

Annex: Existing Commitments Related to Human Rights and Humanitarian Law— Select Government Documents on Arms Transfers¹

International Documents

United Nations Security Council Resolution 1467 (March 18, 2003)

The Security Council expresses its profound concern at the impact of the proliferation of small arms and light weapons, as well as mercenary activities, on peace and security in West Africa. These contribute to serious violations of human rights and international humanitarian law, which the Council condemns. The Council requests States of the subregion to ensure that relevant measures adopted at the national, regional and international levels to combat these problems are put into effect. [Detailed recommendations follow.]

United Nations Security Council Resolution 1460 (January 30, 2003)

The Security Council (...) urges Member States, in accordance with the United Nations Program of Action on Small Arms and Light Weapons to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons, to take effective action through, inter alia, conflict resolution and the development and implementation of national legislation, in a manner which is consistent with existing responsibilities of States under relevant international law, to control the illicit trade of small arms to parties in armed conflict that do not respect fully the relevant provisions of applicable international law relating to the rights and protection of children in armed conflict. (Para. 7)

The Security Council (...) further requests the Secretary-General to submit a report by 31 October 2003 on the implementation of this resolution and of its resolution 1379 (2001) which would include, inter alia (...) an assessment of violations of rights and abuses of children in armed conflict, including in the context of illicit exploitation and trafficking of natural resources and of illicit trafficking of small arms in conflict zones. (Para. 16 (b))

United Nations Security Council Resolution 1379 (November 20, 2001)

The Security Council (...) underlining the need for all parties concerned to comply with the provisions of the Charter of the United Nations and with international law, in particular those regarding children... (Preamble)

The Security Council (...) urges Member States to (...) consider, where appropriate, measures that may be taken to discourage corporate actors, within their own jurisdiction, from maintaining commercial relations with parties to armed conflicts that are on the Security Council's agenda, when those parties are violating applicable international law on the protection of children in armed conflict [and to] consider measures against corporate actors, individuals and entities under their jurisdiction that engage in illicit trade in natural resources

¹ The compilation presented here builds on one produced by the International Committee of the Red Cross and Red Crescent (ICRC): ICRC Mines-Arms Unit, "IHL [International Humanitarian Law] Commitments in Governmental Documents on Arms Transfers," version dated January 10, 2003.

and small arms, in violation of relevant Security Council resolutions and the Charter of the United Nations... (Para. 9 (c) and (d))

United Nations Program of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (July 20, 2001)

Recognizing that the illicit trade in small arms and light weapons in all its aspects (...) undermines respect for international humanitarian law [and] impedes the provision of humanitarian assistance to victims of armed conflict (...) (Preamble, para. 5)

We (...) undertake (...) to 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 the illegal trade. (Section II, para. 11)

International Red Cross and Red Crescent Plan of Action² (November 1999)

States enhance the protection of civilians in armed conflict and post-conflict situations by seeking to strengthen controls on the availability of arms, in particular small arms and ammunition, at the national, regional and international levels, including by improving national export regulations. States examine the establishment of means to integrate consideration of respect for international humanitarian law into national decision-making on transfers of arms and ammunition, and, where relevant, examine ways of integrating such considerations into “codes of conduct.” (Final goal 1.5 (23))

Regional Documents

Organization for Security and Cooperation in Europe Best Practice Guide on Export Control of Small Arms and Light Weapons³ (draft dated February 8, 2003, due to be finalized by July 2003)

[T]he following export criteria should be taken into account in considering a license application for a SALW [small arms light weapon] export. The same criteria should apply, as appropriate, when granting licenses for the transit of SALW[:] *The respect for human rights and*

² The plan of action containing this commitment was adopted at the 27th International Conference of the Red Cross and Red Crescent in November 1999. The conference represents all states party to the Geneva Convention (191 states as of July 2003), as well as the National Red Cross and Red Crescent Societies, their International Federation, and the International Committee of the Red Cross.

³ The document makes clear that the same criteria should apply, as appropriate, when considering licenses for transit and licensed production. This draft has been presented for endorsement by the participating states of the Organization for Security and Co-operation in Europe (OSCE): Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia and Montenegro, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, the United Kingdom, the United States of America, and Uzbekistan.

fundamental freedoms in the recipient country; (...) [t]he record of compliance of the recipient country with regard to international obligations and commitments (...) and the respect for international law governing the conduct of armed conflict.

The issuance of licenses should be avoided where it is deemed that there is a clear risk that the small arms, light weapons or associated technology in question might: Be used for the violation or suppression of human rights and fundamental freedoms; (...) threaten compliance with international law governing the conduct of armed conflict; (...) be either re-sold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to aims of the OSCE document on small arms and light weapons; [or] be used for the purpose of repression (...).

Ministerial Declaration for Continued Concerted Action [on Small Arms] in the Great Lakes Region and the Horn of Africa⁴ (August 8, 2002)

We, the Ministers of Foreign Affairs of the countries of the Great Lakes Region and the Horn of Africa [...acknowledge] that the problem of proliferation of illicit small arms and light weapons in the region has been exacerbated by internal political strife and extreme poverty, and that a comprehensive strategy to arrest and deal with the problem must include putting in place structures and processes to promote democracy, the observance of human rights, the rule of law and good governance, as well as economic recovery and growth, and practical measures to ensure peace and security in Africa (...).

European Union Code of Conduct on Arms Exports⁵ (June 8, 1998)

Criterion Two: The respect of human rights in the country of final destination

Having assessed the recipient country's attitude towards relevant principles established by international human rights instruments, Member States will:

not issue an export license if there is a clear risk that the proposed export might be used for internal repression;

exercise special caution and vigilance in issuing licenses, on a case-by-case basis and taking account of the nature of the equipment, to countries where serious violations of human rights have been established by the competent bodies of the UN, the Council of Europe or by the EU.

⁴ Those signing the declaration were the ministers of foreign affairs of Burundi, Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Tanzania, and Uganda.

⁵ These criteria apply to arms exports, but the E.U. has subsequently clarified that they also should be taken into consideration with respect to the issuing of license for arms brokering and arms transit or transshipment. The E.U. Code of Conduct on Arms Exports was adopted by the members of the E.U. at the time: Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden, and the United Kingdom. Numerous other countries—Bulgaria, Cyprus, the Czech Republic, Estonia, Hungary, Iceland, Latvia, Lithuania, Norway, Poland, Romania, Slovakia, and Slovenia—have aligned themselves to the E.U. Code. Canada, Malta, and Turkey also have subscribed to the principles and criteria contained in the E.U. Code. The United States has endorsed the E.U. Code and the principles contained in its criteria, and in November 1999 the U.S. Congress adopted the International Arms Sales Code of Conduct Act, a law that requires the U.S. president to work toward negotiation of an international code of conduct containing human rights and humanitarian law criteria.

For these purposes, equipment which might be used for internal repression will include, inter alia, equipment where there is evidence of the use of this or similar equipment for internal repression by the proposed end-user, or where there is reason to believe that the equipment will be diverted from its stated end-use or end-user and used for internal repression. (...) Internal repression includes, inter alia, torture and other cruel, inhuman and degrading treatment or punishment, summary or arbitrary executions, disappearances, arbitrary detentions and other major violations of human rights and fundamental freedoms as set out in relevant international human rights instruments, including the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights.

Criterion Six: The behavior of the buyer country with regard to the international community, as regards in particular to its (...) respect for international law

Member States will take into account inter alia the record of the buyer with respect to: the potential effect of the proposed export on their defense and security interests and those of friends, allies and other member states, while recognizing that this factor cannot affect consideration of the criteria on respect of human rights and on regional peace, security and stability;

its compliance with international commitments (...) including under international humanitarian law applicable to international and non-international armed conflicts (...).

European Parliament Resolution on Small Arms (November 15, 2001)

[The European Parliament...] affirming the urgent need for more effective regulation of legal and illicit arms transfers in the wake of the tragic events of 11 September 2001, in order to cut off lines of supply to terrorist organizations and to tightly control transfers to governments that abuse human rights and regions of conflict and instability (Preamble, para. A)

(...) Noting with satisfaction the commitment contained in the Program of Action for all States to assess applications for export authorization according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with States' existing responsibilities under relevant international law; welcoming the commitment to strengthen agreed norms or measures at the global, regional or national levels... (Preamble, para. D)

...Calls on Member States to bring all national and regional control systems for the export of armaments into line with States' existing responsibilities under international law, and to take steps towards the negotiation of a legally binding instrument setting out norms and procedures for the international transfer of armaments, based on existing responsibilities under international law. (para. 6)

Organization of African Unity Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons⁶ (December 1, 2000)

We, the Ministers of the Member States of the Organization of African Unity (...) express our grave concern that the problem of the illicit proliferation, circulation and trafficking of small arms and light weapons (...) sustains conflicts, exacerbates violence, contributes to the displacement of innocent populations and threatens international humanitarian law (...), as well as fuels crime and encourages terrorism; (...) undermines good governance, peace efforts and negotiations, jeopardizes the respect for fundamental human rights, and hinders economic development. (V (1) (i) (v))

We therefore agree that (...) it is vital to address the problem of the illicit proliferation, circulation and trafficking of small arms and light weapons in a comprehensive, integrated, sustainable and efficient manner through: (...) the promotion of structures and processes to strengthen democracy, the observance of human rights, the rule of law and good governance (...); [and] the respect for international humanitarian law. (V (2) (iii) (ix))

Brasilia Declaration on Small Arms⁷ (November 24, 2000)

[T]he Latin American and Caribbean States share an unshakable commitment to the basic norms of international law (...). (Annex (4))

Organization for Security and Cooperation in Europe Document on Small Arms and Light Weapons⁸ (November 24, 2000)

Each participating State will, in considering proposed exports of small arms, take into account: the respect for human rights and fundamental freedoms in the recipient country; (...) the record of compliance of the recipient country with regard to international obligations and commitments (...) and the record of respect for international law governing the conduct of armed conflict. (Section (III), (A) 2 (a) (i) (iii))

⁶ Organization of African Unity (since renamed African Union) member states are: Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Cote D'Ivoire, Democratic Republic Of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Saharawi Arab Democratic Republic, Sao Tome And Principe, Seychelles, Senegal, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe.

⁷ The declaration was issued by the representatives of Latin America and Caribbean states at the Regional Preparatory Meeting of the Latin American and Caribbean States for the 2001 United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, from November 22-24.

⁸ Agreed by the participating states of the OSCE: Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Netherlands, Norway, Poland, Portugal, Romania, the Russian Federation, San Marino, Serbia and Montenegro, the Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Tajikistan, the former Yugoslav Republic of Macedonia, Turkey, Turkmenistan, Ukraine, the United Kingdom, the United States of America, and Uzbekistan.

Each participating State will avoid issuing licenses for exports where it deems that there is a clear risk that the small arms in question might: be used for the violation or suppression of human rights and fundamental freedoms; (...) contravene its international commitments; (...) threaten compliance with international law governing the conduct of armed conflict; be sold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to the aims of this document; [or] be used for the purpose of repression (...). (Section (III), (A) 2 (b) (i) (iv) (v) (vii)

Further, each participating States will (...) ensure that these principles are reflected, as necessary, in its national legislation and/or in its national policy documents governing the export of conventional arms and related technology. (Section (III), (A) 4 (i))

North Atlantic Treaty Organization Parliamentary Assembly Resolution 303 on Small Arms Control⁹ (November 21, 2000)

The Assembly (...) urges member governments and parliaments of the North Atlantic Alliance (...) to harmonize national approaches through wider acceptance and application of guidelines and codes of conduct - such as the EU Code of Conduct, effective application of arms embargoes, and enhanced evaluation of recipient States' records with regard to adherence to international humanitarian law and control over stocks and flows of small arms. (Para. 8 (d))

Nairobi Declaration on the Problem of the Proliferation of Illicit Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa¹⁰ (March 15, 2000)

We the Ministers for Foreign Affairs of the countries of the Great Lakes Region and the Horn of Africa [...acknowledge] that the problem of the proliferation of illicit small arms and light weapons in the region has been exacerbated by internal political strife and extreme poverty, and that a comprehensive strategy to arrest and deal with the problem must include putting in place structures and processes to promote democracy, the observance of human rights, the rule of law and good governance as well as economic recovery and growth (...). (Preamble)

⁹ At the time this resolution was adopted, the members of NATO included Belgium, Canada, the Czech Republic, Denmark, France, Germany, Greece, Hungary, Iceland, Italy, Luxembourg, the Netherlands, Norway, Poland, Portugal, Spain, the United Kingdom, and the United States.

¹⁰ Signed by the ministers for foreign affairs of the countries of the Great Lakes Region and the Horn of Africa namely, Burundi, the Democratic Republic of Congo, Djibouti, Ethiopia, Eritrea, Kenya, Rwanda, Sudan, Tanzania, and Uganda

Other

Chairman's Summary from the Lancaster House Conference on Implementing the Program of Action: Strengthening Export Controls¹¹ (January 14-15, 2003)

Recalling the principles of the Program of Action, and recommitting themselves to its implementation, participants recognized: (...) the particular need to prevent the acquisition of arms by terrorist groups and organizations and other groups that violate international humanitarian law or abuse human rights, as well as the need to prevent and combat transnational organized crime. (Introduction)

Participants recognized the need to strengthen efforts to implement relevant commitments in the UN Program of Action (including those contained in paragraphs 2 and 11 of Section II), and thus to: (...) assess applications for export authorizations according to strict national regulations and procedures that cover all SALW 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 the illegal trade. (Section I)

There was wide agreement that the conference had explored many of the factors any responsible exporting government takes into account when considering whether to authorize a specific SALW [small arms and light weapons] transfer. Some guidelines (...) commanded consensus support [including] consistency with existing responsibilities of States under relevant international law. These guidelines could usefully be a focus for further international consideration, to clarify the scope and content of existing international law, and to enhance shared understandings of their implications. (Section I)

Most participants supported the view that States should take the following factors into account: (...) the record of compliance with international obligations and commitments (...); and the record of respect for international law governing the conduct of armed conflict; respect for human rights in the recipient country; [and] the risk that the proposed transfer will be used for internal repression (...). (Section I (vi) (vii) (viii))

Wassenaar Arrangement Best Practice Guidelines for Exports on Small Arms and Light Weapons¹² (December 11-12, 2002)

Each Participating State will, in considering proposed exports of SALW [small arms and light weapons], take into account: (...) the record of compliance of the recipient country with regard to international obligations and commitments, in particular (...) the respect for

¹¹ The participants in the Lancaster House conference included participants and observers from forty-nine countries.

¹² The best practice guide has been adopted by the plenary of the Wassenaar Arrangement on Export Controls in Conventional Arms and Dual-Use Technologies. The participating states in the Wassenaar Arrangement are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Russia, Slovakia, South Korea, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States.

international law governing the conduct of armed conflict (...); [and] the respect for human rights and fundamental freedoms in the recipient country. (Section I, para.1 (c) (i))

Each Participating State will avoid issuing licenses for exports of SALW where it deems that there is a clear risk that the small arms in question might: (...) threaten compliance with international law governing the conduct of armed conflict; [...or] be used for the violation or suppression of human rights and fundamental freedoms (...). (Section I, para. 2 (e) (i))

Further, each Participating State will: ensure that these principles are reflected, as appropriate, in their national legislation and/or in their national policy documents governing the export of conventional arms and related technology. (Section II, para. 3 (a))

Group of Eight Miyazaki Initiative on Small Arms and Light Weapons¹³ (July 13, 2000)

The G8 (...) confirms that we will exercise a high degree of responsibility in controlling and licensing [small arms] exports. (...) The G8 will not authorize the export of small arms if there is a clear risk that these might be used for repression or aggression against another country. (...) [The G8] recognizes the need to tackle the problem of illicit small arms possession and misuse through effective law enforcement and crime prevention measures.

¹³ The G8 includes France, Germany, Japan, the Russian Federation, the United Kingdom, and the United States. This initiative was adopted by the G8 foreign ministers as part of a series of initiatives on conflict prevention agreed at their meeting in Miyazaki, Japan, on July 13, 2000.