Informal Australian Research Paper

What next for advancing responsible state behaviour at the United Nations?

Established pursuant to A/Res/73/27, the Open Ended Working Group on Developments in the field of information and telecommunications in the context of international security (the OEWG) has, inter alia, a mandate "to study the possibility of establishing regular institutional dialogue with broad participation under the auspices of the United Nations."

Egypt, France, et al[1] have proposed establishment of a [Programme of Action on Advancing Responsible State Behaviour in Cyberspace](#) (Cyber POA). **Australia supports in-principle the joint-proposal for establishment of a Cyber POA.** That said, Australia has not co-sponsored the proposal as we remain open to exploring all options and to exchanging views with all UN members states before we collectively commit to one format over another.

Drawing on lessons from the Programme of Action on Small Arms and Light Weapons (SALW POA) this Research Paper considers what elements from the SALW POA a new cyber mechanism could incorporate, modify and improve upon, as well as how this may build upon the current OEWG format (i.e.: the new mechanism could provide a forum for practical cooperation <u>and</u> ongoing discussion, rather than the OEWG's focus on discussion and agreement of a report).

Discussions about the establishment of regular institutional dialogue are ongoing in this current OEWG. This Research Paper does not pre-suppose the outcomes of those discussions, rather it is intended to share food-for-thought on potential elements UN Member States may decide could be incorporated into any new mechanism. For the purposes of simplicity, this paper refers to the new mechanism as a "Cyber POA". As with all the food-for-thought elements listed below, this is not intended to presuppose eventual consensus agreement on that name.

Separate to ongoing discussions in this OEWG, in November 2020, the UN First Committee approved – by vote – a Russian resolution establishing a new 5-year Open Ended Working Group (the new OEWG). OP3 of the establishing resolution provides that the new OEWG will "start its activities upon the conclusion of the current Open-Ended Working Group **and considering its outcomes**" (emphasis added).

Australia reiterates its commitment to the successful conclusion of the current OEWG, including agreement of a substantive consensus report which, inter alia, makes consensus recommendations reflecting the intent of all UN member states for the establishment of regular institutional dialogue with broad participation under the auspices of the United Nations.

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[1] As at time of drafting co-sponsors include: France, Egypt, Argentina, Canada, Colombia, Ecuador, Gabon, Georgia, Iceland, Japan, Lebanon, Montenegro, Morocco, Norway, Salvador, Singapore, the Republic of Korea, the Republic of Moldova, The Republic of North Macedonia, the United Kingdom, the EU and its member States (Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, France, Finland, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.) A number of other delegations have spoken in support of the proposal during OEWG meetings. Sponsorship remains open.

Potential elements of a new UN mechanism to advance responsible state behaviour in cyberspace (drawing on lessons learnt from SALW POA).

PART ONE: ESTABLISHMENT AND PROCEDURAL ISSUES

SALW POA	FOOD FOR THOUGHT: HOW MIGHT THE OEWG BORROW FROM/MODIFY/IMPROVE ON THE SALW POA WHEN ESTABLISHING A NEW CYBER MECHANISM
1. Establishment of the SALW POA Small arms control was first raised by UN Resolution A/Res/46/36 (December 1991). A UN Panel of Governmental Experts on Small Arms was set up in 1995 (A/Res/50/70). It produced reports in 1997 and 1999 to the Security Council which recommended the holding of an "international conference on the illicit arms trade in all its aspects" (A/52/298; A/54/258). In 2001 the UN held a *Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (the Conference) (at request of UNGA decision 55/415; from A/Res/54/54V). On 20 July 2001, the Conference adopted the *draft Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* contained in document A/CONF.192/L.5/Rev.1 (the SALW POA). At the same meeting, the Conference adopted its report to the General Assembly by consensus (the report contains the POA). In 2001, UNGA (A/Res/56/24/V) welcomed adoption of the POA as agreed by the Conference. UNGA agreed to convene a conference, no later than 2006, to review progress made in the implementation of the SALW POA. UNGA also decided to convene a meeting of States on a biennial basis, commencing in 2003, to consider the national, regional and global implementation of the SALW POA. Hence establishing the practice of periodic Review Conferences and biennial implementation meetings.	The OEWG could recommend establishment a new mechanism, for example, a Cyber POA. UNGA 76 could then welcome the OEWG's recommendations, endorse the Cyber POA, and decide hold regular Cyber POA review conferences (to review/update the POA) and regular technical meetings* (to review implementation of the POA between review conferences). All meetings would be open to participation by all UN Member States. *note SALW POA holds biannual meetings and sexennial review conferences (see also #2 below).*

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2. SALW Meeting Structure The 2001 UNGA Resolution establishing the PoA called on States to convene a review conference every 6 years and to convene biennial meetings of States. **Review conferences** are convened every 6 years (to date in (2006, 2012 and 2018). These conferences review national, regional and global implementation of the POA, and, when appropriate, update the POA and political declaration. **Biennial meetings** of experts are convened every 2 years, between Review Conferences.[i] Biennial meetings generally review implementation progress and consider, in depth, particular issues under the POA and challenges to implementation. The first biennial meeting was held in 2003, the next is scheduled for 2022. In addition to the Biennial Meetings, the SALW POA also convened various meetings of Government Experts (which lead to the adoption of the International SALW Tracing Instrument)[ii]: - A **Group of Governmental Experts**, appointed by the Secretary-General on the basis of equitable geographical representation, established pursuant to A/Res/60/81, to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons - MGE1: An **Open-ended Meeting of Governmental Experts** on 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, established pursuant to resolution A/Res/63/72. - MGE2: A **Second Open-ended Meeting of Governmental Experts** on 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, established pursuant to resolution A/Res/69/51.	The Cyber POA could comprise Review Conferences and Technical Meetings. Given the speed at which ICTs develop, we may decide to convene Cyber POA meetings with higher frequency than SALW POA meetings. For example, Cyber POA Review Conferences could be held every 3-4 years, and Technical Meetings could be held annually. Review Conferences could review national, regional and global implementation of the POA, and, when appropriate, update the POA and/or political declaration (see also #6 below). Given the unique attributes of ICTs, Review Conferences could consider if additional norms should be developed over time on a consensus basis. Technical Meetings could review implementation progress and consider, in depth, particular issues under the POA and challenges to implementation. Review Conferences and/or Technical Meetings could decide to refer particularly challenging issues to smaller sub-groups for further study.

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3. SALW NGO/Industry participation All Member States, as well as accredited UN entities and NGOs, can attend Review Conferences and Biennial meetings. The 2001 Conference Rules of Procedure (A/CONF.192/L.1) provide for representatives from NGOs: - With consultative status with ECOSOC - Other interested NGOs for consideration on a no-objection basis. Representatives of accredited non-governmental organizations are allowed to address the Conference during one meeting specifically allocated for this purpose, which does not coincide with other meetings of the Conference.	The Cyber POA could include an "multi-stakeholder track"; for example, hold meetings, open to all, the day before each Technical Meeting and each Review Conference, for open discussion between States and the multi-stakeholder community (including industry, civil society, and academia). These meetings could be modelled upon this OEWG's consultative meeting with industry and civil society held in December 2019. The multi-stakeholder community should be consulted on design of this element.
4. SAWL Rules of Procedure Each Conference and Biennial Meeting adopt their own Rules of Procedure (ROP). While there are some small differences[iii], the Review Conferences and Biennial Meeting are largely identical to those of the 2001 Conference. The 2001 Conference Rules on decision making state: "Every effort should be made to reach agreement on substantive matters by means of consensus. There should be no voting on such matters until all efforts to achieve consensus have been exhausted" (rule 33). It then sets out rules for voting (substantive matters must pass by a two-thirds majority; procedural matters by a simple majority; the decision of procedural vs substantive is one for the President). The Reports of the Conference in 2001 and 2012 were agreed by consensus. The Conference of 2006 was not able to agree to conclude a final document. In 2018, voting was called for the inclusion or deletion of particular paragraphs in the outcome document. It then adopted its report to the General Assembly (A/Res/73/168) by consensus.	The Cyber POA Rules of Procedure should require agreement on all substantive issues by consensus (including reports, recommendations, and declarations of the Cyber POA).

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5. Legal status of the SALW POA The SALW POA comprises a voluntary, though politically binding, set of commitments. After establishment of the SALW POA, UNGA subsequently established: **SALW International Tracing Instrument:** a politically (not legally) binding instrument developed within the policy framework established by the SALW POA.[iv] **Arms Trade Treaty:** a legally binding instrument regulating international transfers of conventional weapons (including SALW).[v]	The Cyber POA could comprise a voluntary, but politically binding, set of commitments articulated in a Political Declaration (see also #6, below). Adoption of the Cyber POA would not necessitate nor prevent development of further politically or legally binding instruments on the same or related subject matter.

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6. SALW Political Declaration The Report of the Conference in 2001, adopted by consensus, included, in the POA, a declaratory preamble, followed by the Programme setting out specific actions for: - Preventing, combatting and eradicating the illicit trade in SALW at the national, regional and global levels, - Implementation international cooperation and assistance, and - A follow up mechanism. (This was adopted by UNGA: A/Res/56/24/V) The Conference of 2012 adopted its Report by consensus, including the '**2012 Declaration** – A renewed commitment to prevent, combat and eradicate the illicit trade in SALW in all its aspects' (p6) and updated the POA. The UNGA Resolution welcoming the 2012 Report recalled "the commitment of States to the Programme of Action as the main framework for measures within the activities of the international community to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects" (A/Res/67/58). The Report of the 3rd Conference in 2018 set out the '**2018 Declaration** – A renewed commitment to prevent, combat and eradicate the illicit trade in SALW in all its aspects' (p7) and updated the POA. (This was adopted by UNGA: A/Res/73/69).	The OEWG could recommend adoption of a Political Declaration (along with establishment of the POA). Any Political Declaration should be agreed by consensus by all countries. As a starting point, the Political Declaration could reaffirm the application of international law, including the UN Charter, to state conduct in cyberspace, and reaffirm states' commitment to act in accordance with the 11 norms of responsible state behaviour (as endorsed by consensus by all countries in A/Res/70/237). The Political Declaration could be updated following UNGA consensus endorsement of future recommendations (for example: following consensus UNGA endorsement of the forthcoming OEWG and GGE reports), or by consensus agreement at POA Review Conferences.

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7. SALW Reporting Mechanism Every two years, States voluntarily submit national reports on implementation of the SALW POA and the SALW International Tracing Instrument. Initially reporting was in a non-standardised format.[vi] In 2010, a reporting template was developed by UNDP and welcomed by UNGA (A/Res/64/50). The template closely follows the Programme of Action and its International Tracing Instrument, and recognises that not all areas may be applicable to, or a priority for, every State. Once a State has provided a full report using the template, the template will pre-populate for each country to update relevant sections every two years (see, for example, Australia's 2020 National Report). Country profiles highlight key information included in States' most recent national reports. The UNGA has recognised that these voluntary national reports on the implementation of the SALW POA can provide a baseline for measuring progress on its implementation, build confidence and promote transparency, provide a basis for information exchange and action, and serve to identify needs and opportunities for international assistance and cooperation, including the matching of needs with available resources and expertise.	The OEWG could recommend the Cyber POA include a request for States to submit national reports on implementation on a voluntarily basis. The OEWG could recommend the POA adopt as a standardised reporting mechanism the Survey of National implementation of UN General Assembly Resolution 70/237 ("the Survey"). The Survey could be updated when new recommendations are agreed by the POA and endorsed by UNGA by consensus. The Cyber POA may choose, at any time funding becomes available, to fund a secure online reporting portal to provide a simple way to respond to the Survey online.
8. SALW Points of Contact The 2001 Conference Report, in its POA, called upon States: - "to establish or designate, as appropriate, a national point of contact to act as liaison between States on matters relating to the implementation of the Programme of Action" at the national level, - "to establish or designate, as appropriate, a point of contact within subregional and regional organizations to act as liaison on matters relating to the implementation of the Programme of Action" at the regional level. POCs are published by UNODA in a database that is searchable by country, region, and type of contact (National Coordinating Authority / SALW POA / ITI). POCs are updated as part of the voluntary national reporting every two years (and can also be updated more regularly if required).	The OEWG could recommend the Cyber POA include a request for States to nominate points of contact on a voluntary basis for collation into a Cyber POC database. Subject to funding, the POC database could be made securely available online (on the same platform as responses to the Survey (see #7, above)). The POC database should be updated regularly (for example, in conjunction with the Survey responses (see #7, above), and/or on an ad hoc basis as required).

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9. Capacity building/implementation support Capacity building for implementation of the SALW POA has been contemplated and encouraged since its inception in 2001. Increasingly, requests for international assistance are articulated in States' national reports on the implementation of the SALW POA. These requests are compiled and presented by theme on the UNODA reporting database to assist donors and recipients connect. In response to States' calls for an improved funding mechanism to better match assistance needs with available resources, the United Nations Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR) was established in 2013. UNGA resolution A/Res/73/69 welcomed the initiative of the Secretary-General to establish a multi-partner trust facility within the Peacebuilding Fund, dedicated to providing sustainable, cross-sectional, multi-year programming focused on eradicating the illicit trade in small arms and light weapons in settings of conflict and pervasive crime, and encouraged States in a position to do so to make voluntary contributions to the facility.[vii]	The OEWG report could recommend that States invest in capacity building, including capacity building for implementation of the recommendations of the report. The National Survey (see point #7, above) could be updated to ask States to request assistance/offer assistance to implement recommendations. These responses could be used to target/match capacity building. A specific funding mechanism may be considered in the longer term. In the short-term focus should be on coordination of existing efforts.

PART 3 FUNDING

SALW POA	FOOD FOR THOUGHT: HOW MIGHT THE OEWG BORROW FROM/MODIFY/IMPROVE ON THE SALW POA WHEN ESTABLISHING A NEW CYBER MECHANISM
10. SALW funding SALW Biennial meetings and Review Conferences are supported through the UN regular budget. The UNODA, through regular budget, provides secretariat services and substantive services for meetings.	There will be costs associated with the new Cyber POA. The OEWG should seek advice from the UN Secretariat budget area for an estimate of cost (what the 'programme budget implications' (PBI) would be). Given the Cyber POA is intended to replace the dual track processes of both OEWG and GGE, arguably, as these processes will no longer be funded through the regular budget, the Cyber POA could be considered zero nominal growth to budget.

i **Biennial meetings of States** consider the national, regional and global implementation of the POA. The First Biennial in 2003 (A/CONF.192/BMS/2003/1) considered the national regional and global implementation of the POA, as well as international cooperation and assistance mechanisms, and included a Chair's summary (establishing resolution: A/Res/57/72). The Second Biennial in 2005 (A/CONF.192/BMS/1) considered implementation of the POA, and in particular themes based upon a list of questions provided by the Chair (establishing resolution: A/Res/59/86; UNGA resolution welcoming report: A/Res/60/81). The Third Biennial in 2008 (A/CONF.192/BMS/2008/3) included a Report Annex, summarising the discussion, and set out an agreed 'way forward' of measures to ensure full and effective implementation (establishing resolutions: A/Res/61/66 and A/Res/62/47). The Fourth Biennial in 2010 (A/CONF.192/BMS/2010/3) included a more detailed Report, that considered:
- Subregional and regional mechanisms and the way forward;
- International cooperation and assistance and the way forward;
- Strengthening the follow-up mechanisms of the POA and the way forward;
- Priority issues of relevance, implementation challenges and opportunities.

(establishing UNGA resolutions: A/Res/63/72 and A/Res/64/50). The Fifth Biennial in 2014 (A/CONF.192/BMS/2014/2) considered the same items as per the 2010 Biennial, with the addition of:
- International Tracing Instrument (ITT) international cooperation and assistance,
- Follow-up to the Second Review Conference including regional meetings, engagement of civil society, and support for participation.

(establishing resolutions A/Res/67/58 and A/Res/68/48). The Sixth Biennial in 2016 (A/CONF.192/BMS/2016/2) considered the same items as per the 2014 Biennial, with the addition of:
- These issues in light of the 2030 SDGs, and
- Ways to strengthen implementation and ensure effectiveness and sustainability of assistance.

(establishing resolution A/Res/67/58).

ii See end note (i) above

iii The 2003, 2005, 2008, 2010, 2014, 2016 Biennial Meetings decided that the rules of procedure of the 2001 Conference (A/CONF.192/L.1) would be applied mutatis mutandis. The ROP adopted by the 2006 Review Conference (A/CONF.192/2006/RC/5), 2012 Review Conference (A/CONF.192/2012/RC/L.2) and 2018 Review Conference (A/CONF.192/2018/RC/L.3) are largely identical to those of the 2001 Conference.

iv The **International SALW Tracing Instrument** is a politically (not legally) binding instrument developed within the policy framework established by the SALW POA. The 2001 SALW POA agreed to undertake a UN study, within existing resources, "for examining the feasibility of developing an international instrument to enable States to identify and trace in a timely and reliable manner illicit small arms and light weapons". This resulted in one Group of Governmental Experts (established pursuant to resolution A/Res/60/81) and two subsequent Open Ended Meetings of Governmental Experts (MGE1, established pursuant to resolution A/Res/63/72; and MGE2, established pursuant to resolution A/Res/69/51), which in turn led to the 2005 *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* (adopted by UNGA A/Res/63/72).

v The **Arms Trade Treaty** (ATT) is a legally binding instrument regulating international transfers of conventional weapons (including SALW). The ATT was developed under the auspices of the UNGA First Committee, with its own resolutions and process. While the ATT was developed in parallel, it was not developed under the SALW POA. The first ATT resolution "Towards an Arms Trade Treaty" in 2006 (A/Res/61/89) established a GGE to examine the feasibility of a treaty. An OEWG was then established in 2008, after which the UNGA decided to a PrepCom and then several rounds of Diplomatic Conferences to negotiate text. The ATT was adopted by the UN General Assembly on 2 April 2013 with 154 votes in favour, 3 votes against, and 23 abstentions.

vi National reporting was first raised in the 2001 Conference Report, which requested the Secretary-General to collate and circulate national reports on implementation of the Programme of Action, provided by States on a voluntary basis. 17 countries reported against the POA in 2002 (Australia's 2002 National Report).

vii **UNSCAR:** supports ratification, accession and implementation of relevant international instruments and arms regulations; coordinates, monitors and matches capacity building needs with resources; and increases sustainability of international assistance through predictable sources of funding.
Entities eligible for funding include UN partner entities, international/regional organisations, NGOs and research institutes. Governments wishing to receive assistance can work with eligible entities who can submit a proposal to UNSCAR. Eligible entities can submit proposals for UNSCAR funds once a year during the annual call for proposals. Between 2013 and 2018, UNSCAR funded 64 projects on a total budget of approximately US$9M, from 12 donors, with 140 States benefitting directly or indirectly from the activities funded.