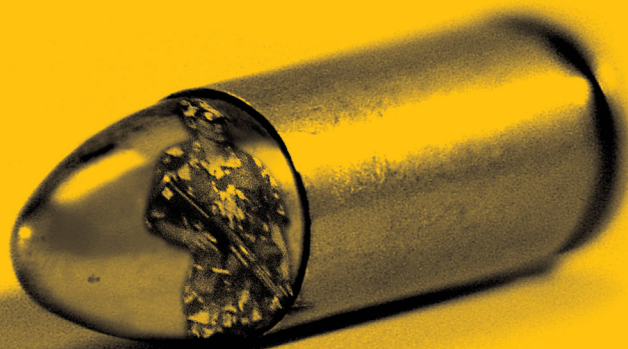


**PROMOTING EFFECTIVE GLOBAL  
ACTION ON SMALL ARMS:  
PRIORITIES FOR THE 2006  
UN REVIEW CONFERENCE**

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REPORT

**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.



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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: Priorities for the 2006 UN Review Conference**

**January 2006**



**Biting the Bullet Project (International Alert, Saferworld and University of Bradford)**

**By: Owen Greene**

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# 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 is important. Trafficking, proliferation and misuse of small arms and light weapons (SALW) contributed to massive suffering and insecurity across the world each year.

This Report identifies and examines key priorities for the 2006 Review Conference for the PoA. It particularly focuses on identifying realistic and potentially negotiable objectives for the 2006 Review Conference.

**Purposes of the 2006 Review Conference.** The 2006 Review Conference should:

- v Review progress made towards implementing the PoA;
- v Consider further agreements and measures to strengthen and promote implementation of the PoA;
- v 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. However, this approach poses risks to the good as well as the weak parts of the existing agreement. So the best approach is instead to focus on negotiating a strong new Review Conference 'Outcome Document', to supplement and strengthen the existing unrevised 2001 PoA agreement. There is emerging consensus amongst States in favour of the latter approach, which we endorse in this Report.

**Consensus Issues:** Decisions on the PoA have so far been taken by consensus. This approach strengthens that status and respect for the politically-binding international norms and programmes established, and helps to promote wide international commitment to the process. However, this does not mean that a 'lowest common denominator' approach is acceptable. A few 'sceptical' governments may be tempted to use consensus rules to exert veto power, and to frustrate the will of the vast majority of countries on some issues.

This would be unreasonable. Every effort should be taken to take proper account of the concerns and preferences of all states. But sceptical governments should in the final analysis be prepared to allow progress on proposals that command very wide support, even if they remain doubtful of their benefits.

This is simply a restatement of widely understood norms and practices at the UN and elsewhere relating to consensus-based multilateral processes.

**Reviewing progress towards implementing the PoA.** There is as yet no UN-recognised comprehensive examination of progress towards implementation of the PoA. So the 2006 Review Conference cannot focus productively on detailed reviews and assessments of implementation or compliance. Nevertheless, substantial studies on this issue are publicly available.

Overall, they show that implementation of the PoA is not 'on track'. Significant progress towards implementation of the PoA has been achieved in some issue areas and regions. But progress is patchy, and the overall scale of the measures so far are not sufficient to have more than a local or marginal impact on the problems of SALW trafficking, proliferation and misuse. Importantly, some of the factors contributing to inadequate performance are linked to weaknesses in the PoA itself.

## Priority outcomes for the 2006 Review Conference

### 1. Launch global programmes to enhance implementation of the PoA

The 2006 Review Conference should aim to agree mechanisms to establish and facilitate global co-operative programmes amongst groups of interested states and other stakeholders to enhance implementation of selected key elements of the PoA. Strong candidates for such international programmes include, *inter alia*:

- v SALW stockpile management and security
- v weapons collection;
- v weapons destruction;
- v safe and secure destruction of SALW ammunition;
- v SALW management and destruction in post-conflict contexts and programmes
- v national controls on SALW production;
- v national controls on SALW transfers (including end-use/end-user controls).

The 2006 Review Conference should identify those issue areas for which such global programmes to enhance implementation are encouraged. The specific character and elements of each such global programme would be elaborated over time after the Review Conference, particularly by the groups of interested states and other stakeholders concerned to promote implementation in the issue in question.

The Review Conference should allow flexibility on such design issues for each global programme, and set out overall guidelines on how such global programmes should be conducted. These guidelines would include requirements for open-endedness, transparency, and reporting to the UN DDA and to PoA meetings. They would also include safeguards for the integrity of the PoA and for non-participating states, including that any outputs from such global programmes would be used on a voluntary basis, and would not apply to non-participating states unless or until they are endorsed at the next PoA Review Conference.

### 2. Support New International SALW-Related Agreements

A number of specific international instruments and agreements should be 'spawned' from the PoA over time.

**The new SALW Tracing Instrument.** The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit SALW was established by the General Assembly in December 2005. In spite of its weaknesses, this SALW Tracing Instrument is an important step forward. It should be rapidly and fully implemented, and opportunities should be taken to develop it further.

This new instrument specifies that it will review its implementation and future development of this instrument within the framework of PoA Review Conferences. The 2006 Review Conference should:

- promote early and full implementation of the SALW Tracing Instrument;
- take decisions that facilitate and support its effective operation and future development;
- otherwise fulfill its function as the first Review Conference for the SALW Tracing Instrument.

A session of the 2006 Review Conference needs to be officially dedicated to these purposes. This session could be short (2 – 3 hours), but needs to be distinctive, well-prepared and business-like. An informal open-ended international meeting of interested states and relevant partners should be convened prior to the Review Conference, to contribute to preparations.

The Review Conference should aim to achieve agreement to establish a specific global programme to support and enhance implementation of the new SALW Tracing Instrument. The main elements of this programme should be identified at the Conference, and subsequently pursued by an open-ended group of interested states and other concerned stakeholders such as Interpol.

The application of the Instrument to SALW marking, record-keeping and tracing in post-conflict countries merits specific attention at the Review Conference. A specific mechanism for examining this issue should be recommended by the Conference, which could be an open-ended working group or similar UN process.

**Promote early establishment of an international instrument on SALW brokering activities.** The 2006 Review Conference should promote rapid progress towards the launch of negotiations for a international instrument to control SALW brokering activities. It should encourage the Group of Governmental Experts (GGE) on SALW brokering, due to be establishing in summer 2006, to ensure that it adds value, by directly building on the previous 2001 GGE report on this issue, and interpreting its mandate to include an examination of the feasibility of negotiating an international instrument.

The Review Conference should further encourage and promote national and regional efforts to develop effective national controls on brokering activities in the meantime, and encourage international information exchange and consultation on national experiences and lessons-learned in order to promote a consistency of approach internationally pending agreement on a binding international instrument.

### **3. Clarify and elaborate existing PoA commitments.**

The 2006 Review Conference should aim to clarify and elaborate existing PoA commitments, where this would help to enhance implementation and promote the overall objectives of the PoA.

**Elaborate international guidelines to national controls on SALW transfers.** The PoA commitments in Paragraph 11, Section II, of the PoA require systematic attention at the 2006 Review Conference. These relate to the guidelines to be applied by national authorities in deciding whether to authorise SALW transfers, and are thus of central importance to the PoA. Although some states continue to have sensitivities on this issue, a number of international consultation processes since 2002 have prepared the ground for this issue to be productively addressed at the 2006 Review Conference.

The Review Conference should aim to:

- ✓ Clarify or develop the PoA commitments in Para 11, Section II to the effect that they should apply to all States involved in authorising an SALW transfer –importing, transit, and transshipment states as well as the exporting state, and also states with jurisdiction over relevant brokers;
- ✓ Clarify and elaborate international guidelines on State's responsibilities, based on the commitments in PoA paragraph 11, section 2;
- ✓ Recommend that relevant states co-operate and consult in the application of these guidelines
- ✓ Establish or enable international follow-on efforts to raise awareness and promote implementation of the above, and (if necessary) further develop international understandings on these matters through intersessional meetings;
- ✓ Agree that all states should ensure that they have in place effective end use and end-user controls, end-use monitoring, controls on licensed production agreements, and control systems to be applied by transit and transshipment as well as exporting and importing states;;
- ✓ Endorse a follow-on global programme to enhance implementation of PoA commitments relating to SALW transfer controls.

**Clarify PoA commitments and approaches relating to SALW ammunition.** Although most believe that PoA commitments apply in principle to ammunition as well as weapons, in some areas the actual PoA commitments are unclear in this context. It is very important to address and tackle problems and challenges relating to SALW ammunition. However, ammunition has its own characteristics, and in practice often requires specific treatment.

The Review Conference should thus:

- ✓ emphasise the importance of addressing SALW ammunition within a UN Framework, including the PoA

- v clarify how SALW ammunition controls should be considered in relation to each key aspect of the PoA;
- v recommend appropriate frameworks for necessary follow-up after the 2006 Conference.

**Clarify the humanitarian and development dimensions of the PoA.** Although the importance of links between trafficking, proliferation and misuse of SALW and international humanitarian and development concerns is noted in Section I of the PoA, such issues are not adequately specified. In December 2005, the UN General Assembly agreed a resolution on addressing the negative humanitarian and development impact of illicit or excessive SALW. These issues should be addressed by the 2006 Review Conference, which should aim to:

- v Emphasise the importance of the interrelationships between the PoA and development, poverty reduction, and humanitarian assistance;
- v Emphasise that such inter-relationships are important not only in the context of large scale armed conflict or post-conflict contexts, but also in relation to armed crime and social violence involving SALW;
- v Call for appropriate and effective integration of international, regional, and national measures to control SALW, prevent and reduce armed violence, promote development, alleviate poverty, and address humanitarian needs;
- v Welcome and encourage the growing engagement of development and humanitarian aid institutions and agencies, including relevant UN agencies, in activities that contribute to the implementation of the PoA; including the OECD DAC decisions that most efforts to support implementation of the PoA may qualify as development aid.
- v Call for national SALW action plans or other SALW reduction and control initiatives to be integrated into national security strategies and national poverty reduction frameworks;
- v Call for SALW reduction and control strategies to be an integral part of programmes for conflict prevention and post-conflict peace-building; and also for appropriate linkage and integration with DDR, return of displaced persons, and other such programmes;
- v Welcome the recommendations and guidelines produced in relation to DDR through the Stockholm Initiative on DDR and the UN IDDRS process, and encourage follow-up to promote implementation and to ensure effective linkages with other efforts to promote security and control SALW in post-conflict environments;
- v Emphasise the importance of gender and age in the development and security impacts and responses to problems of SALW trafficking and misuse, and associated violence and insecurity;
- v Request that the UN Peace Building Commission and other relevant international and regional organisations incorporate such objectives and programmes into their work programmes;
- v Call on States, regional and international organisations, and civil society partners to follow-up the above in their efforts to implement the PoA.

#### **4. Address key gaps in the existing PoA**

There are important gaps or weaknesses in the present PoA commitments. States' understandings and priorities on some issues have evolved significantly between 2001 and 2006. The 2006 Review Conference should aim where possible to achieve agreement on useful norms and measures to address these gaps.

**Transfers to Non-State Actors (NSA).** The problems arising from inadequate controls on transfers and flows of SALW to NSA are so important that proposals to develop international norms on this issue can be expected at the 2006 Review Conference. It is important to recognise that there is a wide variety of different types of NSAs, and also a range of contexts and risks. Thus there are a wide range of different policy priorities and regulatory approaches, depending on the context and the type of NSA in question.



The Review Conference should aim to:

- v elaborate the particular risks that should be considered when deciding whether to authorise SALW transfers to NSAs, including the risks of diversion, misuse, theft or loss, and the adequacy of local controls on civilian possession;
- v emphasise that there should be a relatively strong presumption against authorising a SALW transfer to a NSA when any of the risk factors are judged to be significant;
- v establish a voluntary international information exchange and consultation process on national policies, practices and regulations restricting possession of SALW to NSAs including civilians, to facilitate effective co-operation on SALW transfer controls and future discussions on possible international norms in this area.
- v Agree international norms and consultation procedures relating to restrictions on transfers to non-state actors that have not been authorized by the government of the recipient state, on the basis of the approaches developed by the informal Small Arms Consultative Group Process.

**Controls on civilian possession.** It is generally agreed that controls on possession by civilians of SALW are a critical element of national controls to prevent, combat, and reduce SALW trafficking, proliferation and misuse. However, the character and stringency of such national controls varies widely between states, and some States are sceptical about whether international norms on such domestic regulation are appropriate.

The Review Conference could aim to achieve agreements on:

- v commitments by all states to ensure sufficient national controls on civilian possession of SALW, to enable full and effective co-operation with all PoA commitments and to avoid contributing to problems of illicit trafficking and misuse experienced by neighbouring and other countries;
- v a declaration of basic principles about the national regulation of civilian possession of SALW.
- v commitments by States to ensure that they do not authorize transfers of SALW that risk undermining the controls on civilian possession in that the recipient country and region;
- v establish or endorse an international programme within the PoA framework to help to enable states that wish to co-operate on issues of controlling civilian possession to do so, including information exchange and technical assistance programmes.

**Restrictions on transfers of specific categories of SALW, including MANPADS.** Transfers of certain categories of SALW are widely regarded as being particularly sensitive. The 2006 Review Conference should aim to:

- v Incorporate the relevant commitments and objectives in the recent UN General Assembly resolution controlling transfers and access to MANPADS into the PoA;
- v Establish an information exchange and consultation process to examine whether there are other categories of SALW that should be subject to special restrictions.

**Addressing issues to reduce demand for SALW.** The importance of addressing the factors contributing to excessive or undesirable demand for SALW is widely acknowledged. It is important that these issues receive more prominence in the PoA process. By their nature, the processes leading to demand for SALW that contribute to trafficking, proliferation and misuse are highly complex and context specific. They often mutually interact with supply processes. Generally, they can only very partially be addressed within the PoA process itself. Thus the Review Conference should not only aim to emphasise key aspects of demand issues and enhance the way these are addressed in the PoA, but also promote effective links with other international programmes and measures that more directly engage with relevant demand factors.

The Review Conference should aim to agree to:

- ✓ emphasise the importance of efforts within or associated with the PoA process to address factors that contribute to undesirable demand for SALW – normally through comprehensive or integrated programmes that engage with SALW problems in their complexity;
- ✓ promote programmes and measures to help to reduce demand in society for SALW, including programmes that promote: human security from violence; rule of law and access to justice; good governance; appropriate capacity-building and reform of police, judiciary, armed forces, and other security sector agencies; regulation and control of private security companies; and appropriate control and use of SALW by state officials;
- ✓ encourage and support programmes to prevent and reduce urban or rural violence and insecurity;
- ✓ encourage research on the inter-relationships between SALW problems and issues of development, human security, human rights, regional co-operation, access to justice and good governance;
- ✓ ensure that focused attention is devoted to groups that are specifically affected by SALW violence, including young men, women, boys, and girls;
- ✓ ensure that youth and gender issues are fully taken into account in efforts to promote peace, security, development and good governance;

## **5. Follow-up after the 2006 Review Conference**

After the Review Conference, its Outcome Document will join the existing 2001 PoA document to form the central documentation for the PoA process, along with the SALW Tracing Instrument. The Review Conference needs to establish the follow-up mechanisms needed after July 2006.

**PoA Follow-up meetings and conferences.** The 2006 Review Conference Outcome Document needs to provide for subsequent Biennial Meetings of States and Review Conferences. There are several options for the timing of BMS and Review Conferences after 2006. Any option is acceptable that involves convening the next Review Conference by 2012, and ensuring that either a BMS or a Review Conference is held on a cycle of no more than two years.

The overall purposes of future Review Conferences should be elaborated in the 2006 Outcome Document, to include review of implementation and future development of the PoA and also relevant associated instruments (including the SALW tracing instrument). The mandates and purposes of Biennial Meetings of States need to be reviewed. In addition to its existing purposes, the BMS should be permitted to produce more substantial outcome documents, including recommendations where they are functionally useful to global efforts to enhance implementation of existing PoA commitments.

**Provide for initiatives and global programmes to enhance implementation.** It is a high priority for the 2006 Review Conference to agree to a range of follow-up measures to enhance implementation and develop the PoA process, as outlined in the sections above. Since it seems clear that there will be significant need for a number of inter-sessional meetings to consider and pursue these and other follow-up activities, it may be useful to provide for limited number of days of inter-sessional meetings to be held at the UN each year for PoA-related business. Additional meetings can be informally arranged according to needs and at the expense of the interested groups of states.

## **6. Preparations for the 2006 Review Conference**

The 2006 Review Conference needs to review progress and take the decisions required to substantially enhance implementation and develop the PoA. These goals are important. An effective 2006 Review Conference will help to save many lives. The 2006 Conference has a full agenda, and time is short. Careful and intensive preparations are needed between January and June 2006 if it is to be a success.

# 1. Introduction

Trafficking, proliferation and misuse of small arms and light weapons (SALW), such as pistols or automatic rifles, contribute greatly to armed violence, conflict, insecurity and massive human suffering across much of the world. They obstruct or undermine efforts to promote security, development, good governance, and to prevent, manage and reduce armed violence and conflict.

Tackling these problems requires concerted action at international, regional, national and local levels. The UN Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects was agreed in 2001. This UN Programme of Action (PoA) now provides the main global framework for international efforts to prevent, combat and reduce uncontrolled or illicit flows, holdings and misuse of SALW.<sup>1</sup> It is quite comprehensive in scope, and its commitments include many important international norms and measures. It is now complemented and reinforced by a number of important international and regional agreements, national action programmes and local initiatives relating to SALW.

Since 2001 there has been significant, though inadequate, progress towards implementation of the PoA, particularly in some regions.<sup>2</sup> The first Review Conference for the PoA is due to take place between 26 June – 7 July 2006. This is a major international event. It provides the first formal international opportunity to review and strengthen the PoA since it was agreed in July 2001.

It is important to take this opportunity, to enhance implementation and to address some of the PoA's limitations and weaknesses. When it was negotiated in 2001, some commitments and norms that commanded wide support were either omitted or left frustratingly vague in the interests of achieving consensus. Since that time, States' experience and policy positions have evolved, offering new possibilities in 2006 for further agreement and enhanced co-operative action.

This Report identifies and examines key priorities for the 2006 Review Conference for the PoA. It particularly focuses on identifying realistic and potentially negotiable objectives for inclusion in the outcome document(s) from the 2006 Review Conference. It is offered as a contribution to international thinking and debate on these issues.<sup>3</sup>

The next Section of this Report discusses the aims and roles of the 2006 Review Conference and identifies key overall objectives. The following section highlights some key findings relating to progress in implementing the PoA since 2001 that have implications for the 2006 Review Conference. The subsequent sections address a series of specific issues and priorities for the Review Conference, and include a number of recommendations. The Report concludes with a discussion of the requirements for an effective preparatory process in the first half of 2006.

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<sup>1</sup> 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>.

<sup>2</sup> As examined, for example in: Biting the Bullet project, *International Action on small arms 2005: examining implementation of the UN Programme of Action*; Biting the Bullet/IANSA, London, 2005. See also the similar BtB/IANSA publications of 2003 (*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) and of 2006 (forthcoming).

<sup>3</sup> The present report builds upon, develops and revises the arguments and findings in the BtB Discussion Paper published in July 2005: Owen Greene, *Promoting Effective Global Action on Small Arms: emerging agendas for the 2006 Review Conference*, BtB Discussion Paper, Biting the Bullet, London, July 2005. It benefits from a range of subsequent discussions at numerous international meetings since then, and from the comments of many government officials, civil society experts and others.

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## 2. The Aims and Roles of the 2006 Review Conference

### 2.1 Purposes of the 2006 Review Conference

Section IV of the PoA sets out a number of agreed steps for effective follow-up of the 2001 UN Conference. These include agreement:

'To convene a conference no later than 2006 to review progress made in the implementation of the Programme of Action' (Paragraph 1 a), Section IV, PoA).

This was in addition to the agreement in the PoA to 'convene a meeting of States on a biennial basis to consider the national, regional and global implementation of the PoA' (Paragraph 1 b), Section IV, PoA). In line with this, two Biennial Meetings of States (BMS) have been convened in 2003 and 2005. These two meetings involved information exchange and included interactive discussions on the complex issues and interlocking themes raised and addressed by the PoA. The events were useful in providing a focused opportunity to exchange information on implementation and discuss emerging issues and challenges.

During the negotiation of the PoA in 2001, there were attempts made to define and elaborate the mandate and purposes of the 2006 Review Conference. But no consensus could be achieved. As a result, this issue was essentially left open.

It was always clear in the 2001 negotiations for the PoA that the 2006 Review Conference was envisaged to be a major international event, at which decisions may be made on measures to promote implementation and to ensure that the PoA is effective in achieving its overall objectives. Some have pointed out that the words in the PoA used to describe the purpose of Review Conference do not greatly differ from those relating to the BMS. In response, many states have subsequently made it clear that there is little value in convening a 2006 Review Conference that does little more than has been done at the BMS.

The purposes and mandate of the 2006 Review Conference are therefore to be established politically by participating States, in terms of what is useful for effective implementation, review and further development of the PoA, not through some detailed legal analysis of the PoA text. These purposes are probably best elaborated within the context of what is customary for Review Conferences for international agreements in the United Nations framework.

Most multilateral political and legal agreements include follow-up provisions for Conferences to review progress in implementation, and where decisions may be taken by Parties to revise or further develop the agreement or enhance its effectiveness. The specific purposes and mandates for Review Conferences can vary significantly between agreements.<sup>4</sup>

Across a wide range of issue areas there are examples of Review Conferences whose purposes and mandates broadly include the following:

- ✓ Review progress towards implementation of the agreement – both in terms of implementation of the existing commitments and of progress towards achieving the objectives of the agreement;
- ✓ Consider the adequacy of existing commitments, and further measures to strengthen and promote effective implementation of the agreement;
- ✓ Consider further commitments and programmes that may be needed for effective international action to achieve the overall objectives of the agreement.

Research indicates that such implementation review processes are very important for the effectiveness of international agreements.

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<sup>4</sup> See, for example, the discussion in Sarah Parker, 'Reviewing Multilateral Political Agreements Precedents for the 2006 Small Arms Review Conference', Geneva Forum, October 2005.

These above purposes are fully consistent with those of the follow-on provisions in the PoA document, and are what is needed to promote the PoA's effectiveness.

**Thus, it seems clear that the purposes of the 2006 Review Conference for the PoA should include all of the three listed above: to review implementation and further develop the PoA in order to promote effective measures to prevent, combat and eradicate the illicit trade in SALW in all its aspects.**

**In fact, the 2006 Review Conference has recently been given an additional purpose. This is to review the implementation and further development of the recently-agreed International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit SALW, as specified in the follow-up provisions of this instrument agreed by the UN General Assembly in December 2005.**

## 2.2 Outcomes from the 2006 Review Conference

Overall, there could be a number of desirable outcomes from the 2006 Review Conference. These include:<sup>5</sup>

- ✓ Clarify and elaborate the overall goals of the PoA and their relationship to wider international efforts to prevent, control and reduce the problems and impacts associated with SALW trafficking, proliferation and misuse;
- ✓ Clarify and elaborate existing PoA commitments;
- ✓ Develop, strengthen or add commitments relating to the PoA;
- ✓ Build and strengthen the partnerships and coalitions that are required at local, national, regional and international levels to ensure effective international action to achieve the PoA's objectives;
- ✓ Enhance awareness and understanding of SALW issues;
- ✓ Develop mechanisms and procedures to establish and facilitate more effective follow-on processes to promote effective international co-operation to pursue the goals of the PoA and to tackle SALW-related problems.

All of these are important, and should be pursued as far as possible.

International understandings of SALW issues and problems have developed substantially since 2001. Many previously reluctant States have grown more comfortable with international commitments contained in the PoA. This means that there are new opportunities in 2006 to agree measures to enhance implementation and further develop the PoA. Nevertheless, several issues remain quite sensitive for some governments, and there are disputes about priorities. International consensus can be hard to achieve, and often requires extensive preparation (for which time is now short). It is important therefore to acknowledge some constraints and to focus on priorities.

**Constraints.** Although a full official review of progress towards implementing the PoA would be desirable at the 2006 Review Conference, in fact it is not practical for it to focus substantially on this task. This is because the mechanisms have not been put into place to produce the *officially-recognised*, detailed and comprehensive compilations and assessments of implementation that would need to be made available to all States before the Conference.

This is not to suggest that relevant and detailed information is not available to inform discussions on these issues at the Conference. For example much relevant information is contained in national reports submitted to the UN and in independent examinations and assessments of these and of other available information.<sup>6</sup> This is sufficient to enable some useful overall assessments, and to support proposals to clarify and strengthen the PoA in some key areas (as discussed in section 3 below). **But without the necessary officially-prepared and detailed reports on progress on implementation across all countries and regions, it would not be productive to focus the 2006 Conference on reviewing and assessing implementation of the PoA. If States wish to carry out such reviews at the**

<sup>5</sup> On this issue, this report benefited particularly from discussions at the Geneva Forum meeting at Gen Cove, NY, USA, 30 September – 2 October (see summary report at [www.Geneva-forum.org](http://www.Geneva-forum.org)) for exploring these desirable outcomes.

<sup>6</sup> For example the civil society 'Red Book' examinations of implementation of the PoA prepared by the Biting the Bullet project in co-operation with IANSA and published in 2003, 2005 and (forthcoming) 2006. See op cit, footnote 2.

**subsequent Review Conference (probably to be convened between 2010 – 12), they will need to establish agreed mechanisms for preparing the official information and assessments required.**

A second important constraint relates to the prospects for revising the existing PoA document. In principle, the 2006 Review Conference could aim to revise and strengthen this document. There would be some 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. 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. With barely five months left between the first (and probably only) Preparatory Committee and the Review Conference beginning on 26 June 2006, there is insufficient time for this.

In any case, many governments have stated that they do not wish to revise the text of the existing PoA at this stage. There is an emerging consensus that this will not be an objective of the Conference. Instead, **attention should focus on agreeing upon a Conference Outcome Document, which will supplement, clarify or develop aspects of the existing PoA document.**

**Such a Conference Outcome Document should include a range of types of commitments and measures that supplement and reinforce those in the existing PoA document, including as a priority:**

- ✓ **political declarations and statements expressing agreements on goals and new, clarified or elaborated principles, norms, commitments and programmes;**
- ✓ **initiatives to develop existing or new norms, instruments or programmes;**
- ✓ **agendas and programmes for enhanced implementation of the PoA;**
- ✓ **follow-on measures to ensure and promote effective international action on the PoA and related processes between this and the next Review Conference;**
- ✓ **decisions and measures required to fulfill its function as the official review conference for the new SALW Tracing instrument.**

This supplementary Outcome Document will have the same politically-binding status as the existing PoA document.

## **2.3 The issue of ‘Consensus’ rules**

The existing PoA document was negotiated and agreed in 2001 by consensus amongst participating States. This was an important achievement. There are good reasons for striving to maintain a consensus approach to the further development of the PoA. It strengthens that status and respect for the politically-binding international norms and programmes established, and helps to promote wide international co-operation and commitment to the process.

However, this does not mean that a ‘lowest common denominator’ approach is acceptable, or that further progress at an international level should be restricted to the pace and comfort of the most reluctant or sceptical governments. Effective international action to prevent, combat and eradicate trafficking, proliferation and misuse of SALW is an urgent priority. Countries and regions cannot adequately tackle these global and transnational problems on their own, but require wider co-operation at an international level.

Such effective international co-operation on SALW controls should not be denied to the many countries that want it simply because a few countries are sceptical or uncomfortable about proposed norms or programmes, or because they do not regard them to be a priority for themselves. If a few countries use consensus-based processes to unreasonably veto progress desired by the great majority of other countries, then proposals to move to majority voting, or to move outside established UN frameworks, will inevitably attract wider support.

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At the 2001 Conference, a few governments used consensus rules to frustrate the will of the vast majority of countries on some issues. During the preparations for the 2006 Review Conference, a few governments similarly seem to be tempted to use consensus approaches to enable them to veto proposals on which they are sceptical or uncomfortable.

In the context of the PoA, this would be unreasonable. There are few if any proposals to strengthen the PoA that would seriously threaten the vital national interests of such skeptical States. But the vital national interests of states and communities greatly affected by trafficking, proliferation and misuse of SALW certainly may be threatened if international progress to strengthen the PoA is blocked.

***Every effort should be taken to design and revise possible measures so that they take proper account of the concerns and preferences of all States. But 'sceptical' governments should in the final analysis be prepared to allow progress on widely supported proposals, even if they remain doubtful of their benefits. This is simply a restatement of widely understood norms and practices at the UN and elsewhere relating to consensus-based multilateral processes. It should inform discussions at the 2006 Review Conference.***

As discussed in Section 4 of this Report, this approach also provides a basis for proposals to agree certain follow-on mechanisms at the 2006 Conference, which aim not only to enable open-ended international groups of interested states and other stakeholders to progress on international co-operation on certain aspects of the PoA, but also to provide safeguards to reassure states that choose not to join such coalitions.

### 3. Progress towards implementing the PoA

Many governments and others have emphasised that discussions and proposals at the 2006 Review Conference should be directly linked to the goals and commitments of the existing PoA document, and should draw upon experience so far with efforts to implement the PoA. This is reasonable. Debates and proposals should as far as possible be grounded in practical experience with SALW-related problems, and with efforts to implement the PoA.

As noted, the multilateral mechanisms have not so far been put into place to provide an officially-recognised comprehensive and reliable compilation of information and assessments of progress towards implementing the PoA commitments. Nor are the information and analyses available to assess the impacts of implementation measures, enabling detailed assessments of the adequacy of existing commitments. Nevertheless, substantial information and assessment is publicly available. For example, 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.<sup>7</sup> These examinations take full account of the official information provided by government and international/regional organisations in their reports, and also of a wide range of other available information.

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 a large number of specific findings from these studies. Overall, they show that there are a wide range of useful ongoing implementation activities. Many useful lessons have been identified. There are important precedents and emerging good practices and guidelines relating to virtually 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.

**Overall, implementation of the PoA is not 'on track'.** So far, 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 co-operation programmes on SALW remain quite isolated, due to missed opportunities to establish strong international information-exchange and support frameworks.

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<sup>7</sup> Op cit footnote 2



## 4. Launching global programmes to enhance PoA implementation

The above assessments of progress towards implementing the PoA have important implications for the 2006 Review Conference. It is not 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 have a responsibility to consider adopting additional international measures and agreements within the PoA framework that could help to improve performance.

A key implication of findings on implementation so far is that international as well as regional co-operation on implementing PoA commitments needs to be substantially enhanced.

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 needs to take a variety of forms, including:

- international agreements;
- joint research, training and implementation programmes;
- information-exchange and experience sharing;
- development and promotion of good practice guidelines;
- financial and technical assistance;
- establishment of international resource centres; 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 mechanisms to establish and facilitate global co-operative programmes to enhance implementation of key parts of the PoA. In this context, strong candidates for the priority issues for such international programmes include:***

- v ***stockpile management and security***
- v ***weapons collection;***
- v ***weapons destruction;***
- v ***safe and secure destruction of ammunition and munitions;***
- v ***SALW management and destruction in post-conflict contexts and programmes***
- v ***national controls on SALW production;***
- v ***national controls on SALW transfers (including end-use/end-user controls).***

***Several other important issue areas could similarly be the focus of such global implementation programmes, including: national controls on SALW possession and holdings; victim assistance and rehabilitation; or***

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**linking SALW and development/poverty reduction programmes. In the lead-up to the Review Conference other issue areas may be identified in this context as priorities by States.**

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 global programmes to enhance PoA implementation in specific issue areas 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 (resource centres; reference guides, etc) would probably be integral parts of each global programme, according to the specific characteristics and needs of that issue area.

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

Some may wonder whether it might be best simply to launch a single global programme to enhance PoA implementation. Obviously, such a process should in any case be framed in a single comprehensive framework. However, the priorities and characteristics of effective global programmes in each issue area are sufficiently distinct for it to be better to allow significant relative autonomy between global programmes in different issues areas. For example, efforts to establish one large international resource centre to support implementation of all aspects of the PoA would pose relatively high risks of competition, over-centralisation, and under-resourcing. It is probably better to enable multiple global implementation programmes that may develop relevant resource centres for each selected issue area, and to allow the governments and other stakeholders most concerned with that particular issue to develop co-operative resources as they see fit. This approach, while allowing greater flexibility, also requires provisions for appropriate information exchange and co-ordination between global programmes.

The specific character of these global programmes to enhance PoA implementation will need to be elaborated over time, particularly by those groups of interested states and other concerned stakeholders. For example, the requirements and priorities for a global programme to promote safe and secure destruction of ammunition and munitions are distinct in many ways, and deserve focused attention.<sup>8</sup> Such a programme would need to be co-ordinated with similar international initiatives to promote weapons destruction and secure SALW stockpile management. But it would also have its own relative autonomy.

The problem is that the design and development of each such global programme to support and promote implementation is a complex process for each issue area, in both policy and technical terms. Moreover there are several important issue areas to be addressed, each with its own priorities and distinctive challenges. Although some progress towards their development may be made during the preparations for the 2006 Review Conference, detailed agreements on the design and content of a good set of global programmes is unlikely to be achieved by that time.

***It is therefore important that the Review Conference agrees to launch global programmes to enhance implementation of selected aspects of the PoA, and agrees follow-on mechanisms that enable development of these programmes afterwards.*** It would plainly be unsatisfactory to insist that work to develop such global programmes would need to be suspended pending agreement at the next Review Conference perhaps six years

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<sup>8</sup> 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.

later. It would similarly be unsatisfactory to insist that such follow-on work take place outside the UN framework for the PoA, because its content has not yet been agreed by consensus.

***The precise formulation of such follow-on mechanisms to enable global programmes to enhance implementation of key aspects of the PoA would be the subject of negotiation during the preparations for the Review Conference. However, the main elements should include:***

- ✓ *Recognise* the importance of establishing and developing global co-operation programmes to enhance implementation of key aspects of the PoA;
- ✓ *Agree* that these global programmes may include a combination of elements, according to the specific requirements of the issue area in question, including: international information exchange and consultation mechanisms; international resource centres; international mechanisms or facilities for training, assistance, or programme implementation (such as destruction facilities); and development of good practice guidelines;
- ✓ *Agree* that each global implementation programme will require open-ended intersessional meetings of interested states and other relevant partners and stakeholders, which may (if desired) be facilitated and supported by the UN (to the extent possible within available resources);
- ✓ *Recommend* that such programmes are supported as appropriate by relevant UN Departments, agencies, and co-ordination mechanisms (such as UN DDA, UNDP, and CASA), at least in terms of facilitating information exchange and ensuring co-ordination with relevant UN programmes;
- ✓ *Recognise* that these global programmes may be developed by groups of interested States and other stakeholders, on a non-exclusive open-ended basis, and may not be a priority for some states participating in the PoA;
- ✓ *Recognise* the value and legitimacy of such global programmes to enhance implementation of selected aspects of the PoA, and of their outputs;
- ✓ *Decide* that the outputs of such global programmes, such as agreed good practice guidelines, would be adopted on a voluntary basis, and any norms developed would apply only to those States that have specifically joined the global programme in question, and not to other States unless or until they are agreed at the next Review Conference for the PoA.
- ✓ *Establish* procedures for the establishment and operation of such global programmes to support implementation, to ensure appropriate procedures, co-ordinate and avoid undue overlap between different global programmes, and ensure appropriate information exchange with all States;
- ✓ *Require* that each global implementation programme and its outputs would be based on and fully consistent with existing PoA commitments (and any other agreements contained in the outcome documents of the 2006 Review Conference).

***In order to achieve agreement at the 2006 Review Conference to provide for such global programmes to enhance implementation of the PoA, substantial preparatory work will be required.*** The key tasks for this preparatory work include:

- ✓ develop international understandings and consensus in favour of the principle of launching global programmes or mechanisms to enhance implementation on specific issue areas within the PoA;
- ✓ develop understandings of appropriate frameworks and overall design and operational principles for establishing and operating such global implementation programmes;
- ✓ agree on mechanisms to enable the subsequent development of such global programmes after the Review Conference.
- ✓ develop consensus on the issue areas for which such global programmes to enhance implementation should be launched (which will hopefully include the prime candidates listed above).
- ✓ elaborate the mechanisms and procedures through which such programmes can subsequently be developed by groups of interested states and other stakeholders;

- v Agree criteria and procedures to enable additional global programmes to enhance implementation to be launched between review conferences (this might be open for decision at BMS as well as at review conferences, for example).

If agreement can be achieved that enable global programmes to enhance implementation of key aspects of the PoA to be developed and implemented by groups of interested states between the 2006 Review Conference and the next, it would be a very great achievement. It would go a very long way towards ensuring that most of the desirable overall outcomes of the Review Conference will be achieved.

## 5. Supporting New International SALW-related Agreements

It is hoped that a number of specific international instruments and agreements may be 'spawned' from the PoA over time. The first such international agreement is the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit SALW, which was established by the General Assembly in December 2005. However, agreements are expected on new international instruments over time, including an international agreement to control SALW brokering activities. The 2006 Review Conference should play a key role in relation to several such actual or possible 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. In December 2005, the UN General Assembly adopted an 'international instrument to enable states to identify and trace, in a timely and reliable manner, illicit small arms and light weapons' (hereafter referred to as the SALW Tracing Instrument), which was negotiated between 2003 – 2005 by a UN Open-Ended Working Group.<sup>9</sup>

The substance of this new SALW Tracing Instrument is disappointing in several respects. For example, it is politically rather than legally binding. It does not include SALW ammunition within its scope. The mechanisms for promoting implementation and further development of the instrument are undeveloped.

In spite of these and other weaknesses, the SALW Tracing Instrument is an important step forward. It is important that it is rapidly and fully implemented, and that opportunities are taken to develop it further.

The reporting and review mechanisms for this new instrument are explicitly integrated with those of the PoA itself. Thus, States will review the implementation and future development of this instrument within the framework of PoA Review Conferences (paragraph 38 of the instrument). The reports that States are required to provide biennially on their implementation of the instrument will be considered at PoA BMS meetings (paragraph 36, 37). Similarly, the provisions in the SALW Tracing Instrument on mechanisms for technical advice or international co-operation and assistance encourage initiatives within the PoA process to mobilise relevant resources (paragraphs 27 – 29 of the instrument).

Thus the 2006 Review Conference for the PoA is strategically important for the new SALW Tracing Instrument. Though it is tempting, it is almost certainly too early in 2006 to try to revisit some of the main debates relating to the scope and key norms of the new instrument, or to attempt to change it into a legally-binding instrument. Government positions have not evolved substantially since the instrument was agreed in 2005, and further progress on such contentious issues is unlikely to be possible at this Review Conference.

***It is important that the 2006 Review Conference effectively:***

- ***promotes early and full implementation of the SALW Tracing Instrument;***
- ***takes decisions that facilitate and support its effective operation and future development;***
- ***otherwise properly fulfils its function as the first Review Conference for the SALW Tracing Instrument.***

The Review Conference is thus the first international opportunity to report and review the initiative operations of the Tracing Instrument; promote rapid and full implementation; or elaborate standard forms for requesting and responding to requests for information. It also provides an opportunity to launch key mechanisms and initiatives to

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<sup>9</sup> 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.

facilitate necessary co-ordination, information exchange, international resource centres or guide, and international technical advice and assistance. The next such opportunity may not arise until 2011 or later.

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 all States demonstrate that they are determined to use the PoA Review Conferences as the distinctive sovereign body for the new instrument, where they can review, revise or develop it as they see fit.

***Thus it is important that a session of the Review Conference is officially dedicated to the review of implementation and future development of the new SALW Tracing Instrument. Further, the outcomes from that special session should be set out in a separate section of the Conference Outcome Document.***

In practice, the Review Conference has a large amount of work to do, and on this occasion the session dedicated to reviewing and developing the new Tracing Instrument may not be allocated more than 2 – 3 hours. It is important that this is used very efficiently and productively. Specific detailed reports to support this session should be prepared and circulated beforehand. There should be sufficient prior preparation that decisions and initiatives can be agreed and launched at the conference without lengthy negotiation or discussion. ***This implies that there is an urgent need to convene an informal open-ended international meeting of interested states and relevant partners prior to the Conference, where effective preparatory work can be done to review and promote implementation of the SALW Tracing Instrument.***

***One major outcome of this session of the Review Conference should be the launch of a specific global programme to support and enhance implementation of the new SALW Tracing Instrument.*** In many respects, this would have similar goals and procedures to the global implementation programmes proposed for other aspects of the PoA (as discussed in section 4 above). However, it would be distinctive, as befits a global programme supporting a specific new international instrument.

The specific elements of this global programme to enhance implementation of the Tracing Instrument could be elaborated over time after the Review Conference. But since at least some of the requirements for such a programme are now relatively well-understood by all States, it may be possible to agree the key elements at the review Conference itself, including the roles of the UN Department of Disarmament Affairs (DDA) and UN CASA (Co-ordination Action on Small Arms), Interpol, and various established international recourses (such as Interpol's IWETS (International Weapons and Explosives Tracking System) data base, and the Firearms Reference Table maintained by the Royal Canadian Mounted Police.

The relevant Outcome Document should also engage with the two key issues addressed in the Recommendations in the Report of the Open-Ended Working Group that negotiated the tracing Instrument.<sup>10</sup> These are the issues of:

- v SALW ammunition; and
- v The applicability of the provisions of the new tracing instrument to UN peace-keeping operations.

The issue of ammunition is considered in this report in Section 6 below. ***The application of the Instrument to SALW marking, record-keeping and tracing in post-conflict countries raises particular unresolved issues, and merits specific attention at the Review Conference. At the least, a specific mechanism for examining this issue should be recommended by the Conference, which could be an open-ended working group or other UN working group process.***

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<sup>10</sup> Ibid, paragraphs 27 and 28.

## 5.2 Promoting the early establishment of an international instrument to control SALW brokering activities

The 2006 Review Conference provides an important opportunity to promote early launch of 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. Dubious brokers are heavily implicated in arranging many destabilising transfers to conflict prone or war-torn regions. Unfortunately, there are 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.

It would have been best to use the 2006 Review Conference to recommend the establishment of an Open-Ended Working Group specifically tasked with preparing a binding international instrument on SALW brokering activities. In many ways the situation is ripe for this. Since 2001 there has been significant progress on developing common international understandings of the basic issues 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 Position. 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'.<sup>11</sup>

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

- ✓ establishing national controls on arms brokering activities
- ✓ the scope of what is included in 'brokering activities' (focused on direct facilitation of arms deals and transfers)
- ✓ the need also to ensure adequate national controls on brokering related activities (such as financing or transportation)
- ✓ 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 minimum standards on issues such as degrees of extra-territorial controls
- ✓ establishing information exchange and consultation arrangements
- ✓ minimum penalties and/or other sanctions
- ✓ establishing mechanisms for co-operation in enforcement.

Such an international instrument seems to be negotiable. However, in Autumn 2005, the UN General Assembly agreed a Resolution that established a group of governmental experts (GGE) to 'consider further steps to enhance international co-operation in preventing, combating and eradicating illicit brokering in small arms and light weapons'.<sup>12</sup> This GGE on brokering is required to commence after the 2006 Review Conference, and submit a report to the General Assembly at its 66<sup>th</sup> Session (i.e. in late 2007). In fact, there has already been a UN Group of Experts on arms brokering, which reported in 2001. The planned follow-up GGE should ensure that it adds value, by directly building on the previous GGE report and interpreting its mandate to include an examination of the feasibility of negotiating an international instrument.

Now that this GGE process has been agreed by the General Assembly, the Review Conference will inevitably produce recommendations consistent with this. Thus in practice the start of negotiations on an international instrument to control SALW brokering activities until the beginning to 2008: after the General Assembly has

<sup>11</sup> <http://www.un.org/largerfreedom>

<sup>12</sup> General Assembly document A/C.1/60/L.57, 20 October 2005; para 3.

considered the follow-on GGE's report. ***The Review Conference should aim to promote successful development of such an effective international instrument as far as its can. In the meantime, on the basis of existing PoA commitments, it should further encourage and promote national and regional efforts to develop effective national controls on brokering activities.***

In this context, it is urgent to promote a consistency of approach internationally, not least because dubious brokers are adept at exploiting inconsistencies. Thus some elaboration of elements of effective national controls in the Outcome Document would be useful, on the basis of emerging good practices. Similarly, specific encouragement of international information exchange and consultation on national and regional experiences would be welcome. The Conference Outcome Document should also emphasise some wider norms relating to controls on brokering activities. One such norm should be that any brokering or other activities that contribute to the violation of a UNSC arms embargo should be criminalised in international and domestic law.



## 6. Clarifying and elaborating PoA Commitments

### 6.1 The importance of clarifying and elaborating PoA commitments

As noted in section 2 above, the 2006 Review Conference should aim to clarify and elaborate existing PoA commitments, where this may help to enhance implementation and promote the overall objectives of the PoA.

In practice, this is a priority. Where commitments in the PoA are vague or unclear, there is a high risk that the relevant national, regional and international policy-makers, officials, practitioners and other stakeholders will not take actions to ensure standards or change practices in the appropriate ways. However, where the commitments and their implications are clear and elaborated in PoA documents, the international agreements have more meaning for those who have to implement them, and they are more likely to take steps to work through their implications for their own policies, programmes and activities.

Where commitments are not clear, international co-operation to achieve them is undermined. Interpretations may differ excessively, leading to misunderstandings and missed opportunities.

In practice, regional and national procedures and circumstances differ, implying a need to ensure appropriate scope for flexibility in how international norms are implemented. So it is unnecessary (as well as impractical) to aim for highly detailed elaboration of many of the commitments contained in the PoA. However, we are far from this point at present in relation to the PoA.

This report broadly proposes two overall strategic approaches to clarifying and elaborating PoA commitments and their implications. The first has been addressed in Section 4 above, where such clarification can be a key element of wider global (as well as regional and national) programmes to enhance implementation of particular aspects of the PoA. Thus, for example, elaboration of implications of PoA commitments relating to safe and secure management of SALW stockpiles may be pursued through the development of reference documents and good practice guidelines in the framework of a global programme to promote security of SALW stocks and holdings. These guidelines would be 'owned' only by the groups of interested States and other stakeholders that choose to participate in this particular global programme, pending endorsement at a subsequent Review Conference. But they would nevertheless be a useful international resource and reference for concerned States and practitioners.

However, there are some PoA commitments which may be considered sufficiently sensitive or controversial at a UN level that it is better that they are clarified and elaborated in the Outcome Document of the Review Conference itself, or at subsequent dedicated inter-sessional meetings as agreed at the Conference. This requires a second approach.

The elaboration of international guidelines for national decisions on SALW transfers is probably a key issue that comes under this category. So too may be clarification and elaboration of how PoA commitments relate to SALW ammunition, and to the links between SALW and development or humanitarian programmes. These are discussed in turn in the remainder of this section.

### 6.2 Elaborating international guidelines for SALW transfer controls

The PoA commitments in Paragraph 11, Section II, of the PoA require systematic attention at the 2006 Review Conference. These relate to the guidelines to be applied by national authorities in deciding whether to authorise SALW transfers, 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.' (Paragraph 11, Section II)

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 guidelines to enable relevant national licensing authorities to 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 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, 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 (TCI) sponsored by the UK and supported by many other governments;
- ✓ the informal Small Arms Consultative Group Process (CGP) convened by the Biting the Bullet Project partners involving some 35 governments from across the world together with some NGOs and civil society experts;
- ✓ an international NGO coalition supporting 'Global Principles' led by the NGO Arms Trade Treaty (ATT) Steering Group.

Each, in their different ways, focus on developing shared international understandings of how to elaborate or strengthen PoA commitments, and particularly the commitments in Paragraph 11, Section II quoted above. Through these and other initiatives, there is now understanding and support amongst many (probably most) governments for the clarification and elaboration of these PoA commitments at the 2006 Review Conference.

There are now some key areas of emerging consensus, which should be reflected in the Outcome Document of the Review Conference.<sup>13</sup>

***The value of elaborating these PoA commitments in terms of norms for importing, transit, transshipment as well as exporting States.*** In 2001, attention focused on the possible international guidelines on whether to authorise SALW exports. This is reflected in the formulation of the main relevant PoA commitment quoted above. However, it is now widely agreed to be more productive instead to focus on possible international guidelines to be applied by all states involved in authorising an SALW transfer: importing, transit, and transshipment states as well as exporting states. To these should also be added states with jurisdiction over relevant brokering activities.

This revised approach recognises the responsibilities, roles and concerns of all parties to an SALW transfer process, and not only those of the exporting state. Moreover, it helps to avoid possible concerns that international guidelines might imply, for example, that exporting states are in a better position than importing states to assess the possible risks of the SALW transfer under consideration or the security or other needs that have given rise to the transfer application.

***The importance of consultation and co-operation.*** Moreover, there is increasing recognition of the importance of co-operation and consultation between all states directly concerned with authorising a possible SALW transfer. The national authorities for the exporting, importing, transit and transshipment states each have the right independently to decide on whether to authorise a proposed SALW transfer. Moreover, any SALW transfer is illegal unless authorised by all parties, particularly the exporting and importing state. Nevertheless all parties should be encouraged to consult and exchange information before arriving at decisions. Consultations should as far as possible be based on international or expert reports to which each party has access.

Relevant authorities in transit or transshipment states should also ensure that they have adequate information before taking authorisation decisions, as should states with authority over any arms brokers that may be involved.

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<sup>13</sup> See for example: Small Arms Consultative Group Process, *Developing International Guidelines for national Controls on SALW Transfers*, published by Biting the Bullet Project, November 2005; (see also Chair's Interim Report, *Small Arms Consultative Group Process*, Biting the Bullet Project, 2004; 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).

**The elaboration and clarification of the PoA commitments.** The challenge remains to clarify and elaborate undertakings of States reflecting their international responsibilities in deciding whether to authorise SALW transfers, based on the PoA commitments in Paragraph 11, Section II of the PoA. This remains a challenge.

Several regional agreements and documents, including those associated with the Nairobi Protocol, OSCE, and EU, include specific regional guidelines. But due to their regional nature, they cannot form the main basis for international discussions at the Review Conference. Similarly the Wassenaar Arrangement guidelines are a key reference for the exporting states that participate in that arrangement.

At the international level, the small arms Consultative Group Process (CGP) has developed a set of ideas on possible international guidelines,<sup>14</sup> which have been offered by participants as a contribution to PoA debates. These aim to elaborate and develop existing PoA commitments in terms of political guidelines that express the political, legal and moral responsibilities of all states involved in authorising a SALW transfer (exporting, importing, etc). The so-called 'Global Principles' developed by an NGO coalition are formulated in terms of elaborating the existing responsibilities of States under international law.<sup>15</sup> The TCI process has not generated specific proposals for international guidelines, though the UK has circulated a relevant 'Non-Paper'.

These ideas on guidelines and States' responsibilities relating to SALW transfers are contributions to a debate that should now be focused around the process of preparing for the Review Conference. The time is ripe to develop specific proposals for text to be included in the Outcome Document from the Review Conference. The Chair-designate for the Review Conference needs to ensure that focused informal consultations take place in the first half of 2006, so that the Chair can propose a developed draft for discussion at the review Conference.

In addition, it is important to elaborate PoA 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 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. Within this framework it is important to clarify or elaborate PoA commitments to ensure effective end-use and end-user controls, end-use monitoring, controls on licensed production agreements, and control systems to be applied by transit and transshipment as well as exporting and importing states. These could then be followed-up through the global implementation programme to enhance implementation of PoA commitments relating to SALW transfer controls, as recommended in section 4 above.

***On this topic, the Outcome Document should thus at least:***

- ✓ Clarify or develop the PoA commitments in Para 11, Section II to the effect they should apply to all States involved in authorising an SALW transfer –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, based on the commitments in PoA paragraph 11, section 2;
- ✓ Recommend that relevant states co-operate and consult as far as possible in the application of these guidelines
- ✓ Establish or enable international follow-on efforts to raise awareness and promote implementations of the above, and (if necessary) further develop international understandings on these matters through intersessional meetings;
- ✓ Agree that all states should ensure that they have in place effective end use and end-user controls, end-use monitoring, controls on licensed production agreements, and control systems to be applied by transit and transshipment as well as exporting and importing states, and perhaps clarify or elaborate more widely the key components and operational standards for national SALW transfers controls;

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<sup>14</sup> See Small Arms Consultative Group Process, *Developing International Guidelines for national Controls on SALW Transfers*, published by Biting the Bullet Project, November 2005

<sup>15</sup> Oxfam, Amnesty International, Arias Foundation et al, *Compilation of Global Principles for Arms Transfers*, 11 January 2006.

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- v Endorse a follow-on global programme to enhance implementation of PoA commitments relating to SALW transfer controls.

### 6.3 Clarifying PoA commitments and approaches relating to SALW ammunition

According to widely used understandings, ammunition is included in the category of SALW. For example, descriptions of the SALW categories recommended by the 1997 and 1999 Groups of Governmental Experts include SALW ammunition, and these were the primary reference point for the 2001 Conference. This makes sense in many ways: weapons cannot function without ammunition, and thus they are inextricably linked. For example, 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.

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 set out the ways in which they should be applied to ammunition. Thus, although most believe that PoA commitments apply in principle to ammunition as well as weapons, in some areas the actual PoA commitments are unclear 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.

The issue of ammunition proved to be controversial during the negotiations for the new SALW Tracing Instrument. In spite of wide support for the inclusion of ammunition within the scope of the Instrument, consensus could not be achieved on this point. In the area of marking and tracing, ammunition raises specific technical issues that are distinct from those posed by weapons. At least some states took the view that necessary international technical work on the implications of these differences for a marking and tracing instrument had yet to be done.

The Open-Ended Working Group to Negotiate the SALW Tracing Instrument recommended that 'the issue of SALW ammunition be addressed in a comprehensive manner as part of a separate process within the Framework of the United Nations'.<sup>16</sup> It is not clear what exactly this means. In the first instance, it appears best to clarify matters within the PoA framework.

It is thus a priority for the Review Conference to clarify whether and how PoA commitments relating to SALW ammunition, and to recommend UN mechanisms by which SALW ammunition issues may be pursued after the 2006 Conference. In the same context, it would be useful also to ensure that the PoA is being implemented in a way that pays proper attention to SALW parts and components.

The first step is to clarify where the implications of PoA commitments for SALW ammunition are relatively unproblematic, at least of a policy level, and where they are subject to serious international dispute. For example, PoA commitments relating to controls on manufacture and transfers of SALW seem relatively easy to apply directly to ammunition. In other issue areas, such as safe and secure storage, collection and destruction, the application of the commitments included in the PoA to SALW ammunition as well as weapons appears to be relatively unproblematic in principle, although the implementation challenges are distinctive.

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<sup>16</sup> Op cit footnote 9, paragraph 27.

***The Outcome Document for the Review Conference should thus include a section that:***

- ✓ ***emphasises the importance of addressing SALW ammunition within a UN Framework, including the PoA***
- ✓ ***clarifies how SALW ammunition controls should be considered in relation to each key aspect of the PoA;***
- ✓ ***recommends appropriate frameworks for necessary follow-up after the 2006 Conference.***

As discussed in section 4 above, this report proposes, for example, that a specific global programme be established to enhance implementation of PoA commitments relating to the safe and secure storage and destruction of ammunition. In other areas, such as transfer controls or controls on manufacture, the Outcome Document might clarify that SALW ammunition should be considered an integral part of SALW for all POA commitments and implementation efforts in these issue areas.

***In relation to marking and tracing, and perhaps other types of commitments, the policy frameworks and approaches to deal with ammunition-related issues may be too complex or sensitive to resolve by the end of the Review Conference. In this case, the Conference should recommend that specific intersessional meetings be held to consider this issue further.***

## **6.4 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 adequately specified in the subsequent sections of the PoA.

In the 2005 'World Summit' document, world leaders expressed grave concern at the negative effects on development, peace, security and human rights posed by, inter alia, the illicit trade in SALW in all its aspects.<sup>17</sup> In autumn 2005, the UN General Assembly endorsed a resolution on addressing the negative humanitarian and development impact of illicit or excessive SALW.<sup>18</sup> This Resolution 'calls upon States, when addressing the issue of the illicit trade in SALW in all of its aspects, to explore ways, as appropriate, to more effectively address the humanitarian and development impact of the illicit manufacture, transfer and circulation of SALW and their excessive accumulation, in particular in conflict or post-conflict contexts'. It goes on to highlight some important dimensions of this matter, including:

- ✓ appropriate integration of comprehensive armed violence prevention programmes into national development strategies, including poverty reduction strategies;
- ✓ use of international donor assistance resources and funds to support the implementation of PoA commitments;
- ✓ encouraging UN Peace-keeping operations to address safe storage and disposal of SALW as an integral part of DDR programmes;
- ✓ systematically including national SALW regulation and control measures in longer term post-conflict development strategies and programmes;
- ✓ ensuring that the above take full account of differences in roles and needs, particularly those associated with gender and age.

Addressing these and related issues is therefore an important objective for the 2006 Review Conference. The Conference process itself can contribute through developing awareness and understanding of these issues, through extensive consultations during the preparatory process and at the Conference itself. However, the Conference should also aim at taking decisions that will enable and promote effective follow-up after the Conference.

<sup>17</sup> 2005 World Summit Outcome, UN Document A/RES/60/1, 24 October 2005.

<sup>18</sup> UN General Assembly Document A/C.1/60/L.34/Rev 1, 21 October 2005.

One of the key objectives in this context should be for the Conference Outcome Document to elaborate and develop statements of principle on the importance of the links between PoA implementation and efforts to promote development, eradicate poverty and address humanitarian needs.

Although these links are widely recognised in principle, in practice appropriate integration of programmes and measures between these areas is often obstructed, not least by institutional and even legal barriers at the national, regional and international level. For example, many development aid agencies remain reluctant to properly engage with efforts to prevent and reduce armed violence or control SALW, and SALW issues remain neglected in many countries' poverty reduction strategies. Strong normative statements to encourage and endorse effective and appropriate linkage or integration at the Review Conference will provide important reference points for those working to overcome such obstacles.

Similarly, the Review Conference should aim to request and encourage UN and other international institutions and processes to contribute to the implementation of the PoA, while at the same time clarifying how efforts to implement the PoA can help them to achieve their own goals.

***Thus, the Outcome Document of the Review Conference should, inter alia:***

- ✓ *Emphasise* the importance of the inter-relationships between the PoA and development, poverty reduction, and humanitarian assistance;
- ✓ *Emphasise* that such inter-relationships are important not only in the context of large scale armed conflict or post-conflict contexts, but also in relation to armed crime and social violence involving SALW;
- ✓ *Call for* appropriate and effective integration of international, regional, and national measures to control SALW, prevent and reduce armed violence, promote development, alleviate poverty, and address humanitarian needs;
- ✓ *Welcome and encourage* the growing engagement of development and humanitarian aid institutions and agencies, including relevant UN agencies, in programmes and activities that contribute to the implementation of the PoA; including the OECD DAC decisions that most efforts to support implementation of the PoA may qualify as development aid.
- ✓ *Call for* national SALW action plans or other SALW reduction and control initiatives to be integrated into national security strategies and national poverty reduction frameworks;
- ✓ *Call for* appropriate integration of SALW reduction and control strategies to be an integral part of programmes for conflict prevention and post-conflict peace-building; and also for appropriate linkage and integration with DDR, return of displaced persons, and other such programmes;
- ✓ *Welcome* the recommendations and guidelines produced in relation to DDR through the Stockholm Initiative on DDR and the UN IDDRS process, and encourage follow-up to promote implementation and to ensure effective linkages with other efforts to promote security and control SALW in post-conflict environments;
- ✓ *Emphasise* the importance of gender and age in the development and security impacts and responses to problems of SALW trafficking and misuse, and associated violence and insecurity;
- ✓ *Request* that the UN Peace Building Commission and other relevant international and regional organisations incorporate such objectives and programmes into their work programmes;
- ✓ *Call on* States, regional and international organisations, and civil society partners to follow-up the above in their efforts to implement the PoA.

## 7. Addressing key gaps in the existing PoA

There are important gaps or weaknesses 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 substantial efforts to agree some international norms and commitments at the 2001 Conference. However, consensus could not be achieved on any specific commitments in the PoA, although existing PoA commitments do have implications in these areas. States' understandings and priorities have evolved significantly between 2001 and 2006, and the 2006 Review Conference provides an important opportunity explore whether it is now possible to achieve agreement on useful norms and measures in the PoA framework.

### 7.1 Transfers to Non-State Actors

Attempts in 2001 to negotiate a complete ban on authorising any SALW transfers to Non-State Actors (NSA) without specific approval of the governments of the recipient as well as the exporting state foundered over the issue of possible exceptional 'hard cases', where some states believe that such transfers might in principle be justified. Similarly, attempts to define an international norm that certain types of SALW should not be licensed to civilians for non-official purposes failed due to disagreements on where to 'draw the line'.

Nevertheless, the problems arising from inadequate controls on transfers and flows of SALW to NSA are so important that it is both inevitable and legitimate that proposals to develop international norms on this issue will be made at the 2006 Review Conference. It is important to develop approaches to this issue that promote the prospects for productive discussion and international agreement, and which avoid the pitfalls of the approaches tried in 2001. This has been a core objective for the informal small arms Consultative Group Process (CGP) in its work since 2003, which has produced a number of developed ideas about how issue may usefully be approached in 2006.<sup>19</sup>

It is important to recognise that there is a wide variety of different types of NSAs – ranging from armed rebel groups, warlords, civil defence forces, terrorists, criminals, private security companies; arms retailers; civil institutions such as museums, and civilians. Some of these are unlikely ever to be legitimately authorized as recipients of SALW transfers authorized. Others may be so authorized, depending on the context or declared use of the arms, while posing risks of loss, diversion or misuse of the SALW in the future. There are many types of NSA, context and risk. Thus there are a wide range of different policy priorities and regulatory approaches, depending on the context and the NSA in question.

#### ***The Review Conference could usefully aim to:***

- ✓ elaborate the particular risks that should be considered when deciding whether to authorise SALW transfers to NSAs, including the risks of diversion, misuse, theft or loss, and the adequacy of local controls on civilian possession;
- ✓ emphasise that there should be a much greater presumption against authorising a SALW transfer to a NSA when any of the risk factors are judged to be significant, since they lack the counter-balancing international rights of sovereign states to acquire arms for self defence or security;
- ✓ establish a voluntary international information exchange and consultation process on national policies, practices and regulations restricting possession of SALW to NSAs including civilians, in order to facilitate effective co-operation on SALW transfer controls and provide the basis for future discussion on possible international norms in this area.
- ✓ Agree international norms and consultation procedures relating to restrictions on transfers to non-state actors that have not been authorized by the government of the recipient state, on the basis of the approaches developed by the CGP.<sup>20</sup>

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<sup>19</sup> Small Arms Consultative Group Process, *Developing International Norms to restrict SALW Transfers to Non-State Actors*, published by Biting the Bullet project partners, London, January 2006.

<sup>20</sup> Ibid.

## 7.2 Controls on civilian possession of SALW

It is generally agreed that controls on possession by civilians of SALW are a critical element of national controls to prevent, combat, and reduce SALW trafficking, proliferation and misuse. However, the character and stringency of such national controls varies widely between states. Some States are sceptical about whether international norms on such domestic regulation are appropriate unless they are demonstrated to be necessary to prevent or reduce illicit or uncontrolled trans-border arms flows.

However, there is strong evidence that lax internal controls on civilian possession of SALW contributes to illicit trafficking or misuse in neighbouring states. Moreover, many states participating in the PoA regard improving controls on civilian possession of SALW to be an important element of the national SALW strategies. Thus, in spite of well-known sensitivities, the Review Conference should aim to agree measures relating to civilian possession.

### ***Agreements at the Review Conference on this issue could include:***

- ✓ commitments by all states to ensure sufficient national controls on civilian possession of SALW within their jurisdiction, to enable full and effective co-operation with all PoA commitments to prevent, combat and eradicate illicit trafficking and misuse (including tracing) and to avoid contributing to problems of illicit trafficking and misuse experienced by neighbouring and other countries;
- ✓ a declaration of basic principles about the national regulation of civilian possession of SALW.
- ✓ commitments by States to ensure that they do not authorize transfers of SALW that risk undermining the controls on civilian possession in that the recipient country and region;
- ✓ establish or endorse an international programme within the PoA framework to help to enable states that wish to co-operate on issues of controlling civilian possession to do so, including information exchange and technical assistance programmes.

## 7.3 Restrictions on transfers of specific categories on SALW, including MANPADS

Transfers of certain categories of SALW are widely regarded as being particularly sensitive. For example, since 2001 the international community has developed shared understandings of the importance of maintaining particularly strict controls on transfers of Man-Portable Air Defence Systems (MANPADS), such as shoulder launched anti-aircraft missiles. In autumn 2005, the UN General Assembly approved a resolution on the prevention of the illicit transfer and unauthorised access to and use of MANPADS.<sup>21</sup> Many would regard other categories of SALW also to merit relatively stringent controls, such as mortars, heavy machine guns, and other military style light weapons and automatic rifles.

### ***The 2006 Review Conference should aim to agree to:***

- ✓ Incorporate the relevant commitments and objectives in the recent UN General Assembly resolution (referred to above) into the Outcome Document, and thus into the PoA process
- ✓ Establish an information exchange and consultation process to examine whether there are other categories of SALW that should be subject to special restrictions.

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<sup>21</sup> UN General Assembly, UN Document No A/C.1/60/L.49/Rev.1, 21 October 2005.



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## 7.4 Addressing issues to reduce demand for SALW

The importance of addressing the factors contributing to excessive or undesirable demand for SALW is widely acknowledged, and at least implicitly recognised in the existing PoA. However, it is important that these issues receive more prominence in the PoA process.

By their nature, the processes leading to demand for SALW that contribute to trafficking, proliferation and misuse are highly complex and context specific.<sup>22</sup> They often mutually interact with supply processes. Generally, they can only very partially be addressed within the PoA process itself. This implies that the Review Conference should not only aim to emphasise key aspects of demand issues and enhance the way these are addressed in the PoA, but also promote effective links with other programmes and measures that more directly engage with relevant demand factors.

Issues for the relating to demand for SALW include important links with the issues addressed in Section 6.4, on the humanitarian and development dimensions of the PoA. Thus, some of the issues raised for the 2006 Review Conference proposal in that section also apply here, and vice versa.

### ***The Review Conference should aim to agree to:***

- v emphasise the importance of efforts within or associated with the PoA process to address factors that contribute to undesirable demand for SALW – normally through comprehensive or integrated programmes that engage with SALW problems in their complexity;
- v call for the promotion of programmes and measures that will help to reduce demand in society for SALW, including programmes that promote: human security from violence; rule of law and access to justice; good governance; appropriate capacity-building and reform of police, judiciary, armed forces, and other parts of the security sector; regulation and control of private security companies; and appropriate control and use of SALW by state officials;
- v encourage and support programmes to prevent and reduce urban or rural violence and insecurity;
- v encourage further research on the inter-relationships between trafficking, proliferation and misuse of SALW and issues relating to development, human security, respect for human rights, regional co-operation, access to justice and good governance;
- v ensure that focused attention is devoted to groups and that specifically affected by SALW violence, including young men, boys, girls, and women.
- v ensure that youth and gender issues are fully taken into account in efforts to promote peace, security, development and good governance;

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<sup>22</sup> See for example, D. Atwood, A Glatz and R. Muggah, *Demanding Attention: Addressing the Dynamics of Small Arms Demand*, Occasional Paper 18, Small Arms Survey, Geneva, January 2006.

## 8. Follow-up after the 2006 Review Conference

The implementation and further development of the PoA is an on-going process. The overall purposes of the 2006 Review Conference are to review progress so far and to agree and promote measures that will enhance implementation and effectiveness of the PoA process in the future. The Review Conference will need to supplement and revise Section IV of the existing PoA, in order to establish the follow-up mechanisms needed after July 2006.

After the Review Conference, its Outcome Document will join the existing 2001 PoA document to form the central documentation for the PoA process, along with the tracing instrument. Paragraph 2, section IV of the existing PoA will need to be appropriately revised and incorporated into the 2006 Outcome Document to take this into account.

### 8.1 PoA Follow-up meetings and conferences after July 2006

The Conference Outcome Document will need to include agreements on subsequent Biennial Meetings of States and Review Conferences. Such follow-on meetings and conferences will continue to be needed, though their exact timings and purposes may be revised. Moreover, now that PoA meetings and conferences also serve the new SALW Tracing instrument, they have added important functions

***There are several options for the timing of BMS and Review Conferences after 2006, including:***

- √ Maintaining the present pattern of PoA meetings, so that further Biennial Meetings of States (BMS) would be held in 2008 and 2010, with the next Review Conference in 2011.
- √ Opting for a two-year cycle of meetings, with the next Review Conference convened in 2012.
- √ Alternating BMS and Review Conferences on a four year cycle after 2006, implying a BMS in 2008 and 2012, and a review conference in 2010 and 2014.

Any of these options would be acceptable. However, if the PoA is to be effective, it will need to be a dynamic process with reasonably frequent review conferences where decisions can be made on elaboration and further development of the PoA. Particularly if the 2006 Conference makes only modest agreements to enhance implementation of the PoA, there is a strong case for holding the next Review Conference in 2010 or 2011.

***The mandates and purposes of Biennial Meetings of States need to be reviewed, to ensure that they remain valuable.*** If the Conference adopts the recommendations in the present report to launch a number of global programmes to enhance implementation of specific aspects of the PoA, then international work on each issue area will intensify, and the requirements for open global information exchange and discussion may increase. Mechanisms for ensuring more effective and structured reporting and consultation at the BMS are needed. Moreover, BMS should be permitted to produce more substantial outcome documents, including recommendations and agreements where they are functionally useful to global efforts to enhance implementation of existing commitments (as contained in the 2001 PoA and the 2006 Outcome Documents).

***The overall purposes of future Review Conferences should be elaborated in the 2006 Outcome Document, to include review of implementation and future development of not only the PoA but also associated instruments (including the SALW tracing instrument).***

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## 8.2 Providing for initiatives and global programmes to enhance implementation

It is a high priority for the 2006 Review Conference to agree to a range of follow-up measures to enhance implementation and develop the PoA process. The previous sections of this report make a number of recommendations to this effect.

Section 4 proposes that the 2006 Review Conference encourages and enables groups of interested states and other PoA stakeholders to establish and develop a number of global programmes to enhance implementation of specific aspects of the PoA. As discussed, provisions need to be made by the Review Conference to enable and guide the formation, development and implementation of each such programme, including relevant inter-sessional meetings, consultations, co-ordination and reporting. Most of these will not directly require UN Conference facilities, for example, since they will be convened in various appropriate locations by the interested states and organisations. However, they will require some links and support from the UN, including the DDA.

Similarly, Section 5.1 recommends a global programme to enhance implementation of the new SALW tracing instrument, which will similarly require provision for appropriate inter-sessional processes, working groups and meetings.

Sections 5.2, 6 and 7 of this report further imply follow-up measures, provisions for which will need to be made. For example, inter-sessional meetings and working group processes may be required to clarify and elaborate the implications and application of PoA commitments relating to SALW ammunition, and also (if necessary) to elaborate and clarify the commitments and guidelines relating to SALW transfers.

Since it seems clear that there will be significant need for a number of inter-sessional meetings to consider and pursue these and other follow-up activities, and also to ensure consultation and co-ordination between such activities and programmes, it may be sensible to provide for limited number of days of inter-sessional meetings to be held at the UN in New York and Geneva each year for PoA-related business, with the Review Conference and BMS deciding on how to allocate these appropriately amongst between PoA-related follow-on activities. Additional meetings can be informally arranged according to needs and at the expense of the interested groups of states.

## 9. Preparations for the 2006 Review Conference

As will be 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 has a full agenda, and time is short. Careful and intensive preparations are needed if it is to be a success.

It is a key part of the strategy underlining the recommendations in this report to focus where possible on proposals for the Review Conference to initiate or provide for follow-on processes and programmes in a way that allows them to be designed and developed subsequently, rather than try to agree all of the details and contents of these initiatives by July 2006. This particularly applies to the proposals for global programmes to enhance implementation of a range of aspects of the PoA, as discussed in Section 4. Since these would be pursued by groups of interested States particularly concerned with the issue, rather than all States, all that is required at the Conference is to agree the overall principles, procedures, guidelines and safeguards governing each such programme.

This will hopefully enable sufficient time to be allocated to preparing for the negotiations at the review Conference on the other more sensitive proposals, such as those contained in sections 5, 6 and 7 of this report.

Only one preparatory conference is currently planned, on 9 – 20 January 2006. Much work needs to be done between January – June 2006 through informal consultations convened by the Chair-designate of the Review Conference, and at informal meetings and workshops on particular issues. It is important the all governments play a full part in supporting such consultations, not only by participating actively but also where useful by sponsoring or convening relevant workshops and meetings. Civil society groups, including the Biting the Bullet project and the Geneva Forum, also plan to contribute to this process, by convening and contributing to such consultations and informal workshops. However, the primary responsibility lies with governments to support the process and avoid causing unnecessary delays, as well as with the Chair-designate and the UN Secretariat to ensure that an appropriately detailed draft of the Outcome Document is available in time to provide a good basis for discussions during the Review Conference.

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. However, progress towards implementation has been patchy. The 2006 Review Conference needs to review progress and take the decisions required to substantially enhance implementation and develop the PoA. These goals are important. An effective 2006 Review Conference will help to save many lives.



# 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.



UNIVERSITY OF  
BRADFORD  
MAKING KNOWLEDGE WORK

#### 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](mailto:general@international-alert.org)  
[www.international-alert.org](http://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](mailto:cics@bradford.ac.uk)  
[www.brad.ac.uk/acad/cics](http://www.brad.ac.uk/acad/cics)