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SPECIFIC HUMAN RIGHT ISSUES

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

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

* This report was submitted late so as to include the most updated information possible.

Summary

This preliminary report develops the broad parameters for the legal and practical issues involved in the prevention of human rights violations with small arms and light weapons. The report develops the analysis adopted by the Special Rapporteur in her working paper regarding the role of international human rights laws and procedures in preventing human rights violations committed with small arms and light weapons.

The paper first defines the use of terms, including small arms, misuse, armed individuals and groups, and transfers. The paper then briefly reviews the direct and indirect human rights impacts of the availability, misuse and transfer of small arms and light weapons. The paper then discusses a basic human rights law analysis of several different categories of violations with small arms and light weapons. The final section suggests some recommendations and proposes areas for further development.

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I. INTRODUCTION¹

1. In its decision of 2001/120, the Sub-Commission on the Promotion and Protection of Human Rights decided to entrust Ms. Barbara Frey with the task of preparing a working paper on the questions of (a) the trade and carrying of small arms and light weapons; and (b) the use of such weapons in the context of human rights and humanitarian norms, to be considered at its fifty-fourth session. In response to this request, Ms. Frey submitted a working paper to the Sub-Commission (E/CN.4/Sub.2/2002/39) considering the diverse legal and practical issues involved in these questions and offering recommendations for further action and research.

2. At its fifty-fourth session, the Sub-Commission examined this working paper and in resolution 2002/25 it endorsed its conclusions and recommendations and recommended that the Commission on Human Rights authorize Ms. Frey's appointment as Special Rapporteur with the task of preparing a comprehensive study on the prevention of human rights violations committed with small arms and light weapons on the basis of the working paper.

3. In decision 2003/112 the Commission at its fifty-eighth session approved the nomination of Ms. Frey as Special Rapporteur and requested her to submit a preliminary report to the Sub-Commission at its fifty-fifth session, a progress report at its fifty-sixth session and a final report at its fifty-seventh session.

II. DEFINITIONS

4. This paper adopts the definition of small arms and light weapons used in the 1997 report of the Panel of Governmental Experts on Small Arms, (A/52/298, annex, para. 25).² According to the report, small arms are those weapons designed for personal use, light weapons are designed for use by several persons serving as a crew.³ The definition also includes ammunition, such as cartridges, shells, grenades and land mines. For purposes of this paper, the term "small arms" shall be used to refer to all categories of weapons and ammunition included in the above definition.

5. The term "misuse" is used in this study to designate acts by States, individuals or groups that are inconsistent with standards of international human rights and humanitarian law.

6. The terms "armed individual" and "armed group" will be used to designate persons and groups of persons who possess small arms and are not under State control. The use of these terms is designed as a comprehensive way to describe the variety of actors who have access to and use small weapons.⁴

7. The term "arms transfers" refers to all arms transferred outside of the control of the producing State. The term is broader than "arms trade" because it includes not only commercial sales but all exchanges of arms, including exchanges under aid programmes and military alliances, exchanges between private citizens and other non-monetary arrangements.

III. ADVERSE CONSEQUENCES FOR HUMAN RIGHTS

8. The availability and misuse of small arms in our world has dramatic consequences. A single weapon, misused, can change the fate of an individual, a family, or even an entire community. A flood of small arms can shift the entire balance of power in a community, leading

to a lack of personal security that destroys the rule of law. Small arms are used to facilitate an entire range of human rights abuses, including rape, enforced disappearance, torture, forced displacement and forced recruitment of child soldiers. Landmine casualties continue to be reported in every region of the world. Even in genocidal conflicts, where people have been hacked to death with machetes or other non-ballistic instruments, the victims are often initially rounded up with firearms. Heavily armed individuals also provide the security environment in which atrocities can be committed at will by various other means. An increase in expenditures due to deteriorating security conditions also results in decreased support for economic, social and cultural rights. No corner of the world has been left untouched by armed violence.

9. The human rights analysis regarding small arms is complicated by the many types of use - legal and illegal - of these arms. The act of discharging a weapon has varying legal significance based on the identities of the shooter and the victim, and the circumstances under which the shot was fired. In her working paper, the author set forth five categories of violations for analysis under human rights and humanitarian law. Given space considerations, this preliminary report will examine three of those categories in greater detail: misuse by State agents, misuse by armed individuals and groups when the State fails to exercise due diligence, and transfer with knowledge that arms are likely to be used to commit serious violations of international human rights and international humanitarian law. Future reports will develop further the examination of these categories of violations and also address the misuse of small arms by States and by armed groups in situations of armed conflict.

10. The estimated number of firearms in circulation in the world is 640 million.⁵ It is likely that the actual global stockpile of small arms is even greater. While small arms proliferation is not a new phenomenon, in the era of globalization there is growing concern that more guns are getting into more hands with fewer restraints. In today's world, small arms - including military-style weapons - are available to almost anyone who has the will to obtain them.

11. While small arms have legitimate uses, they are also used to carry out widespread and systematic human rights violations. The most visible impact of small arms on human rights is the human carnage, including half a million people killed each year in war, homicides, accidents and suicides. Millions more are disabled or die from untreated injuries inflicted by small arms. The lives of those affected by small arms-related violence are often changed forever due to long-term disability and ongoing psychological trauma. In addition to the immediate impacts on life and health, small arms-related misuse affects the entire spectrum of civil, political, economic, social and cultural rights. Small arms have become the tools of choice in facilitating the barbarous acts which, a half-century after the Universal Declaration of Human Rights pledged to eliminate them, continue to outrage the conscience of humankind.

12. One way to view the adverse consequences of small arms on human rights is to identify measurable indicators that can be used to assess the human costs of small arms-related violence. The following chart provides an initial analysis of two different examples of the misuse of small arms: an incident of excessive force by law enforcement, and chronic violence by armed individuals and groups. The analysis will leave aside for now the analysis of incidents committed in the context of armed conflicts, which will be addressed in the Special Rapporteur's subsequent reports.

Framework for human rights analysis of incidents of small arms misuse

Selected incidents of small arms misuse	Rights potentially violated	Measurable indicators attributable to small arms violence
Use of excessive force by law enforcement against student demonstration	Right to life, security of person Freedoms of assembly, association, movement Freedoms of thought, speech Freedom of participation in government Right to education	Number of deaths Number of injuries Psychological trauma to survivors Loss of education of victims Loss of income to families Fear of political participation Loss of investment in community due to violence
Chronic violence by armed individuals and groups	Right to life, security of person Freedom of assembly, association, movement Free speech Right to education Right to adequate standard of living, social security Right to participate in cultural life of the community Right to health care	Number of deaths Number of injuries Number of abductions Number of rapes and other gender-based acts of violence Psychological trauma to survivors Loss of income and property due to death, disability, theft Loss of investment in community due to violence Number of displaced persons Length of state of emergency that suspends human rights Access to education, health care Declining public expenditures on social welfare and increase in public expenditure on personal security

13. This framework illustrates the broad-reaching impacts of armed violence on communities. Even a single incident can have a lasting effect on the lives of many people. It is not merely the body count from armed violence that tells the tale; it is the weakening of the

fabric of society in which any human right can be guaranteed. Using this type of framework, researchers can provide human rights policy makers with measurable data that illustrate the long-reaching impact of small arms on a community.

14. Besides the toll of armed violence on community stability and security, the very nature of small arms provides perpetrators with the ability to increase the scale and the pace of killing and other human rights violations. Because they are portable and highly lethal, small arms have the power to transform a basic violation of human rights into a profound one. With a firearm, for example, a police action to subdue a mentally unstable person may quickly turn into a killing, a pattern of domestic violence may turn into homicides and/or suicide, a cattle raid may turn into a massacre, and ethnic tensions may turn into acts of genocide. In many countries, the introduction of small arms into ethnic, political or religious conflicts has enabled atrocities on a massive scale.⁶

15. The growing availability of small arms has been associated with the increased incidence of armed conflict. While accumulations of small arms, alone, may not create the conflicts in which they are used, the availability of small arms tends to exacerbate conflicts by increasing the lethality and duration of violence, and by increasing the sense of insecurity which leads to a greater demand for weapons. Some commentators consider the easy availability of small arms to be a “proximate cause” of armed conflict, transforming a potentially violent situation into a full-scale conflict.⁷

16. One of the difficulties in conducting this study is that, while most arbitrary killings and many other serious violations against the integrity of the person are believed to be committed or facilitated by persons carrying small arms, the instruments used in the violations are almost never reported by witnesses or reporters. In reviewing cases of arbitrary killing reported by various representatives of the United Nations and non-governmental organizations, the Special Rapporteur was continually challenged by the lack of information about the tools of the killing. This omission on the part of human rights reports may occur because reporters do not ask about the instrument used or do not think it is an important detail. Witnesses may not have information or knowledge of the instrument used. It would, in any case, be extremely helpful in further studies on this issue to have information about whether a small arm has been used in the violation and as many details as possible about that number, type and use of that arm.

IV. MISUSE OF SMALL ARMS BY STATE AGENTS

Types of violations

17. Because human rights law is primarily directed at State practice, this preliminary report will focus initially upon the misuse of small arms by State actors. State agents frequently misuse small arms to violate human rights by killing or causing injury to persons or groups.⁸ Misuse of small arms by police and military officials, for instance, through use of excessive force against demonstrators or detainees and by committing extrajudicial executions of political opponents, street children and other groups deemed as “undesirable”, have been documented.⁹ Governments provide arms to groups to foment racial, political or ethnic violence in support of their political ends.¹⁰ Easy access to small arms, especially military-style weapons, increases the coercive capacity of State agents, which can lead to larger and graver violations of human rights.

18. Small arms have many lawful uses, including their use by law enforcement for peace and self-defence. In the right hands and in certain circumstances, the possession and use of small arms can be legitimate and appropriate. Along with the power to carry and use small arms, however, comes the obligation for States to ensure that their agents are in compliance with national and international standards. This report will therefore review the adequacy and effectiveness of current standards on the use of force and firearms by State agents.

19. Law enforcement agencies and militaries that carry out law enforcement activities use small arms in their policing activities, including civilian policing, security services, border guards and customs. United Nations peacekeeping forces in many regions are conducting policing functions as well as training local agents to carry out law enforcement activities. Many States allow and encourage private companies to provide training to military and law enforcement groups around the world. Small arms use in all these circumstances should be, but seldom is, carried out in a manner consistent with obligations under international human rights law.

20. The above-stated principles also apply to violations committed with small arms by persons and groups including paramilitary, vigilante and private security forces that are operating with the express or implicit permission of authorities, and are therefore treated as State agents. States are responsible, for instance, under article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for acts of torture committed by a person who is “acting at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. Similarly, in cases of small arms-related violence, States are legally responsible for executions, torture and other human rights violations committed by vigilante groups, “death squads”, or private militias who operate with the consent or acquiescence of government officials.¹¹

21. A central, non-derogable, tenet of international human rights law is the protection of the right to life under article 3 of the Universal Declaration of Human Rights and article 6 of the International Covenant on Civil and Political Rights. The Human Rights Committee, which monitors implementation of that Covenant, elaborated on the fundamental nature of the right to life under article 6 (and article 4) in general comment 6, in 1982, stating, “It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation”. The Human Rights Committee further noted that “States parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity. Therefore, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities”.

Requirements regarding the use of force

22. Flowing from the international community’s recognition of the fundamental nature of the right to life, rules have developed to govern the use of State-sponsored force, including the use of weapons. The General Assembly adopted the Code of Conduct for Law Enforcement Officials in 1979 (resolution 34/169) as a comprehensive international code of ethics. The Code consists of eight articles, and emphasizes that the role of law enforcement officials is to serve and protect the rights of the community. Article 3 of the Code states the central tenet regarding

the use of force: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.” The commentary to article 3 of the Code states, “The use of firearms is considered an extreme measure”. The commentary notes that firearms should not be used except when a suspect offers armed resistance or jeopardizes the lives of others and less extreme measures are not sufficient.

23. The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted in 1990 by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, further define the rules on use of firearms as originally set forth in article 3 of the Code. The Basic Principles reiterate that law enforcement officials must not use force except when strictly necessary and to the minimum extent required under the circumstances. Principles 9, 10 and 11 further emphasize that force should be the last resort, that the force used must be proportionate to the threat, and that a clear and timely warning should be given.¹² Lethal force can only be used in response to a direct and imminent threat to life.

24. Police trainers have identified four complementary concepts that define the legitimate use of force under the Basic Principles: proportionality, legality, accountability and necessity (“PLAN”). According to trainers in the field, these concepts are often ignored by law enforcement and are underemphasized in training while preference is given to technical demands of learning to use weapons.¹³ To give effect to the Basic Principles, training must enable officers to assess threats and make split second decisions.

25. The effective protection of the right to life requires that States, and the United Nations in its engagement in peacekeeping and law enforcement responsibilities, must adequately train law enforcement officials to prevent arbitrary and summary executions. According to the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Economic and Social Council resolution 1989/65, annex), national and international authorities are further required to ensure that a prompt and effective investigation is carried out regarding killings that are the result of the use of force by State agents. Such an investigation is used to determine whether the killing was the result of a justifiable use of force, as defined in the Basic Principles. If not, the State must compensate the victim and reform its policies and procedures to bring them into line with international norms. The Human Rights Committee has declared that “to secure compliance with articles 6 and 7 of the Covenant, the State party must take firm measures to limit the use of force by the police, to investigate all complaints regarding the use of force by the police and take appropriate action when the use is in violation of the relevant regulations”.¹⁴

Case law

26. The European Court of Human Rights has articulated the nature of State responsibility to protect the right to life in a series of cases regarding article 2 (right to life) of the European Convention on Human Rights. In the case of *McCann and Others v. the United Kingdom*, the Court held that the United Kingdom had violated article 2 by its actions in planning and carrying out an operation to prevent the likely detonation of a car bomb by three IRA members.¹⁵ The police operation resulted in the shooting deaths by State agents of the unarmed suspects. The Court’s approach to article 2 was “guided by the fact that the object and purpose of the Convention as an instrument for the protection of individual human beings requires that its

provisions be interpreted and applied so as to make its safeguards practical and effective". The Court concluded that the State's planning of its operation occurred in such a manner that the use of lethal force by the authorities was "almost unavoidable", the use of deadly force was therefore in violation of article 2 of the Convention.¹⁶

27. The European Court has reiterated in many cases the principle that the right to life under article 2, read in conjunction with the State's general duty under article 1 to "secure to everyone within their jurisdiction the rights and freedoms defined in [the] Convention", requires that there should be an effective official investigation of the use of lethal force by State agents.¹⁷

Recommendations

28. State practice regarding the training, planning of operations and investigation of arms-related violations by State agents falls woefully below the standards articulated by international human rights bodies. Few States have enacted the Basic Principles on the Use of Force and Firearms into their domestic laws or regulations. The right to life is violated in many countries with impunity by law enforcement and other State agents who act without adequate training in human rights principles and whose violations are never investigated. The Special Rapporteur therefore proposes that the international human rights community articulate clearly the principles required to give meaning to the non-derogable right to life in light of State practice regarding excessive force and small arms. A first step in this effort would be to draft model human rights principles with regard to training, operational planning and investigation of the use of force and small arms by law enforcement officials. A set of human rights principles would complement the existing framework established by the United Nations Commission on Crime Prevention and Criminal Justice and would add further weight to the call for adoption and implementation of effective national standards to prevent human rights violations committed with small arms and light weapons.

29. To prevent human rights violations committed with small arms, the human rights community must first be concerned, then, with the misuse of such weapons. Human rights monitors must document and report on the role that small arms play in carrying out or in making worse the violations that occur. In order to reduce the demand for small arms and the spiralling violence that occurs in heavily armed communities, the international human rights community must demand that States continue to address the root causes of violence in their communities, provide training on the basic norms regarding the use of small arms to State agents who carry them, and work with community groups on other practical interventions.

V. MISUSE BY ARMED INDIVIDUALS AND GROUPS WHEN THE STATE FAILS TO EXERCISE DUE DILIGENCE

30. States can be held responsible under certain circumstances for harm caused by armed individuals and groups when the State fails to act with due diligence to protect human rights. The concept of due diligence is one that requires a State to take positive steps to carry out its obligations under international law.

Types of violations

31. Armed individuals and groups are responsible for a large number of the deaths, injuries and other harm carried out with small arms in the world today. Small arms are frequently used by individuals to coerce victims in robberies, violent assaults and sexual assaults.¹⁸ Emergency rooms across the globe bear witness to the human devastation wrought by small arms in the hands of private actors. Armed violence strains health-care systems and doctors report that, because of the intentional nature of the violence, victims require long periods of psychological as well as physical treatment.¹⁹ In addition, armed groups are central to the instability, anarchy and social degradation that characterize armed conflict in many regions.²⁰

32. There are at least 378 million firearms in the hands of civilians, representing 59 per cent of the total global firearms stockpile.²¹ Between 115,000 and 200,000 persons are estimated to die each year from suicides, homicides and accidents caused by armed individuals.²² While the link between the availability of small arms and levels of violence is not absolute, research shows that in general rates of firearm ownership are related to increases in the incidence of arms-related violence, including both intentional and unintentional deaths and injuries.²³

33. The United Nations Commission on Crime Prevention and Criminal Justice has expressed its concern over the high incidence of crimes, accidents and suicides involving the use of firearms, noting the lack of appropriate regulations in many countries for the possession and storage of firearms, and the lack of training on the use of firearms.²⁴ Several countries currently have extremely high firearm homicide rates.²⁵

34. In some communities, whether crime-ridden parts of urban areas or villages that are dominated by warlords, small-arms violence perpetrated by private persons inflicts an enormous toll upon human rights. Studies indicate that in heavily armed urban areas, a high percentage of homicides are perpetrated with firearms.²⁶ The group with the highest casualty rate is males between the ages of 15 and 44.²⁷ In addition to the direct deprivation of the right to life, many other human rights violations are linked to the misuse of guns by armed individuals, such as: forced displacement due to armed violence; partial closures of schools through armed confrontations; high incidence of rape of girls between 11 and 17; limitations on the right to freedom of association and to participate in the cultural life of the community because of personal fears about walking freely as a pedestrian, speaking freely, using public transport, or participating in group activities.

35. Armed violence is a direct causal factor in forced displacement, militarization of refugee camps, and withdrawal of humanitarian assistance in areas affected by violence. Chronic armed violence also deters development by disrupting the social stability needed for the delivery of services such as education, infrastructure and health care. The ability to meet basic human needs is limited in an environment dominated by fear from the threat and use of small arms. Community development and personal livelihoods are reshaped by arms-related insecurity, leading to the loss of traditional forms of economic activity and a halt to investment in public and private enterprises.²⁸

Due diligence to protect human rights

36. There is an emerging legal norm which holds States accountable for patterns of abuses by private persons that occur because a State fails to act with due diligence to protect human rights. Under such a norm, a State could be held responsible for its failure to take reasonable steps to prevent, investigate, punish and compensate with regard to human rights violations committed by armed individuals or groups.

37. There are two jurisprudential theories regarding State responsibility for violations committed by private actors: an International Law Commission (ILC)-based theory of State responsibility and the due diligence theory of State responsibility.²⁹ While both theories have support in the case law, support for the latter theory predominates, suggesting a growing international consensus regarding some level of State responsibility for human rights violations committed by private actors.³⁰ The following discussion will therefore focus on the legal underpinnings of the theory of due diligence.

38. The due diligence theory of State responsibility has its origins in principles of customary international law indicating that a State has an affirmative duty to protect non-citizens from injury by private actors.³¹ If the State fails in its duty to reasonably protect, it is liable under international law for its omissions. The judicial bodies charged with interpreting and enforcing international human rights law, in particular the Inter-American Court of Human Rights and the European Court of Human Rights, have drawn on this traditional State responsibility doctrine to create a due diligence standard.³²

39. There is no single, agreed-upon definition of “due diligence”. In general, it involves the concept of duty, which “encompasses an obligation to marshal the full apparatus of the state to prevent, investigate, punish and compensate” and the concept of failure to exercise due care.³³ Or alternatively, as another commentator suggests, due diligence “results from more than mere negligence on the part of state officials ... it consists of the reasonable measures of prevention that a well-administered government could be expected to exercise under similar circumstances”.³⁴ Thus, under a due diligence standard, it is the omission on the part of the State, not the injurious act by the private actor, for which the State may be responsible.

Case law

40. In *Velásquez*, the Inter-American Court applied a modified due diligence standard in finding the State liable for the disappearance of Manfredo Velásquez. The Court determined that “an illegal act which violates human rights and which is initially not directly imputable to the State can lead to international responsibility of the State, not because of the act itself but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention”.³⁵ Furthermore, the Court found that, “where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane”.

41. In addition to applying a due diligence standard, the *Velásquez* Court clearly laid out the principle that a State’s responsibility for private actors actually derives from the breach of independent legal obligations - in this case, the obligations outlined in article 1 (“... to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction

the free and full exercise of those rights and freedoms ...”) and article 4 (“... No one shall be arbitrarily deprived of his life.”) of the American Convention on Human Rights. Most regional and international human rights instruments contain similar language - “ensure rights”, or “ensure and secure rights” - which creates positive legal obligations to control certain activities of private individuals so as to protect against human rights abuses. The implication of the “due diligence/independent legal obligation standard” laid out by the Court in *Velásquez*, as well as in the cases of *Godinez Cruz*³⁶ and *Fairen Garbi and Solis Corrales*,³⁷ is that when a State fails to act or to prevent human rights violations committed by private entities, as in the activities of the “death squadron” in Barrios Altos, the State may be legally responsible for the violations.

42. The case law of the European Court of Human Rights also adheres to and supports a “due diligence/independent legal obligation” standard. In both *X and Y v. the Netherlands* and *Plattform “Ärtze für das Leben”*, the Court found inherent positive obligations for the State under the European Convention on Human Rights.³⁸ The Court further outlined this principle in *McCann, Tanrikulu, Akkoç and Jordan*,³⁹ in which it held that the State’s duty under article 2 (the right to life) of the European Convention on Human Rights is necessarily informed by its duty under article 1 to “secure to everyone within its jurisdiction the rights and freedoms of the Convention” and thus leads to the State’s duty to investigate when an individual is killed. Furthermore, in the Court’s own analysis of its 2001 case law, with regard to the *Calvelli and Ciglio* case, it stated that:

“the importance of this ruling must be emphasized, not only because it confirms states’ obligations with respect to protection of life, but also because it shows that these obligations are not limited to violations resulting from actions or omissions imputable to state officials or occurring in public institutions. They also apply to violations committed by private individuals, operating within structures which are not managed by the state or public authorities”.⁴⁰

43. Under the due diligence standard for determining State liability, therefore, a State may have an affirmative duty under the human rights instruments to ensure that small arms are not used by armed individuals and groups to commit human rights violations. Obviously the measures that a State might take to meet this obligation will be constrained by democratic principles and practical considerations of resources; however, sufficient measures, akin in scope to those required for the effective investigation of an individual’s death, are not an unreasonable burden and are arguably required under international law.

Responsibility in states of emergency

44. In considering what steps must be taken by States to meet the due diligence standard with regard to the acts of armed individuals, the Special Rapporteur would like to acknowledge that there are wide variations in the type and degree of armed violence being confronted by different States. One pattern of arms-related violations typically occurs in stable societies during peacetime where deaths and injuries are the result of the acts of armed individuals or criminal groups. This pattern tends to occur in States that have high rates of private ownership.⁴¹ While many small arms-related deaths and injuries occur in these countries, these acts of violence are not typically politically motivated, and the State continues to maintain overall control in the society.

45. Another pattern that bears discussion, however, is one involving organized violence that does not rise to the level of armed conflict yet threatens the stability of the State. In this pattern criminal groups, terrorists, warlords, or political opposition groups using small arms are a large enough threat to public safety that the State authorities may not have the capacity to control them. The appropriate response of States to widespread and systematic armed violence by individuals and groups must be guided in these situations by the principles of international law with regard to states of emergency.

46. International human rights law provides States with certain measures to defend themselves against grave threats to the life of their nations, as established in article 4 of the International Covenant of Civil and Political Rights.⁴² In situations of public emergency which threaten the life of the nation and the existence of which is officially proclaimed, a State may derogate from certain human rights obligations. The State's actions, however, must be proportionate to the exigencies of the situation, must not be inconsistent with other legal obligations, and must not discriminate on the basis of race, colour, sex, language, religion or social origin. In addition, there are certain core rights which must never be suspended, including freedom from arbitrary killing, freedom from torture, slavery, freedom of conscience. State efforts to control armed individuals and groups therefore must not involve violations of core rights, and must strictly meet the exigencies of the situation. Within this framework, States should take positive steps to ensure the protection of basic human rights.

Recommendations

47. Several previous statements of international bodies offer a foundation for the necessary guidelines for a State to meet the due diligence standard regarding the regulation of the ownership and use of small arms. Those statements suggest that adequate guidelines must include the following State actions with regard to small arms: licensing to prevent possession of arms by persons who are at risk of misusing them, requiring safe storage of small arms, requiring tracking information by manufacturers, investigating and prosecuting those who misuse small arms, and offering periodic amnesties to remove unwanted small arms from circulation.⁴³ Adequate guidelines regarding State responsibility for the actions of armed individuals and groups should also address the root causes of armed violence and other practical interventions.

48. The human rights community could make a very useful contribution to the international discussion on small arms by drafting model human rights principles on State responsibility for preventing and investigating human rights violations caused by armed individuals and groups. Like the principles proposed to address misuse by State agents, principles regarding misuse of small arms by armed individuals and groups would complement the work of the crime prevention and arms control branches of the United Nations, and would elaborate for States the nature of their obligation under international law to regulate the possession and misuse of small arms by armed individuals and groups. Such model human rights principles would therefore support the development of effective national standards to prevent human rights violations committed with small arms and light weapons.

VI. TRANSFER OF SMALL ARMS WITH KNOWLEDGE THAT ARMS ARE LIKELY TO BE USED TO COMMIT SERIOUS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS AND HUMANITARIAN LAW

Types of violations

49. Another dimension of the small arms analysis is the question of what can be done to prevent small arms from getting into the hands of human rights violators. States are among the key actors involved in the transfer of small arms to those who use them to commit gross violations of human rights and humanitarian law. Some States supply small arms directly to violators while other States allow shipment of small arms through their national territories. While primary responsibility for compliance with national and international laws falls upon those States that misuse small arms to violate human rights, other States and private companies engaged in production and transfer bear a degree of political, moral and, in some cases, legal responsibility towards the international community for the use made of their small arms. The responsibilities States have regarding arms transfers need to be spelled out in a more coherent fashion by the international community.

50. The manufacture and trade in small arms has become even more diffuse and complex in the post-cold war era. The manufacture of small arms has increasingly moved from State-owned factories to private companies. Small arms are estimated to be produced by approximately 600 companies in 95 countries.⁴⁴ Between 4.3 million and 6.3 million small arms are produced each year, representing only about 1 per cent of the global stockpile. Besides new weapons coming on the market, huge quantities of surplus weapons have been dumped onto the market since the end of the cold war, and stiff market competition has created a disincentive for strict export control.⁴⁵ Access to small arms is made easier by the durability of the weapons, which remain functional for a long time and are passed from hand to hand. The global trade in small arms, both legal and illicit, is estimated to be worth US\$ 5-7 billion per year.⁴⁶

51. Small arms reach the hands of violators through many types of transfers. For example, States initiate sales directly to other Governments, or license sales by private companies. States may also use arms brokers, including former employees of State defence forces and security agencies, to provide cover for their shipments into the hands of human rights violators. Brokers, who may reside far from the manufacturer or end users, can arrange shipments of small arms from conflict to conflict, using secret bank accounts, front companies and fraudulent end-user certificates.⁴⁷ Transnational corporations have also been involved in the sale or transfer of small arms to States and armed groups that violate human rights.⁴⁸

52. The lack of transparency by States in the production and transfer of small arms makes transfer of these arms difficult to study and to control at an international level. While there is a growing trend towards greater transparency in some regions, there is no international norm requiring State reporting on small arms exports. Among those States that do produce public reports on small arms transfers, the presentation of data varies from country to country, making analysis and regulation extremely difficult. In addition, the secrecy and informal nature of transfers by brokers and other private actors keep these transfers out of public scrutiny.

International standards to prevent the illicit transfer of small arms

53. Over the past century, the international security and arms control communities have taken important steps to prohibit the transfer of specific weapons⁴⁹ as well as to prohibit the transfer of all weapons to certain recipients who are deemed to be involved in situations that amount to a threat to international peace and security. The Security Council has imposed arms embargoes under Chapter VII of the Charter of the United Nations approximately 15 times since 1965. Under these embargoes, States are prohibited from transferring weapons to the embargoed State and they must also take the necessary measures to implement, apply and enforce the embargo internally to make it operative against private actors within their jurisdictions. As a measure of the seriousness with which the Security Council considers its embargoes, it has called upon States to adopt legislation making the violation of arms embargoes a criminal offence. Despite these efforts, violations against these embargoes are well documented and the Security Council has recently begun to try to improve methods of supervision in an ad hoc manner.⁵⁰

54. The ongoing work of the Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York in July 2001, is concerned with the security, humanitarian and economic consequences associated with the illicit trade in small arms as well as their excessive and destabilizing accumulation. The Programme of Action (A/CONF.192/15, chap. IV) contains measures that call for concrete action at the national, regional and global levels to stem the illicit arms trade. While focused on trafficking, the Programme of Action also addresses authorized arms transfers to a limited extent. The Programme of Action includes, among others, commitments by States to exercise effective control over the export and transit of small arms and to develop brokering controls. Most notable is a commitment by States to ensure that national arms export regulations and procedures are “consistent with ... international law”. This provision, which is not elaborated further, provides an opportunity for the Conference to reflect on the nature of State responsibility for the human rights consequences of arms transfers.⁵¹

55. There are several regional codes that stipulate that States should not transfer arms to situations where they will be used to violate human rights, such as the Principles Governing Conventional Arms Transfers of the Organization for Security and Cooperation in Europe (OSCE) (25 November 1993), the European Union Code of Conduct on Arms Exports (1998), the Declaration of a Moratorium on Importation, Exportation and Manufacture of Light Weapons in West Africa of the Economic Community of West African States (ECOWAS) (31 October 1998, renewed July 2001), and the criteria contained in the OSCE *Small Arms Document* (2000).⁵² Despite these codes, many States continue to transfer military, security and police equipment and technology and expertise that contribute to human rights violations in the receiving country.⁵³

56. Given the global scope of the arms trade, more effective global solutions must be put in place to address the transfer of small arms to States and armed groups that use those arms to violate international human rights. To that end, a broad group of human rights advocates is proposing to establish a Framework Convention on International Arms Transfers, also known as the Arms Trade Treaty, which articulates minimum international standards regarding the transfer of arms, and prohibits the transfer of arms into situations where they could be used to commit serious violations of international human rights and humanitarian law.⁵⁴ The Framework

Convention on International Arms Transfers (Arms Trade Treaty) would require States to assess the respect for fundamental principles of international law in recipient States before authorizing the transfer of any arms, including small arms and light weapons. This initiative has been endorsed by 19 recipients of the Nobel Peace Prize.

57. The Arms Trade Treaty proposes to limit State transfer of arms based on the anticipated use that will be made of the weapons by the recipient State. The exporting State's responsibility is based upon its international legal obligation not to participate in the wrongful acts of the recipient State.⁵⁵ Under the Arms Trade Treaty, the wrongful acts of the recipient States include the commission of serious violations of human rights, defined as the non-derogable provisions of the International Covenant on Civil and Political Rights and other treaties.

Recommendations

58. The human rights community should engage cooperatively with regional and international processes focused on international arms transfers to ensure that those processes include a full discussion of the human rights implications of such transfers. The Arms Trade Treaty is an important proposal that calls attention to a previously underscrutinized problem - the State-to-State transfer of arms used to commit serious violations of human rights. The international human rights community should further discuss State responsibility in this area.

VII. CONCLUSIONS AND RECOMMENDATIONS

59. **The availability, misuse and transfer of small arms have grave consequences for the entire spectrum of human rights. Besides their direct negative impacts on the lives and livelihoods of millions of persons, fear generated by small arms violence affects the well-being of many communities and regions. Because of the devastating consequences of small arms violence, the international community must focus increased attention on the type, number and role of small arms used to violate human rights.**

60. **The following recommendations suggest some initial steps towards preventing human rights violations resulting from the availability, misuse and transfer of small arms.**

61. **To reduce the demand for small arms, and the spiralling violence that occurs in heavily armed communities, the international human rights community must demand that States continue to address the root causes of violence in their communities, provide training on the basic norms regarding the use of small arms to State agents who carry them, and work with community groups on other practical interventions.**

62. **United Nations human rights bodies should encourage States to adopt national laws regarding small arms to bring States into compliance with international human rights and humanitarian law norms. Specifically, all States should incorporate into their own laws the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. The Office of the High Commissioner on Human Rights, in cooperation with the United Nations Commission on Crime Prevention and Criminal Justice, should provide technical assistance to States expressing interest in incorporating the Basic Principles into their domestic law.**

63. **Human rights investigators and reporters, including the United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, should seek out information and report specifically on the type, number and role of small arms in specific human rights violations.**
64. **To prevent State misuse of small arms, the international community should draft model human rights principles concerning training, operational planning and investigation of the use of force and small arms by law enforcement officials.**
65. **To prevent human rights violations caused by the State's lack of due diligence regarding armed individuals and groups, the international community should draft model human rights principles on State responsibility for preventing and investigating human rights violations caused by armed individuals and groups.**
66. **To prevent transfer of small arms into situations where they will be used to commit serious violations of international human rights and humanitarian law, the international community should further consider the underscrutinized problems inherent in State-to-State transfer of arms. The international human rights community should further articulate principles regarding State responsibility in the transfer of small arms.**
67. **These sets of related principles - on misuse by State agents, misuse by armed individuals and groups, and transfer of arms - would complement the work of the crime prevention and arms control branches of the United Nations and would elaborate for States the nature of their obligations under international law to regulate the availability, misuse and transfer of small arms. Such model human rights principles would encourage the development of effective national standards to prevent human rights violations committed with small arms and light weapons.**

Notes

¹ Ms. Frey would like to express her thanks to Ms. Jill Brown, Mr. Robert Nelson, and Ms. Stephanie Root for their assistance in preparing this report.

² According to that Panel of Experts,

1. The term *small arms* includes: revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns.

2. The term *light weapons* includes: heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-aircraft guns, portable anti-tank guns, recoilless rifles; portable launchers of anti-tank missile and rocket systems; portable launchers of anti-aircraft missile systems and mortars of calibres of less than 100 mm.

3. The term *ammunition* includes: cartridges (rounds) for small arms; shells and missiles for light weapons; mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems; anti-personnel and anti-tank grenades; landmines; and explosives.

³ Several light weapons, such as shoulder-fired rocket launchers and other portable anti-aircraft guns, have grown in importance in armed conflicts, adding to the destructive capacities of armed individuals and groups.

⁴ See International Council on Human Rights Policy, *Ends and Means: Human Rights Approaches to Armed Groups*, 2000, pp. 5-8.

⁵ This estimate has increased from 550 million based on new details uncovered since the Special Rapporteur submitted her initial working paper in 2002. Graduate Institute of International Studies, *Small Arms Survey 2002: Counting the Human Cost*, Oxford University Press, 2002, p. 63 (hereinafter "*Small Arms Survey 2002*"). The figure does not include the estimated 230-245 million stockpiled landmines (UNHCR, 2000; International Campaign to Ban Landmines, 2001). An alternative estimate of total global firearms is 594 million (Gregory Fetter, 2001). These figures vary depending upon the definition of small arms used in the estimate. The figures used in this paper are intended to give a general idea of the extent of small arms proliferation. Increased transparency regarding the production and transfer of small arms is the only way in which to begin to get a more accurate picture of the actual relationship between the availability of small arms and human rights violations.

⁶ In Sierra Leone, for example, in 1999 after the Revolutionary United Front invaded the capital of Freetown, a senior government pathologist reported that more than 7,330 people had been shot and killed in a single month, almost 1 per cent of the city's population. Thousands more were injured and mutilated by firearm violence. Surveys indicated that almost 60 per cent of all war injuries in Sierra Leone were small arms-related. Salama et al., "Health and Human Rights in Contemporary Humanitarian Crises: Is Kosovo More Important than Sierra Leone?", *British Medical Journal*, vol. 319, 1999, pp. 1569-71. In Papua New Guinea, inter-tribal disputes once settled with bows, arrows and machetes are now fought out with firearms. Philip Alpers, Address to Pacific Islands Forum Secretariat, April 2003.

⁷ See, e.g., B. Pirseyedi, *The Small Arms Problem in Central Asia: Features and Implications*, United Nations Institute for Disarmament Research, May 2000; *The Machel Review 1996-2000: A Critical Analysis of Progress Made and Obstacles Encountered in Increasing Protection for War-Affected Children* (A/55/749, annex).

⁸ See, e.g., Amnesty International, *Human Rights Abuses with Small Arms: Illustrative cases from Amnesty International Reports 2000-01*, London, 2001. This report summarized case reports from over 90 countries in which law enforcement officials used small arms to violate international human rights law.

⁹ See, e.g., 24 February 2003 statement of Ms. Asma Jahangir, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, expressing deep concern at excessive use of government force resulting in more than 100 deaths in one month by Thai security forces engaged in a crackdown on the drug trade (United Nations press release of 24 February 2003, at <http://www.unhchr.ch/news>). She also reported that on 11 May 2003 a

group of Rangers, a unit under the direct control of the Pakistani military, shot and killed an individual in a crowd demonstrating against the Rangers' excessive use of force on previous occasions (United Nations press release of 15 May 2003, at <http://www.unhchr.ch/news>).

¹⁰ The United Nations High Commissioner for Human Rights expressed grave concern in February 2003 over "death squad" activities being carried out by the Government of Côte d'Ivoire aimed at inciting xenophobia and war (United Nations press release of 7 February 2003, at <http://www.unhchr.ch/news>); see also Human Rights Watch, *Playing with Fire: Weapons Proliferation, Political Violence, and Human Rights in Kenya*, May 2002.

¹¹ See, e.g., Human Rights Committee concluding observations, Peru (29 September 1992), (CCPR/C/79/Add.8) Colombia (5 May 1997), (CCPR/C/791/Add.76) India (4 August 1997), (CCPR/C/79/Add.81) each expressing concern regarding violations of article 6 by paramilitary forces.

¹² *Report of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990*. United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2.

¹³ In Timor-Leste, for example, the newly established Police Service was equipped with 3,000 Austrian Glock 9 mm handguns. Amnesty International has expressed its concern that the United Nations mission's training course in Timor-Leste regarding the handguns did not adequately emphasize the practical application of the Basic Principles. Amnesty International, AI Index: ASA 57/001/2003.

¹⁴ Concluding observations on the third periodic report of Cameroon (CCPR/C/79/116, para. 17).

¹⁵ Application No. 18984/91, Strasbourg, 5 September 1995, <http://hudoc.echr.coe.int>

¹⁶ See also *Mastromatteo v. Italy*, Application No. 32967/97, Strasbourg, 24 October 2002 (State's obligation under article 2 "extends beyond its primary duty to secure the right to life by putting in place effective criminal-law provisions to deter the commission of offences against the person backed up by law-enforcement machinery for the prevention, suppression and punishment of breaches of such provisions.")

¹⁷ See, e.g., *McCann v. United Kingdom*, supra; *Tanrikulu v. Turkey*, Application No. 23763/94, Strasbourg, 8 July 1999; *Akdeniz and Others v. Turkey*, Application No. 23954/94, Strasbourg, 31 May 2001; *Irfan Bilgin v. Turkey*, Application No. 25659/94, Strasbourg, 17 July 2001, <http://hudoc.echr.coe.int>.

¹⁸ According to the National Crime Victimization Survey conducted in the United States in 1998, 23 per cent of the country's 2.9 million violent crimes of rape, sexual assault, robbery and aggravated assault were carried out with firearms, at www.ojp.usdoj.gov/ovc/publications/bulletins/gun_7_2001/gun2_2_01.html.

¹⁹ Centre for Humanitarian Dialogue, *Putting People First: Human Security Perspectives on Small Arms Availability and Misuse*, 2003, section one, “You never get used to it, senseless death”.

²⁰ The role of armed groups in violent conflict will be discussed in the Special Rapporteur’s next report.

²¹ *Small Arms Survey 2002*, p. 79.

²² Graduate Institute of International Studies, *Small Arms Survey 2001: Profiling the Problem*, Oxford University Press, 2001, p. 59 (hereinafter “*Small Arms Survey 2001*”). The figure of 500,000 deaths with small arms is based on estimates of 300,000 killed in armed conflict and 200,000 killed in peacetime each year. A recent World Health Organization Study of 52 high- and middle-income countries concluded that more than 115,000 people died in those countries from firearm injuries in a one-year period in the mid-1990s, including 79,000 homicides, 29,000 suicides, and 7,000 accidents or undetermined. WHO, *Small Arms and Global Health*, 2001.

²³ See generally *Small Arms Survey 2001* (citing studies by Miller and Cohen, 1997; Van Dijk, 1997; Wintemute et al., 1999; CDC, 1997; Kellerman, 1993); Martin Killias, Gun Ownership, Suicide and Homicide: An International Perspective. In Anna Alvazzi del Frate, Ugljesa Zvekic and Jan J.M. van Dijk (eds.), *Understanding Crime: Experiences of Crime and Crime Control*, United Nations Interregional Crime and Justice Research Institute publication No. 49, Rome, 1993, pp. 289-302.

²⁴ *United Nations International Study on Firearm Regulation*, 1998, p. 1.

²⁵ Among the countries with the highest reported firearm deaths in the 1990s per 100,000 were Colombia (55.85), Brazil (26.97), Jamaica (18.72), the United States (14.05) and Estonia (10.15). *Ibid.*, pp. 108-109.

²⁶ A study regarding the impact of small arms on Medellín, Colombia, found that 61 per cent of all deaths in the city are caused by homicide, making homicide the main cause of mortality. The study reported that 90 per cent of homicides are perpetrated with firearms. Oxfam, *The impact of small arms on health, human rights and development in Medellín*, January 2003.

²⁷ These percentages are consistent with the findings of the World Health Organization: in a 52-country study, 63 per cent of all homicides in a one-year period were carried out with firearms; the demographic group most highly affected was males between ages 15 and 44. WHO, *Small Arms and Global Health*, 2001, pp. 4-6.

²⁸ See, generally, Robert Muggah and Eric Berman, *Humanitarianism Under Threat: The Humanitarian Impacts of Small Arms and Light Weapons*, *Small Arms Survey 2001*.

²⁹ See, generally, Stephanie Farrior, *State Responsibility for Human Rights Abuses by Non-State Actors*, in American Society of International Law, Proceedings of the 92nd Annual Meeting, 1998, and Gordon A. Christenson, Attributing Acts of Omission to the State, *Michigan Journal of International Law*, vol. 12, 1991.

³⁰ Under the less-favoured theory, the ILC theory of State responsibility, the acts of private individuals not acting on behalf of the State are not attributable to the State. The International Court of Justice applied this principle in the *Case Concerning United States Diplomatic and Consular Staff in Tehran*, Judgment of 24 May 1980, paras. 56-68, <http://www.icj-cij.org/icjwww/idecisions/ismmaries/Iccsummary490409.htm> . The Court's application of the ILC standard represented a doctrinal shift away from the broad standard it had laid out in the *Corfu Channel* case, Judgment of 9 April 1949, <http://www.icj-cij.org/icjwww/idecisions/ismmaries/Iccsummary490409.htm> . In the *Corfu Channel* case, the Court had found that regardless of whether the State itself had actually laid the minefield, it was inferable that it had or should have had knowledge of its existence. On this basis, the State had a duty to warn shipping vessels of the minefield, and its failure to do so constituted an omission for which it was internationally responsible.

³¹ Christenson, op. cit., p. 347.

³² Farrior, op. cit., p. 299.

³³ Ibid.

³⁴ Dinah L. Shelton, Private Violence, Public Wrongs, and the Responsibility of States, *Fordham International Law Journal*, vol. 13, No. 1, 1990, pp. 21-22..

³⁵ *Velásquez Rodríguez Case*, Judgement of 29 July 1988, para. 172, Inter-American Court of Human Rights, http://www.corteidh.or.cr/juris_ing/index.html .

³⁶ Judgement of 20 January 1989, http://www.corteidh.or.cr/juris_ing/index.html .

³⁷ Judgement of 15 March 1989, http://www.corteidh.or.cr/juris_ing/index.html .

³⁸ *Case of X and Y v. the Netherlands*, Application No. 8978/80, para. 23, Strasbourg 27 February 1985; *Case of Plattform "Ärzte für das Leben"*, Application No. 10126/82, para. 32, Strasbourg 25 May 1988. The Court's case law can be found at <http://hudoc.echr.coe.int> .

³⁹ *Case of McCann and Others v. the United Kingdom*, Application No. 18984/91, para. 161, Strasbourg, 5 September 1995; *Case of Tanrikulu v. Turkey*, Application No. 23763/94, para. 101, Strasbourg, 8 July 1999; *Case of Akkoç v. Turkey*, Application Nos. 22947/93 and 22948/93, para. 97, Strasbourg, 10 October 2000; *Case of Hugh Jordan v. the United Kingdom*, Application No. 24746/94, para. 102, Strasbourg, 4 May 2001.

⁴⁰ *Analysis of the Court's Case-Law in 2001* at <http://www.echr.coe.int/Eng/EDocs/JURISPRUDENCE%202001Annual%20reportE.pdf> .

⁴¹ The United States, for instance, is home to the highest known number of privately owned firearms, estimated to be more than 220 million, or 84 firearms for every 100 persons. *Small Arms Survey 2001*, p. 66. There were 28,663 deaths by firearms in the United States in 2000 representing 10.4 deaths per 100,000 in the general population, 22.7 deaths per 100,000 of males ages 15-19, and 62.2 deaths per 100,000 of black males ages 15-19. National Center for Health Statistics, <http://www.cdc.gov/inchs/fastats/firearms.htm>, accessed 26 May 2003.

⁴² See also Human Rights Committee, general comment 29 on article 4.

⁴³ United Nations Commission on Crime Prevention and Criminal Justice, Conclusions and recommendations of the Expert Group Meeting on Gathering Information on and Analysis of Firearm Regulation (E/CN.15/1997/4, annex I). See also, Security Council resolution 1209 (1998), encouraging African States to enact legislation on the domestic possession and use of arms.

⁴⁴ *Small Arms Survey 2002*, p. 10. The number of companies is based on those involved in some aspect of small arms production, either as intermediate and/or end producers. Ibid. p. 11. China, Russia and the United States are the leading producers of small arms.

⁴⁵ Human Rights Watch, *The NATO Summit and Arms Trade Controls in Central and Eastern Europe*, briefing paper, 15 November 2002; Human Rights Watch, *Arsenals on the Cheap: NATO Expansion and the Arms Cascade*, April 1999.

⁴⁶ *Small Arms Survey 2001*, p. 167.

⁴⁷ One such transfer was documented thoroughly this year by the Organization of American States, involving the illegal diversion of 3,000 AK-47s and 2.5 million rounds of ammunition from Nicaraguan government stocks to an armed guerrilla organization in Colombia. An Israeli arms merchant claiming to represent the Panamanian National Police used a Panamanian shipping company to pick up the arms in Nicaragua and divert them to Colombia where they were delivered to a paramilitary group, the *Autodefensas Unidas de Colombia*. Organization of American States, report of the General Secretariat on the diversion of Nicaraguan arms to the United Defence Forces of Colombia (OEA/Ser.G), Permanent Council doc. 3687/03, 29 January 2003.

⁴⁸ Shell Oil Company admitted to providing private security forces in Nigeria with weapons used to suppress minority groups, including the Ogoni people, in the 1990s.

⁴⁹ Weapons that have been specifically prohibited under international law include: exploding projectiles, expanding bullets, chemical and biological weapons and, most recently, anti-personnel mines.

⁵⁰ See, e.g., the report of the Panel of Experts on Violations of Security Council Sanctions against UNITA ("Fowler Report") (S/2000/203, annex). In March 2003, an independent panel of experts documented the flow of small arms from neighbouring countries into war-torn Somalia in contravention of Council resolution 733 (1992), Report of the Panel of Experts on

Somalia (S/2003/223). Observers have noted that fighting in Somalia is carried out by small groups of militia and lasts only a few days before ammunition and other supplies are exhausted. Warlords struggle to raise sufficient money to buy arms and ammunition. These factors indicate that a halt to arms transfers could avert further violence there.

⁵¹ Despite the security-based focus of the Programme of Action, the Conference process has provided a valuable forum for discussing legal and practical approaches to preventing small arms-related violence, including human rights abuses. As an example, a meeting of representatives from 49 countries that was convened at Lancaster House in London in January 2003 acknowledged the need for guidelines that States can use in case-by-case assessments of applications for authorization of small arms transfers. The Lancaster House meeting listed several factors that should be considered in arms transfers, including respect for human rights in the recipient country and the risk that the proposed transfer will be used for internal repression.

⁵² See the working paper submitted by the Special Rapporteur (E/CN.4/Sub.2/2002/39, paras. 20-28) for a discussion of regional and international commitments to control the transfer of small arms. See also, *Small Arms Survey 2001*, pp. 251-281.

⁵³ The world's largest industrialized economies, the Group of eight (G8), are responsible for at least two thirds of all global arms transfers, including conventional weapons and small arms. Amnesty International, *A Catalogue of Failures: G8 Arms Exports and Human Rights Violations*, 2003, <http://web.amnesty.org/library/print/ENGIOR300032003> .

⁵⁴ <http://www.arias.or.cr/fundarias/cpr/armslaw/fccomment.html> .

⁵⁵ State responsibility for assistance in the commission of an internationally wrongful act was recognized by the International Law Commission in its draft articles on responsibility of States for internationally wrongful acts:

“Article 16: Aid or assistance in the commission of internationally wrongful act

“A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

“(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

“(b) The act would be internationally wrongful if committed by that State.”

Report of the International Law Commission on the work of its fifty-third session, Official Records of the General Assembly, Fifty-sixth session, Supplement No. 10 (A/56/10), chap. IV.E.1.
