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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**

**Preparing for the 2006 SALW PoA Review Conference**

*Appropriate use of SALW by law enforcement officials*

(Submitted by Switzerland)

**1. INTRODUCTION**

The problem of the illicit trade in SALW in all its aspects raises important human rights issues. These have been mentioned within the framework of the UN small arms process,<sup>1</sup> in specific UN human rights processes,<sup>2</sup> and in some regional small arms instruments.<sup>3</sup> Most importantly, the *2005 World Summit Outcome Document* underlines the interrelated and “mutually reinforcing” nature of development, peace, security and human rights<sup>4</sup> across the wide range of areas that the *Document* addresses, including the illicit trade in small arms and light weapons.<sup>5</sup>

While the human rights issue underpins some of its provisions,<sup>6</sup> the PoA does not address human rights in any detail. It is important to fill this gap and fully reflect the consensus expressed at the 2005 World Summit.

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<sup>1</sup> See: United Nations, *Report of the Panel of Governmental Experts on Small Arms*, A/52/298 of 27 August 1997, paras. 37(c), 58; *Concluding Statement by the Chairman of the Biennial Meeting of States*, Ambassador Pasi Patokallio, 15 July 2005.

<sup>2</sup> See, for example, the *Draft Principles on the Prevention of Human Rights Violations Committed with Small Arms*, part A of which deals with State officials. E/CN.4/Sub.2/2005/35 of 16 June 2005. <<http://www.ohchr.org/english/bodies/subcom/57/aevdoc.htm>>

<sup>3</sup> See Organization of African Unity, *Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons*, 1 December 2000, para. 1.v.

<sup>4</sup> United Nations, A/RES/60/1 of 24 October 2005, para. 72. See also paras. 6, 9 and 12.

<sup>5</sup> Para. 111.

<sup>6</sup> Para. II.11. See also para. I.4.

Misuse of SALW by law enforcement officials clearly undermines human security. Moreover, research shows that such misuse often spurs civilian demand for weapons, resulting, in many cases, in the further impairment of human security at local and national levels.<sup>7</sup>

The appropriate use of SALW by law enforcement officials is also a key component of post-conflict peace-building. Societies emerging from conflict will experience only partial improvements in security unless SALW policies address all small arms users, including government.<sup>8</sup>

## **2. EXISTING NORMS**

A well-established body of international norms and principles regulates the appropriate use of SALW by law enforcement officials.<sup>9</sup> These include the most fundamental of all human rights:

- the right to life, liberty and security of person
- the ban on torture
- the ban on cruel, inhuman or degrading treatment or punishment

These and other human rights obligations are given concrete application to the law enforcement /public security realm in the following international instruments:

*Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August – 7 September 1990)

*Code of Conduct for Law Enforcement Officials* (adopted by UNGA Resolution 34/169 of 17 December 1979)

They apply to all public officials who exercise police powers:

[T]he term “law enforcement officials” includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services. (*UN Basic Principles*, note 1; see also *UN Code of Conduct*, art. 1)

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<sup>7</sup> See David Atwood, Anne-Kathrin Glatz and Robert Muggah, *Demanding Attention: Addressing the Dynamics of Weapons Demand* (Small Arms Survey Occasional Paper No. 18, January 2006).

<sup>8</sup> See *Small Arms Survey 2006* (forthcoming).

<sup>9</sup> For more information, see *Small Arms Survey 2004*, chapter 7.

### 3. KEY CHALLENGES

States have already committed themselves in the PoA to:

Strengthening or developing agreed norms and measures at the global, regional and national levels that would reinforce and further coordinate efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects (para. I.22.a)

The PoA equally affirms the “multi-faceted” and “comprehensive” nature of the small arms problem (paras. I.15, I.21).

Addressing the human rights /law enforcement challenge involves the following basic steps:

*Specifically in relation to the use of force and firearms by law enforcement officials,*

- To explicitly acknowledge the relevance of certain, *existing* human rights norms to the UN small arms process.
- To secure agreement on text, whether existing or new, that anchors and operationalizes these norms within the UN small arms framework.

States will also need to attend to the following, specific issues:

- Ensuring that *private* actors that exercise security functions within national jurisdiction are held to the same standards as the *State* officials that exercise such functions.
- Ensuring that law enforcement agencies are “representative of and responsive and accountable to the community as a whole”<sup>10</sup> so as to lessen the prospect of law enforcement officials using excessive force (recruitment of women and ethnic minorities, etc.).

The *UN Basic Principles*, *UN Code of Conduct* and other instruments define the appropriate use of force and firearms by police in specific situations. They equally address the broader range of factors that influence police compliance with fundamental human rights norms (less-lethal means of coercion, firearm storage, oversight systems, etc.).

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<sup>10</sup> UNGA Resolution 34/169 of 17 December 1979 (adopting the *Code of Conduct for Law Enforcement Officials*).

#### **4. PROPOSALS**

- 1) Incorporate a reference to relevant international human rights instruments in the 2006 Review Conference outcome document (or documents).
- 2) Incorporate the *UN Basic Principles* in the 2006 Review Conference outcome document (or documents).
- 3) Reach agreement on specific commitments /text addressing the various issues enumerated above.

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