Discussion paper on the prevention and combating of the illicit trade in small arms and light weapons across borders

I. Introduction

1. The international community is aware of the urgent need to prevent, combat and eradicate the illicit trafficking in small arms and light weapons owing to the harmful effects of those activities on the security of each State, each region and the world as a whole, endangering not only the well-being of peoples, but also their social and economic development and their right to live in peace.

2. Illicit small arms and light weapons come from a number of sources, including but not limited to illicit brokering, illicit arms transfer and distribution, conflicts, illicit manufacturing, leakages from military and police stockpiles, smuggling and the absence or ineffectiveness of border control.

3. States are aware that measures to promote further cooperation among them, in particular with a view to strengthened controls in border areas (land, sea and air), will assist in preventing the diversion of such weapons for unlawful purposes.

4. In addition, it is important to acknowledge that, during his consultations in Bali, Geneva, Kigali, Lima, New York, Sydney and Vienna, the Chair-designate for the Fourth Biennial Meeting of States to Consider 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 identified the need for States to prevent and combat the illicit trade in small arms and light weapons across borders, which is a source of concern for all regions.

II. Problems related to the lack of effectiveness in the prevention and combating of the illicit trade in small arms and light weapons across borders

5. The porosity of borders is an aggravating element of illicit arms trafficking that leads to the prolongation of conflicts, exacerbates violence, undermines the
internal security of States, increases the activities of transnational organized crime, assists corruption, undermines socio-economic development and enables criminals and weapons traffickers to gain free access to armaments as a result of poor border controls.

6. The effects of this scourge are amply demonstrated in countries that lack the means (technological and human resources) and the institutional capacity to address it. Criminal activity tends to flourish when the mandates of government are unclear and when laws do not lead to the prosecution and imprisonment of those who break them. Those factors can also demoralize officials responsible for implementing the law and make them susceptible to corruption.

7. Therefore, as expressed in several instruments, action against transnational organized crime, in particular the illicit trade in small arms and light weapons, is a common and shared responsibility.

III. Are we starting from zero in the prevention and combating of the illicit trade in small arms and light weapons across borders?

8. Although border control is not a topic new to the subregional and regional agendas, it is not being sufficiently addressed through a multilateral approach.

9. The United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/CONF.192/5), in its section II, highlights the importance of transborder customs cooperation, encouraging, where needed, regional and subregional action to introduce, adhere, implement or strengthen relevant laws, regulations and administrative procedures (paras. 27 and 28).

10. Moreover, there are several mechanisms and instruments aimed at ensuring effective border controls as a means to combat the trafficking in small arms and light weapons. These include, inter alia, the following:

   (a) 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 (General Assembly resolution 55/255). In its article 11 (b), the Protocol requests States parties “To increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation”;

   (b) Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment, a legally binding arms export control instrument for European Union member States, adopted in December 2008 by the Council of the European Union. In addition to defining common rules for the control of exports of military technology and equipment, it sets out the criteria according to which European Union member States must assess licence applications for the export of military goods;

   (c) The Organization for Security and Cooperation in Europe (OSCE) Document on Small Arms and Light Weapons, a politically binding agreement

1 See, for example, S/PRST/2010/6.
adopted by OSCE in November 2000 and outlining various steps that member States agree to take to prevent illicit trafficking. Section III (E) of the Document, which concerns improving cooperation in law enforcement, underlines in its paragraph 4 that “participating States agree to cooperate with each other on the basis of customary diplomatic procedures or relevant agreements and with intergovernmental organizations such as INTERPOL, in tracing illegal small arms”. The Document also encourages participating States to share, in accordance with their national laws and through established channels such as INTERPOL, police forces or customs agencies, information in the many areas related to the illicit trafficking in small arms and light weapons.

d) The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (1997), a legally binding instrument for the members of the Organization of American States (OAS). In its article X, the Convention calls for the adoption by each State party of “such measures as may be necessary to detect and prevent illicit trafficking in firearms, ammunition, explosives, and other related materials between its territory and that of other States parties, by strengthening controls at export points”;

e) The Proposed Model Legislation and Commentaries for Strengthening Controls at Export Points for Firearms, Ammunition, Explosives and Other Related Materials, adopted by OAS in 2008 to reaffirm article X of the Inter-American Convention by seeking the establishment or maintenance of an effective system of export licences or authorizations, as well as measures to ensure the security of firearms, ammunition, explosives and other related materials;

f) 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 (2004). In its article 4 (Operational capacity), the Protocol emphasizes that States parties shall strengthen subregional cooperation among police, intelligence, customs and border control officials in combating the illicit circulation and trafficking in small arms and light weapons, establish and improve national databases and communication systems, and acquire equipment for monitoring and controlling small arms and light weapons movements across borders;

g) The Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region. Its article 6 (b) provides that States parties undertake to improve the capacity of police, customs, border guards, the military, the judiciary and other relevant agencies to fulfil their roles in the implementation of the Protocol and to establish and improve national databases and communication systems and acquire equipment for monitoring and controlling the movement of firearms across borders;

h) The guidelines for international arms transfers in the context of General Assembly resolution 46/36 H of 6 December 1991 (A/51/42, annex I). According to paragraph 34 of the guidelines, “States should cooperate at the bilateral and multilateral levels as appropriate to share relevant customs information on trafficking in and detection of illicit arms and coordinate intelligence efforts. In this context, States should endeavour to ensure effective control of borders with a view to preventing illicit arms trafficking.”
IV. What might be expected at the Fourth Biennial Meeting of States with regard to the prevention and combating of the illicit trade in small arms and light weapons across borders?

- The reinforcement of the legislative and/or regulatory regimes for strengthening border controls at the national, regional and multilateral levels may be requested.

- States may be urged to enhance practical cooperation among those institutions responsible for the effective control of borders, with a view to combating the illicit trade in small arms and light weapons as well as related criminal activities.

- The holding of meetings of the relevant enforcement authorities may be encouraged with a view to the exchange of information regarding the movement across borders of illicit small arms and light weapons.

- The international community may be requested to strengthen border control mechanisms through the development of laws, regulations, policies and practices, the improvement of infrastructure, the upgrading of equipment, the sharing of lessons learned, the implementation of confidence-building measures and the development of training programmes for personnel.

- It may be stressed that the principle of shared responsibility is essential in order to improve efforts to prevent and combat the illicit trade in small arms and light weapons across borders. In that regard, the work carried out by regional organizations to implement border security focal point networks may be recognized, and Member States may be requested to establish a national focal point for sharing information in order to prevent and combat the illicit trade in small arms and light weapons across borders.

- Give the need for international guidelines or an international instrument, within the framework of the Programme of Action, specifically concerning this issue, it may be suggested that the open-ended meeting of governmental experts to be convened in 2011 consider establishing parameters for preventing and combating the illicit trade in small arms and light weapons across borders.