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**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
New York, 9-20 January 2006**

**IMPORTANCE OF THE SUBJECT ON CIVILIAN POSSESSION IN THE COMBAT
AGAINST THE ILLICIT TRADE OF SMALL ARMS AND LIGHT WEAPONS
(CONCEPT PAPER SUBMITTED BY MEXICO)**

According to the Center for Humanitarian Dialogue, 60% of the global stockpile of small arms and light weapons is in hands of civilians. The users range from sporting shooters, gun collectors, private security guards, citizens, hunters, criminals, terrorists and drug-dealers,

Most of the victims of the small arms and light weapons are civilians. According to the Small Arms Survey of 2004, each year near 500,000 people die because of the use of small arms and light weapons, out of which 300,000 die in armed conflicts and 200,000 die in peaceful situations².

Globally, firearms are used in more than 40% of the homicides and 6% of the suicides³. The United Nations Interregional Crime and Justice Research Institute has established a close relation between the perpetration of violent crimes, such as robbery, assault and sexual crimes, and the use of firearms⁴.

The civilian possession of small arms represents a serious challenge to the security of the international community and that of the States. The **excessive accumulation** of illicit small arms and light weapons is an important issue in international and non international armed conflicts, in post-conflict situations, for the stability of **some** countries, in the fight against terrorism and organized crime,

² Small Arms Survey 2004, Rights at risk. A project of the Graduate Institute of International Studies, Geneva. Oxford University Press. 2004. pag.174

³ Small Arms Survey 2004, Rights at risk. A project of the Graduate Institute of International Studies, Geneva. Oxford University Press. 2004. pag. 174.

⁴ Small Arms Survey 2004, Rights at risk. A project of the Graduate Institute of International Studies, Geneva. Oxford University Press. 2004. pag. 179

and **may contribute to the creation of** a violent atmosphere within communities with high records of possessing this kind of armament. Illegal civilian possession of small arms usually starts with weapons that were brought and produced in a legal way, until they become part of the illicit market after being lost, robbed or transferred in any way from the legal owner to another person that couldn't get them through the legal way. **One of the sources** of the illegal market are the legal owners, **there is an evident need for the enactment and enforcement of civilian possession regulations, with a view to preventing such flows from taking place.**

It is important to underscore that the discussions on regulation and control of civilian possession of SALW do not necessarily presuppose support for outright prohibitions, bans or comprehensive restrictions. While in some societies such measures may have yielded positive results, in others the possession of firearms as means of self-defence is regarded as a legitimate individual right. The lack of unequivocal empirical evidence in support of either approach suggests that the decision to impose bans or comprehensive restrictions on the possession of SALW by civilians is a matter best left for each State to decide, in light of its domestic circumstances and in accordance with its constitutional principles.

In the international context, the debate on civilian possession should focus on the impact of lax or absent regulations on the flow of weapons to the illicit market, and on the need to put in place effective measures to prevent the diversion or misuse of weapons acquired legally by civilians.

RELATION WITH THE PROGRAM OF ACTION

The first draft of the UN Program of Action to Prevent, Combat and Eradicate the Illicit Trade of Small Arms and Light weapons in all aspects, version L.4 Rev.1 explicitly called the States to regulate, through the use of law and administrative procedures, the civilian possession of small arms and light weapons, as well as their use. Unfortunately, these references weren't included in the final document.

The final Program of Action has some isolated references on the subject:

1. In the third paragraph, Section II, States agreed to adopt and implement the necessary legislative or other measures to establish as criminal offences under their domestic law the illegal manufacture, possession, stockpiling and trade of small arms and light weapons within their areas of jurisdiction, in order to ensure that those engaged in such activities can be prosecuted under appropriate national penal codes.
2. In the eighth paragraph, Section II, States agreed to adopt and enforce all the necessary measures to prevent the manufacture, stockpiling, transfer and possession of any unmarked or inadequately unmarked small arms and light weapons.

3. In the ninth paragraph, Section II, States agreed to ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of small arms and light weapons under their jurisdiction.

The Program of Action with these references clearly indicates that the national regulation of civilian possessions is an indispensable part in the prevention and combat against illicit trade of small arms and light weapons. However, so far there is no consensus in the international community on the content of the regulation.

Some States that recognize the importance of this issue for the efficient implementation of the Program of Action, have made big efforts to reform their national legislation and therefore limit this kind of armament possession: Actually during the First Biennale Meeting, that was held in 2003, 69 out of the 103 States declared in a voluntary way the adoption of policies that regulate civilian possession, and according with the Small Arms Survey 70% of the States had mentioned the issue in their annual reports.

The forthcoming Review Conference that will take place in 2006 is a great opportunity to agree and promote best practices on regulation of civilian possession, since this phenomenon has a transnational component, even though the regulation falls under state jurisdiction. As a matter of fact, a lack of control in the civilian possession makes easier the illicit trade through borders.

II. MECHANISM AND INSTRUMENTS

INTERNATIONAL

In the 1997/28 resolution related to the measures needed to control firearms, to avoid delinquency and to look after the public health and security, the **UN** Social and Economic Council encouraged Member States to study the possibility of adopting regulatory measures in order to control civilian possession of firearms and requested the Secretary-General to continue gathering data and spreading information on firearms control. In the same resolution, the Council requested the Secretary-General to gather the points of view of Member States, institutes of the net of the United Nations Program on crime prevention and criminal justice, the United Nations entities and the Intergovernmental and Non Governmental Organizations that are involved in the elaboration of the declaration of principles on firearms control.

On August 27th 1997, the United Nations Security Council distributed the report made by the Governmental Experts Group in the subject of Small Arms and Light Weapons (document A/52/298) in which it calls all States to gather and destroy, as soon as possible, all the arms that are illegally in hands of civilians and that are not needed for the security of the country.

The Experts Group also recommends to States to include in their national legislation the type of arms and the circumstances under which civilians are allowed to possess.

It also calls the States to make laws, administrative regulations and procedures in order to have an effective control about the possession of arms and their transfer with the purpose, among others, to prevent illicit trafficking. It also suggests that States coming out of a conflict, should impose as soon as possible requirements to grant permits for all kinds of civilian possession of small arms or light weapons within their territory.

Resolution 1209 (1998) of the United Nations Security Council encourages all States, particularly from Africa, to pass laws about possession and use of firearms, including the establishment of legal and judicial mechanisms that ensure their effective implementation and to control in an efficient manner their importation, exportation and re-exportation.

Even though the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (Palermo Protocol) does not have any explicit reference to the regulation of civilian possession in the national legislation, it does establish the obligation for the States, contained in article: 8. 1. c) to watch over that, in the moment that firearms from the State's reserve are transferred to civilians in a permanent way, those firearms are properly marked so that all State Parties can identify the State that made the transfer.

REGIONALS

The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials states in Article VII.2. that States will adopt all needed measures to ensure that all firearms, ammunitions, explosives and other related materials that have been seized or confiscated as a consequence to their illicit manufacturing or traffic do not reach individuals or become part of the trade through auctions, sales or any other ways.

The agreements on regional security include more provisions that require cautious regulation of the small arms that are in hands of civilians, such as: the Combined Action of the European Union of 1998, the Bamako Declaration about the Common African Position Regarding the Proliferation, Circulation and Illicit Traffic of Small Arms and Light Weapons of 2000, the Nadi's Principles of the year 2000, the Protocol of the Developing Community of Southern Africa on Firearms created in the year 2001 and the Andean Plan of 2003 as well as the Nairobi Protocol, that is one of the most specific mechanisms to regulate the civilian possession of arms.¹

¹ The Nairobi Protocol asks States to incorporate into their national legislation, inter alia, the following points:

- to forbid possession without restrictions of small arms by civilians;
- to regulate and centralize the register of all small arms by civilians in their territories

III. PROPOSAL

Considering the amount of deaths caused each year by **small arms and light weapons in possession of civilians**, its humanitarian cost, the lack of an international regulation that establishes guidelines for civilian possession of firearms at national level and the importance of the subject in the correct implementation of the Program of Action, it is proposed to the Review Conference to promote the adoption of a declaration of principles about the national regulation for firearm civilian possession that contains, inter alia, the following elements:

1. The property, possession and carrying of weapons should be authorized through the expedition of licenses that should consider the following criteria:
 - a) Minimal age
 - b) Criminal record or any history of interfamilial violence
 - c) Prove of a legitimate reason to acquire a weapon.
 - d) Knowledge of laws related to arms.
 - e) Prove the training in the use of the weapon in a safe way.
 - f) Prove that the weapon can be stored in a safe place.
2. Limit the sale of ammunitions to those who posses a valid license of property, possession and/or carrying of weapons, and will only be sell ammunitions to the type of weapon mentioned in the license and in a reasonable number of them.
3. Licenses should have an expiration date and be subject to a periodical re-expedition after being proved that the person has no criminal records, besides any other requirement.
4. It should be forbidden for civilians to posses weapons designed for military use, **not suitable for legitimate self-defense purposes (i.e. automatic and semiautomatic assault rifles, machine guns and light weapons in general)**
5. All weapons possessors should ensure a safe storage and keep separate storages for the weapon and the ammunitions.
6. establish measures that allow authorities to seize the weapon when the licenses are revoked or when it can be proved that the owners, in events that take place after the license issuance, do not have the capacity of using them in a safe way.
7. Have trustworthy records that contain information about the license of the salesman, the buyer, the type of weapon and the type of ammunition (brand, caliber and serial number), besides from having certificates for the final user.
8. Establish criminal or administrative sanctions when the dispositions on possession are violated.

to monitor and audit the liceneses and to restrict the armas possessed by civilians.
• to register all weapons in the hands of private security services.

9. Have amnesties to promote the hand out of legal weapons and the ones that are not being used in exchange of money or food. These programs should have gender perspective. **In order to prevent their resale or diversion to the illicit market, weapons collected through these initiatives should be destroyed as soon as possible, where appropriate and in accordance with national legislation.**
10. States should cooperate in the exchange of information, mobilization of resources for training and exploration of alternatives for national legislation harmonization.
11. Involve international organizations and civil society in assisting States for the effective implementation of these principles.
