



## BITING THE BULLET

INTERNATIONAL ALERT | SAFERWORLD | UNIVERSITY OF BRADFORD

### International weapons transfers and the PoA

#### Introduction

Between 26 June and 17 July 2006, international governments will meet to review their commitment made five years ago to control small arms and light weapons (SALW). The UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (PoA) was agreed at a UN Conference in July 2001, and is the primary international instrument relating to the controls of small arms and light weapons.

The PoA sets out a range of measures and initiatives to be taken by states' in areas such as: controls on the import, export and transit of small arms (transfer controls); the regulation of arms brokering; stockpile management; addressing the impact of small arms on development; and the marking and tracing of small arms.

The Biting the Bullet project aims to promote effective implementation of the PoA and periodically it produces a "Red Book" analysing progress against the PoA.

The 2006 Red Book concludes that global implementation of the PoA is patchy. Although progress has been made in some areas, action taken so far has not been sufficient to have more than a local or marginal impact on the problems of Small Arms and Light Weapons (SALW) trafficking, proliferation and misuse. Some of the factors contributing to inadequate performance are linked to weaknesses in the PoA itself. This year's conference provides the first formal opportunity to review and strengthen the PoA since it was agreed.

This Biting the Bullet briefing focuses on the transfers dimension of the PoA, highlighting progress thus far, and outlining recommendations for further improvements.

#### Key recommendations

The Outcome document of the Review Conference should:

- **Clarify or develop** the PoA commitments in Section II, Para 11 to the effect they should apply to all States involved in authorizing SALW transfers – importing, transit, and transshipment states as well as the exporting state, and also states with jurisdiction of relevant brokers;
- **Clarify and elaborate** international guidelines on State's responsibilities under international law as they relate to SALW transfers, based on the commitments in PoA Section II, Paragraph 11;
- **Recommend** that relevant states co-operate and consult as far as possible in the application of these guidelines to specific transfers of SALW.
- **Establish** or enable international follow-on efforts to raise awareness and promote implementations of the above guidelines, and (if necessary) to

- develop further international understandings on these matters through intercessional meetings;
- **Agree** that all states should ensure that they have in place: effective end-use and end-user controls including, end-use monitoring mechanisms, controls on licensed production agreements; transit and transshipment controls; as well as effective import and export controls.

### **SALW transfers**

The illicit trade in SALW is inextricably linked to the government-sanctioned or 'legal' trade. Effective transfer controls are therefore key to preventing destabilising accumulations and misuse of these weapons. This premise has been fully acknowledged in the PoA itself, which includes measures to promote the effective regulation of the import, export and transit of SALW alongside those to address guidelines on transfer control, arms brokering, end-use, border controls and the enforcement of UN arms embargoes.

However, a large number of states are failing to implement this commitment properly, either due to lack of detail in the PoA concerning the substance of these commitments, and/or due to a lack of clarity regarding those guidelines that should be applied by national licensing authorities when assessing SALW transfer applications. In this respect, the existing PoA document is not helpful: there is no elaboration of what constitutes states existing responsibilities under international law despite this being cited as the fundamental basis for SALW transfer controls. Indeed, it is likely that different governments have different understandings of the status and implications of existing relevant international law, or to the requirements for assessing risks of diversion. This situation leads to inadequate or inconsistent national standards, and creates obstacles to international co-operation and co-ordination of transfer controls

During the 2006 UN Preparatory Committee (a meeting held in January 2006 to set the agenda for the Review Conference), a growing number of countries and organizations highlighted the need to elaborate and clarify the transfer controls aspects of the UN PoA process and to take a holistic approach in this regard.

### **The PoA and existing language on transfers**

The UN PoA is structured into four main sections: (I) Preamble, (II) Preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects, (III) Implementation, international cooperation and assistance and (IV) Follow-up to the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects. Section II, Paragraph 11 of the PoA refers to the guidelines to be applied by national authorities when deciding whether to authorize SALW transfers. This specifies that states should:

'Assess applications for export authorisations 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 illicit trade.' (Paragraph 11, Section II)

However, many states still do not have regulations and systems enabling them effectively and comprehensively to control manufacture and transfer of SALW. As a

result, there continues to be inadequate controls on international SALW transfers; this is compounded in many more states by the lack of specificity about guidelines for national decisions on whether to authorize such transfers. The Review Conference Outcome Document should therefore commit states to developing global criteria for national controls of arms transfers, which accurately reflect the full range of their existing responsibilities under relevant international law.

It is important to reinforce PoA commitments under Section II, Paragraph II of the PoA, on ensuring that states have in place adequate laws, regulations and administrative procedures to exercise effective control of SALW transfers. Several regional agreements and documents, including those associated with the SADC Nairobi Protocol, OSCE, and EU, include specific provisions in this regard - these provisions now need to be elaborated at the international level.

### **References to transfers in the Review Conference President's non-paper**

As Chair of the Review Conference, HE Ambassador P. Kariyawasam, Permanent Representative of Sri Lanka to the United Nation has produced a draft of Outcome Document (non-paper) in advance of the Conference. The most recent *President's non-paper for informal consultation purposes* of 18 May 2006 elaborates on transfers as follows:

"9. To exercise the highest degree of responsibility in the import, export, transfer and re-transfer of small arms and light weapons, according to States' existing commitments under relevant international law, as well as to apply an end-user certification process, and to consider applying global guidelines for national controls governing transfers of small arms and light weapons with the view to avoid their diversion to the illicit market, and to non-authorized uses or users."

and

"16. Recognizing the need for developing common guidelines, criteria and standards on relevant issues addressed by the Programme of Action, including those related to the control of transfers of small arms and light weapons"

The inclusion of paragraphs 9 and 16 explicitly recognise the need for developing common guidelines, criteria and standards relating to transfers of SALW which is a welcome and positive step. However, to ensure that there is positive action to rectify the problem, the document should state that the Review Conference will develop and agree global guidelines. Furthermore, whilst the draft Outcome Document makes no suggestion as to what these common guidelines should be and fails to explicitly state that the global guidelines should exclude based upon states' existing commitments under relevant international law.

Since the PoA was agreed, a number of international initiatives have taken place with a view to elaborating the issue of states' international legal responsibilities regarding SALW transfers. The UK government has led the Transfer Controls Initiative, exploring existing regional practices with regard to SALW transfers, with a view to identifying commonalities in approach that could be translated at the international level. The Consultative Group Process convened by the Biting the Bullet Project (International Alert, Saferworld and the University of Bradford) has in consultation with over 30 governments and has developed a set of guidelines for international SALW transfers. A third initiative has been led by the international NGO community,

which with the help of a team of international lawyers, has put forward a set of 'Global Principles', which clarify states' existing responsibilities under international law.

In addition, the draft Outcome Document fails to include language on controls on licensed production - one of the most common loopholes in transfer control systems. The increasing tendency for companies to relocate production of weapons to countries where transfer controls are weaker is a worrying trend. These arrangements tend to be under-regulated and the transfer of production know-how and capacity has serious implications for weapons proliferation. The current draft Document understands transfers only as exports, imports, transit and brokering of SALW. A specific reference to the control of licensed production is also required.

### Further information

- *Implementing the Programme of Action 2003: Action by States and Civil Society*, Biting the Bullet (International Alert, Saferworld and University of Bradford), June 2003
- *International Action on Small Arms 2005: Examining Implementation of the Un PoA*, Biting the Bullet (International Alert, Saferworld and University of Bradford), June 2005
- *Promoting Effective Global Action on Small Arms: Priorities for the 2006 UN Review Conference*, Biting the Bullet Project (International Alert, Saferworld and University of Bradford), January 2006
- Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, UN Document A/CONF.192/15
- *President's Non-Paper for Informal Consultation Purposes - 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*, 18 May 200