCO can bring together these actors. However SARPCCO is an organization independent of SADC and, although it has agreed to support the implementation of the SADC Protocol to date, there is, in fact, no formal agreement for this type of cooperation between the two organizations. In addition, SARPCCO's membership differs from SADC's in the form of the Democratic Republic of the Congo, which belongs to SADC but not SARPCCO (although it has applied to the latter for membership).

The functioning of SADC is also being reviewed, and it seems that in future the Small Arms Programme may come under the SADC Organ on Politics, Defence and Security. If this is the case, the relationship between SADC and SARPCCO may need to be reviewed to ensure that there is effective coordination between the two organizations.

In terms of the content of the SADC Protocol, its relatively long and complex evolution has culminated in a legal instrument that tries to meet all needs. It may be that this in itself is potentially problematic. There has been little visible process of prioritizing which of the many provisions need to be addressed most immediately. Nor has there been assistance to SADC member states, through SADC or SARPCCO, to discuss the implementation of the Protocol from national perspectives.

National action

What are needed now are concrete strategies and measurable implementation plans that will see the SADC Protocol's successful and sustainable execution. It will take a long time for any country in the region to implement all the provisions of the SADC Protocol. However, it is important to view its implementation as a process. The SADC Protocol, because it is so wide in its scope and because so many different authorities and agencies will be involved in its implementation, should rather be seen as a framework through which various small and more manageable projects can be carried out. The process of implementation should, in itself, enhance the capacity of the relevant governmental authorities, in cooperation with civil society organizations and individuals, to address the implementation challenges of the Protocol.

There is little doubt that member states will have to prioritize their implementation of the SADC Protocol's broad objectives as each country has different needs and challenges. There is little point in Mauritius, for example, developing arms collection strategies when it has no problem with arms caches. However this is a key priority for Mozambique and may become a priority for Angola and the DRC.

While all countries in the region need to review their national laws and regulations, and many will need to change them to meet new standards, practical constraints will also have to be addressed. An additional, but fundamental concern that has been expressed is the lack of resources and capacity to develop necessary systems, such as computerised databases and equipment such as ballistic testing machines, scanning devices and technologies for small arms and light weapons destruction. Other constraints identified so far include a lack of information and knowledge between member states of:

- Current projects police and other government agencies in a particular country are carrying out;
- Extent of licensed firearms in each country;
- Types of people who own or want to own firearms;
- Extent of firearm theft in each country;
- Level of arms flows, internally and externally;
- Weapons availability and where these are located - rural or urban areas;
- Patterns of both legal and illegal acquisition;
- Impact of arms on society;
- Best types of public awareness campaigns;
- Penalties and deterrence measures;
- Value of 'Firearms Free Zones';
- Strategies to reach the different target audiences using different mediums, e.g. radio;
- Linkages between types of weapons and types of crime.

CONCLUSION

The proliferation of small arms is generally associated with conflict and post-conflict situations, but "the reality has also shown that they are integrally linked to crimes such as robberies, burglaries, hijackings, drug trafficking, gang-related violence, money laundering and stock-theft".[26] The impact that the SADC Protocol's implementation will have on other sectors and issues should thus also be of interest, although it may not be immediately measurable. Improved border controls, firearms tracking systems and the like will positively impact on measures to control other trafficked items such as women, diamonds, migrants, vehicles and drugs.[27] Often it is the same routes and networks that are used for these activities.

The reverse is also true. Joint operations between the police forces of Mozambique, South Africa, Swaziland, Lesotho, Botswana and Zimbabwe have led to the recovery of scores of stolen vehicles. The operations are carried out to implement decisions of the regional police co-operation body, SARPCCO, for preventing and fighting cross-border crime. As such they are not aimed exclusively at stolen vehicles. "The police also hope to seize drugs and illegal firearms". [28]

The political will certainly exists both in SADC and in the individual members states to bring the proliferation of small arms under control and eradicate illicit trafficking. The SADC Protocol calls for many national measures to be undertaken but importantly it also calls for greater cooperation between states - this, if it occurs, can only bode well for the future of integrating the region and for SADC as an institution. As has been noted by the UN, the SADC Protocol "provides guidelines for collective action against the proliferation of, and trafficking in, small arms and light weapons".[29]

The SADC Protocol could further facilitate collaboration among member states

The Southern African subregion has set a strong example of police co-operation. The SADC Protocol could thus further facilitate collaboration among member states on a range of issues and fronts and could provide a framework to address disarmament and arms control in the region more broadly. Civil society is also committed to assisting, where appropriate and possible. At the 2001 UN Conference on Small Arms and at numerous other regional and subregional fora, states have readily acknowledged the vital contributions of civil society in addressing the small arms threat.[30] SADC is no different, but how these sentiments will translate into practice remains to be seen, as some states in the region are unfamiliar with the role of civil society working in partnership with governments on what are traditionally viewed as security issues.

Measuring the implementation of the SADC Protocol is one thing. Being able to measure the impact of the SADC Protocol in achieving its objectives is another - and this can only be done over time. While many of the provisions may be implemented, the more important question to assess is whether these adopted measures are having the required impact on reducing SALW in the region and further whether the reduction of SALW in the region has contributed to greater stability, development and less violent crimes. Further work in establishing baselines of data and standards, so that such progress can be monitored is required and, with national implementation, remains one of the challenges for the region.

NOTES

1 Originally known as the Southern African Development Co-ordination Conference (SADCC), the organization was formed in Lusaka, Zambia on 1 April 1980, following the adoption of the Lusaka Declaration. The Declaration and Treaty establishing the Southern African Development Community (SADC) was signed at the Summit of Heads of State or Government on 17 August 1992, in Windhoek, Namibia. The Treaty commits members to co-operating on politics, diplomacy, international relations, peace and security. Present member states of SADC are Angola, Botswana, Democratic Republic of Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
2 UNESCO, SADC Signs Firearms Protocol, *Bulletin to Control Small Arms*, No. 9, October 2002.
3 SADC Council Decision, 13-14 August 1999.
4 The twelve member countries of SARPCCO are: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia, and Zimbabwe.
5 The African Union (AU) was established in 2002 following the dissolution of the Organization of African Unity (OAU). For the purposes of this paper, the differences, if any, between the two organizations are not deemed significant, as the change of name has affected neither the core structure nor function of the organization in relation to small arms and light weapons. The name of the organization as it was at the time reference is made to it has been maintained.
6 Africa: Preparing for the 21st Century, Yaoundé Declaration, 32nd Ordinary Session of the Assembly of Heads of State and Government, Yaoundé, Cameroon, 8 to 10 July 1996, paragraph 27.
7 Solemn Declaration on the Conference for Security, Stability, Development and Cooperation in Africa (CSSDCA), 10-12 July 2000, Lomé, Togo, paragraph 2, 9, 10 (h) and 14 (l); Algiers Declaration, 35th Ordinary Session of the Assembly of Heads of State and Government, 12-14 July 1999.
8 The Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking on Small Arms and Light Weapons, 1 December 2000, paragraph 2.
9 Bamako Declaration, paragraph 2.
10 Bamako Declaration, paragraph 3(A).
11 See, After Palermo: An Overview of what the Convention and Protocols Hope to Accomplish http://www.undcp.org/adhoc/palermo/sum1.html
12 For more details on the 9-20 July UN Conference on the Illicit Trade in Small Arms and Light Weapons see: <disarmament.un.org>.
13 Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF/192/15.
14 *Small Arms Survey 2002: Counting the Human Cost*, Oxford University Press, 2002, p 128.
15 Amb. Carlos dos Santos (Mozambique) statement at the African Conference on the Implementation of the UN Programme of Action on Small Arms, Pretoria, March 2002.
16 See Appendix A for the full text of the SADC Protocol.
17 Minutes of the Safety and Security Portfolio Committee, 12 November 2002, <www.pmg.org.za>.
18 By Honourable Jerry Ekandjo, Minister of Home Affairs of the Republic of Namibia on behalf of the Southern African Development Community (SADC), at the United Nations Conference on Illicit Trade in Small Arms and Light Weapons in all its Aspects, New York, 12 July 2001.
19 Ibid.
20 Interview with SADC official, 21 October 2002.
21 Two countries in SADC have provided information on national points of contact to the United Nations, Botswana and Mauritius. However other countries have identified responsible desk officers. In Mozambique, a national small arms coordinating committee has recently been established.
22 UK Helps Botswana Destroy Guns, *South African Press Association*, 24 October 2002.
23 New Partnership for Africa's Development (NEPAD), point 74. For further details on NEPAD see <www.africanrecovery.org>.
24 SARPCCO consists of the following 12 SADC member states: Angola, Botswana, Lesotho, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, Tanzania, Zambia and Zimbabwe.
25 Mark Shaw, "Organized Crime and State Responses in Southern Africa", *Crime & Justice International* Volume 19 Number 73 May 2003, p 13.
26 Rob Wensley, Deputy-Director, Arms Control, Department of Foreign Affairs, South Africa, "Operation Rachel and Bilateral Co-Operation: Political Dimensions", presentation to an ISS Workshop, 12 August 2002.
27 See Charlene Smith, "On a High", *Mail & Guardian* November 8–14 2002, p. 6; Andre Jurgens, "Border Deal Stalls Car Theft Gangs", *Sunday Times* 13 October 2002, p 6.
28 See for example, Police Cooperation to Recover Stolen Cars, Agencia de Informacao de Mocambique, 18 January 2003.
29 United Nations 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.
30 Jayantha Dhanapala, Under-Secretary-General for Disarmament Affairs, United Nations, "The Role of Civil Society in the Implementation of the United Nations Programme of Action on Small Arms", at the African Conference on the Implementation of the UN Programme of Action on Small Arms: Needs and Partnerships, Pretoria, South Africa, 18-21 March 2002.

Appendix A

Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region

PREAMBLE

We, the Heads of State or Government of the:
Republic of Angola
Republic of Botswana
Democratic Republic of Congo
Kingdom of Lesotho
Republic of Malawi
Republic of Mauritius
Republic of Mozambique
Republic of Namibia
Republic of Seychelles
Republic of South Africa
Kingdom of Swaziland
United Republic of Tanzania
Republic of Zambia
Republic of Zimbabwe

CONSIDERING Article 21 of the Treaty which provides for areas of cooperation, Article 22 of the Treaty which provides for the conclusion of Protocols which may be necessary in agreed areas of cooperation and Article 5 of the Treaty which provides for promotion and defence of peace and security as one of the objectives of SADC;

CONSCIOUS that illegal firearms, most commonly used in the perpetration of crime, contribute to the high levels of instability, extended conflict, violence and social dislocation evident in Southern Africa and the African continent as a whole;

AWARE of the urgent need to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use, and owing to the harmful effects of those activities on the security of each State and the Region and the danger they pose to the well-being of people in the Region, their social and economic development and their rights to live in peace;

REAFFIRMING that priority should be given to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use of firearms, because of their links with, inter alia, drug trafficking, terrorism, transnational organised crime, mercenary and other violent criminal activities;

CONVINCED that the prevention, combating and eradication of the illicit manufacturing of firearms, ammunition and the other related materials and their excessive and stabilising accumulation, trafficking, possession and use requires international cooperation, the exchange of information, and other appropriate measures at the national, regional and global levels;

STRESSING the need, especially during peace processes and post-conflict situations, to maintain effective control over firearms, ammunition and other related materials;

RECOGNISING the importance of regional and international co-operation and regional and international initiatives undertaken to prevent, combat and eradicate the illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms and related materials;

HEREBY AGREE as follows:

ARTICLE 1

DEFINITIONS

1. In this Protocol, terms and expressions defined in Article 1 of the Treaty shall bear the same meaning unless the context otherwise requires.

2. In this Protocol, unless the context otherwise indicates:

"ammunition" means the complete cartridge including the cartridge case, unfired primer, propellant, bullets and projectiles that are used in a firearm, provided those components are themselves subject to authorisation in the respective State Parties;

"brokering" means:
a) acting for a commission, advantage or cause, whether pecuniary or otherwise; or
b) to facilitate the transfer, documentation or payment in respect of any transaction relating to the buying or selling of firearms, ammunition or other related materials; and thereby acting as intermediary between any manufacturer or supplier of, or dealer in, firearms, ammunition and other related materials and buyer or recipient thereof;

"firearm" means:
a) any portable lethal weapon that expels, or is designed to expel, a shot, bullet or projectile by the action of burning propellant, excluding antique firearms or their replicas that are not subject to authorisation in the respective State Parties;
b) any device which may be readily converted into a weapon referred to in paragraph a);
c) any small arm as defined in this Article; or
d) any light weapon as defined in this Article;

"illicit manufacturing" means the manufacturing or assembly of fire arms, ammunition and other related materials, without a licence or permit from

a competent authority of the State Party where the manufacture or assembly takes place;

"illicit trafficking" means the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from, to, or across the territory of a State Party without the authority of State Parties concerned;

"light weapons" include the following portable weapons designed for use by several persons serving as a crew: heavy machine guns, automatic cannons, howitzers, mortars of less than 100 mm calibre grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder fired rockets, anti-aircraft weapons and launchers and air defence weapons.

"other related materials" means any components, parts or replacement parts of a firearm that are essential to the operation of the firearm;

"small arms" include light machine guns, sub-machines guns, including machine pistols, fully automatic rifles and assault rifles and semi-automatic rifles;

"State Party" means a member of SADC that is party to this Protocol.

ARTICLE 2
SOVEREIGNTY

State Parties shall fulfil their obligations and exercise their rights under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of State Parties.

ARTICLE 3
OBJECTIVES

The objectives of this Protocol are to:

a) prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use in the Region;
b) promote and facilitate cooperation and exchange of information and experience in the Region to prevent, combat, and eradicate the illicit manufacturing of, excessive and destabilising use and accumulation of, trafficking in, possession and use of, firearms, ammunition and other related materials; and
c) co-operate closely at the regional level as well as at international fora to effectively prevent, combat, and eradicate the illicit manufacturing of, excessive and destabilising use and accumulation of, trafficking in, possession and use of, firearms, ammunition and other related materials in collaboration with international partners.

ARTICLE 4
INTERNATIONAL INITIATIVES

State Parties undertake to consider becoming parties to international instruments relating to the prevention, combating and eradication of illicit manufacturing of, excessive and destabilising accumulation of, trafficking in, possession and use of firearms, ammunition and other related materials and to implement such instruments within their jurisdictions.

ARTICLE 5
LEGISLATIVE MEASURES

1. State Parties shall enact the necessary legislation and take other measures to establish as criminal offences under their national law to prevent, combat and eradicate, the illicit manufacturing of firearms, ammunition and other related materials, and their excessive and destabilising accumulation, trafficking, possession and use.
2. State Parties shall enact the necessary legislation and take other measures to sanction criminally, civilly or administratively under their national law the violation of arms embargoes mandated by the Security Council of the United Nations;
3. State Parties further undertake to incorporate the following elements in their national laws as a matter of priority:
    a) the prohibition of unrestricted possession of small arms by civilians;
    b) the total prohibition of the possession and use of light weapons by civilians;
    c) the co-ordination of procedures for the import, export and transit of firearm shipments;
    d) the regulation and centralised registration of all civilian owned firearm in their territories;
    e) measures ensuring that proper controls are exercised over the manufacturing of, possession and use of firearms, ammunition and other related materials;
    f) provisions promoting legal uniformity and minimum standards in respect of the manufacture, control, possession, import, export and transfer of firearms, ammunition and other related materials;
    g) provisions ensuring the standardised marking and identification of firearms at the time of manufacture, import or export;
    h) provisions that adequately provide for the seizure, confiscation, and forfeiture to the State of all firearms, ammunition and other related materials manufactured or conveyed in transit without or in contravention of licences, permits, or written authority;
    i) provisions that ensure the effective control of firearms including the storage and usage thereof, competency testing of prospective firearm owners and restriction on owner's

rights to relinquish control, use, and possession of firearms, ammunition and other related materials;

j) the monitoring and auditing of licences held in a person's possession, and the restriction on the number of firearms that may be owned by any person;
k) provisions that prohibit the pawning and pledging of firearms, ammunition and other related materials;
l) provisions that prohibit the misrepresentation or withholding of any information given with a view to obtain any licence or permit;
m) provisions that regulate firearm brokering in the territories of State Parties; and
n) provisions that promote legal uniformity in the sphere of sentencing.

ARTICLE 6
OPERATIONAL CAPACITY

State Parties, undertake to improve the capacity of police, customs, border guards, the military, the judiciary and other relevant agencies to fulfil their roles in the implementation of this Protocol and to:

a) co-ordinate national training programmes for police, customs and border guards, the judiciary and other agencies involved in preventing, combating and eradicating the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use;
b) establish and improve national data-bases, communication systems and acquire equipment for monitoring and controlling the movement of firearms across borders; establish inter-agency working groups, involving police, military, customs, home affairs, foreign affairs and other relevant agencies, to improve policy co-ordination, information sharing and analysis at national level regarding firearms, ammunition and other related material; and
c) undertake joint training exercises for officials, from countries within the Region drawn from the police, customs and other relevant agencies, including the military where it is involved with border control, and explore the possibility for exchange programmes for such officials within the Region, and with their counterparts in other regions.

ARTICLE 7
CONTROL OVER CIVILIAN POSSESSION OF FIREARMS

State Parties undertake to consider a co-ordinated review of national procedures and criteria for issuing and withdrawing of firearm licences and establishing and maintaining national electronic databases of licensed firearms, firearm owners, and commercial firearms traders within their territories.

ARTICLE 8
STATE-OWNED FIREARMS

State Parties undertake to:

a) establish and maintain complete national inventories of firearms, ammunition and other related materials held by security forces and other state bodies;
b) enhance their capacity to manage and maintain secure storage of state owned firearms;
c) harmonise relevant import, export and transfer documents and end-user control certificates regarding firearms, ammunition and related material; and
d) establish systems to verify the validity and authenticity of documents issued by licensing authorities in the Region.

ARTICLE 9
MARKING OF FIREARMS AND RECORD-KEEPING

1. State Parties undertake to establish agreed systems to ensure that all firearms are marked with a unique number, at the time of manufacture or import, on the barrel frame and, where applicable, the slide and undertake to keep proper records of the markings.

2. The marking referred to in paragraph 1 of this Article shall identify the country of manufacture, the serial number, and the manufacturer of the firearm.

ARTICLE 10
DISPOSAL OF STATE-OWNED FIREARMS

1. State Parties undertake to identify and adopt effective programmes for the collection, safe-storage, destruction and responsible disposal of firearms rendered surplus, redundant or obsolete through, inter alia,:

    a) peace agreements;
    b) demobilisation or reintegration of ex-combatants; and
    c) re-equipment, or restructuring of armed forces or other armed state bodies.

2. State Parties shall pursuant to paragraph 1 of this Article consider:

    a) encouraging full preparation for, and implementation of the collection, safe-storage, destruction or responsible disposal of firearms as part of the implementation of peace agreements;
    b) establishing and implementing guidelines and procedures for ensuring that firearms,

ammunition and other related materials rendered surplus, redundant or obsolete through the re-equipment or re-organisation of armed forces or other state bodies are securely stored, destroyed or disposed off in a way that prevents them from entering the illicit firearm market or flowing into regions in conflict or any other destination that is not fully consistent with agreed criteria for restraint; and

c) destroying surplus, redundant or obsolete state-owned firearms, ammunition or other related materials.

ARTICLE 11
DISPOSAL OF CONFISCATED OR UNLICENSED FIREARMS

1. State Parties undertake to adopt co-ordinated national policies for the disposal of confiscated or unlicensed firearms that come into the possession of state authorities.
2. State Parties undertake to develop joint and combined operations across the borders of State Parties to locate, seize and destroy caches of firearms, ammunition and other related materials left over after conflict and civil wars.

ARTICLE 12
VOLUNTARY SURRENDER OF FIREARMS

State Parties shall introduce programmes to encourage:

a) lawful firearm holders to voluntarily surrender their firearms for destruction by the State, and in such cases, the State may consider paying compensation in cash or in kind; and
b) illegal firearm holders to surrender their firearms for destruction, and, in such cases, the State may consider granting immunity from prosecution.

ARTICLE 13
PUBLIC EDUCATION AND AWARENESS PROGRAMMES

State Parties undertake to develop national and regional public education and awareness programmes to enhance public involvement and support for efforts to tackle firearms proliferation and illicit trafficking and to encourage responsible ownership and management of firearms, ammunition and other related materials.

ARTICLE 14
MUTUAL LEGAL ASSISTANCE

1. State Parties shall co-operate with each other to provide mutual legal assistance in a concerted effort to prevent, combat and eradicate the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use.
2. Mutual legal assistance shall, inter alia, include the following:
   a) communication of information and transfer of exhibits;
   b) investigation and detection of offences;
   c) obtaining evidence or statements;
   d) execution of searches and seizures;
   e) inspection of sites or examination of objects or documents;
   f) request for judicial documents;
   g) service of judicial documents;
   h) communication of relevant documents and records;
   i) identification or tracing of suspects or proceeds of crime; and
   j) application of special investigative techniques, such as forensics and ballistic and fingerprinting.

3. State Parties may further agree upon any other form of mutual legal assistance consistent with their national laws.

4. State Parties shall designate a competent authority, the name of which shall be communicated to the Executive Secretary, which shall have the responsibility and power to execute and monitor requests for mutual legal assistance.

5. Requests for mutual legal assistance shall be made in writing to the competent authority and shall contain details of the following:
   a. the identity of the authority making the request;
   b. the subject matter and nature of the investigation or prosecution to which the request relates;
   c. the description of the assistance sought;
   d. the purpose for which the evidence, information or action is sought; and
   e. all relevant information available to the requesting State Party and which may be of use to the requested State Party.

6. A State Party may seek any such additional information which it considers necessary for the execution of the request in accordance with its national laws.

ARTICLE 15
LAW ENFORCEMENT

State Parties shall establish appropriate mechanisms for co-operation among law enforcement agencies of the State Parties to promote effective implementation of this Protocol including the:

a) establishment of direct communication systems to facilitate a free and fast flow of information among the law enforcement agencies in the Region;
b) establishment of an infrastructure to enhance effective law enforcement, including suitable

search and inspection facilities at all designated ports of exit and entry;

c) establishment of multi-disciplinary law enforcement units for preventing, combating and eradicating the illicit manufacturing of firearms, ammunition and other related materials and their excessive and destabilising accumulation, trafficking, possession and use;
d) promotion of co-operation with international organisations such as the International Criminal Police Organisation and World Customs Organisation and to utilise existing data bases such as the Interpol Weapons and Explosives Tracing System;
e) establishment of national focal contact points within the respective law enforcement agencies for the rapid information exchange to combat cross-border firearm trafficking; and introduction of effective extradition arrangements.

ARTICLE 16
TRANSPARENCY AND INFORMATION EXCHANGE

State Parties undertake to:

a) develop and improve transparency in firearms accumulation, flow and policies relating to civilian owned firearms; and
b) establish national firearms databases to facilitate the exchange of information on firearms imports, exports and transfers.

ARTICLE 17
INSTITUTIONAL ARRANGEMENT

State Parties shall establish a Committee to oversee the implementation of this Protocol.

ARTICLE 18
SETTLEMENT OF DISPUTES

Disputes arising from the interpretation or application of this Protocol, which cannot be settled amicably, shall be referred to the Tribunal.

ARTICLE 19
AMENDMENTS

1. An amendment to this Protocol shall be adopted by a decision of three quarters of the State Parties.
2. Subject to sub-article (3) of this Article, a proposal for the amendment of this Protocol shall be submitted to the Executive Secretary by any State Party for preliminary consideration by the Council.
3. The Executive Secretary shall submit a proposal for amendment to the Council under paragraph 2 of this Article after:
    a) all Member States have been duly notified of the proposal; and
    b) three months have elapsed since the notification.

ARTICLE 20
SIGNATURE

This Protocol shall be signed by duly authorised representatives of Member States.

ARTICLE 21
RATIFICATION

This Protocol shall be ratified by the Signatory States in accordance with their constitutional procedures.

ARTICLE 22
ENTRY INTO FORCE

This Protocol shall enter into force thirty (30) days after the deposit of the instruments of ratification by two thirds of the Member States.

ARTICLE 23
ACCESSION

This Protocol shall remain open for accession by any Member State.

ARTICLE 24
WITHDRAWAL

1. Any State Party may withdraw from this Protocol upon the expiration of twelve (12) months from the date of giving to the Executive Secretary a written notice to that effect.
2. Any State Party that has withdrawn pursuant to paragraph 1 of this Protocol shall continue to enjoy all rights and benefits under this Protocol and shall remain bound by the obligations herein until the expiration of the period of twelve (12) months from the date of giving notice of intention to withdraw.

ARTICLE 25
DEPOSITARY

1. The original text of this Protocol and all instruments of ratification and accession shall be deposited with the Executive Secretary, who shall transmit certified copies to all Member States.
2. The Executive Secretary shall register this Protocol with the Secretariats of the United Nations Organisation and the Organization of African Unity.

IN WITNESSES WHEREOF, WE, the Heads of State or Government or our duly authorised representatives, have signed this Protocol.

Done at ……..…… this ……. day of …… in three (3) original texts in the English, French and Portuguese languages, all texts being equally authentic.

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About this paper

The SADC Protocol on the Control of Firearms, Ammunition and other Related Materials' major objective is to prevent, combat and eradicate the illicit trade of firearms, ammunition and other related materials in the Southern African region through the mobilization of a regional commitment to policy and practice. The implementation of its comprehensive provisions presents enormous challenges for member states. However, if viewed as a framework through which regional initiatives can be carried out cooperatively to deal with the problem of firearms and related materials, then its impact on reducing small arms and light weapons in the region and its contribution to greater stability and development can be more effectively measured.

About the author

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