

## Small Arms and Light Weapons: Transfer Controls

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### Summary Report

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## Introduction

Under the terms of the *United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (henceforth referred to as “the PoA”), States have committed themselves to implement strict controls on small arms transfers (export, import and transit). In particular, they undertake:

*“To put in place, where they do not exist, regulations and administrative procedures to exercise effective control over the...export, import, transit or retransfer of [small arms and light weapons]” (PoA, Section II, paragraph 2)*

and

*“To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. Likewise, to establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons.” (PoA, Section II, paragraph 11).*

On 17 November 2005, the Geneva Forum organised a conference on ‘Small Arms and Light Weapons: Transfer Controls’ in order to provide an opportunity for States, international bodies and civil society organisations to discuss transfer controls in the context of the PoA, in an informal setting, with a view to sharing regional experiences on the issue of transfer controls and to identifying steps to be taken to advance the issue before the first PoA Review Conference on 26 June – 7 July 2006.

The conference was held at UN Headquarters in Geneva and was attended by over 100 people representing 38 governments, 6 UN bodies or international organisations, and 17 NGOs (see list on page 25). The conference was jointly chaired by H.E. Dr. John Freeman, Ambassador and Permanent Representative of the United Kingdom to the Conference on Disarmament, and Dr. Patricia Lewis, Director of the United Nations Institute for Disarmament Research (UNIDIR).

The following materials were available at the conference and have been annexed to this report:

**Annex I:** *Food for Thought Paper: Elements of effective controls for export, import, transit, and transshipment of guidelines governing transfers of small arms and light weapons*, prepared by the UK Foreign and Commonwealth Office.

**Annex II:** *Small Arms and Light Weapons Transfers: Developing Understandings on Guidelines for National Controls and Transfers to Non-State Actors - Developing International Guidelines for national Controls on SALW Transfers* (November 2005), prepared by the Small Arms Consultative Group Process, convened by Biting the Bullet (Bradford University, International Alert and Saferworld).

**Annex III:** *Global Principles for Arms Transfers*, prepared by Control Arms Campaign.

**Annex IV:** *Avances del Proyecto Centroamericano para Prevenir y Combatir el Trafico Illicito de Armas Pequeñas y Ligeras*, prepared by Nicaragua.

## Introductory Remarks

*H.E. Dr. John Freeman (Ambassador and Permanent Representative of the United Kingdom to the Conference on Disarmament)*

Ambassador John Freeman welcomed participants to the conference remarking that, from the UK's perspective, the conference provided a timely opportunity to reflect upon growing humanitarian impact of small arms and light weapons. The UK hoped the conference would provide participants with an opportunity to enhance and build upon the emerging consensus on the need to control transfers of small arms and light weapons. He reminded participants that the first Review Conference of the *United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (henceforth referred to as "the PoA") would be held in the summer of 2006, and that its Preparatory Committee (PrepCom) was less than 2 months away. Whilst much of the work of the PrepCom is administrative, it also, he pointed out, provides a forum for fostering ideas.

## Why Elaborate Transfer Controls?

### 1. **Elaborating international principles for SALW transfers**

*Henry Smith (Head of Arms and Security, Export Controls and Small Arms Programme, Saferworld)*

- a) **A changing debate:** Before the 2001 UN small arms conference process got underway, there was no strong consensus on enhancing international transfer controls on small arms and light weapons. Significant changes occurred, however, during the 18 months prior to the UN Conference and a commitment was made in the PoA to strengthen transfer controls.
- b) **Commitment in the Programme of Action:** International progress built from a regional base, but there are still some regions where no real progress has been made. Regional commitments to controlling international arms transfers now include at least 107 governments. However, regional action on its own is not sufficient due to the global nature of the small arms and light weapons problem. Global solutions are required.
- c) **PoA commitment remains undeveloped:** Decisions on transfers are the purview of national governments. The PoA stresses the importance of international law in providing a bedrock for decisions, but the specific requirements on states remain vague and underdeveloped. As a consequence, the PoA has had little impact on controlling the transfer of small arms and light weapons.
- d) **Since 2001:** Since the PoA was established in 2001, there has been lots of discussion and progress at the regional and international level. At an international level, the Transfer Controls Initiative (TCI) and the Small Arms Consultative Group Process have been established and discussions regarding an international Arms Trade Treaty (ATT) have taken place. Each process is involved in elaborating guidelines or principles for the transfer of small arms.
- e) **Elaborating criteria to implement PoA Commitments:** International law obligations fall into three categories:
  - i) *Express Limitations:* States shall not authorise transfers of weapons to destinations that are 'out of bounds' due to commitments to the UN Charter or other treaty law including universal principles of international humanitarian law (ie. States subject to UN arms embargoes, weapons that cause unnecessary suffering, and/or weapons that are incapable of distinguishing between combatants and civilians).

- ii) *Limitations based on likely misuse:* States should not transfer small arms and light weapons when it is likely they will be used to commit unlawful acts (ie. violations of international human rights or international humanitarian law or acts of genocide).
- iii) *Other factors to be taken into account:*
  - The right to self defence or to meet legitimate security needs;
  - Record of compliance with international obligations and commitments, eg end user commitments;
  - The risk that transfer would adversely affect regional or internal peace and security, fuel violent crime or undermine sustainable development.
- f) **Where now?** An approach to elaboration along the lines of international responsibilities is mandated by the PoA. It is critical that principles are tabled at the PrepCom and that there is sufficient time allocated both prior to and during the Review Conference. States themselves need to consider what they see as the next steps.

## 2. **Lessons Learned: The Australian Perspective**

*Mr. Craig MacLachlan (Deputy Permanent Representative, Permanent Mission of Australia to the United Nations)*

- a) **Indicators of instability:** Illicit transfers of small arms and light weapons often serve as an indicator of problems with governance, as well as a catalyst for the breakdown of governance. From Australia's perspective, it is costly to deal with the resulting instability in the region after the event. Initiatives such as the Regional Assistance Mission to the Solomon Islands (RAMSI), have proven very effective but are costly operations to mount. Prevention is a preferable approach.
- b) **Supplier's role:** As one of the key suppliers of small arms in the region, Australia has a particular role to play. Accordingly, Australia has developed a system of transfer controls which includes:
  - i) closer scrutiny of firearm end-users (eg. obtaining endorsement of end-users from regional police authorities); and
  - ii) a refusal to approve transfers of handguns to dealers in the region unless the Australian government is satisfied with the end-user process.

In addition, Australia runs outreach programmes in the region.

- c) **Ineffectiveness of transfer controls in isolation:** Determined proliferators are able to work their way around transfer controls by approaching other sources, hence the need for a global approach. Australia has, in fact, approached some of these alternative sources of small arms and has had some cooperation regarding unifying and strengthening the weaknesses in the transfer system. Many of these alternative sources are on the other side of the world and are therefore perhaps less aware of the impact their transfers have in the region.

Regional Experiences and Best Practices

3. **Great Lakes Region and the Horn of Africa**

*Mr. Richard Nabudere (Commissioner of Police, Uganda National Focal Point on Small Arms)*

- a) **Background to the Nairobi Guidelines:** In April 2004 eleven States of the Great Lakes Region and the Horn of Africa (GLRHA) signed the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons. The Protocol will be legally binding once it has been ratified by two thirds of signatory States, and, as part of this process, the Regional Centre on Small Arms (RECSA) has convened a series of workshops on transfer controls, stockpile management, marking and tracing, public awareness, arms destruction and brokering.

As a result of these workshops, a comprehensive set of guidelines was developed, which was adopted at the Nairobi Declaration Ministerial Review Conference in June 2005 (a copy of these guidelines is contained in Annex V of this report.)

- b) **Purpose/Role of the Nairobi Guidelines:** The purpose of these guidelines is to inform the review and development of national policy and legislation and to assist States ensure they effectively implement the Nairobi Protocol and other regional and international agreements on small arms control. The process of developing these guidelines has also assisted States in identifying the common problems that they face in relation to small arms and light weapons, and in recognising the importance of working in close co-operation to address them (eg. through sharing information on national export licensing procedures). The process will also help ensure national policy and legislation is harmonised across the region.

Not all national transfer control systems should follow a single model, since States have varying needs, capacities and legal and administrative systems. States can use these guidelines as a means to develop national systems which are compatible and which reduce the possibility of criminals exploiting variations in the controls in different countries.

- c) **The Source of the Nairobi Guidelines:** The Guidelines that have been developed on transfer controls have elaborated upon the provisions of the Nairobi Protocol, the Nairobi Declaration, the Bamako Declaration, the UN Firearms Protocol and the PoA. In developing these guidelines, Government representatives also studied and built upon guidelines developed elsewhere, whilst adapting them to the specific needs of the region, including the OSCE Handbook of Best Practices on SALW, the Wassenaar Arrangement on Export Controls, and the SEESAC Regional Micro-Disarmament Standards.
- d) **The Scope of the Nairobi Guidelines:** In terms of their scope and formulation, the Nairobi Guidelines are based, to a considerable degree, upon recognised principles of international law. The preamble to the Nairobi Guidelines mentions the right of States to import arms in order to exercise their right to self-defence and so as to participate in UN peace support operations. It also confirms States' responsibility to "ensure that arms transfers are in full compliance with all obligations under national and international law".

The substance of the guidelines closely reflects recognised international principles as follows:

- i) *International Law:* Article A of the Guidelines requires that States do not authorise transfers which would violate their direct obligations under international law. This includes obligations arising from the UN Charter including UN Security Council embargoes; the prohibition on the use of force; and the prohibition on intervention in other States' internal affairs.

- ii) *Treaty Obligations:* Article A also stipulates that States should not transfer arms in contravention with any other treaty or legal obligations entered into by States parties, such as embargo decisions of the African Union Peace and Security Council and commitments under, eg, the Convention on Certain Conventional Weapons.
- iii) *International Humanitarian Law:* Article A also sets out States' obligations under international humanitarian law which require suppliers to refrain from transferring arms which would run contrary to the prohibition on the use of arms which can cause superfluous injury or unnecessary suffering, and the prohibition on weapons that are incapable of distinguishing between combatants and civilians (eg. anti-personnel landmines)

Article B incorporates prohibitions based on international law centred upon the likely use of arms that are transferred including:

- the duty of States not to transfer arms which would be used to violently suppress human rights or to commit serious violations of international humanitarian law; and
- the obligation on States to refuse arms transfers which would be used aggressively against another State or population or would run contrary to international law governing armed conflict.

- e) **Comparison with other Regional Initiatives:** The Nairobi Guidelines go beyond existing commitments of other regional initiatives. For example, the EU Code of Conduct on arms exports does not reflect a similar level of commitment to the principles of international humanitarian law or issues of human rights. Rather than imposing a binding prohibition on States with regard to transfers that might be used to violate international humanitarian law, the EU Code merely requires States parties to take into account the record of the recipient in this regard.
- f) **Other Principles:** The Nairobi Guidelines include other commitments which, though not officially recognised as international legal principles, are increasingly being accepted by States as important factors for consideration in arms transfer control. For instance, the Guidelines require that States do not authorise transfers which are likely to be used:

- i) to worsen the internal situation in the country of final destination;
- ii) to carry out terrorist acts or support or encourage terrorism;
- iii) other than for the legitimate defence and security needs of the recipient.

In addition, States are obliged to take into account a number of other factors, not to licence transfers which:

- iv) may be used in the commission of violent crime;
- v) may have a negative impact on regional security or contribute to a destabilising accumulation of arms;
- vi) may adversely affect sustainable development;
- vii) may involve corrupt practices; or
- viii) may contravene any other multilateral commitments entered into.

Finally, there is a requirement that States do not transfer arms that are likely to be diverted or re-exported for use other than by the stated final end-user.

By placing these issues of emerging international consensus at the heart of efforts to control arms transfers, the Nairobi Guidelines can be seen to be playing an important role in terms of assisting the progressive development of customary international law.

In this regard, the approach taken by other sub-regional agreements including the EU through the EU Code of Conduct and the OSCE through the Principles Governing Conventional Arms Transfers are also significant as they too have placed issues such as sustainable development, regional and international security, and terrorism at the centre of arms transfer control policy.

- g) **Going forward/ What can we learn?** For the transfer control guidelines to make a significant contribution to the small arms and light weapons control and to peace, security and development in the region, it is vital that they are incorporated within national control systems, and these systems are implemented effectively.

This will necessitate:

- i) Establishment of effective and comprehensive export control legislation;
- ii) Development of systems for effective information exchange between States; and
- iii) Establishment of comprehensive national control systems.

All this will require significant technical and financial resources, as well as sustained political will.

- h) **Conclusions:** Despite these challenges there has been growing consensus in the past few years as to the necessity of agreeing international standards for arms transfer control which are consistent with States' obligations under international law. In this regard, the final communiqué from the February 2005 meeting of the International Workshop on Global Principles for Arms Transfers in Dar Es Salaam is an important articulation of this growing momentum.

These guidelines are not only an important guide to the strengthening of controls at the national level, but may also encourage and inform further progress at the international level.

- i) **Responses to questions:** Participants put the following questions to Richard Nabudere with respect to his presentation:

- i) *Are the Nairobi Guidelines having any impact on trade, in practice?*  
Answer: It is too early in the process to talk about the impact of the Guidelines.
- ii) *Are there inter-regional exchanges in Africa*  
Answer: The African Union has called a conference to facilitate coordination between the various regions. There has been disparity among some areas; i.e. some have developed the issue of transfer controls more than others, and this seems to depend on the structures they have in place to coordinate implementation of the PoA. Progress has been slower where there is no institutional framework. Generally speaking, facilitation of coordination between regions is being worked on.

Generally speaking, it may not be possible to implement guidelines in isolation. The following elements are required (for example):

- appropriate laws;
- policy cooperation/coordination;
- training needs must be identified;
- a structure within which decisions will be made (who will decide the criteria? Who will decide who to transfer to? Etc.

4. **Latin America**

*Mr. Ernesto Martínez Gondra (Deputy Permanent Representative, Permanent Mission of Argentina to the United Nations)*

- a) **Introduction:** The transfer of small arms and light weapons is a 4 billion dollars business per year, how much of that is illegal is not known exactly. More than 1/2 million people die every year in our world as a result of small arms use and abuse. These arms in the hands of drug cartels and terrorist groups are a real threat to regional peace and security.

Technically speaking, small arms are weapons designed for personal use. Light weapons include heavy machine guns, grenade launchers, and portable anti-aircraft guns, among other weapons. These are dangerous weapons and are beyond the "legitimate civilian uses", such as hunting and sports.

The PoA is not a legally binding instrument, but a political commitment. It provides for follow-up in the form of biennial meetings (2003 and 2005) to consider its implementation and a review conference in 2006.

Latin American States take the PoA very seriously, and consider that it should be reviewed and reinforced. At the Review Conference the State Parties should be able to develop and adopt principles and guidelines for transfer controls.

b) **Relevant Instruments to Transfer Controls:**

- i) Inter-American convention against the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials (1997);
- ii) UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (2001);
- iii) Wassenaar Arrangement Export Controls for Conventional Arms and Dual-Use Goods and Technologies; Best Practice Guidelines for Exports of Small Arms and Light Weapons (2002).

- c) **Regional seminars and meetings:** In the context of the Transfer Control Initiative (TCI) a total of 5 workshops were organized in Latin America and the Caribbean (Buenos Aires, Managua, Bahamas, Lima, and Porto Alegre) in the last 14 months. The workshops have provided an opportunity for countries to exchange their views on several aspects of firearms import, export and in-transit, with a view to reaching a common position for the Review Conference. It also afforded an opportunity to discuss customs and other related legislation and procedures.

Some of the recommendations arising out of the workshops include:

- i) Adoption of a common position with respect to firearms import export and in-transit;
- ii) Use of focal point databases to enhance communications between designated bodies;

- iii) Implementation of legal firearms instruments, such as the Inter-American Convention;
  - iv) Development of capacity-building initiatives for government officials;
  - v) Fostering the role of civil society (which is a particularly important issue for Argentina).
- d) **MERCOSUR mechanisms and instruments:** MERCOSUR (Argentina, Bolivia, Brazil, Chile, Paraguay, and Uruguay) includes a joint mechanism for the registration of buyers and sellers of small arms, ammunitions, explosives and other related materials. It is a database system operated by competent bodies of each MERCOSUR member.

By 2001, MERCOSUR established a Working Group on small arms, ammunitions and other related materials. The Working Group is a consultative body for harmonization of national legislations, improvement of cooperation and general coordination.

In 2004, MERCOSUR produced an Understanding for the exchange of Information on the production, illicit transfer of small arms, ammunitions, explosives and other related materials. The focal points established in the Understanding receive and transmit information on arms transfers. The Understanding, however, is not yet in force.

e) **National legislation:**

- i) *Paraguay:* Ley Nro. 1910/02 is a general law that regulates administrative and judicial measures (seizure, confiscation fines, licences, handing of the firearms).
- ii) *Brazil:* A law known as the Disarmament Statute was created in 2003, which includes regulations on: registrations of fire arms, possession, transference, alterations, etc. Furthermore the penal code increased penalties for illegal possession and or illegal transference of firearms.
- iii) *Uruguay:* In 2002 Uruguay legislation was amended so that prerequisites to buy arms are now stricter and the Penal Code has been modified to penalize any alteration in the identifications of arms and ammunitions. The Uruguayan government successfully concluded the destruction of 1512 firearms on 13 September 2005.
- iv) *Argentina:* Argentina has a complete transfer control regime that is described in its National Report on implementation of the UN Programme of Action. In November 2004, an NGO called 'Argentine Net for Disarmament' was established, which discusses the small arms problem from the civil society perspective.

Ley Nacional de Armas 20.249 (1973) and Ley 25.086 modify the Penal Code such that higher sanctions are now imposed for illegal fire arm possession.

A summary of arms destruction by Argentina follows:

YEAR	1993	1994	1995	1996	1998	2000	2001	2002	2003	2004	Total
<b>ARMS DESTROYED</b>	709	916	3,650	1,376	2,626	14,822	3,925	4,381	14,471	11,200	<b>58,076</b>

5. **South Africa**

*Rick de-Caris (Programme Officer, SaferAfrica, and a former member of the South Africa police service)*

- a) **Introduction:** The transfer of small arms and light weapons in South Africa prior to 1995 was authorized by certain senior government officials in two state departments, namely the Department of Defence and the Department of Police. Transfers in the form of exports were authorized according to a list of approved or non-approved countries. Where there was doubt, the export was referred to the relevant Minister for decision. Little or no consultation took place with other departments.

The process was changed due to a particular export to a country that was diverted by a broker to another country that was under a UN arms embargo. The resultant bad publicity forced the government into taking action.

- b) **Cameron Commission:** The first step by the Government was to appoint a Commission of Enquiry. This commission under the chair of a judge reviewed what had happened in the transfers and reviewed the process that led to the issuing of export licenses for small arms and light weapons. In the report a series of recommendations were made one of which was to completely overhaul the process to ensure accountability for each and every export. The report proposed the establishment of a committee at ministerial level to oversee the issuing of export licenses.
- c) **National Conventional Arms Control Committee:** After reviewing the report, Cabinet issued a decision to establish a committee that would oversee the issuing of all export licenses - the National Conventional Arms Control Committee (NCACC).

The NCACC consists of senior minister and government officials. The Ministers on the committee are the Ministers of Defence, Safety and Security (Police), Foreign Affairs, Trade and Industry, Intelligence and Education (who was the chair). The NCACC is chaired by a non-aligned Minister (ie. one who is not associated with small arms and light weapons) so as to achieve maximum objectivity. The current Chair is the Minister for Local Government.

- d) **Process for Export Permits:** The NCACC developed a process and criteria for evaluating applications for export permits. The process for applying for an export permit is two-tiered. Any applicant who wants to conduct business relating to an arms transfer must first apply for a marketing permit to negotiate. This permit allows the parties to open discussion on the arms transfer. The issuing of such a permit does not mean that an export permit will necessarily be issued. If the parties agree to do business, an application for an export permit must be made to the NCACC. This application will first be considered by a sub-committee consisting of senior government officials. This sub-committee will make a recommendation to the NCACC where a final decision will be made. Even these permits can be withdrawn at any stage if any grounds upon which such permit was issued have changed or a misrepresentation was made to obtain the permit.
- e) **Criteria:** The criteria that are taken into account before an export permit is issued are comprehensive:
- i) Assess each application on a case-by-case basis;
  - ii) Safeguard the national security interests of the Republic and those of its allies;
  - iii) Avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms;

- iv) Avoid transfers of conventional arms to governments that systematically violate or suppress human rights and fundamental freedoms;
  - v) Avoid transfers of conventional arms that are likely to contribute to the escalation of regional military conflicts, endanger peace by introducing destabilizing military capabilities into a region or otherwise contribute to regional instability;
  - vi) Adhere to international law, norms and practices and the international obligations and commitments of the Republic, including the UN Security Council arms embargoes;
  - vii) Take account of calls for reduced military expenditure in the interests of development and human security;
  - viii) Avoid contributing to terrorism and crime;
  - ix) Consider the conventional arms control system of the recipient country and its record of compliance with end-user certificate undertakings, and avoid the export of conventional arms to a government that has violated an end-user undertaking;
  - x) Take into account the inherent right of individual and collective self-defence of all sovereign countries in terms of the United Nations Charter; and
  - xi) Avoid the export of conventional arms that may be used for purposes other than the legitimate defence and security needs of the government of the country of import.
- f) **The National Conventional Arms Control Act, 41 of 2002 (the Act):** In 2002 the establishment of the NCACC was formalized by the enactment of the National Conventional Arms Control Act, 41 of 2002 (the Act). The Act imposes severe penalties for anyone breaching its provisions, including imprisonment of up to 25 years and/or a monetary fine.

6. **Japan**

*Mr. Akihiko Uchikawa (Japanese Ministry of Foreign Affairs)*

- a) **History of Japanese Transfer Controls:** Japan's system originated from a 1967 policy document which prohibits arms exports to certain countries (eg. communist countries, countries under a UN embargo and countries likely to engage in international conflict). Later, the system was reinforced by a 1976 collateral policy guideline, which, in principle, banned arms exports altogether.
- b) **Japan's thoughts on the TCI:**
  - i) There needs to be a speeding up of discussion on this issue at an international level before the Review Conference;
  - ii) TCI should involve the major exporting countries;
  - iii) Criteria should be clear and objective; and
  - iv) Creating criteria is one thing, *enforcing* it is another, and this will be crucial.

7. **Central America**

*Mrs. Patricia Campbell Gonzalez (First Secretary, Permanent Mission of Nicaragua to the United Nations)*

- a) **Update on activities in the region:** In 2003, Nicaragua was designated host country for the Central American Project to Prevent and Combat the Transfer of

Small Arms and Light Weapons. Since October 2004, the Office for Democratic Security of the Nicaraguan Ministry for Foreign Affairs has been acting as coordinator for the Central American Project. In that regard, Nicaragua has put forth several initiatives of technical assistance and resource mobilization. The main activities undertaken include: workshops, formation of a national multidisciplinary commission in the region, and program implementation between UNDP and each country in the region.

- b) At the political level, Nicaragua has also had an active role. One of its most important initiatives has been the “Central American Code of Conduct on Arms Transfer”, which is in its last negotiation phase and is programmed to be signed by November 29 2005, during the meeting of the Central American Security Commission. (A progress report, in Spanish, of the Central American project is contained in annex IV of this report).

### Developing Principles for Transfer Controls

#### 8. **Developing International Principles**

*Simon Johnson (Security Policy Group, Foreign & Commonwealth Office, UK)*

- a) **Introduction - Strengthening Transfer Controls:** The UK has worked hard in recent years through the Transfer Controls Initiative (TCI) to build international support for stronger controls on small arms and light weapons transfers within the PoA. Over 110 countries have expressed support – a majority of UN member States. The UK believes the best way to make progress on small arms control is through inclusive discussion and consensus-based decision-making in order to ensure all views are taken into account. The UK is very much open to comments that can be fed back into this inclusive process.
- b) **Why have a TCI?** The aim of the TCI is as follows:
  - i) Prevention of irresponsible small arms and light weapons transfers e.g. that fuel conflict or undermine development or fall into the hands of terrorists and criminals;
  - ii) Build consensus amongst States on the need to strengthen controls on small arms and light weapons transfers - if all countries adopt the same approach, many important loopholes for illegal trafficking will be closed;
  - iii) To address not just export controls, but also import controls and transshipment.

Consistent with Section III of the Programme of Action, the UK recognises that responsibility for solving the problems associated with the illicit trade in small arms and light weapons falls on *all* States. The UK also recognizes that States need close co-operation to prevent, combat and eradicate the illicit trade. Those States in a position to do so, need to seriously consider rendering assistance, including technical and financial support where needed.

Within the scope of Section III, the UK is taking forward this TCI process of consultation focused on the two inter-related undertakings in paragraphs 2 and 11 of Section II of the PoA (Effective regulation and assessment of small arms and light weapons transfers).

- c) **Outline of Transfer Controls (TCI):** The UK is keen to promote co-operation and assistance to strengthen capacity to enforce legislation where necessary. Working within the framework of the PoA, in 2003 the UK launched the TCI, aimed at securing international agreement to common standards on the export, import and

transshipment of small arms and light weapons at the Review Conference. This is based on a bottom-up and region by region approach, working through dialogue, meetings and workshops around the world to establish common ground.

The process embraces the following principles:

- i) It is based on inclusive partnerships - many regional workshops have already been held;
  - ii) Building up consensus from bottom to top;
  - iii) It aims to strengthen transfer controls using criteria and guidelines to enhance PoA and prevent irresponsible small arms and light weapons transfers;
  - iv) It is based on Section III of PoA - close co-operation and assistance amongst countries;
  - v) It avoids outside imposition of solutions eg. from West/North to developing world.
- d) **SALW Transfers: Existing Guidelines in PoA:** The PoA recognises the need for strict controls on the export of small arms and light weapons to prevent their uncontrolled spread, especially to stop weapons falling into the hands of terrorists and criminals and to comply with UN and other international obligations. Working within the existing PoA, the UK is working to implement, clarify and support the PoA.

However it is clear that not all countries and regions are fully implementing these commitments. It is also clear that the existing commitments need further elaboration so that there is a common understanding.

Many regions and countries take into account a range of criteria when considering export applications. An effective control system does not need to be expensive or bureaucratic, particularly where the quantity of exports is low. The burden therefore on importing States is manageable and reasonable even where capacity is limited or still developing. Furthermore, the adoption and strict implementation of guidelines for small arms and light weapons transfers could help address concerns on restricting transfers to non-state actors.

- e) **Examples of Other Guidelines/Criteria Used:** The following criteria/guidelines are examples only, and do not necessarily reflect the minimum the UK wishes to achieve, nor the maximum that it would see as necessary. Nevertheless, the UK views these criteria as reasonable, balanced and comprehensive:
- i) Right to self defence of recipient country (Art 51 UN Charter);
  - ii) Right of recipient country to meet legitimate security needs;
  - iii) Need to avoid destabilising/excessive accumulations of arms;
  - iv) Risk of supporting/encouraging terrorism;
  - v) Risk of supporting or facilitating organised crime;
  - vi) Compliance record with international obligations/commitments;
  - vii) Respect for human rights;
  - viii) Risk that transfer will be used for internal repression;
  - ix) Impact of transfer on regional peace and security;
  - x) Cost in relation to sustainable development;
  - xi) Whether transfer is proportionate/appropriate for security threat;

- xii) Consent of importing State.
- f) **Regional Workshops:** Regional small arms and light weapons meetings specific workshops on the TCI have been held in:
- i) South America (BA) April 2004
  - ii) East Africa (Nairobi) May 2004
  - iii) Pacific Islands Forum Aug 2004
  - iv) Central America (Managua) Oct 2004
  - v) Middle East, North Africa (Algiers) April 2005
  - vi) CARICOM (Bahamas) May 2005
  - vii) Lima (Andean Pact) May 2005
  - viii) MERCOSUR (Porte Alegre) June 2005

Follow up workshops have also been held in SADC, South & East Asia and elsewhere.

These Regional workshops have been focusing on how States are implementing their existing commitments in Section II, paragraph 11 of the PoA to: *“assess applications for export authorisations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international”* and then considering how national and regional approaches on small arms and light weapons minimum standards on transfer controls can be strengthened and improved.

- g) **SALW Transfer Controls Achievements:** Good progress has already been made in East Africa (where there is solid existing regional small arms and light weapon cooperation), and Latin America and the Caribbean, following a comprehensive series of workshops: MERCOSUR, CARRICOM, Andean Pact. These workshops revealed that an overwhelming majority of States representatives agree that there is a need to:
- i) Develop common firearms import, export and in-transit standards, including agreed criteria and guidelines for consideration in firearms transfers;
  - ii) Raise the issue of minimum common firearms standards in national and regional statements addressing the issue of 2005 Biennial Meeting of States; and
  - iii) Promote the issue of minimum common standards with a GRULAC Statement at the Review Conference, with a view to including this issue into the PoA.

Also, the declaration arising out of the G8 Summit in Gleneagles, Scotland, makes specific reference to improving the effectiveness of transfer controls over small arms and light weapons at the Review Conference.

As already mentioned, there is significant support for a regional process to discuss common approaches on transfer controls to feed into PoA, with over 110 countries and more everyday. There was also widespread support for the issues at the BMS2.

- h) **Analysis:** Diverse security concerns mean different regions come at the problem with rather distinct perspectives e.g. some view the problems as importers rather than exporters. But the large numbers of small arms and light weapons in

circulation and the activities of arms brokers mean that traditional distinctions are breaking down. Controls need to apply to transits and re-exports as well as to initial exports.

Many countries and regions already have their own criteria or guidelines for transfer controls – if States can recognise the need to have criteria or guidelines then they could all take the same approach.

As part of their regional efforts to combat the misuse, threat and proliferation of small arms and light weapons, States can publicly support the idea of agreeing common minimum standards for the transfer of small arms and light weapons (eg. at the PrepCom and before). Even where States do not consider transfer controls to be directly relevant to their situation, they should bear in mind that only through regional and ultimately global support for transfer controls, can loopholes that allow licit transfers to become illicit trafficking be stopped.

- i) **Way Forward 2005-2006:** The best way forward is to continue to build on consensus in key regions on the type of approach best suited to their particular concerns and draw out commonalities that might secure a wider consensus at the Review Conference. The UK and its partners, will work within the UN framework to carry the process forward via sub-regional workshops and bilateral meetings. This should lead to some common ground on responsibility in small arms and light weapons transfers.

A minority of countries have argued for the Review Conference to be limited to a review of PoA implementation, an exercise that would merely repeat this year's Biennial Meeting of States. If any progress is to be made towards reducing violence and securing development by curbing the illicit small arms trade, it is essential that States use the Review Conference to raise important issues such as transfer controls. This would provide an excellent opportunity to hear the arguments from all sides and to reflect the broad support for stronger transfer controls. It could also pave the way for possible further work under the PoA.

- j) **SALW Transfer Controls Summary:**

- i) Working within PoA in order to prevent irresponsible small arms and light weapons transfers that can flow into the illicit market;
- ii) Continuing need for inclusive partnerships (bottom upwards) and recognition of differing national/regional capacity and security concerns;
- iii) Aiming for consensus concerted action at regional level on criteria and guidelines at the PrepCom and Review Conference;
- iv) There is no suggestion of imposing solutions developed outside the PoA;
- v) Global standards of transfer controls on small arms and light weapons will be a major step forward in combating small arms and light weapons proliferation and the damage they cause.

The UK believes it is time to accelerate its activity and co-operation to make clear that it has the support of the majority of PoA participants. The UK hopes that States and regional organisations will take every suitable opportunity in coming months to make the case for progress on transfer controls at the upcoming Review Conference. Such an international effort at this stage will produce beneficial results and lay the foundations for greater safety, security and prosperity in the world's conflict regions.

Participants were invited to provide their thoughts on the TCI, including how realistic they perceive the TCI approach is for their regions, by contacting Simon Johnson:

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**9. Kenya's Understanding of What Transfer Criteria Might Look Like**

*Leonard Onyonyi (Kenyan National Focal Point on Small Arms)*

- a) **Introduction:** Kenya has experienced, directly, the social, humanitarian, security and economic impact of arms proliferation, particularly over the last 15 years. The Kenya government thus attaches great importance to initiatives that can promote peace and security necessary for social and economic development.

The last four years has witnessed tremendous progress in the arena of arms control with visible commitments being witnessed across the globe. There has also been reciprocal improvement in democratization, empowerment of citizenry and increased participation of civil society in the security sector, an area that remained the preserve of Governments for years. The previous two BMS have seen broader and greater reporting by States, a testimony to the recognition of the need to collectively work on the uncontrolled availability and movement of arms as a global security concern.

- b) **Hopes for the PrepCom and Review Conference:** Kenya, like other concerned nations, attaches great importance to the next PrepCom scheduled for January 2006. It is Kenya's desire that the journey to the Review Conference must begin with a clear vision of what needs to be achieved based on the reflection of the past five years, and the need to re-energize appropriately aspects of the PoA to reflect contemporary issues and challenges, and provide appropriate effective responses.

As had been reiterated by HE President Mwai Kibaki during his address to the UN General Assembly in September, Kenya remains firmly committed to the PoA, and remains supportive of any initiatives that would strengthen its implementation, particularly on providing for stronger transfer controls based on sound principles, in consonance with article 26 of the UN Charter.

- c) **Kenya's implementation of Transfer Guidelines:** At sub-regional level, Kenya is implementing transfer guidelines developed within the context of the Nairobi Protocol, drawing global mandate from paragraph 26 of the PoA, and espousing the following principles:

- i) Non-violation of direct State obligations under international law;
- ii) Promotion of human rights;
- iii) Promotion of confidence building among States through non accumulation of excessive arms;
- iv) Promotion of internal stability of States;
- v) Respect for legitimate security needs and concerns of States;
- vi) Promotion of economic development through reduction in security expenditures;
- vii) Promotion of good governance and accountability;
- viii) Promotion of transparency in arms transfers subject to internal and regional security situations;
- ix) Promotion of accountability in arms transfers that will not allow for diversion to any other parties that do not observe these principles.

These principles have in effect been adopted by many regions and are being practiced by many producer States including Japan, South Africa and Argentina.

- d) **Conclusion:** Kenya believes that upcoming meetings provide States with a good opportunity not only to re-energize the transfer regime but also complement the efforts of sub-regional arrangements that have already taken these principles into account and need global approach to enhance the effectiveness and coordination of such regimes.

The proposed text can thus be used as a basis for developing appropriate principles and approaches in a consensual manner without necessarily reopening debate on the PoA.

#### 10. **Finland's Perspective**

*Ambassador Kari Kahiluoto (Ambassador, Permanent Representative of Finland to the Conference on Disarmament)*

- a) **Strengthening Transfer Principles:** Finland strongly supports strengthening small arms and light weapons transfer principles in the context of the Review Conference. Much valuable groundwork to this aim has been done, with this conference adding considerably to the amount of thinking by governments, NGO's and the academic community.
- b) **Review Conference Outcome Document:** An eventual Outcome Document of the Review Conference could incorporate guidelines, and ideally also operative procedures, to advance their implementation, and thus strengthen the existing commitments on transfer principles in the PoA. Eventually these principles would form a part of the small arms and light weapons dialogue, becoming themselves a part of eventual biannual assessments and reporting requirements.
- c) **UK's 'Food for Thought' Paper:** Finland supports the minimum principles introduced in the UK's '*Food for Thought Paper*' (see annex I of this report). Ambassador Kahiluoto summarised the principles contained in the paper as follows:
- i) reaffirmation of international obligations relevant to arms transfers;
  - ii) reaffirmation of the transfer principles in the PoA;
  - iii) reaffirmation of the obligation for an effective system of licensing that encompasses measures to cover import, export, transit and brokering of small arms and light weapons;
  - iv) commitment not to authorise weapons transfers that might violate UN or other sanctions, contravene multilateral or bilateral non-proliferation commitments, be used for repression or violent suppression of international human rights law or international humanitarian law, be used for aggression against another State, aggravate an internal situation, or provoke or prolong armed conflict, or be used to carry out a terrorist act or support violent crime;
  - v) take into account the following in licensing decisions: internal and regional situation, recipients' compliance with non-proliferation and disarmament commitments, risk of diversion and the inherent right to individual or collective self defence.
- d) **Helsinki Conference:** On 10 November 2005, a conference on Arms Transfer issues was arranged in Helsinki by the Finnish NGO KATU Civil Society Prevention Network and Saferworld with sponsorship and active participation by the Finnish Ministry for Foreign Affairs.

The co-organisers KATU and Saferworld will eventually report more in detail on the conference that was attended by some key Eastern European expert delegations, including delegations from Belarus, Moldova the Ukraine and Russia. Representatives of several operational arms transfer control organisations and regimes explained in detail their principles and operational provisions for weapons transfer controls.

The OSCE SALW Document and Arms Transfer principles were introduced, as was the Wassenaar arrangement. The EU Code of Conduct was introduced, as were CIS measures on the control of exports of MANPADS. Focus was also extended to the Nairobi Protocol. An important conclusion was that, with respect to establishing international principles on weapons transfers (especially concerning small arms and light weapons) there exists a great deal of convergence and common ground. This common ground is an excellent building block for global PoA principles. Consolidation of this common ground into an academic background paper (possibly by UNIDIR) could be useful for the PrepCom.

**11. Switzerland**

*Reto Wollenmann (Policy Advisor, Arms Control and Disarmament Policy Swiss Federal Department of Defence, Civil Protection and Sports Switzerland)*

With respect to the Swiss principles on transfers, Swiss legislation requires consideration of human rights, international peace, etc. States need to remember that export controls and tracing are complimentary measures.

**12. China**

*Deng Hongmei (Counsellor, Delegation of the People's Republic of China to the Conference on Disarmament)*

China is taking a cautious and responsible attitude to transfer issues, and has strict controls over its military transfers. China welcomes an exchange of views on transfer controls issues, and further studies on the subject.

Next Steps: Towards the Small Arms Review Conference and its Preparatory Committee

**13. Towards the Small Arms Review Conference and its Preparatory Process**

*Mr. Paulino Franco de Carvalho Neto (Counsellor, Permanent Mission of Brazil to the United Nations)*

- a) **Achievements so Far – the Marking and Tracing Instrument:** One of the most critical issues on the wake of the PoA has been the establishment, in 2004, of an Open-Ended Working Group (OEWG) with the goal of negotiating an *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* (the Marking and Tracing Instrument). Upon three sessions of two weeks each, the OEWG was able to reach consensus on a final text. In line with the PoA tradition, the process that led to this result was full of bitter controversies. In the end, by means of what some have described as yet another case of misuse of the consensus rule, the OEWG adopted a political document, again without any mention of ammunition.

Notwithstanding, proper implementation of the Marking and Tracing Instrument is crucial for the sustainability of the PoA as a whole. In the future, in case the shortcomings of the Marking and Tracing Instrument come to reveal themselves as a major impairment of its efficacy, the international community must not refrain from the task of strengthening its terms.

- b) **New Developments/ Undertakings:** As regards the likelihood of the adoption of new undertakings on transfer controls per se, there seems to be widespread interest in seizing the opportunity offered by the Review Conference in order to strengthen and refine the PoA's dispositions on this matter, as well as to adopt new commitments. Many interesting proposals on transfer controls have already been put forward during the 2003 and the 2005 BMS, which follow both procedural-administrative and risk-based denial approaches.

Among the former, the most promising proposals aim at strengthening national and international import/export/transit oversight systems. Some examples are:

- i) standardization of the format of end-user certificates, with a view to avoiding problems with falsified documents;
- ii) improvement of information-exchange mechanisms between national authorities, in order to increase efficiency in the fight against persons and groups involved with illicit manufacturing or trafficking;
- iii) improvement of customs procedures, including the need for thorough physical inspection of shipments by authorities of export, import and transit countries; and
- iv) the need for the importing country to issue confirmations of receipt of shipments to the exporting country.

In addition, the calls for the international community to adopt further steps related to illicit brokering may finally begin to be tackled, by means of the establishment of a Group of Government Experts to discuss the issue. The importance of this measure is highlighted by the fact that very few countries in the world have legislation properly suited to control brokers.

In tandem with those, many countries have continuously expressed their interest in having the Review Conference to consider and approve ambitious "risk-based denial" transfer control measures. Among those are the long-standing calls for a prohibition of transfer of small arms and light weapons to unauthorized non-state actors (strongly opposed by some countries), as well as the proposals to include respect for human rights, international humanitarian law and sustainable development as criteria for national export licensing systems' decision-making (in addition to the risk of diversion into the illicit market, which is already mentioned in the PoA).

- c) **The UK's Transfer Controls Initiative:** A bold approach has been followed by the UK, which is seeking to promote the adoption of an ambitious and comprehensive package of criteria. With this goal in mind, UK has launched a series of regional seminars and meetings with interested States, known as "Transfer Controls Initiative" (TCI). Its objective is to build support "from bottom to top", by taking into account views and proposals from a cross-regional range of interested countries. Laudable as this inclusive initiative may be, it remains to be seen if the outcome of regional discussions held under TCI will actually be incorporated into the final package. Ultimately, this is what will determine if the initiative is a valid attempt to seek consensus through open consultations. The international transfer controls regime for small arms and light weapons and ammunition is still in its infancy, marred by uncertainties and sustained by an incomplete legal-regulatory framework.

Previous attempts to implement such controls have met considerable resistance, which has been receding gradually as the consensus on the urgent need to curtail illicit trade in small arms and light weapons and ammunition grows.

- d) **Options Going Forward:** Experience shows that procedural-administrative transfer controls are more easily adopted, their implementation is politically less

sensitive, and they yield considerable results in the short term. Strengthening and broadening such controls should be thus a top priority.

On the other hand, there is a host of serious problems whose origin lies in the intersection between the licit and the illicit trade of small arms and light weapons, and these cannot be tackled by mere reinforcement of border controls and by double-checking end-user certificates. Difficult and politically sensitive as they may be, proposals based on the “risk-based denial” approach may offer concrete solutions for those yet unaddressed problems.

In order to generate the much-needed consensus for the adoption of such measures, interested States should proceed with caution and avoid trampling over others’ security concerns. They must also seek ways and means to ensure an effective, non-discriminatory and fairly homogenous implementation. Last but not least, they must actively seek to engage key actors, such as the major small arms and light weapons manufacturing and exporting countries, as well as the major importers.

- e) **Lessons Learned:** The need for such cautiousness is reinforced by the edgy discussions and controversies that could already be noticed during the BMS2 and the proceedings of the 60th Session of the General Assembly. The inability of the BMS2 to adopt any substantive recommendations, as well as the many disputes over breadth and wording of the General Assembly Draft Resolutions on the issue of small arms and light weapons are evidence of mounting potential for deadlock, which could easily lead the Review Conference down a path very similar to the one followed by its NPT counterpart, held in May this year. Given that the PoA is a far less consolidated regime, such a scenario is nothing short of disastrous, and must be avoided by all means.

Bearing this in mind, all States should avoid crystallizing their national positions, and do their utmost to make room for compromise and commitment. On one hand, countries interested in pressing for the strengthening and broadening of the PoA should be reminded that experience in the NPT and other regimes advises against pressing too hard against more reluctant States, especially when this reluctance is based on security fears, real or perceived. On the other hand, those States that are wary of any new commitments in the field should understand that the 2001 Conference did not provide the international community with a finished, single-shot solution, but rather with a foundation that must be gradually built upon.

Too many people have suffered from the misery inflicted by misuse of small arms and light weapons. If countries refrain from taking immediate and resolute action, they are sealing the fates of those who are under threat of suffering from it in the future.

#### 14. **The Netherlands Hopes for the Review Conference**

*Ellen Schut (Arms Control and Arms Export Policy Division, Ministry of Foreign Affairs)*

- a) **Review Conference Outcomes:** The Review Conference should be ambitious in terms of implementation of the PoA, but should not come with a host of new issues. The Netherlands seeks a twofold result:
- i) *Agenda for Implementation:* an agenda for implementation of the PoA should be established by the Review Conference involving a detailed elaboration of agreements that are part of the PoA already, but need to be concretised;
  - ii) *Declaration:* the Review Conference should produce a short, clear Declaration which should pay attention to the context and what is already

achieved, ie: the 2005 World Summit including the link to peace, security and development, terrorism, BMS1 and BMS2, a tracing instrument, regional seminars, Small Arms Survey year books, etc. At the same time the Declaration should represent what remains to be done: a group of experts on illicit brokering, transfer controls, and particularly the commitment of donor States.

- iii) *Issues for development:* Issues relating to the Dutch resolution on small arms such as armed violence reduction strategies and safe storage and destruction in DDR need to be built upon.
  - iv) *Mainstreaming:* Focus should be on mainstreaming issues of small arms and light weapons in the Peacebuilding Commission that will be set up. Furthermore, in light of second council resolution 1325 on women and conflict, it is important that more attention is paid to gender issues.
- b) **Transfer Controls:** In the context of transfer controls, the Netherlands thinks the following issues should be considered:
- i) *Coordinating initiatives/ Interfacing:* One issue that needs to be addressed is: how do different initiatives relate to each other? For instance, transfer controls and illicit brokering are both currently priority issues in the international small arms and light weapons arena. It is worth analysing, therefore, how the present approach to brokering activities relates to the approach of transfer controls, since both issues entail profound international cooperation, effective legislation and a method of regulation. The question of how best to address transfer control issues should be reviewed in the context of the Marking and tracing Instrument. When there is more clarity on how these subjects relate to each other, States will have a better starting point for new ideas and initiatives.
  - ii) *End User Certificates:* Are end-user certificates part of the transfer controls initiative?
  - iii) *Engaging States:* The aim is to get as many States involved in the active thinking process on transfer controls as possible. Once there is clarity on where States stand on the problem and approach of transfer controls, it will be possible to discuss the way ahead and go there together. Thus, it is important that discussions between State parties are kept open and active.

#### General Comments

Participants made the following general points during the discussions which followed each session:

- a) **Viewing transfer controls in their entirety:** The focus of transfer controls should not be restricted to exports. Other aspects of the transfer controls issue need to be emphasised, such as: imports, transit, intermediaries and transfers to non-state actors.
- b) **Implementation:** A lack of progress in respect to transfer controls can be ascribed to a lack of implementation of the PoA generally, and this is the aim of the Review Conference - to look at implementation. Whilst agreement on common standards is important, implementation remains a key issue that must not be overlooked.

- c) **Establishing International Guidelines:** The best way forward may be to establish an international set of guidelines on transfers which reflect 'best practices' at a regional level, as opposed to negotiating a legally binding instrument (just yet). Such guidelines would apply to *all* States involved in the transfer (ie. exporters, importers etc).
- d) **Process for establishing International Guidelines:** Consideration needs to be given to the form of these guidelines and *how* they would be incorporated into the PoA since there is consensus that the text of the PoA should not be opened for re-negotiation. Practical consideration also needs to be given to *how* consultations will take place between all of the States involved in a transfer, and there is a particular need to ensure all weapons-producing States are involved in the process.
- e) **Non-state Actors:** The transfer of arms to non-state actors was a big issue in the 2001 UN Conference discussions, and remains an important issue. Non-state actors contribute to the destabilisation of whole regions, not just the countries in which they are active, therefore the issue of transfers to non-state actors and countries that support terrorism should be addressed in the PoA or the International Guidelines.
- f) **Review Conference:** The Review Conference provides a good opportunity to identify implementation problems and address new issues which are not addressed by the PoA. There are precedents in other spheres for going further in implementation reviews and achieving an acceleration and clarification of commitments, but this will depend on the political will of States.
- g) **Follow-on process:** Consideration should be given to a follow-on process which encourages and facilitates interested States to pursue issues within the PoA framework, but which does not require every State to get involved. This would allow issues to be developed, albeit that consensus on them has not yet been achieved.

#### Concluding Remarks

*Dr. Patricia Lewis (Director of the United Nations Institute for Disarmament Research (UNIDIR))*

The TCI is clearly about the illicit trade in small arms and light weapons, and provisions addressing exports alone are not enough. There is a need to implement the commitments that already exist, and look for ways to close any gaps or loopholes. There seems to have been much progress, regionally, although there are gaps, particularly in Asia, the Middle East and parts of Africa, which warrants a call for capacity building in those areas and a sharing of experience between regions. An important question is whether the international community can go further based on a consensus approach, given that, for some, enough (or even too much) progress has already been made.

Participating Governments and Organisations

<b>Governments</b>	<b>UN &amp; IOs</b>	<b>NGOs</b>
1. Argentina	1. European Commission	1. Amnesty International (International Secretariat)
2. Australia	2. International Committee of the Red Cross (ICRC)	2. BioWeapons Prevention Project (BWPP)
3. Austria	3. Soka Gakkai International United Nations Liaison Office (SGL)	3. Franciscans International
4. Bahrain	4. UN Department for Disarmament Affairs (UNDDA)	4. Geneva Forum
5. Belgium	5. UN Institute for Disarmament Research (UNIDIR)	5. Handicap international
6. Brazil	6. UN Development Programme (UNDP)	6. International Action Network on Small Arms (IANSA)
7. Canada		7. International Alert
8. China		8. Oxfam International Advocacy (Geneva)
9. Finland		9. Parliamentary Forum on Small Arms and Light Weapons
10. FYRM		10. Programme for Strategic and International Security Studies (PESI)
11. Germany		11. Quaker United Nations Office (QUNO)
12. Greece		12. Regional Centre on Small Arms and Light Weapons (RECSA)
13. Iran		13. SaferAfrica
14. Ireland		14. Saferworld
15. Israel		15. Small Arms Survey
16. Hungary		16. Women's International League for Peace and Freedom (WILPF)
17. Japan		17. World Council of Churches (WCC)
18. Kenya		
19. Malaysia		
20. Malta		
21. Mauritius		
22. Mexico		
23. Netherlands		
24. Nicaragua		
25. Norway		
26. Peru		
27. Poland		
28. Republic of Korea		
29. Russian Federation		
30. Singapore		
31. Slovenia		
32. Sri Lanka		
33. Sweden		
34. Switzerland		
35. Thailand		
36. Uganda		
37. UK		
38. USA		

# Annex I

## **Food for thought paper**

(prepared by the UK Foreign and Commonwealth Office)

### **Elements of effective controls for export, import, transit, and transshipment of guidelines governing transfers of small arms and light weapons**

The Programme of Action requires that States assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons, and are consistent with the existing responsibilities of States under relevant international law. (*para II.11*)

The Programme of Action requires that States establish or maintain an effective national system of export and import licensing or authorization, as well as measures on international transit, for the transfer of all small arms and light weapons, with a view to combating the illicit trade in small arms and light weapons. (*para II.11*)

Taking into account our respect for and commitment to international law and the purposes and principles enshrined in the Charter of the United Nations, [including the sovereign equality of States, territorial integrity, the peaceful resolution of international disputes, non-intervention and non-interference in the internal affairs of States],

We undertake to avoid authorising exports of small arms and light weapons where there is a clear risk that the transfer in question will:

- a) Violate, or threaten to violate sanctions of the United Nations Security Council or other multilateral sanctions to which the State adheres;
- b) Contravene bilateral or multilateral commitments on non-proliferation, small arms, or other arms control and disarmament agreements to which the State adheres;
- c) Be used for the purpose of repression or the violation or suppression of human rights and fundamental freedoms, including the commission of genocide or crimes against humanity;
- d) Be used for the commission of serious violations of international humanitarian law;
- e) Be used in acts of aggression against another State or population or threaten the national security or territorial integrity of another State;

- f) Be used to worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts or aggravating existing tensions;
- g) Be used to support or encourage terrorist acts and facilitate organised crime.

In considering proposed exports of small arms and light weapons, States will take into account:

- a) The internal and regional situation in and around the recipient country, in the light existing tensions or armed conflicts;
- b) The record of the recipient country's compliance with regard to international obligations and commitments in the field of non-proliferation, non-use of force, suppression of terrorism arms control and disarmament, and their record of respect for international humanitarian law;
- c) The requirements of the recipient country to enable it to exercise its inherent right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
- d) The requirements of the State to meet its legitimate self-defence and security needs, and to enable it to participate in peacekeeping operations in accordance with the Charter of the United Nations or relevant regional organisations with a peacekeeping mandate;
- e) The nature and cost of the arms to be transferred in relation to the circumstances of the recipient country, including its legitimate security and defence needs and to the objective of the least diversion of human and economic resources to armaments;
- f) The risk of diversion or re-export in conditions incompatible with these guidelines.

States will, in importing small arms and light weapons, undertake to:

- a) Ensure that all shipments of small arms imported into their territory are subject to effective national licensing or authorization procedures in order to prevent their diversion to any party other than the declared end-user;
- b) Without prejudice to the rights of States to re-export small arms and light weapons that they have previously imported, ensure that the original exporting State will be notified before re-export or re-transfer of these weapons.

## Annex II

# **SMALL ARMS CONSULATIVE GROUP PROCESS**

**Small Arms and Light Weapons Transfers:  
Developing Understandings on Guidelines for  
National Controls and Transfers to Non-State Actors**

## **Developing International Guidelines for National Controls on SALW Transfers**

**November 2005**



Convened by Biting the Bullet Project  
Bradford University, International Alert, and Saferworld)

Contact: Owen Greene (o.j.greene@bradford.ac.uk); Paul Eavis (peavis@saferworld.org.uk); Charlotte Watson (cwatson@international-alert.org)

# **Small Arms and Light Weapons Transfers: Developing Understandings on Guidelines for National Controls**

## **Small Arms Consultative Group Process**

### **1. Introduction**

This document is a revised version of one of the sections of the SALW Consultative Group Process' 'Food for Thought' Paper<sup>1</sup>, published in July 2005, which outlined ideas on approaches to international shared understandings on two linked issue areas that are of key importance to the implementation and further development of the UN Programme of Action (PoA) on Small Arms and Light Weapons (SALW):

- Restrictions of transfers of SALW to non-state actors (NSA)
- Guidelines for national decisions on whether to authorise transfers of SALW

These two issues are also closely linked in practice, not least because the criteria applied by states in deciding whether to authorise SALW transfers have a critical bearing on whether licenses for transfers to NSAs are issued and also on the risks that legal arms transfers are illicitly diverted to NSAs.

Further discussion and dialogue has been necessary on both of these issues to enable them to be effectively addressed at the 2006 UN Conference to review the PoA. The informal Small Arms Consultative Group Process (CGP) was established in January 2003 to facilitate the development of shared understandings and ways forward for the PoA on these two linked issues. It consists of representatives of over 30 governments from most regions,<sup>2</sup> the UN and several regional organisations, and selected civil society experts. It is convened by the Biting the Bullet Project.<sup>3</sup> It has so far met six times during 2003 – 2005.<sup>4</sup>

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<sup>1</sup> Small Arms Consultative Group Process, *Food for Thought Paper: Small Arms and Light weapons Transfers: developing understandings on Guidelines for National Controls and Transfers to Non-State Actors*, published and disseminated on behalf of the CGP participants by Biting the Bullet Project (Bradford University, International Alert, Saferworld), July 2005.

<sup>2</sup> Governments that are participating in this informal Small Arms Consultative Group Process include: Argentina, Belarus, Botswana, Brazil, Canada, Czech Republic, Colombia, Estonia, Finland, Germany, Ghana, Kenya, Japan, Latvia, Lithuania, Mexico, Nigeria, Norway, Poland, Mozambique, Netherlands, Romania, Russian Federation, Slovakia, Sri Lanka, Switzerland, Tanzania, Uganda, UK, Ukraine, USA. A number of additional states have expressed support for the CGP and an intention to join the process.

<sup>3</sup> Biting the Bullet is a joint project of Bradford University, International Alert, and Saferworld to inform and promote the development and implementation of the UN Programme of Action on small arms.

<sup>4</sup> The CGP meetings have taken place in London, UK (January 2003); Prague, Czech Republic (June 2003); New York, USA (July 2003); Lake Naivasha, Kenya (September 2003); Colombo, Sri Lanka (September 2004); and Rio de Janeiro, Brazil (April 2005).

In 2004 the CGP published the results of the first phase of its work.<sup>5</sup> In the second phase of its work, since summer 2004, the members of the CGP have made considerable progress in developing shared understandings and possible proposals. These were outlined in some detail in the CGP 'Food for Thought' Paper (July 2005). Although the governments, organisations and experts participating in the CGP did not necessarily fully endorse the approaches and proposals outlined in this Paper, they did all agree to present this paper as a useful contribution to wider international discussion and debate.

As we approach the Preparatory Conference for the 2006 UN Conference to Review Implementation of the PoA, it is increasingly important to focus on specific suggestions to clarify and elaborate PoA commitments, including those relating to controls on SALW transfers.

This short paper aims to present a revised draft of the CGP ideas relating to the elaboration of international guidelines for national decisions on whether to authorise proposed SALW transfers. The content of the ideas contained in the CGP 'Food for Thought Paper' is essentially unchanged, but we have aimed to simplify and clarify some of the formulations. CGP ideas relating to possible commitments relating to SALW transfers to Non-State Actors will be presented in forthcoming separate papers.

## **Elaborating and Clarifying International Guidelines for National Controls on SALW Transfers**

### **Introduction**

Effective regulation and control of legal transfers of SALW are essential components of efforts to prevent, reduce and combat illicit SALW trafficking in all its aspects. Many SALW enter illicit circulation or use through diversion from legal transfers. Large quantities of arms fall into the hands of criminals, terrorists, rebel groups and others through leakage from legally held military, police, civilian or other stocks. Moreover, SALW that have been transferred legally can be misused in human rights abuses and repression, or contribute to conflict, violence and insecurity.

The PoA includes important commitments that aim to ensure that states exercise effective controls over legal transfers of SALW. For example, Paragraph 2 of Section II of the PoA commits states to

*'put into place, where they do not exist, adequate laws, regulations, and administrative procedures to exercise effective control over the production of SALW within their areas of jurisdiction and over the export, import and transit or retransfer of such weapons, in order to prevent illegal manufacture of and illicit trafficking in SALW or their diversion to unauthorised recipients.'*

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<sup>5</sup> Chair's Interim Report, Small Arms Consultative Group Process, *Small Arms and Light Weapons Transfers: developing understandings on guidelines for national controls*, Biting the Bullet Project, London, May 2004.

The key commitment relating to guidelines for SALW transfers is contained in Paragraph 11 of Section II of the PoA. States should

*‘assess applications for export authorisations according to strict national regulations and procedures that cover all SALW and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illicit trade.’*

This is an important commitment, with powerful implications for national systems for regulating SALW transfers. But these implications are not elaborated or fully clear.

It is widely recognised that national guidelines have an important place in effective national arms export and import control systems. Such guidelines are needed to enable licensing officials to make reasonably consistent case-by-case assessments of applications for authorisation of SALW transfers, which take appropriate account of all of the factors deemed relevant by the state, including national and international policies and commitments.

The lack of clarity means that the implications of these PoA obligations may not be clear for national officials responsible for carrying them out, and that there is high risk of significant differences in national interpretations for these obligations. These are probably undermining the effectiveness of the PoA, and may lead to damaging misunderstandings and disputes. There would be important benefits to clarifying the implications of these commitments and elaborating shared international understandings of the guidelines and criteria that national officials should take into account when deciding whether to authorise applications to transfer SALW.

### **The value of elaborating international norms for importing and transit as well as exporting States**

The debates during the preparations for the 2001 UN Conference focussed on the possible international guidelines for national decisions on whether to authorise SALW exports. This is reflected in the formulation of the main relevant PoA commitment quoted above.

It may be more productive instead to focus on possible international guidelines to be applied by all states involved in authorising an SALW transfer: importing and transit states as well as exporting states. To these should also be added states with jurisdiction over any brokering activities that might be associated with the possible SALW transfer in question.

This revised approach recognises the responsibilities, roles and concerns of all parties to an SALW transfer process, and not only those of the exporting state. Moreover, it helps to avoid possible concerns that international guidelines might imply, for example, that exporting states are in a better position than importing states to assess the possible risks of the SALW transfer under consideration or the security or other needs that have given rise to the transfer application.

Moreover, this revised approach emphasises the importance of co-operation and consultation between all states directly concerned with authorising a possible SALW transfer. While recognising that the national authorities for the exporting and importing states each have the right independently to decide on whether to authorise a proposed SALW transfer, and that the transfer is illegal unless authorised by both parties, they should be encouraged to consult and exchange information before arriving at decisions. Consultations should as far as possible be based on international or expert reports to which each party has access.

Relevant authorities in transit states should also ensure that they have adequate information before taking authorisation decisions, as should states with authority over any arms brokers that may be involved.

### **CGP Ideas for elaborated international guidelines for national decisions on whether to authorise proposed SALW transfers**

This section suggests a formulation of possible undertakings by States relating to the elaboration of international guidelines relating to national authorisation of proposed SALW transfers. It is designed to clarify and elaborate existing commitments contained in Paragraph 11 of Section II of the PoA. However, for the reasons discussed above, it proposes broadening these beyond exporting States to include importing and transit states, and also States with authority over any arms brokers that may be involved.

Recognising the principles enshrined in the UN Charter, including (inter alia) the principles of non-intervention, non-interference in internal affairs, and the requirement to avoid use or threat of force; and the rights of States to self defence and to acquire arms required for legitimate national security needs.

1. States undertake that any authorisation of transfers of SALW (including parts, components and ammunition) shall be made only in strict accordance with their undertakings contained in the PoA, including requirements to:
  - a) Assess applications for SALW transfers according to strict national regulations and procedures, taking into account relevant national and international guidelines;
  - b) Ensure explicit authorisation of the SALW transfer by all states directly concerned with the process of the SALW transfer (including the exporting, importing and transit states), in accordance with their relevant and adequate national laws, regulations and administrative procedures to control SALW transfers, and subject to the national controls of relevant transit and/or transshipment states and of states with jurisdiction over relevant arms brokering activities;
  - c) Ensure adequate marking and record-keeping in relation to each of the SALW involved in the proposed transfer, in accordance with relevant international standards, and co-operate to enable timely and reliable identification and tracing of any SALW that are diverted to the illicit trade;

2. Consistent with commitments contained in Paragraph 11 of Section II of the PoA, States should not authorise exports, imports, transit or brokering activities relating to transfers of SALW (including parts, components and ammunition) where there is a clear and substantial risk that the transfer in question will:

- a) Violate or circumvent decisions by the United Nations Security Council including those imposing arms embargoes or restrictions on SALW transfers, or other international, regional or sub-regional sanctions to which the State adheres.
- b) Contravene bilateral or multilateral commitments to which the State is party, including non-proliferation, arms control, disarmament or small arms agreements (such as the 1980 Convention on the Use of Certain Conventional Weapons Which May Be Considered Excessively Injurious and the associated Protocols).
- c) Violate or circumvent their existing responsibilities under relevant international law, including appropriate responsibility to avoid actions likely to facilitate or contribute to actions by others that are in contradiction to such international law.
- d) Be used for, or to facilitate, violation or suppression of human and peoples' rights and freedoms, or for the purposes of oppression.
- e) Be used for, or to facilitate, acts that violate international humanitarian law, including genocide and crimes against humanity.
- f) Be used for, or to facilitate or encourage, terrorist acts.
- g) Be used for, or to threaten, acts of aggression against another State or population.
- h) Be diverted to unauthorised uses or users or into the illicit trade.

3. In considering whether to authorise exports, imports, transit or brokering activities relating to a proposed transfer of SALW (including their parts, components and ammunition), States should take into account the following factors:

- a) The requirements of the recipient State to enable it to exercise its right to self defence in accordance with Article 51 of the UN Charter, or to enable it otherwise to meet its legitimate national security needs or to contribute to internationally mandated peacekeeping operations.
- b) The record of compliance of all States involved in the process of the transfer with international obligations and commitments, in particular in relation to: compliance with end-use commitments; the non-use of force; non-proliferation, arms control and disarmament; prevention and suppression of terrorism; and the record of respect for international law governing the conduct of armed conflict.

- c) The risk that the proposed SALW transfer would adversely affect international, regional or internal peace and security, or contribute to destabilising or uncontrolled accumulations of arms, particularly in countries or regions that are at serious risk of armed conflict or are emerging from conflict.
- d) The risk that the proposed SALW transfer might be used for or would facilitate violent or organised crime or contribute to criminal mis-use of arms and ammunition.
- e) The risk that the SALW concerned in the proposed transfer may be diverted from authorised stocks, for example due to inadequate stockpile management and security, or due to lack of ability or willingness to protect against transfers, loss, theft or diversion that are unauthorised or inconsistent with commitments relating to end use or end user.
- f) The risk that the proposed SALW transfer may hinder or obstruct sustainable development and unduly divert human and economic resources to armaments of the states involved in the process of the SALW transfer.
- g) The risk of diversion or re-export that would contravene or undermine the objectives of PoA and the guidelines listed above.

In addition to the above international obligations and guidelines, each state directly concerned with authorising a proposed transfer may also take into account other relevant national, regional or international commitments or guidelines. After considering the above international obligations and guidelines, and assessing the balance of risks, each such state has the right and responsibility to make national decisions. However, the decision-making process should be approached co-operatively and with appropriate consultation.

As far as possible, assessments relating to the above obligations and guidelines should be made on the basis of objective evidence. Where the states directly concerned initially differ in their assessments relating to one or more of the above obligations or guidelines, they should seek to engage in relevant information exchange or consultation, with a view to resolving or addressing the issues or concerns in a co-operative manner.

## Annex III

### **Global Principles for International Arms Transfers**

(prepared by the Control Arms Campaign)

#### **Principle 1: Responsibilities of states**

All international transfers of arms shall be authorised by a recognized state and carried out in accordance with national laws and procedures that reflect, as a minimum, states' obligations under international law.

#### **Principle 2: Express limitations**

States shall not authorise international transfers of arms that violate their expressed obligations regarding arms under international law. This includes:

- a) **Obligations under the Charter of the United Nations, including:**
  - i) **decisions of the Security Council, such as those imposing arms embargoes;**
  - ii) **the prohibition on the use or threat of force;**
  - iii) **the prohibition on intervention in the internal affairs of another state.**
- b) **Any other treaty or decision by which that state is bound, including:**
  - i) **Binding decisions, including embargoes, adopted by relevant international, multilateral, regional, and sub-regional bodies to which a state is party;**
  - ii) **Prohibitions on arms transfers that arise in particular treaties which a state is party to, such as the 1980 UN Convention Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects, and its Protocols, and the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.**
- c) **Universally accepted principles of International Humanitarian Law:**
  - i) **Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering;**
  - ii) **Prohibition on weapons that are incapable of distinguishing between combatants and civilians.**
- d) **Transfers which are likely to be diverted for any of the above or be subject to unauthorised transfer.**

*Principle 2 encapsulates existing express limitations under international law on states' freedom to transfer and to authorise transfers of arms. It focuses on circumstances in which a state is already bound not to transfer arms, as set out in expressed limitations in international law. The language is clear: "states shall not ..."*

*When new binding international instruments are agreed, new criteria should be added to the above principles. For example, if there is a new binding instrument on illicit brokering.*

#### **Principle 3: Limitations based on use or likely use**

States shall not authorise international transfers of arms where they will be used or are likely to be used for violations of international law, including:

- a) **breaches of the UN Charter and customary law rules relating to the use of force;**
- b) **the commission of serious violations of human rights;**
- c) **the commission of serious violations of International Humanitarian Law, genocide, and crimes against humanity;**

- d) **transfers which are likely to be diverted and used for the commission of any of the above.**

*In Principle 3, the limitations are based on the use or likely use of the weapons to be transferred. All states should abide by the principles of state responsibility, as set out in international law, which include supplier-state responsibility and accountability for the use of arms transferred between states.*

#### **Principle 4: Factors to be taken into account**

**States shall take into account other factors, including the likely use of the arms, before authorising an arms transfer, including:**

- a) **the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control, and disarmament.**  
**States should not authorise the transfer if it is likely to:**
- b) **be used for or to facilitate the commission of violent crimes;**
  - c) **adversely affect regional security or stability;**
  - d) **adversely affect sustainable development;**
  - e) **be used to carry out terrorist acts or support or encourage terrorism;**
  - f) **involve corrupt practices;**
  - g) **contravene other international, regional, or sub-regional commitments or decisions made, or agreements on non- proliferation, arms control, and disarmament to which the exporting, importing, or transit states are party;**
  - h) **be diverted for any of the above.**

*Principle 4 does not contain clearly stated prohibitions on the authorization of arms transfers. Instead, it identifies possible consequences that states are required to take into account before authorizing an arms transfer, imposes a positive duty on states to address these issues, and establishes a presumption against authorization where these consequences are deemed very likely.*

#### **Principle 5: Transparency**

**States shall submit comprehensive national annual reports on international arms transfers to an international registry, which shall publish a compiled, comprehensive, international annual report.**

*Principle 5 is a minimum requirement to increase transparency so as to help ensure compliance with Principles 1-4 above. States should report each international arms transfer from or through their territory or subject to their authorisation. Reporting should be standardised and tied to the implementation of the normative standards set out in the Treaty. These reports should be sent to an independent and impartial Registry of International Arms Transfers, which should issue a comprehensive annual report.*

#### **Principle 6: Comprehensive Controls**

**States shall establish common standards for specific mechanisms to control:**

- a) **all import and export of arms;**
- b) **arms brokering activities;**
- c) **transfers of licensed arms production;**
- d) **the transit and trans-shipment of arms.**

**States shall establish operative provisions to monitor enforcement and review procedures to strengthen the full implementation of the Principles.**

*Principle 6 will help ensure that states enact national laws and regulations according to common standards, and ensure that the principles are implemented consistently.*

## Annex IV

### INFORME AVANCES DEL PROYECTO CENTROAMERICANO PARA PREVENIR Y COMBATIR EL TRAFICO ILICITO DE ARMAS PEQUEÑAS Y LIGERAS

(circulated by Nicaragua)

#### **Antecedentes**

- El Proyecto Centroamericano para Prevenir y Combatir el Tráfico Ilícito de Armas Pequeñas y Ligeras, fue aprobado durante la XXVI Reunión de la Comisión de Seguridad de Centroamérica, realizada el 6 de junio de 2003. Nicaragua fue designada Sede del Proyecto Centroamericano, en agosto de 2003.
- En octubre de 2003, el Ministerio de Relaciones Exteriores asumió la dirección interina del Proyecto, que ejecuta desde la Dirección de Seguridad Democrática, con el objetivo de impulsar su fase preliminar.

#### **Gestiones ante el PNUD**

- En octubre del 2004, se establecieron reuniones de coordinación con PNUD de El Salvador para impulsar, a través de foros de discusión, un diagnóstico de la región con relación a la armas.
- El PNUD, además de proporcionar apoyo técnico y financiero para diversas actividades, en el 2004 iniciaron negociaciones para definir un programa de implementación que permita alcanzar el apoyo financiero en su totalidad por parte de la comunidad donante.
- A la fecha se ha elaborado el Programa de Implementación, el cual se firmará como Memorandum de Entendimiento, una vez que sea aprobado. Con este aval, se podrá hacer uso de fondos que estén dispuestos para enfrentar el problema de las armas, de forma ordenada, sin duplicar esfuerzos e involucrando a todos los actores internacionales en el tema, entre otros, UN-LIREC y principalmente la comunidad cooperante (Suecia, Reino Unido, Japón).
- En julio de 2005, la Señora Martha Ramírez, Directora para América Latina del PNUD, manifestó que la región contará con un millón de dólares (US\$ 1,000,000.00) para el primer año de ejecución del Proyecto. Se comprometió agilizar los trámites de técnicos-jurídicos para que a finales de este año se firme el Programa de Implementación del Proyecto Centroamericano entre el PNUD y cada uno de los países de la región.

### **Gestiones ante el Reino Unido**

- En enero de 2004, se iniciaron conversaciones con el Reino Unido para impulsar el tema de control de transferencias de armas pequeñas, en el marco del Programa de Acción de las Naciones Unidas para el Control del Tráfico Ilícito de Armas Pequeñas y Ligeras en todos sus Aspectos (PoA).
- En octubre del mismo año, el Reino Unido otorgó un monto de US\$80,000.00 para capacitación, financiando un taller sobre exportaciones, importaciones y transferencia de armas.
- En julio de 2005, el Reino Unido confirmó el apoyo para avanzar en el establecimiento de normas mínimas, basados en los objetivos del Proyecto Centroamericano y atendiendo los planteamientos de Naciones Unidas para avanzar en las regulaciones en materia de transferencia de armas. El apoyo se concretiza en dos vías: facilitando un especialista en Desarme para presentar las ideas de un Código de Conducta en la materia; y financiando un pequeño proyecto de US\$40,000.00 con perspectiva regional, con el objetivo de avanzar hacia una iniciativa regional común sobre control de transferencia de armas y apoyar a la finalización, formalización y comienzo inicial del Proyecto Centroamericano.
- En este contexto se prevé se finalice y formalice el Proyecto Centroamericano y apoyo en la contratación de personal y en la compra del equipo para establecer la Unidad Ejecutora Regional.
- Para alcanzar estos objetivos, se solicita a todos los países que cooperen con los expertos y que les brinden la información que necesitan para elaborar la propuesta de política común en materia de transferencia de armas. Igualmente, agradecería que todos los países apoyen a los expertos a fin de que logremos la finalización y formalización del Proyecto Regional.
- En este esfuerzo se enmarca el Código de Conducta Centroamericano sobre Transferencia de Armas, que es un eslabón importante para una política común regional sobre control de transferencia de armas. En este sentido, durante Reunión Conjunta de las Subcomisiones Jurídica, de Desarme y Seguridad Pública, realizada el 23 de agosto de 2005, gracias al financiamiento del Reino Unido, se contó con la asistencia técnica del Señor Daniel Luz, experto en materia de desarme.

### **Gestiones ante UN-LiREC**

- El Centro de Desarme de las Naciones Unidas para el Desarrollo de América Latina y el Caribe (UN-LiREC), igualmente ha expresado incidir en el apoyo necesario, de asistencia técnica y capacitación para que el Proyecto Centroamericano avance.

### **Comisiones Nacionales Multidisciplinarias**

- Los países han trabajado en la creación de las Comisiones Nacionales Multidisciplinarias, que son las instancias que están atendiendo la problemática del tráfico de armas pequeñas y ligeras de forma integral y multidisciplinaria.
- Nicaragua creó por Decreto Presidencial No. 111-2004, la “Comisión Nacional Multidisciplinaria para el Control del Tráfico Ilícito de Armas Pequeñas y Ligeras.” Esta Comisión se establece como una instancia de coordinación que sería la contraparte de la Unidad Ejecutora Regional del Proyecto Centroamericano.
- Panamá, por su lado, mediante Decreto Ejecutivo No. 145 del 29 de marzo de 2005, creó la “Comisión Nacional Multidisciplinaria para el Control del Tráfico de Armas Pequeñas y Ligeras.” Igualmente, Honduras creó en el año 2002, el “Comité Interinstitucional para la Reducción y el Control de Armas Livianas en Honduras.” Dicho Comité está conformado por instituciones gubernamentales, no gubernamentales y miembros de la sociedad civil, con el propósito de desarrollar programas de trabajo que permitan la búsqueda de soluciones nacionales y regionales, mediante la implementación de planes específicos en pro de la reducción y control de armas pequeñas y ligeras.
- Por otro lado, Costa Rica está tramitando la publicación del Decreto Ejecutivo para la creación de la Comisión Interdisciplinaria para el Control del Tráfico de Armas Pequeñas y Ligeras, la cual estará conformada por el Ministerio de Relaciones Exteriores y Culto, el Ministerio de Seguridad, Gobernación y Policía, el Ministerio de Salud Pública, el Ministerio de Justicia y Gracia, el Ministerio de Educación Pública, el Ministerio de Hacienda y el Ministerio de la Presidencia.

### **Talleres de Capacitación**

- En el 2004, en el contexto del Proyecto Centroamericano se realizaron tres actividades regionales y subregionales:
  - Taller Centroamericano sobre Creación de Comisiones Nacionales Multidisciplinarias para el Control del Tráfico Ilícito de Armas Pequeñas y Ligeras, 12 y 13 de febrero de 2004.
  - Seminario Interamericano sobre Identificación, Recolección, Administración de Arsenales y Destrucción de Armas Pequeñas y Ligeras, 12 y 13 de Mayo de 2004.
  - Taller sobre Exportaciones e Importaciones y Tránsito de Armas Pequeñas y Ligeras 7 y 8 de octubre de 2004.

- Estos resultados alcanzados, son producto de la buena voluntad y la decisión de los países centroamericanos preocupados por alcanzar el anhelado propósito de una Centroamérica segura, en paz y en pleno desarrollo.
- Disposición y voluntad que nos ha llevado a una discusión abierta y transparente de los problemas existentes para alcanzar un control necesario en la prevención y eliminación del tráfico ilícito de armas.
- Es importante que los países que aún no lo han hecho, constituyan sus Comisiones Nacionales Multidisciplinarias, a fin de avanzar en las definiciones de líneas de organización nacional y regional para el funcionamiento del mecanismo operativo y administrativo del Proyecto, que facilite la implementación de iniciativas del control de armas.
- Otra solicitud importante de los actores que atienden la asistencia, capacitación y financiamiento para el control de armas, es la unificación de las solicitudes a través de la coordinación del proyecto, con el propósito de que no se produzcan dualidades y se diluyan los esfuerzos. Nicaragua, mientras se constituye la Unidad Ejecutora Regional, está a la disposición para canalizar las solicitudes de cada país.

## Annex V

### **BEST PRACTICE GUIDELINES FOR THE IMPLEMENTATION OF THE NAIROBI DECLARATION AND THE NAIROBI PROTOCOL ON SALW**

Agreed by Foreign Ministers, June 2005

The **Nairobi Protocol** applies to 12 countries: Burundi, Democratic Republic of Congo, Djibouti, Eritrea, Ethiopia, Kenya, Rwanda, Seychelles, Transitional Federal Republic of Somalia, Sudan, Uganda, Tanzania.

#### **Chapter 2. Import, export, transfer and transit of SALW**

##### **2.2.3 Arms transfer criteria**

State Parties to the Nairobi Protocol should adopt the following Criteria, for international arms transfers (export, transit and brokered transactions):

a) State Parties shall not authorise transfers which would violate their direct obligations under international law, including:

- i) Obligations under the Charter of the United Nations – including
  - decisions of the Security Council such as those imposing arms embargoes
  - the prohibition on the use or threat of force
  - the prohibition on intervention in the internal affairs of another State
- ii) Any other treaty or legal obligations, to which a State is bound, including binding decisions, including embargoes, adopted by relevant international regional and sub-regional bodies, such as the Africa Union Peace and Security Council.
- iii) Prohibitions on arms transfers that arise in particular treaties which a State is party to, such as
  - 1980 Convention on the Use of Certain Conventional Weapons, Which May be Considered Excessively Injurious, including its Protocols
- iv) Universally accepted principles of international humanitarian law
  - Prohibition on the use of arms that are of a nature to cause superfluous injury or unnecessary suffering
  - Prohibition on weapons that are incapable of distinguishing between combatants and civilians.

b) State Parties shall not authorise transfers which are likely to be used:

- i) for the violation or suppression of human and peoples' rights and freedoms, or for the purpose of oppression;
- ii) for the commission of serious violations of international humanitarian law;
- iii) in acts of aggression against another State or population, threatening the national security or territorial integrity of another State, or threatening compliance with international law, governing the conduct of armed conflict;
- iv) to worsen the internal situation in the country of final destination, in terms of provoking or prolonging armed conflicts, or aggravating existing tensions;
- v) to carry out terrorist acts or support or encourage terrorism;
- vi) other than for the legitimate defence and security needs of the recipient country.

**c) State Parties shall take into account other factors, before authorising an arms transfer.**

States should not authorise the transfer if it is likely to:

- i) be used for or to facilitate the commission of violent crimes;
- ii) in the commission of serious violations of international humanitarian law, applicable in international and non-international armed conflict;
- iii) in the commission of genocide or crimes against humanity;
- iv) in acts of aggression against another State or population, threatening the national security or territorial integrity of another State;

*Small Arms and Light Weapons: Transfer Controls*

- v) adversely affect regional security; to endanger peace, introduce destabilizing accumulations of arms or military capabilities into a region, or otherwise contribute to regional instability;
- vi) adversely affect sustainable development, through the excessive or unjustifiable diversion of resources from social expenditure, to military expenditure;
- vii) involve corrupt practices at any stage – from the supplier, through any middlemen or brokers, to the recipient;
- viii) contravene other international, regional or subregional commitments or decisions made, or agreements on non-proliferation, arms control and disarmament.

States shall take into account the recipient's record of compliance with commitments and transparency in the field of non-proliferation, arms control and disarmament.

d) State Parties shall not authorise transfers that are likely to be diverted, within the recipient country or be re-exported, to any other user, other than the stated final end-user.

States should take into account the recipient's

- i) record on compliance with end-use undertakings and diversion;
- ii) stockpile management and security procedures
- iii) ability and willingness to protect SALW against unauthorised transfers, loss, theft and diversion.

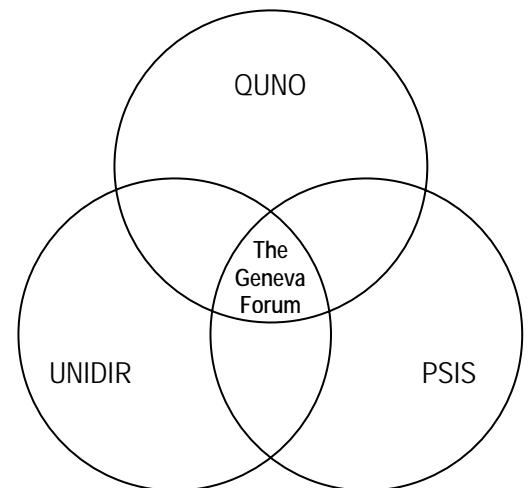
e) State Parties shall not authorise transfers if the arms have not been marked according to requirements under the Nairobi Protocol.

## About the Geneva Forum

The Geneva Forum project is the brainchild of the Quaker United Nations Office (QUNO), the United Nations Institute for Disarmament Research (UNIDIR), and the Programme for Strategic and International Security Studies (PSIS) of the Graduate Institute of International Studies. Its overarching objective is to contribute to building international peace and security by forging partnerships among and between governments, international organisations and NGOs on disarmament and arms control issues of common concern.

The Geneva Forum is a unique partnership between a nongovernmental organisation, a UN body and an academic institute, each of which is engaged in its own right in research, policy and advocacy on issues related to multilateral security and disarmament. These organisations pool their extensive knowledge, skills and networks for their common work within the framework of the Geneva Forum.

**The Quaker United Nations Office (QUNO)** has been at work in Geneva since 1948. Through its seminars, encounters, active presence where possible in negotiations, and links both to the diplomatic and international organization community and to a whole range of international networks, QUNO is ideally placed to provide a critical non-governmental element in the Geneva Forum "triad".



**The United Nations Institute for Disarmament Research (UNIDIR)**, an inter-governmental organization within the United Nations, conducts research on disarmament and security. Working with researchers, diplomats, officials and non-governmental organizations, UNIDIR acts as a bridge between the research community and governments and promotes informed debate within United Nations structures.

**The Programme for Strategic and International Security Studies (PSIS)** of the Graduate Institute of International Studies has operated as a policy-relevant academic research programme at the Graduate Institute of International Studies since 1978, and has a long record of successfully organising activities that bring together scholars, activists and practitioners.

The Geneva Forum Partner Organisations work together to advance along the three tracks that comprise the work of the Geneva Forum:

- **Building agendas around new and emerging issues in disarmament and arms control**
- **Supporting ongoing disarmament and arms control negotiations**
- **Promoting the implementation of disarmament and arms control agreements**

In carrying out this work, the Geneva Forum interacts principally with the 153 government missions to the United Nations in Geneva, but also with UN bodies, international organisations, NGOs and the media. The Geneva Forum also actively engages Geneva's important humanitarian, development, human rights and public health communities in its disarmament work.

# **The Geneva Forum**

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