

CIFTA: Regional Construction of Responses to the International Calamity of Arms Trafficking*

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It is often thought that foreign policy issues, international cooperation and multilateral agreements are far removed from reality, failing to address to everyday people's main concerns. Today, correcting this erroneous vision is imperative while contributing, through foreign policy, to improving citizens quality of life, to ensure their welfare, to generate opportunities for development and to ease their concerns.

It is from that perspective, sensitive to what negatively impacts society most, that the Ministry of Foreign Affairs is currently placing priority on international attention and cooperation against the illicit trafficking and diversion of arms and ammunition.

A challenge that fuels violence and criminality

Crime and violence are two of the main challenges facing citizens, entire communities and the State itself alike. These two threats are becoming increasingly intertwined. Crime does not always involve violence, but in recent years entire regions have witnessed the growth of criminal organizations that use violence as their main form of asserting themselves. Firearms are one of the main factors for this increase

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in violence. The greater the number of arms and the more powerful they are, the greater the possibility for criminals to frighten and defeat opponents.

The case of Latin America and the Caribbean particularly stands out, as it is a whole subcontinent where, without wars, in recent years, there have been constantly growing levels of violent deaths, with higher figures in firearm-related deaths than areas in the world declared to be in armed conflict. An analysis over time goes so far as to present the possibility that life expectancy could actually be reduced by armed violence in some areas of Central America and Mexico.¹

The diagnoses on insecurity and the growth of homicidal violence are many and diverse, but one of the best founded and most concrete arguments holds the view that there are two components responsible for the increased power of criminal organizations: the illicit flow of capital and the illicit flow of arms.²

The illicit trafficking and diversion of arms is today a calamity that demands urgent response for Mexico, which has the second largest border with the world's largest arms and ammunition market: the United States.³ It has been estimated, for example, that more than 230 000 weapons enter Mexico illegally each year.⁴ Although this is not a new topic, its size and the urgency of dealing with it from an integral approach is, as it is one of the most lucrative illicit markets and also a motor phenomenon behind a chain of criminal actions and violence.

¹ Claudio Alberto Dávila-Cervantes and Ana Melissa Pardo-Montaño, "Análisis de la tendencia de la mortalidad por homicidios en México entre 2000 y 2010", in *Revista Gerencia y Políticas de Salud*, vol. 12, no. 24, January-June of 2013, pp. 163-183.

² David Pérez Esparza, Shane D. Johnson and Paul Gill, "Why Did Mexico Become a Violent Country?", in *Security Journal*, May, 2019, pp. 1-31, at <https://doi.org/10.1057/s41284-019-00178-> (date of access: March 24, 2020).

³ Matt Schroeder, "Drips and Drabs: The Mechanics of Small Arms Trafficking from the United States", in *Small Arms Survey Issue Brief*, no. 17, March 2016.

⁴ Sarah Kinosian and Eugenio Weigend, "We're Sending Guns, Crime to Mexico", en *Los Angeles Times*, March 2, 2017.

Regulatory developments and their subsequent problems

The discussion in international forums on the illicit arms trade has its roots in the efforts to ban, after the two world wars, for humanitarian reasons, certain excessively harmful weapons. To this end, the Convention on Certain Conventional Weapons was adopted in the early 1980s under the care of the United Nations.

Since then, discussions at the United Nations have continued to evolve, especially along the lines of arms control or limitation for situations of conflict. Gradually, reality caught up with the normative efforts to consider the growing possession of small arms and light weapons in the hands of civilians as a major challenge. In the 1990s, the General Assembly began to discuss possible measures to ensure that, contrary to the interests of the major arms and ammunition producers, marking and traceability measures were established to discourage illicit production and sale. However, it was at the Organization of American States (OAS) that the adoption of the first legally binding international instrument to address the issue of illicit trafficking was proposed and accelerated: the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA), adopted in 1997.

Mexico was the main promoter of CIFTA and thus began to play a key role in its implementation, as well as in the negotiation of subsequent instruments, such as the U.N. Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA), the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, and until the adoption of the Arms Trade Treaty in 2013.

Despite these progressive developments, the problem of illicit arms, ammunition and parts has been spreading geographically, increasing profits and generating increasingly serious consequences. It is therefore appropriate to summarize some of the central problems encountered by the normative developments on this priority issue:

1. *Universalization problems.* None of the international instruments adopted have achieved universal membership, nor is there any possibil-

ity of doing so. The root problem lies in the resistance received from the large arms producers who, without clear awareness of the consequences of their actions, consider it a priority to ensure the supply of the international arms market.

2. *Scope problems.* Thematically, regulatory developments have been limited. Treaties and agreements are seen in silos, in sections that do not necessarily communicate. On the one hand, there are those that refer to the humanitarian consequences and that therefore promote the prohibition or control of certain weapons, ammunition or components of these and, on the other hand, the legal instruments directed at judicialization and criminal prosecution, as well as at strengthening cooperation for the investigation and collection of evidence; there are also those that favor cooperative platforms for marking and tracing, and those oriented to favor transparency in transfers and to better regulate trade. An additional expression of that thematic compartmentalization is seen in the limitation of the instruments to certain conventional weapons, in other cases to firearms or small arms and light weapons, their ammunition or their parts and components.
3. *Implementation problems.* While the international community has succeeded in adopting legal instruments and mechanisms, their complete implementation has been poor. They are minimally binding, as they lack review measures for implementation and provisions requiring immediate domestic policy alignment. On the contrary, these are instruments that contain many safeguards to ensure that they do not interfere with domestic law, criminal law, and business models that each State has at the national level.

The reality presents us with extremes between highly restrictive national legislation for the purchase and possession of firearms, and others that, in addition to being permissive, even encourage their use. This situation, together with the previously identified problems, means that very few cases of illicit arms trafficking are prosecuted in the criminal justice system as a stand-alone crime; the illegal arms trade ends up being only an aggravating factor, a means or a tool for the commission of other crimes.

It should be noted that, after 2015, the multilateral reference framework that has been progressively consolidated to address this phenomenon is

joined by the call of the 2030 Agenda for Sustainable Development to make progress in meeting Sustainable Development Goals. Specifically, the adoption of target 16.4, which Mexico promoted and which calls for a significant reduction in the illicit flow of both capital and arms, supports the idea of stimulating synergies between international organizations and instruments, without encroaching on mandates, with the common purpose of contributing to curbing and preventing the diversion of and trafficking in arms.⁵

CIFTA: from regional to global

In its early days, the OAS concentrated its security tasks on the collective defense of the hemisphere.⁶ However, towards the end of the 20th century, it correctly adapted its conceptualization and security agenda, after recognizing its own elements going beyond the problems of war and peace, and to move towards an institutional structure that would allow it to deal with everyday threats rather than armed confrontation. It was through this process that CIFTA came into existence.

It should be noted that this Convention was an initiative of the Mexican Government, which dates back to the Tenth Summit of Heads of State and Government of the Permanent Mechanism for Consultation and Political Coordination (Rio Group) held in Cochabamba, Bolivia, in September 1996. At that regional meeting, the Mexican delegation presented a proposal to prepare a draft convention to prevent the illicit production and trafficking of arms in the region and to promote regional cooperation to establish controls and regulations on the illicit manufacture and trafficking of these weapons.

⁵ María Pía Devoto and Héctor Guerra, "Regulación del comercio de armas y desarrollo sustentable, los próximos 15 años," in *Sur: Revista Internacional de Derechos Humanos*, vol. 12, no. 22, 2015, pp. 141-151.

⁶ Luis Rodríguez Bucio, "La Junta Interamericana de Defensa (JID): desarrollo histórico, consolidación institucional y prioridades de la Presidencia Mexicana," in Laura Angélica Rojas Hernández (coord.), *La Organización de los Estados Americanos hacia su 70 aniversario: desafíos actuales y su relevancia en el acontecer hemisférico*, Mexico, The Mexican Senate, 2018, pp. 315-338.

During 1997, two meetings at the expert level were held in Cancun, Mexico, to shape the drafting of the Inter-American Convention. Subsequently, the OAS Permanent Council established a working group to work, with the participation of government experts, to finalize the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, which was opened for signature by OAS member states during the twenty-fourth special session of the OAS General Assembly, held November 13-14, 1997, in Washington, D.C.

CIFTA consists of 30 articles that detail a series of provisions aimed at preventing and combating the illicit trafficking in arms and ammunition, as well as facilitating cooperation and the exchange of information and experience among the States Parties. Among its most important provisions, it establishes the relevance of marking weapons to identify their origin; the importance of judicial cooperation for tracing firearms, ammunition, explosives, and other related materials; the establishment of security measures in the handling of weapons and ammunition; aspects of firearms registration and handling; and the strengthening of controls on import, export, or transit processes to prevent illicit trafficking in firearms, ammunition, explosives, and other related materials; the promotion of the exchange of information on issues such as producers, tactics used, routes, legislative measures, and anti-money-laundering legislation; the promotion of programs for the exchange of experiences and training among collaborating officials to facilitate access to equipment or technology; and the call on States Parties to establish criminal offences in relation to the illicit manufacture of and trafficking in arms in their national legislation.

CIFTA entered into force on July 1, 1998. All OAS member states have deposited their signature (34 countries), although only 31 have ratified it; Canada, Jamaica and the United States are missing. It should be noted and kept in mind that CIFTA is today, therefore, the only legal instrument in this area signed by the government of the United States, which would perhaps place it under obligations, if not exactly to the letter, at least in line with the spirit and purpose of the Convention.

Since the entry into force of CIFTA in 1998, four conferences of States Parties have been held, the last of which was held in Mexico City on April 4 and 5, 2018, when two documents of particular relevance were approved to encourage better implementation of CIFTA and to renew political

commitment to the issue: the 2018-2022 Course of Action for the Operation and Implementation of CIFTA, and the Declaration of Mexico, on the twentieth anniversary of the Convention.

In adopting the Declaration of Mexico, the States Parties proposed, on the twentieth anniversary of CIFTA, the proclamation of April 5 of each year as the “Inter-American Day for Counteracting the Illicit Manufacturing of and Trafficking in Firearms,” and expressed a renewed commitment to the continued implementation of CIFTA and to significantly reduce the illicit flow of arms in the region, in accordance with target 16.4 of the 2030 Agenda for Sustainable Development.

With the approval of the 2018-2022 Course of Action for the Operation and Application of CIFTA, the parties agreed upon legislative measures and technical actions for the better implementation of the Convention in the following areas: marking and tracing of firearms; import and export controls; legislative measures; stockpile management and destruction of excess weapons, ammunition, and explosives; border controls; cooperation and the exchange of information; and follow-up actions that strengthen ties with the civil society, other international and sub-regional organizations, and the United Nations.

Next steps

In line with the strategy that the Mexican Ministry of Foreign Affairs has outlined to prioritize attention to arms trafficking and to accompany bilateral dialogue and collaboration efforts through multilateral actions, Mexico has proposed to once again occupy the Secretariat Pro Tempore of the Consultative Committee of CIFTA during 2020 and until the next Conference of States Parties.

From the Secretariat Pro Tempore of the Consultative Committee, as the governing body of the Convention, Mexico will be able to advance the recommendations to promote the ratification of the three missing OAS countries, while encouraging better accountability measures from the States Parties in terms of their level of national implementation.

It will also be necessary to encourage in-depth reflection, accompanied by experts not only from Governments but also from academia and civil

society organizations, on the new dimensions of the phenomenon of illicit trafficking and diversion of arms in the hemisphere. The commemoration of the inter-american day against this calamity could be the appropriate occasion.

Progress can also be made through a dialogue between the secretariats and governing bodies of other international instruments and mechanisms, with the aim of identifying convergences and avoiding a duplication of efforts, in order to make the issue more visible and address it with the urgency it demands.

Convinced that the scope of CIFTA is enhanced by full and complete implementation, Mexico could also promote actions to deepen the investigative aspects for the prosecution of cases, legislative harmonization and priority consideration of ammunition and the complete life cycle of weapons, that is, from their design and manufacture to their final destination and destruction.

With concrete proposals based on a regional legal instrument such as CIFTA, which have a positive impact at both the national and international levels, the commitment to multilateralism to respond to the main challenges is reaffirmed as the most viable option for translating a foreign policy issue into actions that improve people's daily lives and their environment.