

THE THREAT OF SMALL ARMS TO REGIONAL SECURITY IN THE PACIFIC

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I. INTRODUCTION

The presence of only a few small arms in the Pacific has fuelled significant instability across the region. The misuse of firearms during instances of armed violence in the region in the last twenty years has resulted in long lasting socio-economic harm and damage to governmental institutions. Weapons recovered after such violence were either possessed legally or diverted into the illicit market through theft from internal sources such as civilian and state stockpiles.

For the purpose of this study, the Pacific region includes the island members of the Pacific Islands Forum (PIF): the Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Nauru, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, the Solomon Islands, Tonga, Tuvalu and Vanuatu.¹ This group of socially and geographically isolated states face unique challenges in the establishment of an effective small arms control regime.

This article first describes the role of small arms within the Pacific in order to understand the nature of the market and how weapons become illicit. Following this, there will be an examination of the international and regional frameworks that have developed as an attempt to address small arms proliferation. Lastly there will be a discussion about the current position of domestic legislation and examples of developing multilateral initiatives within the region.

II. SMALL ARMS

“In all parts of the world, the ready availability of weapons and ammunition has led to human suffering, political repression, crime and terror among civilian populations.”² International concern over the proliferation of heavy weapons such as nuclear, chemical and biological weapons systems has shaped the international weapons control framework. However, the role of small arms³ during intra-state conflicts and armed conflict highlights a gap in the regulatory framework.

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1 Limiting the case study to members of the Pacific Islands Forum allows a close examination of regional activity focused on small arms. The metropolitan states of New Zealand and Australia are not included, as these states face very different challenges to those of the smaller Pacific states.

2 United Nations Office for Disarmament Affairs “United Nations Disarmament – About the Arms Trade” (2012) < www.un.org/disarmament/convarms/ArmsTrade/>.

3 This term is used interchangeably with arms, firearms, guns, and weapons throughout this article.

Small arms transcend the barriers to armed force that traditionally separated civilian populations from state forces. Unlike heavy weapons, small arms can be legally traded and possessed by state officials or approved civilians in accordance with international norms and nationally proscribed limitations.⁴ These inexpensive weapons require little in the way of formal training and are widely available to civilians, with estimates as low as one civilian-held gun for every seven people worldwide.⁵ With a wider group of clients, the resulting market has developed into a hugely profitable market for both states and entrepreneurs.⁶

With high levels of weapons in circulation, small arms play a deadly role within society even outside armed conflict with high levels of misuse of small arms by the legal owners and other individuals. There are an estimated 100,000 individuals killed each year by small arms in conflict situations worldwide.⁷ Gun related deaths in non-conflict situations, such as homicides, suicides and accidents, are much higher with as many as 200,000 per year.⁸

Despite this record, a single authoritative definition for small arms still eludes the international system. The most cited definition arises in soft law and is contained within the 1997 United Nations Panel of Government Experts on Small Arms report.⁹ As an authoritative guide, small arms are characterised by this definition as a subgroup of “light weapons” designed specifically for individual use such as handguns, rifles and carbines and automatic weapons.¹⁰

A. Small Arms in the Pacific

Positive social attitudes towards gun ownership have contributed to high levels of civilian ownership across the Pacific. These attitudes are reinforced by significant agriculture and fishing industries as well as sporting traditions such as hunting within the region alongside relatively permissive firearms legislation. The Pacific is estimated to have one gun for every ten people. However, some states have a much higher rate of saturation than others. For example, in Niue it is estimated to be as low as one gun to every five people.¹¹ With high levels of small arms in circulation, the potential for diversion or misuse by the legal owner increases.

4 W Cukier *The Illicit Trade in Small Arms: Addressing the Problem of Diversion* (Project Plough Shares, Waterloo, 2008) at 1.

5 A Karp “Completing the Count: Civilian Firearms” (2007) Small Arms Survey 39 at 40.

6 M Haug “A Thriving Trade: Global Legal Small Arms Transfers” (2001) Small Arms Survey 141 at 141.

7 S Markowski, S Koorey, P Hall and J Brauer “Multi-channel supply chain for illicit small arms” (2009) 20 Defence and Peace Economics 171 at 171.

8 A Efrat “Towards Internationally Regulated Goods: Controlling the Trade in Small Arms and Light Weapons” (2010) 64 International Organisation 97 at 98.

9 Report of the Panel of Governmental Experts on Small Arms GA Res 52/298, A/52/298 (1997).

10 At para 26(a)(i).

11 P Alpers and C Twyford *Small Arms in the Pacific* (Small Arms Survey, Occasional Paper No 8, 2003) at 10.

B. The Black and Grey Markets in the Pacific

The establishment of a legal framework governing the legal possessors of small arms necessarily means some individuals will be excluded from legal ownership. The shadow market, which has developed in order to fulfil this demand, has two inextricably linked elements with varying degrees of legality. Most small arms begin their life legally but later become illegal by virtue of the conditions of their possession or their misuse after being diverted into the illicit market.¹²

The black market has developed completely outside of international and domestic norms as unauthorised groups and individuals turn to illicit sources in order to satisfy demand. This market has proved highly profitable, with an estimated value of US\$1 billion, or roughly a quarter of the legal market.¹³ As estimates are based on anecdotal evidence and recovered weapons, the true extent of this market may in fact, be much greater.

Grey market transfers “travel a fine line between legal and illicit”¹⁴ by exploiting legal and policy exceptions within the international framework.¹⁵ Such transfers are undertaken by states seeking to further their economic or political interests by supporting dissident groups engaging in armed conflict against another state. However, grey market weapons are often diverted into the black market.

Weapons seized in the Pacific indicate the shadow market is largely supplied by the domestic diversion of civilian and state weapons as opposed to arms being smuggled into the region.¹⁶ While demand for weapons due to armed conflict and crime in the Pacific is on the rise, only small numbers seem to be actually crossing borders.¹⁷ This suggests that domestic demand is sufficiently fulfilled by the supply circulating within Pacific states. However, even though the demand for illicit commodities begins domestically, cross-border movement occurs once the internal supply is exhausted.

1. Diversion from Domestic Sources

“Diversion” is the process by which small arms move from legally controlled sources, such as authorised civilian ownership and state stockpiles, into the illicit market.¹⁸ State armouries in Papua New Guinea, Fiji and the

12 Cukier, above n 4, at 4.

13 Small Arms Survey “The Legal-Illicit Link: Global Small Arms Transfers” (2002) Small Arms Survey 109 at 109.

14 R Stohl and S Grillot *The International Arms Trade* (Polity Press, London, 2009) at 94.

15 M Haug “Crime, Conflict, Corruption: Global Illicit Small Arms Transfers” (2001) Small Arms Survey 165 at 166.

16 A Schloenhardt *Palermo in the Pacific: Organised Crime Offences in the Asia Pacific Region* (Martinus Nijhoff Publishers, Leiden, 2010) at 284.

17 A Schloenhardt “Drugs, Sex and Guns: Organised Crime in the South Pacific” in N Boister and A Costi (eds) *Droit Pénal International dans le Pacifique: Tentatives d’Harmonisation Régionale / Regionalising International Criminal Law in the Pacific* (New Zealand Association for Comparative Law/Association de Législation Comparée des Pays du Pacifique, Wellington, 2006) 159 at 178.

18 “The Legal-Illicit Link: Global Small Arms Transfers”, above n 13, at 128.

Solomon Islands have been used as “gun supermarkets” during instances of armed violence.¹⁹ Between 2000 and 2001 an estimated 700 police weapons were leaked from state stockpiles in Papua New Guinea.²⁰ High-powered rifles sourced from the Royal Papua New Guinea Police Constabulary, the Defence Force and even from prison officers have been used in revenge killings and tribal warfare.²¹

2. The Presence of World War II Era Weapons

Small arms will continue to circulate even after conflicts have ended, enabling the conflict to reignite or the arms to be trafficked to neighbouring states.²² There is a significant amount of World War II arms, ammunition and unexploded ordnance, which were abandoned after the war, circulating around some parts of the Pacific. World War II rifles and .50-calibre ammunition were confiscated during the disarmament process in Bougainville and the Solomon Islands.²³ World War II era 12-gauge ammunition has been used with water piping to make homemade weapons in Papua New Guinea.²⁴

3. Transnational Trafficking of Small Arms

As globalisation has improved the ability to move goods, money and services across state borders; individuals and groups have exploited differences in legal and financial systems to mask their illicit activities.²⁵ Transnational criminal activity has been recognised as a specific threat to international peace and security²⁶ by fuelling crime, corruption and insecurity in many states.²⁷ The accumulation of small arms in conflict prone societies undermines economic growth, democracy and peace building efforts.²⁸

It would seem most weapons are being sourced from inside, rather than being trafficked into the region. Weapons used in the Bougainville conflict, even after disarmament, have been found in other areas of Papua New Guinea and the Solomon Islands.²⁹ Reports of trafficking between American Samoa, Samoa, Nauru, Niue and the Cook Islands remain anecdotal in the absence of

19 Alpers and Twyford, above n 11, at xvi; D Capie *Under the Gun: The Small Arms Challenge in the Pacific* (Victoria University Press, Wellington 2003) at 12-13.

20 Alpers and Twyford, above n 11, at 20.

21 E LeBrun and R Muggah *Silencing Guns: Local Perspectives on Small Arms and Armed Violence in Rural Pacific Islands Communities* (Small Arms Survey, Occasional Paper 15, 2005) at 16.

22 R Stohl “The Tangled Web of Illicit Arms Trafficking” (12 October 2004) *Terror in the Shadows* < www.americanprogress.org > at 22.

23 Capie, above n 19, at 13.

24 Alpers and Twyford, above n 11, at 20.

25 A Schloenhardt “Transnational Crime and Island Security in the South Pacific” in Shibuya, E and J Rolfe (ed) *Security in Oceania: In the 21st Century* (Asia-Pacific Center for Security Studies, Honolulu, 2003) at 171.

26 Secretary General’s High Level Panel on Threats, Challenges and Change *A More Secure World: Our Shared Responsibility* (United Nations, 2004) at 1.

27 O Greene “Examining international responses to illicit arms trafficking” (2000) 33 *Crime, Law & Social Change* 151 at 155.

28 Secretary General’s High Level Panel on Threats, Challenges and Change, above n 26, at 15-16.

29 Schloenhardt, above n 17, at 176-177.

hard evidence.³⁰ However, the risk of trafficking rising in the Pacific increases as new instances of instability arise and the possibility of illicit weapons being imported from the outside is not unrealistic.³¹

Despite small populations and weak economies, Pacific states have not been isolated from the global rise of transnational crime.³² There are historical instances of conflicts within the region generating organised gun running operations. In 1988, a 12-tonne container discovered en route from North Yemen to Fiji contained weapons suspected to be destined for use following the 1987 Fijian coup.³³ The finding of fourteen AK-47 assault rifles, a weapon more prevalent outside the region, in Papua New Guinea provides evidence of some trafficking into the region.³⁴

The Pacific provides a relatively attractive transfer route for illicit activity. These developing island states lack the financial, technical and human resources to adequately monitor their large archipelagic coastlines, and hundreds of small isolated islands.³⁵ Small vessels can, therefore, cross international borders undetected; the actual size of the trade is difficult to monitor and control.³⁶

III. THE NEED TO ADDRESS SMALL ARMS IN THE PACIFIC

The use of small arms during armed violence in the Pacific illustrates the devastating impact these weapons have on society and the effective functioning of the state. States are vulnerable to the potential social and economic cost of the uncontrolled circulation of small arms. These weapons have the power to displace entire communities and further fuel demand for them.³⁷ When social, economic and political cleavages prove particularly divisive within society, they act as drivers of demand for small arms as tensions become violent. If these grievances are not addressed, many states will continue to be vulnerable to this threat. As public confidence in the ability of the state to protect its citizens diminishes, a cycle of arming can develop within society.³⁸

30 R McCusker *Transnational crime in the Pacific Islands: real or apparent danger?* (No 308 Australian Institute of Criminology, Canberra, 2006) at 5.

31 Capie, above n 19, at 89.

32 McCusker, above n 30, at 1.

33 P Alpers and M Wilson "Guns in Fiji: Small arms policy, firearm injury and gun law" (8 February 2011) GunPolicy.org < www.gunpolicy.org/firearms/region/cp/fiji>.

34 Pacific Transnational Crime Network *Intelligence Assessment: Transnational Crime 2007* (2008) at 11.

35 Capie, above n 19, at 10.

36 Schloenhardt, above n 17, at 164.

37 K Maze and Y Issar *International Assistance for Implementing the UN Programme of Action on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: Case Study of the South Pacific* (United Nations Institute for Disarmament Research, Geneva, 2009) at i.

38 R Muggah "After the Smoke Clears: Assessing the Effects of Small Arms Availability" (2001) Small Arms Survey 197 at 205.

A. Solomon Islands

Frustration over the inability of successive governments in the Solomon Islands to address development and land disputes sparked an ethnic conflict in 1988.³⁹ Fighting broke out between two militia groups: The Isatabu Freedom Movement, armed with civilian and World War II era rifles, and the Malaitan Eagle Force, armed with high-powered assault rifles stolen from state armouries.⁴⁰ With just 3,500 weapons, this conflict resulted in 200 casualties and the displacement of a further 40,000 individuals.⁴¹ The disarmament process has proved particularly difficult with ex-combatants slow to disarm and continuing law and order problems in Honiara.⁴² Development in the Solomon Islands has regressed as on-going instability has destroyed the state's infrastructure and economy.⁴³

B. Bougainville and Papua New Guinea

The Bougainville crisis was sparked when this culturally and geographically distinct province sought independence from Papua New Guinea. This conflict represents the longest and most devastating Pacific conflict since World War II.⁴⁴ Armed with World War II era firearms, homemade weapons and stolen defence force weapons, the Bougainville Republican Army fought against the Papua New Guinean Defence Force.⁴⁵ An estimated ten per cent of the population died, and a further 64,000 people were displaced.⁴⁶ A ceasefire negotiated between the two sides in 1990 ended the nine-year conflict. The conflict destroyed major infrastructure and Papua New Guinea is still trying to overcome the on-going social and economic costs.⁴⁷

Two decades since the Bougainville crisis, Papua New Guinea continues to battle high levels of political and social unrest. Weapons have been used to undermine government processes, with politicians and the military attempting to influence elections with weapons being openly displayed around the ballot box.⁴⁸ High levels of poverty and the lack of economic advancement have proven to be a particular problem in Papua New Guinea. With limited education and skills, many young men have turned to crime in the absence of other opportunities. Criminal activity by "raskol gangs" in Port Moresby is twice that of Johannesburg and Rio de Janeiro.⁴⁹

39 Alpers and Twyford, above n 11, at 39.

40 At 39.

41 Schloenhardt, above n 17, at 178.

42 Alpers and Twyford, above n 11, at 81.

43 Office of the United Nations Resident Coordinator *Common Country Assessment: Solomon Islands* (2002) at xiv.

44 Alpers and Twyford, above n 11, at 44.

45 At 45.

46 LeBrun and Muggah, above n 21, at 20.

47 Alpers and Twyford, above n 11, at 44.

48 D Atwood, A Glatz and R Muggah *Demanding Attention: Addressing the Dynamics of Small Arms Demand* (Small Arms Survey, Occasional Paper 18, 2006) at 33.

49 Stohl and Grillot, above n 14, at 98.

C. An 'Arc of Instability'?

Concern has been expressed, particularly in Australia, over the establishment of a so-called “arc of instability” within Melanesia.⁵⁰ This expression attempts to describe the ability of insecurity to spread like an epidemic across a particular region leaving behind a series of failed states.⁵¹ Examples of tension in Papua New Guinea, Vanuatu and Fiji over intergroup relations and economic inequality are used to suggest such an arc existing within Melanesia. However, there is no evidence to suggest one conflict has directly caused conflict within other Melanesian states. Additionally, a land dispute in Samoa, a Polynesian state, resulted in a standoff between villagers and police during 2012.⁵² Reports of small arms being present remain disputed. The main instances of armed violence have occurred in their own unique circumstances and have been fuelled through a variety of grievances. But growing instances of armed violence, crime and instability are of concern within the region.

IV. THE INTERNATIONAL AND REGIONAL LEGAL FRAMEWORK

Internal criminal activity can be addressed through the simple application of a state’s domestic legislation. Conventional state mechanisms no longer provide an effective response to transnational criminal activity in isolation from multilateral cooperation.⁵³ “If crime crosses borders, so must law enforcement”,⁵⁴ therefore, jurisdiction must be established over such activity regardless of whether it is committed transnationally or domestically. This enables the effective prosecution of both domestic and transnational criminal activity. As a result, there has been a concerted effort to implement comprehensive changes at the international, regional and national levels. There are a number of areas, including the marking of weapons and the harmonisation of penalties that require urgent reform in order to bring the region in line with international obligations.⁵⁵

A. International Instruments

1. United Nations Conventions

The United Nations Convention against Transnational Organized Crime 2000 (the Convention) and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

50 R Ayson “The ‘arc of instability’ and Australia’s strategic policy” (2007) 61 *Australian Journal of International Affairs* 215 at 215.

51 Capie, above n 19, at 14.

52 “Armed stand-off in Samoa affects tourists” (18 August 2012) TVNZ <www.tvnz.co.nz>.

53 Schloenhardt, above n 25, at 191.

54 K Annan “Foreword” to United Nations Convention against Transnational Organized Crime 2225 UNTS 209 (signed 12 December 2000, entered into force 29 September 2003).

55 G Pattugalan *Two Years After: Implementation of the UN Programme of Action on Small Arms in the Asia-Pacific Region* (Centre for Humanitarian Dialogue, Geneva, 2003) at 9.

2001 (the Protocol)⁵⁶ form the basis of international action. These instruments operate in tandem to “promote, facilitate and strengthen cooperation” against illicit activities.⁵⁷ States are required to review and implement domestic legislation consistent with the framework.

The Protocol establishes the international framework specific to the transnational trafficking of small arms. Common definitions are established for firearms and associated parts,⁵⁸ as well as the criminalisation of illicit trafficking and manufacturing.⁵⁹ Implementing offences to include the “organisation, directing, aiding and abetting, facilitating or counseling” elements of trafficking ensures the entire chain of offences can be prosecuted.⁶⁰ Common definitions and offences prevent jurisdictional differences from establishing territorial safe havens that are exploited by traffickers to avoid prosecution.

Like a number of other instruments targeting certain transnational criminal activities, the enforcement of the Protocol’s offences derives from its relationship with the Convention.⁶¹ The Convention lends to the Protocol specific money laundering and corruption offences,⁶² while providing the prosecution and punishment provisions for a range of transnational crimes.⁶³ This relationship between the instruments requires the Convention’s provisions to be interpreted in order to give effect to the purpose of the Protocol. States must be a party to the Convention in order to accede to the Protocol.⁶⁴ Nauru is the only Pacific state to have ratified the Protocol. Connecting different instruments in this way assists in the standardisation of cooperation developing at different levels for the enforcement of the regime’s various offences.⁶⁵ The Convention also makes provision for mutual legal assistance,⁶⁶ extradition,⁶⁷ and information sharing,⁶⁸ as well as financial and technical assistance in capacity building exercises.⁶⁹

Prevention measures such as authorising appropriate officials to confiscate and destroy illicit weapons recovered in order to remove these arms from circulation is also introduced into the regime.⁷⁰ Measures supporting the

56 United Nations Convention against Transnational Organized Crime 2225 UNTS 209 (signed 12 December 2000, entered into force 29 September 2003) [“Convention”]; Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Crime 2326 UNTS 208 (signed 2 July 2001, entered into force 2005) [“Protocol”].

57 Protocol, above n 56, art 2.

58 Art 3.

59 Arts 5 and 6.

60 Art 5(2).

61 Art 1(3).

62 Convention, above n 56, arts 6 and 8.

63 Art 1.

64 Art 37; Protocol, above n 56, art 1.

65 Protocol, above n 56, art 13.

66 Convention, above n 56, art 18.

67 Art 16.

68 Art 28; Protocol, above n 56, art 12.

69 Convention, above n 56, arts 26, 29 and 30.

70 Protocol, above n 56, art 6.

keeping of comprehensive records and requiring firearms and ammunition to be appropriately marked at the time of manufacture and importation should be introduced.⁷¹ By insisting on these measures, firearms can be tracked to the point of diversion and removed from circulation.

2. United Nations Programme of Action

The 2001 United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms⁷² (the Programme) represents an international political statement for action on small arms. The Programme stops short of establishing any further legal obligations but provides a basis for dialogue instead. It aims to promote the convergence of national legislation and provide a foundation for multilateral activities. A set of minimum international and regional guidelines is outlined, but the exact nature of the obligations to be established is left to the interpretation of each state. States are obliged to submit bi-annual reports on measures undertaken, however the most recent Pacific reports were submitted by Fiji (2008) and the Solomon Islands (2004).

At the national level, states should review national legislation and implement reforms in accordance with the Programme's recommendations. This would require legislation to target the "illegal manufacture of and illicit trafficking in small arms and light weapons or their diversion to unauthorized recipients".⁷³ In accordance with these offences, groups or individuals undertaking this criminal behaviour should be identified and prosecuted.⁷⁴

It is expected that measures prohibiting the manufacture, stockpiling, transfer and possession of any unmarked or inadequately marked weapons will be implemented in accordance with the Programme.⁷⁵ Measures include ensuring the appropriate marking of small arms and the accurate recording of this information for as long as reasonably possible.⁷⁶ Accordingly, where weapons are seized and are deemed illicit, powers must be given to law enforcement agencies to destroy such weapons.⁷⁷

The Programme aims to promote coherency in the different regional and international coordination and capacity building projects. States are particularly encouraged to negotiate regional instruments, which reinforce the international framework.⁷⁸ According to the Programme, regional cooperation and information sharing mechanisms should be developed between customs and law enforcement agencies.⁷⁹ There is a particular emphasis on providing

71 Arts 7 and 8(1).

72 *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (2001) ["Programme"].

73 Part II, art 2.

74 Part II, art 6.

75 Part II, art 8.

76 Part II, arts 7 and 9.

77 Part II, art 16.

78 The current position of regional action within the Pacific is discussed below.

79 Programme, above n 72, Part II, art 27.

and strengthening capacity in post-conflict situations through disarmament, demobilization, and rehabilitation programmes.⁸⁰ Provision should therefore be made by wealthier states to provide technical and financial assistance when requested to support the implementation of measures addressing the small arms trade.⁸¹

3. International Tracing Instrument 2005

The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons 2005 (the Instrument)⁸² expands upon the Protocol. This soft law instrument contains provision for the marking, recordkeeping, and tracing of small arms and light weapons.⁸³ The Instrument requires a biennial report to be submitted to the Secretary General.⁸⁴ In practice, many states combine this with the Programme report.

States should implement measures, including the adoption of legislation, which gives effect to the definition of “tracing” under the Instrument. There should therefore, be provisions aiding the tracing of illicit weapons from their source, whether it is the manufacturer, importer or last legal owner, through the lines of supply to the point of diversion.⁸⁵ When a point of diversion is identified, preventative measures should be undertaken to stop further diversion.

Under the Instrument, states should ensure all weapons are appropriately marked and recorded or otherwise destroyed.⁸⁶ All civilian and military style weapons are required to be marked at the time of manufacture, import and retransfer to ensure recovered weapons can be traced.⁸⁷ These should identify the manufacturer, year of manufacture, type and calibre of the weapon and also include a serial number.⁸⁸

States should also keep effective record-keeping measures to ensure tracing requests can be responded to in a timely manner.⁸⁹ Computerising these records will ensure fast access to information for these purposes. States maintain the right to decline or restrict the information sought by other states:⁹⁰

Where the information would compromise ongoing criminal investigations or violate legislation providing for the protection of confidential information, where the requesting State cannot guarantee the confidentiality of the information, or for reasons of national security consistent with the Charter of the United Nations.

80 Part II, art 30.

81 Part III, art 3.

82 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (2005) [“Instrument”].

83 Bureau for Crisis Prevention & Recovery *How to Guide: Small Arms and Light Weapons Legislation* (United Nations Development Programme, Geneva, 2008) at 168-169.

84 Instrument, above n 82, art 36.

85 Art 5.

86 Art 9.

87 Art 8(a)-(d).

88 Art 8(a).

89 Art 14.

90 Art 22.

This reflects the continuing reluctance to place stronger controls on transfers being undertaken by states.

There is also provision promoting cooperation and provision of assistance both bilaterally and multilaterally.⁹¹ States are therefore encouraged to support initiatives undertaken through the Programme that will provide resources to promote the implementation of the Instrument.⁹²

4. The Proposed Arms Trade Treaty

The Arms Trade Treaty was an attempt by the United Nations to negotiate a binding treaty regulating the small arms trade. It was hoped common standards for the transfers of small arms and other conventional weapons could be negotiated. However, the negotiations for this treaty failed to reach a final consensus during the diplomatic conference that was convened in July 2012. The diplomatic conference ended with no agreement for the next step in the regulation of the trade in small arms. As most of the international framework has gone unimplemented by Pacific states, any further action would need to establish strong regional cooperation mechanisms and international assistance for small states.⁹³

B. Regional Mechanisms

Small arms have been on the regional agenda since 1996⁹⁴ and the developing regional framework is better suited to harmonising the Pacific approach. A comprehensive and up-to-date regional framework will ensure there is a legal basis to rely upon when pursuing transnational criminals. The lack of regional coherence and significant gaps in jurisdiction may make the Pacific an attractive region for traffickers seeking to avoid prosecution.

The negative effect of small arms on the security, people and the social and economic development of Pacific states was first recognised in 1996. After examining domestic legislation across the region the South Pacific Chiefs of Police Conference (SPCPC) produced “The Honiara Initiative: Agreement in Principle on Illicit Manufacturing of and Trafficking in Firearms, Ammunitions, Explosives and Other Related Materials” (the Honiara Initiative).⁹⁵ The Honiara Initiative advocated for stricter controls to be implemented in order to address small arms within the Pacific.

In 2000, “Towards a Common Approach to Weapons Control” (the Nadi Framework)⁹⁶ was presented to the Pacific Islands Forum (PIF) by the SPCPC as a result of the Honiara Initiative. The Nadi Framework attempts

91 Art 27.

92 Art 29.

93 Oxfam International *Brokers without Borders: How illicit arms brokers slip through gaps in the Pacific and international arms control systems* (2010) at 22.

94 Pattugalan, above n 55, at 9.

95 South Pacific Chiefs of Police Conference *The Honiara Initiative: Agreement in Principle on Illicit Manufacturing of and Trafficking in Firearms, Ammunitions, Explosives and Other Related Material* (Honiara, 1998) [“Honiara Initiative”].

96 South Pacific Chiefs of Police Conference and Oceania Customs Organisation *Towards a Common Approach to Weapons Control* (Nadi, 2000) [“Nadi Framework”].

to guide the region towards the implementation of a common approach to legal controls over arms within the region. It is based on two principles; first, possession and the use of firearms remains a privilege conditional on overriding public safety, and secondly, imposing strict controls on firearms will improve this public safety.⁹⁷ Like the Programme, the Nadi Framework represents a general statement of reform for the region. It has a broad scope for legislative action and higher levels of cooperation between states.

Following the Nadi Framework, the PIF worked towards providing legislative assistance that supported the regional and international framework. The PIF endorsed the Weapons Control Bill (the Bill)⁹⁸ in 2003, which connects the international framework to the region's specific needs. For example, the Bill not only criminalises certain offences required by the international framework⁹⁹ but also attempts to standardise licencing and possession provisions across the region.¹⁰⁰ The Bill also includes provision for the management of arms and ammunition, particularly the registration, marking and safe storage of small arms. Despite the contentious nature of imposing stricter controls on civilian ownership at the international level, the Bill provides some measure of control over civilian possession and state stockpiles. With the sheer saturation of firearms ownership by civilians and the role state stockpiles have played as a source for illicit weapons, it seems prudent to address both elements.

The majority of the Pacific states remain outside of the international framework. Many of the international commitments do not appropriately engage with the problems experienced by the region. Where comprehensive legislative action is required, the Bill will be the most useful in assisting Pacific states in the updating of their domestic law.¹⁰¹ The Bill is comprehensive and wholesale implementation would tax the capacity of most Pacific states.¹⁰² States would be able to pick and choose the reforms that are needed most.

V. THE CURRENT POSITION OF DOMESTIC LEGISLATION ACROSS THE PACIFIC

The enforcement of international and regional obligations is reliant upon domestic implementation and enforcement. Comprehensive reform is required throughout the region, as most domestic legislation has lain dormant since independence was achieved in the 1960s, 1970s and 1980s. A pre-independence ordinance banning "Natives and Chinamen from possessing a firearm" was finally repealed by Nauru in 2011.¹⁰³ However, the

97 Capie, above n 19, at 22.

98 Pacific Islands Forum *Weapons Control Bill* (2003) ["Weapons Control Bill"].

99 Part 7, s 2.2

100 Part 4.

101 Capie, above n 19, at 60.

102 At 52.

103 Arms, Liquor and Opium Prohibition Ordinance 1936-1967 (Nauru), no 10, cap 11 as cited in Alpers and Twyford, above n 11, at 58. Repealed by Statute Law Revision Act 2011 (Nauru).

repeal of this ordinance leaves Nauru's regulation of small arms unclear. In 2003, Fiji became the first state to adopt comprehensive reforms regulating the possession, manufacture, sale, repair, storage, import and export of arms and ammunition.¹⁰⁴ Domestic legislation across the region varies widely on issues of ownership, licensing, marking, registering, the import and exports of arms as well as the penalties.¹⁰⁵

A. Definition of Firearms, Ammunition and Types of Prohibited Weapons

Adopting a common definition reduces confusion as to what kind of weapons are subject to the legislation. Without this, the effective prosecution of suspected traffickers may be hindered if the weapons being transferred do not fall within the definition of both jurisdictions. The regional definition for a "firearm" in the Bill goes further than the most widely accepted international definition to include:¹⁰⁶

A device designed or adapted to discharge shots, bullets or other projectiles by means of explosive charge or compressed gas, whether or not it is fitted with a magazine or other feeding device designed to be used with it and includes a replica.

There is currently a considerable degree of commonality in the definitions of firearms across the Pacific owing to a similar colonial history.¹⁰⁷ The Cook Islands has the simplest definition, which provides a firearm to be "any weapon from which a missile is discharged by the force of any explosive substance or compressed air".¹⁰⁸ Samoan legislation specifically defines "pistols," "shotguns" and "explosives" instead of providing a more general provision.¹⁰⁹ The accepted uses of firearms within society have had a significant influence upon legislation. Exclusions exist for devices used for signalling, line throwing, spear fishing or industrial purposes, like those in Palau or Kiribati legislation.¹¹⁰ These exclusions are acceptable under the new Bill.¹¹¹

B. Importing and Exporting Firearms

Trafficking includes the unauthorised "import, export, acquisition, sale, delivery, movement or transfer of firearms" under the Protocol.¹¹² However, more than three weapons of the same kind in a single transaction by an unlicensed person more than three times in a month will constitute trafficking under the Bill.¹¹³ A corresponding provision is missing from most domestic

104 Arms and Ammunition Act 2003 (Fiji).

105 Alpers and Twyford, above n 11, at xvii.

106 Weapons Control Bill, above n 98, s 1.4.

107 Capie, above n 19, at 27.

108 Arms Ordinance 1954, No 3 (Cook Islands) as cited in Alpers and Twyford, above n 11, at 79.

109 Arms Ordinance 1960, No 11 (Samoa), s 2.

110 National Firearms Control Act, No 33 (Palau), s 3303; Arms and Ammunition Ordinance 1977 (Kiribati), cap 3, s 2.

111 Weapons Control Bill, above n 98, at s 1.4.

112 Protocol, above n 56, at art 3 (e).

113 Weapons Control Bill, above n 98, at s 7.12.

legislation, and examples of cross-border movement are unlikely to meet this threshold. It would be more effective to suppress smaller-scale transfers and establish a clear authorisation process.

Requiring express authorisation for the importation and exportation of firearms will ensure some measure of control over the trading in weapons. The Bill requires the appropriate licence to be produced to customs officers at the time of importation.¹¹⁴ Most states already have a sufficient provision for this. Importers in the Federated States of Micronesia are required to show the weapon is going to a licenced person, and the District Chief of Police must inspect the weapon before final delivery takes place.¹¹⁵ Many states do not have a penalty for importation offences, but there will be a small fine or a short custodial sentence of less than 12 months. The Cook Islands applies a maximum penalty of three months' imprisonment,¹¹⁶ while Samoa prescribes a penalty of five years and a fine.¹¹⁷ To be in line with the Bill, most states will need to increase importation penalties to AUD\$10,000 or a custodial sentence of ten years.¹¹⁸

Similarly, the Bill requires the written authority of the Police Commissioner to be produced to customs before exportation.¹¹⁹ Kiribati and Tonga both require export licences to be obtained.¹²⁰ Samoan legislation provides that the Head of State can take express action to prohibit the exportation of any arms and associated materials.¹²¹ There is no similar provision regulating arms exportation within the legislation of the Federated States of Micronesia and Vanuatu.¹²²

C. Arms Manufacturing

Manufacturing under the Protocol is illicit where weapons are assembled without proper authorisation with parts that are illicitly trafficked and without the appropriate marking.¹²³ There is no corresponding provision within the Bill, except the manufacture of certain prohibited weapons.¹²⁴ The Bill will require the illegal manufacturing to carry a penalty of up to AUD\$10,000 or up to ten years imprisonment.¹²⁵

Specifically legislating against manufacturing in the Pacific is largely unnecessary as no state has the resources or capacity to pursue or establish commercial manufacturing of small arms. Nevertheless many states prohibit

114 At s 7.1.

115 Trust Territory Weapons Control Act 1971, cap 12 (FSM), s 1221.

116 Arms Ordinance 1954, no 3 (Cook Islands), s 4(1) and 5(1).

117 Arms Ordinance 1960, No 11 (Samoa), s 6(1).

118 Weapons Control Bill, above n 98, at s 7.1

119 At s 7.2.

120 Arms and Ammunition Ordinance 1977 (Kiribati), s 18; Arms and Ammunition Act 1968, no 10, cap 39 (Tonga), s 7.

121 Customs Act 1977 (Samoa), s 73(1)(a).

122 Alpers and Twyford, above n 11, at 69.

123 Protocol, above n 56, at art 3(d).

124 Weapons Control Bill, above n 98, at s 2.2

125 *Ibid.*

manufacturing or require the express authorisation of the Commissioner of Police to establish such ventures.¹²⁶ Palau imposes a sentence of no less than 15 years and up to \$5,000 fine for unauthorised manufacturing.¹²⁷

D. Tracing Illicit Weapons

The international definition of tracing includes the systematic tracking of illicit small arms through the lines of supply beginning with the manufacture until the point they become illicit.¹²⁸ This provides states with the tools to detect and investigate suspected trafficking, and to subsequently stop further diversion through the same source. Issues of capacity restrict the ability of some states to maintain such systems. In practice, there are a number of well-established regional assistance programmes in place. The Australian Federal Police has assisted the Papua New Guinean police in tracing weapons seized in criminal investigations, the vast majority of which are traced back to Southeast Asia.¹²⁹

E. The Marking and Registration of Firearms

By insisting on the appropriate marking of weapons, state authorities will be more successful in identifying and tracing seized weapons. These measures ensure illicit firearms can be removed from circulation if found to be illicitly possessed.

The Protocol requires mandatory marking at the time of manufacture and importation.¹³⁰ The Tracing instrument requires easily recognisable, readable and durable marks to be placed on an exposed surface.¹³¹ This mark should be placed on a structural part of the weapon, so the weapon is still identifiable even after being rendered permanently inoperable.¹³² The Bill only requires the markings to be somehow identifiable.¹³³ The marking of firearms is required by most states, but these markings are not always recorded. By acceding to the Protocol, Pacific states would be required to ensure the removal of such markings to be a criminal offence.¹³⁴ Removing the markings on a firearm holds a penalty in Fiji of \$10,000 or 12 months imprisonment.¹³⁵

The Bill requires states to establish registers, which include specific information about the owner and the weapon.¹³⁶ Registers provide an important law enforcement tool as they enable the flow of small arms to be tracked within and between countries. During periods of unrest, the existence of a central

126 Alpers and Twyford, above n 11, at 66.

127 National Firearms Control Act, cap 33 (Palau), s 3306 (a) and (b).

128 Instrument, above n 82, at art 5.

129 Alpers and Twyford, above n 11, at 21-22.

130 Protocol, above n 56, art 8(1)(a).

131 Instrument, above n 56, art 7.

132 Art 10.

133 Weapons Control Bill, above n 98, at s 4.3.

134 Protocol, above n 56, art (1)(b) and (c).

135 Arms and Ammunition Act 2003 (Fiji), at s 7(2).

136 Weapons Control Bill, above n 98, at s 4.2

register assisted authorities in Fiji and the Solomon Islands to call in all privately held weapons.¹³⁷ Accuracy and capacity to ensure these registers are kept up to date is a significant problem, and therefore, many are just estimates.

F. Regulation of Civilian Possession and Licensing

The international and regional initiatives do not attempt to prohibit civilian ownership. The regional framework does, however, recognise the prevalence of firearms within Pacific states and therefore provides some assistance in determining the proper level of control.

1. Prohibitions and Limitations Placed On Civilian Ownership

All Pacific jurisdictions regulate civilian possession, ownership, use and transfer of small arms to some extent. Some, such as Palau¹³⁸ have placed a blanket ban on all civilian ownership. Others have implemented temporary moratoriums on civilian ownership like that in the Solomon Islands.¹³⁹ Informal restrictions in Kiribati have the effect of prohibiting new arms and ammunition from being imported into the territory.¹⁴⁰

There are widespread restrictions placed upon civilian ownership of handguns and a few types of automatic and semi-automatic weapons or military style weapons. It is illegal in Fiji to be in possession of any firearm with a barrel less than 61mm.¹⁴¹ On the other hand, Papua New Guinea permits the licensing and ownership of handguns.¹⁴² Restrictions against automatic and semi-automatic weapons arise as these are considered to be weapons of war. Vanuatu prohibits the importation of automatic and semi-automatic weapons without the special authority of the Police Commissioner.¹⁴³

2. Licensing Conditions

Ensuring comprehensive conditions on the provision of civilian licences for firearms will ensure some level of state control over the circulation of small arms within their territory. These conditions should serve to minimise the potential misuse of weapons by their lawful owners through careful vetting and consideration. However, instances of misuse by lawful owners show that this process is not always successful.

Licensing officials enjoy a considerable amount of discretion in approving applications. In a region where most authorities will know the applicants personally, this discretion can open the door for corruption or neglect. Like most states, Niue requires the applicant to be considered a “fit and proper

137 Alpers and Twyford, above n 11, at 65.

138 Palau Constitution 1979 (Palau), art XIII, s 12.

139 Commitment between Parties to the Townsville Peace Agreement, Solomon Islands (15 October 2000).

140 Capie, above n 19, at 34.

141 Arms and Ammunition Act 2003 (Fiji), s 14.

142 Firearms Act 1978, no 46 (PNG), s 27(1).

143 Firearms Act 1988, no 7, cap 198 (Vanuatu), sch 2, reg 14.

person” but provides no criteria as to how this standard can be fulfilled.¹⁴⁴ The criteria outlining “good” or “lawful” reasons for possession or what constitutes a “fit and proper person” need to be more carefully defined. The Bill requires the applicant’s mental and physical condition and the likelihood of a firearm to be used for an unlawful purpose to be considered.¹⁴⁵ Lastly, the criminal record and instances of violence must also be examined before a licence is granted.¹⁴⁶

A minimum age and a limited life span of licences should also be introduced into the licensing process. The Bill requires applicants to be at least 18 years of age.¹⁴⁷ Samoa has subsequently amended legislation increasing the legal age of possession from 16 to 21.¹⁴⁸ The Bill also insists that civilian licences should only last for a period of three years.¹⁴⁹ Licences in Tonga expire annually on 31 December.¹⁵⁰ This allows the suitability of applicants to be reassessed with each new renewal and new circumstances to be taken into account.

3. Penalties

Penalties which attach to firearms offences in the Pacific have been significantly eroded over time due to inflation. The lack of strong penalties leaves the Pacific open to becoming a favourable transit route or destination for traffickers in the future.¹⁵¹ Ensuring that the illegal possession of a firearm is a significant offence will be a large deterrent factor for most individuals.

The Bill would require penalties to be increased to a fine of up to AUD\$5,000, five years imprisonment or both.¹⁵² Increased penalties were introduced alongside a moratorium in the Solomon Islands during the disarmament process. Penalties for illegal possession and misuse were increased from a maximum fine of SB\$1,000 to SB\$25,000, and prison sentences increased from two years to ten years.¹⁵³ An amendment bill recently before Parliament in Tonga proposed the penalties for the illegal possession of firearms and ammunition to be reduced from five years to one year.¹⁵⁴ A similar bill was rejected in 2011 by the late King George Tupou V owing to concerns about the “welfare, well-being and safety of his subjects.”¹⁵⁵

144 Arms Act 1975 (Niue), s 7.

145 Weapons Control Bill, above n 98, at s 3.9.

146 Ibid.

147 At s 3.7.

148 Arms Ordinance 1960, No 11 (Samoa) s 8.

149 Weapons Control Bill, above n 98, at s 3.19(1).

150 Arms and Ammunition Act 1968, no 10, cap 39 (Tonga), s 6(5).

151 Capie, above n 19, at 50.

152 Weapons Control Bill, above n 98, at s 2.1.

153 P Alpers and M Wilson “Guns in the Solomon Islands: Small arms policy, firearm injury and gun law” (1 June 2010) < www.gunpolicy.org/firearms/region/cp/solomon-islands>.

154 T Maddocks, “Tonga tries to reduce penalties for gun possession” (17 October 2012) ABC News <www.abc.net.au>.

155 “Tonga tries to reduce penalties for gun possession” (18 October 2012) Pacific Islands News Association <www.pina.com.fj>.

G. Other Areas Requiring Reform

The emerging small arms framework leaves three main areas that could assist in controlling the supply of small arms largely unregulated: regulation of ammunition, management of state stockpiles and secondary civilian transfers.

The absence of provision for ammunition from many international initiatives is an important oversight as these weapons pose significantly less threat without ammunition.¹⁵⁶ Most states do attempt to limit the possession of ammunition through restricting the purchasing of ammunition specific to the weapon registered to the licenced individual.¹⁵⁷

The management of state stockpiles is largely unregulated by states within the region. This is a significant oversight owing to the larger concentration of the more high-powered small arms in the hands of the military and police.¹⁵⁸ As one of the principal ways for licit weapons to enter the illicit market, this has important consequences in stemming the flow of weapons into the illicit trade. The tighter regulation of these two areas would provide stronger barriers to individuals seeking to use these weapons outside of legal controls.

Transfers between civilians are usually required to be registered or involve some authority to oversee such transactions.¹⁵⁹ However, in many states, secondary transfers between civilians are not effectively regulated, and the practice of “straw purchasing” can arise. Straw purchasing occurs where a firearm can be legally bought by a licensed individual and sold or given to a second owner without regulatory oversight. Transactions of this kind can act to conceal the true identity of the intended receiver who cannot legitimately gain access to a weapon otherwise.¹⁶⁰ Legislation must be tightened in regards to these transactions as the potential for weapons to fall outside of state control increases.

VI. REGIONAL COOPERATION AGAINST BARRIERS TO IMPLEMENTATION

Despite being crucial for the prevention and suppression of transnational crime, legislative action in the Pacific has been slow.¹⁶¹ There is a prevailing perception that crime is a matter of internal concern and the uncontrolled trade of small arms is a problem confined to Melanesia.¹⁶² However, the

¹⁵⁶ Efrat, above n 8, at 99.

¹⁵⁷ Alpers and Twyford, above n 11, at 62.

¹⁵⁸ Capie, above n 19, at 49.

¹⁵⁹ Alpers and Twyford, above n 11, at 67.

¹⁶⁰ J Mouzos “International Trafficking in Firearms: Emerging issues” paper presented to the Australian Institute of Criminology in association with the Australian Federal Police and Australian Customs Service, Canberra 9-10 March 2000 at 3.

¹⁶¹ Schloenhardt, above n 17, at 180-181.

¹⁶² At 175.

misuse and proliferation of weapons is of concern throughout the Pacific.¹⁶³ The risk of small arms needs to be considered in its wider context, including the relationship to conflict, crime, community safety and security.¹⁶⁴

A. Lack of Capacity

Action against small arms will be ineffective if the unique difficulties this region faces are not recognised. “Gun-control laws are merely words on paper” if issues of capacity continue to act as a barrier to effective law enforcement measures being implemented.¹⁶⁵ Legislative action must not be undertaken in isolation from broader policy concerns such as development. The international framework encourages the development of interchangeable law enforcement and cooperation mechanisms in order to ease capacity issues. There is a large amount of financial and technical assistance being dedicated to the region for such initiatives.

As law enforcement agencies often lack the training, skills and tools to monitor their borders effectively, there has been a strategic push towards establishing regional customs and police bodies. The Pacific Islands Chiefs of Police and the Oceania Customs Organisations assist with enhanced information sharing and cooperation between the respective national bodies by providing training and other forms of assistance.¹⁶⁶ Funding was given to the Pacific Islands Chiefs of Police to undertake a comprehensive study of police armoury facilities and identify key areas requiring development.¹⁶⁷

Australia and New Zealand have provided training and technical advice on a state-by-state basis to the members of the Pacific Islands Forum.¹⁶⁸ Tonga Police Development Programme and Customs Service received funding to build capacity in specialist areas and provide key infrastructure and equipment.¹⁶⁹ Initiatives like this are not specifically aimed at the management of small arms but instead provide officials with the skills to investigate and gather intelligence on a more general basis. Police armouries in the Cook Islands, Fiji, Samoa, Solomon Islands and Vanuatu have been upgraded in order to satisfy the Programme’s safe storage recommendations.¹⁷⁰ Japan

163 Capie, above n 19, at 13-14.

164 O Greene and E Kirkham “Preventing Diversion of Small Arms and Light Weapons: Strengthening Border Management under the UN Programme of Action” (Biting the Bullet, 2010) at 5.

165 Efrat, above n 8, at 101.

166 Maze and Issar, above n 37, at 4.

167 New Zealand’s Ministry of Foreign Affairs and Trade *Implementation of the International Tracing Instrument and Programme of Action* (2010) at 12.

168 Alpers and Twyford, above n 11, at 12.

169 Australian Department of Foreign Affairs and Trade *National Report on the Implementation of the United Nation Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects: National Small Arms and Light Weapons Statement* (2009) at 14.

170 E Kytomaki and V Yankey-Wayne *Five Years of Implementing the United Nations Programme of Action on Small Arms and Light Weapons: Regional Analysis of National Reports* (United Nations Institute for Disarmament Research, Geneva, 2006) at 118.

and the United States of America provided Fiji with training from stockpile management specialists.¹⁷¹ These initiatives work towards minimising the potential of poorly secured state stockpiles from continuing as a source of illicit weapons within the Pacific.

B. Disarmament, Demobilisation and Rehabilitation

There is a need to address how the presence of these weapons can fuel ongoing conflicts over poverty, unequal economic and education opportunities and land disputes to name a few. As violence is a significant barrier to long term sustainable development and human security, measures must be undertaken to support development programmes. Reducing violent crime should be a priority for achieving the Millennium Development Goals, particularly where crime is disproportionately high.¹⁷²

The disarmament process in Bougainville illustrated the challenge of reintegrating young men socialised in such a way that the power of the gun informs their identity and level of self-esteem.¹⁷³ Ex-combatants are more likely to return to armed violence or crime without effective demobilisation and reintegration programmes providing them a viable alternative. In Papua New Guinea, an urban safety initiative promoted the voluntary surrender of weapons and provided casual employment to youths and former gang members.¹⁷⁴ The lack of economic opportunities can prove just as divisive as other key marginalising factors. The level of conflict within society should decrease as these marginalising factors begin to be addressed.

Other programmes, such as the destruction of surplus weapons, voluntary weapons collections, and amnesty periods are underway across the region.¹⁷⁵ Aid was provided to the Solomon Islands government and local civil society organisations to address the misuse of firearms within society.¹⁷⁶ Over 3,600 weapons were collected during the Regional Assistance Mission to Solomon Island (RAMSI) 21-day amnesty period. As of 2009, there had been no credible reports of firearms being used during criminal activity since 2005.¹⁷⁷ Collected weapons were either dumped at sea or cut up and buried in monuments.¹⁷⁸ Ensuring the destruction of these weapons removes potential stockpiles from being established and decreases the risk of diversion back into the illicit market.

171 The Permanent Mission of Fiji to the United Nations *Fiji's National Report on the Implementation of the United Nation Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects* (2008).

172 United Nations Office on Drugs and Crime *Global Study on Homicide* (2011) at 5.

173 Alpers and Twyford, above n 11, at 48.

174 Australian Department of Foreign Affairs and Trade, above n 169, at 12.

175 M Bourne *Arming Conflict* (Palgrave MacMillan, New York, 2007) at 6.

176 Alpers and Wilson, above n 153.

177 Australian Department of Foreign Affairs and Trade, above n 169, at 13.

178 Government of the Solomon Islands *National Report on the Implementation of the United Nations Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in all its Aspects* (2004) at 16.

VII. CONCLUSION

There is a high saturation of small arms circulating within the Pacific. This is in part fuelled by permissive legislation and positive social attitudes to civilian ownership. However, the presence of these weapons does pose a significant risk to these small island states. State authority has been challenged on a number of occasions by the development of tensions arising from a number of political, social and economic grievances. Small arms have been used to varying degrees of severity in order to articulate these grievances. The resulting damage to state infrastructure and societal cohesion has been long lasting, further challenging development and access to essential services.

Despite the violent role small arms have played, large parts of the regional and international frameworks for small arms control remain unincorporated. A comprehensive review of the national legislation is required to examine the extent to which national laws are in line with emerging international and regional norms. Domestic reforms will be aided through consideration of the model provisions contained within the Pacific Islands Forum's Weapon Control Bill 2003. States will be able to pick and choose the provisions that are required in order to bring domestic legislation in line with international and regional obligations. While significant reforms are needed, legislative action may have minimal impact on small arms control. In particular, capacity limitations restrict the region's ability to implement the regime effectively.

Many states lack the resources for strict border controls and the effective investigation and prosecution of transnational crimes. However, by developing regional initiatives to complement the international framework, there is significant opportunity for capacity building programmes to be developed either on a state-by-state or regional basis. A number of bilateral and multilateral partnerships have established projects targeted at improving the capacity of police and customs organisations, as well as the development of inter-agency cooperation mechanisms.

The region must incorporate broader policy initiatives in order to control and reduce the demand for small arms. Initiatives aimed at reducing poverty, sustainable development and education will remain important in providing the Pacific states with the capacity to address the demand. Current examples of regional coordination illustrate a strong start towards improving the capacity of Pacific states to begin addressing small arms within the region. Further regional and international assistance will require a long-term commitment to addressing the risk of small arms across the Pacific.