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### SPECIFIC HUMAN RIGHTS ISSUES

#### **Prevention of human rights violations committed with small arms and light weapons**

**Final report submitted by Barbara Frey, Special Rapporteur,  
in accordance with Sub-Commission resolution 2002/25\*\***

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\* Pursuant to General Assembly resolution 60/251 of 15 March 2006 entitled "Human Rights Council", all mandates, mechanisms, functions and responsibilities of the Commission on Human Rights, including the Sub-Commission, were assumed, as of 19 June 2006, by the Human Rights Council. Consequently, the symbol series E/CN.4/Sub.2/\_ , under which the Sub-Commission reported to the former Commission on Human Rights, has been replaced by the series A/HRC/Sub.1/\_ as of 19 June 2006.

\*\* The annexes to the present report are submitted as received, in the language of submission only.

## Summary

The present final report of the Special Rapporteur with the task of preparing a comprehensive study on the prevention of human rights violations committed with small arms and light weapons addresses two international legal principles that are critical to understanding the nature and extent of the State's obligation to prevent human rights violations committed with small arms: the due diligence responsibilities of States to prevent small arms abuses by private actors and the significance of the principle of self-defence with regard to the State's human rights obligations to prevent small arms-related violence. Annexes to the present report contain a summary and analysis of the responses of United Nations States Members to the questionnaire of the Special Rapporteur.

Under human rights law, States have a primary obligation to maximize human rights protection, especially with regard to the right to life. This commitment entails negative and positive obligations; State officials must refrain from violations with small arms and States must take steps to minimize armed violence between private actors. Article 2, paragraph 1, of the International Covenant on Civil and Political Rights imposes positive obligations upon States parties to prevent acts by private persons that impair fundamental rights, including the right to life.

Minimum effective measures that States must adopt to comply with their due diligence obligations to prevent small arms violence must go beyond mere criminalization of acts of armed violence. States must also enforce a minimum licensing requirement designed to keep small arms out of the hands of persons who are most likely to misuse them. Other effective measures should also be enforced to protect the right to life, as suggested by the draft principles on the prevention of human rights violations committed with small arms that have been proposed by the Special Rapporteur.

The principle of self-defence has an important place in international human rights law, but does not provide an independent, supervening right to small arms possession, nor does it ameliorate the duty of States to use due diligence in regulating civilian possession. Rather, as this report shows, there are wide areas where States should, can, and do regulate possession of firearms consistent with principles of self-defence. Self-defence is a widely recognized, yet legally proscribed, exception to the universal duty to respect the life of others. It is the basis for exemption from criminal responsibility that can be raised by any State agent or non-State actor. International law does not support an international legal obligation requiring States to permit access to a gun for self-defence. The principle of self-defence does not negate the due diligence responsibility of States to keep weapons out of the hands of those most likely to misuse them. The State has particularly acute obligations to protect vulnerable groups, including victims of domestic violence, from abuses with small arms.

Article 51 of the Charter of the United Nations applies to States acting in self-defence against armed attacks against their State sovereignty. It does not apply to situations of self-defence for individual persons.

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## **Introduction<sup>1</sup>**

1. The present final report of the Special Rapporteur with the task of preparing a comprehensive study on the prevention of human rights violations committed with small arms and light weapons is submitted pursuant to Sub-Commission on the Promotion and Protection of Human Rights resolution 2002/25, decision 2003/105, decision 2004/123 and decision 2005/110, as well as Commission on Human Rights decision 2003/112. Annexed to the present report are a summary and an analysis of States' responses to the questionnaire elaborated by the Special Rapporteur pursuant to Sub-Commission decision 2003/105 and Commission decision 2004/124.

2. The principal report will complement the first two reports prepared by the Special Rapporteur. Her preliminary report (E/CN.4/Sub.2/2003/29) described the adverse consequences for human rights caused by the misuse of small arms during peacetime. The Special Rapporteur set forth a legal framework for analysing how existing human rights standards define the obligations of States in three different situations, namely to prevent: (a) human rights violations committed with small arms by State actors; (b) human rights abuses caused by private actors; and (c) the transfer of small arms into situations where they are likely to be used to commit serious human rights violations. The Special Rapporteur's progress report (E/CN.4/Sub.2/2004/37) addressed the detrimental effects on human rights and human security caused by small arms in situations of armed conflict. In her progress report, the Special Rapporteur reviewed international humanitarian law and human rights law obligations regarding the availability, misuse and transfer of small arms, and considered the gender implications of small arms availability and misuse in a human rights context.

3. The present final report will further delineate two legal principles: States' responsibilities under the due diligence standard to take affirmative steps to prevent small arms abuses by non-State actors and the implications of the principle of self-defence upon the State's small arms policies.

4. The human rights policy framework for this entire study is based upon the principle that States must strive to maximize human rights protection for the greatest number of people, both in their own societies and in the international community. In other words, to meet their obligations under international human rights law, States must enact and enforce laws and policies that provide the most human rights protection for the most people. In regard to small arms violations, this principle - the maximization of human rights protection - means that States have negative responsibilities to prevent violations by State officials and affirmative responsibilities to increase public safety and reduce small arms violence by private actors.

5. Accordingly, States are required to take effective measures to reduce the demand for small arms by ensuring public safety through adequate law enforcement. State officials, including law enforcement officials, serve at the benefit of their communities and are under a duty to protect all persons by promoting the rule of law and preventing illegal acts. Their actions must be consistent with human rights and the high degree of responsibility required by their profession (Code of Conduct for Law Enforcement, General Assembly resolution 34/46 of 17 December 1979).

6. To maximize human rights protection, States are also required to take effective measures to minimize private sector violence by enforcing criminal sanctions against persons who use small arms to violate the law and, further, by preventing small arms from getting into the hands of those who are likely to misuse them. Finally, with regard to extraterritorial human rights considerations, States have a duty to prevent the transfer of small arms and light weapons across borders when those weapons are likely to be used to violate human rights or international humanitarian law.

7. The Sub-Commission has a critical role to play in considering the question of the human rights implications of small arms availability, transfer and misuse. No other United Nations forum has addressed this particular question. Despite the well-documented and devastating effects of small arms on the rights of people worldwide, there was no outcome document from the recently concluded Conference to Review Progress made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects that made reference to human rights.

## **I. INTERNATIONAL HUMAN RIGHTS LAW OBLIGATIONS TO PREVENT SMALL ARMS ABUSES BY NON-STATE ACTORS**

8. A primary focus of this study has been to consider the extent to which States are responsible for preventing human rights abuses carried out with small arms by non-State actors, including civilians in non-conflict situations. To add urgency to this issue, since the Special Rapporteur first highlighted the serious nature of the human rights abuses caused by non-State actors (E/CN.4/Sub.2/2003/29, paras. 30-35), the estimated number of firearms-related deaths in non-conflict settings has increased. It is now estimated that firearms violence results in between 200,000 and 270,000 homicides and suicides per year.<sup>2</sup> High levels of firearms violence in non-conflict settings take their toll not just in deaths and injuries, but in the diminished protection of all human rights which occurs in an atmosphere of community insecurity. The seriousness of these violations demands renewed attention to the legal and policy bases under international human rights law for holding States accountable for preventing reasonably foreseeable private sphere violations carried out with small arms.

9. Under human rights law, States must maximize protection of the right to life.<sup>3</sup> This commitment entails both negative and positive obligations; States officials must refrain from violations committed with small arms and States must take steps to minimize armed violence between private actors. In the next sections, the present report will set forth the legal authority that is the foundation for the positive responsibilities of States - due diligence - to protect the human rights from private sector armed violence. The report then proposes the specific effective measures required under due diligence to maximize human rights protections in the context of that violence.

### **A. The due diligence standard in relation to abuses by private actors**

10. Under article 2, paragraph 1, of the International Covenant on Civil and Political Rights, States must respect and ensure human rights to all individuals. Ensuring human rights requires positive State action against reasonably foreseeable abuses by private actors. Legal commentators, especially in the field of women's human rights, have long noted the due

diligence responsibilities of States to prevent human rights violations in the private sector.<sup>4</sup> One such commentator, John Cerone, has undertaken a useful and comprehensive survey of the application of the due diligence standard in international human rights law, noting references to due diligence “in the reports of United Nations special rapporteurs, United Nations special representatives, and the Secretary-General; comments, views and concluding observations of human rights treaty bodies; reports on expert group meetings; resolutions of the Commission on Human Rights and the Economic and Social Council; declarations by the General Assembly, and the writings of publicists”.<sup>5</sup>

## **1. The Human Rights Committee**

11. The Human Rights Committee has regularly addressed the due diligence responsibilities of States parties to the International Covenant on Civil and Political Rights. In general comment No. 6 (1982) on the right to life, for instance, the Committee interpreted broadly the State obligation to protect the right to life under article 6, noting that “[t]he Committee considers that States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces”. In general comment No. 18 (1989) on non-discrimination, the Committee instructed States parties to cite more than just their constitutions and laws when reporting on articles 2, paragraph 1; 3 and 26 of the Covenant, “[w]hile such information is of course useful, the Committee wishes to know if there remain any problems of discrimination in fact, which may be practised either by public authorities, by the community, or by private persons or bodies”. Similarly, in general comment No. 27 (1999), on freedom of movement, the Human Rights Committee stated, “The State party must ensure that the rights guaranteed in article 12 are protected not only from public but also from private interference” (para. 6). In general comment No. 31 (2004) on the nature of the general legal obligations imposed on States parties to the Covenant, the Committee elaborated further the requirements of article 2, paragraph 1: “The positive obligations on States parties to ensure Covenant rights will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities” (para. 8).

12. The Human Rights Committee has also applied the due diligence standard in its case law. In communication No. 859/1999, *Jiménez Vaca v. Colombia*, the Committee found a violation of article 6, paragraph 1, of the Covenant, in part, because the State did not use due diligence in investigating who was responsible for an attempt on the complainant’s life, thus preventing him from living safely in Colombia. To meet its obligation under article 2 of the Covenant, the Committee found in *Jiménez Vaca v. Colombia* that the “State party is also under an obligation to try to prevent similar violations in the future” (para. 9).

## **2. Other treaty bodies and special procedures**

13. Other human rights treaty bodies have also recognized the due diligence responsibilities of States in general comments, cases and concluding observations. The Committee on the Elimination of Discrimination against Women stated, in its general recommendation XIX, paragraph 9, that “Under general international law and specific human rights covenants States may also be responsible for private acts if they fail to act with due diligence to prevent violations

of rights or to investigate and punish acts of violence, and for providing compensation.” The Committee on the Elimination of Racial Discrimination (CERD), in its communication No. 4/1991 (CERD/C/42/D/4/1991), *L.K. v. The Netherlands*, found that the State had violated article 4 (a) of the treaty because it had failed “to investigate with due diligence and expedition” in response to racist remarks and threats made by private persons. In its concluding observations on the report of the United Arab Emirates (A/50/18), the Committee on the Elimination of Racial Discrimination recommended that “the State party show the utmost diligence in preventing acts of ill-treatment being committed against foreign workers, especially foreign women domestic servants, and take all appropriate measures to ensure that they are not subjected to any racial discrimination”.

14. Application of the due diligence standard to protect the rights of individuals from abuses by private actors is also evident in the reports of United Nations special procedures. In the most recent report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, for instance, the author noted that “States have a legal duty to exercise ‘due diligence’ in protecting the lives of individuals from attacks by criminals, including terrorists, armed robbers, looters and drug dealers” (E/CN.4/2006/53, para. 47). Notably, the Special Rapporteur used this example in his report to reject specifically the “shoot-to-kill” policies of various Governments, and to call for States facing terrorist or other threats to clarify policies in the light of human rights requirements and to train law enforcement accordingly.

#### **B. Effective measures to meet the due diligence obligation**

15. Given the existence of the due diligence obligation as a part of international human rights law, the question remains what specific measures States must take to meet this standard with regard to the prevention of human rights abuses committed with small arms by non-State actors. The legal framework for considering necessary State action begins with article 2, paragraph 2, of the International Covenant on Civil and Political Rights, which requires States parties “to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant”. Under article 2, paragraph 2, States must adopt legislation to hold individuals responsible for violation of another’s right to life. Every State, of course, has national laws that penalize the killing of another. In addition to adopting general legislation, human rights bodies have emphasized the need for further effective measures “through some machinery of control” in order to protect violations of core rights.<sup>6</sup>

16. Minimum effective measures that States should adopt to prevent small arms violence, then, must go beyond mere criminalization of acts of armed violence. Under the principle of due diligence, it is reasonable for international human rights bodies to require States to enforce a minimum licensing requirement designed to keep small arms and light weapons out of the hands of persons who are likely to misuse them.<sup>7</sup> Recognition of this principle is affirmed in the responses to the questionnaire of the Special Rapporteur on the prevention of human rights violations committed with small arms and light weapons which indicate widespread State practice to license private ownership of small arms and ammunition.<sup>8</sup> The criteria for licensing may vary from State to State, but most licensing procedures consider the following: (a) minimum age of applicant; (b) past criminal record including any history of interfamilial violence; (c) proof of a legitimate purpose for obtaining a weapon; and (d) mental fitness.<sup>9</sup> Other proposed criteria include knowledge of laws related to small arms, proof of training on the

proper use of a firearm and proof of proper storage. Licences should be renewed regularly to prevent transfer to unauthorized persons. These licensing criteria are not insurmountable barriers to legitimate civilian possession. There is broad international consensus around the principle that the laws and procedures governing the possession of small arms by civilians should remain the fundamental prerogative of individual States.<sup>10</sup> While regulation of civilian possession of firearms remains a contested issue in public debate - due in large part to the efforts of firearms manufacturers and the United States of America-based pro-gun organizations - there is in fact almost universal consensus on the need for reasonable minimum standards for national legislation to license civilian possession in order to promote public safety and protect human rights.<sup>11</sup> This consensus is a factor to be considered by human rights mechanisms in weighing the affirmative responsibilities of States to prevent core human rights violations in cases involving private sector gun violence.

17. Other effective measures should also be considered by human rights bodies charged with overseeing State action to protect the right to life. These measures are similar to United Nations guidelines adopted to give meaningful protection to other core human rights obligations.<sup>12</sup> They include:

- (a) The prohibition of civilian possession of weapons designed for military use (automatic and semi-automatic assault rifles, machine guns and light weapons);
- (b) Organization and promotion of amnesties to encourage the retiring of weapons from active use;
- (c) Requirement of marking and tracing information by manufacturers;
- (d) Incorporation of a gender perspective in public awareness efforts to ensure that the special needs and human rights of women and children are met, especially in post-conflict situations.

18. The draft principles proposed by the Special Rapporteur (E/CN.4/Sub.2/2005/35), particularly draft principles 10 to 14, are intended to elaborate for States the nature of their due diligence obligation under international human rights law especially with regard to non-State actors.

## **II. THE PRINCIPLE OF SELF-DEFENCE WITH REGARD TO HUMAN RIGHTS VIOLATIONS COMMITTED WITH SMALL ARMS AND LIGHT WEAPONS**

19. This report discusses and recognizes the principle of self-defence in human rights law and assesses its proper place in the establishment of human rights principles governing small arms and light weapons.<sup>13</sup> Those opposing the State regulation of civilian possession of firearms claim that the principle of self-defence provides legal support for a “right” to possess small arms thus negating or substantially minimizing the duty of States to regulate possession.<sup>14</sup> The present report concludes that the principle of self-defence has an important place in international human rights law, but that it does not provide an independent, legal supervening right to small arms possession, nor does it ameliorate the duty of States to use due diligence in regulating civilian possession.

### A. Self-defence as an exemption to criminal responsibility, not a human right

20. Self-defence is a widely recognized, yet legally proscribed, exception to the universal duty to respect the right to life of others. Self-defence is a basis for exemption from criminal responsibility that can be raised by any State agent or non-State actor. Self-defence is sometimes designated as a “right”. There is inadequate legal support for such an interpretation.

Self-defence is more properly characterized as a means of protecting the right to life and, as such, a basis for avoiding responsibility for violating the rights of another.

21. No international human right of self-defence is expressly set forth in the primary sources of international law: treaties, customary law, or general principles. While the right to life is recognized in virtually every major international human rights treaty, the principle of self-defence is expressly recognized in only one, the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights), article 2.<sup>15</sup> Self-defence, however, is not recognized as a right in the European Convention on Human Rights. According to one commentator, “The function of this provision is simply to remove from the scope of application of article 2 (1) killings necessary to defend against unlawful violence. It does not provide a right that must be secured by the State”.<sup>16</sup>

22. Self-defence is broadly recognized in customary international law as a defence to criminal responsibility as shown by State practice. There is not evidence however that States have enacted self-defence as a freestanding right under their domestic laws, nor is there evidence of *opinio juris* that would compel States to recognize an independent, supervening right to self-defence that they must enforce in the context of their domestic jurisdictions as a supervening right.

23. Similarly, international criminal law sets forth self-defence as a basis for avoiding criminal responsibility, not as an independent right. The International Criminal Tribunal for the Former Yugoslavia noted the universal elements of the principle of self-defence.<sup>17</sup> The International Criminal Tribunal for the Former Yugoslavia noted “that the ‘principle of self-defence’ enshrined in article 31, paragraph 1, of the Rome Statute of the International Criminal Court ‘reflects provisions found in most national criminal codes and may be regarded as constituting a rule of customary international law’”.<sup>18</sup> As the chapeau of article 31 makes clear, self-defence is identified as one of the “grounds for excluding criminal responsibility”. The legal defence defined in article 31, paragraph (d) is for:

conduct which is alleged to constitute a crime within the jurisdiction of the Court has been caused by duress resulting from a threat of imminent death or of continuing or imminent serious bodily harm against that person or another person, and the person acts necessarily and reasonably to avoid this threat, provided that the person does not intend to cause a greater harm than the one sought to be avoided.<sup>19</sup>

Thus, international criminal law designates self-defence as a rule to be followed to determine criminal liability, and not as an independent right which States are required to enforce.

24. There is support in the jurisprudence of international human rights bodies for requiring States to recognize and evaluate a plea of self-defence as part of the due process rights of

criminal defendants. Some members of the Human Rights Committee have even argued that article 6, paragraph 2, of the International Covenant on Civil and Political Rights requires national courts to consider the personal circumstances of a defendant when sentencing a person to death, including possible claims of self-defence, based on the States Parties' duty to protect the right to life.<sup>20</sup> Under common law jurisdictions, courts must take into account factual and personal circumstances in sentencing to the death penalty in homicide cases. Similarly, in civil law jurisdictions: "Various aggravating or extenuating circumstances such as self-defence, necessity, distress and mental capacity of the accused need to be considered in reaching criminal conviction/sentence in each case of homicide."<sup>21</sup>

25. Again, the Committee's interpretation supports the requirement that States recognize self-defence in a criminal law context. Under this interpretation of international human rights law, the State could be required to exonerate a defendant for using firearms under extreme circumstances where it may be necessary and proportional to an imminent threat to life. Even so, none of these authorities enumerate an affirmative international legal obligation upon the State that would require the State to allow a defendant access to a gun.

### **B. Necessity and proportionality requirements for claim of self-defence**

26. International bodies and States universally define self-defence in terms of necessity and proportionality.<sup>22</sup> Whether a particular claim to self-defence is successful is a fact-sensitive determination. When small arms and light weapons are used for self-defence, for instance, unless the action was necessary to save a life or lives and the use of force with small arms is proportionate to the threat of force, self-defence will not alleviate responsibility for violating another's right to life.

27. The use of small arms and light weapons by either State or non-State actors automatically raises the threshold for severity of the threat which must be shown in order to justify the use of small arms or light weapons in defence, as required by the principle of proportionality. Because of the lethal nature of these weapons and the *jus cogens* human rights obligations imposed upon all States and individuals to respect the right to life,<sup>23</sup> small arms and light weapons may be used defensively only in the most extreme circumstances, expressly, where the right to life is already threatened or unjustifiably impinged.

28. The requirements for a justifiable use of force in self-defence by State officials are set forth in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In exceptional circumstances that necessitate the use of force to protect life, State officials may use firearms and claim self-defence or defence of others as a justification for their decision to use force.<sup>24</sup> However, if possible to avoid the threat without resorting to force, the obligation to protect life includes the duty of law enforcement to utilize alternative non-violent and non-lethal methods of restraint and conflict resolution.<sup>25</sup>

29. The severe consequences of firearm use therefore necessitate more detailed and stricter guidelines than other means of force.<sup>26</sup> Even when firearm use does not result in death, the injuries caused by firearm shots can be paralyzing, painful, and may immobilize a person for a much longer period of time than would other methods of temporary immobilization.<sup>27</sup> The

training handbook for police on human rights practices and standards produced by the Office of the High Commissioner for Human Rights says that “firearms are to be used only in extreme circumstance”.<sup>28</sup> Any use of a firearm by a law enforcement official outside of the above-mentioned situational context will likely be incompatible with human rights norms.

### **1. The Human Rights Committee**

30. The Human Rights Committee has endorsed the self-defence necessity and proportionality equation for use of force by law enforcement agents. In *Suarez de Guerrero v. Colombia* the Human Rights Committee found that Maria Fanny Suarez de Guerrero had been arbitrarily deprived of her life through firearm use by law enforcement officials in Colombia because there was “no evidence that the actions of the police was necessary in their own defence or that of others or that it was necessary to effect the arrest or prevent the escape of the persons concerned”.<sup>29</sup> The Human Rights Committee further found that the amount of force used to cause de Guerrero’s death was “disproportionate to the requirements of law enforcement in the circumstances of the case” and hence that “the right to life was not adequately protected by the law of Colombia as required by article 6, paragraph 1”.<sup>30</sup> Further, in *Burrell v. Jamaica*,<sup>31</sup> the Human Rights Committee held that the intentional killing of an inmate, in the aftermath of the capture and release of some prison guards, was a result of the prison guards’ panic, not the result of necessary self-defence. Burrell was not putting any person in danger that would justify his arbitrary killing by State agents; all of the guards had been released and “the need for force no longer existed”.<sup>32</sup> Therefore, the Jamaican authorities had violated Burrell’s right to life and they had no justifiable claim of self-defence.<sup>33</sup>

### **2. European Court of Human Rights**

31. The European Court of Human Rights also recognized the necessity and proportionality equation for self-defence, as present in the Basic Principles. In *Nachova and Others v. Bulgaria*, the Court found that a violation of the right to life occurred when two individuals were shot and killed by a member of the military police who was attempting to arrest them. In reaching its finding, the Court dismissed the argument of the Government of Bulgaria that the military official’s actions did not violate the right to life because he was abiding by his duty under Bulgarian law to protect “as far as possible, ... the life of the person against whom they use force ...”. The Court instead adopted the standard that “Any use of force must be no more than ‘absolutely necessary ...’” The Court wrote:

The use of potentially lethal firearms inevitably exposes human life to danger even when there are rules designed to minimize the risks. Accordingly, the Court considers that it can in no circumstances be “absolutely necessary” within the meaning of article 2 § 2 of the [European] Convention to use such firearms to arrest a person suspected of a non-violent offence who is known not to pose a threat to life or limb, even where a failure to do so may result in the opportunity to arrest the fugitive being lost.<sup>34</sup>

32. In *McCann and Others v. United Kingdom*, the Court interpreted article 2, paragraph 2, of the European Convention on Human Rights, which includes a self-defence exception to the right to life, to require a showing of absolute necessity and proportionality to justify the use of force by State agents which infringed upon the right to life.<sup>35</sup>

**C. The claim of self-defence does not negate the due diligence obligation to prevent private sector violence**

33. The individual's desire to carry a gun as self-defence must be considered in the broader context of the State's obligation to maximize protection of human rights. The State has an obligation under international law to promote law enforcement and to suppress private violence by creating a legal and social system in which the general duty is to avoid the use of force where non-violent means of self-protection are reasonably available.<sup>36</sup>

34. Even if there were a "human right to self-defence", it would not negate the State's due diligence responsibility to maximize protection of the right to life for the society through reasonable regulations on civilian possession of weapons. While there is no international mandate to prohibit all civilian ownership, neither is there a mandate to allow every individual to carry a weapon. The State must consider the community as a whole, and not just the single individual, in carrying out its obligation to minimize physical violence.

35. For example, even if there were a "right" to self-defence, that would not negate the State's due diligence responsibility to keep weapons out of the hands of those most likely to misuse them. As the responses to the Special Rapporteur's questionnaire show, screening for likely misuse is one of the measures commonly used by States to implement legitimate State policy interests in preventing small arms violence by non-State actors. This common State practice is an example of the responsible implementation of the legal principle of due diligence that has been elaborated in many international bodies with no apparent negative impact on self-defence law. Thus it appears that States, at the very least, should put in place regulations to keep weapons away from certain people who - based on factors such as age, past record of criminality or personal violence, or lack of mental fitness - can be reasonably expected not to understand or comply with the requirements of necessity and proportionality that are the prerequisites to invoking self-defence.

36. Having established that the affirmative duty of States to impose some regulation on unfettered civilian possession is not inconsistent with principles of self-defence, other instances of appropriate regulation may also be identified. For example, the State has particularly acute obligations when it comes to protecting the rights of vulnerable groups, including victims of domestic violence, who are most at risk from misuse of a gun in the home. The presence of a gun in the home can easily turn domestic violence into domestic homicide. Recent studies show that, in the United States, firearms are used in 59 per cent of all intimate partner homicides of women,<sup>37</sup> and having one or more guns in the home makes a woman 7.2 times more likely to be murdered by an intimate partner.<sup>38</sup> Despite self-defence justifications for possessing a firearm, research indicates that firearms are rarely used to stop crimes or kill criminals.<sup>39</sup> Instead, they are often turned on the very person who may have the best arguments for self-defence - the woman herself.<sup>40</sup> In the face of such evidence and under the international due diligence legal mandate that has been elaborated by human rights bodies to prevent violence against women - including:

“the duty of Governments to ... exercise due diligence to prevent, investigate and, in accordance with national legislation, to punish acts of violence against women and to take appropriate and effective action concerning acts of violence against women, whether those acts are perpetrated by the State or by private persons ...”<sup>41</sup>

- the State has an irrefutable international legal duty to keep small arms out of the hands of persons who have a history of interfamilial violence.

37. Screening for likely misuse and removing of weapons where there is a history of interfamilial violence are two examples where States’ duty of due diligence to regulate firearms is: (a) consistent with commonly reported State practices; and (b) not inconsistent with the principle of self-defence. Such regulations can be carried out in a manner that does not implicate issues of generalized confiscation that are raised disingenuously by opponents of any regulation of civilian possession. Other instances of such regulation may be evaluated based on the experience in States that have implemented them and on the criteria that have been discussed in this paper and the draft principles.

#### **D. Self-defence by States against the force of other States**

38. Finally, it is important to address briefly the claim that Article 51 of the Charter of the United Nations provides a legal right to self-defence to individuals.<sup>42</sup> The ability of States to use force against another State in self-defence, through individual State action or collective action with other States, is recognized in Article 51 of the Charter.<sup>43</sup> This article is applicable to the States Members of the United Nations who act in defence of armed attacks against their State sovereignty. Article 51 provides an exception to the general prohibition on threat or use of force in international law, as expressed in article 2, paragraph 4, of the Charter.<sup>44</sup> International customary law also binds States who act in self-defence against other States to conform to the three elements of necessity, proportionality and immediacy of the threat.<sup>45</sup>

39. The right of self-defence in international law is not directed toward the preservation of lives of individuals in the targeted country; it is concerned with the preservation of the State.<sup>46</sup> Article 51 was not intended to apply to situations of self-defence for individual persons.<sup>47</sup> Article 51 has never been discussed in either the Security Council or General Assembly as applicable, in any way, to individual persons.<sup>48</sup> Antonio Cassese notes that the principle of self-defence claimed by individuals is often wrongly confused with self-defence under public international law, such as in Article 51.<sup>49</sup> “The latter relates to conduct by States or State-like entities, whereas the former concerns actions by individuals against other individuals ... confusion [between the two] is often made.”<sup>50</sup>

### **III. CONCLUSIONS AND RECOMMENDATIONS**

40. **To meet their obligations under international human rights law, States must enact and enforce laws and policies to maximize protection of human rights for the most people. States must consider the community as a whole and not just the single individual in carrying out their obligation to minimize violence by promoting law enforcement and**

**suppressing private violence. International human rights law mandates States “to respect and to ensure” human rights to all individuals subject to their jurisdiction. Under this mandate, States have positive obligations to protect individuals from violations by State and non-State actors.**

**41. States must take effective measures to reduce the need for people to arm themselves by ensuring an atmosphere of public safety supported by law enforcement that is committed and trained to protect the rule of law and to prevent illegal acts.**

**42. States must also take effective measures to minimize violence carried out by armed private actors. States are required to enforce criminal sanctions against persons who use arms to violate the law. States are further required, under the principle of due diligence, to prevent small arms from getting into the hands of those who are likely to misuse them. Under the due diligence standard, international human rights bodies should require States to enforce a minimum licensing standard designed to prevent small arms from being used by private actors to violate human rights.**

**43. Other effective measures consistent with due diligence include the prohibition of civilian possession of weapons designed for military use; the sponsoring of effective amnesty programmes to decrease the number of weapons in active use; requirement of marking and tracing information by manufacturers; and incorporation of a gender perspective in policies regarding small arms. States have an affirmative duty under international human rights law to protect groups that are most vulnerable to small arms misuse, including victims of domestic violence.**

**44. The principle of self-defence, as an internationally recognized exemption from criminal responsibility, is not inconsistent with the due diligence responsibilities of States to regulate civilian possession of small arms. There is no independent or supervening right in international human rights law of self-defence that would require States to provide civilians with access to small arms; nor does the principle of self-defence diminish the State’s responsibility to use due diligence to keep weapons out of the hands of those most likely to misuse them. Rather, States should exercise their due diligence responsibilities in the context of self-defence law, including the likelihood that those possessing firearms will act only out of necessity and with proportionality.**

**45. Article 51 of the Charter of the United Nations applies to States acting in self-defence in response to armed attacks against their State sovereignty. It does not apply to situations of self-defence for individual persons.**

**46. The Sub-Commission on the Promotion and Protection of Human Rights should act to clarify the positive responsibilities of States to prevent human rights violations committed with small arms. To this end, the Special Rapporteur with the task of preparing a comprehensive study on the prevention of human rights violations committed with small arms and light weapons would welcome the endorsement by the Sub-Commission of the draft principles on the prevention of human rights violations committed with small arms (E/CN.4/Sub.2/2005/35) as an important contribution to the ongoing delineation of measures regarding small arms and light weapons to be carried out by States in order to give effect to international human rights in communities around the world.**

## Notes

<sup>1</sup> Ms. Frey would like to express her thanks to Ms. Lora Lumpe and Ms. Jennifer Johnson for their invaluable research assistance in preparing this report. Ms. Frey is also grateful for funding support from the Canadian Department of Foreign Affairs and International Trade for the summary and analysis of State responses to the questionnaire.

<sup>2</sup> Graduate Institute of International Studies, *Small Arms Survey 2004: Rights at Risk* (New York, Oxford University Press, 2004), p. 175. The highest regional concentration of firearm homicides is in Latin America and the Caribbean, with 40 per cent of the estimated cases, and Africa, with 20 per cent. The authors of the above study suggest that Latin American urban areas experience the highest rates of assaults, threats, robberies and sexual offences committed with firearms. North America experiences the highest regional firearm suicide rate. *Idem*, pp. 175-77.

<sup>3</sup> See B.G. Ramcharan, *The Right to Life in International Law* (Biggleswade, Brill, 1985), p. 15 (“As a norm of *jus cogens*, no Government may deny the existence of the right to life and a higher duty and standard of protection of the right is imposed upon Governments”).

<sup>4</sup> S. Farior, “The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential”, *Harvard Human Rights Journal* 10, (1997), p. 225. (“By virtue of Article 2 of the Covenant, states violate their obligations under the Covenant if they fail to exercise due diligence to end slavery and the slave trade by private actors within their jurisdiction”); R.J. Cook, “State Responsibility For Violations of Women’s Human Rights”, *Harvard Human Rights Journal* 7 (1994), p. 125; D. Shelton, “Private Violence, Public Wrongs and the Responsibilities of States”, *Fordham International Law Journal* 13 (1989), p. 23.

<sup>5</sup> John Cerone, “The Human Rights Framework Applicable to Trafficking in Persons and its Incorporation into UNMIK Regulation 2001/4”, *International Peacekeeping, The Yearbook of International Peace Operations*, vol. 7, 2001 (2002), pp. 43-98 (footnotes omitted).

<sup>6</sup> In its general comment No. 7, the Human Rights Committee describes steps beyond mere legislation that States must take to prevent torture, “Because such cases nevertheless occur, it follows from article 7, read together with article 2 of the Covenant, that States must ensure an effective protection through some machinery of control.”

<sup>7</sup> The need for international principles with regard to selection, training and oversight of State actors is discussed above in Section I (a).

<sup>8</sup> Thirty-five out of thirty-eight responding States indicated that they license private ownership; three - the Czech Republic, Qatar and Ukraine - did not answer the question.

<sup>9</sup> See States’ responses to part 2, annex I. See also, Conference room paper submitted by the Chairman (A/Conf.192/2006/PC/CRP.17), Preparatory Committee for the Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects which proposes consensus criteria for licences.

<sup>10</sup> Ibid.

<sup>11</sup> More than 50 States have strengthened their national laws on civilian possession since 2001. At the January 2006 Preparatory Committee for the Conference to Review Progress made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, the Chairman submitted a conference room paper (A/Conf.192/2006/PC/CRP.17) including a proposed declaration of principles about the national regulation of civilian possession after at least 12 States spoke in favour of including the issue at the Review Conference. Only the United States spoke explicitly against the reference to the regulation of civilian possession of small arms and light weapons. Despite this apparent consensus, there was no outcome document from the Small Arms Review Conference, held 24 June-7 July 2006, which made reference to the regulation of civilian possession.

<sup>12</sup> *The Istanbul Protocol, The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, section II.B.1, 9 August 1999 (available at: <http://www.unhchr.ch/pdf/8istprot.pdf>; accessed 6 July 2006), which establishes certain obligations that States must respect to ensure protection against torture. See also general comment No. 17 of the Human Rights Committee. (Each State has a duty to take “every possible economic and social measure ... to reduce infant mortality and to eradicate malnutrition among children and to prevent them from being subjected to acts of violence and cruel and inhuman treatment or from being exploited by means of forced labour or prostitution, or by their use in the illicit trafficking of narcotic drugs, or by any other means”.)

<sup>13</sup> Because of the severe limits on space and the breadth of issues that need to be covered in this study, the author does not attempt here to undertake a full legal discussion of the principle of self-defence in international law. For an authoritative discussion of this complex topic, see Antonio Cassese, *International Criminal Law* (2003). In addition, the legal concepts discussed herein assume a non-conflict setting. Situations of mass human rights abuse and armed conflict involve international humanitarian law and security law principles that require an extended if not completely separate set of legal and policy considerations. For the Special Rapporteur’s findings and recommendations regarding role of small arms and light weapons in violations of human rights and international humanitarian law in armed conflict, see her progress report (E/CN.4/Sub.2/2004/37).

<sup>14</sup> David Kopel, Paul Gallant, and Joanne Eisen, “Is Resisting Genocide a Human Right?” *Notre Dame Law Review*, vol. 81, No. 4 (2006), p. 1 (“... The Universal Declaration of Human Rights affirms the existence of a universal, individual right of self-defense, and also a right to revolution against tyranny ... Taken in conjunction with Anglo-American human rights law, the human rights instruments can be read to reflect a customary or general international law recognizing a right of armed resistance by genocide victims”).

<sup>15</sup> Convention for the Protection of Human Rights and Fundamental Freedoms, 213 United Nations *Treaty Series* 222, entered into force on 3 September 1953, as amended by Protocols Nos. 3, 5, 8 and 11, which entered into force on 21 September 1970, 20 December 1971, 1 January 1990 and 1 November 1998, respectively. Article 2 states:

(1) Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.

(2) Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:

(a) In defence of any person from unlawful violence;

(b) In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;

(c) In action lawfully taken for the purpose of quelling a riot or insurrection.

<sup>16</sup> John Cerone, "A human right of self-defence?", *George Mason Journal of Law, Economics, & Policy* (accepted for 2006 publication).

<sup>17</sup> Antonio Cassese, *International Criminal Law* (New York, Oxford University Press, 2003), p. 223, No. 2 (2003) (citing *Prosecutor v. Kordić and Čerkez*, International Criminal Tribunal for the Former Yugoslavia (Trial Chamber) (26 February 2001) at section 451). "In *Kordić and Čerkez* a Trial Chamber of the International Criminal Tribunal for the Former Yugoslavia held that self-defence as a ground for excluding criminal responsibility is one of the defences that 'form part of the general principles of criminal law which the International Tribunal must take into account in deciding the cases before it'." *Idem* at p. 223 (citing *Prosecutor v. Kordić and Čerkez*, International Criminal Tribunal for the Former Yugoslavia (Trial Chamber) (26 February 2001) at section 449).

<sup>18</sup> *Ibid.*, p. 223, No. 2 (2003) (quoting *Prosecutor v. Kordić and Čerkez*, International Criminal Tribunal for the Former Yugoslavia (Trial Chamber) (26 February 2001) at section 451).

<sup>19</sup> Rome Statute of the International Criminal Court (A/CONF.183/9), adopted 17 July 1998, as corrected by the procès-verbaux of 10 November 1998, 12 July 1999, and 8 May 2000.

<sup>20</sup> See communication No. 806/1998 of the Human Rights Committee, *Thompson v. Saint Vincent and the Grenadines* (CCPR/C/70/D/806/1998) of 5 December 2000. In his dissent, Lord Colville said self-defence was an avenue for the defence to counter accusations of homicide which must result in acquittal of any crime, "unless the prosecution can satisfy the tribunal of facts that the defendant's actions, which led to the death, exceed a proportional response, in his own perception of the circumstances, to the threat with which he was faced" (para. 5).

<sup>21</sup> Human Rights Committee, communication No. 1077/2002, *Jaime Carpo et al. v. Philippines* (CCPR/C/77/D/1077/2002) of 15 May 2003 dissenting opinion of Mr. Nisuke Ando.

<sup>22</sup> The presence of the principle of self-defence in emerging international criminal law reflects the global uniformity of the principle of self-defence and its elements. Antonio Cassese summarized the required elements of self-defence as a justification for criminal action in customary international criminal law as:

“(i) the action in self-defence is taken *in response to an imminent or actual unlawful attack* on the life of the person or of another person; (ii) there is *no other way of preventing or stopping the offence* [necessity]; (iii) the unlawful conduct of the other *has not been caused by the person acting in self-defence*; (iv) the conduct in self-defence is *proportionate* to the offence to which the person reacts.”

Cassese, *op. cit.*, p 222.

<sup>23</sup> *Ibid.* (“[T]he life, body, and dignity of human beings are protected by international norms having the rank of *jus cogens*, and are therefore not derogable by either States or Individuals.”)

<sup>24</sup> Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 (hereinafter “Basic Principles”), principle 9.

<sup>25</sup> Basic Principles, principle 4 (“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”). See also Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 5/Add.3, *Human rights standards and practice for the police* (United Nations publication Sales No. E.03.XIV.7) (2004), p. 23.

<sup>26</sup> Basic Principles, article 9, states that “Intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life”. See also Human Rights Committee, Consideration of Reports Submitted by States parties under article 40 of the Covenant, Second periodic report of States parties due in 1996, Addendum: Ireland (28 April 1999) (CCPR/C/IRL/98/2, para. 113). “The Human Rights Committee, in its comments on the first periodic report of Ireland (A/48/40, para. 612) emphasized the importance of the issuing of rules and guidelines on, inter alia, the use of firearms, and ensuring the strict enforcement thereof by law enforcement officials.” “The regulations governing the use of firearms by the Gardaí forces in Ireland thereafter developed are detailed in the Irish Garda Code 25.42.” *Idem.*, para. 117.

<sup>27</sup> *Small Arms Survey 2001: Profiling the Problem* (Geneva, the Graduate Institute of International Studies, 2001), pp. 216-17. (“Victims of small arms injuries often require resource-intensive surgery, followed by prolonged hospitalization and rehabilitation ... For the individual, the repercussions from firearm injury are profound ... [including] long-term, often permanent, psychological trauma and social marginalization.”)

<sup>28</sup> Office of the United Nations High Commissioner for Human Rights, Professional Training Series No. 5/Add.3, *Human rights standards and practice for the police* (United Nations publication Sales No. E.03.XIV.7) (2004), p. 24. The handbook further states that:

Firearms are to be used only in self-defence or defence of others against imminent threat of death or serious injury, or to prevent a particularly serious crime that involves a grave threat to life, or to arrest or prevent the escape of a person posing such a threat and who is

resisting efforts to stop the threat and in every case, only when less extreme measures are insufficient. Intentional lethal use of force and firearms shall be permitted only when strictly unavoidable in order to protect human life.

<sup>29</sup> Husband of Maria Fanny in *Suarez de Guerrero v. Colombia*, *Official Records of the General Assembly, Thirty-seventh Session, Supplement No. 40 (A/37/40)*, communication No. 45/1979 (*Guerrero v. Colombia*) at 137 (1982), para. 13.2.

<sup>30</sup> *Ibid.*, para. 13.3.

<sup>31</sup> *Rickly Burrell v. Jamaica*, communication No. 546/1993: Jamaica 1 August 1996 (CCPR/C/53/D/546/1993) (1996).

<sup>32</sup> *Ibid.*, para. 9.5.

<sup>33</sup> In the Burrell case, the Human Rights Committee also held that States parties have a negative duty not to kill arbitrarily and that they have a positive duty to protect the lives of inmates while in State custody. In this case Jamaica had breached both of those duties. *Ibid.*, para. 9.5.

<sup>34</sup> *Nachova and Others v. Bulgaria* (Application Nos. 43577/98 and 43579/98) [2004], European Convention on Human Rights 89 (26 February 2004), para. 105.

<sup>35</sup> *McCann and Others v. United Kingdom*, Application No. 18984/91, paras. 148-49, Strasbourg, 5 September 1995. See also *Öcalan v. Turkey*, Application No. 46221/99, Strasbourg, 12 March 2003.

<sup>36</sup> A.J. Ashworth, “Self-defence and the right to life”, *Cambridge Law Journal*, vol. 34 (1975), p. 289 (“The preservation of human life must rank high among state interests, and the interests in the minimization of physical violence, in the promotion of law enforcement and in ... ‘the suppression of private warfare’ all have a bearing upon the justifiability of force.”). Ashworth further writes that,

a legal system which supports the maximum protection for every human life should provide that a person attacked ought if possible to avoid the use of violence, especially deadly force, against his attacker. This might be termed the “human rights” approach to self-defence, since it accords with the provision in the European Convention that no life shall be deprived of protection unless absolutely necessary for a lawful purpose. This approach, supported by the state interest in the minimization of violence, would result in a general duty to avoid the use of force where non-violent means of self-protection are reasonably open to the person attacked.

*Idem.*, at p. 289.

<sup>37</sup> United States Bureau of Justice Statistics, 2002, cited in *Small Arms Survey 2004: rights at risk*, A project of the Graduate Institute of International Studies, Geneva, p. 183.

<sup>38</sup> James E. Bailey, MD, MPH, et. al., “Risk factors for violence death of women in the home,” *Archives of Internal Medicine*, vol. 157, No. 7 (1997), pp. 777-782.

<sup>39</sup> In 2003 only 203 justifiable homicides by private citizens using firearms were reported by the United States Federal Bureau of Investigation Uniform Crime Reports, including 163 with handguns. This number compares to the 17,108 suicides, 11,829 homicides and 762 accidental deaths caused by firearms in 2003, data compiled by the Centers for Disease Control and Prevention.

<sup>40</sup> K.M. Grassel and others, “Association between handgun purchase and mortality from firearm injury”, *Injury Prevention*, vol. 9 (2003) (reporting that women who were murdered were more likely, not less likely, to have purchased a handgun in the three years prior to their deaths).

<sup>41</sup> The elimination of violence against women, Commission on Human Rights resolution 1996/49, para. 4.

<sup>42</sup> Don Kates, “Individuals’ right to self-defence under international law” (2003), excerpted in *Small Arms Survey 2004: rights at risk* (Geneva, the Graduate Institute of International Studies, 2004), p. 181. (The right to individual self-defence is implicit in Article 51 of the Charter of the United Nations.)

<sup>43</sup> Charter of the United Nations, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, entered into force 24 October 1945, Article 51:

Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.

<sup>44</sup> Charter of the United Nations, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, entered into force 24 October 1945, Article 2 (4) (“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.”). See also, *Repertory of Practice of United Nations Organs (1945-1954)*, *Repertory of Practice of United Nations Organs Supplements No. 1-9 (1954-1999)*, Vol. I-III, Article 51 (available at <http://www.un.org/law/repertory/art51.htm>). In particular, *Repertory of Practice of United Nations Organs Supplement No. 5 (1970-1978)*, vol. II., article 51, paras. 8-19, discuss Article 51 and Article 2 (4) of the Charter, as well as Article 51 in relation to the principle of proportionality.

<sup>45</sup> The equation on self-defence in international customary law is a measure of necessity, proportionality and immediacy to justify the use of force by one State against another State. It was established in the United States Supreme Court’s 1837 *Caroline* case and codified in Article 51 of the Charter of the United Nations (26 June 1945, 59 Stat. 1031, T.S. No. 993, 3 Bevans 1153, entered into force 24 October 1945).

<sup>46</sup> Cerone, “A Human Right of Self-Defense?”

<sup>47</sup> See General Assembly resolution 48/88 of 20 December 1998 (“Reaffirming once again that, as the Republic of Bosnia and Herzegovina is a sovereign, independent State and a Member of the United Nations, it is entitled to all rights provided for in the Charter of the United Nations, including the right to self-defence under Article 51 thereof”); Kofi A. Annan, Secretary-General’s address to the General Assembly, New York (23 September 2003) (“Article 51 of the Charter prescribes that all States, if attacked, retain the inherent right of self-defence.”); Human Rights Committee, general comment No. 6 (1982) on the right to life, Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies (HRI\GEN\1\Rev.1) at 6 (1994), para. 2. (“Under the Charter of the United Nations the threat or use of force by any State against another State, except in exercise of the inherent right of self-defence, is already prohibited.”)

<sup>48</sup> Repertory of Practice of United Nations Organs Supplement No. 6 (1979-1984), Vol. III, Article 51, para. 13. (“On several occasions the question of the bearing of Article 51 on the items under consideration gave rise to constitutional discussion in the Security Council ... In each of the seven situations, action by a Member State, claimed to have been taken in individual or collective self-defence, gave rise to questions concerning the application of Article 51 and the rights and obligations of Member States under that Article.”); see also Repertory of Practice of United Nations Organs (1945-1954), Repertory of Practice of United Nations Organs Supplements No. 1-9 (1954-1999), Vol. I-III, article 51 (available at: <http://www.un.org/law/repertory/art51.htm>).

<sup>49</sup> Cassese, *op. cit.*, p. 223.

<sup>50</sup> *Ibid.*

## ANNEXES

### Annex I

#### SUMMARY OF RESPONSES RECEIVED FROM UNITED NATIONS MEMBER STATES TO THE SPECIAL RAPPORTEUR'S QUESTIONNAIRE

##### Part 1. Use of small arms and light weapons by law enforcement

##### Regulating the use of small arms, light weapons and ammunition

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are there laws regulating possession and use?	SALW ammo <sup>1</sup>	SALW ammo	SALW ammo <sup>2</sup>	SALW ammo <sup>3</sup>	SALW ammo	SALW ammo	SALW ammo <sup>4</sup>	SALW ammo <sup>5</sup>	SALW ammo <sup>6</sup>	SALW ammo	SA <sup>7</sup> ammo	SALW ammo <sup>8</sup>	SA <sup>9</sup>	SALW ammo	SALW ammo <sup>10</sup>	SALW ammo <sup>11</sup>	SALW ammo <sup>12</sup>	SA <sup>13</sup>	SA ammo
Are there laws regulating the process for issuance to state agents?	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo <sup>14</sup>	SALW ammo <sup>15</sup>	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SA	SALW ammo	SA	SALW ammo	SALW ammo	SA ammo	
Are there laws regulating the process of collection from state agents that leave service?	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SA	SALW ammo	SA	SALW ammo	SALW ammo	SA ammo	SA
Are retiring officers allowed to keep their weapons?	No	SA ammo	No	No	No	SALW ammo	No	SALW ammo	SALW ammo	No	No	No	SA	No	No	No	No	No	No

**Part 1. Use of small arms and light weapons by law enforcement (*continued*)**

**Regulating the use of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are there laws regulating possession and use?	SALW ammo	SALW ammo	SALW ammo <sup>16</sup>	SALW ammo <sup>17</sup>	SALW ammo	SA ammo <sup>18</sup>	SALW ammo <sup>19</sup>	SALW ammo <sup>20</sup>	SALW	SALW ammo	SALW ammo <sup>21</sup>	SALW ammo	SALW ammo <sup>22</sup>	SALW ammo <sup>23</sup>	SALW ammo <sup>24</sup>	SALW ammo	SA ammo <sup>25</sup>	SA ammo	SA ammo <sup>26</sup>
Are there laws regulating the process for issuance to state agents?	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo		SALW ammo	SALW ammo	SALW	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo		SA ammo	SA ammo
Are there laws regulating the process of collection from state agents that leave service?	SALW ammo	SALW ammo	SALW ammo	SALW ammo <sup>27</sup>	SALW ammo		SALW ammo	SALW ammo	SALW	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo	SALW ammo		SA ammo	SA ammo
Are retiring officers allowed to keep their weapons?	No	No	No	No	No		No	SALW ammo	No	No		No	No	No	No	SA		No	SA ammo



**Part 1. Use of small arms and light weapons by law enforcement (continued)**

**Investigating misuse of small arms, light weapons and ammunition**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Do you have laws requiring investigation of incidents of alleged misuse of small arms?	Yes	Yes	Yes <sup>30</sup>	Yes	Yes	Yes		Yes	Yes	Yes	Yes <sup>31</sup>	Yes <sup>32</sup>	Yes	Yes	Yes <sup>33</sup>	Yes <sup>34</sup>	Yes	Yes	Yes
Are those investigations carried out by someone independent of the agency accused?	Yes	Yes	Yes	Yes	Yes	Yes <sup>35</sup>		Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	Yes	No	Yes
Is there judicial oversight of the investigative process?	Yes	Yes	Yes	Yes	Yes	No <sup>36</sup>		Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes
Are the investigative proceedings made available to the public?	No	Yes	Yes	Yes	Yes	No		Yes	No	No <sup>37</sup>	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Are sanctions imposed against state agents who have misused small arms?	Yes	N/A	Yes	Yes	Yes	Yes		Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Are sanctions imposed against commanding/superior officers who authorize the misuse of small arms?	Yes	No	Yes	Yes	Yes	Yes		Yes	No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes
Is there a process for compensating civilians and their families who have been injured or killed due to misuse of small arms by state security forces?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is there regular funding allocated in the national budget to support such investigations?	Yes <sup>38</sup>	Yes	Yes	No	Yes	Yes		Yes	No	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes

**Part 1. Use of small arms and light weapons by law enforcement (continued)**

**Investigating misuse of small arms, light weapons and ammunition (continued)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Do you have laws requiring investigation of incidents of alleged misuse of small arms?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>39</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes <sup>40</sup>
Are those investigations carried out by someone independent of the agency accused?	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes		Yes	Yes
Is there judicial oversight of the investigative process?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	No	Yes		Yes	No
Are the investigative proceedings made available to the public?	No	Yes	Yes	No	No		Yes	Yes	Yes	Yes		No	Yes	Yes	No	Yes		Yes	Yes
Are sanctions imposed against state agents who have misused small arms?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Are sanctions imposed against commanding/superior officers who authorize the misuse of small arms?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes		Yes	Yes
Is there a process for compensating civilians and their families who have been injured or killed due to misuse of small arms by state security forces?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Is there regular funding allocated in the national budget to support such investigations?	Yes <sup>41</sup>	Yes	Yes		Yes		Yes	No	No	Yes	Yes	Yes	Yes	Yes	No	Yes		Yes	Yes

**Part 1. Use of small arms and light weapons by law enforcement (*continued*)**

**Security and storage of small arms, light weapons and ammunition**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are there existing laws governing the storage of small arms by state agents?	Yes	Yes	Yes	Yes	Yes	Yes		Yes <sup>42</sup>	Yes	Yes	Yes <sup>43</sup>	Yes	Yes	Yes	Yes <sup>44</sup>	Yes	Yes	Yes	Yes
Are off-duty agents allowed to keep their government-issued small arms?	No	No	Yes	No	No	Yes		Yes	Yes	Yes <sup>45</sup>	Yes	No	No	No	No	No	No	No	Yes
Are sanctions imposed against state agents for violations of laws on safe storage of small arms?	Yes	N/A	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes
Are there laws requiring training of forces in securing and safely storing small arms?	Yes	Yes	No		Yes	Yes		Yes	No	Yes	Yes	No	Yes	Yes	No <sup>46</sup>	Yes	Yes	Yes <sup>47</sup>	Yes
Do you allocate funding in your national budget for the facilities and resources to safely and securely store small arms?	Yes <sup>48</sup>	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes	Yes	No <sup>49</sup>	Yes	Yes	Yes	Yes	Yes	No	Yes
Are private storage facilities being inspected?	No	Yes	Yes	No	No	Yes		No		Yes		Yes <sup>50</sup>	Yes	No	Yes	Yes	Yes	N/A <sup>51</sup>	Yes



**Part 1. Use of small arms and light weapons by law enforcement (continued)**

**Data collection**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are there national laws requiring the collection and maintenance of data on the use of small arms?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	N/A	Yes	Yes	Yes	No	Yes	Yes	Yes	No
Do you allocate funding in your national budget for the collection of this data?	Yes <sup>58</sup>	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes <sup>59</sup>	N/A	No	Yes	No	No	Yes	Yes	No	No
Is this data disaggregated by gender?	No	Yes	Yes	No	No	No		No	No	Yes	N/A	No	No	Yes	No	Yes			No
Is this data public?	No	Yes	No		No	No		Yes	Yes	No <sup>60</sup>	N/A	No	No	Yes	No	Yes	No	No	No

(continued)	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are there national laws requiring the collection and maintenance of data on the use of small arms?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes			Yes <sup>61</sup>
Do you allocate funding in your national budget for the collection of this data?	Yes	Yes	Yes		Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	No			Yes
Is this data disaggregated by gender?	Yes	No	Yes	No	No		Yes	No	No	N/A		Yes	Yes	Yes	No	Yes			
Is this data public?	No	No	Yes	No	No		Yes	Yes	No	N/A	No <sup>62</sup>	No	No <sup>63</sup>		No	No			No

### Part 2. State regulation of armed individuals and armed groups

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are there laws requiring the licensing of all private ownership of small arms and ammunition?	Yes <sup>64</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>65</sup>	Yes	Yes	Yes <sup>66</sup>	Yes	Yes <sup>67</sup>	Yes	Yes <sup>68</sup>	Yes <sup>69</sup>	Yes	Yes	Yes
Are there laws specifying limits to the type and number of weapons that can be held by individuals?	No	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
If seeking to own several weapons, does the need for each one have to be justified separately?	Yes	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is there a periodic review of the licences?	Yes	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Are there laws requiring screening or background investigation on individuals seeking ownership of small arms and ammunition based on:	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Age?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Criminal record?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Psychological profile?	Yes	Yes	No	Yes	Yes	Yes		Yes			Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes
Incidents of family violence?	Yes	Yes	No	Yes	No	Yes		Yes	No	Yes	No	No	No	Yes	No	Yes	No	Yes	No
• If yes, is the partner automatically notified of the request for a licence?	No	Yes				No		No		No				Yes					
• Justification of need?	Yes	Yes	No	Yes	Yes	Yes		Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
• Are there laws requiring training for seeking ownership of small arms and/or ammunition?	Yes	Yes	No	No	Yes	Yes		No	No	Yes	No <sup>70</sup>	No	No	No	No	Yes	Yes	Yes	No

**Part 2. State regulation of armed individuals and armed groups (continued)**

(continued)	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
• Do those laws require training be completed before issuing a licence?	Yes	Yes	No	No	Yes	Yes		No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No
• Do those laws require training in the safe use and handling of small arms and/or ammunition?	Yes	Yes	No	No	Yes	Yes		No	No	Yes	No	No	No	No	No	Yes	Yes	Yes	No
• Do those laws require training in the safe storage and maintaining security of small arms and/or weapons?	Yes	Yes	No	No	Yes	Yes		No	No	Yes	Yes	No	No	Yes	No	Yes	Yes	Yes	No
• Do you allocate funding in your budget for licensing, screening and/or training private owners of small arms and ammunition?	No	No	No	No	Yes	Yes		Yes	No	No <sup>71</sup>	No	No	No	No	No	Yes	Yes	No	No
• Is there a database of licensed owners of small arms and ammunition?	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
• Is that database public?	No	Yes	No	No	No	No		No	Yes	No	No	No		Yes	No	Yes	No	No	No
• Do you allocate funding in your budget for maintenance of the database?	Yes <sup>72</sup>	No	Yes	Yes	No	Yes		Yes	No	Yes	Yes	Yes	No	Yes	No	Yes	Yes	No	No
• Are there programmes allowing for periodic amnesties for individuals who want to turn in small arms?	No	No	Yes	Yes	Yes	No		Yes	No	No	No	No	No	Yes	No	No	No	Yes	No
• Are there laws requiring the collection and maintenance of data on the use of small arms by private owners?	No	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	No <sup>73</sup>	Yes <sup>74</sup>	Yes	Yes	No	No	Yes	Yes	No

**Part 2. State regulation of armed individuals and armed groups (continued)**

(continued)	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
<ul style="list-style-type: none"> <li>Are there laws requiring that the collection and maintenance of data on the use of small arms in incidents of crime including the type of firearm, use of the firearm and the type of injury caused?</li> </ul>	Yes	Yes	No	No	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	No <sup>75</sup>	No	Yes		Yes
<ul style="list-style-type: none"> <li>Do you allocate funding in your budget for the collection of this data?</li> </ul>	Yes <sup>76</sup>	No	No	No	Yes	No		Yes		Yes	Yes	Yes	No	No	No	Yes	Yes		No

**Part 2. State regulation of armed individuals and armed groups (continued)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are there laws requiring the licensing of all private ownership of small arms and ammunition?	Yes	Yes <sup>77</sup>	Yes <sup>78</sup>	Yes <sup>79</sup>	Yes		Yes	Yes <sup>80</sup>	Yes	Yes <sup>81</sup>	Yes	Yes	Yes <sup>82</sup>	Yes	Yes <sup>83</sup>	Yes		Yes <sup>84</sup>	Yes <sup>85</sup>
Are there laws specifying limits to the type and number of weapons that can be held by individuals?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	No	Yes	Yes	Yes	Yes <sup>86</sup>	Yes	No	Yes		Yes	Yes
If seeking to own several weapons, does the need for each one have to be justified separately?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>87</sup>	Yes	Yes	Yes		Yes	Yes
Is there a periodic review of the licences?	No	No	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Are there laws requiring screening or background investigation on individuals seeking ownership of small arms and ammunition based on:	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes <sup>88</sup>
Age?	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes	Yes	Yes <sup>89</sup>	Yes	Yes	Yes		Yes	Yes
Criminal record?	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
Psychological profile?	Yes	Yes	Yes	Yes	Yes		No	Yes		Yes	Yes	Yes	Yes		No	Yes		Yes	Yes
Incidents of family violence?		Yes	Yes		Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
• If yes, is the partner automatically notified of the request for a licence?		Yes			No		Yes			No		No	Yes	Yes	Yes <sup>90</sup>	Yes		Yes	Yes
• Justification of need?	Yes	Yes	Yes		Yes		Yes	Yes		Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes
• Are there laws requiring training for seeking ownership of small arms and/or ammunition?	No	Yes <sup>91</sup>	Yes <sup>92</sup>	No <sup>93</sup>	Yes		No	Yes	No	No <sup>94</sup>	Yes	Yes	Yes	Yes	Yes	No		Yes	Yes <sup>95</sup>

**Part 2. State regulation of armed individuals and armed groups (continued)**

(continued)	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
• Do those laws require training be completed before issuing a licence?	No	No <sup>96</sup>	Yes	No <sup>97</sup>	Yes		No	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No		Yes	
• Do those laws require training in the safe use and handling of small arms and/or ammunition?	N/A	Yes	Yes	Yes <sup>98</sup>	Yes		Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No		No <sup>99</sup>	
• Do those laws require training in the safe storage and maintaining security of small arms and/or weapons?	N/A	Yes	Yes	No <sup>100</sup>	Yes		Yes	Yes	Yes <sup>101</sup>	No	Yes	Yes	Yes	Yes	Yes	No		No	
• Do you allocate funding in your budget for licensing, screening and/or training private owners of small arms and ammunition?	N/A	Yes	Yes	No <sup>102</sup>	No		Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	No		Yes	
• Is there a database of licensed owners of small arms and ammunition?	Yes	Yes	Yes <sup>103</sup>	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
• Is that database public?		Yes	Yes <sup>104</sup>	No	No		No	No	No	No		No	No	Yes	No	No		No	No
• Do you allocate funding in your budget for maintenance of the database?	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes		Yes	
• Are there programmes allowing for periodic amnesties for individuals who want to turn in small arms?		Yes	Yes	No	No		Yes	No	Yes	No	Yes	No	Yes	Yes	No	No		Yes	No
• Are there laws requiring the collection and maintenance of data on the use of small arms by private owners?		Yes	Yes	No	Yes		Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes		Yes	Yes

**Part 2. State regulation of armed individuals and armed groups (continued)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
<ul style="list-style-type: none"> <li>Are there laws requiring that the collection and maintenance of data on the use of small arms in incidents of crime including the type of firearm, use of the firearm and the type of injury caused?</li> </ul>	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	No		Yes	
<ul style="list-style-type: none"> <li>Do you allocate funding in your budget for the collection of this data?</li> </ul>	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes	No	No	Yes	Yes	Yes	No	No		Yes	

### Part 3. Manufacture and transfer of small arms, light weapons and ammunition

#### Manufacture of small arms, light weapons and ammunition

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Do you have state owned or operated manufacturers of small arms?	No	Yes <sup>105</sup>	Yes	Yes	No	No		Yes	No	No	Yes	No	No <sup>106</sup>	No	No	Yes	No	No	No
Do you have privately owned manufacturers of small arms?	Yes	No	No	No	No	No		Yes	No	Yes	No	No	No	No	No	Yes	No	No	No
Do you provide State subsidies to private manufacturers of small arms?	No	No	No		No	No		No	No	No	No	No	N/A	No	N/A	No	No	No	No
Do you have national laws and/or enforceable policies which regulate the manufacture of small arms?	Yes <sup>107</sup>	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes <sup>108</sup>	Yes <sup>109</sup>	Yes	N/A	No	Yes	Yes <sup>110</sup>	Yes	No	No
Do these laws require that manufacturers of small arms be licensed?	Yes	Yes	Yes	Yes		Yes		Yes	Yes	Yes	Yes	Yes	N/A	No	N/A	Yes	Yes	No	N/A
Are there minimum requirements for issuance of licences?	Yes	Yes	Yes	Yes		Yes		Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
Do those licences have to be renewed on a regular basis?	No	Yes	Yes			Yes		No	Yes	No	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
Do you allocate funding in your national budget for the collection of data and maintenance of a database?	Yes	No <sup>111</sup>		Yes		No		Yes	No	No <sup>112</sup>	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
Are there procedures for investigating violations of laws by manufacturers of small arms?	Yes	Yes	No	Yes		Yes		Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A
Are there sanctions in place for violations by manufacturers?	Yes	No	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	N/A	Yes	N/A	Yes	Yes	N/A	N/A

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (continued)**

**Manufacture of small arms, light weapons and ammunition (continued)**

(continued)	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Do you have state owned or operated manufacturers of small arms?	No	No	No	Yes	No		No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes <sup>113</sup>	No	-- <sup>114</sup>
Do you have privately owned manufacturers of small arms?	No	No	Yes	Yes	Yes		Yes	No	No	Yes	Yes	Yes	No	No	No	Yes		No	No
Do you provide State subsidies to private manufacturers of small arms?	N/A	No	No	No	Yes		No	No	No	No		No	No	No	No	No		No	No
Do you have national laws and/or enforceable policies which regulate the manufacture of small arms?	N/A	Yes	Yes	Yes	Yes	Yes <sup>115</sup>	Yes	Yes	Yes	Yes	Yes <sup>116</sup>	Yes	Yes	Yes	Yes <sup>117</sup>	Yes		Yes	Yes <sup>118</sup>
Do these laws require that manufacturers of small arms be licensed?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A <sup>119</sup>	Yes	Yes	Yes	Yes	N/A <sup>120</sup>	N/A	Yes		Yes	Yes
Are there minimum requirements for issuance of licences?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes		Yes	Yes
Do those licences have to be renewed on a regular basis?	N/A	Yes	Yes	No	Yes	Yes	No	Yes	N/A	No	Yes	Yes	Yes	N/A	N/A	Yes		Yes	No
Do you allocate funding in your national budget for the collection of data and maintenance of a database?	N/A	Yes	Yes	No	Yes		No	No	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes		Yes	
Are there procedures for investigating violations of laws by manufacturers of small arms?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	Yes	N/A	Yes		Yes	Yes
Are there sanctions in place for violations by manufacturers?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes	Yes	Yes	N/A	N/A	Yes		Yes	Yes

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (continued)**

**Transfer of small arms, light weapons and ammunition**

	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Are manufacturers of small arms permitted to sell or transfer directly to state agencies, including law enforcement and security forces?	Yes	Yes	Yes	N/A <sup>121</sup>	N/A <sup>122</sup>	Yes		Yes	No	Yes	Yes	No	Yes	Yes	N/A <sup>123</sup>	Yes	No <sup>124</sup>	N/A	N/A <sup>125</sup>
Are manufacturers of small arms permitted to sell or transfer directly to private persons or groups?	Yes	No	No	N/A		Yes		Yes	No	Yes	Yes	No	No	Yes	N/A	Yes	No	N/A	N/A
Are manufacturers of small arms permitted to sell small arms outside the state to other governments?	No	No	No	N/A		No		Yes	Yes <sup>126</sup>	Yes	Yes	No	No	Yes	N/A	Yes	No	N/A	N/A
Are manufacturers of small arms permitted to sell small arms outside the state to private individuals or groups?	No	No	No	N/A		No		Yes	Yes	Yes	Yes	No	No	Yes	N/A	Yes	No	N/A	N/A
Are there national laws and/or enforceable policies regulating the sale or transfer of small arms within the state?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Do those laws contain procedures for investigating and verifying the end user of these small arms?	Yes	Yes	No	N/A	Yes	Yes		Yes	Yes	Yes	Yes	N/A <sup>127</sup>	No	Yes	N/A	Yes	Yes	Yes	Yes
Are there national laws and/or enforceable policies regulating the sale or transfer of small arms outside the state?	Yes	Yes	Yes	N/A		Yes		Yes <sup>128</sup>	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes <sup>129</sup>	Yes	No	No

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (*continued*)**

**Transfer of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Do those laws contain procedures for investigating and verifying the end user of these small arms, including the risk of diversion?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A	Yes	Yes	N/A	Yes	Yes	N/A	No
Do your laws contain requirements for verifying the human rights situation in buyer state or region?	Yes	No <sup>130</sup>	Yes	N/A		Yes		Yes	Yes	Yes	No <sup>131</sup>	N/A		Yes	N/A	No	No	Yes	No
Before transfer, do you assess if there is risk the small arms will be used in internal repression?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A
Before transfer, do you assess whether there is a situation of armed conflict in which the small arms might be used?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A
Before transfer, do you investigate whether the end use of the small arms might be to commit acts of aggression or force on neighbouring countries or territories?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A
Before transfer, do you assess the potential impact of small arms on regional stability?	Yes	N/A <sup>132</sup>	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A
Before transfer, do you assess the risk of whether small arms will be used in acts of terrorism or organized crime?	Yes	Yes	Yes	N/A		Yes		Yes	Yes	Yes	Yes	N/A		Yes	N/A	No	N/A	N/A	N/A

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (continued)**

**Transfer of small arms, light weapons and ammunition (continued)**

<i>(continued)</i>	Austria	Bangladesh	Chile	Colombia	Costa Rica	Cyprus	Czech Republic	Finland	Georgia	Germany	Greece	Jordan	Kyrgyzstan	Marshall Isl.	Mauritius	Mexico	Monaco	Mongolia	Morocco
Do you use any of the above criteria in your decision whether or not to export small arms?	Yes	N/A	Yes	N/A		Yes		Yes	No	Yes	Yes	No		Yes	N/A	No	N/A	N/A	N/A
Do you allocate funding in your national budget for making these assessments in decisions to export?	No <sup>133</sup>	Yes	Yes	N/A		Yes		Yes	No	No	Yes	No		Yes	N/A	No	N/A	N/A	N/A
Are there sanctions in place should a manufacturer or state agent transfer small arms in violation of these considerations?	Yes	N/A	No	N/A		Yes		Yes	No	Yes	Yes	Yes		Yes	N/A	Yes	N/A	N/A	N/A

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (continued)**

**Transfer of small arms, light weapons and ammunition (continued)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are manufacturers of small arms permitted to sell or transfer directly to state agencies, including law enforcement and security forces?	N/A	No	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes	Yes	Yes	No	Yes <sup>134</sup>	No	Yes	Yes <sup>135</sup>		No
Are manufacturers of small arms permitted to sell or transfer directly to private persons or groups?	N/A	No	Yes	Yes	Yes <sup>136</sup>	No	Yes	Yes	N/A	No	No	No	No	No	No	Yes			No
Are manufacturers of small arms permitted to sell small arms outside the state to other governments?	N/A	No	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes	Yes	Yes	No	No	No	Yes			No
Are manufacturers of small arms permitted to sell small arms outside the state to private individuals or groups?	N/A	No	Yes	Yes	Yes	No	Yes <sup>137</sup>	Yes	N/A	No	No	No	No	No	No	Yes			No
Are there national laws and/or enforceable policies regulating the sale or transfer of small arms within the state?	Yes	Yes	Yes	Yes	Yes	Yes	Yes <sup>138</sup>	Yes	Yes	Yes	Yes	Yes	Yes <sup>139</sup>	Yes	Yes	Yes		Yes	Yes
Do those laws contain procedures for investigating and verifying the end user of these small arms?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes		Yes	Yes
Are there national laws and/or enforceable policies regulating the sale or transfer of small arms outside the state?	Yes	Yes	Yes <sup>140</sup>	Yes <sup>141</sup>	Yes	Yes	Yes	Yes <sup>142</sup>	No <sup>143</sup>	Yes	Yes <sup>144</sup>	Yes	Yes	Yes	N/A	Yes		Yes	Yes

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (continued)**

**Transfer of small arms, light weapons and ammunition (continued)**

(continued)	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Do those laws contain procedures for investigating and verifying the end user of these small arms, including the risk of diversion?	Yes	Yes	No <sup>145</sup>	Yes	Yes	Yes	Yes	Yes	N/A	Yes	Yes		Yes	Yes	N/A	Yes		Yes	Yes
Do your laws contain requirements for verifying the human rights situation in buyer state or region?	N/A	Yes	Yes	Yes	Yes		Yes <sup>146</sup>	Yes	N/A	Yes	Yes		Yes		N/A	yes			
Before transfer, do you assess if there is risk the small arms will be used in internal repression?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	
Before transfer, do you assess whether there is a situation of armed conflict in which the small arms might be used?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	
Before transfer, do you investigate whether the end use of the small arms might be to commit acts of aggression or force on neighbouring countries or territories?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes			
Before transfer, do you assess the potential impact of small arms on regional stability?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes			
Before transfer, do you assess the risk of whether small arms will be used in acts of terrorism or organized crime?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	

**Part 3. Manufacture and transfer of small arms, light weapons and ammunition (*continued*)**

**Transfer of small arms, light weapons and ammunition (*continued*)**

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Do you use any of the above criteria in your decision whether or not to export small arms?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	
Do you allocate funding in your national budget for making these assessments in decisions to export?	N/A	Yes	Yes	No	Yes		No	Yes	N/A	No	Yes		Yes		N/A	Yes			
Are there sanctions in place should a manufacturer or state agent transfer small arms in violation of these considerations?	N/A	Yes	Yes	Yes	Yes		Yes	Yes	N/A	Yes	Yes		Yes		N/A	Yes		Yes	Yes <sup>147</sup>

**Notes**

<sup>1</sup> Waffengebrauchsgesetz 1969 (Weapons Usage Act) and Kriegsmaterialgesetz (War Material Act).

<sup>2</sup> Ley No. 17.798 sobre control de Armas, Explosivos y Elementos Similares, y los Reglamentos Institucionales de las FF.AA., Carabineros y Policia de Investigaciones como autoridades encargados por la Ley 17.798.

<sup>3</sup> Decreto 2535 del 17 diciembre de 1993; Decreto Reglamentario 1809 de 1994.

<sup>4</sup> Act No. 119/2002 Coll. On firearms and ammunition, as amended, effective as of 1 January 2003; Act No. 13/1993 Coll., Customs Act; Act No. 283/1991 Coll. On Police of the Czech Republic, as amended, section 39 et sequential.

<sup>5</sup> Police Act.

<sup>6</sup> Georgian Law “On Weapons”.

<sup>7</sup> Law 3169/2003 on “Matters Concerning the Possession and Use of Firearms by Police Officers and article 1 of the Decision 8517/4/7mb of the Minister of Public Order dated 17 February 2004. The Government of Greece has drafted legislation that would regulate the possession and use of light weapons. As of September 2005, this legislation was being considered by Parliament.

<sup>8</sup> Firearms and Ammunitions Law of 2001.

<sup>9</sup> Law of the Kyrgyz Republic on “Small Arms”, 9 June 1999.

<sup>10</sup> Police Act, Sect. 13D; Criminal Code Act, Section 140, 233 and 378 (g); Firearms Act.

<sup>11</sup> Ley Federal de Armas de Fuego y Explosivos.

<sup>12</sup> Loi No. 943 du 18 Juin 1971 et OS.G947 du 16 Octobre 1980 sur les Armes et munitions.

<sup>13</sup> Law on Firearms of Mongolia.

<sup>14</sup> There are regulations.

<sup>15</sup> No. 283/1991 Coll. On Police of the Czech Republic, as amended, section 39 et sequentia.

<sup>16</sup> Sections 3, 4, 5 and 6 of Implementing Rules and Regulations of Presidential Decree 1866, as amended by Republic Act 8294; Rule XI of Standard Operating Procedure 13 and Executive Order 522.

<sup>17</sup> Law of 21 May 1999 on Firearms and Ammunition, as amended.

<sup>18</sup> Police Code 23 of 1999.

<sup>19</sup> Act on Special Measures for the Defense Industry and Enforcement Decree; Act on Control of Firearms, Swords, Explosives, etc.; Foreign Trade Act; Presidential decrees and enforcement decrees; and Public Notice on the Export and Import of Strategic Goods.

<sup>20</sup> Law 295/2004 on the Regime of Arms and Ammunition; articles 46-52 of Law 17/1996 on the Regime of Firearms and Ammunition; and Law 360/2002 on the Status of Policemen.

<sup>21</sup> Firearms Control Act of 2000 and Firearms Control Regulations of 2004.

<sup>22</sup> Sudan Police Force Law.

<sup>23</sup> Possession of hunting guns and small revolvers and ammunition therefore is permitted; the rest of the weapons are carried only by the armed forces.

<sup>24</sup> Firearms Act and Police Service Act.

<sup>25</sup> Articles 12, 15 and 151 of Ukrainian law “About Police” of 20 December 1990. The norms for usage of ammunition are laid out in “Shooting Course - Order of the Ministry of the Interior of Ukraine”, of 25 November 2003 (No. 1444).

<sup>26</sup> As of June 2005 (when the response was submitted), the law “About Weapons” was still under development in the Republic of Uzbekistan. Currently, all questions related to small arms, light weapons and ammunition are regulated by regulations of the relevant Ministries and Agencies. The control-licensing activities of the Ministry of the Interior, as determined by the regulation of 20 August 2001, No. 226, do not cover light weapons. They regulate small arms and ammunition to the small arms such as: rifled-barrel army models, special-order training models (including gelded ones), sport large-calibre arms (7.62 mm and more), small-calibre arms, hunting rifled-barrel arms, and smoothbore firearms and ammunition to all of these weapons, which belong to organizations and individual citizens, except those weapons that are in possession of the Ministry of the Interior, Ministry of Defense and Ministry on Emergency Situations, as well as State Customs Committee and National Security Agency. The Agency Regulations of the Ministry of the Interior, National Security Agency, Ministry of Defense, and the Office of Public Prosecutor: the possession and use of weapons by the members of the Armed Forces is regulated by the Armed Forces manual/regulations as well as individual regulations of distinct kinds of the Armed Forces.

<sup>27</sup> Ministry of Defence internal regulations.

<sup>28</sup> Article 34 of Law 295/2004 on the Regime of Arms and Ammunition; order of the minister of Administration and Interior 1020/1996 on the preparation, organization and conduct of the firing training of Ministry personnel.

- <sup>29</sup> Instructions for securing the safety of weapons, ammunition and special means of the internal security forces is affirmed by the order of the Ministry of the Interior of Ukraine of 6 July 2001 (No. 541). Instructions about the safety measures for the use with firearms is affirmed by the order of the Ministry of the Interior of Ukraine of 25 November 2005 (No. 1444).
- <sup>30</sup> Código de Justicia Militar, Ley No. 17.798, Código Penal y la reglamentación de cada Institución.
- <sup>31</sup> Presidential Decree 22/1996 on “Disciplinary Law for Police Personnel” and provisions of Law 3169/2003.
- <sup>32</sup> Criminal Law 1952 and Firearms and Ammunitions Law 2001.
- <sup>33</sup> Police Act.
- <sup>34</sup> Art. 157, Código de Justicia Militar; arts. 31 y 36, Ley Federal de Armas de Fuego y Explosivos; El Código Penal Federal.
- <sup>35</sup> If the incident is serious.
- <sup>36</sup> The Attorney General oversees such investigations.
- <sup>37</sup> Publicity during the investigatory phase is at the discretion of the public prosecutor’s office. If charges are made, the court proceedings are public (with a few specific exceptions).
- <sup>38</sup> There is no regular budget allocation, but money for investigations and damages is granted via the national budget as needed.
- <sup>39</sup> Law 218/2002 on the Organization and Functioning of the Romanian Police; Regulation 193/1992 on the Organization of the Committees and Commissions for Human Rights and Humanitarian Law in the Ministry of Administration and Interior; Instruction 776/1998 on the Organization, Coordination and Control of the Activity of Labor Protection in the Ministry of Administration and Interior Units; article 21 of Law 90/1996 on the Coordination of the Labor Protection Activity; Law 550/2004 on the Organization and Functioning of the Romanian Police.
- <sup>40</sup> Articles 247, 248, 249, 250, 297 of the Criminal Code of the Republic of Uzbekistan; Manual for performance of Garrison duties.
- <sup>41</sup> Through the budget of the National Army.

- <sup>42</sup> Firearms Act.
- <sup>43</sup> Articles 3, 5, 7 and 8 of Decision 8517/4/7-mb of the Minister of Public Order, dated 17 February 2001.
- <sup>44</sup> Firearms Act.
- <sup>45</sup> With special permit by the relevant authority.
- <sup>46</sup> There is no legal requirement for such training, but training on safe storage is given to law enforcement agents.
- <sup>47</sup> Law on Police Organization and Law on Armed Forces.
- <sup>48</sup> There is no regular budget allocation, but money is granted via the national budget as needed.
- <sup>49</sup> Secure storage is the responsibility of relevant departments and is funded through their budgets.
- <sup>50</sup> During police investigations; not routinely.
- <sup>51</sup> There are no private storage facilities.
- <sup>52</sup> Executive Order 61, designating the Philippine Constabulary as Government custodian of firearms, ammunition and explosives.
- <sup>53</sup> Law 295/2004 on the Regime of Arms and Ammunition.
- <sup>54</sup> Government orders, rather than law.
- <sup>55</sup> Control over the storage of weapons is regulated by the control-licensing agencies (order of the Ministry of the Interior of the Republic of Uzbekistan No. 226 of 20 August 2001). For the forces of the Ministry of the Interior see “Manual for the service of artillery weaponry of the interior forces and army training colleges”; for the forces of the Ministry of Defense, see “Instructions for organizing the registration, storage and issuance of small arms and ammunition to the Armed Forces”.

<sup>56</sup> Except for military forces.

<sup>57</sup> Sudan Law for Weapons and Ammunition, 1986.

<sup>58</sup> Funding is allocated as part of the Normal Budget.

<sup>59</sup> Funded by the general budget allocated for the police.

<sup>60</sup> Depersonalized statistics are published.

<sup>61</sup> The database of owners and users of the small arms is being formed according to the order of the Ministry of the Interior of the Republic of Uzbekistan No. 105 of 26 May 1998.

<sup>62</sup> Regulation 87 and 88 of the Firearms Control Regulations, 2004 prescribe the types of information which must be kept by central databases. No provision is made by the Firearms Control Act, 2000 for such information to be made public. Applications may be made under the Promotion of Access to Information Act, 2000 to obtain certain records. In addition, the reporting duties of the national Conventional Arms Control Committee (in terms of Section 23 of the National Conventional Arms Control Act, 2002) implies the collection of data regarding all conventional arms exported and provides for this data to be made public.

<sup>63</sup> Some data are made public, but others are not.

<sup>64</sup> Such laws are enacted at the state level.

<sup>65</sup> Firearms Act (1/1998, as amended).

<sup>66</sup> Articles 7 and 10 of Law 2168/1993 and Common Ministerial Decision 4325/99 of the Ministers of Culture and Public Order.

<sup>67</sup> Law of the Kyrgyz Republic on “Licensing”, 3 March 1997.

<sup>68</sup> Firearms Act. As of March 2005, the Firearms Act will be repealed and replaced by a new enforcement act.

<sup>69</sup> Constitución Política de los Estados Unidos Mexicanos, art. 10; Ley Federal de Armas de Fuego y Explosivos, arts. 24-27, 34-35.

- <sup>70</sup> Training is required only in cases where licences are for athletes.
- <sup>71</sup> The fees for using these services are raised by the competent authority.
- <sup>72</sup> There is no regular budget allocation, but money is granted via the normal budget process as needed to collect this data.
- <sup>73</sup> The possession and use of small arms by private individuals is prohibited in Greece. In special cases and when the conditions of the law concur (special weapons of protection or security) private individuals are granted a licence by the competent police authorities.
- <sup>74</sup> Only in cases where weapons are used in crime.
- <sup>75</sup> No legal requirement to maintain this data, but records are kept.
- <sup>76</sup> There is no regular budget allocation, but money is granted as needed to maintain the database.
- <sup>77</sup> With the exception of shotguns acquired before 1990.
- <sup>78</sup> Standard Operating Procedure 13, enacted at the state level.
- <sup>79</sup> Weapon and Ammunition Statute, applied at national level.
- <sup>80</sup> Law 295/2004 on the Regime of Arms and Ammunition.
- <sup>81</sup> Act 190/2003 Coll. On Firearms and Ammunition, as amended; Notice of the Ministry of the Interior 555/2003 Coll.
- <sup>82</sup> Applied at the federal level.
- <sup>83</sup> Firearms Act 16:01 and Firearms (Amendment) Regulations No. 3 of 2004.
- <sup>84</sup> Applied at the federal level.

<sup>85</sup> The Law of the Republic of Uzbekistan “About Licensing of Certain Types of Activities”. Also, in accordance with the order of the Ministry of the Interior of the Republic of Uzbekistan No. 226 of 20 August 2001, there are regulations regarding issuances of special permits for import/export, acquisition, transport, storage and carrying, and realization of weapons. Ammunition can be sold to citizens who are members of hunting societies and who have permits for the storage and carrying of weapons, and only through special stores.

<sup>86</sup> Regulation of the Arms Law of 1997.

<sup>87</sup> There is only one weapon allowed per individual.

<sup>88</sup> According to the established order, a permit for the acquisition of weapons can be issued based on a citizen’s application only after investigating the citizen’s identity, health, criminal history, lifestyle (abuse of narcotics, alcohol, leading to police detentions), behaviour at work and at home, affairs, and other important circumstances. In case there are foundations for refusal of a licence, the Ministry of the Interior notifies the citizen about the refusal without providing grounds for this refusal.

<sup>89</sup> Not less than 30 years of age for firearms and 25 years for air guns.

<sup>90</sup> The partner of a firearms licence applicant is interviewed before a licence is granted to the applicant.

<sup>91</sup> A licensee must be a member of a gun club or shooting association.

<sup>92</sup> National Police Commission Resolution 97-162 states that an applicant is required to undergo a Gun Safety Seminar and a Responsible Gun Ownership Seminar.

<sup>93</sup> Training is not required by law, but a licensee must pass an exam covering operations, safety and use of weapons.

<sup>94</sup> There is an exam of qualification, abilities and skills connected with the use of SALW.

<sup>95</sup> According to current regulations, the right to own weapons is given only to the members of the hunting society (those who have a hunting licence), which, according to its constitution must require passing relevant exams (“hunting minimums”).

<sup>96</sup> Some gun clubs require such training.

- <sup>97</sup> Training is not required by law, but a licensee must pass an exam covering operations, safety and use of weapons.
- <sup>98</sup> Training is not required by law, but a licensee must pass an exam covering operations, safety and use of weapons.
- <sup>99</sup> Legislation to do so was under consideration in 2005.
- <sup>100</sup> Training is not required by law, but a licensee must pass an exam covering operations, safety, storage and use of weapons.
- <sup>101</sup> For security companies.
- <sup>102</sup> Applicants for a permit pay a fee to support the licensing review system.
- <sup>103</sup> Firearms Information Management System stores all names of registered firearms holders nationwide and their licensed firearms.
- <sup>104</sup> Subject to the provisions of disclosure of information involving and/or relating to firearms and explosives.
- <sup>105</sup> Bangladesh Ordnance Factories.
- <sup>106</sup> There is no manufacture of SALW and ammunition in the Kyrgyz Republic.
- <sup>107</sup> Austrian Trade Act, Federal Gazette 194/1994 (Gewerbeordnung).
- <sup>108</sup> For war weapons, the War Weapons Control Act.
- <sup>109</sup> Article 5 of Law 2168/1993.
- <sup>110</sup> Ley Federal de Armas de Fuego y Explosivos, Título Tercero, Capítulo 1; Capítulo IV del Reglamento de la Ley Federal de Armas de Fuego y Explosivos; Disposiciones de la Secretaría de la Defensa Nacional.
- <sup>111</sup> No separate fund is allocated; accounting is done at government level.
- <sup>112</sup> Funds are earmarked in the budgets of the competent authorities.

- <sup>113</sup> KNVO “Fort” Ministry of the Interior of Ukraine (town: Vinnitza).
- <sup>114</sup> Information withheld according to the law of the Republic of Uzbekistan “About State Secrets”.
- <sup>115</sup> Code 14 of 1999, which relates to weapons and ammunition.
- <sup>116</sup> Sections 45-58 of the Firearms Control Act, 2000.
- <sup>117</sup> Section 15 (1) of the Firearms Act, Ch. 16:01 forbids the manufacture of any firearm and ammunition in Trinidad and Tobago.
- <sup>118</sup> The Cabinet of Ministers Directive No. 236 of 28 June 2002 “About the measures for the realization of the Republic of Uzbekistan law ‘About licensing of certain types of activities’” requires licensing for production, repair and realization of battle, hunting and sport firearms and ammunition, as well as of side-arms (except national knives and knives for domestic use).
- <sup>119</sup> There is no private arms manufacture of small arms in Saudi Arabia.
- <sup>120</sup> There are no private manufacturers of SALW; there are no licences for manufacturing SALW.
- <sup>121</sup> There is no private arms manufacturing in Colombia; weapons production is a state monopoly.
- <sup>122</sup> Costa Rica does not manufacture or export armaments.
- <sup>123</sup> There is no arms manufacture in Mauritius.
- <sup>124</sup> There is no arms manufacture in Monaco.
- <sup>125</sup> There is no arms manufacture in Morocco and no export of firearms.
- <sup>126</sup> Regulated by the Georgian Law “On the Control of Export-Import of Armaments, Military Equipment and Goods of Dual-Purpose Use”.
- <sup>127</sup> It is illegal to export or transfer weapons at all times.

- <sup>128</sup> Act on the Export and Transit of Defense Materiel (242/1990, as amended).
- <sup>129</sup> Ley Federal de Armas de Fuego y Explosivos, arts. 55-59.
- <sup>130</sup> Bangladesh does not export weapons, except for United Nations Missions. Weapons are authorized by the Bangladeshi government to Bangladeshi government agencies for security purposes.
- <sup>131</sup> The EU Code of Conduct and United Nations Decision 1540 are taken in mind.
- <sup>132</sup> Bangladesh does not export weapons, except for United Nations Missions.
- <sup>133</sup> There is no extra budget for these assessments, but the necessary money is granted.
- <sup>134</sup> Transfers of SALW are made in accordance with strict national laws and under enforced supervision to prevent diversion.
- <sup>135</sup> Purchase (transfer) of arms for MVD (Ministry of the Interior of Ukraine) forces are conducted through a centralized system of DRO of the Ministry of the Interior of Ukraine. The units of the Ministry of the Interior, themselves, are forbidden from purchasing weapons.
- <sup>136</sup> Except for military arms.
- <sup>137</sup> SALW for military purpose may not be sold to private individuals or groups.
- <sup>138</sup> Act on Control of Firearms, Swords, Explosives, etc.
- <sup>139</sup> Sudan is not an exporter of armaments, but Sudanese law contains human rights requirements nevertheless. Sudan is a member of the Nairobi Protocol and has committed to all obligations in the Protocol.
- <sup>140</sup> Standard Operating Procedure 13 and Executive Order 256.
- <sup>141</sup> Act of 29 November 2000 on Foreign Trade in Goods, Technologies and Services of Strategic Importance to the Security of the State and to Maintaining International Peace and Security.

<sup>142</sup> Government Ordinance 158/1999 on the Control Regime of the Exports, Imports and other Operations with Military Goods, as amended by Law 595/2004.

<sup>143</sup> There is no export from Saudi Arabia

<sup>144</sup> Firearms Control Act, 2000 and National Conventional Arms Control Act, 2002.

<sup>145</sup> A bill pending in the Senate as of May 2005 for a National Firearms Act would incorporate other issues related to the transfer of SALW.

<sup>146</sup> Act on Special Measures for the Defense Industry and Enforcement Decree.

<sup>147</sup> Article 248 of the Criminal Code of the Republic of Uzbekistan.

## **Annex II**

### **SUMMARY AND ANALYSIS OF RESPONSES RECEIVED FROM UNITED NATIONS MEMBER STATES TO THE SPECIAL RAPPORTEUR'S QUESTIONNAIRE**

Sub-Commission decision 2003/105 and Commission decision 2004/124 authorized transmittal of a questionnaire elaborated by the Special Rapporteur to Governments and other entities in order to solicit information in connection with her study. Surveys were sent by the Office of the High Commissioner to Governments. Full or partially completed surveys were received back from 38 States.<sup>1</sup> The Special Rapporteur would like to express her gratitude to the States that responded to the survey. A chart summarizing all State responses is attached as annex I to this report.

The regional affiliation of the States that responded to the survey is:

Africa: 5 States (9% of the 53 States in the region)

Asia: 12 States (23% of the 52 States in the region)

Eastern Europe: 6 States (29% of the 21 States in the region)

Latin America and Caribbean: 5 States (15% of the 33 States in the region)

Western Europe and Other: 10 States (37% of the 27 States in the region)<sup>2</sup>

Unless otherwise noted, percentages used in the summary below are based on the number of responses received from States to individual questions. The responses have not been weighted on the basis of regional representation, non-answers, or any other factors.

#### **A. Part 1: Use of small arms and light weapons by law enforcement**

##### **1. Summary of State responses**

Because the primary focus of human rights law is on State practice, the first set of questions in the Special Rapporteur's survey requested States to provide information related to the possession and use of small arms by State officials, including law enforcement officers. Responses indicated a high degree of consensus among responding States regarding laws and practices that govern the possession of small arms, investigations of misuse, and storage of firearms by law enforcement. There was less consensus regarding State policies on collection of firearms from officers who are off-duty or retired. The following is a summary of the State responses regarding small arms and law enforcement:

- All responding States (100%) regulate at least the distribution of small arms ("SA") to law enforcement officers; 30 of 38 States (79%) regulate the distribution of all SA, light weapons ("LW"), and ammunition.
- At least 27 of 38 (71%) States collect State-issued weapons when law enforcement officers retire.

- All States (100%) answering the survey questions on training of law enforcement officers<sup>3</sup> provide technical/mechanical training. All but one responding (the Republic of Korea) provide practical/tactical training. All but two (Mauritius and Mongolia) provide training in applied decision-making.
- All responding States (100%) have laws or regulations requiring investigation of allegations of misuse of firearms by law enforcement officials. Thirty of 36 States (83%) have independent investigations of alleged firearms misuse. The same percentage provide for judicial oversight of the investigative process. Twenty-three of 35 States (66%) make such investigative proceedings public. Based on the sample participating in the survey, there appears to be a higher degree of transparency in this regard by non-European States.
- Thirty-four of 35 responding States (97%) impose sanctions against State agents who misuse small arms. Thirty-two of 35 States (91%) impose sanctions against commanders/superior officers who authorize the misuse of small arms. (Bangladesh, Georgia and the Marshall Islands do not do so.)
- Only 1 of 34 responding States (3%) does not have a process in place to compensate civilians and/or families of civilians who have been injured or killed due to misuse of small arms by State forces.
- Thirty-five of 35 responding States (100%) have laws governing the storage of small arms by State agents. Six States do not reveal whether they impose sanctions against State agents for violations of laws on safe storage of firearms, but - of those responding to this question - all (100%) said that they did. Most responding States (85%) allocate funding in their budget for safe storage of small arms.
- Nineteen of 34 responding States (56%) do not allow off-duty State agents to keep their government-issued small arms. (Conversely, 44% do allow off-duty law enforcement agents to keep their weapons.)
- Thirty of 33 responding States (91%) have laws requiring the collection and maintenance of data on the use of small arms by law enforcement officers. Twenty-three of 32 responding States (72%) allocate funding in their budgets to support this requirement. Eight of 30 States (27%) make this data public.

## **2. Analysis of responses with regard to the draft principles**

The responses of States with regard to the possession and use of small arms by law enforcement show significant convergence between the policies of States and those stated in the draft principles on the prevention of human rights violations committed with small arms (E/CN.4/Sub.2/2005/35), which the Sub-Commission considered at its fifty-sixth and fifty-seventh sessions. Though it would be premature to draw any normative conclusions from a 20% sampling of State responses, it is relevant to the Sub-Commission's further consideration of the draft principles to consider the views of the responding States.

Based on the responses received, in general, States' policies and practice tend to show support for the adoption and implementation of rules on force and small arms by law enforcement, (E/CN.4/Sub.2/2005/35, annex, draft principle 2, "Governments and State agencies shall adopt and implement rules and regulations on the use of force and small arms against persons by State officials, especially law enforcement officials.").

States' policies and practices indicate the existence of a chain of command and the imposition of sanctions against State officials who misuse small arms (E/CN.4/Sub.2/2005/35, annex, draft principle 3, "[I]n order to prevent the violation of human rights by small arms, Governments and State officials shall ensure strict enforcement of the rules and regulations they adopt, including a clear chain of command over all officials authorized by law to use force and, in particular, small arms. Governments shall ensure that arbitrary or abusive use of force carried out with small arms, including but not limited to force used by any State official or person acting at the instigation of or with the consent or acquiescence of a public official, is punished as a criminal offence.").

All responding States have laws governing the safe storage of small arms including imposition of sanctions for violations of laws regarding safe storage. There is less clarity about the requirements regarding storage of ammunition. Inconsistent policies regarding the possession of small arms by off-duty and retired law enforcement raise a concern about the potential for misuse of such weapons (E/CN.4/Sub.2/2005/35, annex, draft principle 4, "[I]n order to further prevent the violation of human rights by small arms, Governments and State officials shall establish and maintain adequate and detailed procedures for the proper storage and management of small arms, particularly ammunition. Governments shall actively pursue the collection, safe storage, destruction and responsible disposal of surplus small arms.").

With regard to training, all responding States require at least technical training of law enforcement in the use of firearms, and all but two responding States require situational training (E/CN.4/Sub.2/2005/35, annex, draft principle 5, "Governments and State agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training on the acceptable conditions for the use of force set out in these principles. Those State officials who are permitted to carry firearms shall be authorized to do so only upon completion of special training regarding the limitations on their use. The compliance of State officials with rules and regulations on the use of force and small arms shall be subject to regular review.").

States' replies, however, offer little insight into the nature of the situational and human rights training of officers with regard to the proper use of firearms, (E/CN.4/Sub.2/2005/35, annex, draft principles 6, 7, 8).<sup>4</sup> See annex III, however, for supplementary information provided by the Governments of Finland, Poland and Portugal that provide comparative models for domestic implementation of limitations on the use of force by law enforcement. The variety of State practice on the training and oversight of firearms use by law enforcement indicates that the international standards found in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter, "United Nations Basic Principles") are not being implemented in a consistent manner designed to protect human rights.

All responding States require investigation of misuse of small arms by State officials, though only 83 per cent of responding States require investigations by independent entities or judicial oversight of such investigations. Responding States shared few details about the nature of the investigation required. (E/CN.4/Sub.2/2005/35, annex, draft principle 9, “Governments and State agencies shall establish effective reporting and investigative procedures to ensure that all incidents involving the misuse of small arms by State officials, including law enforcement and other security officials, are reviewed by independent and competent authorities. There shall be thorough, prompt and impartial investigation of all cases of death, torture, other ill-treatment or injury involving small arms. In addition to determining the cause, manner and time of death, torture or injury, and the persons responsible, all investigations should identify the type of weapon(s) used in the incident.”)

## **B. Part 2: State regulation of civilian possession and use of small arms**

### **1. Summary of State responses**

The second part of the Special Rapporteur’s survey asked questions related to the responsibility of States to take positive steps to prevent human rights violations caused by armed individuals and groups. The Special Rapporteur’s questions sought information regarding State laws and practices concerning licensing of civilian possession of small arms as well as regulations concerning training, storage of firearms and data collection relevant to civilian possession. Responses are summarized below.

- All responding States (100%) require licensing of private ownership of small arms and ammunition, and all require screening and/or background investigation of individuals seeking licences.
- All responding States (100%) vet applicants on the basis of a minimum age requirement and criminal record; 84% require consideration of psychological profile, and 73% examine instances of domestic violence.
- Nineteen of 33 responding States (58%) require training in (or demonstration of) safe use and handling of small arms and/or ammunition.
- Twenty-nine of 35 responding States (83%) limit the type and quantity of weapons individuals can hold. Four of 5 Latin American States (80%) and 8 of 10 Western European and Other States (80%) do so.
- All responding States (100%) maintain a database of licensed small arms owners. Twenty-five of 34 responding States (73%) allocate funding in their budget to maintain this database. Only 7 of 32 States (22%) responding to this question make this data public. (These States are Bangladesh, Georgia, the Marshall Islands, Mexico, Norway, Philippines, and the Syrian Arab Republic.)

- Fourteen of 34 responding States (41%) have periodic amnesties for individuals who want to turn in illegally held small arms and/or ammunition. (These States are Chile, Colombia, Costa Rica, Finland, the Marshall Islands, Mongolia, Norway, Philippines, Republic of Korea, Saudi Arabia, South Africa, Sudan, Syrian Arab Republic and the United Arab Emirates.)

## **2. Analysis of responses with regard to the draft principles**

All responding States have licensing requirements for civilian possession of small arms. (E/CN.4/Sub.2/2005/35, annex, draft principle 10, “In order to ensure the protection of human rights by preventing small arms violence by private actors, Governments shall incorporate into their national laws licensing requirements to prevent possession of arms by persons who are at risk of misusing them. Possession of small arms shall be authorized for specific purposes only; small arms shall be used strictly for the purpose for which they are authorized ...”). Among those States, however, the factors considered as a basis for licensing to civilians vary to some degree and responding States provided few details about what evidence would disqualify an individual from being licensed to own a firearm. While all regulating States consider criminal record and age before approving a licence for civilian possession of a firearm, slightly fewer consider the psychological profile (84%) or domestic abuse record (73%) of the applicant. A majority of States (58%) require a demonstration of technical capability as part of the licensing process. (E/CN.4/Sub.2/2005/35, annex, draft principle 10, ... “[B]efore issuing a licence Governments shall require training in proper use of small arms, and shall take into consideration, at a minimum, the following factors: age, mental fitness, requested purpose, prior criminal record, and prior acts of domestic violence. Governments shall require periodic renewal of licences.”)

### **C. Part 3: Manufacture and transfer of small arms, light weapons and ammunition**

#### **1. Summary of State responses**

The third part of the Special Rapporteur’s questionnaire requested information related to States’ laws and policies with regard to the manufacture and transfer of small arms. There was less consensus among responding States on specific regulation of the manufacture and transfer of small arms; however, the variance appears to be related largely to the fact that many States report having (or allowing) no small arms production or trade. The responses are summarized as follows:

- Fourteen of 35 responding States (40%) have State owned or operated manufacturers of small arms; 12 of 35 responding States (34%) have privately owned manufacturers of small arms.
- Thirty of 34 responding States (88%) regulate the private manufacture of small arms; all States (100%) that report having private manufacturers respond that they regulate those entities.
- Twenty-six of 28 responding States (93%) regulate manufacturing by requiring that manufacturers be licensed by the State. Ten States either did not answer this question

or indicated that it was not applicable to them, since they do not permit private manufacture of small arms. Nineteen of 26 responding States (73%) require licences to be renewed periodically.

- Twenty-six of 28 responding States (93%) have procedures in place for investigating violations of laws by manufacturers. Ten States either did not answer this question or indicated that it was not applicable to them, since they do not permit private manufacture of small arms.
- All 34 States responding to the question have enforceable policies or laws regulating the sale of small arms within the State. All but 2 of 32 responding States (94%) have laws containing procedures for investigating and verifying the end user of these small arms.
- Twenty-nine of 31 responding States (93%) have enforceable policies or laws regulating the sale of small arms outside the States; 26 of 28 responding States' laws contain procedures for investigating and verifying the end user of these small arms.
- Eighteen of 28 States (64%) responding to this question have laws requiring verification of the human rights situation in States or regions to which they are allowing sales of small arms. Ten participants in the survey did not respond to this question.
- Twenty of 38 States participating in the overall survey (53%) affirm that prior to transferring small arms they assess whether there is a risk the small arms may be used in internal repression. However, several States do not manufacture or export small arms, and so they marked these questions as not applicable to them. Of those that responded "yes" or "no" to this question, 95% assesses the risk that small arms may be used in repression. The same percentage (95%) assess the risk of small arms being used in armed conflict, acts of terrorism or organized crime, or acts of aggression or force on neighbouring countries.
- Only 13 responding States allocate funding in their budgets to support the consideration of the above factors in relation to export decisions.

## **2. Analysis of responses with regard to the draft principles**

All responding States that report having private small arms manufacturers purport to regulate those entities. As indicated by the responses, State practice tends toward regulation of private manufacture, but many of the answers to questions in this section are too diffuse to show particular trends regarding how such regulation is carried out on the ground.

Almost all responding States (93%) require that small arms manufacturers be licensed, (E/CN.4/Sub.2/2005/35, annex, draft principle 11, "Governments shall incorporate into their national laws measures ensuring that proper controls are exercised over the manufacturing of small arms. For the purpose of identifying and tracing small arms, Governments shall require that at the time of manufacture, each small arm has a unique permanent mark providing, at a minimum, the name of the manufacturer, the country of manufacture and the serial number").<sup>5</sup>

Almost all responding States (93%) have a process for investigating licence violations though the sanctions for these violations were not explained in detail, (E/CN.4/Sub.2/2005/35, annex, draft principle 12, “Governments shall incorporate into their national laws measures ensuring the investigation and prosecution of persons responsible for the illegal manufacture, possession, stockpiling or transfer of small arms. Governments shall enact serious penalties for crimes involving the misuse of small arms, especially to commit domestic violence, and for the unlawful possession of small arms.”).

The questionnaire did not elicit information on States’ involvement in international disarmament, demobilization and reintegration programmes. Regarding domestic reduction of the supply of small arms, relatively few reporting States (41%) have periodic domestic amnesties for individuals who want to turn in illegally held small arms and/or ammunition, (E/CN.4/Sub.2/2005/35, annex, draft principle 4).

The survey posed a series of questions in Part 3 regarding the investigation and verification of the human rights and security situation in the States where small arms were being transferred. (E/CN.4/Sub.2/2005/35, annex, draft principle 14). The answers given by States to those questions indicate an awareness of the need to assess the impact of the transfers being considered including the potential effect on the human rights situation and the risk that the small arms will be used in repression. Still, only 13 of the responding States allocate funding to assess the implications of small arms transfers, indicating that the practices are not being implemented as effectively as possible given the gravity of the potential consequences.

### Notes

<sup>1</sup> See footnote 2 for a listing of participating States. Representatives of two additional States - Venezuela and India - also responded; however, their response did not include answers to any of the survey questions.

<sup>2</sup> Responding States, broken down by regional grouping, are:

Africa - Mauritius, Morocco, Niger, South Africa, Sudan;

Asia - Bangladesh, Jordan, Kyrgyzstan, the Marshall Islands, Mongolia, Philippines, Qatar, Republic of Korea, Saudi Arabia, Syrian Arab Republic, the United Arab Emirates, Uzbekistan;

Eastern Europe - Czech Republic, Georgia, Poland, Romania, Slovakia, Ukraine;

Latin America and Caribbean - Chile, Colombia, Costa Rica, Mexico, Trinidad and Tobago;

Western Europe and Other - Austria, Cyprus, Finland, Germany, Greece, Monaco, Norway, Portugal, Spain, Turkey.

Regional groups are defined in “Member States of the General Assembly arranged in regional groups as of 31 May 2002”, UNEP/POPS/COP.1/INF/16, 29 November 2004.

<sup>3</sup> The Czech Republic and Qatar did not answer these questions.

<sup>4</sup> Draft principle 6: “In the training of State officials, especially law enforcement agents, Governments and State agencies shall give special attention to the promotion and protection of human rights as a primary duty of all State officials. Governments shall design training programmes to emphasize alternatives to the use of force and small arms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to demonstrate technical means, with a view to limiting the misuse of force and small arms.”

Draft principle 7: “For specific operations and tactical situations, Governments and State agencies shall require prior planning to include alternative means of settlement without recourse to force and small arms.”

Draft principle 8: “In honouring the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights, the intentional lethal use of small arms may only be made when strictly unavoidable in order to protect life. State officials, including law enforcement and other security officials, shall not use small arms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.”

<sup>5</sup> The Special Rapporteur’s questionnaire did not request information relevant to draft principle 11 with regard to States’ marking and tracing procedures, though those questions, which have profound implications for preventing human rights abuses, have been addressed as part of the process of drafting an international instrument. See report of the Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (A/60/88, 27 June 2005).

### **Annex III**

#### **EXCERPTS OF UNITED NATIONS MEMBER STATES' LAWS AND REGULATIONS CONCERNING POSSESSION AND USE OF SMALL ARMS AND LIGHT WEAPONS**

The questionnaire sent by the Special Rapporteur requested States to provide copies of relevant laws, executive orders and/or implementing regulations relating to the licensing, use and export of small arms and light weapons. Several participating States did so. This annex briefly sets forth examples of these States' procedures in three discrete areas:

- Use of deadly force by law enforcement officers and allegations of misuse of small arms and light weapons;
- Licensing criteria for civilian possession of firearms; and
- Small arms export decision-making process in relation to the human rights record of the recipient State.

This annex provides a view of selected States' practices in light of standards being developed by the international community with response to availability, use and transfer of small arms and light weapons. The standards against which national laws and policies are being compared are:

- Articles 4 to 11 of the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (hereinafter "United Nations Basic Principles");
- Draft principle 10 of the draft principles on the prevention of human rights violations committed with small arms; and
- Section II, paragraph 11 of the United Nations Programme of Action on the Illicit Traffic in Small Arms and Light Weapons in All Its Aspects.

#### **A. Use and misuse of small arms by law enforcement**

Articles 4 to 11 of the United Nations Basic Principles state that:

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

(a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;

- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

### **Special provisions**

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;

(d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;

(e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;

(f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

According to the State responses and the accompanying summary analysis:

- All States (100%) answering the survey questions on training of law enforcement officers provide technical/mechanical training. All but one responding (the Republic of Korea) provide practical/tactical training. All but two (Mauritius and Mongolia) provide training in applied decision-making.
- All responding States (100%) have laws or regulations requiring investigation of allegations of misuse of firearms by law enforcement officials. Thirty of 36 responding States (83%) have independent investigations of alleged firearms misuse. The same percentage provide for judicial oversight of the investigative process. Twenty-three of 35 responding States (66%) make such investigative proceedings public. Based on the sample participating in the survey, there appears to be a higher degree of transparency in this regard by non-European States.
- Thirty-four of 35 responding States (97%) impose sanctions against State agents who misuse small arms. Thirty-two of 35 States (91%) impose sanctions against commanders/superior officers who authorize the misuse of small arms. (Bangladesh, Georgia and the Marshall Islands do not do so.)
- And only one of 34 responding States (3%) does not have a process in place to compensate civilians and/or families of civilians who have been injured or killed due to misuse of small arms by State forces.

Supplementary information provided by representatives of the Governments of Finland, Poland and Portugal provide different models for legal specification of limitations on the use of force.

Of the three, the case of Finland provides the most flexible interpretation of the necessity and proportionality requirements under the United Nations Basic Principles. The Police Act (493/1995; amendments up to 315/2001 included) Section 27 - Use of forcible means specifies only that,

When carrying out official duties, police officers have the right to use necessary forms of force that can be considered justifiable to overcome opposition, remove a person from the scene, carry out an apprehension, prevent the escape of a person who has lost his or her liberty, eliminate an obstacle or avert immediate threat of a crime or other dangerous act

or event. When judging the justifiability of forcible means, the importance and urgency of the duty, the danger posed by the opposition, the available resources and other factors affecting the overall assessment of the situation shall be taken into consideration.

Moreover,

Persons temporarily assisting police officers at their request or with their consent in a situation in which it is vital to enlist the forcible aid of bystanders in carrying out an extremely important and urgent official police duty have the right, under a police officer's guidance, to exercise any essential forcible means authorized by a police officer acting within his or her powers.

(Provisions on self-defence and emergency are laid down in the Penal Code, which was not provided.)

Based on the information provided, Polish legislation and regulations appear to spell out the limits of necessity and proportionality more strictly, especially regarding the requirement of law enforcement officers to use armed force as a last resort. On the matter of misuse of weapons, there are legal regulations concerning distributing arms and ammunition among State agents. According to article 17 of 6 April 1990 - the Act on Police (Journal of Laws No. 7 of 2002, item 58 with subsequent amendments), "a police officer has the right to use arms if measures of direct coercion proved insufficient or if using such measures is impossible because of the circumstances of the given incident". Moreover, article 17 states in which situations a police officer has the right to use arms. According to excerpt 3 of this article, "usage of arms should cause as little harm to the person against whom it is used as possible".

Similarly, article 24 of the Polish Act of 12 October 1990 on Border Guards states that "arms cannot be used to take somebody's life, the usage of arms should cause as little harm to the person against whom it is used as possible, and it cannot endanger other people's lives or health". And article 15 of the Act of 16 March 2001 on the Government Protection Office states "the usage of arms should cause as little harm to the person against whom it is used as possible and may not lead to taking his/her life or endangering other people's lives or health".

The following regulations are also applicable:

- Regulation of the Minister of the Interior and Administration of 15 November 2000 on Police armament governs which items constitute police armament.
- Regulation of the Council of Ministers of 21 May 1996 details the conditions and police conduct when using firearms.
- The Police, Border Guards and the Government Security Office carry out complex training courses related to operating weapons - technical and mechanical skills (e.g., cleaning and maintenance of the weapons); practical and tactical skills (e.g., target shooting) and binding relevant law, including human rights. "Every functionary has the duty to observe the binding law (not only during the performance of their business duties), including human rights."

- Improper use of weapons, depending on the effects, can result in disciplinary, penal or civil liability, as laid out in chapter 10 of the Police Statute (Disciplinary and Penal Liability of Police Officers), chapter 14 of the Border Guard Statute (Disciplinary and Penal Liability of Functionaries of the Border Guards) and chapter 9 of the Government Security Office Statute (Disciplinary Liability of the Functionaries).

The alleged misuse of arms by Polish military also constitutes a crime, prosecutable under the Law of 6 June 1997 - Criminal Procedure Code (Journal of Laws No. 89 pos. 555), the Penal Code (Journal of Laws No. 88 item 553 with subsequent amendments), and Law of 24 August 2001 on Military Police and Order-maintaining Organs (Journal of Laws No. 123 pos. 135). Investigations of alleged incidents involving misuse of small arms are conducted by the Military Police and/or by the Military Prosecutor's Office - bodies directly subordinate to the Minister of Defence. If found guilty of misuse of small arms, soldiers in active service may be subject to imprisonment, demotion, dismissal from active service, and/or a fine.

Portuguese law and regulations appear to stipulate even stricter rules and preconditions for the use of small arms by law enforcement officers. According to the legislation provided, an officer should only point a gun at someone in extreme circumstances, namely in self-defence, when other people's safety is at stake or to prevent a crime from taking place. Police must always warn the person before discharging a firearm. Portuguese domestic law also stipulates that officers should try to use a gun in the least damaging way possible. And whenever a police officer uses a firearm (even when used according to the law), she/he must report the use to his/her commanding officer in writing. The excessive use of a gun by a police officer is a crime under the Portuguese Criminal Code, punishable by imprisonment.

Also of note, Council of Ministers resolution No. 37/2002 established a code of conduct and ethics for Portuguese public security forces. This code includes general rules on human rights, respect, honour, dignity, impartiality, solidarity and objectivity, as well as a specific requirement for the inclusion of a course in ethics in the police training course.

### **B. Licensing criteria for civilian possession of firearms**

Draft principle 10 of the draft principles on the prevention of human rights violations committed with small arms states that:

10. In order to ensure the protection of human rights by preventing small arms violence by private actors, Governments shall incorporate into their national laws licensing requirements to prevent possession of arms by persons who are at risk of misusing them. Possession of small arms shall be authorized for specific purposes only, and small arms shall be used strictly for the purpose for which they are authorized. Before issuing a licence, Governments shall require training in proper use of small arms, and shall take into consideration, at a minimum, the following factors: age, mental fitness, requested purpose, prior criminal record, and prior acts of domestic violence. Governments shall require periodic renewal of licences.

According to the State responses, and the accompanying summary analysis:

- All responding States (100%) require licensing of private ownership of small arms and ammunition, and all require screening and/or background investigation of individuals seeking licences.
- All States (100%) vet applicants on the basis of attainment of a minimum age requirement and criminal record; 84 per cent require consideration of psychological profile, and 73 per cent examine instances of domestic violence.

The following table outlines the licensing practices of five states in some detail, based on information they provided.

Country	Legal Framework	Specifics
Czech Republic	<p>Act dated 8 March 2002 on firearms and ammunition, and changing and amending Act No. 156/200 coll., on certification of firearms, ammunition and pyrotechnic items</p> <p>Licensing criteria, Section 18</p>	<p>The police directorate of jurisdiction shall issue a firearms permit only to a natural person who meets the following requirements:</p> <ul style="list-style-type: none"> <li>• Is a resident in the territory of the Czech Republic;</li> <li>• Has reached required age (21 for self-defence, collectors or professional use; 18 for hunting and sporting purposes, with licences available at 15 for sporting and 16 for hunting under certain circumstances);</li> <li>• Is fully capable of legal actions;</li> <li>• Is medically fit and capable;</li> <li>• Is professionally competent and capable;</li> <li>• Has full integrity (regarding criminal background);</li> <li>• Is reliable (regarding criminal background, alcohol or drug abuse, and treasonous behaviour);</li> <li>• Is a holder of a valid hunting licence (if obtaining a hunting firearm permit).</li> </ul>
Finland	<p>Firearms Act (1/1998; amendments up to 804/2003 included) Sections 27-9</p>	<p>“A firearm licence may be granted to a person who has reached the age of 18 and who, on the basis of his or her state of health and behaviour, is deemed suitable for handling firearms, firearm components, cartridges and specially dangerous projectiles. ... A firearm licence is granted for a maximum of five years at a time. ...”</p> <p>The licence may be revoked if the licence is holder of an offence indicating violent behaviour, including a firearms violation.</p>

Mauritius	Firearms Act (RL 2/751 - 12 June 1982, as amended)	<p>Applicant has to provide all information required by the local Superintendent of Police in the district where she/he resides.</p> <p>The Superintendent must be satisfied that the applicant has a good reason for possessing the firearm(s).</p> <p>The Superintendent does not find the applicant to be a person “of intemperate habits or unsound mind”.</p> <p>Anyone sentenced to penal servitude or imprisonment for a term of three months or more for any crime is barred from having a gun or ammo for five years from the date of release.</p> <p>No person subject to the supervision of the Police, on licence under Part XIII of the Criminal Procedure Act, “has been bound over to keep the peace and be of good behaviour”; or is subject to a recognizance of good behaviour barring possession or use of a firearm.</p>
Philippines	Special Operating Procedure No. 13 (19 Sept 1991)	<p>Applicant must:</p> <ul style="list-style-type: none"> <li>• Be at least 21 years of age;</li> <li>• Receive neuropsychiatric clearance (from the PNP), any government hospital or government accredited psychiatrist;</li> <li>• Provide certificate of good conduct from city/municipality where applicant lives;</li> <li>• Obtain clearance from intelligence agency;</li> <li>• Provide proof of income.</li> </ul>
South Africa	Firearms Control Act, 2000 Section 9	<p>The requirements for a person to obtain a firearms competency certificate (necessary in order to obtain a firearms licence) include being:</p> <ul style="list-style-type: none"> <li>• 21 years or older on the day the application is received by the designated firearms officer;</li> <li>• A South African citizen or a holder of a permanent South African residence permit;</li> <li>• Of stable mental condition and not inclined to violence;</li> <li>• Free from dependency on any substance which has an intoxicating or narcotic effect;</li> </ul>

		<ul style="list-style-type: none"> <li>• Free from conviction, whether in or outside South Africa, of an offence involving the unlawful use or handling of a firearm by him or her or another participant to the offence, whether committed in or outside South Africa;</li> <li>• Free from conviction, whether in or outside South Africa, of an offence involving domestic violence or sexual abuse and sentenced to a period of imprisonment without the option of a fine;</li> <li>• Free from conviction for other crimes - including fraud, drug trafficking, negligent handling of a firearm, sabotage, terrorism, public violence, arson, intimidation, rape and kidnapping.</li> </ul> <p>An applicant for a competency certificate must also successfully complete tests demonstrating knowledge of the contents of the Firearms Act and on the safe handling of a firearm.</p>
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### C. Small arms export criteria

Section II, paragraph 11 of the Programme of Action (PoA) on the Illicit Traffic in Small Arms and Light Weapons in All Its Aspects commits States politically to exercise strict control over the international transfer of small arms, including:

*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. (Emphasis added.)*

Existing international law obligations would include, inter alia:

- Obligations under the Charter of the United Nations - including binding resolutions of the Security Council, such as those imposing arms embargoes; the prohibition on the use or threat of force; and the prohibition on intervention in the internal affairs of another State;
- Any other treaty or decision by which that State is bound, including prohibitions on arms transfers that arise in particular treaties, such as the 1980 United Nations Convention on 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 Anti-personnel Mine Ban Convention;

- The responsibility of States not to authorize international transfers of small arms and light weapons where they will be used or are likely to be used for gross violations of international human rights law, serious violations of international humanitarian law, or crimes against humanity and genocide.
- Respondents to the survey indicated a lower degree of consensus on issues related to regulation of the manufacture and transfer of small arms than to the previous areas; however, the variance appears to be related largely to the fact that many States report having (or allowing) no small arms production or trade.
- Fourteen of 35 responding States (40%) have State owned or operated manufacturers of small arms; 12 of 35 responding States (34%) have privately owned manufacturers of small arms.
- Twenty-nine of 31 responding States (93%) have enforceable policies or laws regulating the sale of small arms outside the States; 26 of 28 responding States' laws contain procedures for investigating and verifying the end user of these small arms.
- Eighteen of 28 States (64%) responding to this question have laws requiring verification of the human rights situation in States or regions to which they are allowing sales of small arms. Ten participants in the survey did not respond to this question.
- Twenty of 38 States participating in the overall survey (53%) affirm that prior to transferring small arms they assess whether there is a risk the small arms may be used in internal repression. However, several States do not manufacture or export small arms, and so they marked these questions as not applicable to them. Of those that responded "yes" or "no" to this question, 95 per cent assesses the risk that small arms may be used in repression. The same percentage (95%) assesses the risk of small arms being used in armed conflict, acts of terrorism or organized crime, or acts of aggression or force on neighbouring countries.
- Only 13 States allocate funding in their budgets to support the consideration of the above factors in relation to export decisions.

In Finland, small arms export decision-making is proscribed by the Act on the Export and Transit of Defence Materiel (242/1990; amendments up to 900/2002 included). This law lays out the requirement for an export licence from the Ministry of Defence for exports and brokerage of arms. It refers to the General Guidelines for the Export and Transit of Defence Materiel. These guidelines bind the Ministry to make export licence decisions based on United Nations, Organization for Security and Cooperation in Europe and European Union embargoes, the guidelines of the EU Common Criteria, the OSCE guidelines and factors relating to the internal situation of the recipient State, including human rights:

3.2.1. *In assessing licence applications in general terms the following factors will also be taken into account:*

- Foreign and security policy aspects, including the possible grounds for denial listed under chapters 2.1. or 2.2;
- Analysis of the situation prevailing in the recipient country, especially with regard to human rights, including attitudes of other States vis-à-vis the recipient country;
- Characteristics, intended use and military significance of the item to be exported ...

Section 15 of South Africa's National Conventional Arms Control Act of 2002 sets forth the guiding criteria and principles for the National Conventional Arms Control committee to consider when assessing an application for a permit to export any arms. These criteria and principles include:

- *Avoid contributing to internal repression, including the systematic violation or suppression of human rights and fundamental freedoms;*
- *Avoid transfers of conventional arms to Governments that systematically violate human rights or suppress fundamental freedom ...;*
- *Avoid contributing to terrorism and crime.*

Section 16 of the same Act provides for accountability under the law, including a requirement that all export applications include an end-user certificate and that the recipient supply a delivery verification certificate.

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