



Assemblée générale

Distr.
GÉNÉRALE

A/HRC/Sub.1/58/27*
27 juillet 2006

FRANÇAIS
Original: ANGLAIS

CONSEIL DES DROITS DE L'HOMME

Sous-Commission de la promotion et
de la protection des droits de l'homme
Cinquante-huitième session
Point 6 de l'ordre du jour provisoire

QUESTIONS SPÉCIFIQUES SE RAPPORTANT AUX DROITS DE L'HOMME

**La prévention des violations des droits de l'homme commises
à l'aide d'armes de petit calibre et d'armes légères**

**Rapport final soumis par M^{me} Barbara Frey, Rapporteuse spéciale,
conformément à la résolution 2002/25** de la Sous-Commission**

* En application de la résolution 60/251 de l'Assemblée générale du 15 mars 2006 intitulée «Conseil des droits de l'homme», à compter du 19 juin 2006 le Conseil des droits de l'homme a assumé tous les mandats, mécanismes, fonctions et attributions de la Commission des droits de l'homme, y compris la Sous-Commission. En conséquence, l'indicatif de série de cote E/CN.4/Sub.2/_ sous lequel étaient publiés les documents de la Sous-Commission, qui faisait rapport à l'ancienne Commission des droits de l'homme, a été remplacé à compter du 19 juin 2006 par A/HRC/Sub.1/_.

** Les annexes au présent rapport sont reproduites telles qu'elles ont été reçues, dans la langue originale seulement.

Résumé

Le présent rapport final de la Rapporteuse spéciale chargée de procéder à une étude complète de la question de la prévention des violations des droits de l'homme commises à l'aide d'armes de petit calibre et d'armes légères traite de deux principes juridiques internationaux essentiels pour comprendre la nature et l'étendue de l'obligation qu'a l'État de prévenir les violations des droits de l'homme commises à l'aide d'armes de petit calibre: le devoir qu'ont les États d'exercer la diligence voulue pour prévenir les violences causées par des acteurs privés au moyen d'armes de petit calibre et l'importance du principe de légitime défense au regard de l'obligation qu'a l'État de prévenir les violences liées aux armes de petit calibre. Les annexes au présent rapport contiennent un résumé et une analyse des réponses que les États membres de l'Organisation des Nations Unies ont données au questionnaire de la Rapporteuse spéciale.

Conformément au droit des droits de l'homme, les États ont l'obligation principale de porter au niveau le plus élevé possible la protection des droits de l'homme, en particulier le droit à la vie. Cette responsabilité emporte des obligations négatives et positives: les représentants de l'État doivent s'abstenir de commettre des violations au moyen d'armes de petit calibre et les États doivent prendre des mesures pour réduire au minimum la violence armée entre acteurs privés. Le paragraphe 1 de l'article 2 du Pacte international relatif aux droits civils et politiques impose aux États l'obligation positive d'empêcher les particuliers de commettre des actes qui portent atteinte à des droits fondamentaux, notamment au droit à la vie.

Pour prévenir les violences causées par des armes de petit calibre, les États ne doivent pas se limiter, pour s'acquitter de leur obligation d'exercer la diligence voulue, à la simple incrimination des actes de violence armée. Ils doivent également appliquer un système minimum de licence pour empêcher que des armes de petit calibre ne tombent entre les mains des personnes qui sont les plus susceptibles d'en faire mauvais usage. D'autres mesures efficaces devraient également être appliquées pour protéger le droit à la vie, comme l'a proposé la Rapporteuse spéciale dans le projet de principes sur la prévention des violations des droits de l'homme commises à l'aide d'armes de petit calibre qu'elle a élaboré.

Le principe de la légitime défense occupe une place importante dans le droit international des droits de l'homme mais il ne confère pas un droit indépendant et supérieur de posséder des armes de petit calibre, pas plus qu'il n'infirme le devoir qu'ont les États d'exercer la diligence voulue pour réglementer la possession de ces armes par des civils. Au contraire, comme le montre le présent rapport, il existe de vastes domaines dans lesquels les États doivent et peuvent réglementer – ce qu'ils font d'ailleurs – la possession d'armes à feu conformément au principe de la légitime défense. Ce principe est une exception largement reconnue, bien qu'interdite par la loi, au devoir universel de respecter la vie d'autrui. Il est un motif d'exonération de la responsabilité pénale qui peut être invoqué par tout agent de l'État ou tout acteur non étatique. Pour autant, le droit international ne contient pas de disposition exigeant des États qu'ils autorisent l'accès aux armes à feu à des fins de légitime défense. Le principe de la légitime défense ne va pas à l'encontre du devoir qu'ont les États d'exercer la diligence voulue pour que des armes ne tombent pas entre les mains des personnes qui sont les plus susceptibles d'en faire mauvais usage. L'État a en particulier l'obligation impérative de protéger les groupes vulnérables, notamment les victimes de violence dans la famille, des violences commises au moyen d'armes de petit calibre.

L'article 51 de la Charte des Nations Unies s'applique aux États qui agissent en état de légitime défense en réaction à des attaques armées contre leur souveraineté. Il ne s'applique pas à la légitime défense des individus.

TABLE DES MATIÈRES

	<i>Paragraphes</i>	<i>Page</i>
Résumé		2
Introduction.....	1 – 7	5
I. OBLIGATION DÉCOULANT DU DROIT INTERNATIONAL HUMANITAIRE DE PRÉVENIR LES VIOLENCES COMMISES PAR DES ACTEURS NON ÉTATIQUES AU MOYEN D'ARMES DE PETIT CALIBRE	8 – 18	6
A. La norme de la diligence voulue au regard des violences commises par des acteurs privés	10 – 14	7
B. Mesures efficaces pour s'acquitter de l'obligation de diligence voulue	15 – 18	9
II. LE PRINCIPE DE LA LÉGITIME DÉFENSE AU REGARD DES VIOLATIONS DES DROITS DE L'HOMME COMMISES AU MOYEN D'ARMES DE PETIT CALIBRE ET D'ARMES LÉGÈRES.....	19 – 39	10
A. La légitime défense: un motif d'exonération de la responsabilité pénale non assimilable à un droit de l'homme ..	20 – 25	10
B. Critères de nécessité et de proportionnalité applicables à la légitime défense	26 – 32	12
C. L'invocation de la légitime défense ne dispense pas de l'obligation d'exercer la diligence voulue pour prévenir les violences commises par des particuliers	33 – 37	14
D. La légitime défense des États contre la force employée par d'autres États.....	38 – 39	15
III. CONCLUSIONS ET RECOMMANDATIONS	40 – 46	16
Annexes		
I. Summary of responses received from United Nations Member States to the Special Rapporteur's questionnaire		24
II. Summary and analysis of responses received from United Nations Member States to the Special Rapporteur's questionnaire		53
III. Excerpts of United Nations Member States' laws and regulations concerning possession and use of small arms and light weapons		61

Introduction¹

1. Le présent rapport final de la Rapporteuse spéciale chargée de procéder à une étude complète de la question de la prévention des violations des droits de l'homme commises à l'aide d'armes de petit calibre et d'armes légères est soumis en application de la résolution 2002/25 et des décisions 2003/105, 2004/123 et 2005/110 de la Sous-Commission de la promotion et de la protection des droits de l'homme ainsi que de la décision 2003/112 de la Commission des droits de l'homme. On trouvera en annexe un résumé et une analyse des réponses des États au questionnaire élaboré par la Rapporteuse spéciale conformément à la décision 2003/105 de la Sous-Commission et à la décision 2004/124 de la Commission.

2. Le présent rapport principal complète les deux premiers rapports établis par la Rapporteuse spéciale. Dans son rapport préliminaire (E/CN.4/Sub.2/2003/29), celle-ci a décrit les conséquences néfastes pour les droits de l'homme de l'utilisation abusive d'armes de petit calibre en temps de paix. Elle a établi un cadre juridique qui permet d'analyser la manière dont les normes existantes relatives aux droits de l'homme définissent les obligations des États dans trois situations différentes: a) prévenir les violations des droits de l'homme commises à l'aide d'armes de petit calibre par des agents de l'État; b) prévenir les atteintes aux droits de l'homme commises par des acteurs privés; et c) prévenir le transfert d'armes de petit calibre dans les situations où elles risquent d'être utilisées pour commettre de graves violations des droits de l'homme. Son rapport intérimaire (E/CN.4/Sub.2/2004/37) portait sur les conséquences néfastes pour les droits de l'homme et la sécurité des personnes de l'utilisation d'armes de petit calibre dans les situations de conflit armé. Dans ce rapport, la Rapporteuse spéciale a passé en revue les obligations énoncées par le droit international humanitaire et le droit international des droits de l'homme en ce qui concerne l'offre, l'utilisation abusive et le transfert des armes de petit calibre ainsi que les incidences sur les femmes de l'offre et de l'utilisation abusive de ces armes, dans le contexte des droits de l'homme.

3. Le présent rapport final précise en outre deux principes juridiques: l'obligation qu'ont les États, conformément à la norme de la diligence voulue, de prendre des mesures positives pour prévenir les violences commises par des acteurs non étatiques au moyen d'armes de petit calibre et les incidences du principe de légitime défense sur les politiques de l'État en matière d'armes de petit calibre.

4. L'axe directeur de la présente étude en matière de droits de l'homme est le principe selon lequel les États doivent tout faire pour porter au niveau le plus élevé possible la protection des droits de l'homme, pour le plus grand nombre, à l'échelle tant nationale qu'internationale. En d'autres termes, pour respecter les obligations qui leur incombent en vertu du droit international des droits de l'homme, les États doivent adopter et appliquer des lois et politiques qui prévoient la meilleure protection des droits de l'homme pour le plus grand nombre. En ce qui concerne les violations liées aux armes de petit calibre, ce principe – porter la protection des droits de l'homme au niveau le plus élevé possible – signifie que les États ont l'obligation négative de prévenir la Commission de ces violations par des représentants de l'État et l'obligation positive d'accroître la sécurité publique et de réduire la violence découlant de l'utilisation d'armes de petit calibre par des acteurs privés.

5. En conséquence, les États sont tenus de prendre des mesures efficaces pour réduire la demande d'armes de petit calibre en assurant la sécurité publique grâce à une application

adéquate des lois. Les représentants de l'État, notamment les agents de la force publique, sont au service de la communauté et sont tenus de protéger toutes les personnes en favorisant la primauté du droit et en empêchant la commission d'actes illégaux. Leurs actes doivent être conformes aux droits de l'homme et au haut degré de responsabilité qu'exige leur profession (Code de conduite pour les responsables de l'application des lois, résolution 34/169 de l'Assemblée générale en date du 17 décembre 1979).

6. Pour porter la protection des droits de l'homme au niveau le plus élevé possible, les États sont également tenus de prendre des mesures efficaces pour réduire au minimum les violences commises par des particuliers, en appliquant des sanctions pénales aux personnes qui utilisent des armes de petit calibre pour enfreindre la loi et en faisant en sorte que des armes de petit calibre ne tombent pas entre les mains de ceux qui sont susceptibles d'en faire un mauvais usage. Enfin, en ce qui concerne les considérations extraterritoriales relatives aux droits de l'homme, les États sont tenus d'empêcher le transfert transfrontière d'armes de petit calibre et d'armes légères lorsque ces armes sont susceptibles d'être utilisées pour commettre des violations des droits de l'homme ou du droit international humanitaire.

7. La Sous-Commission a un rôle crucial à jouer dans l'examen de la question des conséquences pour les droits de l'homme de l'offre, du transfert et de l'utilisation abusive des armes de petit calibre. Aucune autre instance de l'ONU n'a traité de cette question particulière. Malgré les effets bien connus et dévastateurs des armes de petit calibre sur les droits des personnes dans le monde entier, il n'y a pas eu de texte faisant référence aux droits de l'homme adopté à l'issue de la Conférence des Nations Unies chargée d'examiner les progrès accomplis dans l'exécution du Programme d'action en vue de prévenir, combattre et d'éliminer le commerce illicite des armes légères sous tous ses aspects, qui s'est récemment achevée.

I. OBLIGATION DÉCOULANT DU DROIT INTERNATIONAL HUMANITAIRE DE PRÉVENIR LES VIOLENCES COMMISES PAR DES ACTEURS NON ÉTATIQUES AU MOYEN D'ARMES DE PETIT CALIBRE

8. La présente étude est notamment axée sur la mesure dans laquelle les États sont responsables de la prévention des violations des droits de l'homme commises au moyen d'armes de petit calibre par des acteurs non étatiques, notamment des civils en dehors des périodes de conflit. L'urgence de cette question a été renforcée par le fait que depuis que la Rapporteuse spéciale a mis en lumière la première fois la gravité des atteintes aux droits de l'homme commises par des acteurs non étatiques (E/CN.4/Sub.2/2003/29, par. 30 à 35), le nombre estimé de décès liés à l'usage d'armes à feu en dehors des périodes de conflit a augmenté. On estime aujourd'hui que les violences par armes à feu représentent 200 000 à 270 000 homicides et suicides par an². Les taux élevés de violences par armes à feu en dehors des périodes de conflit ne se traduisent pas seulement par des décès et des blessures mais aussi par un affaiblissement de la protection de l'ensemble des droits de l'homme qui se produit lorsque la communauté vit dans un climat d'insécurité. Compte tenu de la gravité de ces violations, il faut porter une attention renouvelée aux bases juridiques et politiques du droit international des droits de l'homme en vertu duquel les États sont tenus d'empêcher la commission au moyen d'armes à feu, par des agents du secteur privé, d'atteintes raisonnablement prévisibles.

9. Conformément au droit international des droits de l'homme, les États doivent porter à un niveau aussi élevé que possible la protection du droit à la vie³. Cette responsabilité emporte des

obligations négatives et positives: les représentants de l'État doivent s'abstenir de commettre des violations au moyen d'armes de petit calibre et les États doivent prendre des mesures pour réduire au minimum les violences armées entre acteurs privés. Dans les sections ci-après, la Rapporteuse spéciale expose le principe juridique – celui de la diligence voulue – qui fonde l'obligation positive qu'ont les États de protéger les droits de l'homme contre les violences armées commises par des agents du secteur privé. Elle énonce ensuite les mesures efficaces spécifiques qui sont requises en vertu de ce principe pour porter au niveau le plus élevé possible la protection des droits de l'homme dans le contexte de ces violences.

A. La norme de la diligence voulue au regard des violences commises par des acteurs privés

10. Conformément au paragraphe 1 de l'article 2 du Pacte international relatif aux droits civils et politiques, les États sont tenus de respecter et de garantir les droits de l'homme de toutes les personnes. Garantir les droits de l'homme exige une action positive de l'État contre les violences raisonnablement prévisibles commises par des acteurs privés. Les commentateurs juridiques, en particulier dans le domaine des droits fondamentaux des femmes, ont noté depuis longtemps que les États ont l'obligation d'exercer la diligence voulue pour empêcher la commission d'atteintes aux droits de l'homme par des particuliers⁴. L'un d'eux, M. John Cerone, a entrepris une étude complète et utile de l'application de la norme de la diligence voulue dans le droit international des droits de l'homme, relevant qu'il est fait référence à cette norme «dans les rapports des rapporteurs spéciaux, des représentants spéciaux et du Secrétaire général de l'ONU, dans les observations générales, constatations et observations finales des organes créés en vertu d'instruments internationaux relatifs aux droits de l'homme, dans les rapports des réunions des groupes d'experts, dans les résolutions de la Commission des droits de l'homme et du Conseil économique et social, dans les déclarations de l'Assemblée générale et dans les écrits des publicistes»⁵.

1. Le Comité des droits de l'homme

11. Le Comité des droits de l'homme a régulièrement traité de la responsabilité en matière de diligence voulue qui incombe aux États parties au Pacte international relatif aux droits civils et politiques. Dans son observation générale n° 6 (1982) sur le droit à la vie, par exemple, il a interprété au sens large l'obligation qui incombe à l'État de protéger le droit à la vie conformément à l'article 6, notant ce qui suit: «Le Comité considère que les États parties doivent prendre des mesures, non seulement pour prévenir et réprimer les actes criminels qui entraînent la privation de la vie, mais également pour empêcher que leurs propres forces de sécurité ne tuent des individus de façon arbitraire». Dans son observation générale n° 18 (1989) sur la non-discrimination, il a demandé aux États parties de ne pas citer uniquement les dispositions de leur Constitution ou de leur législation lorsqu'ils font rapport sur le paragraphe 1 de l'article 2 et les articles 3 et 26 du Pacte, faisant valoir ce qui suit: «ces renseignements sont évidemment utiles, mais le Comité souhaiterait savoir s'il se pose encore des problèmes liés à une discrimination de fait, de la part, soit des pouvoirs publics ou de la communauté, soit des particuliers ou des organismes privés». De même, on peut lire ce qui suit dans l'observation générale n° 27 (1999) sur la liberté de circulation, «l'État partie doit veiller à ce que les droits garantis par l'article 12 échappent à toute ingérence, tant publique que privée» (par. 6). Dans son observation générale n° 31 (2004) sur la nature de l'obligation juridique générale imposée aux États parties au Pacte, il a précisé en ces termes les dispositions du paragraphe 1 de l'article 2:

«Les États parties ne pourront pleinement s'acquitter de leurs obligations positives de garantir les droits reconnus dans le Pacte que si les individus sont protégés par l'État non seulement contre les violations de ces droits par ses agents, mais aussi contre des actes commis par des personnes privées, physiques ou morales, qui entraveraient l'exercice des droits énoncés dans le Pacte dans la mesure où ils se prêtent à une application entre personnes privées, physiques ou morales» (par. 8).

12. Le Comité des droits de l'homme a également appliqué la norme de la diligence voulue dans sa jurisprudence. Dans la communication n° 859/1999, *Jiménez Vaca c. Colombie*, il a estimé qu'il y avait eu violation du paragraphe 1 de l'article 6 du Pacte, notamment parce que l'État n'avait pas exercé la diligence voulue pour mener une enquête en vue d'identifier les responsables d'un attentat contre la vie de l'auteur, ce qui empêchait celui-ci de vivre en sécurité en Colombie. Il a également estimé que pour s'acquitter des obligations qui lui incombent en vertu de l'article 2 du Pacte, «l'État partie [était] tenu de veiller à ce que des violations analogues ne se reproduisent pas à l'avenir» (par. 9).

2. Autres organes conventionnels et procédures spéciales

13. D'autres organes créés en vertu d'instruments relatifs aux droits de l'homme ont également reconnu les obligations des États en matière de diligence voulue dans des observations générales, des communications et des observations finales. Le Comité pour l'élimination de la discrimination à l'égard des femmes a affirmé ce qui suit, au paragraphe 9 de sa recommandation générale n° 19: «En vertu du droit international en général et des pactes relatifs aux droits de l'homme, les États peuvent être également responsables d'actes privés s'ils n'agissent pas avec la diligence voulue pour prévenir la violation de droits ou pour enquêter sur des actes de violence, les punir et les réparer». Le Comité pour l'élimination de la discrimination raciale a estimé, dans la communication n° 4/1991 (CERD/C/42/D/4/1991), *L. K. c. Pays-Bas*, que l'État avait violé l'article 4 a) du traité parce qu'il avait manqué à son devoir «d'enquêter rapidement et diligemment» dans une affaire de remarques et de menaces racistes émanant de personnes privées. Dans ses observations finales sur le rapport des Émirats arabes unis (A/50/18), il a recommandé que «l'État partie apporte la plus haute diligence pour [empêcher que des] actes [constituant des] mauvais traitements [soient commis sur la personne] de travailleurs étrangers, surtout des domestiques étrangères, et prenne toutes mesures utiles pour éviter toute discrimination raciale à leur rencontre».

14. L'application de la norme de la diligence voulue pour protéger les droits des individus des atteintes commises par des acteurs privés apparaît également dans les rapports des procédures spéciales de l'ONU. Ainsi, dans le dernier rapport du Rapporteur spécial sur les exécutions extrajudiciaires, sommaires ou arbitraires, l'auteur note que «les États ont l'obligation juridique d'exercer la “diligence due” pour protéger la vie des individus contre les attaques de criminels, y compris de terroristes, de voleurs à main armée, de pilleurs et de pourvoyeurs de drogues» (E/CN.4/2006/53, par. 47). En particulier, le Rapporteur spécial utilise cet argument dans son rapport pour condamner expressément le recours par plusieurs gouvernements à la tactique du «tirer pour tuer» et pour engager les États, qui doivent faire face à des menaces terroristes ou autres, à préciser leurs politiques compte tenu des obligations qui leur incombent en matière des droits de l'homme et à former en conséquence les agents de la force publique.

B. Mesures efficaces pour s'acquitter de l'obligation de diligence voulue

15. Compte tenu de l'obligation de diligence voulue qu'impose le droit international des droits de l'homme, il reste à savoir quelles mesures particulières les États doivent prendre pour se conformer à cette norme en ce qui concerne la prévention des atteintes aux droits de l'homme commises par des acteurs non étatiques au moyen d'armes de petit calibre. Le cadre juridique dans lequel s'inscrivent les actions que doit mener l'État est d'abord défini au paragraphe 2 de l'article 2 du Pacte international relatif aux droits civils et politiques, aux termes duquel les États parties sont tenus d'adopter «[des] mesures d'ordre législatif ou autre, propres à donner effet aux droits reconnus dans le Pacte». Conformément à cette disposition, les États doivent adopter des lois pour rendre les individus responsables des atteintes au droit à la vie d'autrui qu'ils commettent. Dans tous les États, bien sûr, la législation nationale incrimine l'homicide. Outre l'adoption d'une législation générale, les organes qui s'occupent des droits de l'homme ont souligné que les États devaient prendre d'autres mesures efficaces «grâce à un mécanisme de contrôle» afin de protéger les droits fondamentaux⁶.

16. Les mesures efficaces minimales que les États doivent adopter pour s'acquitter de leur obligation d'exercer la diligence voulue pour prévenir les violences causées par des armes de petit calibre ne doivent donc pas se limiter à la simple incrimination des actes de violence armée. En vertu du principe de la diligence voulue, les organes créés en vertu d'instruments relatifs aux droits de l'homme peuvent raisonnablement exiger des États qu'ils appliquent un système minimum de licence permettant d'empêcher que des armes de petit calibre et des armes légères ne tombent entre les mains de personnes susceptibles d'en faire mauvais usage⁷.

La reconnaissance de ce principe est confirmée par les réponses au questionnaire de la Rapporteuse spéciale chargée de procéder à une étude complète de la question de la prévention des violations des droits de l'homme commises à l'aide d'armes de petit calibre et d'armes légères qui montrent que la pratique consistant à imposer une licence pour la possession d'armes de petit calibre et de munitions est largement répandue⁸. Les critères régissant l'octroi des licences peuvent varier en fonction des pays mais les éléments suivants sont pris en compte dans la plupart des cas: a) âge minimum du requérant; b) antécédents judiciaires, y compris violence intrafamiliale; c) preuve que la demande est fondée sur un but légitime; d) aptitude mentale⁹.

Les autres critères retenus sont notamment la connaissance des lois relatives aux armes de petit calibre, l'entraînement au maniement correct d'une arme à feu et un stockage approprié.

Les licences devraient être renouvelées régulièrement pour éviter qu'elles soient transférées à des personnes non autorisées. Ces critères régissant l'octroi des licences ne sont pas des barrières insurmontables à la possession légitime d'armes à feu par des civils. Le principe selon lequel les lois et procédures régissant la possession d'armes de petit calibre par des civils doivent rester la prérogative fondamentale des États nationaux fait l'objet d'un large consensus international¹⁰.

Alors que la question de la réglementation de la possession d'armes à feu par des civils reste controversée dans le débat public – en grande partie à cause des efforts des fabricants d'armes et des organisations proarmes basées aux États-Unis – il existe en réalité un consensus quasiuniversel sur la nécessité de mettre en place des normes minimales raisonnables afin que la législation nationale prévoit un système de licence pour la possession d'armes à feu par des civils de façon à favoriser la sécurité publique et à protéger les droits de l'homme¹¹.

Ce consensus est un élément qui doit être pris en compte par les mécanismes relatifs aux droits de l'homme lorsqu'ils examinent l'obligation positive qui incombe aux États de prévenir les atteintes aux droits de l'homme auxquels il ne peut être dérogé dans les affaires de violence par arme à feu commises par des particuliers.

17. Les organes s'occupant des droits de l'homme chargés de superviser l'action de l'État en vue de protéger le droit à la vie devraient également prendre en considération d'autres mesures efficaces. Ces mesures sont analogues aux lignes directrices de l'ONU adoptées pour assurer une véritable protection aux autres obligations impératives en matière de droits de l'homme¹². Elles prévoient notamment:

- a) L'interdiction de la possession par des civils d'armes conçues pour un usage militaire (fusils d'assaut automatiques et semi-automatiques, mitrailleuses et armes légères);
- b) La mise en œuvre et la promotion d'amnisties pour encourager ceux qui utilisent des armes à les déposer;
- c) L'obligation pour les fabricants de mettre en place un système de marquage et de traçage des armes;
- d) La prise en compte des sexospécificités dans les efforts de sensibilisation du public, afin que les besoins particuliers et les droits fondamentaux des femmes et des enfants soient respectés, surtout dans les régions qui sortent d'un conflit.

18. Le projet de principes proposés par la Rapporteuse spéciale (E/CN.4/Sub.2/2005/35) (en particulier les principes 10 à 14) a pour objet de préciser la nature de l'obligation de diligence voulue qui incombe aux États en vertu du droit international des droits de l'homme, en particulier en ce qui concerne les acteurs non étatiques.

II. LE PRINCIPE DE LA LÉGITIME DÉFENSE AU REGARD DES VIOLATIONS DES DROITS DE L'HOMME COMMISES AU MOYEN D'ARMES DE PETIT CALIBRE ET D'ARMES LÉGÈRES

19. Le présent rapport examine et prend en compte le principe de la légitime défense dans le droit des droits de l'homme et évalue la place qu'il occupe parmi les principes relatifs aux droits de l'homme qui régissent les armes de petit calibre et les armes légères¹³. Les adversaires de la réglementation par l'État de la possession d'armes à feu par des civils affirment que le principe de la légitime défense donne un fondement juridique au «droit» de posséder des armes de petit calibre, niant ou minimisant ainsi sensiblement le devoir qu'ont les États de réglementer la possession d'armes¹⁴. Le présent rapport conclut que, s'il tient une place importante dans le droit international des droits de l'homme, le principe de la légitime défense ne confère pas un droit supérieur et indépendant de posséder des armes de petit calibre, pas plus qu'il n'infirme le devoir qu'ont les États d'exercer la diligence voulue pour réglementer la possession de ces armes par des civils.

A. La légitime défense: un motif d'exonération de la responsabilité pénale non assimilable à un droit de l'homme

20. La légitime défense est une exception largement reconnue, bien qu'interdite par la loi, au devoir universel de respecter la vie d'autrui. Elle fonde l'exonération de la responsabilité pénale que peut invoquer tout agent de l'État ou tout acteur non étatique. Elle est parfois désignée comme un «droit» mais cette interprétation n'est pas juridiquement fondée. La légitime défense

est plutôt un moyen de protéger le droit à la vie et, à ce titre, elle permet d'éviter la responsabilité en cas de non-respect des droits d'autrui.

21. Aucun droit fondamental international de légitime défense n'est énoncé expressément dans les sources primaires du droit international que sont les traités, le droit coutumier ou les principes généraux. Alors que la quasi-totalité des instruments internationaux importants relatifs aux droits de l'homme consacrent le droit à la vie, le principe de la légitime défense n'est reconnu expressément que dans un seul traité, à l'article 12 de la Convention de sauvegarde des droits de l'homme et des libertés fondamentales (Convention européenne des droits de l'homme)¹⁵. Cela étant, la légitime défense n'est pas reconnue en tant que droit dans cette Convention. Selon un commentateur, «cette disposition a simplement pour objet de faire sortir du champ d'application du paragraphe 1 de l'article 2 les homicides nécessaires pour se défendre contre la violence illégale. Elle ne confère pas un droit que l'État est tenu de garantir»¹⁶.

22. La légitime défense est largement reconnue dans le droit coutumier international en tant que moyen de défense contre la responsabilité pénale, comme le montre la pratique des États. Cependant, rien n'indique que des États l'aient érigée en droit à part entière dans leur législation, pas plus qu'il n'y a d'*opinio juris* qui contraindrait les États à reconnaître un droit à la légitime défense supérieur et indépendant qu'ils seraient tenus de mettre en œuvre dans le cadre de leur juridiction nationale en tant que droit supérieur.

23. De même, dans le droit pénal international, la légitime défense fonde l'exonération de la responsabilité pénale mais ne constitue pas un droit indépendant. Le Tribunal pénal international pour l'ex-Yougoslavie a noté les éléments universels du principe de la légitime défense¹⁷. Il a relevé que «le principe de légitime défense» énoncé au paragraphe 1 de l'article 31 du Statut de Rome de la Cour pénale internationale «se retrouv[ait] dans la plupart des codes pénaux nationaux et [pouvait] être considéré comme faisant partie intégrante du droit international coutumier»¹⁸. Comme l'indique clairement le chapeau de l'article 31, la légitime défense est définie comme un des «motifs de l'exonération de responsabilité pénale». La défense juridique définie à l'alinéa *d* du paragraphe 1 de l'article 31 est la suivante:

«le comportement dont il est allégué qu'il constitue un crime relevant de la compétence de la Cour a été adopté sous la contrainte résultant d'une menace de mort imminente ou d'une atteinte grave, continue ou imminente à sa propre intégrité physique ou à celle d'autrui, et si elle a agi par nécessité et de façon raisonnable pour écarter cette menace, à condition [que la personne] n'ait pas eu l'intention de causer un dommage plus grand que celui qu'elle cherchait à éviter»¹⁹.

Le droit pénal international définit donc la légitime défense comme un élément à prendre en compte pour déterminer la responsabilité pénale et non comme un droit indépendant que les États sont tenus de mettre en œuvre.

24. La jurisprudence des organes créés en vertu d'instruments internationaux relatifs aux droits de l'homme contient des éléments exigeant des États qu'ils prennent en considération et évaluent l'invocation de la légitime défense dans le cadre du droit des accusés d'être jugés équitablement. Certains membres du Comité des droits de l'homme ont même affirmé que, conformément au paragraphe 2 de l'article 6 du Pacte international relatif aux droits civils et politiques, les tribunaux nationaux doivent, avant de condamner une personne à mort, prendre en considération

la situation personnelle du défendeur, notamment si celui-ci invoque la légitime défense, compte tenu de l'obligation qu'ont les États parties de protéger le droit à la vie²⁰. Dans les juridictions de *common law*, les tribunaux doivent prendre en compte les faits et la situation personnelle avant de prononcer une condamnation à la peine capitale dans les affaires d'homicide. De même, dans les pays de droit romain, «diverses circonstances aggravantes ou atténuantes telles que la légitime défense, la nécessité, un état de détresse et les facultés de discernement de l'accusé doivent être examinées avant d'arriver à une déclaration de culpabilité et de prononcer une condamnation dans chaque affaire d'homicide»²¹.

25. Là aussi, l'interprétation du Comité tend à exiger que les États prennent en compte la légitime défense dans le cadre du droit pénal. L'État peut donc être tenu d'exonérer un défendeur de sa responsabilité si celui-ci a utilisé une arme à feu dans une situation extrême où cet usage était nécessaire et proportionné face à une menace imminente contre sa vie. Pour autant, aucune de ces autorités n'affirme que l'État aurait l'obligation impérative, découlant du droit international, de permettre à un défendeur d'avoir accès à une arme à feu.

B. Critères de nécessité et de proportionnalité applicables à la légitime défense

26. Les organes internationaux et les États définissent tous la légitime défense en termes de nécessité et de proportionnalité²². La recevabilité ou le rejet du moyen de la légitime défense dans une affaire donnée dépend de l'examen des faits. Lorsque des armes de petit calibre et des armes légères sont utilisées à des fins de légitime défense, par exemple, celle-ci ne suffit pas à exonérer de la responsabilité d'avoir porté atteinte au droit d'autrui à la vie, sauf si l'acte était nécessaire pour sauver une ou plusieurs vies et que la force employée était proportionnelle à la menace.

27. L'utilisation d'armes de petit calibre et d'armes légères par des acteurs étatiques ou non étatiques élève automatiquement le seuil de la gravité de la menace qui doit être établi pour justifier le recours à ce type d'armes pour se défendre, conformément au principe de proportionnalité. Compte tenu du caractère létal de ces armes et de l'obligation impérative de respecter le droit à la vie qui est imposée à tous les États et à tous les particuliers²³, les armes de petit calibre et les armes légères ne peuvent être utilisées pour se défendre que dans les circonstances les plus extrêmes, à savoir lorsque le droit à la vie est déjà menacé ou compromis de manière injustifiable.

28. Les critères régissant le recours justifiable à la force par des agents publics à des fins de légitime défense sont énoncés dans les Principes de base des Nations Unies sur le recours à la force et l'utilisation des armes à feu par les responsables de l'application des lois. Lorsque des circonstances exceptionnelles exigent qu'ils aient recours à la force pour protéger des vies, les agents publics peuvent utiliser des armes à feu et invoquer la légitime défense ou la défense d'autrui pour justifier leur décision²⁴. Cependant, s'il est possible d'éviter la menace sans avoir recours à la force, l'obligation de protéger la vie impose aux responsables de l'application des lois d'employer tout autre moyen non violent et toute autre méthode non létale de contrainte et de règlement des conflits²⁵.

29. Compte tenu de la gravité de ses conséquences, il est nécessaire que l'utilisation des armes à feu fasse l'objet de lignes directrices plus détaillées et plus strictes que celles régissant d'autres moyens qui constituent également un recours à la force²⁶. Même lorsque l'utilisation d'une arme

à feu n'entraîne pas la mort, les blessures causées par des tirs peuvent être paralysantes et douloureuses et sont susceptibles d'immobiliser une personne pour une période bien plus longue que d'autres méthodes d'immobilisation temporaire²⁷. Le manuel à l'intention de la police sur les normes relatives aux droits de l'homme et leur application pratique publié par le Haut-Commissariat des Nations Unies aux droits de l'homme dispose que «les armes à feu ne doivent être utilisées qu'en cas d'extrême nécessité»²⁸. Toute utilisation d'une arme à feu par un responsable de l'application des lois en dehors des situations mentionnées ci-dessus est susceptible d'être incompatible avec les normes relatives aux droits de l'homme.

1. Le Comité des droits de l'homme

30. Le Comité des droits de l'homme a entériné les critères de la nécessité et de la proportionnalité qui permettent aux agents de la force publique d'invoquer la légitime défense. Dans l'affaire *Suarez de Guerrero c. Colombie*, le Comité a estimé que Maria Fanny Suarez de Guerrero avait été arbitrairement privée de la vie à cause de l'utilisation d'une arme à feu par des responsables de l'application des lois en Colombie, car «rien ne [venait] prouver que la police [avait] été obligée d'agir ainsi pour se défendre ou défendre des tiers, ni que cette action était nécessaire pour procéder à l'arrestation ou empêcher la fuite des personnes concernées»²⁹. Il a en outre estimé que la force utilisée pour causer le décès de M^{me} de Guerrero était «hors de proportion avec les exigences du maintien de l'ordre dans les circonstances de l'affaire» et, partant, que «le droit à la vie n'[était] pas convenablement protégé par la législation colombienne ainsi que l'exigent les dispositions du paragraphe 1 de l'article 6»³⁰. En outre, dans l'affaire *Burrell c. Jamaïque*³¹, le Comité a estimé que l'homicide volontaire d'un détenu, survenu à l'issue de la prise en otage puis de la libération de plusieurs gardiens de prison, était la conséquence de la panique qui s'était emparée des gardiens et n'était pas commandé par la nécessité de la légitime défense. Burrell ne faisait courir à personne un danger qui justifiait son homicide arbitraire par des agents publics; tous les gardiens avaient été libérés et «le recours à la force ne s'imposait donc plus»³². Les autorités jamaïcaines avaient donc violé le droit à la vie de Burrell et ne pouvaient se justifier en invoquant la légitime défense³³.

2. Cour européenne des droits de l'homme

31. La Cour européenne des droits de l'homme a également pris acte des critères de la nécessité et de la proportionnalité, énoncés dans les Principes de base, qui permettent d'invoquer la légitime défense. Dans l'affaire *Natchova et autres c. Bulgarie*, où deux personnes ont été abattues par balles par un membre de la police militaire qui tentait de les arrêter, elle a estimé qu'il y avait eu violation du droit à la vie. Dans sa conclusion, elle a rejeté l'argument du Gouvernement bulgare selon lequel les actes du membre de la police militaire ne constituaient pas une violation du droit à la vie car il avait respecté son obligation, conformément à la loi bulgare, «dans la mesure du possible, de protéger la vie de la personne contre laquelle [il avait] recours à la force». La Cour a au contraire fait sienne la norme selon laquelle «la force utilisée ne doit pas être supérieure à celle qui est “absolument nécessaire”». Elle a indiqué:

L'emploi d'armes à feu potentiellement meurtrières met inévitablement la vie en danger, même lorsqu'il existe des règles visant à réduire les risques au minimum. Par conséquent, la Cour estime que l'utilisation de telles armes à feu ne saurait en aucun cas être «rendue absolument nécessaire», au sens de l'article 2 § 2 de la Convention, pour arrêter une personne soupçonnée d'une infraction sans

violence et dont on sait qu'elle ne représente aucune menace pour la vie ou l'intégrité physique de quiconque, même s'il peut en résulter une impossibilité d'arrêter le fugitif³⁴.

32. Dans l'affaire *McCann et autres c. Royaume-Uni*, la Cour a estimé que le paragraphe 2 de l'article 2 de la Convention européenne des droits de l'homme, qui prévoit l'exception de la légitime défense au droit à la vie, exigeait que la nécessité absolue et la proportionnalité soient prouvées pour justifier l'usage de la force par des agents de l'État qui avaient porté atteinte au droit à la vie³⁵.

C. L'invocation de la légitime défense ne dispense pas de l'obligation d'exercer la diligence voulue pour prévenir les violences commises par des particuliers

33. Le souhait d'un individu de porter une arme pour se défendre doit être considéré dans le contexte plus large de l'obligation qu'a l'État de porter au niveau le plus élevé possible la protection des droits de l'homme. L'État est tenu, conformément au droit international, de promouvoir l'application de la loi et de réprimer la violence privée en créant un système juridique et social dans lequel le devoir général est d'éviter l'usage de la force lorsque des moyens non violents d'assurer sa propre protection sont raisonnablement disponibles³⁶.

34. Même s'il existait un «droit fondamental à la légitime défense», cela n'infirmerait pas l'obligation qu'a l'État d'exercer la diligence voulue pour porter au niveau le plus élevé possible la protection du droit à la vie à l'aide de règlements raisonnables régissant la possession d'armes par des civils. S'il n'existe pas de texte international interdisant aux civils de posséder une arme, il n'en existe pas non plus qui autorise toute personne à porter une arme. L'État doit prendre en compte la communauté dans son ensemble, et pas uniquement l'individu, lorsqu'il s'acquitte de son obligation de réduire au minimum la violence physique.

35. Ainsi, même s'il existait un «droit» à la légitime défense, cela n'infirmerait pas la responsabilité qui incombe à l'État de faire en sorte que des armes ne tombent pas entre les mains de ceux qui sont les plus susceptibles d'en faire mauvais usage. Comme l'indiquent les réponses au questionnaire de la Rapporteuse spéciale, les États procèdent couramment à un examen minutieux pour déceler toute éventualité d'utilisation abusive d'une arme afin de prévenir les violences commises par des acteurs non étatiques au moyen d'armes de petit calibre, conformément à leurs intérêts politiques légitimes. Cette pratique montre que le principe juridique de la diligence voulue, qui a été élaboré par de nombreux organes internationaux, peut être appliqué de manière responsable sans avoir d'incidence négative manifeste sur la législation relative à la légitime défense. Les États devraient donc, à tout le moins, adopter des règlements pour éviter que des armes ne tombent entre les mains de personnes dont on peut raisonnablement penser – en fonction de facteurs tels que l'âge, les antécédents de criminalité ou de violence personnelle ou l'inaptitude mentale – qu'elles ne comprennent pas ou ne respecteront pas les exigences de nécessité et de proportionnalité qui sont les conditions préalables pour invoquer la légitime défense.

36. Après avoir établi que l'obligation positive qu'ont les États d'imposer des règlements limitant la libre possession d'armes à feu par des civils n'est pas incompatible avec le principe de la légitime défense, on peut citer d'autres exemples de réglementation appropriée. Ainsi, l'État a

des obligations impératives lorsqu'il s'agit de protéger les droits de groupes vulnérables, notamment les victimes de violence dans la famille, qui courent le risque le plus élevé en cas d'usage abusif d'une arme à feu détenue au foyer. La présence d'une arme à feu au foyer peut aisément transformer la violence familiale en homicide familial. Des études réalisées récemment montrent qu'aux États-Unis, dans 59 % des homicides de femmes commis par le partenaire intime de la victime, l'auteur a utilisé une arme à feu³⁷ et que le fait de détenir une ou plusieurs armes à feu au foyer multiplie par 7,2 le risque que la femme soit assassinée par un partenaire intime³⁸. Bien que la légitime défense soit invoquée pour justifier la possession d'une arme à feu, les travaux de recherche montrent que les armes sont rarement utilisées pour empêcher des crimes ou tuer des criminels³⁹. Au contraire, elles sont souvent dirigées contre la personne qui est peut-être la mieux placée pour invoquer cette légitime défense, à savoir la femme elle-même⁴⁰. Compte tenu de ces éléments et de l'obligation internationale de diligence voulue qui a été élaborée par les organes qui s'occupent des droits de l'homme pour prévenir la violence à l'égard des femmes, notamment le fait que «les gouvernements ont le devoir (...) d'agir avec la diligence voulue pour prévenir les actes de [violence contre les femmes], enquêter à leur sujet et les punir conformément à la législation nationale, de prendre des mesures effectives et appropriées concernant ces actes, qu'ils soient le fait de l'État ou de particuliers»⁴¹, l'État a l'obligation incontestable, conformément au droit international, de faire en sorte que des armes de petit calibre ne tombent pas entre les mains des personnes qui ont des antécédents de violence au sein de la famille.

37. Un examen minutieux pour déceler toute éventualité d'utilisation abusive et la confiscation des armes lorsqu'il y a des antécédents de violence au sein de la famille sont deux exemples dans lesquels l'obligation qu'ont les États d'exercer la diligence voulue pour réglementer les armes à feu est a) conforme à des pratiques publiques courantes et b) compatible avec le principe de la légitime défense. Ces règlements peuvent être appliqués de telle sorte qu'ils ne se traduisent pas par une confiscation générale des armes, comme le font valoir avec mauvaise foi ceux qui s'opposent à toute réglementation de la possession d'armes par des civils. Ce type de règlements peut aussi être évalué en se fondant sur l'expérience des États qui les appliquent et sur les critères mentionnés dans le présent document et dans le projet de principes.

D. La légitime défense des États contre la force employée par d'autres États

38. Enfin, il est important d'examiner rapidement l'affirmation selon laquelle l'Article 51 de la Charte des Nations Unies confère aux particuliers un droit à la légitime défense⁴². La capacité de l'État d'avoir recours à la force contre un autre État au titre de la légitime défense, par une action individuelle ou collective avec d'autres États, est énoncée à l'Article 51 de la Charte des Nations Unies⁴³. Cet article est applicable aux États Membres de l'ONU qui se défendent en cas d'agression armée visant leur souveraineté. Il prévoit une exception à l'interdiction générale par le droit international de recourir à la menace ou à l'emploi de la force, tel que l'exprime le paragraphe 4 de l'Article 2 de la Charte⁴⁴. Le droit coutumier international oblige également les États qui agissent en état de légitime défense contre d'autres États à respecter les trois critères de la nécessité, de la proportionnalité et de l'imminence de la menace⁴⁵.

39. Le droit à la légitime défense en droit international ne vise pas à préserver la vie des individus dans le pays agressé; il a pour objet la préservation de l'État⁴⁶. L'Article 51 n'a pas été conçu pour s'appliquer à des situations de légitime défense concernant des particuliers⁴⁷. Il n'a jamais été question au Conseil de sécurité ni à l'Assemblée générale qu'il s'applique de quelque

manière que ce soit à des personnes privées⁴⁸. Antonio Cassese note que le principe de la légitime défense invoqué par des particuliers est souvent confondu à tort avec la légitime défense en vertu du droit international public, tel que l'énonce notamment l'Article 51⁴⁹. «Celle-ci se réfère au comportement d'États ou d'entités de type étatique, alors que le premier concerne des particuliers contre d'autres particuliers (...) la confusion entre les deux est fréquente.⁵⁰»

III. CONCLUSIONS ET RECOMMANDATIONS

40. **Pour s'acquitter des obligations qui leur incombent en vertu du droit international des droits de l'homme, les États doivent adopter et appliquer des lois et politiques permettant de porter au niveau le plus élevé possible la protection des droits de l'homme pour le plus grand nombre. Ils doivent considérer la communauté dans son ensemble et non uniquement l'individu lorsqu'ils se conforment à leur obligation de réduire au minimum les violences en favorisant la primauté du droit et en réprimant la violence privée. Le droit international des droits de l'homme prescrit aux États «de respecter et de garantir» les droits de l'homme pour toutes les personnes placées sous leur juridiction. Conformément à ce mandat, les États ont l'obligation positive de protéger les individus contre les violations et les atteintes commises par des acteurs étatiques et non étatiques.**

41. **Les États doivent prendre des mesures efficaces pour que les personnes n'aient pas besoin de s'armer, en assurant la sécurité publique grâce à l'action de responsables de l'application des lois engagés et formés pour protéger l'État de droit et empêcher les actes illégaux.**

42. **Les États doivent également prendre des mesures efficaces pour réduire au minimum les actes de violence commis par des acteurs armés du secteur privé. Ils sont tenus d'infliger des sanctions pénales aux personnes qui utilisent des armes pour enfreindre la loi. Ils sont en outre tenus, conformément au principe de la diligence voulue, de faire en sorte que des armes de petit calibre ne tombent pas entre les mains de ceux qui sont susceptibles d'en faire mauvais usage. Conformément à la norme de la diligence voulue, les organes créés en vertu d'instruments internationaux relatifs aux droits de l'homme devraient exiger des États qu'ils appliquent un système de licence minimum permettant d'éviter que des armes de petit calibre ne soient utilisées par des acteurs privés pour porter atteinte à des droits de l'homme.**

43. **Les autres mesures efficaces compatibles avec l'obligation d'exercer la diligence voulue sont notamment l'interdiction de la possession par des civils d'armes conçues pour un usage militaire; la promotion de programmes d'amnistie efficaces pour diminuer le nombre d'armes dont il est fait usage; l'obligation pour les fabricants de mettre en place un système de marquage et de traçage des armes; et la prise en compte des sexes dans les politiques relatives aux armes de petit calibre. Les États ont l'obligation positive, en vertu du droit international des droits de l'homme, de protéger les groupes les plus exposés au mauvais usage des armes de petit calibre, notamment les victimes de violence dans la famille.**

44. **Le principe de la légitime défense, en tant qu'exonération de la responsabilité pénale reconnue à l'échelle internationale, n'est pas incompatible avec l'obligation qu'ont les États d'exercer la diligence voulue pour réglementer la possession par des civils d'armes de petit**

calibre. Il n’y a pas de droit indépendant ou supérieur, dans les dispositions du droit international des droits de l’homme, exigeant des États qu’ils donnent aux civils accès aux armes de petit calibre; de même, le principe de la légitime défense ne diminue en rien l’obligation qu’a l’État d’exercer la diligence voulue pour que des armes ne tombent pas entre les mains de ceux qui sont les plus susceptibles d’en faire mauvais usage.

Au contraire, les États devraient s’acquitter de cette obligation dans le contexte du droit relatif à la légitime défense, en tenant compte notamment de la probabilité que les personnes qui détiennent des armes à feu s’en servent uniquement en cas de nécessité et en respectant le principe de proportionnalité.

45. L’Article 51 de la Charte des Nations Unies s’applique aux États qui réagissent en état de légitime défense à des attaques armées contre leur souveraineté. Il ne s’applique pas aux situations de légitime défense concernant des particuliers.

46. La Sous-Commission de la promotion et de la protection des droits de l’homme devrait prendre des mesures pour préciser la responsabilité positive qu’ont les États d’empêcher les violations des droits de l’homme commises au moyen d’armes de petit calibre. À cette fin, la Rapporteuse spéciale chargée de procéder à une étude complète de la question de la prévention des violations des droits de l’homme commises à l’aide d’armes de petit calibre et d’armes légères se féliciterait que la Sous-Commission adopte le projet de principes sur la prévention des violations des droits de l’homme commises à l’aide d’armes de petit calibre (E/CN.4/Sub.2/2005/35), qui est une contribution importante à l’élaboration de mesures relatives aux armes de petit calibre et aux armes légères que doivent poursuivre les États afin de donner effet aux droits de l’homme dans le monde entier.

Notes

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

² Graduate Institute of International Studies, *Small Arms Survey 2004: Rights at Risk*, Oxford University Press, 2004, p. 175. The highest regional concentration of firearm homicides is in Latin America and the Caribbean, with 40% of the estimated cases, and Africa, with 20 percent. 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. Id., pages 175-77.

³ See, *The Right to Life in International Law* 15 (Ramcharan, B.G., ed. 1985) (“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. Farrior, “The International Law on Trafficking in Women and Children for Prostitution: Making it Live Up to its Potential” (1997) 10 *Harv. Hum. Rts. J.* 213, 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” (1994) 7 Harv. Hum. Rts. J. 125; D. Shelton, “Private Violence, Public Wrongs and the Responsibilities of States”(1989) 13 Fordham Intl. L. J. 1, 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, Volume 7, 2001, 43 - 98 (2002) (footnotes omitted).

⁶ Human Rights Committee, General Comment 7, 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 35 out of 38 responding States indicated that they licence private ownership; three – Czech Republic, Qatar and Ukraine – did not answer the question.

⁹ See States’ responses to Part 2, Annex I. See also A/Conf.192/2006/PC/CRP.17, Conference room paper submitted by the Chairman, Preparatory Committee for the United Nations 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 (proposing 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 United Nations 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 including a proposed declaration of principles about the national regulation of civilian possession after at least twelve States spoke in favor of including the issue at the Review Conference. A/Conf.192/2006/PC/CRP.17. 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 that made reference to the regulation of civilian possession.

¹² See, 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, <http://www.unhcr.ch/pdf/8istprot.pdf> (accessed 6 July 2006) (establishing certain obligations that States must respect to ensure protection against torture). See also Human Rights Committee, General Comment 17, (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”) (emphasis added).

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, Joanne Eisen, “Is Resisting Genocide a Human Right?” 81 Notre Dame Law Review, No. 4 (2006) at 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 [European] Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, entered into force, Sept. 3, 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-Defense?” George Mason Journal of Law, Economics, & Policy (accepted for 2006 publication).

¹⁷ Antonio Cassese, International Criminal Law 223, n. 2 (2003) (citing *Prosecutor v. Kordić and Čerkez*, ICTY (Trial Chamber) (26 February 2001), at § 451). “In *Kordić and Čerkez* a Trial Chamber of the ICTY 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’.” *Id.* at 223 (citing *Prosecutor v. Kordić and Čerkez*, ICTY (Trial Chamber) (26 February 2001), at § 449).

¹⁸ Antonio Cassese, *International Criminal Law* 223, n. 2 (2003) (quoting *Prosecutor v. Kordić and Čerkez*, ICTY (Trial Chamber) (26 February 2001), at § 451).

¹⁹ Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, *adopted* July 17, 1998, *as corrected by the procès-verbaux of* November 10, 1998, July 12, 1999, and May 8, 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.*

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*)

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
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	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	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*)

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)

<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 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

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

<i>(continued)</i>	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
Are there laws requiring the licensing of all private ownership of small arms and ammunition?	Yes	Yes 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)

(continued)	Niger	Norway	Philippines	Poland	Portugal	Qatar	Republic of Korea	Romania	Saudi Arabia	Slovakia	South Africa	Spain	Sudan	Syrian Arab Republic	Trinidad and Tobago	Turkey	Ukraine	United Arab Emirates	Uzbekistan
• Do those laws require training be completed before issuing a licence?	No	No 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)

<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 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)

(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 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.⁵¹ 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)⁵²

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 officers⁵³ 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).⁵⁴ 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").⁵⁵

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

⁵¹ 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.

⁵² 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.

⁵³ The Czech Republic and Qatar did not answer these questions.

⁵⁴ 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.”

⁵⁵ 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	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 Licensing criteria, Section 18	The police directorate of jurisdiction shall issue a firearms permit only to a natural person who meets the following requirements: <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	Firearms Act (1/1998; amendments up to 804/2003 included) Sections 27-9	“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. ...” The licence may be revoked if the licence is holder of an offence indicating violent behaviour, including a firearms violation.

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>
--	--	--

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.
