

Unlike weapons of mass destruction, on which there is more or less a consensus that they should be rigorously regulated and eventually eliminated, conventional weapons are regarded as legitimate means with which states are entitled, in time of need, to exercise their sovereign right to individual or collective self-defense. Indeed, a tacit *quid pro quo* may exist between the goal of prohibiting weapons of mass destruction and the continuing availability of conventional weapons.¹ As a result, conven-

tional weapons have seldom been treated as objects for a global control. For example, even the Coordinating Committee for Multilateral Export Controls (COCOM) was not a global control mechanism. Instead, it was a mechanism for denying certain technologies only to one group of nations. Another example may be the Conventional Forces in Europe (CFE) Treaty, in which the North Atlantic Treaty Organization (NATO) and former Warsaw Pact states agreed to put ceilings on various types of conventional weapons and to reduce them. In spite of its historic significance and success in reducing conventional arms, this agreement is largely a regional arrangement that reflects a drastic change in the power structure of the world, rather than an indicator of a new trend toward the global reduction of conventional weapons. Today, it is a recognized fact that conventional arms can be legitimately produced, developed, deployed, traded, and even used by any U.N. member state under Article 51 of the U.N. Charter.

However, the end of the Cold War has brought new attempts to modify and limit the previous “sanctuary” of conventional weapons. Three such efforts (transparency, small arms limitations, and bans on dual-use transfers) are discussed at the outset, along with their difficulties to date. Then, a fourth and more promising route—the notion of creating a “code of conduct” for conventional arms transfers—will be examined in greater detail. In light of the problems facing existing efforts, it may be time for us to start thinking about a code of conduct, rather than a legally-binding instrument, on the transfer and production of conventional weapons.

TRANSPARENCY IS NOT ENOUGH

The first major effort to limit conventional arms has been the attempt to bring more transparency to the transfer, production, and stockpiling of conventional arms.

This trend has been exemplified by the establishment—at the initiative of Japan, the European Community nations, and others²—of the U.N. Register of Conventional Arms by Resolution 46/36 L of 1991. The U.N. Register requires all the U.N. mem-

ber states to report to the United Nations every year the number of major conventional weapons exported or imported during the previous calendar year, according to seven categories of weapons and by giving the names of countries of origin or destination of such exports or imports.³

There are three broad goals to be achieved by the U.N. Register. First, as is often stressed, the Register is a confidence-building exercise⁴ and not an arms control measure. From this standpoint, the will to participate in the Register becomes more important than the accuracy of data submitted. The greater the number of participants, even with “nil reports,” the better.

The second objective of the Register is to achieve greater transparency in the field of arms transfers. Here, accuracy rather than participation counts. The fact that information that used to be available only through sporadic newspaper accounts is now confirmed by official reporting represents a great advance in accuracy. It is

VIEWPOINT: DEVELOPING A CODE OF CONDUCT FOR CONVENTIONAL WEAPONS

by Mitsuro Donowaki

Mitsuro Donowaki is an ambassador in Japan's Ministry of Foreign Affairs and a member of the U.N. Secretariat-General's Advisory Board on Disarmament Matters. Previously, he served as Ambassador to the Conference on Disarmament (1989-92), as Ambassador for Arms Control and Disarmament Affairs in Tokyo (1992-93), and, most recently, as Ambassador of Japan to Mexico. He was also a member of the 1992 Panel and 1994 Group of Governmental Experts of the United Nations on the implementation and development of the U.N. Register of Conventional Arms.

gratifying to note that “as in 1992, the 1993 Register produced more precise data on actual deliveries, both quantities and dates, than the currently existing public information.”⁵

The third objective of the Register is to “contribute to restraint in military production and the transfer of arms.”⁶ The prevention of excessive and destabilizing arms build-up forms part of such an objective. The Register by itself is not an arms control measure, so it is not surprising that it has so far failed to achieve much in this field, leading some to criticize it on these grounds. For example, Ambassador Sha Zukang of China writes, “The Register and transparency in armaments are not goals per se: the real goal is to regulate and control the transfer of armaments...”⁷

Perhaps its founders believed that the data submitted to the Register would help dispel fears and promote confidence among nations and, eventually, contribute to restraint in armaments. However, it should be recognized that reality is far more complex. Without any proactive role assigned to the Register, the Register cannot contribute much to arms control. One way to remedy this may be to introduce a consultative mechanism under which states participating in the Register could seek clarification and elaboration of data submitted by others.⁸ Going even a step further, better utilization of the Register for urging restraint on state transfers of weapons should be studied seriously.

THE THREAT OF SMALL ARMS

Efforts in this area have attempted to curb traffic and use of small arms, which continue to cause enormous human suffering, particularly on the African continent. It is said that all the 90 “armed conflicts” in 1993—defined as those causing 25 to 1,000 deaths a year—were within states. More than 90 percent of deaths and injuries in these conflicts were the result of direct fire from small arms and light weapons.⁹ Small arms include such assault rifles as the AK-47, and even shoulder fired anti-aircraft missiles. Because these weapons take the heaviest toll in human casualties and such armed conflicts tend to undermine the very governability of the states concerned, it is often argued that measures should be taken to control the availability of these weapons. This is what the U.N. secretary-general calls “micro-disarmament.”¹⁰

A modest but important achievement in this field was the dispatch of a pilot advisory mission by the

secretary-general to Mali at the latter’s request. As reported to the First Committee of the United Nations,¹¹ the advisory mission’s finding was that a “security first” approach would be the answer. As long as a state government is not in a position to guarantee security of individuals, people start to arm themselves. Small arms are readily available, not only to worried individuals, but also to criminals and conflicting ethnic and other groups; they can be easily manufactured or purchased legally or illegally, or even stolen from authorities. They are difficult to control at their source of supply. Therefore, priority should be given to means by which governments can better control domestic security situations. This effort will require adequate human and material resources, as well as international assistance. Although the finding of the Mali mission was tentative and represented only a first step, the initiative taken by the secretary-general was strongly endorsed by the U.N. General Assembly.¹² This issue has also been linked to the analogous problem of gun control within the domain of individual states.

Another important development in “micro-disarmament” is an attempt to further curb the use of land mines. Reportedly, over 100 million land mines have been laid across 62 countries, causing recurring casualties to innocent civilians. Although the so-called “Inhumane Weapons Convention” of 1981—adhered to so far by more than 40 nations—restricts the use of mines, it does not apply to internal warfare and lacks strong enforcement provisions. At present, preparations are underway to review this convention in late 1995.¹³

CONTROL OF THE TRANSFER OF DUAL-USE TECHNOLOGY

The third major area of attempted progress in controlling conventional arms is the move to ban the transfer of dual-use items that may have civilian uses and uses in developing advanced conventional weapons. These efforts are similar to the prohibitions on transferring dual-use technologies related to weapons of mass destruction (WMD). Such dual-use WMD technologies are already under the control of international regimes such as the nuclear Non-proliferation Treaty (NPT) and the Chemical Weapons Convention (CWC). Enforcement measures against violators, if not perfect, are provided for under such regimes. Furthermore, sub-groups—such as the Nuclear Suppliers Group and their London Guidelines Part I and II—are useful as long

as they function within the framework of larger global control mechanisms.

However, the opposite may be the case when it comes to the question of the transfer of dual-use technology related to conventional arms. Any supplier attempting to restrict access to such technology is bound to be resented as discriminatory. In principle, science and technology should have no boundaries and are to be utilized to further the interests of all nations, particularly the developing nations. Also, conventional weapons are viewed as legitimate means for national self-defense. Furthermore, in view of the fast pace of scientific and technological developments, it is difficult to stop military applications from dual-use technologies. For example, metal pressing technology that can also be used for mass production of fire-arms was once a breakthrough technology. Today, it is a commonplace technology, and nobody would think of controlling its transfer. Computer hardware that 10 years ago was at the cutting edge of computer science is now readily available off-the-shelf. Software is an even more fluid good.¹⁴ As the U.N. experience in Iraq demonstrated, only elaborate on-site inspection and monitoring devices can effectively prevent the clandestine transfer of sensitive technologies. But the cost of deploying such devices worldwide would be prohibitive.

The control of dual-use technology transfers is further complicated by certain other factors. The shrinking of military expenditures worldwide, in addition to the emergence of new supplier states, is causing stiffer competition among suppliers. As a result, licensed production, co-production, and offset arrangements with the recipients are becoming popular, encouraging rather than discouraging technology transfers.¹⁵ According to the recently announced U.S. Arms Transfer Policy, such transfers can be endorsed in order to "enhance the ability of the U.S. defense industrial base."¹⁶ Today, however, national security depends heavily on economic power, particularly on maintaining a competitive edge in technology.¹⁷ Therefore, the same U.S. Arms Transfer Policy refers to a conflicting need to "preserve its military edge" as one of the reasons for transfer restraints. Such conflicting goals in dealing with technology transfers are bound to compound the task of formulating any international regulations.

Although it may be little known to the disarmament community, prior to 1990, six sessions of the intergovernmental Group of Experts on the International Code of Conduct for Technological Transfers were held un-

der the auspices of the U.N. Conference on Trade and Development (UNCTAD), but with few results.¹⁸ Then, starting in 1991, the U.N. Disarmament Commission worked for four years to consider the guidelines and recommendations on "the role of science and technology in the context of international security, disarmament and other related fields." Under the strong initiatives, in particular of the Canadian and Brazilian delegations, intensive efforts were made to identify common principles acceptable to both supplier states and recipient states of dual-use technology transfers. A document embodying fairly general principles and calling for a multilateral dialogue on universally acceptable international norms and guidelines¹⁹ almost commanded a consensus, but failed to be adopted because a few states opposed the inclusion or deletion of just one sentence in the document. As to the transfer of dual-use technologies and of small arms, both have been hard to make transparent by means of a register system because the former consist mostly of software and the latter are too numerous and have too many sources of supply. The clandestine production and transfer of small weapons exacerbate these problems.

The absence of a code of conduct for dual-use technology transfers, however, should not preclude the search for next-best solutions. The utility of existing supplier state regimes cannot be completely denied. For example, should an irresponsible state, such as Iraq at the time of the Gulf War, be allowed free access to missiles capable of delivering WMD simply because the Missile Technology Control Regime (MTCR) and the ex-COCOM regime are suppliers' cartels and are not operating under legally-binding global control regimes? Obviously, it is better to have some restraint mechanisms than to have no rules at all. It would be even better if efforts were made to improve existing mechanisms in order to dispel the genuine concerns of recipient states.

The future of COCOM, which ceased to exist as of March 1994, is a good case in point. Its accumulated experience as an organ for the exchange of information and for the control of arms transfers will no doubt be an asset in dealing with irresponsible states against which embargoes are to be enforced. On-going efforts to widen participation by including former communist states into the new regime and also to promote national export control measures among supplier states should be viewed positively. The munitions and industrial lists of COCOM will have to be streamlined and given more transpar-

ency. COCOM's rule on consensus decisionmaking will have to be modified. Ideally, recipient states not under embargoes may also be encouraged to participate in the new regime.

Before a post-COCOM regime can be formed, the differences of views on Iran between the United States and the Russian Federation, as well as between the United States and its allies, will have to be settled. However, if the efforts mentioned above are pursued, it is possible for a new regime to go even beyond "anything achieved in either the abortive P-5 arms transfer consultations of 1992 or the U.N. Arms Transfer Register."²⁰

THE P-5 AND ARMS TRANSFER LIMITS

The fourth general activity toward limiting conventional arms relates to international restraints on their transfer. In the new post-Cold War era, the bitter experience of the Gulf War of early 1991 has prompted two direct attempts to introduce global regulations in the trade of major conventional weapons. Besides the U.N. Register (discussed above), the other has been the effort by the five permanent Member States of the U.N. Security Council (P-5) to restrain export of major conventional arms to the Middle East.

The P-5 held a meeting in Paris in July 1991, in London later the same year, and in Washington in 1992. Since they happened to be the largest five exporters of arms to the Middle East,²¹ they tried to work out a mechanism of prior notification and consultation on their military sales to the Middle East. But the talks were discontinued without having achieved much success.²² In the course of their negotiations, however, the parties did manage to agree on the so-called London Guidelines for Conventional Arms Transfer (1991),²³ which urged other arms exporting countries to adopt similar guidelines of restraint. In view of their global applicability, they also sparked subsequent undertakings, such as the Conference on Security and Cooperation in Europe (CSCE) Principles Governing Conventional Arms Transfers of November 1993²⁴ and the 1994 Romanian proposal for a "Code of Conduct for the International Transfers of Conventional Arms" at the Geneva-based Conference on Disarmament.²⁵

These moves were, and still are, looked upon with high expectations. For example, the eminent members of the Commission on Global Governance recommended that the P-5 talks should be quickly resumed, and that

the voluntary reporting requirements under the existing Arms Register should be made mandatory.²⁶ The question is whether these initiatives can be forged into a comprehensive, international agreement.

DEVELOPING A COMPREHENSIVE CODE OF CONDUCT

In spite of the formidable barriers against any attempts for regulating technological transfers, some modest progress may be possible if we are to look for an intermediate solution somewhere between the two alternatives of no rules at all and an ideal legal framework. A code of conduct may be an answer. Although a code of conduct is not a legal instrument, it is a political commitment by all the parties that subscribe to it. Unlike uncoordinated policy statements of various governments, such a code could serve as a global mechanism for restraint if adopted by a large majority of nations and given enough publicity and importance. It could also serve as a basis for negotiating a legally-binding convention.

As noted above, the P-5 talks initiated restraint measures, while the U.N. Register began movement in the direction of transparency. Unfortunately, however, neither the 1991 London Guidelines, the CSCE's 1993 Principles, nor the 1994 Romanian draft proposal can claim to have the status of a globally applicable code of conduct. Yet, they do offer a good basis for the future elaboration of such a code of conduct. What would be the likely structure, scope, and contents of a future code of conduct?

As to the structure of such a code, the Romanian proposal contains a valuable suggestion because it has a section dealing with "mechanism." It appears reasonable for the future code to consist of two sections, one dealing with the principles or guidelines, and the other dealing with the mechanical or operational aspect of the code. In the "mechanism" section, the linkage between the code and the U.N. Register could be clearly stated. States adhering to the code should also adhere to the duties of submitting data to the U.N. Register. Transparency and restraint are like the two sides of a coin. How can you restrain arms transfers without knowing how many transfers are being made? Also, as was pointed out earlier, some kind of consultation mechanism based on the data submitted to the Register might be provided for in this section of the code. The Romanian proposal gives the most advanced description of this mechanism.

I am inclined to go a step further. In the “mechanism” section of the code, other elements should be added. For example, all three existing documents stress in one place or another, in varying degrees, the importance of national measures for controlling arms transfers. Indeed, how can a nation restrain its arms transfers without having an efficient national control mechanism for such transfers? Accordingly, it would be advisable for the “mechanism” section of the code to deal with this question. It may be noted that the efforts being made toward the establishment of a post-COCOM regime also stress the importance of such domestic control measures. Furthermore, it would be useful to make the export of arms contingent upon a recipient state’s agreement to report them to the U.N. Register.²⁷

In this way, the linkage between the code and the Register would be strengthened. The question of the need for ensuring the reliability of end-use certificates may also be taken up in this “mechanism” section.

As to the scope of the future code of conduct, it will have to cover the same categories of conventional arms as are covered by the U.N. Register, simply because restraint should be preceded by transparency. Consequently, small arms will have to be left out. However, whether in 1997 or at a later date, the scope of the Register will have to be expanded to cover not only the international transfer of arms but also the procurement of arms through indigenous production.²⁸ This means that the code of conduct under consideration will also have to deal with indigenous production of conventional weapons. Inevitably, the code will have to ensure that the participating states make adequate efforts to put means in place for national supervision and controls over the production of conventional weapons.

The handling of the question of dual-use-technology transfers may turn out to be a hard issue because the U.N. Register as it stands now leaves the question to be studied by the Conference on Disarmament.²⁹ Of course, whenever a code of conduct for dual-use-technology is agreed upon, it will have to be made an integral part of the wider code of conduct dealing with the production and transfer of conventional weapons. However, since the primary concern is weapon systems, the absence of a code for technology transfers should not be allowed to prevent the search for a weapons-only code of conduct.

As to the main “principles” section of the code of conduct, it should be noted from the outset that although the principles and guidelines on arms *transfers* are being discussed widely, the principles and guidelines on

arms *production* are not often discussed. As far as the transfer of arms are concerned, all three existing documents chose to divide their “principles” sections into two subsections, one dealing with principles under which arms transfers are to be conducted, and the other dealing with those under which such transfers are to be restrained or avoided. This may be a logical way of grouping together some of the principles. The main themes evident in these principles are, on the one hand, the right to transfer arms for legitimate security and defense purposes, and on the other, the need to avoid transfers that would aggravate an existing arms conflict, or would introduce destabilizing military capabilities into a region. The concepts of preventative diplomacy and cooperative security lie behind these principles. As to the question of who makes the judgment about whether a particular arms transfer should be avoided or not, two of the three existing documents appear to leave the judgment to individual states, while the Romanian proposal hints instead at the advisability of a consultative mechanism.

One of the important differences among the existing three documents is the reference to human rights and fundamental freedoms in the CSCE Principles and the Romanian proposal and the total absence of such a reference in the London Guidelines. This may be explained by the fact that the former two documents more or less represent the views of developed nations, while the London Guidelines were the product of a compromise between the three developed members (United States, Britain, and France) and the two less developed members (Russia and China) of the P-5. As to the substance of the matter, it may be true that a nation that does not respect human rights and fundamental freedoms is likely to be irresponsible in its military policy. However, the inclusion of such a principle in the code of conduct will have the effect of discouraging those states that are sensitive to such issues from adhering to the code, thereby seriously undermining its universal applicability. The wording used in the London Guidelines and also in the CSCE Principles, which in effect provides that states should avoid arms transfers that would contravene embargoes or other internationally-agreed restraints to which they are parties, might prove to be a formula acceptable to most states.

As can be seen from this discussion, much will have to be done in order to work out a future code of conduct for the transfer and indigenous production of conventional arms. Furthermore, in order to make such a code

a truly meaningful one with universal adherence, even greater efforts will be required to mobilize the willingness and interest of all members of the international community.

¹ David Mussington, "Understanding Contemporary International Arms Transfers," Adelphi Papers 291 (London: The International Institute for Strategic Studies, September 1994), p. 39.

² For a more detailed account of the role played by Japan, see Mitsuro Donowaki, "The Register—A Continuous Building Process," *Disarmament: A periodic review by the United Nations*, Vol. 17, No. 1 (1994).

³ For a discussion of the U.N. Register, see Malcolm Chalmers and Owen Greene, "The Development of the United Nations Register of Conventional Arms: Prospects and Proposals," *The Nonproliferation Review* 1 (Spring-Summer 1994).

⁴ *Report of the Secretary-General on the continuing operation of the United Nations Register of Conventional Arms and its further development*, U.N. General Assembly document A/49/316, September 22, 1994, paragraph 12. Also, see the text of the U.N. resolutions 46/36 L establishing the Register, preambular paragraphs 3 and 12, as well as operative paragraph 1.

⁵ Edward J. Laurance and Christina K. Woodward, "An Evaluation of the Second Year of Reporting to the United Nations Register of Conventional Arms," *The Nonproliferation Review* 2 (Fall 1994), p. 101.

⁶ U.N. General Assembly resolution 46/36 L, December 1993, preambular paragraph 4. References to "restraint" can also be found in preambular paragraph 13 and operative paragraph 1.

⁷ Sha Zukang, "China and Transparency in Armaments," *Disarmament: A periodic review by the United Nations*, Vol. 17, No. 1 (1994), p. 136.

⁸ Ian Anthony, "The Register and Its Future," *Disarmament: A periodic review by the United Nations*, Vol. 17, No. 1 (1994), pp. 94-95.

⁹ Swadesh Rana, "Small Arms and Intra-State Conflicts," Research Paper No. 34, (Geneva: United Nations Institute for Disarmament Research, March 1995), p. 1.

¹⁰ *Report of the Secretary-General, Supplement to an Agenda for Peace*, U.N. General Assembly document A/50/60 S/1995/1, January 3, 1995, paragraphs 60-64.

¹¹ Remarks by U.N. Under-Secretary Mr. Goulding to the First Committee of the General Assembly on the Advisory Mission to Mali, delivered on October 25, 1994.

¹² U.N. General Assembly Resolution 49/75 G, December 1994.

¹³ Boutros Boutros-Ghali, "The Land Mine Crisis," *Foreign Affairs* (September/October 1994), p. 12.

¹⁴ Holger Iburg, "Controlling High-technology with Military Application," in Malcolm Chalmers, Owen Green, Edward Laurance, Herbert Wulf, eds., *Developing the U.N. Register of Conventional Arms* (Bradford, England: Bradford Arms Register Studies 4, 1994), p. 117.

¹⁵ See, for example, Mussington, pp. 18-37.

¹⁶ The White House, Office of the Press Secretary, "FACT SHEET, Conventional Arms Transfer Policy," and "FACT SHEET, Criteria for Decisionmaking on U.S. Arms Exports," February 17, 1995.

¹⁷ *Scientific and Technological Developments and Their Impact on International Security, Report of the Secretary-General*, U.N. General Assembly document A/49/502, October 12, 1994, paragraph 8.

¹⁸ Iburg, p. 121, note 23.

¹⁹ U.N. Disarmament Commission document A/CN.10/1994/WG.II/CRP.10, May 9, 1994.

²⁰ Mussington, p. 67.

²¹ U.S. Arms Control and Disarmament Agency, *World Military Expenditures and Arms Transfers 1990* (Washington D.C.: U.S. Government Printing Office, November 1991), Main Statistical Table III, pp.133-134.

²² See, for example, Richard Grimmet, "Conventional Weapons Control Measures; Global Initiatives," the Japan Institute of International Affairs, Paper No. 9, delivered at the First Seminar on Conventional Weapons Transfer

after the Cold War, March 16-17, 1995, pp. 123-128.

²³ Text reprinted in U.S. Arms Control and Disarmament Agency, pp. 24A and 24B.

²⁴ Text reprinted in *Disarmament, A periodic review by the United Nations*, Vol. 17, No. 1 (1994), pp. 184-187.

²⁵ Conference on Disarmament document CDE/1257 CD/TIA/WP.25, May 17, 1994.

²⁶ Commission on Global Governance, *Our Global Neighbourhood*, (London: Oxford University Press, 1995), pp. 128-129.

²⁷ Hendrik Wagenmakers, "The United Nations Register of Conventional Arms: Whence? Whither?...and Why?," *Disarmament, A periodic review by the United Nations*, Vol. 17, No. 1 (1994), p. 14.

²⁸ U.N. General Assembly resolution 49/75 C, December 1994, operative paragraph 4.

²⁹ U.N. General Assembly resolution 46/36 L, December 1991, operative paragraph 13.