

## II. Small arms control measures

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Since the 1990s a range of legally binding and voluntary measures have been created to improve standards in the production, trade, storage, use and disposal of small arms. These international, regional and multilateral instruments—which are largely fragmented and compartmentalized—make up the small arms control regime.

In the 1990s there was an attempt to distinguish between controls focused on conflict prevention, management and resolution, on the one hand, and controls focused on crime, law enforcement and public safety on the other. The debate over controlling weapons in the conflict cycle generally used the term ‘small arms’, while controls aimed at strengthening law enforcement and public safety generally used the term ‘firearms’.<sup>1</sup> This endeavoured to differentiate matters that were of concern for international peace and security from those seen as internal matters that should remain the responsibility of national authorities. Opposition to any agreements on small arms controls that could have implications for its domestic laws on gun ownership was particularly strong in the United States.<sup>2</sup> There were also technical aspects to this distinction, as well as differences in which weapons were covered by each control system. However, there was significant overlap, and certain types of arms were covered in both (see below).

In 2001 the United Nations adopted two separate instruments.

1. The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN POA), negotiated under the auspices of the First Committee of the General Assembly as a stand-alone international instrument.<sup>3</sup>

2. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (UN Firearms Protocol), negotiated under the auspices of the UN Economic and Social Council (UN ECOSOC) and its Commission on Crime Prevention and Criminal Justice as a supplement to the 2000 UN Convention against Transnational Organized Crime (UNTOC).<sup>4</sup>

<sup>1</sup> United Nations, ‘Report of the panel of governmental experts on small arms’, A/52/298, 27 Aug. 1997.

<sup>2</sup> Stohl, R., ‘United States weakens outcome of UN small arms and light weapons’, *Arms Control Today*, 1 Sep. 2001.

<sup>3</sup> United Nations, Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN POA), A/CONF.192/15, 20 July 2001.

<sup>4</sup> United Nations General Assembly Resolution 55/255 of 31 May 2001, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), adopted 31 May 2001, entered into force 3 July 2005, *United Nations Treaty Series*, vol. 2326 (2007). The United Nations Convention against Transnational Organized Crime (UNTOC) came into effect through United Nations General Assembly Resolution 55/25, 15 Nov. 2000.

The UN POA is politically binding on all UN member states, whereas the UN Firearms Protocol is legally binding, although only for states parties. The UN POA and the UN Firearms Protocol differ in focus and detail, with the latter providing more specific language on key national obligations. However, both instruments call on states to maintain effective systems of marking, record-keeping and transfer controls, and to share information on the illicit manufacture and trade in small arms.

The attempt to draw a distinction between 'small arms' and 'firearms' has been carried across into other international and regional elements of the small arms control regime. For example, separate instruments have been developed to facilitate the tracing of illicit small arms and firearms.<sup>5</sup> Moreover, the European Union (EU) continues to run two parallel approaches, in which firearms (considered as civilian-operated lawful weapons) and small arms (military-style weapons) are in separate legal and policy frameworks. Whereas transparency and cooperation among EU law enforcement related to firearms is growing, member states maintain exclusive competence over small arms controls.<sup>6</sup> However, the distinction has proven hard to maintain in practice.

First, there is no clear division in terms of which weapons are covered by each set of instruments, with the technical definition of 'firearms' encompassing all small arms and some light weapons.<sup>7</sup> Some UN and regional instruments specify that small arms have been 'manufactured to military specifications'.<sup>8</sup> However, there are no international agreements that specify what this means and states vary in how they distinguish between military and civilian weapons. Furthermore, the technical characteristics of a weapon can be changed during its lifecycle (and this conversion can increase its lethality) or the weapon can be diverted from its original end use and end user.

<sup>5</sup> UN General Assembly Decision 60/519, International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (International Tracing Instrument, ITI), 8 Dec. 2005; and Interpol, 'Illicit arms records and tracing management system (iARMS)', [n.d.], <<http://www.interpol.int/Crime-areas/Firearms/INTERPOL-Illicit-Arms-Records-and-tracing-Management-System-iARMS/What-is-firearm-tracing>>.

<sup>6</sup> European Commission, 'Migration and Home Affairs, policies, trafficking in firearms', [n.d.], <[http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-firearms/index\\_en.htm](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/trafficking-in-firearms/index_en.htm)>; and European External Action Service, 'The fight against excessive accumulation and illicit trafficking of SALW and their ammunition', [n.d.], <[http://eeas.europa.eu/non-proliferation-and-disarmament/conventional\\_weapons/salw/index\\_en.htm](http://eeas.europa.eu/non-proliferation-and-disarmament/conventional_weapons/salw/index_en.htm)>.

<sup>7</sup> 'Small arms' are revolvers and self-loading pistols, rifles and carbines, sub-machine guns and assault rifles, United Nations (note 1), para. 26; 'Firearms' are 'any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive', UN Firearms Protocol (note 4), Article 3(a).

<sup>8</sup> E.g. see Council of the European Union, 'Council Joint Action of 12 July 2002 on the European Union's contribution to combating the destabilizing accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP', *Official Journal of the European Communities*, L191, 19 July 2002.

Second, distinguishing between use of weapons in conflict and for criminal purposes can be subjective and difficult. The transformation of security environments in many places since the 1990s has increasingly blurred the distinction between conflict, crime and terrorism.

As a result, there can be overlap in the commitments contained in the UN POA and the UN Firearms Protocol, as well as their accompanying outreach and capacity-building programmes, creating concerns about unnecessary duplication of effort.<sup>9</sup> Attempts have been made to try to bridge this divide and build links between the two instruments. For example, the outcome document of the 2012 UN POA Review Conference highlighted the need to coordinate UN POA and UN Firearms Protocol implementation efforts.<sup>10</sup> However, it is unclear if this is being translated into concrete action.<sup>11</sup> The picture may be further complicated by the entry into force of the Arms Trade Treaty (ATT) in December 2014, which also includes provisions for (a) transfer controls and stockpile management that apply to small arms; and (b) the creation of linked outreach and assessment programmes.<sup>12</sup>

The remainder of this section provides an overview of recent developments in the UN POA and the UN Firearms Protocol, focusing on their areas of commonality and difference, as well as their shared challenges of maintaining state and non-governmental organization (NGO) interest, and establishing effective mechanisms for assessing national implementation.

### **The United Nations Programme of Action**

The UN POA outlines international, regional and national measures aimed at countering the illicit trade in small arms or small arms and light weapons (SALW). However, its commitments cover all aspects of the legal production, trade, use and disposal of SALW. Like other treaties and conventions on small arms, the UN POA does not have a verification mechanism. The UN POA proposes that states ‘make public’ their relevant national laws, regulations and procedures, and recommends inter-

<sup>9</sup> McClay, J., ‘Beyond stalemate: action and advocacy in the UN small arms process’, eds P. Batchelor, and K. M. Kenkel, *Controlling Small Arms: Consolidation, Innovation and Relevance in Research and Policy* (Routledge: London, 2013), pp. 286–301.

<sup>10</sup> United Nations, General Assembly, ‘Report of the United Nations conference to review progress made in the implementation of the programme of action to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects’, A/CONF.192/2012/RC/4, 18 Sep. 2012.

<sup>11</sup> McClay (note 9).

<sup>12</sup> Arms Trade Treaty (ATT), opened for signature 3 June 2013, entered into force 24 Dec. 2014, <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XXVI-8&chapter=26&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-8&chapter=26&lang=en)>. The ATT was negotiated under the auspices of the United Nations General Assembly First Committee, which focuses on disarmament issues. However, in terms of content the ATT is mainly focused on issues relating to controls on the trade in conventional arms. For this reason, developments in the ATT are discussed in the context of arms control in chapter 15, section I, in this volume.

governmental exchanges of information to help tackle the illicit trade in SALW.<sup>13</sup> It also encourages states to provide, on a voluntary basis, national reports on implementation of the UN POA, which would include information on national transfer controls and brokering controls, seizures, and the routes and means used for trafficking.<sup>14</sup> States meet every two years at the Biennial Meeting of States to Consider Implementation of the UN POA and review conferences have been held in 2006 and 2012. The Third Review Conference is planned for 2018. In addition, the UN has developed a set of International Small Arms Control Standards to assist states with the implementation of the UN POA and other SALW-related international and regional instruments.<sup>15</sup>

In 2006 the UN POA ran into difficulties when UN member states were unable to reach agreement on an outcome document for the First Review Conference, largely due to disagreements on whether, and how, to include language on civilian possession and transfers to non-state actors.<sup>16</sup> In the following years, the amount of high-level attention paid to the UN POA by governments and NGOs fell as resources were redirected towards the ATT. However, states launched a series of meetings of governmental experts (MGEs) to carry out focused discussions on specific issue areas and a moderately successful review conference was held in 2012.

The first MGE took place in 2011, with a focus on effective measures in marking weapons, maintaining records on production and transfers, and tracing illicit arms. A second meeting is planned for 1–5 June 2015.<sup>17</sup> This forms part of an attempt to shift the focus of the UN POA towards a few selected SALW-related issues, where there is greatest scope for inter-governmental cooperation, and to avoid more contentious issues. The outcome document of the 2014 Biennial Meeting of States to Consider Implementation of the UN POA was adopted by consensus and focused on stockpile management and ‘the impact of new technologies on weapons manufacture, design and storage’.<sup>18</sup> However, overall engagement with the UN POA is down on previous years and the level and quality of national reporting has declined considerably. A total of 76 states submitted reports on national implementation during 2014, down from 111 in 2010.<sup>19</sup> In addition, NGOs continue to argue that the instrument needs to be

<sup>13</sup> UN POA (note 3), para. II.23.

<sup>14</sup> UN POA (note 3), para. II.33.

<sup>15</sup> For more detail on the International Small Arms Control Standards see <<http://www.smallarmsstandards.org>>.

<sup>16</sup> Taylor, M. E., ‘UN small arms conference deadlocks’, *Arms Control Today*, 1 Sep. 2006, pp. 46–47.

<sup>17</sup> Programme of Action on small arms and light weapons, Open-ended Meeting of Government Experts, New York, 9–13 May 2011, <<http://www.poa-iss.org/MGE/>>.

<sup>18</sup> Fifth Biennial Meeting of States to Consider Implementation of the POA, <<http://www.un-arm.org/BMS5/>>.

<sup>19</sup> For more detail see UN POA Implementation Support System, <<http://www.poa-iss.org/Poa/poa.aspx>>.

strengthened, particularly with the addition of more formal tools for measuring and assessing national implementation.<sup>20</sup>

### **The United Nations Firearms Protocol**

The UN Firearms Protocol provides a framework for states to control and regulate licit arms and arms flows, prevent their diversion into the illicit market, and facilitate the investigation and prosecution of related offences without hampering legitimate transfers. Until 2014 and the entry into force of the ATT, it was the only global, legally binding convention on small arms. To date, the UN Firearms Protocol has 164 signatories and 112 states parties.<sup>21</sup> Like other treaties and conventions on small arms, the UN Firearms Protocol does not have a verification mechanism. States parties meet every two years in a conference of states parties. There is also an open-ended intergovernmental Working Group on Firearms, which can make recommendations to the conference of states parties and the secretariat. The secretariat—the Implementation Support Section of the Organized Crime and Trafficking Branch in the UN Office of Drugs and Crime—created a Global Firearms Programme in 2011 to assist states parties in the implementation of the UN Firearms Protocol. The programme has developed specialized training courses for criminal justice practitioners, as well as legislative and technical assistance tools, including a legislative guide on how to implement the UN Firearms Protocol at the national level. The programme depends on voluntary contributions and the largest funder is the EU.<sup>22</sup>

Article 32 of UNTOC requires states to establish a mechanism for reviewing the implementation of UNTOC, a process that would include the UN Firearms Protocol.<sup>23</sup> In 2008 Argentina and Norway initiated inter-sessional work on a review mechanism and Mexico has led subsequent negotiations on its creation.<sup>24</sup> Reaching an agreement for a review mechanism was the main issue for consideration at the seventh session of the Conference of the Parties to UNTOC, held in Vienna in October 2014. The proposed mechanism would review the implementation efforts of all states parties every five years. However, states parties again failed to reach agreement on establishing the mechanism. Issues left outstanding, which pre-

<sup>20</sup> Mack, D., *An Assessment of the POA (Or, Why We Are Not in New York)*, Reaching Critical Will, Women's International League for Peace and Freedom (WILPF), Briefing paper (WILPF: New York, June 2014).

<sup>21</sup> UN Firearms Protocol (note 4).

<sup>22</sup> United Nations Office of Drugs and Crime, Global Firearms Programme, <<http://www.unodc.org/unodc/en/firearms-protocol/gfp.html>>.

<sup>23</sup> UNTOC (note 4), Article 32.3(d).

<sup>24</sup> Global Alliance Against Traffic in Women, 'Four years of negotiations and still no review mechanism: the best outcome?', Oct. 2012, <<http://www.gaatw.org/events-and-news/204-latest-news/712-four-years-of-negotiations-and-still-no-review-mechanism-the-best-outcome>>.

vented agreement, were the means of funding the mechanism and the level of involvement of civil society in the process.<sup>25</sup> States parties instead agreed to remain committed to working towards a review mechanism, by continuing joint meetings in the Working Group on International Cooperation and the Working Group of Government Experts on Technical Assistance. In the meantime, states decided that they would keep using the self-assessment software established under the Global Firearms Programme to review their implementation of the UN Firearms Protocol.<sup>26</sup> Unfortunately, the six years of negotiations for a review mechanism have stolen attention away from the actual implementation of national obligations.

## Conclusions

In recent years both the UN POA and the UN Firearms Protocol have been criticized for the limited availability of information needed to accurately assess levels of national implementation. In addition, both have suffered from declining engagement from states and NGOs in the context of efforts to negotiate and ratify the ATT. Despite a clear overlap in the coverage of the two instruments, efforts to build direct links between them have yet to lead to clear results. Nonetheless, this has not proved to be an insurmountable barrier to concrete action on small arms, particularly at the regional level. A range of regional instruments have been drafted—notably in Africa and Latin America—that largely ignore the distinction between small arms and firearms to create unified control instruments.<sup>27</sup> Similarly, NGOs and regional organizations are implementing programmes that sidestep the distinction between the controls, and instead target practical issues such as stockpile management and the destruction of surplus stocks.<sup>28</sup> Thus, while greater coordination between the small arms and firearms control agendas at the international level would be welcome, the absence of such coordination can be overcome.

<sup>25</sup> Global Initiative Against Transnational Organized Crime, '2014: a marker of the effectiveness UNTOC', [n.d.], <<http://www.globalinitiative.net/untoc2014/>>; and Italy, 'Food for thought on the establishment of a mechanism to review the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto', CTOC/COP/2014/CRP.3, 26 Sep. 2014, p. 2.

<sup>26</sup> Austria, France, Italy and Mexico, 'Strengthening the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto', Revised draft resolution, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, CTOC/COP/2014/L.4/Rev.2, 10 Oct. 2014. For more information on the activities of the working groups see <<http://www.unodc.org/unodc/en/treaties/CTOC/working-groups.html>>.

<sup>27</sup> E.g. the definition of 'small arms' in the 2006 ECOWAS [Economic Community of West African States] Convention on Small Arms and Light Weapons, their Ammunition and Other Related Materials includes firearms. For further details of the ECOWAS Convention see annex A, section II, in this volume.

<sup>28</sup> E.g. see South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC), <<http://www.seesac.org>>; and UN Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean, <<http://www.unlirc.org/>>.