

2: INTERNATIONAL RESPONSES AND THE UN PROGRAMME OF ACTION

2.1 INTRODUCTION

The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) stands as the central global agreement on preventing and reducing trafficking and proliferation of SALW.

When it was agreed, during the final moments of the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (2001 UN Small Arms Conference) in July 2001, many participants were very aware of the compromises and weaknesses in the final PoA document. In the interests of achieving consensus support, some commitments and norms that commanded wide support were either omitted or left frustratingly vague. Moreover, developed largely within an arms control and disarmament framework, the PoA does not satisfactorily address some of the key human rights, humanitarian, developmental or crime prevention dimensions of the problems associated with SALW. Nevertheless, the PoA is quite comprehensive in scope, and its commitments include many important international norms, standards and programmes. It provides the main framework for building concerted and effective international action to tackle SALW trafficking and proliferation.

This section briefly outlines the origins and content of the PoA, and of a number of other associated regional and global agreements. It draws substantially on the similar short chapter in our 2003 Report, since it aims to serve similar functions, which are to clarify the significance of the PoA and its relationship to these agreements and initiatives. These are complex issues. This short section aims only to provide sufficient background for the main focus of the remainder of this report – examining progress in implementing the PoA.

2.2 THE DEVELOPMENT OF THE UN PROGRAMME OF ACTION

The problems of small arms trafficking, proliferation and misuse have a long history. However, it was not until the end of the Cold War that these issues emerged on the international agenda. Several factors combined to make the issue a focus of international concern in the early 1990s. As the bilateral Cold War confrontation declined, a number of ‘new’ security challenges gained greater prominence. This included complex internal and transnational wars, the problems of armed opposition groups, warlordism and transnational crime, and the challenges for UN and other international peace support operations as conflicts come to an end. Meanwhile, many states and NGOs were developing and promoting concepts of ‘human security’, in which concerns about the security of people and communities were raised alongside those of states and international society. In all of these contexts, wide availability and misuse of SALW was a major problem, manifestly contributing to great human suffering and insecurity.

In the mid-1990s, SALW problems were placed directly on the UN agenda by a request in 1993 from Mali for UN assistance in controlling small arms within its territory, leading to UN missions to that country and the surrounding region, and by the UN Secretary-General’s Supplement to an Agenda for Peace, issued in January 1995.⁵ However, SALW problems are clearly complex and multidimensional, raising cross-cutting issues that were relatively new to UN and other international arms control and disarmament processes. New international norms, standards and programmes would be needed to address these issues.

A UN Panel of Governmental Experts on Small Arms was established as a result of General Assembly Resolution 50/70B of 12 December 1995. It was tasked with addressing the following issues: the types of

⁵ Supplement to an Agenda for Peace: Position Paper of the Secretary-General on the Occasion of the Fiftieth Anniversary of the United Nations, A/50/60-S/1995/1, 3 January 1995.

SALW actually being used in conflicts being dealt with by the UN; the nature and causes of the excessive and destabilising accumulations and transfers of SALW, including their illicit production and trade; and ways and means of preventing and reducing such problems.⁶ After its Report was presented, it rapidly became clear that substantial further work was required to develop the necessary wide coalitions of support for the relatively comprehensive range of new principles and measures required to address SALW problems. A new Group of Governmental Experts on Small Arms was established in 1998, this time including all five permanent members of the Security Council and other key states, to review the issues, assess implementation of the recommendations in the 1997 Report, and develop further recommendations for action, including on the objectives and agenda for a UN Conference. These were successfully negotiated in the consensus report of the Group, issued in August 1999 (1999 Report).⁷ This Report was endorsed by General Assembly Resolution 54/54V in December 1999, which further decided to convene a UN Conference in 2001.

The Preparations for the 2001 UN Small Arms Conference were formally organised through three Preparatory Committee (PrepCom) meetings, held in February/March 2000, January 2001, and March 2001, together with two consultation exercises conducted by the Chair of the PrepCom in July and October 2000. In practice, the 1999 Report of the UN Group of Governmental Experts provided a major source of agreements and recommendations during the preparations for this UN Conference.

Moreover, there was a relatively intense process of international meetings and regional initiatives during the period, which contributed to the overall negotiating process. The Inter-American Convention against the illicit manufacturing of and trafficking in Firearms, Ammunition, Explosives and Other related Materials (CIFTA), and associated CICAD Model Regulations had already been agreed in 1997 and 1998 respectively. In Africa, the Economic Community of West African States (ECOWAS) Moratorium⁸ was signed in October 1998 after two years of discussion, and the Southern African Development Community (SADC) countries developed a 'Southern Africa regional Action Programme on Light Arms and Illicit Arms Trafficking' in 1998. European Union (EU) States established a Programme for Preventing and Combating Illicit Trafficking in Conventional Arms (1997), a Code of Conduct on Arms Exports (1998) and a Joint Action on Small Arms (1999). During the lead-up to the 2001 UN Small Arms Conference, development of regional initiatives intensified. For instance, Organisation for Security and Co-operation in Europe (OSCE) states agreed a substantial Document on Small Arms and Light Weapons on 24 November 2000. On 1 December 2000, Organisation of African Union (OAU) states agreed a Bamako Declaration on Small Arms Proliferation, which established agreed principles directly relevant to the 2001 UN Small Arms Conference. The European Union (EU) developed its Plan of Action on SALW in December 2000. Other regions arranged similar consultations leading to a number of declarations and processes (such as the 'Brasilia Declaration' of Latin American and Caribbean States, agreed on 24 November 2000).

Importantly, a parallel international process had also been launched, under the auspices of the UN Economic and Social Council (UN ECOSOC). This led to agreement on a United Nations Convention against Transnational Organised Crime, in December 2000, and in spring 2001 to the adoption of a Protocol to the Convention dealing with illicit firearms manufacturing and trafficking. The UN Firearms Protocol was the first instrument on small arms to be agreed at the global level. It was, moreover, a legally-binding treaty, containing important commitments. However, in contrast to the PoA, which followed a matter of months later, the Protocol is focused particularly on illicit firearms used in crime, and particularly transnational crime, and primarily adopts a crime prevention and law enforcement approach to the small arms problem, with state-to-state transactions exempt from its purview. Having finally received sufficient ratifications by signatory states, the UN Firearms Protocol is due to come into force in July 2005.

⁶ Report of the Panel of Governmental Experts on Small Arms, 27 August 1997, A/52/298.

⁷ Report of the Group of Governmental Experts on Small Arms in pursuance of GA Resolution 52/38 J, A/54//258, 19 August 1999.

⁸ ECOWAS Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons.

During the 1990s, NGOs and independent experts became increasingly engaged with SALW problems. By the mid 1990s, a number of these (including the partners in this Biting the Bullet project) had developed substantial programmes and expertise in SALW issues. During 1998-9, the International Action Network on Small Arms (IANSA) was established, forming a network of NGOs concerned with preventing and reducing SALW trafficking, proliferation and misuse, and developing civil society coalitions and initiatives to help to raise awareness and tackle these problems. By the time of the 2001 UN Small Arms Conference, a large number of NGOs and civil society groups from across the world had become engaged, and had participated in a wide range of national, regional and international meetings on the issue, including in all the PrepCom meetings.

The 2001 UN Small Arms Conference itself took place in New York on 9 – 20 July. In addition to representatives of States, many international and regional organisations were represented, together with some 120 NGOs. By these final stages, consensus had virtually already been achieved relating to some key aspects of the PoA, such as on issues like norms for stockpile management and security, weapons collection, and the need for effective national controls to prevent diversion into the illicit trade. However, negotiations proved difficult in several areas, including on guidelines for national decisions on whether to authorise SALW transfers and possible follow-on measures such as negotiations on an agreement to enable tracing of illicit SALW and controls on SALW brokering. In two areas – transfers to non-state actors and norms on civilian possession of SALW – consensus proved impossible. Final agreement on the PoA was only achieved around 6.00 am on 21 July – twelve hours after the ‘clock was stopped’.

2.3 THE UN PROGRAMME OF ACTION

The PoA agreed at the UN 2001 Small Arms Conference is a politically binding document, but one that has been endorsed by consensus at a high political level. The commitments the participating states have entered into are substantial and relatively comprehensive. In spite of its many inadequacies, agreement of the PoA was a watershed in the development of international commitments to prevent and reduce SALW trafficking and proliferation. Full implementation of its commitments would make a big impact on the scale of the problems, and the PoA now provides the main framework for the further elaboration and development of international co-operation in this area.

In practice, the PoA establishes an international programme of relatively comprehensive scope, including almost the full range of issues specified in the 1997 and 1999 Reports of the UN Groups of Experts Reports. Thus it contains substantial agreed norms, standards and programmes on a number of issues, including:

- preventing and combating illicit SALW production and trafficking
- ensuring effective controls on the legal production, holding, and transfer of SALW
- weapons collection and destruction
- management and security of official and authorised SALW stocks
- SALW control in post-conflict situations
- information exchange and confidence-building.

The PoA provides at least strong implicit recognition of the strong interconnections between illicit and legal production, flows and accumulations of SALW, and the need for a comprehensive approach.

In summary, the PoA contains four main sections.

The Preamble (Section 1)

The Preamble refers to many dimensions of the problems associated with SALW trafficking, proliferation and misuse; declares or re-affirms a number of key international principles (such as those contained in the UN Charter); recognises that governments bear the primary responsibility for controlling SALW and for preventing and combating illicit trafficking; establishes that international co-operation and assistance is essential and needs to be strengthened; and requires that efforts be taken at national, regional and international levels involving all relevant stakeholders including civil society groups.

Section I ends with the resolve to prevent, combat and eradicate the illicit trade in SALW in all its aspects by (Section I, Para 22):

- strengthening or developing agreed norms and measures at the global, regional and national levels that would reinforce and further co-ordinate efforts to prevent, combat and eradicate the illicit trade in SALW in all its aspects
- developing and implementing agreed international measures to prevent, combat and eradicate the illicit trade in SALW in all its aspects
- placing particular emphasis on the regions of the world where conflicts come to an end and where serious problems with the excessive and destabilising accumulation of SALW have to be dealt with urgently
- mobilising the political will throughout the international community to prevent and combat illicit transfers and manufacturing of SALW in all their aspects, to co-operate towards these ends, and to raise awareness of the character and seriousness of the interrelated problems associated with the illicit manufacturing of, and trafficking in these weapons
- promoting responsible action by states with a view to preventing the illicit export, import, transit and retransfer of SALW.

Section II

This includes commitments by all participating states to undertake a range of measures to prevent, combat and reduce the illicit trade in SALW in all its aspects (i.e. SALW trafficking and proliferation), which includes some 41 paragraphs of specific agreed measures to be taken at the national, regional and international level. The issue areas where there are commitments include controls and measures on the following:

- establishment and exchange information on national points of contact on SALW
- establishment of national SALW co-ordination agencies or bodies
- combating illicit manufacture and trafficking of SALW
- criminalising unauthorised manufacture, possession, trade, or transfer of SALW
- marking, record-keeping and tracing
- brokering
- licensing end-use controls
- manufacturing
- ensuring controls on legal SALW transfers
- information exchange and transparency
- weapons collection
- destruction of illicit and surplus weapons stocks
- stockpile management and security
- disarmament, demobilisation and re-integration
- addressing the special needs of children affected by armed conflict
- encouraging regional and sub-regional initiatives consistent with PoA commitments

- ensuring compliance with United Nations Security Council arms embargoes
- providing information on implementation of the PoA to the UN Department for Disarmament Affairs (UN DDA), which should collate and circulate this information
- encouraging and facilitate appropriate involvement of regional and international organisations and civil society.

Section III

Section III of the PoA deals with implementation, international co-operation and assistance. Some 18 paragraphs specify undertakings to take measures including:

- co-operation at the sub-regional, regional and international level to achieve to aims and implement the measures of the PoA
- development and strengthening of partnerships to share resources and information, and co-operation in implementing the PoA, including partnerships within governments, between states, regional and international organisations and with civil society groups
- establishing regional and international programmes for specialist training on stockpile management and security
- co-operating in tracing illicit SALW
- exchanging information, on a voluntary basis, on relevant issues and practices, including marking systems and developments relating to national controls, collection and destruction of SALW
- providing assistance, on request, with the implementation of the PoA.

Section IV

This specifies follow-up to the 2001 UN Small Arms Conference. First, it states that meetings of states should be convened on a biennial basis to consider implementation of the PoA, and that a Conference should be convened no later than 2006 to review progress in implementation.

Second, it requests establishment of a UN Study Group, to examine the feasibility of developing an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit SALW.

Third, States undertake to consider further steps to enhance international co-operation in preventing and eradicating illicit brokering of SALW.

Fourth, and finally, all relevant bodies, including states, the UN, regional and international organisations are encouraged to promote implementation of the PoA, and to mobilise all available resources and expertise for this purpose. States further undertake to encourage NGOs and civil society to engage in this process.

There are, as noted, numerous weaknesses as well as strengths contained within the PoA. Nevertheless, there are many substantial commitments, and progress towards their implementation is the main concern of this report.

2.4 THE UN PROGRAMME OF ACTION AND OTHER REGIONAL AND INTERNATIONAL AGREEMENTS

As outlined above, the PoA is by no means the only international agreement relating to SALW. There are many regional initiatives and agreements which address aspects of the SALW problem, and other substantial international agreements, particularly the UN Firearms Protocol.

Formally, these various agreements all stand in their own right. In practice, they should be seen as mutually reinforcing. The development of the PoA was facilitated by the regional initiatives taken by the OAS, OSCE, SADC, ECOWAS, EU, Nairobi Initiative States (Eastern Africa), and others before 2001. Moreover, the process of developing and implementing the PoA has stimulated and assisted the further development of regional agreements. It is firmly established that the PoA sets minimum global standards; regional agreements should be consistent with it and seek to promote implementation and further development of the PoA according to regional circumstances and opportunities.

Similarly, the UN Firearms Protocol and the PoA are mutually reinforcing, and stand together as pillars for international co-operation to prevent, combat and reduce illicit and uncontrolled SALW manufacture, transfers, holdings and misuse.

Thus, it is not desirable, even if it were possible, to seek to distinguish clearly between efforts to implement the PoA and to implement these associated regional and international commitments. We certainly do not aim to do so in this Report. Rather, we look to those measures which have the effect of implementing the PoA, even if national and regional obligations are to the forefront of the minds of those involved.

2.5 FOLLOW-ON MECHANISMS

As noted, Section IV of the PoA specifies certain follow-on measures. In particular, Biennial Meetings of States (BMS) will be convened every two years, to consider implementation of the PoA. The first BMS was held in July 2003, and the second is due in July 2005. Such BMS are considered by participating states solely to be occasions for reporting and discussing progress towards implementation, not for review or debate of the PoA commitments themselves. In practice, the first BMS established some useful precedents to avoid being unduly dominated by formal statements on implementation measures. These included important thematic discussions, where Delegations could discuss the priorities, opportunities and challenges associated with implementing commitments relating to different thematic areas. Moreover, the BMS was well attended by a wide range of civil society and other concerned groups. There were wide informal discussions and many side meetings on initiatives, co-operation, and experiences with implementation.

The 2005 BMS is expected to adopt a similar approach. Informally, consultations on the issues and priorities for the 2006 Review Conference are also likely. This Conference has a mandate to review progress on implementation, which implies a broader aim of assessing progress, reviewing the adequacy of existing commitments and implementation activities, and possibly the taking of decisions aimed not only at promoting better implementation but also strengthening the PoA itself.