

2: INTERNATIONAL RESPONSES, THE UN PROGRAMME OF ACTION AND THE 2006 REVIEW CONFERENCE

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) is relatively comprehensive in scope and its commitments include many important international norms, standards and programmes. It stands as the central global agreement on preventing and reducing the trafficking and proliferation of SALW.

When it was agreed, towards the end of the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects in July 2001, many participants were very aware of the compromises and weaknesses in the final PoA document. In the interests of achieving consensus and a degree of support, some commitments and norms that required wider support were either omitted or left frustratingly vague. Moreover, having been developed largely within an arms control and disarmament framework, the PoA does not satisfactorily address some of the key human rights, humanitarian, developmental and crime prevention dimensions of the problems associated with SALW. The Review Conference for the PoA is therefore a major event, providing the first formal opportunity to address some of these weaknesses and to launch new initiatives or programmes to enhance implementation.

This chapter aims to briefly outline the origins and content of the PoA and of a number of other associated regional and global agreements. It also aims to clarify the significance of the PoA and its relationship to these agreements and initiatives and of the follow-up processes since 2001, including the 2003 and 2005 Biennial Meetings of States (BMS) and the forthcoming Review Conference. These are complex issues and so this short chapter aims only to provide sufficient background to the main focus of the remainder of this report – examining progress in the implementation of the PoA and the implications of this for the Review Conference.

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 diminished, a number of ‘new’ security challenges gained greater prominence. These included complex internal and transnational wars, the problems of armed opposition groups, warlordism and transnational crime and the challenges faced by the 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, the wide availability and misuse of SALW was a major problem, clearly contributing to great human suffering and insecurity.

SALW problems were placed directly on the UN agenda by a request from Mali in 1993 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 the Agenda for Peace, issued in January 1995.¹ However, SALW problems are complex and multi-dimensional and raised crosscutting issues that were relatively new to UN and other international arms control and disarmament processes. To address them, new international norms, standards and programmes were required.

¹ 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

A UN Panel of Governmental Experts on Small Arms was established as a result of General Assembly Resolution 50/70B of 12 December 1995. This panel was tasked with addressing the types of SALW actually being used in conflicts with which the UN was concerned, 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.² After the panel presented its Report, 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 (GGE) on Small Arms was established in 1998, this time including all five permanent members of the Security Council as well as other key states to review the issues, assess implementation of the recommendations in the 1997 Report and to 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 (hereafter, 1999 Report).³ This Report was endorsed by General Assembly Resolution 54/54V in December 1999, which also decided to convene a UN Conference in 2001.

During the same period, two further UN Groups of Governmental Experts examined specific issues: SALW ammunition and SALW brokering activities. These two GGEs examined and clarified the issues and character of the problems, but at that stage could not achieve consensus on specific next steps.

The preparations for the 2001 Conference were formally organised through three Preparatory Committee (PrepCom) meetings, held in January 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, however, the 1999 Report of the UN Group of Governmental Experts provided a major source of agreements and recommendations during the preparations for the 2001 UN Conference.

Moreover, during this period there was a relatively intense process of international meetings and regional initiatives, 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 Inter-American Drug Abuse Control Commission (CICAD) Model Regulations had already been agreed in 1997 and 1998 respectively. In Africa, the Economic Community of West African States (ECOWAS) Moratorium on the Importation, Exportation and Manufacture of Small Arms and Light Weapons was signed in October 1998 following 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 months preceding the 2001 Conference, the development of regional initiatives intensified. The Organization for Security and Co-operation in Europe (OSCE) states agreed a substantial Document on Small Arms and Light Weapons on 24 November 2000. On 15 March 2000, ten states from the Great Lakes Region and Horn of Africa agreed the Nairobi Declaration on SALW in their region, followed by a Co-ordinated Agenda for Action and an Implementation Plan in November 2000. On 1 December 2000, African Union (AU) states agreed the Bamako Declaration on Small Arms Proliferation, which established agreed principles directly relevant to the 2001 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 being reached on the United Nations

² Report of the Panel of Governmental Experts on Small Arms, 27 August 1997, A/52/298.

³ Report of the Group of Governmental Experts on Small Arms in pursuance of GA Resolution, 19 August 1999, 52/38 J, A/54//258.

Convention against Transnational Organised Crime, in December 2000 and in spring 2001, the adoption of a Protocol to the Convention dealing with illicit firearms manufacturing and trafficking: the UN Firearms Protocol, which 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, in particular 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 came into force in July 2005.

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 the Biting the Bullet project) had developed substantial programmes and expertise in SALW issues. In 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 Conference, a large number of NGOs and civil society groups across the world had become engaged in the issue and had participated in a wide range of national, regional and international meetings, including all the PrepComs.

The 2001 Conference itself took place in New York on 9 – 20 July. In addition to representatives of states, many international and regional organisations took part, together with some 120 NGOs. By these final stages, consensus had virtually already been achieved on various key aspects of the Programme of Action, such as 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 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 0600 hrs on 21 July, twelve hours after ‘the clock was stopped’.

2.3 THE UN PROGRAMME OF ACTION

The PoA agreed at the 2001 Conference is not a legally binding document, but it has been endorsed by consensus at a high political level. The commitments entered into by the participating states 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 them 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 (complementing and reinforcing the UN Firearms Protocol discussed above).

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. Thus it contains substantial agreed norms, standards and programmes on a number of topics 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 and
- Information exchange and confidence-building

The PoA provides strong implicit recognition of the considerable interconnections between illicit and legal production, flows and accumulations of SALW and the need for a comprehensive approach. However, the scope of the PoA in some areas has been left somewhat vague. For example, while the category of ‘SALW’ was understood broadly to cover the weapons specified in the 1997 and 1999 Reports of the Groups of Governmental Experts, there was no consensus on specific definitions, including the extent to which SALW ammunition was included.

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 have come to an end and where serious problems with the excessive and destabilising accumulation of SALW need to be urgently addressed
- Mobilising the political will of 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

Section II 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), expressed in some 41 paragraphs of specific agreed measures to be taken at the national, regional and international level. The issues on which there are commitments include controls and measures on the following:

- Establishment and exchange of 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 reintegration
- Addressing the particular 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 the implementation of the PoA to the UN Department for Disarmament Affairs (UN DDA), which should collate and circulate this information
- Encouraging and facilitating appropriate involvement of regional and international organisations and civil society

SECTION III

Section III 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 the 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 on developments relating to national controls, collection and destruction of SALW
- Providing assistance, on request, with the implementation of the PoA

SECTION IV

Section IV specifies follow-up to the 2001 Conference. First, it says 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 on implementation.

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

Third, states are required 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 and regional and international organisations are encouraged to promote implementation of the PoA and to mobilise all available resources and expertise for this purpose. States are further urged to encourage NGOs and civil society to engage in this process.

There are, as noted, numerous weaknesses as well as strengths within the PoA. Nevertheless, it contains 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 ON SALW

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

Formally, each of these various agreements 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), MERCOSUR and others before 2001. Moreover, the process of developing and implementing the PoA has stimulated and assisted the further development of regional agreements. Efforts since 2001 on further developing SALW agreements and implementation programmes, which have been particularly strong in the EU, OSCE, South East Europe, OAS, ECOWAS, Horn of Africa, and South Pacific, have therefore all been - partially at least - in support of the PoA as well as of regional requirements.

Importantly, it has been 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 mechanisms for international co-operation to prevent, combat and reduce illicit and uncontrolled SALW manufacture, transfers, holdings and misuse.

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

2.5 POA FOLLOW-ON MECHANISMS

As noted above, 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 the national, regional and global implementation of the PoA” (Section IV, Para 1b). Similarly, a UN Conference was to be convened “no later than 2006 to review progress made in the implementation of the PoA” (Section IV, Para 1a).

The first BMS was held in July 2003 and the second in July 2005. The mandate of these BMS was deliberately extremely restricted by the 2001 Conference in order to reassure reluctant states. They were considered by participating states solely to be occasions for reporting and discussing progress towards implementation, not for review or debate on the PoA commitments themselves. Attempts to design the agenda or work programme for these BMS to achieve substantial outputs were consistently opposed by a number of governments, who, due to the consensus rule, achieved their goal.

In practice, the first BMS, Chaired by Ambassador Inoguchi (Japan), established some useful precedents to avoid being unduly dominated by formal statements on implementation measures. These precedents included holding important thematic discussions in which government delegations could talk about the priorities, opportunities and challenges associated with implementing commitments relating to different thematic areas. The event proved an important stimulus to governments to submit official reports on their countries’ progress towards implementation of the PoA. 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 was similar in many ways. As in the previous BMS, there were thematic discussions in which delegations could examine the priorities, opportunities and challenges associated with implementing various PoA commitments. The desire to have something to present encouraged a fresh wave of government reports, the meeting was attended by a very active civil society and there were many side events and informal discussions amongst a wide range of stakeholders. The Chair (Ambassador Patakallio, Finland) was also successful in ensuring substantial and useful debates in which governments could exchange views on the strengths and weaknesses of the PoA so far, and priorities for further action. Informally, this provided important preparatory discussions for the 2006 Review Conference process. Formally, however, several states insisted that none of the substance of these discussions should be included in the official report of the 2005 BMS.

Although the 2003 and 2005 BMS meetings were widely recognised to be useful in many ways, by 2005 the great majority of participants had become frustrated and critical of the constraints imposed on them. Because of a highly restrictive mandate imposed by a number of 'reluctant' governments, the 2005 BMS meeting, for example, was not as useful as it could have been.

In this context, the Review Conference has assumed even greater prominence and importance for the PoA process than many anticipated in 2001. As noted earlier, the mandate for this Review Conference was not elaborated in 2001. However, by 2005 the great majority of governments (and also relevant civil society groups and international and regional organisations) had made it clear that they wanted a 'forward looking' Conference, focused on developing international agreement on ways to further enhance implementation and to strengthen the PoA. This is the customary purpose of a Review Conference for international agreements and implies a mandate to:

- Review progress made towards implementation of the PoA
- Consider and establish further agreements and measures to strengthen and promote implementation of the PoA
- Consider and establish 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
- Establish follow-on mechanisms and processes that enable active international consultations, initiatives and programmes to take place between the 2006 and the next major Review Conference, to promote enhanced implementation of the PoA

After a number of informal consultations, the Preparatory Committee for the Review Conference took place at the UN in New York between 9 – 20 January 2006, Chaired by Ambassador Rowe (Sierra Leone). This addressed customary procedural issues, and also conducted a series of thematic debate in which many states presented ideas and proposals on ways to promote implementation or strengthen the PoA. As always, there were many side events and civil society groups were actively engaged.

A consensus rapidly emerged that the Review Conference would not aim to re-negotiate elements of the 2001 PoA Document. This 2001 Document would remain unrevised. Instead attention would focus on agreeing a Review Conference Outcome Document, which would supplement and reinforce the existing PoA. As in 2001, this Outcome Document would be politically rather than legally binding, but would rest on the same degree of political commitment as the 2001 PoA Document.

Immediately after the end of the Preparatory Committee meeting, the Chair-Designate for the Review Conference, Ambassador Prasad Kariyawasam (Sri Lanka) embarked on a process of informal

consultations. These were aimed at developing consensus and at preparing an effective Chair's 'Non-Paper' to provide a good basis for agreement on a substantial Outcome Document at the Review Conference (due to take place on 26 June – 7 July 2006). At the time of writing, these were progressing well, but it was clear that there remained much to do if the Review Conference is to achieve its goals of substantially enhancing implementation and strengthening the PoA.

2.6 ISSUES AND CHALLENGES OF ASSESSING IMPLEMENTATION AND EFFECTIVENESS OF THE POA

As international regimes to tackle global problems such as trafficking and proliferation of SALW develop, it is important to assess their impact and effectiveness. Such assessments are critical for decisions about the adequacy of existing international commitments and for the design and development of further programmes and commitments that may be required.

It is intrinsically difficult to make such assessments. For example, we do not have reliable or detailed information on the scale, character or impact of the problems of uncontrolled or illicit SALW flows or holdings, either in the past or in the present. Research and knowledge on such issues has increased greatly in recent years but good baseline data for 2001 against which to assess progress is lacking.

Similarly, it remains difficult to gather comprehensive, reliable information about the policies and programmes that governments, regions and all other stakeholders have developed and strengthened in order to implement the PoA. One of the primary purposes of the series of BtB/IANSA 'Red Book' reports (of which this is the third) is to contribute to this area. However, although we believe that these reports make a major contribution to understanding, we would be the first to emphasise that they may be incomplete. Moreover, we lack the resources and access to conduct detailed evaluations of the impact and effectiveness of each of the programmes that we describe. To achieve this, substantial improvements need to be made on the consistency and comprehensiveness of government reports on PoA implementation activities, and adequate resources are required to conduct systematic assessments. This is an issue for the Review Conference and beyond.

When discussing issues of impact and effectiveness it is important to recognise that these terms can have multiple meanings. For example, effectiveness could be used simply in relation to compliance such as whether or not states have literally fulfilled their specific PoA commitments. However, this question, although important, is too narrow. The commitments may be too weak or vague for compliance to mean much. In contrast, states that have made real progress towards achieving ambitious commitments could be judged to be more effective, even if they have not actually been able to fully achieve them.

It is important also to focus on effectiveness in terms of:

- The extent to which the PoA has contributed to achieving changes in behaviour (policies, measures, etc.) of governments and all other stakeholders in the direction intended
- The extent to which the actions taken have actually prevented or reduced global SALW trafficking and proliferation

As matters stand, the international community has not established the official mechanisms to produce the systematic reports that would be required for a Review Conference to conduct a detailed review of progress on implementation or the adequacy or otherwise of PoA commitments. Thus establishing some such process is important. This is our primary motivation for the new structure for this report: to organise the information and analyses that are available in a way that supports well-informed international assessment of the adequacy of existing implementation efforts and the extent to which revised, clarified or further developed PoA commitments and programmes are needed.