

The UN Programme of Action on Small Arms & Light Weapons: Towards an Effective First Review Conference

29-30 May 2006
Hotel Victoria, Glion, Switzerland

SUMMARY REPORT

Background and Purpose

On 29-30 May 2006, the Geneva Forum assembled representatives of 22 governments from all regions of the world in Glion, Switzerland, for intensive discussions aimed at securing a positive outcome for the first UN conference to review implementation of the *UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (henceforth the 'PoA'), which will take place at UN headquarters in New York on 26 June – 7 July 2006. A number of representatives of specialised international, regional and nongovernmental organisations also participated in the meeting, which was held under the *Chatham House Rule*.

The focus of the meeting's informal discussion was the composite non-paper released by the President-designate of the Review Conference, Ambassador Prasad Kariyawasam of Sri Lanka, on 18 May 2006 after intensive consultations with UN Member States.¹ This non-paper, which contains a "strategy for further implementation" of the PoA, proposes text for the Review Conference outcome document.

The meeting confirmed that broad agreement exists on most of the language proposed for the outcome document and that this document forms a solid basis for negotiation. There seems to be broad agreement on issues such as tracing, brokering, stockpile management and security, and the destruction of surplus SALW. On other issues, however, there remain significant differences of opinion among UN Member States. Some of these differences are deeply entrenched and will be difficult for the Review Conference to reconcile. Others are not quite so intractable and could be bridged with appropriate compromise language. The following is a list of the most important outstanding issues identified by the Glion meeting, arranged roughly in order of decreasing difficulty:

¹ All references in this report to the "draft Review Conference outcome document" refer to the May 18 version of the President-designate's non-paper.

1. Civilian Possession

The issue of regulating civilian possession of SALW caused great controversy at the 2001 Small Arms Conference. While no agreement was reached on including direct reference to this issue in the PoA, the PoA does contain a number of references to the possession of SALW: It calls upon States to outlaw the possession of illicit SALW (II.3); to identify and prosecute groups and individuals who possess illicit SALW (II.6); and to adopt and enforce measures to prevent the possession of inadequately marked SALW (II.8).

The draft Review Conference outcome document contains a paragraph encouraging States that have not already done so to “adopt adequate laws, regulations and administrative procedures to regulate the possession of small arms and light weapons” (II.4) Although the word “civilian” is not used, it is implied. A small number of States reject outright, for either political or practical reasons, the inclusion of any reference to regulating the civilian possession of small arms. On the other hand, a larger number of States see this as a crucial means of preventing the diversion of arms into the illicit trade. This was an extremely divisive issue at the 2001 Conference and is likely to remain so at the Review Conference.

2. Non-State Armed Groups

The issue of banning transfers of SALW to Non-State Armed Groups (NSAGs) was also a very divisive issue at the 2001 Small Arms Conference, but has evolved somewhat over the last five years. States opposing such a ban have moved from rejecting any mention of NSAGs within the framework of the PoA to rejecting a *blanket* ban on transfers of SALW to such groups. This slight softening of position is due to increasing global concern with the acquisition by NSAGs of Man-portable Air Defence Systems (MANPADS). The Review Conference presents a real opportunity, therefore, to introduce language on NSAGs into the PoA framework.

The draft Review Conference outcome document contains a number of provisions related to NSAGs. States are called upon to:

- “Consider applying global guidelines for national controls governing transfers” (II.9) that “must also include a clear prohibition to the transfer of small arms and light weapons... which are not expressly authorized by the competent authorities in the country of export, import or transit” (II.10).
- Take national measures to ban the transfer of MANPADS to NSAGs (II.15).
- Exchange views on transfers to “actors not authorised by the recipient State,” with a view to developing common understandings or measures.
- Clarify the concept of NSAGs and to examine their impact on the implementation of the PoA (IV.6)

Paragraph II.15 contains the least controversial language in this regard, since it is confined to the transfer of MANPADS. Paragraph II.10 is likely to prove most controversial since it implies a blanket ban on transfers to NSAGs (although the use of the word “or” at the end of the paragraph puts a question-mark over the scope of the proposed prohibition). There is also opposition to paragraph IV.6 based on the costs that might be entailed and the fact that the concept of NSAGs has been elucidated elsewhere, for example in Security Council Resolution 1540.

3. Transfer Controls

The PoA contains strong provisions, concisely expressed, for controlling the transfer of SALW (II.11 and II.2). The draft Review Conference outcome document attempts to lay the groundwork for elaborating on these provisions by calling upon States to “consider applying global guidelines for national controls governing transfers of small arms and light weapons” (II.9) and by broadly outlining the content, scope and origin of such guidelines (II.10). Moreover, States are urged to provide assistance to other States in the implementation of transfer controls (III.3b).

A great deal of agreement has been achieved since 2001 on the need to elaborate on the PoA’s provisions on transfer controls. The Transfer Control Initiative (TCI) has been instrumental in this regard and has, through a process of regional consultations, developed guidelines that reflect States’ existing responsibilities under international law when it comes to considering export authorisations for SALW.² Some States participating in the TCI would like to discuss these guidelines at the Review Conference with a view to adopting them, or a version thereof, at the end of the meeting.

At the opposite end of the spectrum, a number of key States remain staunchly opposed to elaborating on the PoA’s provisions on transfer controls at the Review Conference. Although States seem to have ceased using the argument that this is a “new” issue not within the scope of the PoA, they continue to base their opposition on the importance of focusing on the illicit trade and of not placing restrictions on the legal trade in SALW. It seems likely, however, that there exist additional, as yet unexpressed, grounds for opposing the elaboration of transfer control guidelines, possibly related to concerns of a commercial nature.

Given these divergent views, it is likely to prove difficult to achieve significant progress on transfer controls at the Review Conference itself. Moreover, the draft Review Conference outcome document does not, at this stage, contain any follow-up mechanisms pertaining to elaborating transfer control guidelines.

4. Ammunition

From the beginning of the UN process on SALW, ammunition has formed an “integral part” of the small arms *problematique*.³ This linkage was first thrown into question when the Open-Ended Working Group (OEWG) on Tracing Illicit SALW failed to include ammunition within the scope of the tracing instrument. Ever since, the debate on ammunition has become more intense, with some States now going so far as to argue that ammunition is not included within the scope of the PoA itself.

The draft Review Conference Outcome Document contains the following provisions related to SALW ammunition:

- It recognises an “intrinsic link” between the illicit trade in SALW and the illicit trade in ammunition (I.18);
- It urges States to put in place appropriate controls on stockpiles of small arms ammunition (II.18);

² *Suggested global guidelines for national controls governing transfers of small arms and light weapons*, Nairobi Conference on Transfer Controls, 20-21 April, 2006.

³ Report of the Group of Governmental Experts on Small Arms (A/CONF.192/2), Annex I, page 24. This report bases its cross-referenced definitions of “small arms and light weapons” and “ammunition and explosives” on those developed and used by its predecessors – the Panel of Governmental Experts on Small Arms (A/52/298) and the Group of Governmental Experts on Small Arms (A54/258).

- It initiates a separate UN process to address the issue of ammunition, as recommended by the OEWG on Tracing (II.42);
- Finally, it calls on States to “consider further steps” to prevent the illicit trade in ammunition (IV.5).

These provisions reflect the will of a majority of States that ammunition should be dealt with the framework of the PoA. They are opposed, however, by a small number of key States who insist that ammunition does not fall within the scope of the PoA and should not, therefore, be dealt with by the Review Conference.

At least some of these opposing States have expressed their willingness, however, to participate in a separate process on SALW ammunition so long as this takes place outside of the PoA framework. These same States do not seem willing, however, to achieve this on the basis of the provisions contained in paragraph II.42 of the draft Review Conference outcome document.

This suggests that these key States will oppose any mention of ammunition in the Review Conference outcome document but will be amenable to participating in a process on ammunition initiated by a separate organ of the UN such as, for example, the First Committee of the General Assembly.

5. Matching needs with resources

An important challenge facing the Review Conference is to assist in matching needs with resources in the context of PoA implementation. A number of elements are needed in this regard: The countries that are seeking assistance must clearly identify and prioritise what their needs are. Donors must ensure that procedures for accessing funds are simple, accessible, transparent and predictable. Finally, cooperation and coordination between donors and States seeking assistance is crucial in order to avoid duplication and overlap.

The draft Review Conference outcome document contains a number of provisions in this regard: It calls upon the UN Department for Disarmament Affairs to compile in a database the needs of affected States (III.12) and requests UNIDIR to carry out a study on the financial and technical needs of developing countries in implementing the PoA (III.19). These are very useful provisions. Given the scale and urgency of the problem, however, more will be needed to address the criticism of some donor countries that, when it comes to assistance in the area of PoA implementation, they do not have a clear enough idea of where to invest the substantial resources they have at their disposal.

An earlier proposal to establish a permanent “assistance and cooperation mechanism” to help with the task of matching needs with resources was dropped from the current version of the draft Review Conference outcome document, indicating strong opposition to this idea on the part of some States. It will likely prove quite difficult at the Review Conference, therefore, to agree on the additional measures that would be required to ensure that needs and resources are efficiently matched in the context of PoA implementation.

6. Development

There is likely to be an intense debate at the Review Conference on the question of whether the outcome document should call upon States to mainstream action against the illicit small arms trade into broader development programmes. The draft Review Conference outcome document contains some strong language in this regard. States are urged to “mainstream action to eliminate illicit small arms and light weapons and integrate armed violence prevention programmes, as appropriate, in national and local plans and strategies related to national

security, development, poverty reduction, crime prevention and post-conflict reconstruction” (II.24).

Many States, particularly donor countries, argue that they need such language in order to be able to provide substantial assistance in the area of PoA implementation. A small number of other States question whether such language is necessary, not, it seems, because they oppose it strongly, but because they are wary of expanding the scope of the PoA into areas that they consider to be beyond its core competences.

Interestingly, the States that make this argument are also the ones that argue that implementation of the PoA must improve before its scope can be expanded. If, therefore, a strong case can be made that mainstreaming action on illicit small arms will improve implementation by making more resources available to affected States, the Review Conference might be able to reach agreement on this issue.

7. Follow-up

Participants agreed that a strong follow-up mechanism would be needed to ensure continued progress in combating the illicit trade in SALW. Considerable disagreement remains, however, over the extent and nature of such follow-up.

The draft Review Conference outcome document (section IV) contains provisions for a more intensive follow-up process than was agreed at the 2001 Small Arms Conference. This includes, i.a., enhanced Biennial Meetings of States (BMS) synchronised with an enhanced second Review Conference, an intersessional programme of work between the BMS, a Group of Governmental Experts (GGE) on MANPADS, and multilateral discussions on ammunition and NSAGs. In addition, sections II and III of the draft outcome document also contain undertakings that would require follow-up action but that are not reflected in section IV.

On the one hand, a large number of States are of the opinion that strengthened follow-up mechanisms, of the kind outlined above, will greatly enhance international cooperation in implementing the PoA and the recommendations of the first Review Conference. On the other hand, however, some key States would prefer to make follow-up contingent upon performance in implementing the PoA. They stress that follow-up mechanisms must be goal-oriented and must produce measurable results. They also point to the opportunity cost of investing time and resources in BMSs and intersessional meetings that could be better invested in carrying out actual work to implement the PoA. Occupying the middle-ground between these sets of views are States that advocate the continuation of existing follow-up mechanisms.

The differences of opinion on this issue are not, therefore, insignificant. A small number of key States still question the utility, at this stage, of agreeing to hold a second Review Conference, not to mention the BMSs and intersessional work programme foreseen by the draft Review Conference outcome document. It should be noted in this regard, however, that the final report of the second BMS, which was adopted by consensus, refers to “future biennial meetings of States,”⁴ and that the international instrument on tracing illicit SALW foresees further PoA Review Conferences.⁵

A concern common to all States in this debate, however, is that any follow-up mechanism should be effective and focused and should lead directly to fuller implementation of the PoA.

⁴ A/CONF.192/BMS/2005/1, paragraph 19.

⁵ A/60/88, paragraph 38.

8. Other issues

The above are some of the most important unresolved issues that the Review Conference will have to grapple with. They should not, however, distract attention from the fact that broad agreement seems to have been reached, or seems close to being reached, on many other issues in the draft Review Conference outcome document.

Elaborations on PoA commitments on tracing, brokering, stockpile management and security, MANPADS, and the destruction of surplus SALW seem to enjoy widespread support. Agreement on issues such as assistance to survivors of gun violence and end-user certification, while likely to be somewhat more controversial, also seems within reach.

The international community's understanding issues such as disarmament, demobilisation and re-integration (DDR), security-sector reform (SSR), and demand has greatly increased over the past five years, mainly due to intensified research and field projects. These issues are anchored in the PoA and could well be a focus for negotiating attention.

The challenge facing States at the Review Conference is two-fold: First, to go as far as possible in overcoming the still substantial differences that exist on the issues listed in 1-7 above and, second, to ensure that remaining differences on these issues do not prevent progress being made in areas where broad agreement already exists.

9. Conclusion

The PoA Review Conference will not take place in a vacuum. There are extraneous political factors that will have a bearing on the tone of the debate and, consequently, on its outcome. These include the ongoing discussions on Iran's nuclear programme and, perhaps more significantly, the UN budget crisis, which could come to head in the middle of the Review Conference. It would be very regrettable indeed if States allowed such outside pressures to distract them from the important work that the Conference has before it.

A central role of the Review Conference, second only to re-affirming the provisions of the PoA, is to find ways to strengthen its implementation. This can best be achieved through elaborating as much as possible on the commitments contained in the PoA, which are often expressed in a manner that is too concise or vague to be conducive to implementation by State officials. The more existing PoA commitments can be clarified and elaborated by the Review Conference, the easier it will be to implement.

The Review Conference will not be able to resolve all of the issues outlined above. For this reason, reaching agreement on a strong follow-up process will be vital to ensuring that work within the PoA framework can continue over the coming years. For a follow-on process to be effective, however, it must carefully select and prioritise the issues to be taken forward and must be realistic about what can be achieved within a given timeframe.

Being realistic about what can be achieved implies being able to measure progress towards goals that have been set. An important shortcoming of the PoA is that it does not contain tools to measure its impact on the illicit small arms trade. Any progress that the Review Conference could make on rectifying this would greatly enhance the follow-up process and the overall effectiveness of the PoA regime.

The first PoA Review Conference faces a difficult dilemma. On the one hand, States are united in their commitment to combat the illicit trade in SALW and to reduce the human suffering caused by it. On the other, they are divided by exactly how best to achieve this. Some States prefer to remain narrowly anchored in the PoA until its implementation improves significantly, while others see value in applying, already now, the lessons learned over the last five years in order to clarify, elaborate and even expand its provisions. In sum, States agree on the goal, but not on how best to achieve it.

A weak outcome of the Review Conference would certainly not help global, regional, national and local efforts to combat the illicit small arms trade. But nor would it sound the death-knell of progress in this area. Enough momentum has been built up over the last five years to make concerted action against the illicit small arms trade a “mega-trend” that can be sustained even in the absence of agreement on key issues at the global level. Notwithstanding this, however, the Glion meeting demonstrated that, despite their remaining differences, key States are approaching the Review Conference in a constructive frame of mind and are united in their commitment to do more to address the problem of illicit SALW.

The groundwork for the Review Conference has been well prepared. It is now up to representatives of States to demonstrate the diplomatic skill and finesse that will be necessary to ensure that progress towards eradicating the illicit trade in SALW continues apace in the coming years.