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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
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**The Strengthening of Controls over Transfers (Import, Export and Transit)
of Small Arms and Light Weapons**

(Submitted by Brazil)

1. The Illicit Trade of SALW and the Role of Transfer Controls

The uncontrolled spread of Small Arms and Light Weapons and their ammunition has been widely recognized in recent years as one of the main sources of insecurity for States and individuals worldwide, and the fight against that problem is progressively being seen as a priority issue in the international security agenda.

While the small arms and light weapons themselves may not be described as the cause of violent crime or conflict in which they are used (being such violence, in both cases, a result of intermeshing economic, social, cultural and political factors), the supply of those weapons plays a major role in the intensification and prolongation of both inter-State and internal conflicts and in intensifying the effects of violent crime, thus creating a “vicious circle in which insecurity leads to a higher demand for weapons, which in itself breeds still greater insecurity”¹.

In this context, one of the most crucial aspects of the debate on the fight against illicit trade of small arms and light weapons and ammunition is the one of control over international transfers (meaning the import, export and transit of such weapons). Enacting, enforcing and strengthening such controls is a shared

¹ Report of the 1997 Panel of Governmental Experts on Small Arms (A/52/198).

responsibility of all States involved in transfers (whether by manufacturing, exporting, importing or re-exporting weapons), and constitute essential measures to prevent the diversion of small arms and light weapons to the illicit market.

2. Transfer Controls: an Overview of Existing Mechanisms

To date, many measures have already been adopted by States in order to control SALW transfers, at the national, regional and global levels. For the sake of clarity, these may be grouped into two main categories, according to the approach followed.

2.1 “Procedural-Operative” Approach

The first (and more frequently used) approach may be denominated “procedural-operative”, and is comprised of measures aimed at **strengthening national capabilities** in the fields of regulation, oversight and enforcement over SALW transfers, as well as at **harmonizing and compatibilizing such procedures** in the international level, and at creating or reinforcing **information exchange and cooperation** among relevant national authorities directly responsible for the enforcement of such controls.

This is the approach followed by many regional initiatives related to the fight against the illicit trade of SALW, such as the Inter-American Convention Against Firearms, Ammunition, Explosives and Related Materials (CIFTA), the Model Regulations for the Control of Firearms, their Parts and Components and Ammunition of the Organization of American States (OAS), the Mercosur Memorandum of Understanding on the Interchange of Information Related to the Illicit Manufacturing and Trafficking of Firearms, the Protocol on Firearms of the Southern African Development Community (SADC), the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, as well as by the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention Against Transnational Organized Crime.

2.2 The “Normative Approach”

Another approach to the problem of transfer controls would be through the introduction of **guidelines** or **criteria** to be taken into account in the decision-making process for the issuance of **export and import licenses or authorizations** (which may be called a “normative approach”), which may include an assessment of the potential impact of international transfers of SALW on issues such as UN arms embargoes, risks of future deviation of the weapons to the illicit market, among other criteria.

This normative approach has been followed by some regional initiatives, such as by the European Union Code of Conduct on Arms Exports and the Code of Conduct of Central American States for Transfers of Weapons, Ammunitions, Explosives and Related Materials.

3. Transfer Controls in the UN Programme of Action

The UN-PoA contains prescriptions for action in the national, regional and global levels, all of them aimed at enabling States to prevent, combat and eradicate the illicit manufacturing and trafficking of SALW, which include the need to put in place effective international regime to control SALW transfers and to prevent their diversion to the illicit market.

The bulk of transfer control measures prescribed in the UN-PoA are concentrated at the **national** level. It prescribes the reinforcement of national capacities in the areas of regulation and control of arms production and trade, as well as the need to guarantee adequate marking of SALW and the maintenance of national record-keeping systems, so as to guarantee their traceability. In terms of transfer controls *per se*, the PoA calls upon States to: establish an effective system of export licensing, which should take into account in particular the risk of diversion of such exports into the illicit trade (paragraph 11); to exert effective control over the export and transit of SALW, including by means of the use of authenticated end-user certificates (paragraph 12); to notify the original exporting State in case of re-export of SALW (paragraph 13); to regulate SALW brokering (paragraph 14); and to ensure compliance with UN Security Council Arms Embargoes (paragraph 15).

At the **regional** level, the PoA's most relevant dispositions in terms of transfer controls is the call for States to establish, where appropriate, subregional or regional cooperation mechanisms, in particular trans-border customs cooperation and networks for information-sharing (paragraph 27).

At the **global** level, the PoA contains only measures that indirectly relate to transfer controls (albeit of crucial relevance for their proper implementation): the call to “develop common understandings on the basic issues and the scope of the problems related to illicit brokering” (paragraph 39), and to “strengthen the ability of States to cooperate in identifying and tracing in a timely and reliable manner illicit small arms and light weapons” (paragraph 36).

As can be immediately perceived, the PoA contains a number of important prescriptions related to transfer controls, mainly of a procedural-operative nature. As in the case of the paragraphs related to marking and tracing (which were later further developed and specified), such provisions on transfer controls should be built upon by the Review Conference, in order to enhance their clarity and reinforce the effectiveness of their implementation.

4. Proposal

In view of the considerations above, we propose that the Review Conference adopts a declaration of principles about the regulation of Small Arms and Light Weapons transfers, comprised of measures both procedural-operative and normative in nature.

The procedural-operative measures should aim at strengthening national capabilities in the fields of regulation, control and oversight of SALW transfers, at harmonizing and compatibilizing national regulations and procedures, and at creating or reinforcing information exchange and cooperation among relevant national authorities directly responsible for the enforcement of such controls.

They should include, inter alia, the need for all States involved in transfers (import, export or transit) of Small Arms and Light Weapons to:

a) Ensure the existence of appropriate national controls in the recipient country, such as: licensing and registering of arms exporters and importers; the use of end-user certificates; adequate stockpile management and security of the stocks in order to avoid the risk of loss, theft or diversion of the arms to other uses or actors other than the authorized ones; and

b) Ensure that all shipments of small arms and light weapons exported from, imported into, or in transit throughout their territory are subject to effective national licensing or authorization procedures in order to prevent their diversion to any party other than the declared end-user;

c) Ensure that such procedures include the need for previous registration and express authorization of importers and exporters by competent national authorities of the States involved in transfers of small arms and light weapons (including exporting, importing and transit States);

d) Ensure adequate marking and record-keeping of all small arms and light weapons to be transferred, in accordance with the International instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons, adopted by United Nations General Assembly Resolution A/60/518.

e) Ensure that shipments of small arms and light weapons undergo documentary and physical inspection procedures prior to dispatch and upon arrival, to be undertaken by competent customs or border protection authorities, with a view to verifying consistency with amounts, types and final destination declared in the corresponding authorizations/licenses/end-user certificates;

f) Ensure that shipments of small arms and light weapons are securely stored upon arrival, with a view to preventing theft or unauthorized access prior to customs clearance;

g) By means of simplified notification procedures, confirm receipt of shipments of small arms and light weapons to competent national export control authorities of the countries of origin;

h) Ensure cooperation with the competent national authorities of the countries involved in the transfer in case of theft or diversion of such shipments, with a view to identifying the groups or individuals responsible for such theft or diversion, and applying relevant penal or administrative sanctions (in accordance with paragraph 6 of part II of the Programme of Action);

i) Without prejudice to the rights of States to re-export small arms and light weapons that they have previously imported, ensure that the original exporting State will be notified before re-export or re-transfer of these weapons.

In terms of measures of a normative nature, the declaration of principles on the control of transfers of small arms and light weapons should contain a minimum set of criteria or guidelines to be taken into account by States in the authorization of exports and imports of small arms and light weapons.

However, in order to guarantee that such criteria do not interfere with the right of States to acquire arms for the legitimate purposes such as self-defence, internal security and participation in peace-keeping operations, it is essential that they are defined in an **objective, transparent and balanced** manner, and that their adoption is accompanied by measures aimed at ensuring their **effective** and **non-discriminatory** implementation, including **consultation** and **transparency** mechanisms. It is also essential that such criteria include a clear prohibition of transfers of SALW not properly authorized by the competent national authorities of the recipient State.
