Review of the Progress in Canadian Implementation of the UN Programme of Action on Small Arms

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About this Paper
This paper was prepared for the Small Arms Working Group of Peacebuild. The paper is part of a series that explores key policy areas for Canadian government attention at the July 2008 United Nations Third Biennial Meeting of States to Consider Implementation of the PoA (programme of action on small arms and light weapons). The papers were first presented at a meeting between SAWG and Foreign Affairs and International Trade Canada in April 2008. The support of the Canadian International Development Agency (CIDA) is gratefully acknowledged.

The Small Arms Working Group (SAWG)
SAWG seeks to engage the Canadian peace, disarmament, human rights and development NGO communities in the development and promotion of national and international policies and measures to reverse the diffusion and misuse of small arms and light weapons. Project Ploughshares is the coordinating agency of the working group.

Through meetings, workshops and roundtables on small arms, the Working Group provides a forum, which encourages members to exchange information, share lessons learned and explore specific areas of collaboration and serves as a link between the NGO community and the Canadian government by engaging in small arms policy dialogue with relevant departments.

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Introduction

The 2001 United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN PoA) is arguably the most significant multilateral agreement to date on small arms and light weapons (SALW). Although it is not a treaty, the UN PoA compiles a broad range of important political commitments by UN member states in response to common threats from the proliferation and misuse of SALW. Adherence to these commitments by governments would do much to reverse the deleterious impact of small arms on human, national, regional, and global security.

Canada was an early proponent of multilateral action on SALW and an active architect of the UN PoA. Because Canada is a leading state on the small arms file, its progress in implementing PoA commitments reflects more than success in meeting the agreed provisions. It also demonstrates active endorsement for a global instrument that Canada helped to construct and continues to promote. The extent of Canadian PoA implementation is thus doubly significant. The details of Canada’s reports to the PoA are pertinent not only for what they say about the state of Canadian activity on small arms, but also for what they say about Canada’s global leadership on small arms issues.

The purpose of this review is to examine and evaluate the nature and extent of Canadian implementation of the UN PoA. Canada is obligated to report on the many commitments made in the PoA and the review will provide a summary of the extent to which Canada has met those commitments, with attention to its obligations in some key areas. From the reports that Canada has submitted to the UN to date, and from a recent draft report for 2008, it is possible to analyze progress or regress in Canadian implementation of the PoA, and identify those areas where Canada has or should strengthen normative measures. Finally, the review will also provide recommendations on Canadian policy and action that would advance Canadian implementation of, and ultimately support for, the PoA.

The progress review consists of three components. The first component describes in some detail Canada’s implementation record with respect to core commitments under the UN Programme of Action. These fall under the six categories of brokering, export regulation, import regulation, marking and tracing, stockpiling, and international cooperation and assistance. Largely through the comparison of Canada’s national reports since 2003, it was possible to determine where and how Canada undertook or advanced implementation of relevant commitments under most categories. For some categories it was possible to draw on other sources, such as Canada’s latest report on the export of military goods, for details on Canada’s export regulation. The resulting analysis has identified several areas in which Canada could institute changes and revisions to advance Canadian implementation of the UN PoA. A summary of these has been drawn together as recommendations for Canadian policy and action, and this summary forms the second component of the review.
The final component is an annex of four tables summarizing the record of Canadian implementation of the key provisions of the UN Programme of Action on small arms. The tables reproduce the commitment categories identified by the 2006 IANSA/Biting the Bullet publication, Reviewing Action on Small Arms 2006: Assessing the First Five Years of the UN Programme of Action, more commonly known as the “Red Book.” The information on Canada reported in the Red Book is included in the year 2006 row of the tables. The data in the subsequent two rows—for the years 2007 and 2008—have been added based on information collected in the research for this paper. Where no entry is made, either an entry is not applicable (for example, whether there has been a subsequent review of legislation that was reviewed between 2001 and 2006), or the Canadian government has not reported enough detail to merit an entry (for example, whether Canadian security forces regularly review weapons stockpiles).

It is important to note that in the period since the UN Programme of Action was agreed in 2001 Canada has made significant advances to meet PoA commitments. This is particularly true of its commitments with respect to international cooperation and assistance, its support for developing global SALW transfer principles (in particular through the hosting of an important international meeting on the subject in Geneva in 2007), and its collaboration with, and openness toward, civil society. Among other efforts to meet PoA requirements, it established an early national point of contact within DFAIT and later a national coordination mechanism—the National Committee on Small Arms and Light Weapons, which includes representatives of civil society and all the relevant federal departments with responsibility for policies and practices related to small arms and light weapons. The National Committee first met in 2003 and again in each of the subsequent three years. Between the 2001 PoA agreement and its Review Conference in 2006, Canada also submitted three reports to the UN on PoA implementation.

At the same time, after a decade of multilateral advocacy of SALW policy and action, Canadian leadership and implementation of the PoA are showing signs of neglect. Based on available information examined for this review, it seems likely that Canada’s report to the 2008 Biennial Meeting of States will show little advance over its 2006 report to the Review Conference. Of greater concern, there is growing evidence that the implementation of some important commitments is experiencing deliberate delays or even reversals. Existing reports by Canada bear witness to stalling across a range of commitments. As what follows will show, the same text is used in consecutive reports to explain delays in implementation of a number of regulations, with only the dates changed to more distant points in the future.

The record of past reports to the PoA and more recent elaboration by the Department of Foreign Affairs and International Trade (DFAIT) suggest—at a minimum—a lack of clarity in what may be taken to be Canada’s strategy on small arms. DFAIT (2007a) has recently identified six policy priorities on its SALW webpage that correspond to priorities referenced in Canada’s national statement to the PoA Review Conference in 2006. A seventh focus was noted at the Review Conference: “where appropriate, small arms and light weapons programming should be mainstreamed into the national development plans and strategies of development countries and the international development community.” Although this work is not included in DFAIT’s current list of SALW priorities, it does appear as one of four “key areas of activity for programming” in a description of the Mine Action and Small Arms Team (DFAIT 2008). Meanwhile, only stockpile management and destruction of surplus...
More seriously, there are significant contradictions between Canada’s SALW policy priorities and Canadian action. For example, Canada has long called for improved national regulations for the civilian possession of arms. DFAIT (2007a) has identified “adequate national regulation of civilian possession and use of small arms” as one of its six priority areas for UN PoA and small arms attention. Yet Canadian domestic regulations on civilian possession of firearms have been weakened by recent “amnesties” on civilian license fees and registrations, now extended to 2009. Canadian advocacy of global action to improve regulation of the civilian possession of small arms is consequently countered by a decline in domestic standards.

Similarly, the DFAIT (2007) website notes that “Canada encourages countries to implement the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.” The marking and tracing instrument was adopted by the UN General Assembly in 2005. As described below, not only has the Canadian government failed to implement the instrument in the subsequent two years, but it has deferred requisite national regulations from entry into force until at least 2009.

Canadian action is found wanting with regard to other PoA provisions. On the issue of illicit brokering, in particular, Canada has made no effort to pursue brokering regulation, claiming that existing controls are adequate. Yet multilateral instruments to which Canada is party clearly argue for broker-specific legislation, since there are many aspects of brokering that go beyond the export/import/transit regulations that Canada suggests are sufficient.

Canada should be applauded for emphasizing the centrality of human security to Canadian policy and action on SALW in all reports to the UN PoA to date. A “people-centred approach” to the SALW issue has been used to address the suffering of individuals and communities around the world caused by the proliferation and misuse of small arms and light weapons. Taking this approach, Canada has demonstrated regional and global leadership on small arms before and since the PoA was agreed in 2001. As the following review will show, however, if Canada is to maintain this leadership—as surely it must—then it must do more to meet the PoA commitments it has made.

**Brokering**

The PoA’s (UN 2001) requirement for signatories “to develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering” is a key element of the agreement. The call by the PoA for national legislation or administrative procedures on brokering recognizes that at the core of the illicit trade of SALW is the problem of widespread availability, often facilitated through brokering. The UN has sought to define the measures necessary to prevent illicit brokering by commissioning a Group of Government Experts (GGE) to produce recommendations on preventing, combating, and eradicating illicit brokering in SALW. The GGE report (UNGA 2007, pp. 13-15) calls on states to develop laws, regulations, and procedures to register and
screen potential brokers, keep records on brokers, institute broker licensing, and set penalties and fines for violations of national laws and regulations.

Unfortunately, as Canada’s most recent implementation report to the PoA acknowledges, currently “there is no explicit legislation on the brokering of SALW in Canada” (Canada 2006). The report offers assurances that, despite a lack of legislation concerning the brokering of SALW, “brokering is broadly addressed under a variety of Canadian statutes” (Canada 2006, p. 10). Three core statutes are listed: the Export and Import Permits Act, the Defence Production Act, and the Firearms Act. The Canadian report claims that, while none of these statutes explicitly deals with brokering, the totality of the three provides effective and comprehensive regulation of brokering in Canada. A detailed inspection of these three statutes reveals, however, that although they address a variety of concerns relevant to brokering, inadequacies and loopholes remain and these can only be addressed by instituting formal legislation on the brokering of SALW.

Canada’s report to the 2006 PoA Review Conference provides an overview of why current legislation is viewed to effectively regulate brokering. The following (p. 10) is an excerpt from the June 2006 report:

Under the Export and Import Permits Act, for example, brokers who act as exporters-of-record for items on the Export Control List are required to apply for export permits. In addition, there are very strict controls with respect to automatic firearms subject to the provisions of the Automatic Firearms Country Control List. Activities related to exports to countries included on the Area Control List are also closely regulated.

Under the Defence Production Act, the domestic possession, examination and transfer of “controlled items”, including most munitions, are strictly controlled so any brokers with access to controlled goods or technologies are regulated.

The Firearms Act only regulates business directly involved with firearms within Canada. Should firearms be sourced from Canada, however, firearms registration information could be used to identify their origins. Such information may be a useful investigative tool. The United Nations Act and the Anti-Terrorism Act address brokering activities related to exports to countries under UN embargo and to terrorist financing.

Even so, these statutes do not effectively regulate and monitor all the activities that facilitate the illicit brokering of SALW in Canada. These may be as simple as a broker’s making use of telecommunications resources while in Canada, or as intricate as a broker’s using Canadian financial services or completing financial transactions to support brokering in another state. The three statutes listed by Canada in its 2006 report deal only with the physical movement of SALW and do not address core elements that support brokering, whether illicit or licit.

It must be noted that, while Canada contributed to the OSCE 2003 Handbook of Best Practices on Small Arms and Light Weapons, it has seemingly ignored non-optional core elements of the handbook’s Brokering Controls, specifically that “licensing should be required for all relevant activities that take place on a state’s own territory” (Part IV, p. 10). It is certainly
within Canada’s territorial jurisdiction to enforce a license requirement on brokers, whether
you are Canadian citizens or foreign nationals within Canada facilitating the brokering of
SALW.

In addition, Canadian statutes that address brokering indirectly fail to deal with
extraterritorial activities. Beyond the United Nations Act, the Anti-Terrorism Act, and the Special
Measures Act, which explicitly deal with transactions to embargoed destinations, there is no
legislation in Canada that explicitly deals with the actions of Canadian citizens outside of
Canada in relation to brokering.

Canada’s draft 2008 report notes:

“Canada… has jurisdiction to prosecute offences… where elements of the offence
took place outside of Canada, provided there is a real and substantial link to
Canada. In addition, Canada’s conspiracy provision allows for the prosecution
of an accused person who conspires, in Canada, to commit an offence outside
of Canada, provided it is an offence both in Canada and under the laws of that
place.” (p.11)

The measures noted in the draft 2008 report do not adequately address the nature of illicit
SALW brokering, however. Since illicit brokers often seek refuge in and operate from states
in which their activity is not in violation of the law, under Canada’s current regulations
Canadian brokers operating from such states would be immune from prosecution.

This is a major regulatory loophole. By being selective in their location, Canadian brokers
who conduct operations outside Canada are free to exploit unregulated areas without fear of
reprisal in Canada. The OSCE (2003, Part IV, p. 10) recognizes that “it is often in the very
nature of such transactions that they involve activities on foreign territory.” The illicit
brokering of SALW is a complicated enterprise, as it requires complex transit routes and
“opaque financial transfers through offshore banking and shell companies” (UNGA 2007, p.
7). Adequate national legislation must address the very nature of illicit SALW brokering by
closing regulatory loopholes that ease the passage of illicit brokers and their products.

The United Kingdom has set a precedent for the prosecution of illicit arms dealers who
broker weapons outside of their country of origin. In November 2007, under legislation that
entered into law in 2003, the UK successfully prosecuted a British citizen who was moving
arms from Iran to Kuwait. Article 9 of the UK Trade in Goods (Control) Order 2003 was used
to prosecute the illicit SALW broker; although articles 3 and 4 of the legislation should be
highlighted as well. The Government of Canada should examine this key piece of legislation
and strongly consider developing similar legislation to prevent the illicit extraterritorial
brokering of SALW by Canadian citizens.

Beyond brokering controls to regulate the actions of Canadian citizens outside Canada, the
Government of Canada is obligated to put into place measures agreed with regional and
global partners. The groundwork for strong brokering controls extends beyond the PoA,
and Canada has played a role in the development of multilateral brokering measures even if,
unfortunately, it has not instituted most of these measures.
Canada is party to international instruments that have a bearing on brokering control policy and practices. These commitments stem from Canada’s membership in multilateral organizations, including the Organization for Security and Co-Operation in Europe, the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, the Organization of American States (OAS), and the United Nations. Because Canada agreed “in principle” with the European Union Code of Conduct for Arms Exports in 1999, it is also bound by the criteria of the EU Code. As previously mentioned, in addition to the PoA the UN has sought to further define measures necessary to prevent the illicit brokering of SALW by sanctioning a Group of Government Experts to produce recommendations on preventing, combating, and eradicating illicit brokering in SALW.

The Model Brokering Regulations developed at the 34th Regular Session of the Inter-American Drug Abuse Control Commission (CICAD) of the OAS in Montreal perhaps represent the most comprehensive measures that Canada has helped to formulate but not enact. Although not a binding instrument, the 2001 model regulations provide a set of standards for OAS states to use when establishing brokering regulations. They include numerous provisions that would make Canada a better regional partner in transnational efforts to institute common brokering controls. They call for states parties to develop a national authority or point of contact and mandatory registration and licensing, and they outline prohibitions and offences.

Having a unified system of brokering controls among OAS members would greatly enhance the exchange of information on individual brokers, “including information relative to ineligibility, debarments and denied applicants” (CICAD 2001). Instituting measures such as the CICAD model regulations and OSCE guidelines would move Canada’s brokering controls beyond mere indirect domestic statutes. Only when Canadian legislation effectively addresses the domestic, regional, and global complexity of SALW brokering will Canada be living up to its PoA obligation of adequately “regulating the activities of those who engage in SALW brokering” (UN 2001). Moreover, by fully instituting obligations under international conventions and agreements Canada could become a strong partner in multilateral efforts to eradicate the illicit brokering of SALW.

Export Regulation

The export of SALW from Canada is regulated by the Export and Import Permits Act of Canada, and is managed by the Export and Import Controls Bureau of DFAIT. Canadian regulation of the export of small arms and light weapons is relatively strict, following legislative and procedural improvements since 1991. Canada’s Criminal Code has banned civilian possession of automatic firearms for 30 years, and more recently the government has imposed additional restrictions on the export of firearms and other SALW. In general, Canada has a responsible small arms export record and has done a better job than many suppliers in keeping small arms out of the hands of those that misuse them. Even so, there are significant regulatory gaps and, especially in areas where legislation is subject to interpretation, SALW export approval may be in contravention of Canada’s commitment to the PoA.
Canada requires a permit for the exportation of SALW to any state, with the exception of the United States. Only when an exporter wishes to export a firearm listed as prohibited under the Firearms Act is there a requirement to obtain a permit to ship to the US. Currently, non-restricted and restricted firearms may be shipped to the US from Canada without export permits, even though these shipments must be reported to the Canadian Firearms Centre (CFC). Consequently, most firearms shipments to the US are excluded from the firearms export permit process required for all other countries by the Export Controls Bureau. As a result, to date the Bureau could not and has not maintained or reported complete data on Canadian firearms shipments to the US.

In all of Canada’s reports to the PoA this gap in policy has been identified as a weakness that would be addressed by incoming legislation as part of the Export and Import Regulations of the Firearms Act. In Canada’s April 2005 report to the PoA it was stated that these regulations were expected to be in place in 2006. However, to date the Export and Import Regulations of the Firearms Act have not been enacted. No reason has been given for the delay and no estimated date of enactment is given in Canada’s 2006 report to the PoA.

The Canadian firearm export relationship with the US is also a special case with regard to retransfer notification. Some firearms of US origin—specifically automatic firearms or firearms of greater than .50 calibre—require authorization from US officials before they can be re-exported from Canada. This authorization is additional to the Canadian requirements that must be met before Canada will issue an export permit. Shipments of automatic firearms from Canada to the United States—possible because the US is a member of the Automatic Firearms Country Control List (AFCCL)—require permits, but re-export of these weapons from the US does not require approval from Canada. Canada has not reported on its retransfer requirements for other states, but it appears that in the case of the US, at least, prior notification is not required.

At the international and regional levels Canada is party to many conventions and agreements that have a bearing on SALW export control policy and practice. Canada is an active participant and leader in advancing multilateral principles to control the export of SALW, and it must be commended for advocating improvements to the PoA. Most recently, in August 2007, Canada hosted an “Informal Meeting on Transfer Control Principles for Small Arms and Light Weapons” in Geneva. The international meeting, proposed by Canada at the otherwise unproductive 2006 Review Conference on the UN PoA, was aimed at advancing PoA implementation by identifying and refining “global principles that could provide guidance with respect to the transfer of small arms and light weapons throughout the world” (DFAIT 2007b). Yet, despite Canada’s taking the lead on the international stage, the criteria that govern Canadian arms exports have not changed since 1986. While Canada participates in multilateral forums, it has not amended its control criteria to reflect emerging international standards and, especially, important obligations under international humanitarian and human rights law. Indeed, because in several cases such obligations are legal requirements (for example, the obligation to participate in a UN arms embargo) the Canadian criteria, which are subject to interpretation and being overruled, should be replaced with regulations. Similarly, the transparency of Canadian reports on small arms, light weapons, and other military exports is inadequate and, indeed, has declined with the latest, belated report on Canada’s export of military goods. In contrast to earlier annual reports, the report released in December 2007 covers the three-year period 2003 to 2005. Moreover, the report detail has
reverted to the lower transparency standards before 1996, the year in which some description was added beyond the generic categories contained in the latest document.

The transparency of Canadian exports of SALW could be strengthened by the following improvements to the annual government report:

- including data on exports to the United States (as was done in 2006 when Canada reported SALW exports to the UN Register of Conventional Arms). The US is by far the largest recipient of Canadian military goods and is among the largest recipients of small arms. By omitting data on exports to the US, Canada is not meeting international reporting obligations.
- changing the SALW categories of the annual report to the recommended categories of the UN Register and providing detail on the numbers and values of weapons exported;
- adding details of SALW shipped as part of larger weapons systems; and
- providing more detailed annual data on export permits issued and denied for all classes of weapons, including SALW.

Over the next few years, Canada will have an important opportunity to bring coherence to its domestic and international policies on export controls of SALW. It can do this by ensuring that its own control criteria and practice reflect the international standards that it supports and advocates for all states. This means that, while it continues to press internationally for state transfer decisions to reflect obligations under international humanitarian and human rights laws, it should also amend its own control criteria accordingly. Canada does not need to wait for the negotiation of an Arms Trade Treaty to make domestic improvements. A review of its relevant commitments should clearly show that additional guidelines and regulations are needed and should be made explicit in export control policy. The process can begin by drawing on the core principles for which Canada has already indicated support—those developed by the Arms Trade Treaty Steering Committee (2007).

Import Regulation

As with exports, the import of SALW into Canada is regulated by the Export and Import Permits Act of Canada, and is managed by the Export and Import Controls Bureau of DFAIT. Currently the non-commercial import of a non-restricted firearm into Canada does not require a permit, as long as the importer holds a valid firearms licence (Canada 2006). Non-restricted firearms include:

- semi-automatic rifles and shotguns with barrels that are at least 470 mm (18.5 inches) long, and do not otherwise fall into a restricted or prohibited category; and
- single-shot or manual repeating rifles and shotguns of any length, as long as they are not designed or adapted to be fired when reduced to a length of less than 660 mm (26 inches) by folding, telescoping or other means (CBSA 2007).

The importation of firearms for a commercial purpose does not require an import permit as long as the importer has a Canadian Firearms Business License. With this license a commercial importer is free to import non-restricted firearms. In addition to having a Canadian Firearms Business License, importers of restricted firearms must also obtain an
Authorization to Transport from their provincial Chief Firearms Officer (Canada 2006). In accordance with multilateral agreements, including the PoA, Canada should expand import regulations on SALW to include mandatory permits for the import of all classes of SALW—prohibited, restricted, and non-restricted—into Canada.

According to Canada’s June 2006 report to the PoA, “current Canadian policy allows for individuals to import firearms, other than prohibited firearms, without an import permit.” The perception left by the report is that this policy is about to change, since “individuals wishing to import firearms will be required to obtain an Authorization to Import by the Registrar of Firearms, once the Import Control Regulations enter into force.” This perception has been left by every report Canada has submitted to the PoA since 2003 when Canada (2003, p. 9) stated, in relation to import permits, “Pending legislation proposes that residents wishing to import a firearm must also obtain an Authorization to Import.” While assurances such as these, if taken at face value, are encouraging and demonstrate an effort to strengthen import regulations, when repeated over the course of three reports their credibility is diminished. The repeated statements do not give timelines of pending regulations and do not provide any explanation for the delay in bringing Authorization to Import laws into force. To restore the credibility of planned measures, when legislation listed in prior reports has not gone into force an explanation for the delay and a new expected date of implementation should be given.

Marking and Tracing

Canada’s June 2006 report to the PoA provides assurances of pending legislation to fulfill the SALW marking obligations under the PoA’s International Tracing Instrument (ITI). The ITI, which extends the national marking requirements found in the PoA, was adopted by the General Assembly, on December 8, 2005. The ITI (UN 2005) calls for:

marking on each imported small arm or light weapon, permitting identification of the country of import and, where possible, the year of import and enabling the competent authorities of that country to trace the small arm and light weapon; and require a unique marking, if the small arm or light weapons does not already bear such a marking.

As part of national reports to the PoA states are encouraged to include information on the progress of implementation of the ITI. Canada’s 2006 national report makes reference to the fact that “regulations providing for import and export marking were issued in December 2004, but have not yet entered into force.” Canada’s draft 2008 report is more forthcoming:

Firearms Marking Regulations that were scheduled to come into effect on December 1, 2007 were deferred to December 1, 2009, in order to provide Canadian firearms importers additional time to comply with the requirements, and for the Government of Canada to conduct an independent study of the implementation and potential impact of the Regulations. These regulations would require all newly imported firearms to have the word “Canada” or the letters “CA” and the last two digits of the year of import permanently stamped or engraved on the firearm. (p. 11)
The 2008 draft report also notes that this is the second time the regulations have been delayed. Elsewhere, we learn that the implementation of the Firearms Marking Regulations “was initially set for April 1, 2006,” but, “following representations from firearms associations and of firearms businesses, especially firearms importers, implementation was deferred until December 1, 2007” (Canada Gazette 2007).

The second deferral to December 2009—exactly five years after the legislation passed and regulations were approved by the House of Commons—represents a major breach of Canada’s political and legal commitments. The fact that the Government has established a process to further study the Firearms Marking Regulations suggests that there is little prospect that these regulations will enter into force soon.

Canada committed to instituting the Firearms Marking Regulations when it signed the 1997 CIFTA firearms convention and the 2001 Firearms Protocol of the UN Convention Against Transnational Organized Crime. Unfortunately, Canada has yet to ratify either agreement, largely because of its failure to institute import marking regulations. Its lack of import marking regulations is leaving Canada in a marginalized position in the hemisphere since 28 of 35 OAS member states have ratified CIFTA. In this area of SALW control, Canada is lagging behind the United States, which has had import marking regulations in place since the adoption of the 1968 Gun Control Act. As the Canadian Association of Police Boards (2007) stated in a letter to the Minister of Public Safety in November 2007, “currently Canada is profiting from the United States’ system of import marking and is not living up to its obligations.”

In contrast to its implementation of marking commitments, Canada has adopted tracing technologies that are being utilised by regional and international partners. The Royal Canadian Mounted Police IWETS prototype and the Firearms Reference Table are described in the “International Cooperation and Assistance” section below.

Stockpiling

Stockpiling, like brokering, is not specifically addressed by Canadian legislation and regulations. According to Canada’s 2006 report to the UN PoA, although there are “no distinct offences in the Canadian Criminal Code related to stockpiling, the provisions dealing with illegal manufacture and possession of firearms would prohibit illegal stockpiling” (p. 13). While these provisions may broadly address illicit stockpiling they should not be regarded as comprehensive regulation. Possession laws dictate the registration of non-restricted firearms and limit the possession of restricted and prohibited firearms. Manufacture laws merely apply to prohibited and restricted weapons, stipulating when their manufacture or transfer is illegal. If Canada is to live up to its PoA obligations it must institute a stockpile management system that controls illicit stockpiling through legislation and legal stockpiling through effective regulation. In agreeing to the PoA, Canada has agreed to institute “effective stockpile management and security, in particular physical security measures, for small arms and light weapons” (UN 2001). While Canada has been a strong multilateral partner in helping other nations to set up stockpile management systems, it is lagging in instituting its own system.
Canada’s 2006 report to the PoA provides an outline on developing common principles for stockpile management at the international level. Canada has sought to encourage national procedures for stockpile management by supporting the OSCE Document on Stockpiles of Conventional Ammunition and co-sponsoring “a guide on national procedures for stockpile management and security to be included in the OSCE Handbook of Best Practices on Small Arms and Light Weapons” (Canada 2006, p. 15). Canada also has been an active sponsor of the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) missions that deal with stockpile management. Canada donated software to UN-LiREC to register stockpiled or destroyed firearms, although there is no indication of its use within Canada. Canada has also donated software and assigned a technologist from the RCMP Forensic Laboratory Services to UN-LiREC as a “Monitoring Verification Commission Member and Chief Firearms Technical Advisor for Firearms Destruction Missions 2002–2003” (Canada 2006, p. 17). Canada has demonstrated international leadership by encouraging the institution of PoA stockpiling management measures. It should now turn its attention to domestic implementation of these measures.

As with import/export laws, Canadian stockpiling regulations have been pending for years. Canada’s 2003 inaugural report to the PoA stated that “reporting requirements for public agency firearms are set out in the Public Agents Firearms Regulations. These Public Agents Firearms Regulations are not yet in force” (p. 7). Once again, each of Canada’s national reports to the PoA has cited delayed legislation that has yet to come into force. When legislation is still pending three years after it was first reported to the PoA an explanation should be given for the delay and assurances should be provided only when the prospect of its entering into force is strong.

Canada reported in 2006 that “surplus firearms held by public agencies will be required to be destroyed, with limited exceptions for public purposes, once the amendments to the Public Agents Firearms Regulations enter into force” (p. 7). The draft 2008 report sets October 31, 2008 as the date when these regulations will come into force (p. 6), signalling a commitment on the part of the Canadian government to enact surplus regulations on domestic public agencies.

While the Public Agents Firearms Regulations have not yet entered into force, many public agencies are already invoking key measures. For instance, it is noted that “the RCMP currently destroys all surplus firearms as a matter of policy. As part of a recent Small Arms Replacement Program, the RCMP destroyed more than 20,000 surplus revolvers in the manner specified by the Public Agents Firearms Regulations” (p. 7). Such an initiative on the part of a public agency should be commended. Unfortunately, although this example demonstrates the progress of the RCMP’s destruction program, the number given for destroyed revolvers in the 2006 report was exactly the same as that given in the 2003 report (p. 13). If one were to consider past reports when evaluating the merit of current initiatives, the impression left would be that the RCMP’s destruction program has been stagnant for three years.

The Department of National Defence is responsible for defining what the Canadian military does with surplus SALW. Information on the department’s surplus procedures in Canada’s 2006 PoA report is vague. The report states that the department “reviews its weapons requirements on a continuing basis and disposes of any surpluses in an appropriate manner”
The “appropriate manner” is not explained. Rather, the report notes that the Department of National Defence “reports destruction of its small arms to the … OSCE on an annual basis” (p. 7). If the same commendable transparency were applied to Canada’s national reports to the PoA it would strengthen significantly Canadian reporting on stockpiling.

The transfer of surplus firearms to Canadian businesses and civilians also remains a concern. While Canada provides the assurance that “public agencies generally do not transfer surplus firearms to individuals or businesses for civilian use in Canada,” (Canada 2006, p. 7) no explanation is given of the circumstances in which Canada would approve the transfer of public SALW to private citizens and businesses. An explanation of the exceptions to the no-transfer policy would strengthen the understanding that these are rare occurrences.

Canada’s 2006 report also states that “SALW identified as surplus to the Canadian Armed Forces are either sold to the militaries of allied nations, transferred to approved public agencies or destroyed” (p. 7). It is not apparent whether the term “allied nations” in this context is limited to the countries on the Automatic Firearms Country Control List (AFCCl). In Canada’s draft 2008 report it is made clear that the commercial export of automatic firearms “can only be issued for destinations that are included on the AFCCl.” It is also understood that “only those countries with which Canada has an intergovernmental defence, research, development, and production arrangement are eligible to be included on the AFCCl” (p. 8). Yet, given the recent example of the transfer of surplus DND firearms to Afghanistan, it appears that these commercial regulations are not observed by the Department of National Defence.

As part of the Canadian effort to train the Afghan National Army (ANA), in 2008 Canada transferred 2,500 surplus C-7 automatic rifles to the ANA (Regehr 2008). The training and the equipping of the ANA are seen as necessary components of the security assistance provided as part of Canada’s ongoing mission in Afghanistan. Yet legitimate concerns arise about the risk of diversion of the arms once they have been transferred to the ANA. SALW proliferation and diversion is a recognized problem in Afghanistan. According to Oxfam International (2006, p. 3), there could be as many as 10 million small arms circulating in Afghanistan, a country of 23 million people. As Ernie Regehr (2008) of Project Ploughshares notes:

> The legal status of most of [the Canadian] weapons is at best ambiguous and illegal armed groups are a threat to constitutional authority throughout the country. Any supplier that decides to add still more weapons to that super-saturated small arms environment had better be in a strong and confident position to ensure that none of them are diverted to exacerbate the extraordinary challenge that small arms already present to a country not short on challenges.

The sale of surplus SALW to allied militaries is an important category of SALW stockpiling and disposal. There is little information on such transfers in the public domain and no information on the type of end-use assessments the Canadian military undertakes. Disclosure of such information in the PoA report is another important obligation that needs to be addressed.
International Cooperation and Assistance

At the international level Canada is an active supporter of the implementation and further development of the PoA. Canada has funded numerous initiatives that heighten international awareness of the PoA. Indeed, Canada’s 2006 report lists 15 such programs. By sponsoring initiatives such as the Biting the Bullet Consortium’s reports on the Implementation of the UN Program of Action on Small Arms and Light Weapons Canada is contributing to the further development of the PoA. Through funding research programs undertaken by Gun Free South Africa and the Centre for Conflict Resolution that “examined the trade, use and control of small arms within the Southern Africa Region,” it is providing critical assistance toward international implementation of the PoA (Canada 2006, p. 21).

Besides research, education, and awareness programs Canada has provided donor assistance to states and regions requesting support for SALW action, including support for Disarmament, Demobilization, and Reintegartion programs (DDR) in conflict zones. Canada has been an active contributor to the G8’s Africa Action Plan (AAP), has set up a Canada/West Africa Peace and Security Initiative (PSI), and contributed to the Sierra Leone-UNDP Arms for Development Programme, the Small Arms and Light Weapons Sub-regional Program for West Africa, and the ECOWAS Small Arms Unit. Many DDR projects include stockpile destruction programs. Canada has contributed to the destruction of 11,660 tonnes of surplus SALW ammunition, munitions, and explosives in Albania; to the South East Europe Initiative (SEEI) Trust Fund to destroy 22,223 SALW in Serbia and Montenegro; and to UN-LiREC projects in Argentina, Peru, and Paraguay that destroyed over 10,000 illicit or surplus stockpiled military small arms (Canada 2006, p. 16). Canada’s international leadership demonstrates a conviction that the institution of PoA principles and obligations can provide positive contributions to conflict prevention and post-conflict management.

Through the efforts of the RCMP Canada has assisted international law enforcement efforts to prevent the illicit trade of SALW. The RCMP created a working prototype of the Interpol Weapons Electronic Tracing System (IWETS), a high-performance tracing tool that is a major initiative of Interpol. The IWETS will maintain an international database on stolen and counterfeit firearms as well as an automated tracing form and e-mail capability for subject-matter experts (Canada 2006, p. 22). Canada’s 2006 report (p. 22) notes that

> The IWETS provides law enforcement agencies with enhanced capability to share information and intelligence in a timely manner. Effective use of IWETS enhances the capability of law enforcement agencies to link criminals to criminal organizations, criminal organizations to one another, and criminal organizations to terrorist organizations.

The RCMP Forensic Science and Identification Services also have developed a Firearms Reference Table (FRT) and Help Desk, which maintains a comprehensive database of over 120,000 firearms. The database “establishes a systematic and standard method of identifying and describing firearms which assists in:

- accurate import-export controls,
- detection of stolen firearms and tracing,
- accurate international communications involving trans-national crime,
- record keeping/inventory and
- determination of the legal classification of a firearm.” (RCMP 2008)

The FRT is in the process of being integrated into Interpol’s international tracing system, and provides key support for treaties related to firearms trafficking to which Canada is party.

Finally, Canada has been an active partner with international civil society groups, and considers NGOs to be key vectors in aiding the international implementation of the PoA. However, Canada’s 2006 report notes that the last round of NGO consultations organized by DFAIT occurred in 2002 (p. 23). Since then, civil society has participated in meetings of the National Committee on SALW and NGO representatives have had opportunities to comment on Canada’s national reports.

Nongovernmental organizations are vital to SALW policy development since they house relevant policy expertise and experience of small arms-affected communities and regions. Therefore, Canada should reinstitute direct consultations with civil society representatives. It also should maintain funding and support of civil society groups “monitoring the PoA process; conducting SALW policy relevant research, disseminating and exchanging information; and organizing education and awareness-raising events” (Canada 2006, pp. 23-24). In doing so, Canada helps to build a norm of accountability.

Recommendations

Canada’s reports on implementation contribute to the transparency and accountability of the states parties to the PoA. The reports provide important insight into the extent to which Canada has met its small arms commitments. Based on an analysis of these reports the following recommendations have been compiled. If instituted, they would advance the fulfillment of Canada’s obligations under the PoA.

- **Canada should become a stronger partner in multilateral efforts to eradicate the illicit brokering of SALW by instituting brokering obligations of international agreements.**

- **Canada should examine extraterritorial controls in states such as the United Kingdom and develop similar legislation to prevent the illicit extraterritorial brokering of SALW by Canadian citizens in foreign territories.**

- **Canada should amend its control criteria for the export of SALW to reflect emerging standards under international humanitarian and human rights law.**

- **The transparency of Canadian exports of small arms and light weapons could be strengthened by improvements to the annual government report, in particular by including data on exports to the United States and by reporting more detail on SALW exports.**
In accordance with multilateral agreements, including the PoA, Canada should expand import regulations on SALW to include mandatory permits for the import of all classes of SALW into Canada.

If legislation that was listed in prior reports has not gone into force, or reference to the legislation has been omitted, then an explanation for the delay or omission should be provided and a new expected date of implementation should be noted.

If Canada is to live up to its PoA obligations it must institute a domestic stockpile management system that controls illicit stockpiling through legislation and legal stockpiling through effective regulation.

The Department of National Defence should provide annual reports on the destruction of surplus small arms to the PoA, in a manner similar to that by which they report these figures to the OSCE.

The sale of surplus SALW to allied militaries is an important category of SALW stockpiling and disposal. There is little information on such transfers in the public domain and no information on the type of end-use assessments the Canadian military undertakes. Disclosure of such information in the PoA report is another important obligation that needs to be addressed.

Canada should reinstitute direct consultations with civil society representatives.

Notes

1. See, for example, the statements by the Head of the Canadian Delegation to the First Biennial Meeting (2003) and to the Review Conference (2006).

2. Relevant activities range from “making use of telecommunications resources, e.g. telephone calls in the transit area of an airport, facsimile transmissions or data transmission via servers,” making use of financial services or channeling funds via the State in question, through to the actual transit of SALW.

3. Canada’s 2008 report suggests that the CFC role in this process may have changed. Earlier reports cite pending regulations that would have mandated the CFC to authorize all firearm exports. This citation is not included in the 2008 report.

4. Canada reported details of small arms and light weapons exports to the United States during 2006 in its latest report to the UN Register of Conventional Arms. The first-time data contains the number of weapons exported by UN SALW category and by country. The data does not include the value of the shipments.
5. The Automatic Firearms Country Control List is a list of the countries that Canada has deemed eligible to receive prohibited firearms. The current list consists of Australia, Belgium, Botswana, Denmark, Finland, France, Germany, Greece, Italy, Latvia, Netherlands, New Zealand, Norway, Poland, Portugal, Saudi Arabia, Spain, Sweden, United Kingdom, United States.

6. Canada has partially instituted marking regulations by making it mandatory that all domestically produced firearms have a Firearms Identification Number.

References


Canadian Association of Police Boards. 2007. Letter to the Minister of Public Safety, November 23.


### TABLE 1: FOUNDATIONS

<table>
<thead>
<tr>
<th>Year</th>
<th>Point of contact</th>
<th>National Coordination on Small Arms</th>
<th>Civil Society involvement in national coordination</th>
<th>Comments</th>
<th>Reports to DDA</th>
<th>National Strategy on Small Arms</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>National Coordination Mechanism</td>
<td></td>
<td></td>
<td></td>
<td>A= Either a formal national action plan with relatively comprehensive scope, or an active strategy/set of strategies</td>
</tr>
<tr>
<td>2006</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>10 seats for NGOs at annual meeting. No opportunity for policy input from civil society.</td>
<td>3</td>
<td>N</td>
</tr>
<tr>
<td>2007</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>No annual meeting</td>
<td>0</td>
<td>N</td>
</tr>
<tr>
<td>2008</td>
<td>Y</td>
<td>Y</td>
<td>Annual meeting TBD</td>
<td>1</td>
<td>N</td>
<td>A (amended)</td>
</tr>
</tbody>
</table>

*Some illicit brokering covered if breaks a UN arms embargo. Amendments to export and import regulations due to come into force in 2005 and 2006.

**Reviews in 2002 and 2004 largely to cut costs.

* Relevant regulations pending

1 According to the latest Report on Exports of Military Goods from Canada, 2003-2005, “Careful attention is paid to mandatory end-use documentation in an effort to ensure that the export is intended for a legitimate end-user and will not be diverted to illegitimate ends…”

### TABLE 2: LAWS AND PROCEDURES

<table>
<thead>
<tr>
<th>Year</th>
<th>Production controls</th>
<th>Export controls</th>
<th>Import controls</th>
<th>Transit controls</th>
<th>Brokering controls</th>
<th>Comments</th>
<th>Illicit possession</th>
<th>Illicit trade</th>
<th>Illicit manufacture</th>
<th>Illicit stockpiling</th>
<th>Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Laws &amp; procedures</td>
<td>Laws &amp; procedures</td>
<td>Assessment of risk of diversion</td>
<td>Authenticated EUAs required</td>
<td>Retransfer notification</td>
<td>Laws &amp; procedures</td>
<td>Laws &amp; procedures</td>
<td>Review since 2001</td>
<td>Specific control over brokering activities</td>
<td>Review brokers</td>
<td>Licensing individual deals</td>
</tr>
<tr>
<td>2006</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>See* below</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
</tr>
<tr>
<td>2007</td>
<td>Y</td>
<td>Y*</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
<tr>
<td>2008</td>
<td>Y</td>
<td>Y*</td>
<td>Y</td>
<td>Y</td>
<td>Y</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
</tbody>
</table>
**TABLE 3: WEAPONS MANAGEMENT**

<table>
<thead>
<tr>
<th>Year</th>
<th>Stockpile management and security</th>
<th>Destruction and disposal</th>
<th>Disarmament</th>
<th>Marking, recordkeeping, and tracing</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Procedures and systems exist</td>
<td>Disposal policy and practice:</td>
<td>DDR</td>
<td>VWCP</td>
</tr>
<tr>
<td></td>
<td>Regular reviews of stocks</td>
<td>Surplus arms</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Review standard &amp; procedures since 2001</td>
<td>Collected and confiscated arms</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Comments</td>
<td>Disposed, collected, confiscated</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2006</td>
<td>Y</td>
<td>See * below</td>
<td>Y</td>
<td>Various VWCPs</td>
</tr>
<tr>
<td>2007</td>
<td>Y</td>
<td>N ♦ ♦</td>
<td>Y</td>
<td>See ** below</td>
</tr>
<tr>
<td>2008</td>
<td>Y</td>
<td>N ♦ ♦</td>
<td>Y</td>
<td>See ** below</td>
</tr>
</tbody>
</table>

DDR = Disarmament, demobilization, and reintegration; VWCP = Voluntary weapons collection programs;
I = All imported arms must be marked; E = Exported arms must be marked; M = Marking; A = Actively cooperates in tracing.

* Destruction occurs at local level  ** "RCMP destroys all surplus agency firearms as a matter of policy." DND does not.

♦ Relevant regulations pending

**TABLE 4: INTERNATIONAL ASSISTANCE, COOPERATION, AND TRANSPARENCY**

<table>
<thead>
<tr>
<th>Year</th>
<th>Donor assistance</th>
<th>Other agreements and regional and international cooperation</th>
<th>Cooperation with civil society</th>
<th>Transparency and information exchange</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provision of donor assistance</td>
<td>Comments</td>
<td>Member of regional agreement on small arms</td>
<td>Firearms Protocol</td>
</tr>
<tr>
<td></td>
<td>Comments</td>
<td>Member of regional agreement on small arms</td>
<td>Firearms Protocol</td>
<td>Member of other multilateral agreement</td>
</tr>
<tr>
<td>2006</td>
<td>Y</td>
<td>CIFTA, OSCE Document</td>
<td>Signed</td>
<td>Wassenaar</td>
</tr>
<tr>
<td>2007</td>
<td>Y</td>
<td>CIFTA, CICAD Model Regulations, OSCE Document</td>
<td>Signed</td>
<td>Wassenaar</td>
</tr>
<tr>
<td>2008</td>
<td>Y</td>
<td>CIFTA, CICAD Model Regulations, OSCE Document</td>
<td>Signed</td>
<td>Wassenaar</td>
</tr>
</tbody>
</table>

B = Modest/partial but improving; C = Modest/partial and no evidence of improvement.

[Red Book categories for cooperation with civil society also included A = Substantial and systematic; D = Ad hoc/occasional openness; and E = weak.]