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**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**

New York, 26 June-7 July 2006

Working paper submitted by Kenya

On 20 and 21 April, representatives of 11 States (Kenya, Austria, Canada, Costa Rica, Finland, Mali, Mexico, New Zealand, Nigeria, Thailand and the United Kingdom of Great Britain and Northern Ireland) and civil society met in Nairobi to discuss and develop a non-paper which could be used as the basis for a negotiation on agreed minimum common guidelines for transfers of small arms and light weapons (SALW).

The Conference produced the following text, which aims to make clear, as required by the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, what States' existing responsibilities under relevant international law actually are and to enable national officials to implement fully the United Nations Programme of Action in the area of transfer controls.

The Kenyan Government would like to draw States' attention to the April 2006 declaration of the Foreign Ministers of the countries of the Horn of Africa and the Great Lakes region, which called upon the international community to develop common guidelines on SALW transfers. The Kenyan Government calls upon all States to work together in a spirit of consensus to develop such guidelines and believes the Nairobi text offers a solid basis on which to do so.

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

The guidelines contained in the present document reflect our existing commitments under international law and support the purposes and principles enshrined in the Charter of the United Nations, including the right to self-defence, the sovereign equality of States, territorial integrity, the peaceful resolution of



international disputes, non-intervention and non-interference in the internal affairs of States, and the right to self-determination.

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

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

Adhering, where applicable, to obligations under the United Nations Firearms Protocol and taking into account the obligations in the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons;

Recognizing the importance of the role played by regional and subregional processes in developing common understandings on transfer controls, and noting the similarities in key principles between regional approaches;

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

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

Reaffirming our commitment to strengthening national controls on SALW transfers in accordance with the United Nations Programme of Action, in particular ensuring effective licensing, end-use control, safe storage, marking and record-keeping and information exchange by relevant national authorities of all countries involved in any SALW transfer to prevent diversion of SALW to unauthorized end-users;

Recognizing the need for enhanced cooperation and assistance to strengthen the capacity of States to effectively develop and implement the United Nations Programme of Action, including SALW transfer controls;

Section 1

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

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

- (a) International law, such as the Charter of the United Nations, including the prohibition on the threat or use of force and non-intervention and non-interference in the internal affairs of States;
- (b) Any other treaty or legal obligations by which we are bound;
- (c) Arms embargoes of the United Nations Security Council, or other multilateral embargoes to which we adhere;
- (d) Prohibitions on SALW transfers that arise in particular treaties to which we are parties, including, for example, the Convention on Certain Conventional Weapons and its Protocols;
- (e) Universally accepted principles of international humanitarian law.

Section 2

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

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

Section 3

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

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

(f) States' efforts to prevent corruption and bribery in connection with the transfer of SALW;

(g) States' adherence to these guidelines.

Section 4

We undertake to:

(a) Ensure that all transfers of SALW are subject to effective national licensing or authorization procedures in order to prevent their diversion to any party other than the declared end-user;

(b) Make every effort, in accordance with national laws and practices, without prejudice to the right of States to re-export SALW that they have previously imported, to notify the original exporting State, in accordance with their bilateral agreements, before the retransfer of those weapons;

(c) Ensure that, in accordance with Article 26 of the Charter of the United Nations, we take into account the nature and cost of the arms to be transferred in relation to legitimate security and defence needs and the principle of the least diversion of human and economic resources and armaments;

(d) Exchange information and review progress relating to the implementation of these guidelines.

Agreed in Nairobi on 21 April 2006
