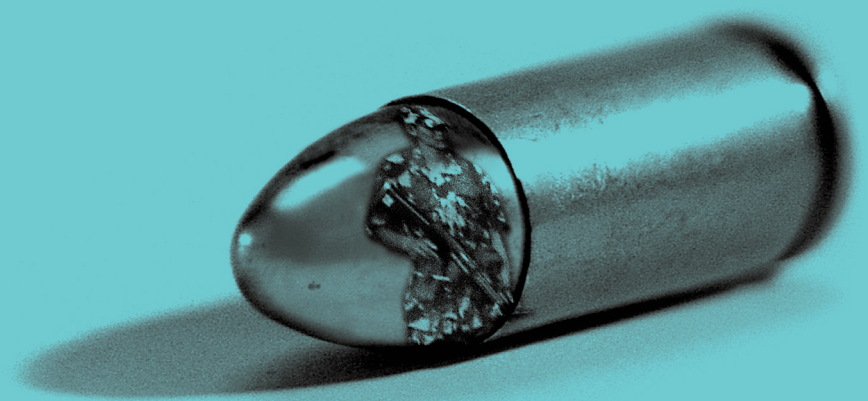


**PROMOTING EFFECTIVE GLOBAL
ACTION ON SMALL ARMS: EMERGING AGENDAS
FOR THE 2006 REVIEW CONFERENCE**



DISCUSSION PAPER

BITING THE BULLET

International Alert.

International Alert

International Alert is an independent peacebuilding organisation working in over twenty countries and territories around the world. We work with people affected by violent conflict as well as at government, EU and UN levels to shape both their policy and practice in building sustainable peace. Our regional work is focused mainly on the African Great Lakes, West Africa, the Caucasus, Colombia, Sri Lanka, Nepal and the Philippines. The issues we work on include business, humanitarian aid and development, gender, security and post-conflict reconstruction.



Saferworld

Saferworld is an independent non-governmental organisation that works with governments and civil society internationally to research, promote and implement new strategies to increase human security and prevent armed violence.



University of Bradford

The Centre for International Co-operation and Security (CICS) is a centre for academic and applied research with extensive expertise in small arms and related issues. It is based at the Department of Peace Studies at the University of Bradford, which is internationally recognised as a leading research and teaching centre in the areas of peace and conflict studies.

Promoting Effective Global Action on Small Arms: Emerging Agendas for the 2006 UN Review Conference

Biting the Bullet Discussion Paper

July 2005

By: Owen Greene

Contents

1. Introduction
2. The aims and role of the Review Conference
3. Progress in Implementing the PoA
4. Enhancing International Co-operation
5. New International Agreements
6. Clarifying and elaborating PoA Commitments
7. Addressing gaps in the existing PoA
8. Preparations for the 2006 Review Conference

Executive Summary

The first Review Conference for the UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects is due to take place in July 2006. This is a major international event. It provides the first formal international opportunity to review and strengthen the UN Programme of Action (PoA) since it was agreed in July 2001.

This Discussion Paper identifies and discusses emerging issues and priorities for the 2006 Review Conference for the PoA. It particularly focuses on identifying realistic and potentially negotiable objectives for the 2006 Review Conference.

The 2006 Review Conference should:

- Review progress made towards implementing the PoA;
- Consider further measures to strengthen and promote effective implementation of the PoA;
- Consider further commitments and programmes that may be needed for effective international action to prevent, combat and eradicate the illicit trade in SALW in all its aspects.

In principle, the 2006 Review Conference could aim to revise and strengthen the existing PoA document itself. There would be strong arguments for doing this, if there were reasonable prospects that consensus could be achieved on a revised and developed text. However, experience shows that it is difficult to revise and develop the main body of an international agreement once it has been agreed. There is a risk that the resulting revised document is no stronger, or perhaps weaker, than the original.

Fortunately, there are also other mechanisms available for developing or reinforcing the PoA at the 2006 Review Conference, which do not involve negotiating changes to the existing PoA document. For example, the Review Conference can express any further agreements achieved on PoA norms, commitments, programmes or processes in its Conference Statements, or through additional agreed annexes or supplementary documents. These provide a more flexible, and relatively low risk, opportunity to develop and strengthen the PoA process.

Through such statements, annexes or initiatives, the Review Conference should aim to achieve progress in the following areas.

A. Establish or reinforce international co-operative programmes and mechanisms to promote implementation of key existing commitments of the PoA, including:

- stockpile management and security
- weapons collection;
- weapons destruction;
- safe and secure destruction of ammunition and munitions;
- national controls on SALW production and transfers.

B. Ensure effective quick start for the implementation of the new international instrument to enable tracing of illicit SALW, and establish customised mechanisms to facilitate international co-operation and assistance, enable technical review, and resolve problems that may arise.

C. Launch negotiations towards an international instrument to control SALW brokering activities, preferably through the establishment of an Open-Ended Working Group.

D. Clarify and elaborate existing PoA commitments relating to:

- International guidelines for national decisions on whether to authorise SALW transfers;
- Good practices relating to controls on SALW production and transfers;
- The application of PoA commitments to SALW ammunition;
- Links between SALW and development and humanitarian programmes.

E. Establish principles and guidelines for the effective and timely development and dissemination of best practice guidelines for implementing aspects of the PoA; and launch processes for the development of such guidelines.

F. Address key gaps in the existing Programme of Action, including:

- Restrictions on SALW transfers to non-state actors;
- International guidelines relating to national controls on civilian possession of SALW;
- Restrictions on transfers of particular types of SALW, such as MANPADS;
- International information exchange and transparency arrangements for SALW;
- Norms and programmes to address demand issues, and linkages between security sector reform and SALW controls;
- Norms to address gender, ethnicity and age issues in SALW policies and programmes.

The 2006 Review Conference agenda is therefore packed, and careful preparations are needed if it is to be a success. Only one preparatory conference (Prep Com) is currently planned, due to take place for two weeks in January 2006. A second preparatory conference is needed, to take place in the spring of 2006. Further, much work needs to be done at informal meetings and workshops from now until July 2006, to prepare for effective and focused discussions on proposals at the PrepComs and Review Conference. The Biting the Bullet Project and its partners plan to facilitate and contribute to such meetings and discussions, hopefully alongside many others.

Those governments that are concerned to promote effective implementation and development of the PoA have a responsibility to devote the necessary resources to preparing for the 2006 Review Conference, including sponsoring consultation meetings. Those governments that, unfortunately, are not yet substantially committed to promoting effective implementation of the PoA have a similar responsibility not to raise unnecessary objections and obstacles, or to play the 'procedural delay' games that plagued the preparations for 2001.

In conclusion, the UN Programme of Action on Small Arms remains the framework for comprehensive international efforts to co-operate to prevent, combat and eradicate illicit trafficking, proliferation and misuse of SALW. Unfortunately only a limited number of countries and regions have so far demonstrated serious commitment to implementing their PoA commitments. To help to rectify this situation, the 2006 Review Conference needs to be used effectively to achieve agreements as outlined above. These goals are important. An effective Review Conference will help to save many lives.

1. Introduction

The first Review Conference for the UNProgramme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects is due to take place in July 2006. This is a major international event. It provides the first formal international opportunity to review and strengthen the UN Programme of Action (PoA) since it was agreed in July 2001. It is important to take this opportunity, so that global action on trafficking, proliferation and misuse of small arms and light weapons can be more effectively pursued.

When the PoA was agreed in July 2001, many participants in the negotiations were very aware of the compromises and weaknesses in the final PoA document.¹ In the interests of achieving consensus, some commitments and norms that commanded wide support were either omitted or left frustratingly vague. Moreover, the PoA has developed largely within an arms control and disarmament framework, and does not satisfactorily address some key development, human rights, humanitarian, or crime prevention dimensions of SALW problems.

Nevertheless, the PoA is quite comprehensive in scope, and its commitments include many important international norms, standards and programmes. It provides the main framework for building concerted and effective international action to tackle SALW trafficking, proliferation and misuse. Moreover, there has been significant, though inadequate, progress towards implementation of the PoA, particularly in some regions. The PoA continues to be a major international focus for debate and action, and it is important to take opportunities to strengthen and develop it when they arise.

This Discussion Paper identifies and discusses emerging issues and priorities for the 2006 Review Conference for the PoA. It particularly focuses on identifying realistic and potentially negotiable objectives for the 2006 Review Conference. It is offered as a contribution to international thinking and debate on these issues. It is relatively brief; a more fully developed BTB Briefing Paper on this topic is due to be published in the autumn of 2005.

Section 2 discusses the aims and roles of the 2006 Review Conference. The next section highlights some key findings relating to progress in implementing the PoA that have implications for the 2006 Review Conference. The following sections address a series of specific issues and priorities for the Review Conference. The Discussion Paper concludes with some comments on the requirements for an effective preparatory process during 2005/6.

2. The Aims and Roles of the 2006 Review Conference

The 2006 Review Conference has a wide mandate to:

- Review progress made in the implementation of the PoA;
- Consider further measures to strengthen and promote effective implementation of the PoA;
- Consider further commitments and programmes that may be needed for effective international action to prevent, combat and eradicate the illicit trade in SALW in all its aspects.

¹ 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, 2001; at <http://disarmament.un.org:8080/cab/poa.html>.

These are the customary mandate and roles for a UN Review Conference associated with an international agreement, whether it is politically or legally binding. The role of the Review Conference is thus entirely distinct from that of the Biennial Meetings of States (BMS), which have simply been to consider national, regional and global implementation of the PoA. The BMS in 2003 and 2005 have performed important roles. They have provided a focused opportunity to exchange information on implementation and to discuss issues and challenges. But they had no mandate to collectively assess progress toward implementation or to consider proposals to reinforce and develop the PoA.

In principle, the 2006 Review Conference could aim to revise and strengthen the existing PoA document itself. There would be strong arguments for doing this, if there were reasonable prospects that consensus could be achieved on a revised and developed text. Many existing weaknesses could be directly addressed in this way.

However, experience shows that it is difficult to revise and develop the main body of an international agreement once it has been agreed. Proposals to revisit one paragraph quickly generate further proposals to re-open other hard-negotiated sections, and there is a risk that the resulting revised document is no stronger, or perhaps weaker, than the original. Substantial preparatory work needs to be done to avoid such undesirable outcomes, and ensure that consensus is likely to be achieved on improvements. With just one year left before the 2006 Review Conference, it is not at all clear that the political conditions will be sufficiently good for many governments to want to risk re-opening negotiations on the PoA Document itself.

Fortunately, there are also other mechanisms available for developing or reinforcing the PoA at the 2006 Review Conference, which do not involve negotiating changes to the existing PoA Document. For example, the Review Conference can express any further agreements achieved on PoA norms, commitments, programmes or processes in its Conference Statements, or through additional agreed annexes or supplementary documents. These provide a more flexible, and relatively low risk, opportunity to develop and strengthen the PoA process.

Through such statements, annexes or initiatives, the Review Conference could:

- establish or reinforce international mechanisms or programmes to promote and support more effective implementation of existing commitments.
- establish or launch negotiations for new international agreements or instruments;
- develop annexes or other supplementary documents to the existing PoA, to elaborate or clarify existing PoA commitments and their implications, or to provide guidelines on good practices and lessons-learned;

This Discussion Paper mainly focuses on possible proposals that can be pursued within this framework.

3. Progress towards implementing the PoA

The Biting the Bullet Project, in co-operation with IANSA, has published detailed examinations and assessments of progress towards implementing the PoA, particularly in the 'Red Book' publications of 2003 and 2005.²

² Biting the Bullet Project; *International Action on Small Arms 2005: examining implementation of the UN Programme of Action*, Biting the Bullet/IANSA, London, pp 320, July 2005; Biting the Bullet Project, *Implementing the Programme of Action 2003: action by states and civil society*; Biting the Bullet/IANSA, London, 260 pp, July 2003.

As would be expected of a detailed examination of implementation of some 180 states in every region, and of each key thematic area covered by the PoA, there are many specific findings from these studies. Overall, they show that there are many useful ongoing implementation activities. Many lessons have been identified. There are important precedents and emerging good practices and guidelines relating to every issue area and sector. Significant progress towards implementation of the PoA and associated commitments has been achieved in some issue areas and regions. For example, substantial momentum towards implementation has developed in much of Europe, and Americas, and in East, West and Southern Africa; and activities to promote SALW stockpile security, destruction and weapons collection have developed appreciably since 2001.

However, overall, implementation of the PoA is not 'on track'. The scale of the interventions is generally not sufficient to have more than a local or marginal impact on the problems of SALW trafficking, proliferation and misuse. While there are some countries and sub-regions that have achieved substantial progress, in many other countries and regions, promising early indicators of imminent action have proved misleading: they have not been properly followed-up. Most States have not really even put in place the basic mechanisms and procedures for PoA participation. The PoA, and associated regional and international agreements, continue to be an important focus for international attention and programmes. But meanwhile, hundreds of thousands more people have died from gunshot wounds.

Importantly, the 'Red Book' examinations of progress towards implementing the PoA find that some of the factors contributing to inadequate performance are linked to weaknesses in the PoA itself. For example, the fact that there continue to be inadequate controls on SALW transfers can be partly linked to the lack of specificity about guidelines for national decisions on whether to authorise such transfers. The patchy and inconsistent approaches to national brokering controls are partly due to the absence of elaborated international guidelines or an international binding instrument. The ad hoc and limited nature of most efforts to promote SALW stockpile security and destruction of surplus or confiscated arms may be linked to the lack of well-developed international mechanisms for promoting and assisting such programmes. Countries located in a geographical region with no substantial regional SALW programmes remain quite isolated, due to missed opportunities to establish strong international information-exchange and support frameworks.

These assessments of progress towards implementing the PoA have important implications for the 2006 Review Conference. Unless performance in implementation unexpectedly improves dramatically in the next year, the 2006 Review Conference has substantial work to do. It is not going to be adequate simply for the Review Conference to remind and encourage states and other relevant stakeholders to implement the existing commitments under the PoA. If progress has been seriously inadequate, this inevitably implies the need for a review of the adequacy of existing PoA commitments. Review Conference participants will have a responsibility to consider adopting additional international measures and agreements within the PoA framework that could help to improve performance.

4. Enhancing international cooperation to implement PoA commitments

Section III of the PoA commits states, together with relevant international and regional organisations and civil society groups, to co-operate to enable and promote effective implementation of PoA commitments. This co-operation should take a variety of forms, including: international agreements; joint research, training and implementation programmes; information-exchange and experience sharing; financial and technical assistance; and co-operation with criminal or other investigations into arms diversion, trafficking or misuse.

Since 2001, there has been substantial co-operation in relation to most aspects of the PoA. However, much of it remains patchy and unduly ad hoc. Co-operation at the regional and sub-regional level has become substantial in some regions, but remains almost negligible in several other regions. In this context, it is inadequate simply to continue to encourage bilateral and regional co-operation. It is clear that such an approach is leading to inadequate international support for countries located in regions that lack substantial regional co-operation on SALW issues. Moreover, in all regions, there is a mismatch between the scale of the co-operative programmes so far and of the problems they intend to address.

It is therefore important for the 2006 Review Conference to agree to establish major international co-operative programmes and mechanisms to promote implementation of key parts of the PoA. In this context, strong candidates for the priority issues for such international programmes include:

- stockpile management and security
- weapons collection;
- weapons destruction;
- safe and secure destruction of ammunition and munitions;
- national controls on SALW production and transfers.

In each of the above issue areas, the PoA has stimulated substantial awareness and support for practical activities. Numerous significant programmes have been implemented, and experience and lesson-learned are developing. However, the programmes have tended to be clustered in a few countries, and are typically too small scale or ad hoc to have substantial impact on the massive problems and risks they aim to address. There is a strong need to scale-up activities across the world on these issues.

The main dimensions of such international programming initiatives have a strong basis in existing PoA commitments. For example, paragraph 6 of Section III calls for international financial and technical assistance to be made available. Paragraphs 7 and 8 call for enhanced co-operation on exchange of experience and training amongst customs, police, intelligence and arms control officials, and on stockpile management and security. Best practice guidelines, international standard setting, awareness raising and co-ordination mechanisms, information exchange mechanisms, and specialist resources would be integral parts of each programme.

The international programmes would link with, and benefit from relevant on-going regional and sub-regional programmes as appropriate. But they would have a global character and would be available to reinforce implementation efforts in any country that meets criteria (to be agreed), particularly countries in a region where regional supports are inadequate.

The specific character of these international programming initiatives would need to be elaborated over time. For example, the requirements and priorities for international programmes for safe and secure destruction of ammunition and munitions are distinct in many ways, and deserve focused attention.³ They would need to be co-ordinated with international programmes to promote weapons destruction and secure SALW stockpile management, but would also have their own relative autonomy.

Thus, during the lead-up to the 2006 Review Conference, the key tasks would be to:

- develop consensus in favour of the principle of launching international programmes or mechanisms to promote implementation on selected topics;

³ O. Greene, S. Holt and A. Wilkinson, *Ammunition Stocks: Promoting Safe and Secure Storage and Disposal*, Biting the Bullet Briefing No 18, London: February 2005.

- agree appropriate frameworks and design principles for establishing and operating each programme;
- agree on mechanisms for the subsequent development of the programme. In most cases, the international programmes would subsequently be developed by leading states or coalitions of willing, with possible support from the UN Secretariat and other international organisations, and strong links with regional initiatives relating to that specific issue area.

Something of the character of a ‘Donor Conference’ would be needed for these programmes, whereby countries and organisations in a position to do so pledge resources and support for the initiatives, and thus enable its work. This might be part of the follow-on process after the 2006 Review Conference.

5. Supporting New International Agreements on SALW

It is hoped that a number of specific international instruments may be ‘spawned’ from the PoA over time. The first such international agreement is likely to be the international instrument to enable States to identify and trace, in a timely and reliable manner, illicit SALW. However, agreements are expected on new international instruments over time, such as an international agreement to control SALW brokering activities. The 2006 Review Conference could play a key role in relation to each of these agreements.

5.1 The international instrument to enable tracing of illicit SALW

The PoA contains relatively strong sets of commitments relating to marking, record-keeping and tracing of SALW. The UN Firearms Protocol, which contains substantial obligations relating to marking, record-keeping and tracing of firearms associated with transnational crime, also came into force in July 2005. The Open Ended Working Group on Tracing Illicit SALW, established in December 2003, recently finalised a draft ‘international instrument to enable states to identify and trace, in a timely and reliable manner, illicit small arms and light weapons’.⁴ Since this is a consensus report, it is virtually certain that this politically-binding agreement will be formally approved by the UN General Assembly in the autumn of 2005.

The substance of this agreement is disappointing in several respects. For example, it is politically rather than legally binding; it does not include ammunition within its scope; and the mechanisms for promoting implementation and further development of the instrument are weak. Nevertheless, it represents important progress, and it is important that it comes effectively and rapidly into operation.

The reporting and review mechanisms for this new instrument are explicitly integrated with those of the PoA itself. So too are the provisions in the new tracing instrument that relate to the development of mechanisms for technical advice or international co-operation and assistance (paragraphs 27 – 29 of the draft instrument).

Thus the 2006 Review Conference for the PoA emerges to be strategically important for the Tracing Mechanism. It is the first opportunity to report and review its initial operations; elaborate standard forms for requesting and responding to requests for information; and to establish key mechanisms to facilitate necessary aid and technical advice and assistance. These are all important for the effectiveness of the new instrument. If these opportunities are not taken in 2006, it is possible that the next opportunities will not rise until 2011 or later.

⁴ Report of the Open-Ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, Un General Assembly Document A/60/88, 27 June 2005.

The opportunity at the 2006 Review Conference to develop further the follow-on mechanisms and scope for flexible further development of the instrument is also very important. International understandings and technical possibilities for marking, record-keeping and tracing SALW are bound to develop rapidly over time. It is important that the collectivity of states that have signed the new tracing instrument have clear authority and scope to decide to revise or develop it as they see fit (for example, by amending annexes), and also to establish working committees or advisory mechanisms, for example to review and advise on developments, address emerging implementation problems, or promote co-operation and implementation.

5.2 Launching negotiations for an international instrument to control SALW brokers

The 2006 Review Conference provides an important opportunity to launch negotiations for a international instrument to control SALW brokering activities. There is now wide awareness of the critical roles played by arms brokers in facilitating international arms transfers, and dubious brokers are heavily implicated in arranging many destabilising transfers to conflict prone or war-torn regions. Unfortunately, there is still only about 40 States that have laws, regulations or administrative procedures enabling them to regulate and control arms brokering activities. Without a legal framework for controls, the distinction between ‘licit’ and ‘illicit’ SALW brokering is unclear.

Since 2001 there has been significant progress on developing common international understandings of the basic issues and problems associated with illicit brokering of SALW, and of ways to control SALW brokering activities. At an international level, the Netherlands-Norway initiative to develop common approaches and agreed elements of a model regulation on SALW brokering was launched in April 2003 (complete with proposals for such elements of model regulations) and followed up with a series of international and regional consultation meetings. The OSCE and other regional organisations have made progress in elaborating best practice guidelines, and the EU has arrived at a common positions. The UN Secretary-General’s High Level Panel called for the development of a legally binding agreement on brokering in its report, supported by the UN Secretary General in his response ‘In Larger Freedom’.⁵

As understanding of the issue and regulatory approaches for brokering improves, it can be expected that more countries will establish controls on arms brokers soon. However, since dubious arms brokers take full advantage of gaps or inconsistencies in different states’ national controls, international co-ordination and harmonisation of approaches towards controlling arms brokering activities is a priority.

In this context, it is important to assess the best way to progress rapidly towards an international agreement in this area. UN General Assembly Resolution 59/86, December 2004, requests the establishment after 2006 of a second UN Group of Experts to consider ‘further steps towards international co-operation’ on this issue. Unfortunately, in many ways this planned exercise appears to be redundant. There has already been a UN Group of Experts on arms brokering, which reported in 2001. It is not clear how a follow-up UN Group of Experts will add value, particularly one that does not even have a mandate to examine the feasibility of negotiating an international instrument.

In practice, it is widely known that efforts to establish a commitment in the UN General Assembly resolution to launch negotiations for an international instrument on controlling arms brokers were frustrated by the objections of a few states. The undesirable compromise to

⁵ <http://www.un.org/largerfreedom/>

establish a second UN Group of Experts was agreed in order to ‘keep the issue alive’ at the UN. As such it may be best regarded as a stop-gap proposal, hopefully to be revised and strengthened at the next session of the First Committee of the UN General Assembly in autumn 2005.

The best option would be to establish an Open Ended Working Group in 2006 to negotiate within the UN framework an international instrument to control SALW brokering activities. If agreement to this cannot be achieved in 2005, at the least the mandate of the Group of Experts should be changed to examine the feasibility of negotiating an international instrument. Then the 2006 Review Conference could usefully establish international support for launching negotiations, for follow-up at the UN First Committee in autumn 2006.

The core of any international agreement on arms brokering is now becoming clear. It would probably include provisions whereby States’ Parties agree to:

- establish national controls on arms brokering activities
- goods to be covered – including prohibited transfers
- model regulations and definitions ensuring a reasonably consistent approach to the design and terms of national controls on brokering activities (including for example commitments to licence each transaction and for brokers to register), with options on relatively controversial issues such as degrees of extra-territorial controls
- establish information exchange and consultation arrangements
- minimum penalties and/or other sanctions
- establish mechanisms for co-operation in enforcement.

Such an international instrument seems to be negotiable.

6. Clarifying and elaborating PoA Commitments

6.1 A flexible approach

As noted in section 2 above, there is scope for the 2006 Review Conference to agree to clarify and elaborate existing PoA commitments. This would clarify and detail the implications of existing commitments. By documenting such agreements in the Conference Statement, or in annexes or supplementary documents, this elaboration can be done without re-opening the existing PoA document itself.

This approach offers real flexibility, and a framework within which progress could be made towards making the PoA more useful and effective relatively rapidly. For example, use of annexes might enable interested states to elaborate the implications of PoA commitments, and to develop global ‘best practice’ or ‘lessons learned’ documents within the PoA framework with less need for full international consensus on every detail.

If it is not possible to agree on the details of such supplementary documents during the 2006 Review Conference itself, as seems likely for at least some issues, it would be useful to aim to secure support for the development of specific annexes by ‘lead-nations’ or informal open-ended working groups, for consideration at the next BMS or Review Conference. In that way, a rolling programme of elaboration and supplementing the PoA would usefully be established.

The following sub-sections outline some ways in which the 2006 Review Conference should consider making the existing PoA more useful and effective, through the use of such annexes or supplementary documents.

6.2 Elaborating international guidelines for SALW transfer controls

The PoA commitments in Paragraph 11, Section II, of the PoA also requires systematic attention at the 2006 Review Conference. These relate to the guidelines to be applied by national authorities in deciding whether to authorise SALW exports, and are thus of central importance to the PoA. The key commitment is 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.’

A few governments are probably deliberately engaged in activities contrary to their commitments under Paragraph 11, Section II of the PoA. However, a much larger number may be failing to implement this commitment properly due to lack of clarity about the implications of the commitments, or due to lack of systematic national principles or guidelines to enable relevant national licensing authorities to systematically and consistently apply SALW transfer controls.

In this respect, the existing PoA Document is not helpful: there is no elaboration of the specific meaning or implications of what constitutes states existing responsibilities under international law. Indeed, it is likely that different countries have different understandings of the status and implications of existing relevant international law. Similarly, different countries probably have widely varying approaches to determining whether there are substantial risks of diversion. This situation leads to inadequate or inconsistent national standards, suspicions of bad faith, and obstacles to international co-operation and co-ordination of transfer controls.

There have been three key international initiatives to develop shared understandings of the principles or guidelines to be applied by national authorities when deciding whether to authorise an SALW transfer. These are: the Transfers Control Initiative sponsored by the UK and other governments; the informal Small Arms Consultative Group Process supported by the Biting the Bullet Project; and the Arms Trade Treaty supported by an increasingly wide range of governments and NGOs. Each, in their different ways, focus on developing shared understandings of how to elaborate or strengthen these PoA commitments. All involve a range of governments from all parts of the world, together with experts from regional and international organisations and independent institutes and NGOs.

Some of the emerging results of the TCI and Small Arms Consultative Group Processes are particularly noteworthy.⁶ Above all, both emphasise the importance of focussing on all aspects of SALW transfers – exports, imports or transit – rather than simply on export controls. This serves to emphasise the shared responsibilities of exporting, importing and transit states in determining whether to authorise a transfer, and also the importance of developing co-operation between all states directly involved in the authorisation process. Similarly, both processes indicate that most governments are broadly in agreement about the types of factors that should be taken into account.

The challenge remains to develop and articulate specific international understandings on the criteria or factors to be taken into account, and on the consultation processes that should be involved. At its last meeting, in Rio de Janeiro in April 2005, the government representatives and other members of the Small Arms Consultative Group Process reached provisional

⁶ See, for example, Chair’s Interim Report, *Small Arms Consultative Group Process*, Biting the Bullet Project, 2004.

consensus on the contents of a ‘food for thought’ paper on these issues.⁷ Hopefully, this indicates that progress will be possible on this issue area at the 2006 Review Conference.

Thus, an aim for the 2006 Review Conference is to agree on an annex or supplementary document that clarifies and elaborates the commitments in Paragraph 11, section II of the PoA. In doing so, participants should take the opportunity to re-frame the approach, so that the commitments applies to all States directly concerned with the decision on whether to authorise a proposed SALW transfer – the exporting, importing and transit/transshipment states, and also the State regulating any relevant arms brokering activities. The annex should include an elaborated list of guidelines the such states should take into account, such as those formulated through the Consultative Group Process noted above, together probably with some statements on adopting a co-operative approach, involving consultation as appropriate.

6.3 Clarifying good practices for controls on SALW production and transfers

Action is needed to promote implementation of states’ commitments under Paragraph 2 of section II of the PoA, on ensuring that adequate laws, regulations and administrative procedures to exercise effective control of SALW production and transfers. On the basis of available evidence, it appears that many (approximately half) of the member states of the UN still do not have regulations and systems enabling them effectively and comprehensively to control manufacture and transfer of SALW. This should be a source of major concern.

In relation to production, governments generally have laws mechanisms and procedures enabling them to exert control when they choose over facilities that produce SALW, parts and components, or ammunition, on an industrial scale. However, the government regulations and systems required to ensure regular and comprehensive reporting, monitoring and oversight over such facilities and the goods that they produce, often have gaps and weaknesses, or rely excessively on voluntary codes of conduct.

Equally problematic in many countries are controls on small-scale ‘craft’ production of firearms or ammunition. Laws, regulations and oversight procedures over such small scale production is often subject to out-of date regulations, developed in relation only to ‘traditional’ production of ceremonial, hunting or collector’s firearms with little capability. However, in many countries now, there is a substantial and growing problem of small-scale arms production for illicit trafficking and use. As access to modern machine technology becomes widespread, small-scale producers are becoming increasingly capable of producing significant quantities of highly capable and sensitive firearms, including semi- and fully-automatic weapons.

To support efforts by all States to ensure that they address these issues, the 2006 Review Conference could aim to launch a process for developing international best practice guidelines on national controls on all aspects of SALW production. This will be able to draw on a wealth of existing national experience and regional guidelines.

Similarly, although most States have some regulations and procedures in place to control SALW transfers, in many cases these are inadequately developed and do not reflect current understandings of best practice. The 2006 Review Conference could thus also aim to launch a process for developing a set of best practice guidelines relating to key aspects of SALW transfer controls, including end-use and end-user controls, end-use monitoring, controls on

⁷ Small Arms Consultative Group Process, *Food for Thought Paper, Small Arms Transfers: Developing Understandings on Guidelines for National Controls and Transfers to Non-State Actors*, Biting the Bullet Project, London, July 2005.

licensed production agreements, and controls systems that may be applied by transit and transshipment countries.

6.4 Clarifying the implications of PoA commitments in relation to SALW ammunition

According to widely used understandings of what is included in the category of SALW, ammunition is included. This makes sense in many ways: weapons cannot function without ammunition, and thus they are inextricably linked. Measures to control and reduce stocks of ammunition are critical elements of wider efforts to prevent, combat and reduce illicit trafficking and proliferation of SALW. During the negotiations for the PoA, many delegations assumed that the commitments applied to ammunition much as they did to the weapons themselves.

Nevertheless, ammunition has its own characteristics, and in practice often requires specific treatment. Moreover, the PoA commitments do not explicitly refer to ammunition, and are not sufficiently elaborated so that they explicitly set out the ways in which they should be applied to ammunition. Thus, although there is little dispute that PoA commitments apply in principle to ammunition as well as weapons, in some areas it remains unclear what the actual PoA commitments are in this context.

This is partly responsible for the ad hoc and generally inadequate approach towards implementing the PoA commitments as they relate to ammunition. Yet ammunition, and associated munitions, are very important. For example, safe and secure management and disposal of SALW and other conventional ammunition is a high priority. Yet SALW programmes to promote SALW stockpile security or destruction have often neglected or dealt inadequately with the massive challenges posed by insecure and surplus ammunition.

Thus, an important aim for the 2006 Review Conference could be to develop an annex or supplementary documents, clarifying the ways in which PoA commitments and programmes specifically apply to SALW ammunition, and also to parts and components. If there is inadequate time to prepare such a document by 2006, then a process should be launched by the Conference whereby interested states can subsequently work on this. In the process, they could usefully further aim to develop best practice guidance on such matters.

6.5 Clarifying the humanitarian and development dimensions of the PoA

The importance of links between trafficking, proliferation and misuse of SALW and international humanitarian and development concerns is emphasised in Section I of the PoA. However, the PoA was developed primarily within a disarmament framework, and issues relating to SALW and development and humanitarian aid are not specified in the subsequent sections of the PoA.

The 2006 Review Conference could usefully take steps to promote more effective engagement between SALW and development and humanitarian concerns, policies and programmes. There are also important links to be recognised and developed with programmes to address and reduce armed violence. This might best be done by including some key recommendations on these issues in the Statement from the Conference, and agreeing to launch a process enabling interested states and relevant organisations to develop more elaborated principles and programmes that address the links between efforts to prevent and

reduce SALW trafficking, proliferation and misuse, address humanitarian needs, and promote development.

The contents of such a statement and the agenda for the proposed follow-on process remain to be elaborated. However, there is now substantial research and programming experience to build upon.

6.6 Developing and disseminating good practice guidelines

Efforts to promote effective implementation of the PoA could usefully be strengthened through the development of best practice guidelines for each of the important relevant issue areas and sectors, drawing on experience and lessons learned. In most sectors, good and relevant national or regional guidelines exist. The key challenge is to develop global guidelines, appropriate for use by any states or organisation across the world, and also programmes to encourage effective use of these guidelines.

As is clear from preceding sections, processes to develop good practice guidelines should be integral elements of many of the proposed agreements and initiatives recommended for the 2006 Review Conference. To underpin these, it may be useful for States and other key PoA stakeholders to agree on general principles on the ways in which such global best practice guides should be produced, disseminated and updated. Within this framework, best practice guidelines could then be developed on key issues such as stockpile security and management, arms destruction, ammunition storage and destruction, weapons collection, and the other important issues discussed elsewhere in this document.

It would be unduly burdensome to approach the development of detailed best practice guidelines as if states were negotiating sensitive political documents. A more flexible approach is needed, whereby interested states work together to produce draft global guidelines, which may then be distributed and used on a 'no objections' basis.

7. Addressing key gaps in the existing PoA

There are important gaps in the present PoA commitments. In several cases, such as restrictions on transfers to Non-State Actors, transparency and information exchange mechanisms, or regulations of civilian possession of SALW, there were major efforts to agree some international norms and commitments in 2001. However, consensus could not be achieved on any specific norms. It is reasonable, and perhaps inevitable, that the 2006 Review Conference aims to revisit these issues, to explore whether it is now possible to achieve consensus on useful norms.

For example, on the issue of restrictions on SALW transfers to Non-State Actors, the Small Arms Consultative Group Process has been working to develop shared understandings of the

complex issues involved, and to develop frameworks for constructive discussion of this issue at the 2006 Review Conference.⁸

In other cases, such as restrictions on transfers of MANPADS, links between security sector reform and SALW controls; norms and programmes to addressing demand issues; and addressing gender, ethnicity or age issues; there was not extended discussion of specific proposals during 2001. Nevertheless, they are key issues, and there are strong cases for considering proposals to develop annexes or supplementary papers on these topics. The 2006 Review Conference should aim to develop principles and guidelines whereby interested states could subsequently develop such supplementary papers on these issues. In some cases, these might usefully be included in the best practice guideline initiative discussed above.

8. Preparations for the 2006 Review Conference

As is clear from the preceding sections, decisions at the 2006 Review Conference are strategically important for the effectiveness and further development of the PoA. It is essential that constructive decisions are taken in a number of areas. The 2006 Conference agenda is packed, and careful preparations are needed if it is to be a success.

Unfortunately, only one preparatory conference is currently planned, due to take place for two weeks in January 2006. Much work needs to be done at informal meetings and workshops during the autumn of 2005, to prepare for effective and focused discussions on proposals at this PrepCom. Similarly, it is important to prepare for intensive consultations between the PrepCom and the 2006 Review Conference. The Biting the Bullet Project and its partners plan to facilitate and contribute to such meetings and discussions, no doubt alongside many others.

However, the primary responsibility lies with governments. Those governments that are concerned to promote effective implementation and development of the PoA have a responsibility to devote the necessary resources to preparing for the 2006 Review Conference, including sponsoring consultation meetings. Those governments that, unfortunately, are not yet substantially committed to promoting effective implementation of the PoA have a similar responsibility not to raise unnecessary objections and obstacles, or to play the ‘procedural delay’ games that plagued the preparations for 2001.

In conclusion, the UN Programme of Action on Small Arms remains the framework for comprehensive international efforts to co-operate to prevent, combat and eradicate illicit trafficking, proliferation and misuse of SALW. Unfortunately only a limited number of countries and regions have so far demonstrated a sufficiently serious commitment to implementing the PoA commitments they entered into in 2001. To help to address this sad situation, the 2006 Review Conference needs to be used to: re-enforce, clarify and strengthen the PoA commitments; launch the specific international agreements on tracing illicit SALW and controlling arms brokers; develop good practice guidance and other support; and establish the specific international programmes required to scale-up efforts to ensure, for example, security of arms stocks, weapons collection and destruction of collected or surplus arms and ammunition. These goals are important. An effective Review Conference will help to save many lives.

⁸ See, for example, the Consultative Group Process’ Food for Thought Paper, *ibid*.



BITING THE BULLET PROJECT

Biting the Bullet is a joint project between Saferworld, International Alert and the University of Bradford. It helped facilitate a wide-ranging and well-informed debate between governments and civil society in the run-up to the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects in July 2001. In particular, it produced a series of policy briefings on key issues for discussion at the conference.

Following the agreement of the Programme of Action, Biting the Bullet is now working to promote international understanding of key issues relating to the implementation of the Programme of Action while creating opportunities to discuss the critical issues that proved controversial at the 2001 UN Small Arms Conference. In order to facilitate discussion on these issues, Biting the Bullet has published further research papers for the Biennial Review focusing on civilian possession, and the implementation of embargoes. This briefing continues this series of papers.

The Biting the Bullet Follow-up Project also prepared a substantial report on States' implementation of the commitments set out in the Programme of Action. This monitoring report analyses progress at the national, regional and international level. It was researched by partners from all world regions and produced by Biting the Bullet for IANSA. Another implementation report is being prepared for the 2005 Biennial Meeting.

In addition, an informal Consultative Group Process involving government officials, international experts and non-governmental organisations was created and has met five times already to discuss in particular, export controls and the issue of nonstate actors.

For more information on the Biting the Bullet Follow-up Project please contact the following organisations:

International Alert.

International Alert

346 Clapham Road
London SW9 9AP (UK)
Tel: +44 (0)20 7 627 6800
Fax: +44 (0)20 7627 6900
Email: general@international-alert.org
www.international-alert.org



Saferworld

The Grayston Centre
28 Charles Square
London N1 6HT (UK)
Tel: +44 (0)20 7324 4646
Fax: +44 (0)20 7324 4647



**Centre for International
Co-operation and Security
Department of Peace Studies**

University of Bradford

Bradford BD7 1DP (UK)

Tel: +44 1274 235172

Fax: +44 1274 235296

E-mail: cics@bradford.ac.uk

www.brad.ac.uk/acad/cics