

Shoes of gunshot victims on display at a rally against arms trafficking near the United Nations in New York, July 2001.

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# Two Steps Forward

## UN MEASURES UPDATE

### INTRODUCTION

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To vote or not to vote? That was the question confronting the Third Biennial Meeting of States (BMS3)<sup>1</sup> on its last day, as it pondered how to take implementation of the *UN Small Arms Programme of Action* a step forward. Governments, international organizations, and NGOs active on small arms issues were hoping the Meeting, the third in a series devoted to a ‘consideration’ of *Programme* implementation, would mark a clean break from the paralysis that had afflicted the earlier biennial meetings as well as the *Programme’s* 2006 Review Conference. Ideally, this meant consensus agreement on a relatively detailed, substantive outcome document. The substance was at hand, consensus not, in the last hours of BMS3.

In the event, the UN membership voted overwhelmingly, on 18 July 2008, to adopt the BMS3 report, including its outcome document. This capped a successful month at UN headquarters in New York. A week earlier, a Group of Governmental Experts (GGE) adopted, by consensus, its report on conventional ammunition stockpiles. That report, much like the BMS3 outcome document, contains text that can be used to translate relatively vague commitments contained in the *Programme*—in this case, for better stockpile management—into tangible improvements ‘on the ground’.

In August 2008, UN headquarters in New York hosted the final meeting of the GEE on an Arms Trade Treaty (ATT). The results from this forum were less than sensational, however. The group could not reach any firm—or even tentative—conclusions on the scope, feasibility, and draft parameters of an ATT. Yet it did agree that the discussions should continue—success of a kind given the thorny nature of the subject matter, namely, possible restrictions on national arms transfer practices.

This chapter reviews these developments, including related follow-up at the autumn 2008 session of the UN General Assembly First Committee (Disarmament and International Security), and examines some of the implications for future work on small arms (and conventional arms) at the global level. Its principal conclusions include the following:

- The BMS3 outcome offers the promise, but not the certainty, of a reinvigorated UN small arms process, focused on ‘implementation challenges and opportunities’ in selected areas of the *Programme of Action*.
- There is also some indication that the UN small arms regime is inching towards the development of a more systematic and rigorous system for monitoring national implementation of *Programme* commitments; but again, this is more potential than reality.
- The decision of the Ammunition Expert Group to treat the issue of ammunition surplus within the broader framework of stockpile management ensures the report’s practical relevance.
- The *Ammunition Report*, which has already prompted the UN to undertake the formulation of technical guidelines for ammunition management, could also be used to improve the management of weapons.

- The ATT Expert Group reached few, if any, firm conclusions; but it did pave the way for further, more inclusive consideration of the arms transfer issue among UN Member States.
- The future prospects for the ATT are unclear. For the moment, all options remain open, including those relating to the core goals and structure of a possible ATT.

The chapter begins its review of recent developments in the UN small arms process with an examination of BMS3 and the Ammunition GGE, before turning to the more difficult ATT meetings. It briefly recaps the history of these initiatives, analyses their outcomes, and considers the resulting implications for international small arms work. The chapter follows events up to the end of 2008, which includes follow-up measures decided at the 63<sup>rd</sup> session of the UN General Assembly.

### THE THIRD BIENNIAL MEETING OF STATES

In July 2008, UN Member States met, for the third time, ‘to consider the national, regional and global implementation of the Programme of Action’ (UNGA, 2007, para. 4). The first two biennial meetings for the *Programme*, held in July 2003 and July 2005, had helped refocus global attention on the still nascent *Programme*, but had done little to catalyse implementation. Another opportunity to achieve this and more came and went in June–July 2006. The first Review Conference for the *Programme of Action*, characterized by much political wrangling, reached no substantive agreement of any kind (Small Arms Survey, 2007, ch. 4).

**Meetings in 2003, 2005, and 2006 did little (or nothing) to advance *Programme* implementation.**

The Review Conference had taken no decision on *Programme* follow-up meetings, but the UN General Assembly, in particular its First Committee (Disarmament and International Security), filled this gap later in 2006 by deciding that a third biennial meeting of states ‘shall be held no later than in 2008, in New York’ (UNGA, 2006b, para. 4). As with the first two biennial meetings, the third was to ‘consider’ *Programme* implementation, not reconsider the terms of the instrument; yet independent evaluations of progress made by states in fulfilling their commitments under the *Programme* had consistently shown that, while not entirely idle, they were by and large falling short (BtB with IANSA, 2006). The *Programme of Action* had been adopted in July 2001. The meetings in 2003, 2005, and 2006, cited above, had done relatively little to advance *Programme* implementation. A lot was therefore riding on BMS3.

There was, first, a need to restore overall confidence in the UN small arms process. As indicated elsewhere in this chapter, progress was being made on several related fronts, including illicit brokering, conventional ammunition stocks, and, to some extent, conventional arms transfers. But the future of the core UN framework for small arms, represented by the *Programme of Action*, was unclear following the Review Conference misfire. Many of the commitments in the *Programme* are open-ended in formulation. They articulate a range of important goals, often in unequivocal terms, but seldom enumerate the concrete steps that are needed to achieve them. There was a need, then, to ‘unpack’ some of these commitments—in essence to provide a more detailed guide to implementation.

BMS3 also offered states their first opportunity ‘to consider the implementation’ of the *International Tracing Instrument* (ITI)<sup>2</sup> (UNGA, 2006b, para. 5). One of the more tangible results of the UN small arms process, the ITI had been agreed in 2005 in an effort to enhance the traceability of small arms and light weapons through improved marking, record keeping, and international cooperation (Small Arms Survey, 2006, ch. 4; CONFLICT TRACING). Like the *Programme*, the ITI provides for biennial implementation meetings, to be held in conjunction with biennial meetings of states for the *Programme of Action* wherever possible (UNGA, 2005b, para. 37).<sup>3</sup>

## Meeting preparations

Preparations for BMS3 got under way in earnest with the nomination of the Chair-designate, Ambassador Dalius Čekuolis of Lithuania, in December 2007. Given the scale of the challenge, this additional lead time—more than previous Chairs had enjoyed—proved instrumental to the success of the Meeting.

Beginning in January 2008, and continuing right up to and during the Meeting itself, the Chair-designate consulted extensively with individual countries, regional groups, the UN membership, and civil society (see Čekuolis, 2008, p. 23). This included meetings with the Geneva Process on small arms. The recommendation of a Geneva Process Working Group to focus BMS3 on a limited number of topics<sup>4</sup> had found imperfect expression in the general ('omnibus') resolution on small arms, adopted by the General Assembly in late 2007, which called upon states to use the Meeting to identify 'priority issues or topics of relevance'.<sup>5</sup> Ambassador Čekuolis took up the Working Group recommendation as originally formulated and instead sought to finalize the topics for priority discussion in advance of BMS3. This would enable the Meeting to get down to business from the first day, with a focused, in-depth discussion of *Programme* implementation in the selected areas.

The Chair-designate's initial consultations confirmed that, in addition to the discussion of the ITI, there was strong support for a discussion of illicit brokering, along with stockpile management and surplus disposal. The subject of international cooperation, assistance, and national capacity-building was identified as a cross-cutting theme that would underpin all of the *Programme* discussions at BMS3 (Čekuolis, 2008, p. 20). In the same spirit, the General Assembly had already encouraged states to use the meeting 'to highlight . . . implementation challenges and opportunities' in the priority discussion areas (UNGA, 2007, para. 8). The choice of topics was not unanimous, necessitating lengthy negotiations over the Meeting agenda. At the end of the day, in order to satisfy countries that were pushing for a discussion of additional subjects at BMS3, Ambassador Čekuolis introduced an 'other issues' session.

Another innovation, at least for a UN small arms meeting, was the sustained use of facilitators, including during the preparatory phase.<sup>6</sup> Four facilitators were appointed in advance of the meeting: Colombia (international cooperation, assistance, and national capacity-building), Egypt (ITI), South Korea (illicit brokering), and Switzerland (stockpile management and surplus disposal). Canada (other issues) and Finland (illicit brokering) were added to the list at BMS3. Of the initial group of four, the appointment of two facilitators from the Geneva diplomatic missions (as well as two from New York) reflected the Chair-designate's desire to make optimal use of the small arms expertise found in Geneva (Čekuolis, 2008, pp. 22–23).

In contrast to the Conference that resulted in adoption of the *Programme of Action* in 2001 and the Review Conference in 2006, there was no formal preparatory process for BMS3. The facilitators provided an (informal) structure for the preparatory process and, crucially, allowed consultations to be conducted simultaneously on each of the focus discussion topics in advance of BMS3 and at the Meeting itself. In June 2008 the facilitators produced discussion papers that were based on their consultations, as well as their analysis of national reporting in their subject area. These papers were among the primary inputs for the eventual BMS3 outcome document.

Unlike many other UN policy initiatives, the *UN Programme of Action* has no formal monitoring process. No mechanisms or bodies have been established for purposes of assessing states' compliance with their commitments under the *Programme*. Aside from the biennial implementation meetings—and so far a single, unsuccessful Review Conference—the *Programme of Action* merely mentions the possibility of 'voluntary' reporting on national implementation (UNGA, 2001, para. II.33).<sup>7</sup> Reporting, however, was used to good effect for BMS3 (see Box 4.1). Echoing the General

**National reporting was used to good effect for BMS3.**

### Box 4.1 National reporting on the UN Programme of Action

The *UN Programme of Action* encourages states to share information on their implementation efforts (UNGA, 2001, para. II.33). The voluntary nature of this mechanism, coupled with the absence of basic parameters for reporting, has affected both the frequency and quality of national reports.

There has been a high level of participation in *UN Programme* reporting. Between 2002 and 2008, 148 UN Member States (77 per cent) submitted at least one report, while 44 others (23 per cent) have never reported. Of the total 466 national reports submitted since 2001, the majority have coincided with years in which a biennial meeting of states or review conference has been held, as indicated in Figure 4.1. Reporting rates have also varied greatly between regions. For example, 95 per cent of European states have reported at least once since 2001, while the figure for Oceania is 43 per cent.

The absence of a prescribed format for reporting has contributed to a divergence in reporting practices. States have submitted reports varying from one-page general descriptions of small arms activities to long, highly structured, and detailed accounts of national policies in *Programme*- and even non-*Programme*-related areas. In presenting this information, they have also used different formats, sometimes changing formats over time. This variation has affected the nature of the information exchanged, its level of detail, and, perhaps most importantly, its comparability.

A lack of comparability obviously hampers an overall assessment of progress in *Programme of Action* implementation. A reporting template, developed by UNDP, UNIDIR, UNODA, and the Small Arms Survey,<sup>10</sup> has been used at least once by about half of all states that reported during the 2003-08 period (Cattaneo and Parker, 2008). There has, however, been considerable variation in the use states make of the template, with some answering, or attempting to answer, all of its questions and others employing it much more selectively. Where states have used the reporting template comprehensively, reporting tends to be more complete; states report on all issues addressed in the *Programme*, even where this entails a 'non-applicable' reply.

The consistent use of a single template would clearly enhance the comparability of national reports. So too the development of detailed standards or benchmarks for *Programme* implementation. Comparability is in fact limited, not only by divergent reporting practices, but also by a lack of specificity in many provisions of the *Programme*. Under the vague heading 'measures to address illegal stockpiling',<sup>11</sup> for example, states have provided information on the regulation of civilian firearms ownership, standards for storage, and the collection of illicit weapons from civilians.

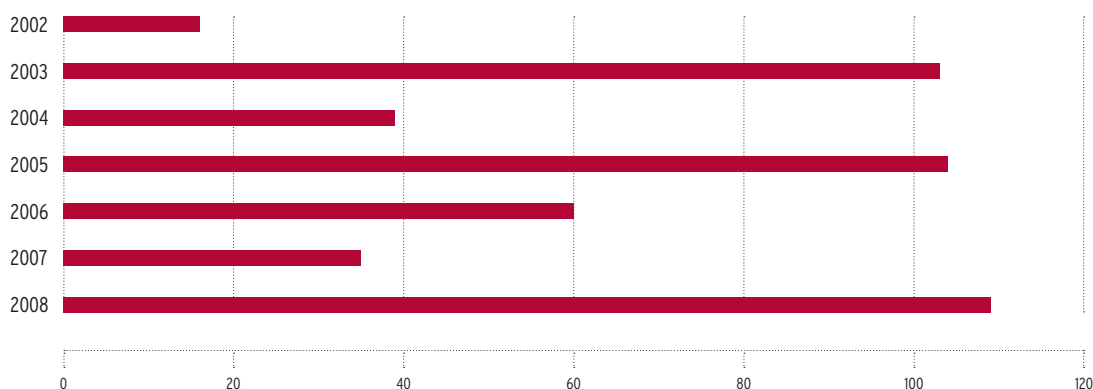
Problems stemming from the lack of a standard reporting format and the open-ended nature of many *Programme* provisions are compounded by weaknesses in national reporting practices. Much of the information states provide is not sufficiently detailed to assess *Programme* implementation, or is unrelated to the relevant provision. For instance, many states simply report that they have adequate stockpile management procedures in place (UNGA, 2001, para. II.17); yet general affirmations of compliance give little sense of *actual* controls. Unless states provide further details—such as the type and extent of the physical security measures they employ—it is impossible to determine whether they have met their *Programme* commitments or not.

Another weakness in national reporting is that states give little or no information on the impact of measures taken under the *Programme of Action*. Many include specifics of the number of seized weapons or surplus arms that have been destroyed. One state has indicated, for example, that the number of thefts from state stockpiles has declined as evidence of the effectiveness of new stockpile management procedures. But overall such data is lacking. For example, no state has provided information on the number of arrests made for illicit manufacturing or trading, despite the *Programme* stipulation that states 'take action' under national laws against groups and individuals involved in such practices (UNGA, 2001, para. II.6).

As recognized at BMS3, the effective implementation of the *Programme of Action* depends, in many cases, on the development of adequate capacity. Some states are using their national reports to communicate their assistance needs, but it is unclear whether donors are taking advantage of this information. The BMS3 outcome document calls upon states to make increasing use of their national reports for this purpose (UNGA, 2008b, para. 7i).

Seven years of reporting on *Programme of Action* implementation yield a mixed picture. A lack of comparability, coupled with inadequate or incomplete information and the vagueness of certain *Programme* commitments, make reporting, overall, only moderately useful. Participation rates suggest that, notwithstanding its voluntary nature, states consider reporting to be important. These reports undoubtedly constitute a central—sometimes the only—source of information on states' efforts to tackle the small arms problem. They help to sustain broad momentum on the small arms issue and, crucially, provide some information on progress made in fulfilling *Programme* commitments. But they do not yet provide a comprehensive or detailed account of the state of *Programme* implementation.

Figure 4.1 Number of reports submitted annually, 2002-08



Note: Biennial meetings of states for the UN Programme of Action were held in 2003, 2005, and 2008, with one Review Conference convened in 2006.

Source: Cattaneo and Parker (2008, p. 4)

Assembly's general resolution on small arms (UNGA, 2007, para. 6), Amb. Čekuolis urged states to submit their reports 'well in advance' of BMS3 so that the Meeting discussions and outcome document could take account of them.<sup>8</sup> The Small Arms Survey and United Nations Institute for Disarmament Research (UNIDIR) also prepared a draft analysis of reporting on the BMS3 focus topics.<sup>9</sup>

The national reports and the analysis of reporting constituted, along with the facilitator papers, the main inputs for the draft outcome document that Amb. Čekuolis circulated to states the week before the start of BMS3. The latter included initial draft text for each of the Meeting themes, including the ITI, but excluding 'other issues'. There were no conclusions, however. What came to be called 'The way forward' sections were developed during BMS3.

### The Third Biennial Meeting

BMS3 was held at UN headquarters in New York during 14–18 July 2008. The United States did not attend the sessions devoted to the implementation of the *Programme of Action*, though it did attend, and participate in, the two meetings held on 17 July on the ITI.<sup>12</sup> The Meeting completed its consideration of procedural matters on the morning of Monday 14 July, immediately launching into the first item of substance, namely, international cooperation, assistance, and national capacity-building. BMS3 then proceeded, more or less on schedule, to consider the other substantive areas, including 'other issues'. Draft conclusions ('The way forward' sections) were prepared by the Chair following each day's discussion, with the UN translating these overnight and immediately issuing them to the UN membership in the organization's six official languages (including online posting).

Throughout the Meeting, states generally followed the Chair's request to focus their interventions on the items under discussion. The 'general exchange of views' that had stolen much time from previous UN small arms meetings was omitted from the BMS3 Programme of Work. During the thematic discussions, states mostly read selectively from longer statements and *Programme* implementation reports, in many cases posting full versions of these documents on the website of UNODA (United Nations Office for Disarmament Affairs). Facilitators or civil society experts gave presentations at the beginning of each thematic discussion that focused on the technical aspects of the relevant subject.

Amb. Čekuolis also kept control of the outcome document, issuing successive drafts or parts of drafts under his own authority despite pressure from Iran, in particular, to initiate 'line-by-line negotiations' on the text. The latter

approach had resulted in the loss of valuable time at the Review Conference as states piled amendment upon amendment to the draft under discussion. In an article published after BMS3, the Chair has argued that neither the time available at the Meeting (five working days) nor the nature of the discussions (focused on the *implementation* of an *existing* instrument) justified formal, treaty-like negotiations (Čekuolis, 2008, p. 22). Instead, the facilitators worked in parallel with the Meeting discussions to solicit inputs from states and to facilitate compromises on matters of dispute. Late in the evening of Wednesday 16 July, Amb. Čekuolis issued an initial draft of the outcome document, incorporating all

sections (except for the ITI) and their recommendations. Following the ITI discussions and further consultations, a revised version of the document was distributed to states late on Thursday night. As far as one can tell, this document, reviewed by states on the Meeting's last day, Friday 18 July, enjoyed consensus support—with the exception of Iran, which again objected to the working method.

Many states and others active on small arms issues had hoped that BMS3 would result in a restoration of the consensus decision-making that had marked the initial phases of the UN small arms process but, as of 2005, had increasingly yielded to formal voting. Iran, however, indicated it would not join the consensus. As a result, the draft Meeting Report, including the outcome document, was put to a vote. It was adopted by a vote of 134 states in favour, with two abstaining (Iran, Zimbabwe) and none opposed.<sup>13</sup>

### Half full: the BMS3 outcome

Of course, any agreed result was better than the non-results that the first two biennial meetings, and also the Review Conference, had produced. But in fact, while not perfect, the BMS3 outcome document has much to recommend it. It does not augment or extend states' existing commitments in the three thematic areas. But it does give these commitments somewhat more detailed—and practical—expression. As recommended by the UN General Assembly, it points to 'implementation challenges and opportunities' in the three areas, providing, above all, a set of benchmarks against which future implementation efforts can be assessed—whether by the state concerned or by independent monitors.

The best example of this is the stockpiles section. The *Programme of Action* articulates the key principles that underpin good stockpile management, but, in so doing, leaves many questions unanswered. When are stockpile management standards and procedures 'adequate' (UNGA, 2001, para. II.17)? How do states go about clearly identifying stocks that are surplus to national requirements (para. II.18)? What do they need to consider when responsibly disposing, preferably through destruction, of their surpluses (para. II.18)? What are the resource implications of such measures? The BMS3 outcome document provides useful answers to each of these questions,<sup>14</sup> while highlighting the close relationship between the different sectors, especially surplus identification and effective stockpile management.<sup>15</sup>

#### Box 4.2 Civil society at BMS3

The BMS3 Chair made extensive use of civil society expertise prior to and during BMS3 (see Čekuolis, 2008, p. 23). Although other fields of UN activity, such as the environment, have included civil society experts in discussions among governments, rules of procedure adopted for the 2001 UN Small Arms Conference and used in subsequent *Programme* meetings have limited civil society participation to a set-piece intervention occupying part of a single day. Civil society has also been excluded from UN experts' meetings on small arms and from formal negotiating sessions, such as those relating to the ITI and Review Conference outcome. While there was no consensus on allowing civil society, generally, a more interactive role at BMS3, representatives of Amnesty International and the Small Arms Survey were able to give presentations at the beginning of the (governmental) sessions devoted to illicit brokering and the ITI. Continuing a practice begun by earlier BMS Chairs, Amb. Čekuolis also encouraged governments to include members of civil society in their BMS3 delegations.

The section of the outcome document devoted to ‘International cooperation, assistance and national capacity-building’ similarly unpacks various parts of the *Programme of Action* in useful ways. After years of talk at the UN about improving the matching of needs and resources, the BMS3 outcome spotlights several practical means of achieving this. It cites UNODA’s Programme of Action Implementation Support System and a relevant database prepared by the United Nations Institute for Disarmament Research (UNGA, 2008b, paras. 2, 3, 7k).<sup>16</sup> It also underlines the utility of national reporting on the *Programme of Action*, both for purposes of bringing donors and recipients together (UNGA, 2008b, paras. 3, 7d, 7i),<sup>17</sup> and for exchanging information on the broader range of areas covered by the BMS3 document (*Programme* and ITI outcomes).<sup>18</sup> As one might expect, the BMS3 cooperation text borrows liberally from the *Programme of Action*, yet pure repetition is rare. Even those paragraphs that are clearly based on the *Programme* tend to incorporate new elements.<sup>19</sup> And in several areas the BMS3 outcome breaks new ground, for example in emphasizing the responsibility of states seeking assistance to assess their own needs and to convey these with some specificity (UNGA, 2008b, paras. 7g–h), and in highlighting the importance of inter-regional cooperation (para. 7l).

The section on illicit brokering is shorter than the other two, but covers several key points. States acknowledge the ‘global’ nature of the problem (para. 10) and the need to adopt ‘a comprehensive approach’ to it, citing, in this regard, the potential relevance of ‘associated activities’, such as financing and transportation, in developing relevant regulations (para. 11). End-user certification, including verification measures, and international cooperation are also emphasized (paras. 12, 16c). Last but not least, the BMS3 outcome gives the report of the GGE on illicit brokering a boost, underlining its utility to national efforts to tackle the problem. The brokering section does not develop corre-

#### Box 4.3 First steps on the ITI

The first meeting on ITI implementation provided evidence that the Instrument has the firm support of many UN Member States, yet also raised questions about the extent to which it has been embraced in national legislation and practice. The day-long discussion devoted to the ITI was practical and focused, with states enumerating various measures they were taking in the areas of weapons marking, record keeping, and tracing. The ITI outcome document<sup>20</sup> lays down certain markers for Instrument implementation. Initial steps, such as bringing national systems into line with the ITI (UNGA, 2008b, Annex, para. 9b) and designating national points of contact (para. 9c), are emphasized. The ITI outcome also underscores the ‘mutually reinforcing’ nature of weapons marking, record keeping, and tracing (para. 9a), along with the need to build national capacity for effective implementation.<sup>21</sup>

On the basis of meeting discussions and resulting outcome, one could conclude that the ITI is a huge success. Yet an analysis of the national reports on ITI implementation tells a different story. While reporting under the *Programme of Action* has been voluntary from the beginning, states decided to write a *requirement* for biennial reporting into the text of the Instrument (UNGA, 2005b, para. 36). Nevertheless, less than one-third of the UN membership (62 of 192 states) submitted information on their implementation of the ITI in 2008 (Cattaneo and Parker, 2008, p. 97).<sup>22</sup> Response rates were considerably lower in many areas of importance. For example, as of 13 December 2007, two years after the ITI’s adoption by the General Assembly (and simultaneous application to all UN Member States), only 27 countries had provided UNODA with name and contact information for their national point of contact (Cattaneo and Parker, 2008, p. 113).<sup>23</sup> Only 24 states reported having established legal requirements or practices for the marking of small arms held by government defence and security forces (p. 116).<sup>24</sup> Only 20 states provided information relating to the tracing cooperation sections of the Instrument (p. 120),<sup>25</sup> raising doubts as to whether it is being used to conduct tracing operations in crime and conflict situations as it was designed to do.

States have provided relatively more information on their implementation of the marking and tracing provisions of the *Programme of Action*,<sup>26</sup> yet, as the authors of the UNIDIR study note, the ITI covers these areas in far more detail (p. 124). The current silence maintained by most states on their use of the ITI could reflect a lack of familiarity with the new instrument’s reporting requirements, but could also reflect a failure to follow through on their commitments.



sponding *Programme* commitments to the extent that the stockpile and cooperation sections do. Yet, given the existence of the GGE report, this isn't necessary. It is, in fact, the latter that provides the benchmarks for implementation in this area.

In relation to brokering, then, as in relation to stockpile management and international cooperation and assistance, the BMS3 outcome provides states with concrete, practical guidance for enhanced *Programme* implementation. Yet the utility of the document will depend on tangible improvements in such implementation. While, as already noted, much of the text offers a useful elaboration of *Programme* commitments, weak language tends to dominate. Most often, states are 'encouraged' to take certain action. In a way, this is logical. No new commitments were agreed at the Third Biennial Meeting. It makes sense to leave the means of implementation to the discretion of states. Nevertheless, the question is left open.

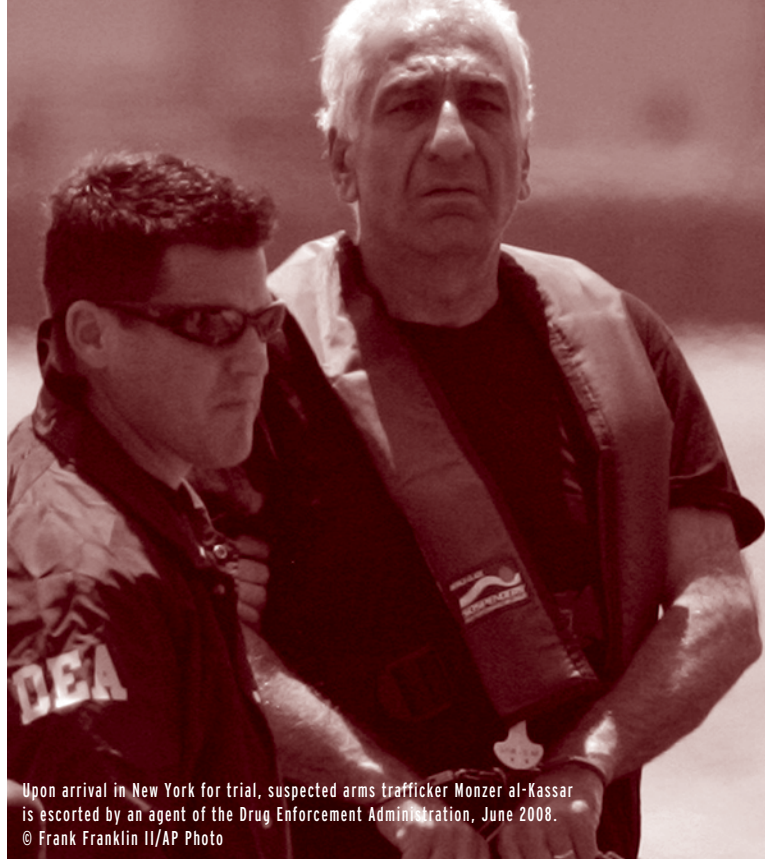
### **A forward-looking implementation agenda**

Although no firm decisions were taken, the BMS3 outcome document provides a tentative road map for the next phase(s) of the UN small arms process. Among the 'ideas and proposals for a forward-looking implementation agenda for the Programme of Action', it mentions:

- a) Reporting on a biennial basis, reporting templates and the analysis of reports;*
- b) Follow-up meetings on the Programme of Action, including periodic meetings of governmental experts;*
- c) Regional meetings that could be used to support subsequent United Nations meetings on the Programme of Action.* (UNGA, 2008b, para. 29)

The notion of 'reporting templates' is echoed elsewhere in the document (paras. 3, 7i), as is the idea of convening regional meetings in non-BMS years in order to advance *Programme* implementation (paras. 6, 7n) and 'periodic meetings of governmental experts' (para. 7o). The BMS3 outcome document also lists 24 'other issues' that 'some States indicated . . . were important to the implementation of the Programme of Action' (para. 28).

The core elements of the BMS3 outcome's 'forward-looking implementation agenda' were taken up by the UN General Assembly's First Committee when it met in October 2008. The General Assembly's principal resolution on small arms, Resolution 63/72, provides for a fourth biennial meeting of states (and second ITI implementation meeting) in 2010, with an 'open-ended meeting of governmental experts' and second review conference following in 2011 and 2012 respectively (UNGA, 2008e, paras. 6–7, 13–14). The resolution also follows up the BMS3 recommen-



Upon arrival in New York for trial, suspected arms trafficker Monzer al-Kassar is escorted by an agent of the Drug Enforcement Administration, June 2008.  
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dition that regional meetings be used to support the *Programme of Action* process (para. 15).<sup>27</sup> As of the end of 2008, it was expected that one or more such meetings would be convened during 2009 in order to help pave the way for the fourth BMS.

Both the ITI<sup>28</sup> and the brokering process<sup>29</sup> receive their due in Resolution 63/72, but it is its emphasis on national reporting that is most striking.<sup>30</sup> Paragraph 8 provides a link between BMS3 and future *UN Programme* meetings, encouraging states to include in their national reports ‘information on progress made in the implementation of the measures highlighted in the report of the third biennial meeting of States’.<sup>31</sup> The proposal for biennial reporting (less frequent but more effective) contained in the BMS3 outcome finds implicit support in that Resolution 63/72 sets the end of 2009 as the next deadline for reporting (para. 8). In essence, these reports will feed into deliberations at BMS4. The same paragraph also encourages states to use the existing reporting template (in order to improve comparability between countries and over time). The analysis of reports is also backed, to some extent, with the mention of the UNIDIR–Small Arms Survey study that provided key inputs for BMS3 and its outcome (pream. para. 8). As reflected in the resolution, all these aspects of reporting remain underdeveloped—especially the importance of assessing implementation through some sort of analysis—but the basic elements are present. BMS3 and Resolution 63/72 offer the potential—but only the potential—of a more systematic, rigorous use of national reporting for purposes of assessing overall progress made in *Programme of Action* (and ITI) implementation.

Among the issues the BMS3 outcome lists as potential themes for future UN small arms meetings, Resolution 63/72 picks no favourites; but in sketching out the path towards BMS4 it backs the BMS3 method of focusing on a limited number of ‘priority issues or topics of relevance’ and, importantly, specifies that these be identified ‘well in advance’ of the meeting (UNGA, 2008e, para. 12). Applying another lesson from BMS3, the resolution also ‘[s]tresses the importance of the early designation of the Chair’, proposing a date of October 2009 for that nomination (para. 11).

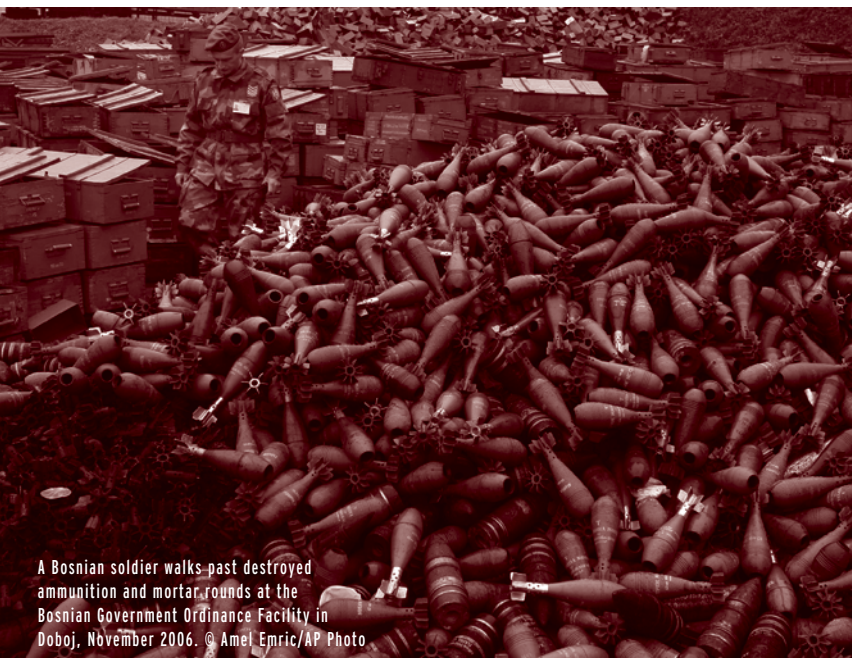
It is no exaggeration to say that BMS3 and the follow-up General Assembly Resolution have breathed new life into the *UN Programme of Action*. Resolution 63/72 outlines a more sophisticated and—at least potentially—dynamic process comprising regional meetings, a fourth biennial meeting, a meeting of governmental experts, and a second review conference. The challenge for 2009 and 2010 will be to ensure that these meetings complement and reinforce one another, and that the links between the regional and the global levels are strengthened. It is equally important that the outlines of an implementation monitoring mechanism, as tentatively drawn in both the BMS3 outcome document and Resolution 63/72, take somewhat firmer shape. The new meetings may prove to be useful, but the key to the success or failure of the *Programme of Action* (and the ITI) remains implementation.

**The key to the success or failure of the *Programme* and ITI remains implementation.**

## THE AMMUNITION GGE

In 2008 a UN Group of Governmental Experts (GGE) convened to consider means of enhancing cooperation in addressing the problem of surplus conventional ammunition (UNGA, 2006c, para. 7). Conventional ammunition includes a wide range of munitions, ranging from the largest-calibre artillery shells and free-flight rockets to the cartridges, grenades, rockets, and guided missiles that are used in small arms and light weapons. It is a category that encompasses both small arms and major conventional weapons.

The problems posed by conventional ammunition are threefold. First, a growing death toll from explosions at ammunition stockpile facilities vividly illustrates the safety risks posed by poorly managed, decaying stockpiles of



A Bosnian soldier walks past destroyed ammunition and mortar rounds at the Bosnian Government Ordnance Facility in Doboj, November 2006. © Amel Emeric/AP Photo

ammunition (Wilkinson, 2008, p. 134). Second, loss and theft from national stockpiles diverts ammunition to fuel armed violence and insurgency (Small Arms Survey, 2008, pp. 47–62). Third, and specific to surplus, states are often tempted to transfer excess ammunition stocks to parts of the world where they are used indiscriminately and/or proliferate without control (Bevan, 2008, pp. 3–4).

Despite these problems, however, states have traditionally marginalized conventional ammunition within the broader arms control debate. Nowhere is this more evident than in international efforts to regulate the trade in small arms and light weapons. Although states continue to transfer surplus small-arms cartridges abroad, sometimes in dubious

circumstances,<sup>32</sup> the *UN Programme of Action* does not address ammunition clearly and specifically. Moreover, states have recently excluded ammunition from associated instruments, such as the ITI.

The 2008 GGE *Surplus Ammunition Report* partially redresses the balance. It provides a framework for action to address excessive ammunition surpluses and suggests ways in which improved national policies, coupled with enhanced international cooperation, can encourage the safe and secure management of ammunition stockpiles. Although the scope of the *Surplus Ammunition Report* is limited to national stockpiles (ammunition held by state security forces), it adds an important dimension to international efforts to address the illicit proliferation of small arms and light weapons ammunition.

### In from the cold

In 1997, the *Report of the Panel of Governmental Experts on Small Arms (UN Panel Report)* listed ammunition alongside the small arms and light weapons of ‘main concern’ to the United Nations (UNGA, 1997, paras. 24, 26c). This appraisal was supported by the 1999 *Report of the Group of Experts on the Problem of Ammunition and Explosives (Ammunition Report)*. States, however, quickly realized that ammunition could not be treated in exactly the same way as small arms and light weapons. Many types of ammunition contain explosives and states were wary of broadening the scope of debate to include issues as diverse as commercial explosives, military demolition stores, and the component parts of major conventional weapons.

The subsequent 1999 *Report of the Group of Governmental Experts on Small Arms (Small Arms Report)* reflected these emerging tensions. While noting the need to control ammunition, it was careful to put the issue behind that of small arms proliferation in the list of priorities (UNGA, 1999b, paras. 118, 129–30). As Greene (2006, p. 7) notes, some states feared that any reference to ammunition in the 1999 *Small Arms Report* would encourage other states to request the addition of the phrase ‘and explosives’ in the text. As a result, the report avoided focusing on ammuni-

tion by referring to small arms and light weapons as a generic category, one in which the role of ammunition was implied rather than explicitly defined. The group's recommendations were limited to encouraging states (UNGA, 1999b, para. 118) to review the 1999 *Ammunition Report* (UNGA, 1999a).

The recommendations of the *Ammunition Report*, however, went unheeded during preparations for the 2001 UN Small Arms Conference and in the *Programme of Action* that emerged from the Conference. Since 2001, the *Programme* has been the touchstone of most international efforts to address illicit small arms proliferation, but the document does not use the word 'ammunition'. While certain provisions of the *Programme*, such as those pertaining to stockpile management and surplus destruction, could arguably apply to ammunition—as well as weapons—this is left to the discretion of UN Member States.

The marginalization of ammunition arguably reached its height in the *International Tracing Instrument*, agreed in 2005. It recommended that 'small arms and light weapons ammunition be addressed in a comprehensive manner as part of a separate process conducted within the framework of the United Nations' (UNGA, 2005a, para. 27). This translated the desire of a few states to push any discussion of small arms ammunition firmly away from the consideration of small arms control within the UN framework.

With explicit reference to the ITI recommendation,<sup>33</sup> in 2005 France and Germany presented a draft document that was to become UN General Assembly Resolution 61/72. The resolution appealed to all states to assess the size and security of national stockpiles and to evaluate whether they might require external assistance to reduce any risks that their assessments might reveal (UNGA, 2006c, para. 2). It also encouraged states to assist other national governments in their efforts to improve stockpile management, whether bilaterally or through international or regional organizations (para. 3). Last but not least, states requested that, no later than 2008, the Secretary General establish a group of governmental experts to consider 'further steps to enhance cooperation with regard to the issue of conventional ammunition stockpiles in surplus' (para. 7). The group, consisting of experts from 17 states,<sup>34</sup> met three times: in Geneva in January 2008, and in New York in March–April and July 2008.

Usefully, the Ammunition Group addressed the issue of surplus as part of stockpile management.

## A pragmatic approach

The most important decision taken by the Ammunition GGE was to address the issue of surplus within the wider context of stockpile management. Surpluses arise, the group noted, primarily because states do not have the stockpile management systems in place to detect and curb their growth. Moreover, ineffective stockpile management also encourages unsafe storage and handling practices and facilitates the diversion (loss or theft) of ammunition to illicit markets. By framing the issue as a stockpile management problem, the group addressed not only the issue of surplus but also the wider safety and security issues inherent in national management of ammunition stockpiles.

The group's decision to focus on stockpile management rather than surplus alone allowed it to skirt some potentially divisive issues, such as surplus 'thresholds' or an 'acceptable level' of surplus. The problem thus became, not the size or level of surpluses, but the ways in which states managed the safety and security of such stocks. States often accrue excessive surpluses because they do not have the necessary monitoring systems with which to assess the quality and quantity of stockpiled ammunition. They may assume that 'more ammunition is better' and therefore retain large stocks of aging, unserviceable, and often dangerous ammunition. Moreover, even where surplus stocks are stored safely and securely, countries incur corresponding storage, maintenance, and security costs.

The group, therefore, recognized that the decision to retain surpluses was a national prerogative, but that, if it is to serve national interests, ammunition should be safely stored and monitored to ensure that it is serviceable and

secured against loss or theft (UNGA, 2008a, paras. 8–10). Specific solutions included the installation of accounting systems to allow states to gauge what was in their national stockpiles and the deployment of associated technical means that would enable them to determine its condition (para. 19). With these systems in place, countries can make a more informed decision as to what constitutes an ‘acceptable level’ of surplus, taking account of cost, security, and safety implications.

The group undertook a systematic review of the major components of effective ammunition management. These include: planning the location and management of national stockpiles; procedures for ammunition storage and handling; monitoring, surveillance, and testing of ammunition; accounting, stocktaking, and forecasting of ammunition requirements; ensuring the physical security of stockpiled and deployed ammunition; and a range of disposal and destruction methods (paras. 21–45). All of these elements, the group noted, were interconnected. Together they constituted an integrated system spanning the ammunition life cycle (paras. 19–20).

The GGE Report recognizes the need to improve the coordination of assistance programmes and to raise awareness among potential recipient countries of the range of programmes on offer. It emphasizes the need to enhance and sustain stockpile management capacity—through both national efforts and bilateral and multilateral assistance (para. 60). It also underlines the need for peacekeeping forces to maintain effective stockpile management systems (paras. 12, 60, 74), an implicit admission that such forces have, in the past, been prone to engage in diversion.

While the report lays out a full range of stockpile management improvements, it does not explain how states might begin this process. It does not, for example, encourage states to review their existing stockpile arrangements, undoubtedly a prerequisite to the identification of existing problems and available resources. Resolution 61/72 (UNGA, 2006c, para. 2) and the BMS3 outcome document (UNGA, 2008b, para. 24), by contrast, do call for such a review. Nor does the *Surplus Ammunition Report* broach the question of international transfer criteria. Although addressing this topic would undoubtedly have tested the limits of the group’s mandate, it merits consideration. Many

states with problematic surpluses continue to import ammunition. Exporting states have obvious leverage in such cases. The Wassenaar Arrangement’s *Elements for Export Controls of MANPADS*, for example, stipulates that exporters should consider stockpile security arrangements in the recipient state before transferring man-portable air defence systems (WA, 2003, paras. 3.7, 3.9). Export criteria that made all ammunition transfers contingent on the safety and security of national stockpiles might encourage recipient countries to remedy ineffective stockpile management practices.

The *Ammunition Report* offers detailed, practical guidance for the improvement of stockpile management. Recognizing that international best practice is a distant goal



A Nigerian UN soldier stands guard next to a cache of weapons at the house of former dictator Charles Taylor in Paynesville, Liberia, October 2003.  
© Ben Curtis/AP Photo

for many countries, it does not seek to develop a new normative framework. The group noted, however, that relatively minor improvements to national stockpile management—such as fitting locks to storage facilities or observing safety distances—could dramatically reduce states’ exposure to security and safety risks.

Given the gulf between international best practice and the often haphazard systems in many states, the group recommended the development of technical guidelines that would be ‘sequenced to allow states gradually to attain a series of progressively more comprehensive stockpile management systems’. These would be designed to enable states ‘to prioritize and address the most serious safety and security risks first’. The group envisaged a ‘realistic process’ aimed at improving ammunition management to the greatest extent possible (UNGA, 2008a, para. 61). In late 2008, the German government agreed to co-fund the development of these guidelines within the UN system.

Although this is never stated explicitly, many of the *Ammunition Report* recommendations apply as much to the management of arms as they do to ammunition. If implemented, they would do much to reduce the proliferation of weapons (as well as of ammunition) already circulating on illicit markets. The report, then, which has already prompted the UN to undertake the formulation of technical guidelines, has the potential to spark wider change. That said, it is no substitute for more comprehensive international efforts to regulate the ammunition trade. The GGE Report does not address broader issues related to illicit proliferation, such as the need for more effective export controls—particularly governing shipments to recipient states with a history of poor stockpile security. Curbing the proliferation of illicit ammunition, like the weapons themselves, requires a series of mutually reinforcing measures, of which stockpile management is only one.

Many Ammunition Group recommendations also apply to the management of weapons.

## THE ATT GGE

By and large, the international arms trade has dodged international control efforts notwithstanding some tentative steps in this regard, notably in the *UN Programme of Action*.<sup>35</sup> Such regulation has traditionally been resisted on the grounds that arms transfers are a matter of state sovereignty and national security, and that the right to self-defence under Article 51 of the UN Charter carries with it a right to buy and sell arms. Indeed, arms, ammunition, and other military equipment are excluded from World Trade Organization rules pursuant to a national security exemption (GATT, 1948, art. XXI). Since the end of the cold war, however, the imposition of an increasing number of UN arms embargoes and a surge in the number of regional arrangements affecting arms transfers have, in theory, imposed greater discipline on international arms transfers. More recently, arms control advocates and sympathetic states have set their sights on a goal of global regulation.

### History of the ATT

The current initiative for an Arms Trade Treaty (ATT) can be traced back to 1995, when a group of Nobel Peace Prize Laureates, led by Oscar Arias, began campaigning for an international agreement to prevent irresponsible arms transfers. The concept found traction among various civil society groups, with Amnesty International, the International Action Network on Small Arms, and Oxfam launching, in 2003, the Control Arms campaign for purposes of promoting agreement on a global, legally binding ATT. Since 2003, many states have lent their support to the initiative, including the United Kingdom, which began urging the development of global guidelines on the transfer of small arms and light weapons earlier that year.

In October 2006, a large majority of UN Member States voted to adopt the first ATT Resolution during the meeting of the General Assembly's First Committee (UNGA, 2006a), with an even larger majority supporting it in the General Assembly plenary session two months later (UNGA, 2006d) (see Table 4.1). In the first instance, the resolution called on the Secretary General to:

*seek the views of Member States on the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms (para. 1).*



Activists campaigning for a global arms trade treaty hold placards during a protest in New Delhi, September 2006. © Adnan Abidi/Reuters

The resolution also instructed the Secretary General to establish a group of governmental experts (GGE) to examine the feasibility, scope, and draft parameters of such an instrument. A total of 99 states and two regional organizations submitted their views on an ATT to the Secretary General in 2007.<sup>36</sup> The GGE, comprising experts from 28 countries,<sup>37</sup> conducted its work over three one-week sessions in 2008,<sup>38</sup> and delivered its report to the Secretary General in August 2008. A further ATT resolution was adopted by the First Committee at its October 2008 meeting (UNGA, 2008d) and by the General Assembly in December 2008 (UNGA, 2008f) (second ATT Resolution). This resolution established an open-ended working group (OEWG), commencing in 2009, that will serve to open up the ATT for discussion among the broader UN membership.

### The political landscape

While, as reflected in General Assembly voting patterns, the ATT process has attracted considerable support among states, it has also, not surprisingly, encountered a certain amount of resistance. The level and nature of states' support for (and opposition to) an ATT can be gleaned from two major sources: the patterns of voting on the ATT resolutions and the national submissions to the Secretary General.

### General Assembly resolutions

A clear majority of states appear to favour the adoption of a legally binding ATT. The United States, the world's largest exporter of conventional arms,<sup>39</sup> is the only country that has consistently voted against the ATT resolutions (see Table 4.1).<sup>40</sup> A comparison of 'yes' votes and abstentions reveals further divergences among the major arms exporters. The United Kingdom, the fifth-largest exporter of conventional weapons (and eighth-largest exporter of small arms),<sup>41</sup> has been instrumental in driving the ATT process forward. Five of the other ten largest exporters of conventional arms co-sponsored the second ATT Resolution,<sup>42</sup> as did three of the largest importers of conventional arms.<sup>43</sup> Furthermore, 23 of the 30 largest exporters of conventional arms<sup>44</sup> and 19 of the 30 largest importers of conventional arms<sup>45</sup> voted

Table 4.1 Voting on the ATT resolutions

Resolution	Voting forum	Yes	Abstained	No	Not voting
First ATT Resolution	First Committee 2006	139	24	1	28
	General Assembly 2006*	153	24	1	14
Second ATT Resolution	First Committee 2008	145	18	2	27
	General Assembly 2008	133	19	1	39

\* There were slight variations between the states that voted in favour of the ATT Resolution at the First Committee and those that voted in favour at the General Assembly (plenary meeting). Most importantly, Cuba and Djibouti abstained from the First Committee vote, but voted in favour of the resolution at the General Assembly. See WILPF (2008).

in favour of the first ATT Resolution at the General Assembly.<sup>46</sup> Five of the 30 largest exporters<sup>47</sup> of conventional arms and nine of the 30 largest importers<sup>48</sup> abstained from the vote, however.

### States' views

The vast majority of the 99 states that submitted views (91) indicated that they believed an ATT was feasible and desirable. Eight, however, asserted that they did not think an ATT was feasible. Not surprisingly, all but one of these countries (Cuba) abstained from voting on the first ATT Resolution. Significantly, some of the states that asserted that an ATT was feasible, including several of the largest arms exporters, pointed out that there might be practical obstacles to agreeing an ATT. These included a lack of political will to negotiate an instrument and the possibility that some of the major exporting states would not participate constructively. The declared ATT sceptics expressed a range of other concerns. They asserted that an ATT process was premature; that universal agreement on a set of standards would be difficult to achieve; that compliance with regional-level commitments should instead be prioritized; and finally that the instrument should be politically, not legally, binding, like the *Programme of Action*. Although the United States did not submit its views on an ATT to the UN Secretary General, US government officials have been quoted as saying that an ATT would weaken existing transfer controls by setting a low universal threshold (see Box 4.4).<sup>49</sup>

#### Box 4.4 The US position: not at all or wait and see?

The United States' declared opposition to the ATT resolutions appears to be at odds with domestic legislation adopted in 1999. The *International Arms Sales Code of Conduct Act of 1999* directed the President, within 120 days of enactment, to begin negotiations 'within appropriate international fora . . . to establish an international regime to promote global transparency with respect to arms transfers' (US, 1999, sec. 1262(a)). It provides a list of criteria that should be included in such an international arms sales code of conduct, including respect for human rights. Although the United States took some initial steps towards a multilateral arms transfer code of conduct,<sup>50</sup> it appears to have abandoned these efforts.<sup>51</sup>

Based on both General Assembly voting and the views submitted to the UN Secretary General, it seems clear that, while a large number of states support the idea of an ATT, several major arms exporters and importers have yet to be convinced. This was reflected in the outcome of ATT GGE discussions.

### The GGE report

Given the disparity of views within the GGE, its adoption of a consensus report represented something of an accomplishment. Had it failed to agree on an outcome, the Chairperson would have been forced to submit what is known as a 'procedural report', which simply states that the experts met at certain times and discussed certain issues, but is devoid of substantive outcomes. Nevertheless, the group's substantive report does not—in its content—extend much beyond a procedural report.



From the text of the GGE report, one could conclude that the group did fulfil its mandate ‘to *examine* . . . the feasibility, scope and draft parameters for a comprehensive, legally binding instrument establishing common international standards for the import, export and transfer of conventional arms’ (UNGA 2006d, para. 2; emphasis added). Indeed, the report is riddled with references to the fact that the group ‘discussed’, ‘observed’, ‘recognized’, ‘noted’, ‘considered’, and ‘examined’ various aspects of ATT feasibility, scope, and draft parameters. It appears, however, that the group did little more than ‘examine’ these issues, and was unable to arrive at substantive findings or agreement. There is only one instance in the report where the group appeared to ‘agree’ on something, namely, ‘that principles enshrined in the Charter of the United Nations would be central to any potential arms trade treaty’ (UNGA, 2008c, para. 24).

### Feasibility

The group did not conclude that an ATT was feasible. Rather, it identified various factors on which, it claimed, feasibility depended (UNGA, 2008c, part IV). These were:

- collectively agreed objectives;
- resistance to political abuse;
- potential for universality;
- respect for the sovereignty of every state;
- respect for the territorial integrity of every state;
- practical applicability;
- clear definitions;
- scope; and
- parameters.

Two aspects of feasibility received some emphasis in the GGE Report: universality and agreed objectives. The need for an ATT to be universal (all states participating) was repeated several times in the report. One of the concerns or criticisms of the current system of regional transfer control arrangements is that not all states are party to them. Nor are they identical—which creates potential gaps and loopholes. Universality is in fact viewed by many ATT proponents as the initiative’s very *raison d’être*—all states would be governed by the same principles and restrictions.

### Scope

Under scope, the group discussed the types of weapons, activities, or transactions that might be included in an ATT. Although the GGE considered using the seven weapons categories contained in the United Nations Register of Conventional Arms,<sup>52</sup> plus small arms and light weapons, as a starting point for follow-up discussions on the



Blood stains the ground near shadows of Afghan police officers following an attack on foreigners in Kabul, Afghanistan, October 2008. © Ahmad Masood/Reuters

scope of an ATT, its members were unable to agree on this (UNGA, 2008c, para. 21). They also considered whether categories such as ammunition, explosives, components, defence services, and manufacturing technology should be included in an ATT, but, again, no agreement was possible. In addition, the group discussed the possible inclusion in an ATT of the following types of activities or transactions: exports, imports, re-exports, transit, trans-shipment, licensing, transportation, technology transfer, manufacturing and foreign licensed production, illicit arms brokering, and arms transfers to non-state actors (UNGA, 2008c, para. 22).

### **Draft parameters**

Discussions of possible draft parameters for an ATT centred on the criteria that should be applied by states when considering whether to authorize an arms transfer. The group mentioned the following factors as potentially relevant

to such a determination: preventing terrorism, organized crime, and other criminal activities; maintaining regional stability; promoting socio-economic development; preventing unlawful transfers to non-state actors, unauthorized re-export, unlicensed production, and illicit brokering; respecting the right to manufacture and import; utilizing end use/end-user assurances; combating diversion; and ensuring compliance with Security Council arms embargoes and other existing international obligations (UNGA, 2008c, para. 25). The group also discussed possible mechanisms, such as information sharing, reporting, and international cooperation and assistance, that could underpin the implementation of an ATT. Yet no firm conclusions were reached in this area either (para. 26).

### **Agreeing to disagree**

It seems clear that the GGE did little to pave the way for concrete discussions, let alone negotiations, on an Arms Trade Treaty. It did not agree on a list of weapons or transactions that should be included in an ATT; it did not agree on draft parameters; most importantly, it did not even agree that there is a need for an ATT, or that such an instrument is 'feasible'. Nevertheless, the group did open the door to a continuation of the process, specifically by concluding that 'further consideration of efforts within the United Nations to address the international trade in conventional arms is required on a step-by-step basis in an open and transparent manner' (UNGA, 2008c, para. 27). The second ATT Resolution took full advantage of this possibility.

### **All options open**

The General Assembly took up the GGE report in the autumn of 2008. Its second ATT Resolution 'endorses' the report and '[e]ncourages all states to implement and address' its recommendations to prevent the diversion of conventional arms and ensure that national



transfer control systems are 'at the highest possible standards' (UNGA, 2008f, paras. 1–2 ; 2008c, paras. 28–29). Most importantly, the resolution establishes an open-ended working group (OEWG) to continue the consideration of international arms transfer issues begun by the GGE, this time with the participation of all UN Member States (UNGA, 2008f, paras. 3, 5; 2008c, para. 27). The OEWG will 'meet for up to six one-week sessions starting in 2009'. In its first year, the OEWG is to 'further consider those elements' of the GGE report 'where consensus could be developed for their inclusion in an eventual legally binding treaty' on conventional arms transfers (UNGA, 2008f, paras. 3, 5).

As of the end of 2008, the future prospects for the ATT were unclear. Given the reservations some states expressed about the initiative, it did well to survive the GGE process. One might think that agreement in the OEWG, among all UN Member States, will prove at least as elusive as in the GGE; yet states intent on blocking particular outcomes may find this more difficult in the more inclusive working group setting. Nevertheless, given the GGE's failure to agree on basic transfer control issues, the ATT OEWG is more or less obliged to start from scratch. The OEWG is, in essence, free to explore all the options. This includes the core goals and structure of a possible ATT. Nothing can be ruled out at this stage, but neither can anything be ruled in.

## CONCLUSION

On paper, at least, the UN small arms process took two steps forward in 2008. BMS3 and the follow-up General Assembly Resolution breathed new life into the *UN Programme of Action*, while the Ammunition GGE produced a useful report that brings ammunition (as well as weapons) firmly into the global arms control picture. As of the end of 2008, it was unclear whether the decision to establish an open-ended working group for purposes of continuing discussions on a possible arms trade treaty would, eventually, yield similar dividends. The documents produced by BMS3 and the Ammunition GGE are important since, coupled with those produced earlier on weapons tracing and brokering, they help establish a set of benchmarks for implementation in the areas they cover. In essence, they provide detailed guidance for the implementation of frequently vague *Programme of Action* norms.

The year 2008 was also important in that fundamental questions regarding the implementation of these instruments gained new force. While the first meeting on ITI implementation saw states engaging with the details of weapons marking, record keeping, and tracing, their national reports (or lack thereof) suggested otherwise. In particular, it appears that the primary function of the ITI, namely, to facilitate small arms tracing in both crime and conflict situations, is so far unfulfilled. Similarly, there are questions about the implementation of the *Programme of Action*. National reporting appears to have the broad support of UN Member States; yet, while undoubtedly useful, it does not yet allow us to evaluate overall progress in *Programme* implementation.

The development of specific benchmarks for implementation will, to the extent these are integrated into national reporting practices, assist in this task. So too will the emergence, at least in broad outline, of a more systematic and rigorous monitoring system. It appears that national reporting for the *Programme of Action*, as well as the ITI, is shifting to a biennial schedule. This will obviously ease the often disparaged 'reporting burden', while encouraging states to provide more detailed and comprehensive information. The increased use of reporting templates will help improve comparability among reports (between states and over time), while the analysis of such information, barely begun in 2008, can be expected, if strengthened, to spur implementation efforts across the board.

The new developments at the UN offer a wealth of possibilities for international small arms work in the coming months and years. But, for now, these are possibilities, not realities. The production of new documents, important as they might be, is only progress on paper. Eight years after the adoption of the *UN Programme of Action*, the priority remains implementation. ■

## LIST OF ABBREVIATIONS

ATT	Arms Trade Treaty	ITI	<i>International Tracing Instrument</i>
BMS3	Third Biennial Meeting of States to Consider 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	OEWG	Open-ended working group (United Nations)
		UNDP	United Nations Development Programme
		UNIDIR	United Nations Institute for Disarmament Research
GGE	Group of Governmental Experts (United Nations)	UNODA	United Nations Office for Disarmament Affairs

## ENDNOTES

- 1 Full title: Third Biennial Meeting of States to Consider 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.
- 2 *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* (UNGA, 2005b).
- 3 ITI implementation meetings are to be combined with *Programme* implementation meetings 'where such meetings are in fact convened'. In essence, states have committed themselves to meeting biennially on ITI implementation, whatever the fortunes of the broader UN small arms process. But, wherever possible (where *Programme* implementation meetings 'are in fact convened.') the two meetings are to be combined (UNGA, 2005b, para. 37).
- 4 See Geneva Process on Small Arms, Working Group on BMS (2007).
- 5 Paragraph 8 of the resolution 'Calls upon States, in considering the implementation of the Programme of Action, to take full advantage of the biennial meetings of States to identify priority issues or topics of relevance in the illicit trade in small arms and light weapons in all its aspects' (UNGA, 2007). To some extent, this is what happened at the 2006 Review Conference with various states and groups of states competing to ensure the issues they considered most important received their due in the outcome document under negotiation.
- 6 Facilitators were also used during the negotiations on the ITI, but only towards the end of the process, in an effort to break deadlock in four key areas. See Small Arms Survey (2006, p. 99).
- 7 See also Small Arms Survey (2004, ch. 8).
- 8 He asked states to submit their reports by the end of March 2008. A large number of reports were, in fact, received by that date or shortly thereafter. By the end of BMS3, a record 109 states had submitted a national report on their implementation of the *Programme of Action*.
- 9 The final report, prepared some months after BMS3, has been published as Cattaneo and Parker (2008).
- 10 The Assistance Package was first developed in 2003 and revised in 2005; it can be downloaded at <<http://www.poa-iss.org/PoA/PoA.aspx>>.
- 11 See UNGA (2001, paras. II.3, II.6).
- 12 In both 2006 and 2007, the United States voted against the UN General Assembly's general ('omnibus') resolution on small arms as it opposed a continuation of biennial meetings—in fact, any formal UN follow-up—for the *Programme of Action*, a position it also defended at the 2006 Review Conference. See, for example, Small Arms Survey (2007, p. 125).

- 13 Ten countries that did not participate in the vote subsequently informed the UN Secretariat of their support for the BMS3 Report (UNGA, 2008b, p. 7 (note 1)).
- 14 Standards and procedures for stockpile management are addressed in UNGA (2008b, paras. 20, 22, 24, 27b–c, e); the identification of surplus in UNGA (2008b, paras. 20, 23, 25–26, 27a); surplus disposal/destruction in UNGA (2008b, paras. 22–23, 27e); and resources in UNGA (2008b, paras. 21–23, 27d).
- 15 See UNGA (2008b, paras. 20, 25).
- 16 See also UNGA (2008b, Annex, para. 9f).
- 17 See also UNGA (2008b, para. 27f and Annex, para. 9d).
- 18 See UNGA (2008b, paras. 9, 14, 27h, Annex, paras. 2 and 9d).
- 19 Compare, for example: UNGA (2008b, para. 7c) with UNGA (2001, paras. II.4, III.18); and UNGA (2008b, para. 7f) with UNGA (2001, paras. III.3, III.10).
- 20 Formally, the ITI outcome was separate from that devoted to the *Programme of Action*. For this reason, it appears in an annex to the BMS3 report, rather than forming an integral part of the same.
- 21 See in particular UNGA (2008b, Annex, paras. 7, 9a, 9e).
- 22 Up to 17 September. During the same period, 109 national reports were received on the implementation of the *Programme of Action* (Cattaneo and Parker, 2008, chart 1 (p. 4)).
- 23 See UNGA (2005b, para. 31a).
- 24 See UNGA (2005b, para. 8d).
- 25 See UNGA (2005b, sec. V).
- 26 See Cattaneo and Parker (2008, pp. 97–112).
- 27 See also pream. paras. 9–10.
- 28 See UNGA (2008e, pream. paras. 3, 5, paras. 7, 9, 15).
- 29 See UNGA (2008e, pream. para. 11, para. 3).
- 30 See UNGA (2008e, pream. paras. 6–8, paras. 8–10).
- 31 See also paras. 4–5. Other themes of the Meeting are reflected in paras. 18 (matching needs with resources) and 19 (‘coherent identification of needs’) of the resolution.
- 32 See, for example, Chivers (2008).
- 33 Discussions over surplus conventional ammunition precede the 2005 ITI, but were nevertheless catalysed by it. See UNGA (2004; 2005c).
- 34 Bangladesh, Bolivia, Cameroon, Chile, China, the Czech Republic, France, Germany, Morocco, Norway, Peru, the Republic of Korea, the Russian Federation, Serbia, South Africa, the United Kingdom, and the United States. See UNGA (2008a, Annex 2).
- 35 Attempts to regulate the international arms trade include efforts by the League of Nations dating back to 1920. See Parker (2008, pp. 2–5).
- 36 The two regional organizations that submitted their views were the Caribbean Community (CARICOM) and the European Union. For a full list of the states that submitted their views, see UNODA (2007).
- 37 Not coincidentally, one assumes, the experts came from most of the world’s top arms suppliers and many of the top arms recipients. For the names of the experts and their countries, see UNGA (2008c, pp. 5–10).
- 38 Exact dates were: first session, 11–15 February 2008; second session, 12–16 May 2008; and third session, 28 July–8 August 2008.
- 39 The United States is also the world’s largest exporter and importer of small arms and light weapons (TRANSFERS).
- 40 Zimbabwe voted against the ATT resolution at the First Committee meeting in October 2008. Yet it voted in favour of the resolution when the General Assembly met in plenary in December 2008.
- 41 This is the ranking for 2005. See the Small Arms Survey website for the latest information.
- 42 Rankings for conventional arms transfers are taken from SIPRI (2008). The five largest exporters that co-sponsored the resolution are France, Germany, Italy, the Netherlands, and Sweden.
- 43 Australia, Greece and Turkey.
- 44 Austria, Belgium, Brazil, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Italy, Montenegro, the Netherlands, Norway, Poland, Republic of Korea, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, and the United Kingdom.
- 45 Algeria, Australia, Canada, Chile, Germany, Greece, Indonesia, Italy, Japan, Malaysia, Norway, Poland, Republic of Korea, Romania, Singapore, South Africa, Spain, Turkey, and the United Kingdom.
- 46 Note that there is some double counting as certain major exporters of conventional arms are also major importers.
- 47 Belarus, China, Israel, Libya, and the Russian Federation.

- 48 China, Egypt, India, Iran, Israel, Pakistan, Saudi Arabia, United Arab Emirates, and Venezuela.
- 49 'The only way to convince all major exporters to sign on to the ATT would be to weaken its provisions. Concluding a weak ATT would legitimize an international standard based on a lowest common denominator that would not address the problem of illicit and irresponsible transfers' (Explanation of vote on Draft Resolution L.39 (Arms Trade Treaty) by Ambassador Christina Rocca, permanent representative of the United States delegation to the Conference on Disarmament, 31 October 2008, para. 2; <<http://www.reachingcriticalwill.org/political/1com/1com08/EOV/USL39.pdf>>). See also Norton-Taylor (2006).
- 50 See, for example, EU and US (2000).
- 51 In the years following the Act's 1999 adoption, the US State Department included a multilateral Arms Transfer Code of Conduct in a list of performance indicators for 'Regional Stability' that figured in its annual *Performance and Accountability* reports. The code indicator was, however, 'discontinued' in the 2002 report. The State Department indicated that 'because arms sales reflect national foreign policies, we do not foresee significant non-European adherence to the code in the near- to long-term'. It concluded that, as several 'influential countries' were 'preparing their own versions' of a code of conduct 'and developing strategies for widespread adoption', '[i]t is to our advantage to let other countries develop their own text for a code before continuing further' (US DoS, 2003, p. 272). There has been no further mention of the code of conduct goal in the State Department reports.
- 52 The seven major categories of weapons under the UN Register of Conventional Arms are: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships (including submarines), and missiles and missile-launchers.
- 53 The author was Special Advisor to Ammunition GGE Chairperson, Michael Hasenau. The views expressed in this chapter are the author's alone and should not be attributed to Mr Hasenau or the Government of Germany.
- 54 The author was Special Advisor to BMS3 Chairperson, Ambassador Dalius Čekuolis. The views expressed in this chapter are the author's alone and should not be attributed to Ambassador Čekuolis or the Government of Lithuania.

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