

The Evolution of Codes of Conduct on Small Arms and Light Weapons (SA/LW)
The ARF CBMs Seminar on Conventional Weapons Transfers

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Introduction

Mr. Chairman, allow me to echo the appreciation expressed by my colleague, in having inviting the U.S. to participate in this important and timely seminar. As we approach the final turn to the UN Conference, we believe that it is important for contributions from all regions of the world to be fully accounted for. I for one am optimistic about prospects for the success of the Conference. I believe that should developments continue along the current positive path, the UN Conference could provide us with a pleasant surprise. It could go well beyond current low expectations of success. And, should this happen, it is the U.S. wish that ARF contributions be fully reflected in this success. In particular, Mr. Chairman, we believe that the Australian Draft Declaration, which was circulated in Seoul, is headed in the right direction and could form a good basis for a possible ARF contribution to the 2001 UN Conference from the ASEAN region.

And in this regard. Mr. Chairman, allow me to say that considering all that your government has done and continues to do, in the field of SA/LW, praise for these efforts is certainly in order. I want the U.S. on record as commending you on your commitment, your energy, and motivation to rid your country of the scourge of these weapons. Now, having said that, wouldn't it be a shame if all the efforts taking place in Cambodia were not reflected in some way at the 2001 UN Conference?

In addition to reporting to the UN Register for the first time, and your White Paper containing a radically new approach to Cambodian national security, the U.S. would also like to commend you most for your other efforts, your "Track two activities." It is clear to every one, that weapons collection and destruction, improved stockpile management and safety, demobilization and reintegration of soldiers, and improving civilian-police relationships is, as we say in the U.S., "where the rubber meets the road" in the SA/LW field.

We hope you will use the knowledge, experience and leadership you are gaining in these areas to spread the word to others in this region, and beyond. I should like to point out that I have talked to General Vender de Graaf, the EU Special Representative, about the possibility of providing U.S. destruction funds for some of the pilot studies going on here in Cambodia. We have the better part of \$2 million dollars to spend on weapons destruction and stockpile management this year, with the hope of more to come, and you have my word that I will follow up on this possibility as soon as I return to Washington.

Mr. Chairman, the topic of my discussion today is The Evolution of Codes of Conduct.

This topic was selected for several reasons, not the least of which is a statement made by the UN Secretary-General in his "Supplement to the Agenda for Peace,"—a paper also mentioned yesterday by H.E. Mr. Gotaro. In this paper, the UN Secretary General suggested that, although norms and an effective legal regime existed for WMD — that is, for those weapons that have in effect have not killed anyone since the end of the Second World War. No such norms exist for those weapons that continue to kill people in the hundreds of thousands — and of course here the Secretary General was speaking of SA/LW.

That these weapons are as lethal and deadly as WMD can no longer be considered a bad joke, or an even an exaggeration. It is a sad fact of everyday life in many areas of the world: The AK-47 has at last become a weapon of mass destruction. The UK Secretary of State, Robin Cook pointed out last week at a similar seminar in London, that since 1990 over three million people have been killed by SA/LW. Another author has put the number of refugees as rivaling that in Europe at the end of the Second World War, over 18 million. As a result of the UN Secretary General's call to action, the U.S. joined others in the search for global norms that could address these weapons. This search has led to a proliferation of developments and discussions of codes of conduct.

What are Codes of Conduct?

Codes of Conduct, are collections of "norms," rules of the road, principled recommendations, collections of moral principles and declarations about the type of conduct a state is willing to "commit to" to ensure that the weapons it holds, sells or transfers to others will not be consciously misused or misdirected to corrupt or otherwise ignoble ends.

Consideration of codes of conduct is thus reserved for those who have made the decision within their governments to address the problem of weapons misuse and illicit trafficking in a serious, rather than a frivolous way. To these countries, normative statements can provide moral guideposts, and reminders that can serve to shape the expectations of what a nation will and will not do with respect to trading in arms. In the end, we believe that it is not the traffickers, or the unscrupulous brokers but the responsibility of governments that is paramount in stemming the tide of SA/LW.

History of Codes of Conduct

We might consider one of the earliest codes as being the 1991 UNDC Guidelines on Illicit Trafficking in Conventional Arms. These guidelines were a comprehensive set of "rules of the road," for dealing with the illicit arms trade, delineated across national, regional and global levels. They covered such areas as civilian possession and use, harmonizing legislation, stricter export controls, regional transparency, enforcing

embargo violations, negotiating legally binding agreements, and respecting the UN Charter and SC resolutions.

The GGE, of which I was member under Ambassador Donowaki's expert leadership, found the UNDC guidelines to be comprehensive and thorough, and are now proving to be more robust than the authors (Colombia) could have ever imagined. As a member of the 1997 and 1999 UN panel of experts on SA/LW, from the outset we established as one of our goals, to complement, rather than duplicate the UNDC Guidelines in our recommendations to States. The UNDC Guidelines endure and remain relevant to today's illicit trafficking problems. Were states to fully commit to the UNDC guidelines, there would be little remaining to be done in meeting the SYG's call to address SA/LW norms.

In 1993, the OSCE issued its Principles Governing the Transfers of Conventional Arms. These principles were based on an earlier set of common EU export criteria, negotiated in 1991 and 1992, but that were never completely agreed to within the EU. Like the UNDC Guidelines, they also consisted of a set of prescriptive recommendations for states to use in conditioning and qualifying sales, use and transfers of conventional weapons, including SA/LW. The principles contained in the 1993 OSCE document served as an important guide and precursor to the development of the 1995 U.S. Conventional Arms Transfer policy, which the U. S. still uses as its de facto code of conduct. And of course it goes without saying that the 1993 OSCE principles set the stage for the more recent "OSCE Document on SA/LW." Together with the UNDC Guidelines, these principles still guide and inform U.S. conventional arms transfer policy, including on SA/LW.

How are Codes of Conduct Used?

Well, the best example of how codes of conduct are used, is demonstrated by how U.S. CAT policy has helped shape U.S. SA/LW initiatives and led to what we have described elsewhere as our SA/LW "Best Practices." U.S. SA/LW "best practices" consist of encouraging stronger and more effective export controls—especially those that include prior authorization before granting retransfers; increased transparency; effective brokering laws; strengthened embargo enforcement; increased accountability; destruction of excess weapons; and cracking down on the financing of illicit arms. U.S. CAT policy (considered our code of conduct) has been used to establish high-standards reflecting, among other things, U.S. values; our sense of responsibility and accountability to ourselves when dealing in the murky waters of arms sales and transfers. Strong norms in such situations can inform and guide policies, make corrupt officials think twice, and generally serve as a deterrent against attempts to misuse and profit from illicit arms sales. In other words, it helps provide a context in which everything done is first checked against the standards in our CAT policy.

The "criteria" in our CAT policy, which constitute our basic set of "norms," consist of the following. The U.S. must: (1) respect international law and the UN Charter, including all UNSC embargoes; (2) promote respect for democracy, human rights, human security and human development.

U.S. CAT Policy also leads us to avoid transfers: (3) meant for illegal armed aggression; or (4) that support international terrorism; (5) or fail to respect international commitments; (6) or that go to countries with a record of gross and consistent violation of recognized human rights standards; (7) that would undermine regional stability; (8) or represent a high risk of use in internal repression; (9) or that would increase the risk of illegal re-transfers or diversion; (10) and finally, that would contribute to terrorism or organized crime.

There are also four principles not yet included as apart of our CAT policy, but which through practice have, de facto, become standard U.S. norms. At some appropriate time in the near future these norms will obviously need to be added and our CAT policy suitably updated. They are: (1) the U.S. has established effective national controls over its SA/LW, including proper licensing for possession and domestic use; (2) we have well established rules and laws to destroy excess stocks; (3) and effective rules and laws that protect our stockpiles against theft, loss, corruption, and illegal diversion; and finally; (4) we have established effective national controls over brokering and retransfers of all SA/LW. With just cursory inspection, one can readily see the correspondence between our "norms" and our "best practices."

In the run up to the 2001 UN Conference, there has been a proliferation of statements and declarations and action plans that can all easily be substituted for, or considered as Codes of Conduct. This includes the current draft action program for the 2001 conference. Some are called declarations, others guidelines and principles, others are referred to as "norms applied to specific subject areas, etc." but no matter what they are called, taken as a set, they look and act very much like codes of conduct.

Among those that deserve special attention are the EU Code of Conduct, the Declaration by the EU-U.S. on the Responsibilities of States and on Transparency Regarding Arms Exports, of which Paul will have more to say shortly; The Bamako Declaration; the Brazilian Declaration; and the OSCE Declaration on SA/LW. Time will not allow even a minimal discussion of more than a couple of these, so in the time I have remaining, I want to briefly discuss our experience with the EU Code of Conduct and share with you some preliminary views on the OSCE Declaration. Then I will pass the baton to Paul for discussion of the most recent EU-U.S. effort.

After a first review of the EU Code, it was easy to see that there was a close correspondence between it and the criteria of our CAT policy. In fact we discovered that U.S. CAT principles and EU normative criteria could be mapped into one another one-to-one, with a few U.S. norms left over. After seeing this initial closeness in basic norms, we were anxious to associate ourselves with the EU Code, and of course eventually we did so, as did 17 other countries. We had hoped to do more than just "associate" ourselves with the EU code, but as we probed deeper into its elements, we discovered that some of the codes "operational" aspects had a number of EU-specific elements, which could not be easily adopted by non-EU members. or at least those not closely linked to EU practices.

In December 1999, the U.S. signed a Joint Declaration on "Common Principles on SA/LW with the EU." This declaration was the SA/LW counterpart to the Declaration Paul is about to discuss, which deals with larger conventional weapons only. Predictably, the "Common Principles on SA/LW" encompassed those standards common to the EU Code of Conduct and to U.S. CAT Principles. The Joint U.S.-EU Declaration encourages others to practice responsibility, transparency, and restraint on a wider international scale and contains a ten-point action plan to help spread the U.S.-EU gospel.

The most recent "OSCE Document on SA/LW" is a comprehensive set of norms principles and measures that makes recommendations on combating illicit trafficking, instituting national controls over manufacturing, marking and record-keeping, common export criteria, stockpile management and destruction, and conflict management elements. The document itself represents a political commitment among the members of the OSCE. It, and the Bamako Declaration, have received the considerable praise and attention and can both be seen to be reflected in the most recent draft program of action for the 2001 Conference.

Allow me to close by saying that codes of conduct are here to stay, and that at some point it may make sense to fashion a single international code along the lines of those advocated by the Commission of Noble Laureates, but that time has not yet come.

Now I will pass the baton to Paul.

Thank you for your indulgence.