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اللجنة الفرعية لتعزيز وحماية حقوق الإنسان

الدورة الثامنة والخمسون

البند ٦ من جدول الأعمال المؤقت

قضايا محددة تتعلق بحقوق الإنسان

منع انتهاكات حقوق الإنسان المرتكبة باستعمال الأسلحة الصغيرة والأسلحة الخفيفة

التقرير الختامي المقدم من السيدة باربرا فري، المقررة الخاصة،
وفقاً لقرار اللجنة الفرعية ٢٥/٢٠٠٢**

* عملاً بقرار الجمعية العامة ٢٥١/٦٠ المؤرخ ١٥ آذار/مارس ٢٠٠٦ والمعنون "مجلس حقوق الإنسان"، تولى مجلس حقوق الإنسان، اعتباراً من ١٩ حزيران/يونيه ٢٠٠٦، جميع ولايات وآليات ومهام ومسؤوليات لجنة حقوق الإنسان، بما فيها اللجنة الفرعية. وتبعاً لذلك، استعيض عن سلسلة الرموز E/CN.4/Sub.2/_ التي كانت اللجنة الفرعية تقدم تقاريرها في إطارها إلى لجنة حقوق الإنسان سابقاً بالسلسلة A/HRC/Sub.1/_ اعتباراً من ١٩ حزيران/يونيه ٢٠٠٦.

** تقدم مرفقات هذا التقرير كما وردت، باللغة التي قدمت بها فقط.

موجز

يتناول هذا التقرير الختامي، الذي أعدته المقررة الخاصة المكلفة بإجراء دراسة شاملة عن منع انتهاكات حقوق الإنسان المرتكبة باستعمال الأسلحة الصغيرة والأسلحة الخفيفة، مبدئين قانونيين دوليين حاسمين لفهم طبيعة الالتزام الواقع على عاتق الدولة بمنع انتهاكات حقوق الإنسان المرتكبة باستعمال الأسلحة الصغيرة، ومدى هذا الالتزام، وهذان المبدآن هما: مسؤوليات الدول عن توخي الحرص الواجب لمنع التجاوزات التي ترتكبها أطراف خاصة باستعمال الأسلحة الصغيرة وأهمية مبدأ الدفاع عن النفس فيما يتعلق بالتزامات الدولة في مجال حقوق الإنسان لمنع العنف الذي تستخدم فيه الأسلحة الصغيرة. وتتضمن مرفقات هذا التقرير موجزاً وتحليلاً للردود التي وردت من الدول الأعضاء في الأمم المتحدة على استبيان المقررة الخاصة.

وعلى الدول، بموجب قانون حقوق الإنسان، التزام أساسي بتحقيق أقصى قدر ممكن من الحماية في مجال حقوق الإنسان، لا سيما فيما يتعلق بالحق في الحياة. وينطوي هذا التعهد على التزامات سلبية وأخرى إيجابية؛ فعلى موظفي الدولة الامتناع عن ارتكاب انتهاكات باستعمال الأسلحة الصغيرة؛ وعلى الدول اتخاذ خطوات لتقليل العنف المسلح الذي يمارس بين أطراف خاصة. وتنص الفقرة ١ من المادة ٢ من العهد الدولي الخاص بالحقوق المدنية والسياسية على فرض التزامات إيجابية على الدول الأطراف لمنع الأعمال التي يقوم بها أفراد بصفتهم الشخصية والتي تحول دون التمتع بالحقوق الأساسية، ومنها الحق في الحياة.

فالتدابير الفعلية الدنيا التي يتعين على الدول اتخاذها للوفاء بالتزاماتها بتوخي الحرص الواجب لمنع العنف الذي تستعمل فيه الأسلحة الصغيرة يجب ألا تقتصر على مجرد تجريم أعمال العنف المسلح. ويتعين على الدول أيضاً تطبيق حد أدنى من شروط الترخيص بجيافة الأسلحة الصغيرة للحيلولة دون وقوع هذه الأسلحة في أيدي أناس من المرجح جداً أن يسيئوا استخدامها. وينبغي أيضاً تطبيق تدابير فعالة أخرى لحماية الحق في الحياة، على النحو المقترح في مشروع المبادئ المتعلقة بمنع انتهاكات حقوق الإنسان المرتكبة باستعمال الأسلحة الصغيرة، وهو المشروع الذي اقترحه المقررة الخاصة.

ويحتل مبدأ الدفاع عن النفس مكانة هامة في قانون حقوق الإنسان الدولي، ولكنه لا يخول حقاً مستقلاً وملازماً في امتلاك أسلحة صغيرة، ولا هو يخفف من واجب الدول بتوخي الحرص الواجب في تنظيم امتلاك هذه الأسلحة من قبل المدنيين. بل على نحو ما يبيّن هذا التقرير، ثمة مجالات واسعة ينبغي للدول أن تنظم فيها مسألة امتلاك الأسلحة النارية بما يتمشى ومبادئ الدفاع عن النفس، وهي تستطيع القيام بذلك وتقوم به بالفعل. والدفاع عن النفس استثناء مسلم به على نطاق واسع، وإن كان محظوراً قانوناً، للواجب العالمي باحترام حياة الآخرين. وهو يشكل الأساس للإعفاء من المسؤولية الجنائية التي قد يثيرها أي موظف في الدولة أو طرف فاعل من خارج الدولة. ولا يدعم القانون الدولي أي التزام قانوني دولي يستوجب من الدول السماح بامتلاك سلاح للدفاع عن النفس. ولا ينفي مبدأ الدفاع عن النفس مسؤولية الدول عن توخي الحرص الواجب لمنع وقوع الأسلحة في أيدي الذين يغلب الظن أنهم سيسيئون استعماله. فعلى الدولة التزامات شديدة للغاية لحماية الفئات المستضعفة، ومنها ضحايا العنف المتزلي، من التجاوزات التي ترتكب باستعمال الأسلحة الصغيرة.

وتسري المادة ٥١ من ميثاق الأمم المتحدة على الدول التي تتصرف دفاعاً عن النفس لدفع هجمات مسلحة موجهة ضد سيادتها كدول. ولا تنطبق على حالات الدفاع عن النفس بالنسبة للأفراد.

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مقدمة^(١)

١ - يُقدّم هذا التقرير الختامي الذي أعدته المقررة الخاصة المكلفة بإجراء دراسة شاملة عن منع انتهاكات حقوق الإنسان المرتكبة باستعمال الأسلحة الصغيرة والأسلحة الخفيفة، عملاً بقرار اللجنة الفرعية لتعزيز وحماية حقوق الإنسان ٢٥/٢٠٠٢، وبمقررها ١٠٥/٢٠٠٣، وبمقررها ١٢٣/٢٠٠٤، وبمقررها ١١٠/٢٠٠٥، وكذلك عملاً بمقرر لجنة حقوق الإنسان ١١٢/٢٠٠٣. ويرد في مرفقات هذا التقرير موجز وتحليل لردود الدول على الاستبيان الذي وضعته المقررة الخاصة عملاً بمقرر اللجنة الفرعية ١٠٥/٢٠٠٣ وبمقرر اللجنة ١٢٤/٢٠٠٤.

٢ - وسيكون التقرير الرئيسي مكتملاً للتقريرين الأولين اللذين أعدتهما المقررة الخاصة. وقد وصف تقريرها الأولي (E/CN.4/Sub.2/2003/29) ما يترتب على إساءة استعمال الأسلحة الصغيرة في أوقات السلم من عواقب وخيمة على حقوق الإنسان. ووضعت المقررة الخاصة إطاراً قانونياً لتحليل الكيفية التي تحدّد بها معايير حقوق الإنسان الحالية التزامات الدول في ثلاث حالات مختلفة لمنع: (أ) انتهاكات حقوق الإنسان التي ترتكبها جهات تابعة للدولة باستعمال الأسلحة الصغيرة؛ (ب) التجاوزات التي ترتكبها جهات خاصة في مجال حقوق الإنسان؛ (ج) نقل الأسلحة الصغيرة إلى حيث يمكن أن تستعمل على الأرجح لارتكاب انتهاكات جسيمة لحقوق الإنسان. وقد يتناول التقرير المرحلي الذي أعدته المقررة الخاصة (E/CN.4/Sub.2/2004/37) الآثار الضارة التي يخلفها استعمال الأسلحة الصغيرة على حقوق الإنسان والأمن الإنساني في حالات النزاع المسلح. واستعرضت المقررة الخاصة، في تقريرها المرحلي، الالتزامات المنصوص عليها في القانون الإنساني الدولي وقانون حقوق الإنسان الدولي فيما يتعلق بالأسلحة الصغيرة المتاحة وإساءة استعمالها ونقلها، وبمحت الانعكاسات الجنسانية المترتبة على توافر هذه الأسلحة وإساءة استعمالها في سياق حقوق الإنسان.

٣ - وسيعكف هذا التقرير الختامي كذلك على تحديد مبادئ قانونيين اثنين هما: مسؤوليات الدول في إطار معيار توخي الحرص الواجب عند اتخاذ خطوات إيجابية لمنع التجاوزات التي ترتكبها أطراف فاعلة من غير الدولة باستعمال الأسلحة الصغيرة، وعواقب مبدأ الدفاع عن النفس على سياسات الدولة فيما يتعلق بالأسلحة الصغيرة.

٤ - ويستند إطار سياسة حقوق الإنسان لمجمل هذه الدراسة إلى المبدأ القاضي بأن تفعل الدول كل ما بوسعها لتوفير أقصى قدر ممكن من الحماية في مجال حقوق الإنسان لأكبر عدد ممكن من الناس، في مجتمعاتهم وفي المجتمع الدولي على السواء. وبعبارة أخرى، يتعين على الدول، لكي تفي بالتزاماتها بموجب قانون حقوق الإنسان الدولي، سن وتنفيذ قوانين وسياسات كفيلة بتوفير الحماية القصوى في مجال حقوق الإنسان لأكبر عدد ممكن من الناس. أما فيما يتعلق بالانتهاكات المرتكبة باستعمال الأسلحة الصغيرة، فإن هذا المبدأ - توفير أقصى قدر ممكن من الحماية في مجال حقوق الإنسان - يعني أن على الدول مسؤوليات سلبية عن منع الانتهاكات التي يرتكبها موظفون تابعون للدولة، ومسؤوليات إيجابية عن زيادة السلامة العامة وتقليل العنف الذي ترتكبه أطراف خاصة باستعمال الأسلحة الصغيرة.

٥ - وتبعاً لذلك، فإن المطلوب من الدول اتخاذ تدابير فعالة لخفض الطلب على الأسلحة الصغيرة وذلك بتأمين السلامة العامة بإنفاذ القانون على النحو الملائم. فموظفو الدولة، بمن فيهم القائمون بإنفاذ القانون، يعملون لصالح مجتمعاتهم وعليهم واجب حماية جميع الأشخاص وذلك بتعزيز سيادة القانون ومنع الأعمال غير المشروعة. ويجب أن تتمشى أعمالهم مع حقوق الإنسان ودرجة المسؤولية العالية التي تقتضيها مهنتهم (مدونة قواعد السلوك للموظفين المكلفين بإنفاذ القوانين، قرار الجمعية العامة ٤٦/٣٤ المؤرخ ١٧ كانون الأول/ديسمبر ١٩٧٩).

٦- ولتحقيق أقصى قدر ممكن من الحماية في مجال حقوق الإنسان، يطلب إلى الدول أيضاً اتخاذ تدابير فعالة لتقليل العنف الذي تقوم به جهات خاصة إلى أدنى حد ممكن وذلك بإنزال عقوبات جنائية بالأشخاص الذين يستعملون الأسلحة الصغيرة لانتهاك القانون، وكذلك بمنع وصول الأسلحة الصغيرة إلى أيدي الذين سيستخدمونها. واستعمالها على الأرجح. وأخيراً، وفيما يتعلق باعتبارات حقوق الإنسان خارج نطاق إقليم الدولة، فمن واجب الدول منع نقل الأسلحة الصغيرة والأسلحة الخفيفة عبر الحدود عندما يغلب الظن أن هذه الأسلحة ستستعمل لانتهاك حقوق الإنسان أو القانون الإنساني الدولي.

٧- وللجنة الفرعية دور حاسم يتعين عليها القيام به لدى بحث مسألة انعكاسات توافر الأسلحة الصغيرة ونقلها وإساءة استعمالها على حقوق الإنسان. ولم يتعرض أي محفل آخر تابع للأمم المتحدة لهذه المسألة بعينها. فرغم ما يترتب على استعمال الأسلحة الصغيرة من آثار فتاكة بحقوق الشعوب في العالم أجمع، وهي آثار تم توثيقها بشكل جيد، لم تصدر عن المؤتمر الذي عقد مؤخراً لاستعراض التقدم المحرز في تنفيذ برنامج العمل المتعلق بمنع الاتجار غير المشروع بالأسلحة الصغيرة والأسلحة الخفيفة من جميع جوانبه ومكافحته والقضاء عليه أية وثيقة بالنتائج تشير إلى مسألة حقوق الإنسان.

أولاً - الالتزامات بموجب قانون حقوق الإنسان الدولي بمنع التجاوزات التي ترتكبها جهات غير تابعة للدولة باستعمال الأسلحة الصغيرة

٨- لقد انصب اهتمام هذه الدراسة أساساً على نطاق مسؤولية الدول عن منع التجاوزات في مجال حقوق الإنسان التي ترتكبها جهات غير تابعة للدولة، بما في ذلك المدنيين، باستعمال الأسلحة الصغيرة في حالات غير حالات النزاع. ومما يزيد من إلحاح هذه القضية، ارتفاع العدد المقدر للوفيات المرتبطة باستعمال أسلحة نارية في ظروف غير ظروف النزاع منذ أن سلّطت المقررة الخاصة الضوء أول مرة على جسامة التجاوزات التي ترتكب في مجال حقوق الإنسان من جانب جهات غير تابعة للدولة (E/CN.4/Sub.2/2003/29، الفقرات ٣٠-٣٥)، فيقدر الآن أن العنف الناتج عن استعمال أسلحة نارية يخلف ما بين ٢٠٠ ٠٠٠ و ٢٧٠ ٠٠٠ جريمة قتل وحالة انتحار سنوياً^(٢). وارتفاع مستويات العنف الناتج عن استعمال الأسلحة النارية في حالات غير حالات النزاع لا يسفر عن إحداث حالات وفاة فحسب، بل وعن تناقص حماية جميع حقوق الإنسان في جو يتسم بانعدام الأمن المجتمعي. وفداحة هذه الانتهاكات تحتم إيلاء الاهتمام مرة أخرى إلى الأسس القانونية والسياسية في سياق قانون حقوق الإنسان الدولي لتحميل الدول مسؤولية منع انتهاكات الحرمات الخاصة التي يمكن توقع حدوثها بدرجة معقولة باستعمال الأسلحة الصغيرة.

٩- ويتعين على الدول، بموجب قانون حقوق الإنسان، أن توفر أقصى قدر ممكن من الحماية للحق في الحياة^(٣). وتترتب على هذا التعهد التزامات سلبية وإيجابية؛ فعلى موظفي الدول الامتناع عن ارتكاب انتهاكات باستعمال الأسلحة الصغيرة؛ وعلى الدول اتخاذ خطوات لتقليل العنف المسلح الذي يمارس بين أطراف خاصة إلى أدنى حد ممكن. وسيحدد هذا التقرير، في الفصول التالية، السند القانوني الذي يشكل أساس المسؤوليات الإيجابية للدول - توخي الحرص الواجب - لحماية حقوق الإنسان من العنف المسلح الذي ترتكبه أطراف خاصة. ويقترح التقرير بعد ذلك التدابير الفعلية المحددة المطلوب اتخاذها لتوخي الحرص الواجب وذلك لتوفير أقصى قدر ممكن من الحماية لحقوق الإنسان في سياق هذا العنف.

ألف - معيار توخي الحرص الواجب فيما يتعلق بالتجاوزات التي ترتكبها جهات خاصة

١٠- يستعين على الدول، بموجب الفقرة ١ من المادة ٢ من العهد الدولي الخاص بالحقوق المدنية والسياسية، احترام حقوق الإنسان وكفالتها لكل فرد. وكفالة حقوق الإنسان إنما تقتضي أن تتخذ الدولة إجراءات إيجابية لمواجهة التجاوزات التي ترتكبها جهات خاصة والتي يمكن التنبؤ بها بصورة معقولة. وقد أشار محللون قانونيون، لا سيما في مجال حقوق الإنسان للمرأة، منذ أمد بعيد إلى مسؤولية الدول عن توخي الحرص الواجب لمنع انتهاكات حقوق الإنسان في القطاع الخاص^(٤). ومن هؤلاء المحللين، جون سيرون، الذي اضطلع بدراسة مسحية مفيدة وشاملة عن تطبيق معيار توخي الحرص الواجب في قانون حقوق الإنسان الدولي، حيث دون الإشارات إلى مسألة الحرص الواجب الواردة "في تقارير المقررين الخاصين التابعين للأمم المتحدة، والممثلين الخاصين للأمم المتحدة، والأمين العام؛ وفي تعليقات الهيئات المنشأة بموجب معاهدات حقوق الإنسان وآرائها وملاحظاتها الختامية؛ وفي التقارير عن اجتماعات أفرقة الخبراء؛ وفي قرارات لجنة حقوق الإنسان والمجلس الاقتصادي والاجتماعي؛ وفي إعلانات الجمعية العامة وكتابات فقهاء القانون"^(٥).

١ - اللجنة المعنية بحقوق الإنسان

١١- لقد تناولت اللجنة المعنية بحقوق الإنسان بانتظام المسألة المتعلقة بمسؤوليات الدول الأطراف في العهد الدولي الخاص بالحقوق المدنية والسياسية عن توخي الحرص الواجب. ففي التعليق العام رقم ٦ (١٩٨٢) عن الحق في الحياة، على سبيل المثال، فسرت اللجنة التزام الدولة بحماية الحق في الحياة بموجب المادة ٦ تفسيراً واسعاً، حيث ذكرت أن "اللجنة ترى أن على الدول الأطراف أن تتخذ تدابير ليس فقط لمنع الأعمال الإجرامية التي تؤدي إلى حرمان أي إنسان من الحياة، والمعاقبة على تلك الأعمال فحسب، بل ومنع أعمال القتل التعسفي التي ترتكبها قوات الأمن التابعة لتلك الدول ذاتها". وفي التعليق العام رقم ١٨ (١٩٨٩) عن حظر التمييز، طلبت اللجنة من الدول الأطراف عدم الاقتصار على الاستشهاد بدساتيرها وقوانينها لدى الإبلاغ عن المواد ٢(١) و٣ و٢٦ من العهد، "ورغم فائدة هذه المعلومات بطبيعة الحال، فإن اللجنة تود معرفة ما إذا كانت لا تزال هناك بالفعل أية مشاكل تتعلق بالتمييز الذي يمكن أن تمارسه السلطات العامة أو المجتمع المحلي أو أفراد بصفتهم الشخصية أو هيئات خاصة". وبالمثل، صرحت اللجنة المعنية بحقوق الإنسان، في التعليق العام رقم ٢٧ (١٩٩٩) عن حرية التنقل بأنه "يجب على الدولة الطرف أن تضمن حماية الحقوق المكفولة في المادة ١٢ من أي تدخل سواء كان من جهات عامة أو من جهات خاصة" (الفقرة ٦). وفي التعليق العام رقم ٣١ (٢٠٠٤) عن طبيعة الالتزامات القانونية العامة المفروضة على الدول الأطراف في العهد، أوردت اللجنة بمزيد من التفصيل الشروط المنصوص عليها في الفقرة ١ من المادة ٢، وهي: "أن الالتزامات الإيجابية الملقاة على عاتق الدول الأطراف بأن تضمن الحقوق المشمولة بالعهد لا يمكن أن تؤدي بالكامل إلا إذا وفرت الدولة الحماية للأفراد لا مما يرتكبه وكلاؤها من انتهاكات للحقوق المشمولة بالعهد فحسب، وإنما أيضاً من الأفعال التي يقوم بها أفراد عاديون أو كيانات خاصة والتي يمكن أن تعوق التمتع بالحقوق المشمولة بالعهد بقدر ما تكون هذه الحقوق قابلة للتطبيق بين الخواص من الأفراد أو الكيانات" (الفقرة ٨).

١٢- وقد طبقت اللجنة المعنية بحقوق الإنسان أيضاً معيار توخي الحرص الواجب في سوابقها القضائية. ففي البلاغ رقم ١٩٩٩/٨٥٩، *خيمينيس فاكا ضد كولومبيا*، استنتجت اللجنة أن الفقرة ١ من المادة ٦ من العهد قد انتهكت، جزئياً، لأن الدولة لم تتوخ الحرص الواجب في التحقيق لتحديد هوية المسؤولي عن محاولة الاعتداء على

حياة صاحب البلاغ، ومن ثم منعه من الحياة في أمان في كولومبيا. ولكي تفي الدولة الطرف بالتزامها بموجب المادة ٢ من العهد، استنتجت اللجنة في قضية *خيمينيس فاكا ضد كولومبيا*، أنه "يقع على عاتق الدولة الطرف التزام بمنع وقوع انتهاكات مشابهة في المستقبل" (الفقرة ٩).

٢ - الهيئات المنشأة بموجب معاهدات والإجراءات الخاصة الأخرى

١٣- هناك هيئات أخرى منشأة بموجب معاهدات حقوق الإنسان أقرت هي الأخرى، في التعليقات العامة وفي القضايا والملاحظات الختامية، بما للدول من مسؤوليات عن توخي الحرص الواجب. فقد صرحت لجنة القضاء على التمييز ضد المرأة، في الفقرة ٩ من توصيتها العامة رقم ١٩ "بأن الدول يمكن أن تكون مسؤولة أيضاً بموجب القانون الدولي العام وعهود معينة لحقوق الإنسان عن الأفعال التي ترتكب من جانب جهات خاصة إذا لم تتصرف بالحيلة الواجبة لمنع انتهاكات الحقوق أو للتحقق في جرائم العنف والمعاقبة عليها وتعويض ضحاياها". واستنتجت لجنة القضاء على التمييز العنصري، في بلاغها رقم ١٩٩١/٤ (CERD/C/42/D/4/1991)، ل.ك. ضد هولندا، أن الدولة انتهكت الفقرة (أ) من المادة ٤ من المعاهدة لأنها لم تقم "بالتحقيق مع توخي الحرص والسرية المطلوبين" لمواجهة التعليقات العنصرية والتهديدات الصادرة عن أشخاص بصفتهم الشخصية. وأوصت لجنة القضاء على التمييز العنصري، في ملاحظاتها الختامية بشأن تقرير الإمارات العربية المتحدة (A/50/18)، بأن "تبدي الدولة الطرف أقصى درجات الحرص في منع إساءات المعاملة التي ترتكب ضد العمال الأجانب، ولا سيما خادمت المنازل الأجنبية، وبأن تتخذ جميع التدابير الملائمة لضمان عدم تعرضهم لأي تمييز عنصري".

١٤- وتتضح مسألة تطبيق معيار الحرص الواجب لحماية حقوق الأفراد من التجاوزات التي ترتكبها جهات خاصة بجلاء أيضاً في تقارير المكلفين بالإجراءات الخاصة والتابعين للأمم المتحدة. ففي آخر تقرير أعده المقرر الخاص المعني بحالات الإعدام خارج القضاء أو بإجراءات موجزة أو تعسفاً، على سبيل المثال، ذكر صاحب التقرير أن "على الدول واجباً قانونياً ببذل العناية الواجبة لحماية حياة الأشخاص من الهجمات التي يقوم بها مجرمون، بمن فيهم الإرهابيون وقطاع الطرق المسلحون والناهبون وتجار المخدرات" (E/CN.4/2006/53، الفقرة ٤٧). وقد استعمل المقرر الخاص هذا المثال بوجه خاص في تقريره لكي يرفض تحديداً سياسات "إطلاق النار بقصد القتل" التي تنتهجها مختلف الحكومات، ولدعوة الدول التي تواجه تهديدات إرهابية أو غيرها من التهديدات إلى توضيح السياسات في ضوء مقتضيات حقوق الإنسان وتنظيم دورات تدريبية بشأن إنفاذ القانون وفقاً لذلك.

باء - الإجراءات الفعالة للوفاء بالالتزام بتوخي الحرص الواجب

١٥- نظراً لوجود الالتزام بتوخي الحرص الواجب الذي يشكل جزءاً من قانون حقوق الإنسان الدولي، تظل مسألة معرفة التدابير المحددة التي يتعين على الدول اتخاذها للوفاء بهذا المعيار قائمة فيما يتعلق بمنع تجاوزات حقوق الإنسان التي ترتكبها جهات غير تابعة للدولة باستعمال الأسلحة الصغيرة. والإطار القانوني للنظر في الإجراءات التي يجب أن تتخذها الدولة يبدأ بنص الفقرة ٢ من المادة ٢ من العهد الدولي الخاص بالحقوق المدنية والسياسية التي تشترط من الدول الأطراف "أن تتخذ ما يكون ضرورياً من تدابير تشريعية أو غير تشريعية لإعمال الحقوق المعترف بها في هذا العهد". فبموجب الفقرة ٢ من المادة ٢، يتعين على الدول اعتماد تشريعات لتحمل الأضرار ومسؤولية انتهاك حق فرد آخر في الحياة. ولدى كل دولة بطبيعة الحال قوانين وطنية تعاقب على قتل الآخرين.

وعلاوة على اعتماد تشريعات عامة، شددت هيئات حقوق الإنسان على ضرورة اتخاذ تدابير أخرى فعالة عن طريق إنشاء آلية رقابة" للحماية من انتهاك الحقوق الأساسية^(٦).

١٦ - وبالتالي، فإن التدابير الفعالة الدنيا التي ينبغي للدول اتخاذها لمنع العنف الذي تستعمل فيه الأسلحة الصغيرة لا بد ألا تقتصر على مجرد تجريم أعمال العنف المسلح. ومن المعقول، بمقتضى مبدأ توخي الحرص الواجب، أن تطلب هيئات حقوق الإنسان الدولية من الدول أن تُعمل حداً أدنى من شروط الترخيص بغرض منع وقوع الأسلحة الصغيرة والأسلحة الخفيفة في أيدي أشخاص يرحح أنهم سيستعملونها^(٧). ولقد جرى تأكيد الإقرار بهذا المبدأ في الردود على استبيان المقررة الخاصة المعنية بمنع انتهاكات حقوق الإنسان التي تتركب باستعمال الأسلحة الصغيرة والأسلحة الخفيفة والتي بينت وجود ممارسة حكومية على نطاق واسع بترخيص الملكية الخاصة للأسلحة الصغيرة والذخائر^(٨). وقد تتفاوت معايير الترخيص من دولة إلى أخرى، وإن كانت معظم إجراءات الترخيص تأخذ في الاعتبار ما يلي: (أ) الحد الأدنى لسن طالب الترخيص؛ (ب) سجل السوابق الجنائية، بما في ذلك أية أحداث ماضية بارتكاب عنف أسري؛ (ج) إثبات مشروعية الاستعمال للحصول على أسلحة؛ (د) السلامة العقلية^(٩). وتشمل المعايير الأخرى المقترحة المعرفة بالقوانين المتعلقة بالأسلحة الصغيرة، وإثبات متابعة التدريب على استعمال الأسلحة النارية على الوجه الصحيح وإثبات القدرة على تخزينها على النحو الملائم. وينبغي تحديد التراخيص بانتظام لمنع نقل هذه الأسلحة إلى أشخاص غير مرخص لهم بامتلاكها. ولا تشكل معايير الترخيص هذه عراقيل يستحيل تذييلها من أجل التملك المدني المشروع. وثمة إجماع دولي واسع حول المبدأ القائل بأن القوانين والإجراءات التي تحكم امتلاك مدنيين لأسلحة صغيرة ينبغي أن تظل من الصلاحيات الأساسية للدول فرادى^(١٠). وفي حين أن القواعد التي تحكم تملك المدنيين أسلحة نارية لا تزال تشكل قضية خلافية في المناقشات العامة - وهو ما يعزى إلى حد بعيد إلى الجهود التي يبذلها صناع الأسلحة النارية والمنظمات التي تدافع عن تملك هذه الأسلحة في الولايات المتحدة - هناك في الواقع إجماع شبه عالمي على ضرورة وضع معايير دنيا معقولة في إطار التشريعات الوطنية لترخيص تملك المدنيين أسلحة نارية وذلك لتعزيز السلامة العامة وحماية حقوق الإنسان^(١١). ويشكل هذا الإجماع عاملاً ينبغي لآليات حقوق الإنسان أخذه في الاعتبار لدى تقدير المسؤوليات الإيجابية للدول لمنع انتهاكات حقوق الإنسان الأساسية في الحالات التي تنطوي على ممارسة العنف من جانب أفراد بصفتهم الشخصية باستعمال السلاح.

١٧ - وينبغي لهيئات حقوق الإنسان المكلفة بالإشراف على الإجراءات التي تتخذها الدول لحماية الحق في الحياة النظر أيضاً في تدابير أخرى فعالة. وهذه التدابير شبيهة بالمبادئ التوجيهية التي اعتمدها الأمم المتحدة لتوفير حماية فعالة لحقوق الإنسان الأساسية^(١٢) الأخرى الملتمزم بها. ومن هذه التدابير:

- (أ) حظر امتلاك المدنيين أسلحة مصممة للاستعمال العسكري (البنادق الهجومية الآلية وشبه الآلية، والمدافع الرشاشة، والأسلحة الخفيفة)؛
- (ب) تنظيم مبادرات للعبو العام وتعزيزها للتشجيع على سحب الأسلحة من الاستعمال الفعلي؛
- (ج) اشتراط تسجيل المعلومات وتعقبها من جانب صانعي الأسلحة؛
- (د) إدراج السبع الجنساني فيما يبذل من جهود لتوعية الجمهور بما يكفل تلبية الاحتياجات الخاصة للنساء والأطفال وتمتعهم بحقوق الإنسان الخاصة بهم، ولا سيما في حالات ما بعد انتهاء الصراع.

١٨- والغرض من مشروع المبادئ الذي اقترحتة المقررة الخاصة (E/CN.4/Sub.2/2005/35)، لا سيما مشروع المبادئ من ١٠ إلى ١٤، هو زيادة تعريف الدول بطابع التزامها بتوخي الحرص الواجب بموجب قانون حقوق الإنسان الدولي حيال الجهات الفاعلة من غير الدول.

ثانياً - مبدأ الدفاع عن النفس فيما يتعلق بانتهاكات حقوق الإنسان المرتكبة باستعمال الأسلحة الصغيرة والأسلحة الخفيفة

١٩- يناقش هذا التقرير مبدأ الدفاع عن النفس ويقره كمبدأ من مبادئ قانون حقوق الإنسان ويقيم المكانة التي يجب أن يحتلها عند تأسيس مبادئ حقوق الإنسان التي تحكم الأسلحة الصغيرة والأسلحة الخفيفة^(١٣). والذين يعارضون تنظيم الدولة لحيازة المدنيين أسلحة نارية يدعون أن مبدأ الدفاع عن النفس يقدم سنداً قانونياً "للحق" في امتلاك أسلحة صغيرة مما ينفي أو يقلل إلى أدنى حد واجب الدولة بتنظيم حيازة هذه الأسلحة^(١٤). ويخلص هذا التقرير إلى أن مبدأ الدفاع عن النفس يحتل مكانة هامة في قانون حقوق الإنسان الدولي، ولكنه لا يخول حقاً قانونياً مستقلاً وملازماً في امتلاك أسلحة صغيرة، ولا هو يخفف من واجب الدولة لتوخي الحرص الواجب في تنظيم امتلاك هذه الأسلحة من قبل المدنيين.

ألف - الدفاع عن النفس باعتباره أساساً للإعفاء من المسؤولية الجنائية، وليس حقاً من حقوق الإنسان

٢٠- الدفاع عن النفس استثناء مسلم به على نطاق واسع، وإن كان محظوراً قانوناً، من الواجب العالمي لاحترام حق الغير في الحياة. والدفاع عن النفس يشكل أساساً للإعفاء من المسؤولية الجنائية التي قد يثيرها أي فرد من وكلاء الدولة أو طرف فاعل من خارج الدولة. ويصنف الدفاع عن النفس أحياناً بأنه "حق". وليس هناك سند قانوني كاف لهذا التفسير. ويوصف الدفاع عن النفس بشكل أنسب بأنه وسيلة لحماية الحق في الحياة، وهو يشكل بذلك أساساً لتجنب المسؤولية عن انتهاك حقوق شخص آخر.

٢١- فلم يرد في المصادر الأولية للقانون الدولي، وهي المعاهدات والقانون العرفي والمبادئ العامة، أي ذكر صريح لحق إنسان دولي في الدفاع عن النفس. وإذا كان الحق في الحياة حقاً مسلماً به في كل معاهدة رئيسية تقريباً من المعاهدات الدولية لحقوق الإنسان، فإن مبدأ الدفاع عن النفس معترف به صراحة في معاهدة واحدة فقط هي الاتفاقية لحماية حقوق الإنسان والحريات الأساسية (الاتفاقية الأوروبية لحقوق الإنسان)، المادة ٢^(١٥). على أن الدفاع عن النفس ليس معترفاً به كحق من الحقوق في الاتفاقية الأوروبية لحقوق الإنسان. ووفقاً لأحد المعلقين، فإن "وظيفة هذا الحكم تقتصر على إخراج حالات القتل الضرورية لصد عنف غير مشروع من نطاق تطبيق الفقرة ١ من المادة ٢. وهي لا تنص على حق يتعين على الدولة أن تكفله"^(١٦).

٢٢- والدفاع عن النفس مبدأ مسلم به على نطاق واسع في القانون الدولي العرفي باعتباره أساساً لدفع المسؤولية الجنائية كما هو مبين في ممارسات الدول. بيد أنه لا يوجد دليل على أن الدول سنت مبدأ الدفاع عن النفس كحق قائم بذاته ضمن تشريعها المحلية، كما لا يوجد دليل في آراء الفقهاء يحمل الدول على الإقرار بحق مستقل وملازم في الدفاع عن النفس يتعين عليها إعماله في إطار اختصاصاتها الداخلية باعتباره حقاً ملازماً.

٢٣- وبالمثل، ينص القانون الجنائي الدولي على مبدأ الدفاع عن النفس كأساس لتفادي المسؤولية الجنائية، لا كحق مستقل. وذكرت المحكمة الجنائية الدولية ليوغوسلافيا السابقة العناصر العالمية لمبدأ الدفاع عن النفس^(١٧). فقد ذكرت المحكمة "أن مبدأ الدفاع عن النفس المكرس في الفقرة ١ من المادة ٣١ من نظام روما الأساسي للمحكمة الجنائية الدولية يعكس أحكاماً موجودة في معظم القوانين الجنائية الوطنية وقد ينظر إليه على أنه يشكل قاعدة من قواعد القانون الدولي العرفي"^(١٨). وكما يرد صراحة في خاتمة المادة ٣١، فإن مبدأ الدفاع عن النفس مبدأ عُنِي على أنه يشكل أحد "أسباب استبعاد المسؤولية الجنائية". والمقصود بالدفاع القانوني المنصوص عليه في الفقرة (د) من المادة ٣١ هو:

إذا كان السلوك المدعى أنه يشكل جريمة تدخل في اختصاص المحكمة قد حدث تحت تأثير إكراه ناتج عن تهديد بالموت الوشيك أو بحدوث ضرر بدني جسيم مستمر أو وشيك ضد ذلك الشخص أو شخص آخر، وتصرف الشخص تصرفاً لازماً ومعقولاً لتجنب هذا التهديد، شريطة ألا يقصد الشخص أن يتسبب في ضرر أكبر من الضرر المراد تجنبه^(١٩).

وبالتالي، يصنف القانون الجنائي الدولي الدفاع عن النفس كقاعدة يتعين اتباعها لتحديد المسؤولية الجنائية، وليس كحق مستقل مطلوب من الدول إعماله.

٢٤- وتدعم أحكام القضاء الصادرة عن هيئات حقوق الإنسان الدولية مطالبة الدول بإقرار الادعاء بالدفاع عن النفس وتقييمه كجزء من حقوق المدعين عليهم الجنائيين في محاكمة وفق الأصول القانونية. بل وحاج بعض أعضاء اللجنة المعنية بحقوق الإنسان بأن الفقرة ٢ من المادة ٦ من العهد الدولي الخاص بالحقوق المدنية والسياسية تشترط من المحاكم الوطنية النظر في الظروف الشخصية لمدعى عليه عند الحكم بالإعدام على شخص، بما في ذلك ادعاءات الدفاع عن النفس الممكنة، على أساس واجب الدول الأطراف بحماية الحق في الحياة^(٢٠). وبمقتضى محاكم النظام القضائي للقانون العام، يتعين على المحاكم أن تراعي الظروف الوقائية والشخصية عند الحكم بالإعدام في قضايا القتل. وبالمثل، تقضي محاكم النظام القضائي للقانون المدني بما يلي: "لا بد من النظر في سائر الظروف المشددة أو المخففة، كالدفاع عن النفس، والضرورة والضيق، والقدرات العقلية للمتهم، للتوصل إلى الإدانة/الحكم في كل قضية قتل"^(٢١).

٢٥- ويؤيد تفسير اللجنة، مرة أخرى، اشتراط اعتراف الدول بمبدأ الدفاع عن النفس في سياق القانون الجنائي. وفي إطار تفسير قانون حقوق الإنسان الدولي على هذا النحو، يمكن أن يطلب من الدولة أن تعفي مدعى عليه من تبعات استعمال أسلحة نارية في ظل ظروف قصوى حيثما كان هذا الاستعمال ضرورياً ومتناسباً مع الخطر المحدق الذي يهدد حياة الفرد. وحتى في هذه الحالة، لا تنص أي من هذه السلطات على التزام قانوني دولي إيجابي يقع على عاتق الدولة مما يلزمها بالسماح لمدعى عليه بالحصول على سلاح.

باء - شرطا الضرورة والتناسب للتذرع بالدفاع عن النفس

٢٦- تحدد الهيئات الدولية والدول على المستوى العالمي مبدأ الدفاع عن النفس من حيث الضرورة والتناسب^(٢٢). والظروف هي التي تحدد في الواقع النتيجة التي سيسفر عنها ادعاء اللجوء إلى مبدأ الدفاع عن

النفس. فعندما تستعمل الأسلحة الصغيرة والأسلحة الخفيفة للدفاع عن النفس، على سبيل المثال، لا يعني هذا الاستعمال من المسؤولية عن انتهاك حق الآخر في الحياة إذا كان الفعل ضرورياً لإنقاذ حياة شخص واحد أو عدة أشخاص، وكان اللجوء إلى القوة باستعمال الأسلحة الصغيرة متناسباً مع التهديد بالقوة.

٢٧- واستعمال الأسلحة الصغيرة والأسلحة الخفيفة سواء من قبل الدولة أو من قبل جهات من غير الدول يرفع تلقائياً عتبة خطورة التهديد الذي يتعين إثباته لتبرير استعمال الأسلحة الصغيرة أو الأسلحة الخفيفة على سبيل الدفاع، كما يقضي بذلك مبدأ التناسب. وبسبب طبيعة هذه الأسلحة القاتلة والأحكام الآمرة التي تنطوي عليها التزامات حقوق الإنسان المفروضة على جميع الدول والأفراد باحترام الحق في الحياة^(٢٣)، لا يجوز استعمال الأسلحة الصغيرة والأسلحة الخفيفة إلا لأغراض الدفاع في أشد الظروف، وتحديدًا عندما يكون الحق في الحياة مهدداً بالفعل أو معتدياً عليه بدون مبرر.

٢٨- وفي شروط الاستعمال المبرر للقوة من جانب موظفي الدولة للدفاع عن النفس في مبادئ الأمم المتحدة الأساسية المتعلقة باستخدام القوة والأسلحة النارية من قبل الموظفين المكلفين بإنفاذ القوانين. فيمكن لموظفي الدولة، في ظروف استثنائية تقتضي استعمال القوة لحماية الحياة، استعمال أسلحة نارية والادعاء بالدفاع عن النفس أو الدفاع عن الغير تبريراً لقرارهم باستعمال القوة^(٢٤). على أن الالتزام بحماية الحياة يشمل، واجب إنفاذ القانون لاستعمال أساليب بديلة غير عنيفة وغير قاتلة لضبط النفس وتسوية النزاعات، إن أمكن تفادي التهديد دون اللجوء إلى القوة^(٢٥).

٢٩- وبالتالي، فإن العواقب الوخيمة المترتبة على استعمال الأسلحة النارية تحتم وضع مبادئ توجيهية تتسم بمزيد من التفصيل والدقة بديلاً عن السبل الأخرى لاستعمال القوة^(٢٦). فحتى عندما لا يؤدي استعمال السلاح الناري إلى الوفاة، فإن الإصابات التي تسببها طلقات السلاح الناري يمكن أن تكون مُشكلة للحركة ومؤلمة وقد تُعقد الشخص لفترة أطول بكثير مما تحدّثه أساليب أخرى من الإقعاذ المؤقت^(٢٧). وقد ذكر دليل الشرطة للتدريب على ممارسات ومعايير حقوق الإنسان الذي وضعته المفوضية السامية لحقوق الإنسان أنه "يجب ألا تستخدم الأسلحة النارية إلا في الظروف القصوى"^(٢٨). وأي استعمال لسلاح ناري من قبل موظف مكلف بإنفاذ القانون خارج الإطار الظرفي المشار إليه أعلاه سيكون منافياً على الأرجح لمعايير حقوق الإنسان.

١ - اللجنة المعنية بحقوق الإنسان

٣٠- لقد أقرت اللجنة المعنية بحقوق الإنسان معادلة الضرورة والتناسب في الدفاع عن النفس لاستعمال القوة من قبل الموظفين المكلفين بإنفاذ القانون. فقد استنتجت اللجنة المعنية بحقوق الإنسان، في قضية *سواريز دي غريرو ضد كولومبيا*، أن ماريا فاني سواريز دي غريرو قد حرمت تعسفاً من حقها في الحياة باستعمال الموظفين المكلفين بإنفاذ القانون في كولومبيا سلاحاً نارياً لأنه "ليس هناك دليل على أن تصرف الشرطة كان ضرورياً للدفاع عن النفس أو للدفاع عن الآخرين، أو أنه كان ضرورياً لإلقاء القبض على الأشخاص المعنيين أو للحيلولة دون هروبهم"^(٢٩). واستنتجت اللجنة المعنية بحقوق الإنسان كذلك أن مقدار القوة المستخدم للتسبب في وفاة غريرو "لم يكن متناسباً مع مقتضيات إنفاذ القانون في ملابسات القضية" وبالتالي "فإن الحق في الحياة لم يكن يحظى بالحماية الكافية في قانون كولومبيا كما تقضي بذلك الفقرة ١ من المادة ٦"^(٣٠). وصرحت اللجنة المعنية بحقوق الإنسان

أيضاً، في قضية *باريل ضد جامايكا*^(٣١)، أن قتل سجين عمداً، في أعقاب احتجاز بعض حرس السجن والإفراج عنهم، كان نتيجة لارتباك حرس السجن، وليس نتيجة لضرورة للدفاع عن النفس. فباريل لم يكن يعرض أي شخص للخطر بما يبرر قتله تعسفاً على يد موظفين تابعين للدولة؛ ذلك أنه كان قد أفرج عن جميع الحراس و"لم تعد هناك حاجة لاستخدام القوة"^(٣٢). وبالتالي، فقد انتهكت سلطات جامايكا حق باريل في الحياة ولم يكن لديها أي ادعاء بالدفاع عن النفس له ما يبرره^(٣٣).

٢ - المحكمة الأوروبية لحقوق الإنسان

٣١- لقد أقرت المحكمة الأوروبية لحقوق الإنسان أيضاً معادلة الضرورة والتناسب في الدفاع عن النفس، كما هو ثابت في المبادئ الأساسية. ففي قضية *ناشوف وآخرون ضد بلغاريا*، استنتجت المحكمة أن انتهاك الحق في الحياة قد حدث عندما قام أحد أفراد الشرطة العسكرية، الذي كان يحاول إلقاء القبض على شخصين، بإطلاق النار عليهما فأرداهما قتيلين. وتوصلت المحكمة إلى استنتاجها هذا، رفضت الحجة التي ساقتها الحكومة البلغارية بأن أعمال الضابط العسكري لم تنتهك الحق في الحياة لأنه كان يمثل لواجبه الذي يمليه عليه القانون البلغاري بحماية "قدر الإمكان... حياة الشخص الذي يستعملون العنف ضده...". واعتمدت المحكمة بدلاً من ذلك المعيار القائل بأن "أي استعمال للقوة يجب أن لا يكون أكثر من الضرورة القصوى"، ودونت المحكمة ما يلي:

إن استعمال أسلحة نارية يمكن أن تكون أسلحة فتاكة يعرض حياة الإنسان حتماً للخطر حتى إذا كانت هناك قواعد يُراد بها تقليل الأخطار إلى أدنى حد ممكن. وتبعاً لذلك، ترى المحكمة أن استعمال أسلحة نارية كهذه لا يمكن أن يكون في أي ظرف من الظروف `ضرورة قصوى`، بالمعنى الذي قصده المادة ٢(٢) من الاتفاقية [الأوروبية]، من أجل إلقاء القبض على شخص متهم بارتكاب جرم لا عنف فيه ومعروف عنه أنه لا يشكل تهديداً على حياة أي شخص أو على سلامته الجسدية، حتى وإن أدى ذلك إلى عدم القبض على الشخص الهارب^(٣٤).

٣٢- وفي قضية *ماك كان وآخرون ضد المملكة المتحدة*، أولت المحكمة الفقرة ٢ من المادة ٢ من الاتفاقية الأوروبية لحقوق الإنسان، التي تشمل الدفاع عن النفس كاستثناء للحق في الحياة، على أنها تتطلب بيان الضرورة القصوى والتناسب لتبرير استعمال موظفي الدولة للقوة بما يعد انتهاكاً للحق في الحياة^(٣٥).

جيم - ادعاء الدفاع عن النفس لا ينفى الالتزام لتوخي الحرص الواجب لمنع ممارسة أعنف من جانب جهات خاصة

٣٣- يجب النظر إلى رغبة الأفراد في حمل أسلحة على سبيل الدفاع عن النفس في السياق الأوسع لالتزام الدولة بتوفير أقصى قدر ممكن من الحماية في مجال حقوق الإنسان. فالدولة ملزمة بمقتضى القانون الدولي بتعزيز إنفاذ القانون وبقمع عنف الخواص وذلك بإيجاد نظام قانوني واجتماعي يتمثل فيه الواجب العام في تجنب استعمال القوة حيثما كانت سبل الحماية الشخصية غير العنيفة متوفرة بشكل معقول^(٣٦).

٣٤- وحتى إن كان هناك "حق إنساني في الدفاع عن النفس"، فإن ذلك لا ينفى مسؤولية الدولة عن توخي الحرص الواجب بغية توفير أقصى قدر ممكن من الحماية للحق في الحياة لسائر أفراد المجتمع بوضع لوائح معقولة

لامتلاك المدنيين أسلحة. فكما أنه لا توجد أية ولاية دولية لحظر جميع أنواع امتلاك المدنيين للأسلحة، لا توجد ولاية تميز لكل فرد يحمل السلاح. وعلى الدولة أن تنظر إلى المجتمع ككل، لا إلى كل فرد على حدة، لدى النهوض بالتزامها بتقليل العنف الجسدي إلى أدنى حد ممكن.

٣٥- فحتى لو كان هناك، على سبيل المثال "حق" في الدفاع عن النفس، فإن ذلك لا ينفي مسؤولية الدولة عن توخي الحرص الواجب لمنع وقوع الأسلحة في أيدي الذين يغلب الظن أنهم سيستعملون أسلحتهم. وكما تبين الردود على استبيان المقررة الخاصة، فإن فحص حالات إساءة الاستعمال المرجحة للسلاح هو أحد التدابير التي تستخدمها الدول عادة لتحقيق المصالح المشروعة المتعلقة بسياسات الدولة في منع العنف الذي تستعمل فيه الأسلحة الصغيرة ويصدر عن جهات من غير الدولة. وممارسات الدول الشائعة هذه هي مثال على التنفيذ المسؤول للمبدأ القانوني المتعلق بتوخي الحرص الواجب الذي جرى تناوله بالتفصيل في العديد من الهيئات الدولية دون أن يخلف أثراً سلبياً يذكر على قانون الدفاع عن النفس. وبالتالي يتضح أن على الدول، على أقل تقدير، أن تضع لوائح تنظيمية لمنع وقوع الأسلحة في أيدي بعض الأشخاص الذين قد يتوقع منهم بشكل معقول - على أساس عوامل مثل السن، أو السجل الجنائي السابق، أو سجل العنف الشخصي، أو الافتقار إلى السلامة العقلية - عدم فهم شرطي الضرورة والتناسب أو عدم التقيد بهما، وهما الشرطان الأساسيان للاحتجاج بالدفاع عن النفس.

٣٦- وبعد إثبات أن واجب الدول الإيجابي يفرض بعض اللوائح التنظيمية على ملكية المدنيين الحرة للسلاح لا يتعارض مع مبدأ الدفاع عن النفس، يمكن أيضاً تحديد حالات أخرى لفرض لوائح تنظيمية مناسبة. ومن ذلك مثلاً، يقع على عاتق الدولة التزامات شديدة بوجه خاص متى تعلق الأمر بحماية حقوق الفئات المستضعفة، ومنها ضحايا العنف المنزلي، الأكثر عرضة لإساءة استعمال السلاح في المنزل. فوجود السلاح في البيت قد يحول العنف المنزلي بسهولة إلى قتل منزلي. وتبين دراسات حديثة أن الأسلحة النارية مستعملة في الولايات المتحدة في ٥٩ في المائة من جميع حالات قتل النساء^(٣٧) على يد الشريك الحميم، وأن الاحتفاظ بسلاح واحد أو أكثر في المنزل يضاعف احتمالات قتل المرأة على يد الشريك الحميم بواقع ٧,٢ مرات^(٣٨). ورغم تبريرات الدفاع عن النفس لامتلاك سلاح ناري، تشير البحوث إلى أن الأسلحة النارية قلما تستخدم لوقف الجرائم أو قتل المجرمين^(٣٩). بل كثيراً ما توجه ضد نفس الشخص الذي قد تكون لديه أفضل الحجج للدفاع عن النفس، وهو المرأة نفسها^(٤٠). وإزاء هذا الدليل واستناداً إلى الولاية القانونية الدولية بضرورة توخي الحرص الواجب التي وضعتها هيئات حقوق الإنسان لمنع العنف ضد النساء - ومنها:

"واجب الحكومات بأن... تتوخى الحرص الواجب لمنع أعمال العنف ضد المرأة والتحقيق فيها والمعاقبة عليها طبقاً لتشريعها الوطنية واتخاذ الإجراءات المناسبة والفعالة بشأنها سواء ارتكبت الدولة هذه الأعمال أو ارتكبتها أفراد بصفتهم الشخصية"^(٤١).

- يقع على عاتق الدولة واجب قانوني دولي لا يمكن دحضه لمنع وقوع الأسلحة الصغيرة في أيدي أشخاص لديهم سجل بممارسة العنف في كنف الأسرة.

٣٧- وفحص حالات إساءة الاستعمال المرجحة للأسلحة وإزالة هذه الأسلحة حيثما كان هناك سجل بممارسة العنف في كنف الأسرة لهما مثالان يكون فيهما واجب الدولة بتوخي الحرص الواجب لتنظيم حيازة الأسلحة النارية: (أ) متمشياً مع ممارسات الدول الشائعة المبلغ عنها؛ (ب) لا يتنافى مع مبدأ الدفاع عن النفس. ويمكن

تطبيق هذه اللوائح التنظيمية مع عدم المساس بقضايا المصادرة المعمة التي يثيرها خصوم أي تنظيم لامتلاك المدنيين للسلاح. ويمكن تقييم حالات أخرى لهذا التنظيم استناداً إلى التجارب التي تحققت في الدول التي طبقت هذه النظم وإلى المعايير التي نوقشت في هذا التقرير وفي مشروع المبادئ.

دال - ممارسة الدول مبدأ الدفاع عن النفس ضد القوة التي تصدر عن دول أخرى

٣٨- ختاماً، من المهم التعرض بإيجاز للدعاء بأن المادة ٥١ من ميثاق الأمم المتحدة تحوّل الأفراد حقاً قانونياً في الدفاع عن النفس^(٤٢). وتقر المادة ٥١ من الميثاق^(٤٣) بقدرته الدولة على اللجوء إلى استعمال القوة ضد دولة أخرى دفاعاً عن النفس، باتخاذ الدولة إجراءات بمفردها أو إجراءات جماعية مع دول أخرى. وتسري هذه المادة على الدول الأعضاء في الأمم المتحدة التي تتصرف لدفع هجمات مسلحة موجهة ضد سيادتها كدول. وتتيح المادة ٥١ استثناءً من الحظر العام الوارد في القانون الدولي على التهديد باستعمال القوة أو باستعمالها، كما نصت على ذلك الفقرة ٤ من المادة ٢ من الميثاق^(٤٤). كما أن القانون الدولي العرفي يلزم الدول التي تتصرف دفاعاً عن النفس ضد دول أخرى بأن تتقيد بعناصر ثلاثة هي الضرورة، والتناسب، وقرب وقوع التهديد^(٤٥).

٣٩- والحق في الدفاع عن النفس ليس المقصود به، في القانون الدولي، الحفاظ على أرواح الأفراد في البلد المستهدف؛ وإنما هو حق يتعلق بالحفاظ على الدولة^(٤٦). وليس المقصود من المادة ٥١ أن تطبق على حالات الدفاع عن النفس بالنسبة للأفراد^(٤٧). فالمادة ٥١ لم تناقش قط لا في مجلس الأمن ولا في الجمعية العامة على أنها تنطبق، بأي شكل من الأشكال، على الأفراد^(٤٨). وقد ذكر أنطونيو كاسيس أن مبدأ الدفاع عن النفس الذي يطالب به الأفراد كثيراً ما يؤوّل خطأً على أنه الدفاع عن النفس المنصوص عليه في القانون الدولي العام، كما في المادة ٥١^(٤٩). "فالدفاع عن النفس في القانون الدولي يتعلق بتصرف الدول أو الهيئات على شاكلة الدول في حين أن الدفاع عن النفس في حالة الأفراد يتعلق بأعمال الأفراد ضد أفراد آخرين... وكثيراً ما يكون هناك لبس [بين المفهومين]"^(٥٠).

ثالثاً - الاستنتاجات والتوصيات

٤٠- يتعين على الدول، لكي تفي بالتزاماتها بموجب قانون حقوق الإنسان الدولي، سن وتنفيذ قوانين وسياسات كفيلة بتوفير أقصى قدر ممكن من الحماية في مجال حقوق الإنسان لمعظم الناس. وعلى الدولة أن تنظر إلى المجتمع ككل، وعدم الاقتصار على النظر إلى الشخص بمفرده، لدى النهوض بالتزامها بتقليل العنف إلى أدنى حد ممكن وذلك بتعزيز إنفاذ القانون وقمع العنف الذي يصدر عن جهات خاصة. فقانون حقوق الإنسان الدولي يعهد إلى الدول ولاية "احترام وكفالة" حقوق الإنسان لجميع الأفراد الخاضعين لولايتها. وهكذا تقع على عاتق الدول، بموجب هذه الولاية، التزامات إيجابية لحماية الأفراد من الانتهاكات التي ترتكبها جهات تابعة للدولة وجهات غير تابعة لها.

٤١- ويتعين على الدول أن تتخذ تدابير فعالة لتقليل حاجة الناس إلى تسليح أنفسهم وذلك بتهيئة مناخ من السلامة العامة تدعمه عملية ملتزمة ومهينة لإنفاذ القانون لحماية سيادة القانون ومنع القيام بأعمال غير مشروعة.

٤٢ - ويتعين على الدول أيضاً أن تتخذ تدابير فعالة للحد من العنف الذي تقوم به جهات خاصة مسلحة. والمطلوب من الدول أن تُنزل عقوبات جنائية بالأشخاص الذين يستعملون الأسلحة لانتهاك القانون. والمطلوب من الدول كذلك، بموجب مبدأ ضرورة توخي الحرص الواجب، منع وقوع الأسلحة الصغيرة في أيدي الذين يرجح أنهم سيسئون استعمالها. وينبغي لهيئات حقوق الإنسان الدولية أن تطلب من الدول، بموجب معيار ضرورة توخي الحرص الواجب، أن تطبق حداً أدنى من معايير الترخيص للحيلولة دون استعمال الأسلحة الصغيرة من قبل جهات خاصة لانتهاك حقوق الإنسان.

٤٣ - وتشمل التدابير الفعالة الأخرى التي تتفق مع مبدأ توخي الحرص الواجب حظر امتلاك المدنيين أسلحة مصممة للاستعمال العسكري؛ ورعاية برامج فعالة للعفو لخفض عدد الأسلحة المستعملة بالفعل؛ واشتراط تسجيل المعلومات وتعقبها من جانب صانعي الأسلحة؛ وإدراج البعد الجنساني في السياسات المتعلقة بالأسلحة الصغيرة. ويقع على الدول، بموجب قانون حقوق الإنسان الدولي، التزام إيجابي بحماية الفئات الأكثر عرضة لسوء استعمال الأسلحة الصغيرة، بما فيها ضحايا العنف المتزلي.

٤٤ - ولا يتنافى مبدأ الدفاع عن النفس، باعتباره استثناءً مسلماً به دولياً من المسؤولية الجنائية، مع مسؤوليات الدول عن ضرورة توخي الحرص الواجب لتنظيم ملكية المدنيين للأسلحة الصغيرة. وليس هناك حق مستقل أو ملازم في قانون حقوق الإنسان الدولي فيما يتعلق بالدفاع عن النفس مما يوجب على الدول إتاحة إمكانية حصول المدنيين على أسلحة صغيرة؛ كما أن مبدأ الدفاع عن النفس لا يُنقص من مسؤوليات الدولة عن توخي الحرص الواجب لمنع وقوع الأسلحة في أيدي الذين يغلب الظن أنهم سيسئون استعمالها. بل ينبغي للدول أن تمارس مسؤولياتها عن توخي الحرص الواجب في سياق قانون الدفاع عن النفس، بما في ذلك الاحتمال بالألا يتصرف حملة الأسلحة النارية إلا بدافع الضرورة وحدود التناسب.

٤٥ - وتنطبق المادة ٥١ من ميثاق الأمم المتحدة على الدول التي تتصرف دفاعاً عن النفس لصد هجمات مسلحة موجهة ضد سيادتها كدول. ولا تنطبق على حالات الدفاع عن النفس بالنسبة للأفراد.

٤٦ - وينبغي للجنة الفرعية لتعزيز وحماية حقوق الإنسان أن تتخذ إجراءات لتوضيح ما للدول من مسؤوليات إيجابية عن منع انتهاكات حقوق الإنسان التي ترتكب باستعمال الأسلحة الصغيرة. ولهذا الغاية، ترحب المقررة الخاصة، المكلفة بإعداد دراسة شاملة عن منع انتهاكات حقوق الإنسان التي ترتكب باستعمال الأسلحة الصغيرة والأسلحة الخفيفة، بإقرار اللجنة الفرعية لمشروع المبادئ بشأن منع انتهاكات حقوق الإنسان المرتكبة باستعمال الأسلحة الصغيرة والأسلحة الخفيفة (E/CN.4/Sub.2/2005/35)، باعتبار هذه الخطوة مساهمة كبيرة في المساعي الجارية لتحديد التدابير المتعلقة بالأسلحة الصغيرة والأسلحة الخفيفة التي يتعين على الدول أن تتخذها من أجل إعمال حقوق الإنسان الدولية في المجتمعات في شتى أنحاء العالم.

Notes

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² 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.

³ 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”).

⁴ S. Fariior, “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.

⁵ 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).

⁶ 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.”

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

⁸ 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.

⁹ 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.

¹⁰ *Ibid.*

¹¹ 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.

¹² 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.unhcr.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”.)

¹³ 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).

¹⁴ 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”).

¹⁵ 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.

¹⁶ John Cerone, “A human right of self-defence?”, *George Mason Journal of Law, Economics, & Policy* (accepted for 2006 publication).

¹⁷ 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).

¹⁸ *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).

¹⁹ 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.

²⁰ 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).

²¹ 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.

²² 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.

²³ *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.”)

²⁴ 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.

²⁵ 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.

²⁶ 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.

²⁷ *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.”)

²⁸ 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.

²⁹ 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.

³⁰ *Ibid.*, para. 13.3.

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

³² *Ibid.*, para. 9.5.

³³ 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.

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

³⁵ *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.

³⁶ 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.

³⁷ 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.

³⁸ 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.

³⁹ 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.

⁴⁰ 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).

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

⁴² 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.)

⁴³ 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.

⁴⁴ 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.

⁴⁵ 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).

⁴⁶ Cerone, “A Human Right of Self-Defense?”

⁴⁷ 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.”)

⁴⁸ 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>).

⁴⁹ Cassese, *op. cit.*, p. 223.

⁵⁰ *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 ¹	SALW ammo	SALW ammo ²	SALW ammo ³	SALW ammo	SALW ammo	SALW ammo ⁴	SALW ammo ⁵	SALW ammo ⁶	SALW ammo	SA ⁷ ammo	SALW ammo ⁸	SA ⁹	SALW ammo	SALW ammo ¹⁰	SALW ammo ¹¹	SALW ammo ¹²	SA ¹³	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 ¹⁴	SALW ammo ¹⁵	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 ¹⁶	SALW ammo ¹⁷	SALW ammo	SA ammo ¹⁸	SALW ammo ¹⁹	SALW ammo ²⁰	SALW	SALW ammo	SALW ammo ²¹	SALW ammo	SALW ammo ²²	SALW ammo ²³	SALW ammo ²⁴	SALW ammo	SA ammo ²⁵	SA ammo	SA ammo ²⁶
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 ²⁷	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*)

Training on 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	
Do you have training regarding small arms, light weapons, and ammunition on the following areas:																				
• <i>Technical and mechanical proficiency</i>	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
• <i>Practical and tactical efficiency</i>	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
• <i>Applied decision-making (i.e., meeting the requirements of law)</i>	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes
Is there regular funding allocated to support training?	Yes	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes

(<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 training regarding small arms, light weapons, and ammunition on the following areas:																				
• <i>Technical and mechanical proficiency</i>	Yes	Yes	Yes	Yes	Yes		Yes	Yes ²⁸	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes ²⁹	Yes	Yes	Yes
• <i>Practical and tactical efficiency</i>	Yes	Yes	Yes	Yes	Yes		No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
• <i>Applied decision-making (i.e., meeting the requirements of law)</i>	Yes	Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Is there regular funding allocated to support training?		Yes	Yes	No	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	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

	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 ³⁰	Yes	Yes	Yes		Yes	Yes	Yes	Yes ³¹	Yes ³²	Yes	Yes	Yes ³³	Yes ³⁴	Yes	Yes	Yes
Are those investigations carried out by someone independent of the agency accused?	Yes	Yes	Yes	Yes	Yes	Yes ³⁵		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 ³⁶		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 ³⁷	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 ³⁸	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 ³⁹	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes ⁴⁰
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 ⁴¹	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 ⁴²	Yes	Yes	Yes ⁴³	Yes	Yes	Yes	Yes ⁴⁴	Yes	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 ⁴⁵	Yes	No	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 ⁴⁶	Yes	Yes	Yes ⁴⁷		Yes
Do you allocate funding in your national budget for the facilities and resources to safely and securely store small arms?	Yes ⁴⁸	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes	Yes	No ⁴⁹	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Are private storage facilities being inspected?	No	Yes	Yes	No	No	Yes		No		Yes		Yes ⁵⁰	Yes	No	Yes	Yes	Yes	N/A ⁵¹		Yes

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

Security and storage 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 existing laws governing the storage of small arms by state agents?	Yes	Yes	Yes ⁵²	Yes	Yes		Yes	Yes ⁵³	Yes	Yes	Yes	Yes	Yes ⁵⁴	Yes	Yes	Yes		Yes	Yes ⁵⁵
Are off-duty agents allowed to keep their government-issued small arms?	No	No	Yes	No	Yes ⁵⁶		Yes		Yes	Yes		Yes	No	No	No	No	Yes	Yes	No
Are sanctions imposed against state agents for violations of laws on safe storage of small arms?	Yes	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	Yes	Yes	Yes		Yes	Yes	No	Yes	Yes	Yes	Yes ⁵⁷	Yes	Yes	Yes		Yes	No
Do you allocate funding in your national budget for the facilities and resources to safely and securely store small arms?	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	
Are private storage facilities being inspected?	Yes	Yes	Yes		Yes		Yes	Yes	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	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 ⁵⁸	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes ⁵⁹	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 ⁶⁰	N/A	No	No	Yes	No	Yes	No	No	No

<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 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 ⁶¹
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 ⁶²	No	No ⁶³		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 ⁶⁴	Yes	Yes	Yes	Yes	Yes	Yes	Yes ⁶⁵	Yes	Yes	Yes ⁶⁶	Yes	Yes ⁶⁷	Yes	Yes ⁶⁸	Yes ⁶⁹	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 ⁷⁰	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 ⁷¹	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 ⁷²	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 ⁷³	Yes ⁷⁴	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"> 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? 	Yes	Yes	No	No	Yes	Yes		Yes	Yes	Yes	No	Yes	Yes	Yes	No ⁷⁵	No	Yes		Yes
<ul style="list-style-type: none"> Do you allocate funding in your budget for the collection of this data? 	Yes ⁷⁶	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)

(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 laws requiring the licensing of all private ownership of small arms and ammunition?	Yes	Yes ⁷⁷	Yes ⁷⁸	Yes ⁷⁹	Yes		Yes	Yes ⁸⁰	Yes	Yes ⁸¹	Yes	Yes	Yes ⁸²	Yes	Yes ⁸³	Yes		Yes ⁸⁴	Yes ⁸⁵
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 ⁸⁶	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 ⁸⁷	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 ⁸⁸
Age?	Yes	Yes	Yes	Yes	Yes		Yes	Yes		Yes	Yes	Yes	Yes ⁸⁹	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 ⁹⁰	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 ⁹¹	Yes ⁹²	No ⁹³	Yes		No	Yes	No	No ⁹⁴	Yes	Yes	Yes	Yes	Yes	No		Yes	Yes ⁹⁵

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
• Do those laws require training be completed before issuing a licence?	No	No ⁹⁶	Yes	No ⁹⁷	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 ⁹⁸	Yes		Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	No		No ⁹⁹	
• Do those laws require training in the safe storage and maintaining security of small arms and/or weapons?	N/A	Yes	Yes	No ¹⁰⁰	Yes		Yes	Yes	Yes ¹⁰¹	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 ¹⁰²	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 ¹⁰³	Yes	Yes		Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes		Yes	Yes
• Is that database public?		Yes	Yes ¹⁰⁴	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"> 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? 	Yes	Yes	Yes	Yes	Yes		Yes	No	Yes	No	No	Yes	Yes	Yes	Yes	No		Yes	
<ul style="list-style-type: none"> Do you allocate funding in your budget for the collection of this data? 	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 ¹⁰⁵	Yes	Yes	No	No		Yes	No	No	Yes	No	No ¹⁰⁶	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 ¹⁰⁷	Yes	Yes	Yes	No	Yes		Yes	Yes	Yes ¹⁰⁸	Yes ¹⁰⁹	Yes	N/A	No	Yes	Yes ¹¹⁰	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 ¹¹¹		Yes		No		Yes	No	No ¹¹²	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 ¹¹³	No	-- ¹¹⁴
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 ¹¹⁵	Yes	Yes	Yes	Yes	Yes ¹¹⁶	Yes	Yes	Yes	Yes ¹¹⁷	Yes		Yes	Yes ¹¹⁸
Do these laws require that manufacturers of small arms be licensed?	N/A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A ¹¹⁹	Yes	Yes	Yes	Yes	N/A ¹²⁰	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 ¹²¹	N/A ¹²²	Yes		Yes	No	Yes	Yes	No	Yes	Yes	N/A ¹²³	Yes	No ¹²⁴	N/A	N/A ¹²⁵
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 ¹²⁶	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 ¹²⁷	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 ¹²⁸	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes ¹²⁹	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 ¹³⁰	Yes	N/A		Yes		Yes	Yes	Yes	No ¹³¹	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 ¹³²	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 ¹³³	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)

(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 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 ¹³⁴	No	Yes	Yes ¹³⁵		No
Are manufacturers of small arms permitted to sell or transfer directly to private persons or groups?	N/A	No	Yes	Yes	Yes ¹³⁶	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 ¹³⁷	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 ¹³⁸	Yes	Yes	Yes	Yes	Yes	Yes ¹³⁹	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 ¹⁴⁰	Yes ¹⁴¹	Yes	Yes	Yes	Yes ¹⁴²	No ¹⁴³	Yes	Yes ¹⁴⁴	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 ¹⁴⁵	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 ¹⁴⁶	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 ¹⁴⁷

Notes

¹ Waffengebrauchsgesetz 1969 (Weapons Usage Act) and Kriegsmaterialgesetz (War Material Act).

² 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.

³ Decreto 2535 del 17 diciembre de 1993; Decreto Reglamentario 1809 de 1994.

⁴ 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.

⁵ Police Act.

⁶ Georgian Law “On Weapons”.

⁷ 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.

⁸ Firearms and Ammunitions Law of 2001.

⁹ Law of the Kyrgyz Republic on “Small Arms”, 9 June 1999.

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

¹¹ Ley Federal de Armas de Fuego y Explosivos.

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

¹³ Law on Firearms of Mongolia.

¹⁴ There are regulations.

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

¹⁶ 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.

¹⁷ Law of 21 May 1999 on Firearms and Ammunition, as amended.

¹⁸ Police Code 23 of 1999.

¹⁹ 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.

²⁰ 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.

²¹ Firearms Control Act of 2000 and Firearms Control Regulations of 2004.

²² Sudan Police Force Law.

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

²⁴ Firearms Act and Police Service Act.

²⁵ 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).

²⁶ 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.

²⁷ Ministry of Defence internal regulations.

²⁸ 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.

- ²⁹ 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).
- ³⁰ Código de Justicia Militar, Ley No. 17.798, Código Penal y la reglamentación de cada Institución.
- ³¹ Presidential Decree 22/1996 on “Disciplinary Law for Police Personnel” and provisions of Law 3169/2003.
- ³² Criminal Law 1952 and Firearms and Ammunitions Law 2001.
- ³³ Police Act.
- ³⁴ Art. 157, Código de Justicia Militar; arts. 31 y 36, Ley Federal de Armas de Fuego y Explosivos; El Código Penal Federal.
- ³⁵ If the incident is serious.
- ³⁶ The Attorney General oversees such investigations.
- ³⁷ 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).
- ³⁸ There is no regular budget allocation, but money for investigations and damages is granted via the national budget as needed.
- ³⁹ 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.
- ⁴⁰ Articles 247, 248, 249, 250, 297 of the Criminal Code of the Republic of Uzbekistan; Manual for performance of Garrison duties.
- ⁴¹ Through the budget of the National Army.

⁴² Firearms Act.

⁴³ Articles 3, 5, 7 and 8 of Decision 8517/4/7-mb of the Minister of Public Order, dated 17 February 2001.

⁴⁴ Firearms Act.

⁴⁵ With special permit by the relevant authority.

⁴⁶ There is no legal requirement for such training, but training on safe storage is given to law enforcement agents.

⁴⁷ Law on Police Organization and Law on Armed Forces.

⁴⁸ There is no regular budget allocation, but money is granted via the national budget as needed.

⁴⁹ Secure storage is the responsibility of relevant departments and is funded through their budgets.

⁵⁰ During police investigations; not routinely.

⁵¹ There are no private storage facilities.

⁵² Executive Order 61, designating the Philippine Constabulary as Government custodian of firearms, ammunition and explosives.

⁵³ Law 295/2004 on the Regime of Arms and Ammunition.

⁵⁴ Government orders, rather than law.

⁵⁵ 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”.

- ⁵⁶ Except for military forces.
- ⁵⁷ Sudan Law for Weapons and Ammunition, 1986.
- ⁵⁸ Funding is allocated as part of the Normal Budget.
- ⁵⁹ Funded by the general budget allocated for the police.
- ⁶⁰ Depersonalized statistics are published.
- ⁶¹ 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.
- ⁶² 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.
- ⁶³ Some data are made public, but others are not.
- ⁶⁴ Such laws are enacted at the state level.
- ⁶⁵ Firearms Act (1/1998, as amended).
- ⁶⁶ Articles 7 and 10 of Law 2168/1993 and Common Ministerial Decision 4325/99 of the Ministers of Culture and Public Order.
- ⁶⁷ Law of the Kyrgyz Republic on “Licensing”, 3 March 1997.
- ⁶⁸ Firearms Act. As of March 2005, the Firearms Act will be repealed and replaced by a new enforcement act.
- ⁶⁹ Constitución Política de los Estados Unidos Mexicanos, art. 10; Ley Federal de Armas de Fuego y Explosivos, arts. 24-27, 34-35.

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

- ⁸⁵ 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.
- ⁸⁶ Regulation of the Arms Law of 1997.
- ⁸⁷ There is only one weapon allowed per individual.
- ⁸⁸ 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.
- ⁸⁹ Not less than 30 years of age for firearms and 25 years for air guns.
- ⁹⁰ The partner of a firearms licence applicant is interviewed before a licence is granted to the applicant.
- ⁹¹ A licensee must be a member of a gun club or shooting association.
- ⁹² National Police Commission Resolution 97-162 states that an applicant is required to undergo a Gun Safety Seminar and a Responsible Gun Ownership Seminar.
- ⁹³ Training is not required by law, but a licensee must pass an exam covering operations, safety and use of weapons.
- ⁹⁴ There is an exam of qualification, abilities and skills connected with the use of SALW.
- ⁹⁵ 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”).
- ⁹⁶ Some gun clubs require such training.

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

- ¹¹³ KNVO “Fort” Ministry of the Interior of Ukraine (town: Vinnitza).
- ¹¹⁴ Information withheld according to the law of the Republic of Uzbekistan “About State Secrets”.
- ¹¹⁵ Code 14 of 1999, which relates to weapons and ammunition.
- ¹¹⁶ Sections 45-58 of the Firearms Control Act, 2000.
- ¹¹⁷ Section 15 (1) of the Firearms Act, Ch. 16:01 forbids the manufacture of any firearm and ammunition in Trinidad and Tobago.
- ¹¹⁸ 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).
- ¹¹⁹ There is no private arms manufacture of small arms in Saudi Arabia.
- ¹²⁰ There are no private manufacturers of SALW; there are no licences for manufacturing SALW.
- ¹²¹ There is no private arms manufacturing in Colombia; weapons production is a state monopoly.
- ¹²² Costa Rica does not manufacture or export armaments.
- ¹²³ There is no arms manufacture in Mauritius.
- ¹²⁴ There is no arms manufacture in Monaco.
- ¹²⁵ There is no arms manufacture in Morocco and no export of firearms.
- ¹²⁶ Regulated by the Georgian Law “On the Control of Export-Import of Armaments, Military Equipment and Goods of Dual-Purpose Use”.
- ¹²⁷ It is illegal to export or transfer weapons at all times.

- ¹²⁸ Act on the Export and Transit of Defense Materiel (242/1990, as amended).
- ¹²⁹ Ley Federal de Armas de Fuego y Explosivos, arts. 55-59.
- ¹³⁰ Bangladesh does not export weapons, except for United Nations Missions. Weapons are authorized by the Bangladeshi government to Bangladeshi government agencies for security purposes.
- ¹³¹ The EU Code of Conduct and United Nations Decision 1540 are taken in mind.
- ¹³² Bangladesh does not export weapons, except for United Nations Missions.
- ¹³³ There is no extra budget for these assessments, but the necessary money is granted.
- ¹³⁴ Transfers of SALW are made in accordance with strict national laws and under enforced supervision to prevent diversion.
- ¹³⁵ 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.
- ¹³⁶ Except for military arms.
- ¹³⁷ SALW for military purpose may not be sold to private individuals or groups.
- ¹³⁸ Act on Control of Firearms, Swords, Explosives, etc.
- ¹³⁹ 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.
- ¹⁴⁰ Standard Operating Procedure 13 and Executive Order 256.
- ¹⁴¹ 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.

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

¹⁴³ There is no export from Saudi Arabia

¹⁴⁴ Firearms Control Act, 2000 and National Conventional Arms Control Act, 2002.

¹⁴⁵ 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.

¹⁴⁶ Act on Special Measures for the Defense Industry and Enforcement Decree.

¹⁴⁷ 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.¹ 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)²

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 officers³ 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).⁴ 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").⁵

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

¹ 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.

² 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.

³ The Czech Republic and Qatar did not answer these questions.

⁴ 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.”

⁵ 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"> • Is a resident in the territory of the Czech Republic; • 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); • Is fully capable of legal actions; • Is medically fit and capable; • Is professionally competent and capable; • Has full integrity (regarding criminal background); • Is reliable (regarding criminal background, alcohol or drug abuse, and treasonous behaviour); • Is a holder of a valid hunting licence (if obtaining a hunting firearm permit).
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"> • Be at least 21 years of age; • Receive neuropsychiatric clearance (from the PNP), any government hospital or government accredited psychiatrist; • Provide certificate of good conduct from city/municipality where applicant lives; • Obtain clearance from intelligence agency; • Provide proof of income.
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"> • 21 years or older on the day the application is received by the designated firearms officer; • A South African citizen or a holder of a permanent South African residence permit; • Of stable mental condition and not inclined to violence; • Free from dependency on any substance which has an intoxicating or narcotic effect;

		<ul style="list-style-type: none">• 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;• 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;• Free from conviction for other crimes - including fraud, drug trafficking, negligent handling of a firearm, sabotage, terrorism, public violence, arson, intimidation, rape and kidnapping. <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.
