

## Regulating international transfers of small arms

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My name is Ochieng Adala and I work with the Africa Peace Forum in Nairobi, Kenya, which is a member of IANSA.

The experience of IANSA members in gun-affected regions confirms the pressing need for the international community to address the issue of principles governing transfer controls for small arms and light weapons. This is due to the fact that the international arms trade is dangerously out of control.

The unregulated trade in small arms fuels conflict, undermines development, and imperils human security, thereby causing untold misery and suffering to millions of people around the world.

The earnings from legal small arms exports – 4 billion US dollars – are paltry compared with income from other forms of international trade. They are also insignificant when compared with the human, economic, security and development costs – in both developed and developing countries – caused by their uncontrolled proliferation and misuse.

The Programme of Action clearly recognises the right of States to acquire weapons for legitimate self-defence and responsible law enforcement. But this right must be balanced with their broader responsibilities and legal obligations, to ensure that transferred arms are not misused.

The Programme of Action clearly establishes the need for States to exercise control over the transfer of small arms.

- Section II, paragraph 2 commits states to: enact ‘adequate laws, regulations and administrative procedures’.
- And, Section II, Paragraph 12, commits states to: “the use of authenticated end-user certificates and effective legal and enforcement measures’.

There are several other references. And one of the key ones is Section II, paragraph 11, which States that:

“States must 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.”

But what are these ‘existing responsibilities of states under international law’? These have not been elaborated; there is no common view amongst states. So, the Programme of Action cannot be fully implemented.

There has been significant progress in elaborating transfer principles at regional and sub-regional level:

For example - Signatories to the **SICA Code of Conduct in Central America** have agreed to a set of 14 principles to guide SALW transfers. These include the prohibition of transfers of small arms to States that commit violations of human rights, incur serious violations of international humanitarian law;

Also, in the Horn of Africa and Great Lakes sub-regions, signatories to the **Nairobi Protocol** have developed a set of best practice guidelines which are firmly based on international law.

These are two examples, but there are many more. Indeed 106 countries have voluntarily bound themselves to some degree of transfer controls through these instruments.

But this, on its own, this is not enough.

The arms trade is by its nature an international one. National and regional controls are fundamental, but currently these are not mutually consistent. Arms manufacturers and traders have shown themselves to be adept at shifting their operations to the weakest part of the supply chain, exploiting weaknesses in national controls. So the achievement of common standards is imperative.

**Momentum towards this goal is growing.**

At the Biennial Meeting of States in July 2005, and subsequently, a growing number of States, well over 100, have expressed their support for developing common standards regulating the transfers of small arms.

There have been several initiatives to elaborate these principles, and promote further discussion of transfer controls on SALW.

NGOs, for their part, have worked with lawyers to draft a set of global principles derived from existing obligations under international law, to directly respond to the question posed by the UN Programme of Action, of what these obligations are.

The main principles can be summarised as follows:

**The first principle obligates states to explicitly authorise all international transfers of arms.**

**Principle Two outlines the express limitations which are already enshrined** in international laws. For instance, States must not authorise international transfers to States and groups under UN arms embargoes or cannot transfer arms that by their nature cause superfluous injury or unnecessary suffering.

**Principle Three says that States must not authorise international transfers of arms where they will be used or are likely to be used for violations of international law.** This international law includes the UN Charter, human rights law, and international humanitarian law.

**Principle Four calls on States to take into account other factors**, including the likely use of the arms, before authorising an arms transfer. These factors include likely adverse impact on sustainable development and regional security as well as whether the transfer is likely to contribute to violent crimes or corrupt practices.

**Principle 5 enshrines the importance of transparency**

And finally **Principle 6** underscores that these principles must apply to all aspects of arms supply: export, brokering, licensed production and transit.

We are at a stage where we have made considerable advances and states have demonstrated the importance of transfer controls regionally and multilaterally. Indeed, transfer controls are one area of the Programme of Action where there has been real and considerable progress in the last few years.

Already this week there have been a number of meetings with civil society and States on this issue. There is enthusiasm for moving forward. Between now and June we have an open door for discussion on small arms transfer principles in the PoA process that must be seized upon. The time is now.

To conclude, Mr Chair, we recommend that the global principles on international arms transfers, which I have briefly outlined today, should be incorporated into the Outcome Document of the Review Conference, in order to promote the full implementation of the Programme of Action.