

Nairobi Conference on Transfer Controls, 20/21 April, 2006

Suggested global guidelines for national controls governing transfers of small arms and light weapons

The guidelines contained in this document reflect our existing commitments under international law and support the purposes and principles enshrined in the Charter of the United Nations, including the right to self-defence, the sovereign equality of States, territorial integrity, the peaceful resolution of international disputes, non-intervention and non-interference in the internal affairs of States, and the right to self-determination.

Recalling that the UN Programme of Action requires that States assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons, and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into illicit trade. (*para II.11*)

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

Adhering, where applicable, to obligations under the UN Firearms Protocol and taking into account the obligations in The International Instrument to Enable States to Identify and Trace in a Timely and Reliable Manner Illicit SALW;

Recognising the importance of the role played by Regional and Sub-Regional processes in developing common understandings on transfer controls, and noting the similarities in key principles between regional approaches.

Recognising also that global guidelines would make a fundamental contribution to national decision-making processes by helping to avoid cross-regional inconsistencies and by including states outside the geographical scope of existing regional processes.

Emphasising that effective control of legal transfers of SALW is an essential component of efforts to prevent, combat and eradicate illicit SALW trafficking in all its aspects, since many SALW enter illicit circulation or use through diversion from legal transfers and since SALW that have been transferred legally can be misused.

Reaffirming our commitment to strengthening national controls on SALW transfers in accordance with the UN Programme of Action in particular ensuring effective licensing, end use control, safe storage, marking and record keeping and information exchange by relevant national authorities of

all countries involved in any SALW transfer to prevent diversion of SALW to unauthorised end- users.

Recognising the need for enhanced cooperation and assistance to strengthen the capacity of states to effectively develop and implement the UN Programme of Action including SALW transfer controls.

Section 1

We will only authorise SALW transfers with the official approval of all states directly concerned (including the exporting, importing, transit and transshipment states) in accordance with relevant and adequate national laws, regulations and administrative procedures to control SALW transfers and brokering activities.

We will not authorise international transfers of SALW where there is a clear risk that the transfer in question is likely to violate our obligations under:

- a) international law, such as the Charter of the UN, including the prohibition on the threat or use of force and the non-intervention and non-interference in the internal affairs of States;
- b) any other treaty or legal obligations by which we are bound;
- c) arms embargoes of the UNSC, or other multilateral embargoes to which we adhere;
- d) prohibitions on SALW transfers that arise in particular treaties to which we are parties, including for example, the Convention on Certain Conventional Weapons and its Protocols;
- e) universally accepted principles of international humanitarian law.

Section 2

We will not authorise international transfers of SALW which are likely to be used:

- a) to commit grave or persistent violations of human rights or fundamental freedoms;
- b) to commit grave breaches of international humanitarian law;
- c) to commit acts of genocide or crimes against humanity;
- d) to contravene bilateral or multilateral commitments on non-proliferation, small arms or other arms control and disarmament agreements to which we adhere;
- e) to support or encourage terrorist acts or to facilitate the commission of organised or violent crime.

Section 3

In considering proposed transfers of SALW, we will take into account:

- a) The requirements of the State to enable it to exercise its inherent right to individual or collective self-defence in accordance with Article 51 of the Charter of the United Nations;
- b) The requirements of the State to meet its legitimate self-defence and security needs, and to enable it to participate in peacekeeping operations in accordance with the Charter of the United Nations or relevant regional organisations with a peacekeeping mandate;
- c) The internal and regional situation in and around the recipient country, in the light of existing tensions or armed conflicts;
- d) The requirement not to transfer SALW that have not been adequately marked in accordance with the international instrument on marking and tracing;
- e) The risk of diversion or re-export in conditions incompatible with these guidelines;
- f) States' efforts to prevent corruption and bribery in connection with the transfer of SALW;
- g) States' adherence to these guidelines.

Section 4

We undertake to:

- a) Ensure that all transfers of SALW are subject to effective national licensing or authorisation procedures in order to prevent their diversion to any party other than the declared end-user;
- b) Make every effort, in accordance with national laws and practices, without prejudice to the right of States to re-export SALW that they have previously imported, to notify the original exporting State, in accordance with their bilateral agreements before the retransfer of those weapons;
- c) Ensure that, in accordance with Article 26 of the UN Charter, we take into account the nature and cost of the arms to be transferred in relation to legitimate security and defence needs and the principle of the least diversion of human and economic resources to armaments;
- d) Exchange information and review progress relating to the implementation of these guidelines.

Agreed in Nairobi on 21 April 2006