

**ADVANCING A GLOBAL CYBER
PROGRAMME OF ACTION:
Options and priorities
May 2022**

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Executive Summary

In 2020, a group of states proposed creating a United Nations (UN) programme of action (PoA) on state behaviour in cyberspace.

This research paper considers the proposal to establish a PoA on state behaviour in cyberspace, with a focus on the formation, architecture, and technical aspects of a possible cyber PoA. It seeks to respond to questions about the specific operational needs of a PoA; about what such a mechanism would look like, how it would operate, and interact with stakeholders and other relevant processes; and how it would build on the existing framework for responsible state behaviour in cyber space developed in the context of the UN.

About programmes of action

Programmes of action are generally described and understood as being exactly that—action plans, or programmes containing a series of recommended actions for endorsers to implement. Programmes of action are like roadmaps, in that they outline recommended activities for endorsing parties to implement to achieve shared objectives, which are identified within the instrument. Programmes of action are different than political declarations because of their length, level of detail, and specificity. While PoAs usually mandate the convening of follow-up meetings or conferences to assess progress or facilitate exchange, they are not in themselves dialogue processes or meeting platforms. Rather, a PoA constitutes a standalone political instrument that, while not legally binding in the way that a treaty is, is intended to be implemented by whomever endorses it.

Based on an examination of six existing programmes of action, the research paper describes seven elements and characteristics of relevance to the cyber PoA:

1. Provision of context setting and problem framing.
2. Articulation of goals, purposes, and objectives.
3. Are comprised of action-oriented language.
4. Identify roles and responsibilities for implementation.
5. Have unique but not dissimilar backgrounds in terms of mandate and negotiation.
6. Possess an implementation relationship with various aspects of the UN system.
7. Aspects of duration, universality, and a follow-up mechanisms.

Priority considerations for the cyber PoA

The paper identifies seven priority considerations for cyber PoA advocates to consider, where further clarity, consultation, or decision-making is required:

1. Clarifying the instrument's goals, objectives, and purpose.
2. Building out the content
3. The issue of new norms and "future proofing"
4. Complementarity with UN Open-ended Working Group on ICTs
5. Issues of timing and process
6. Engagement with civil society
7. Subsidiary bodies and follow-up meetings

Recommendations

- Review and become familiar with existing PoAs, including to determine if this type of instrument is the right vehicle for achieving the vision and aims that have been articulated and endorsed so far.
- Clarify the instrument's purpose and objective, including through consultation and inclusive dialogue. Determine how the new instrument will fit into the broader landscape and add value.
- Engage with relevant parts of the UN Secretariat, including the UN Office for Disarmament Affairs and the UN Office of Legal Affairs.
- Create a draft or working version of the instrument, even a partial one.
- Develop a timeline to highlight key moments and milestones necessary for making progress.
- Be consultative and inclusive.
- Engage meaningfully with civil society.
- Ensure a gender-sensitive PoA that addresses gendered harm; promotes diversity; and fills gaps.
- Be ambitious; the prospect of any instrument's evolution is slim, and whatever loopholes exist when it is adopted are likely to remain.
- Account for accountability; a cyber PoA could go a long way in filling the current accountability gap between the existing norms and actual practice by solidifying commitments and introducing reporting or review mechanisms.

I. Introduction

“Emerging domains of potential conflict or lawlessness, such as cyberspace, have highlighted gaps in our governance architecture. The world is moving closer to the brink of instability, where the risks we face are no longer managed effectively through the systems we have.”¹

Malicious international cyber operations have become one of the most pressing security issues of our time. States and non-state actors still wage war and cause harm with physical weapons, but the role of information and communications technologies (ICT) as both a means and a target for achieving strategic objectives has expanded significantly in recent years.

The international community has been wrestling with the question of how best to govern state behaviour in cyberspace and use of ICT for many years. Over time, states have come to agree that that existing international law applies to cyberspace and state behaviour therein but questions remain about *how* international law applies, and some maintain that certain bodies of international law are irrelevant. The international community has also identified and agreed to different frameworks of voluntary norms, intended as a guide for state behaviour in cyberspace alongside the application of existing law.

Given the undeniable rise in malicious inter-state cyber operations in recent years, however, some states feel that a new international cyber treaty is needed. Other states maintain that the existing patchwork of voluntary norms is sufficient—but that these norms require more effective implementation or monitoring to be effective, and that the climate to negotiate a treaty is not right.

A potential compromise has arisen in the form of a proposal to establish a political instrument on state behaviour in cyberspace—a cyber programme of action (PoA). This proposal was first introduced in the context of an existing United Nations (UN) process on international cyber security in 2020 and is rapidly gaining support and interest from across the international community. It is also generating questions, however, some of which necessarily have to be addressed in order to make progress on this proposal.

¹ Antonio Guterres, *Our Common Agenda: Report of the UN Secretary-General*, United Nations, 2021, https://www.un.org/en/content/common-agenda-report/assets/pdf/Common_Agenda_Report_English.pdf.

As the Women’s International League for Peace and Freedom (WILPF) has stated elsewhere, “Cyber peace is not an elusive concept but a necessary goal. A cyber programme of action could become an important step on the road toward making cyber peace a reality by laying the groundwork to stop problematic cyber behaviour through tangible action, cooperation, nonviolence, and accountability.”²

This research paper considers the proposal to establish a PoA on state behaviour in cyberspace, with a focus on the formation, architecture, and technical aspects of a possible cyber PoA. It seeks to respond to questions about the specific operational needs of a PoA; about what such a mechanism would look like, how it would operate, and interact with stakeholders and other relevant processes; and how it would build on the existing framework for responsible state behaviour in cyber space developed in the context of the UN.

- **Section I** explores what PoAs are, how they are created, and how they function. Based on the examination of six existing PoAs, this section identifies common elements and characteristics that are relevant for the development of a new instrument on cyber. **Annex II** offers a more detailed look at two existing PoAs.
- **Section II** presents the current state of play with respect to the cyber PoA proposal. It outlines the history of the proposal including by situating it within the context of UN cyber processes. This section describes some of the main aspects of the current proposal for a cyber PoA, as based on the most recent publicly available working paper. **Annex I** includes a non-exhaustive overview of state and civil society views.
- **Section III** provides six priority considerations for advancing a cyber PoA. These are areas where, in the author’s view, further clarity, consultation, or decision-making is required to make progress on materialising a cyber PoA.
- **Section IV** presents conclusions and recommendations.
- There are also two “**In Focus**” sub-sections, one considering gender and another on reporting and transparency.

About this paper

This paper was commissioned by the Government of Canada, a co-sponsor of the cyber PoA proposal, and authored by Allison Pytlak of the Women’s International League for Peace and Freedom. This

² Allison Pytlak, *Programming Action: Observations from Small Arms Control for Cyber Peace*, Women’s International League for Peace and Freedom, February 2021, <https://reachingcriticalwill.org/images/documents/Publications/cyber-poa.pdf>.

paper is an endeavour to research the functions and responsibilities of a cyber PoA, what operational requirements would look like, and how it would relate to the use of ICTs in the context of international security. It is intended for sharing with other UN member states and other actors as “food for thought” and to offer possible options to advance work in this area.

To meet the research objectives of this paper, the author engaged in desk research as well as informal discussions with governmental, civil society, and UN representatives. The desk research particularly informed Sections I and II; while the priority considerations identified in Section III were stimulated by recurring questions and themes from the informal discussions and public statements. The author has drawn from her prior work in a few areas, notably a 2021 briefing paper exploring possible lessons learned from the UNPoA on small arms for cyber, and monitoring and reporting of the UN cyber forums.

II. Understanding programmes of action

Some of questions about the proposed cyber PoA have been about the nature of the proposed instrument and what a “programme of action” involves: What does it mean to be politically, but not legally, binding? How and where within the UN are PoAs created? What kind of content do they include? Are PoAs the same as political declarations?

This section will seek to answer those questions and more by exploring six existing PoAs. Based on desk research, the section presents several common elements and characteristics that all these instruments possess, regardless of their thematic focus; many of these are elements that align with some of the more frequently asked questions in the context of the cyber PoA.

Table 1: Existing programmes of action
<ul style="list-style-type: none"> • 1982 World Programme of Action concerning Disabled Persons (WPA)³
<ul style="list-style-type: none"> • Programmes of Action for Least Developed Countries (LDCs)⁴: <ul style="list-style-type: none"> ○ 1981 Substantial New Programme of Action ○ 1990 Paris Programme of Action of the Least Developed Countries for the 1990s ○ Brussels Programme of Action for the Least Developed Countries for the Decade 2001-2010 ○ Istanbul Programme of Action for the Least Developed Countries for the Decade 2011-2020 ○ Doha Programme of Action for the Least Developed Countries for the Decade 2021-2030 (to be adopted in 2022)

³ For more information, see: <http://www.un-documents.net/wpacdp.htm>.

⁴ For more information, see: <https://www.un.org/ldcportal/content/comprehensive-programmes-action-ldcs>

<ul style="list-style-type: none"> • 2001 Durban Declaration and Programme of Action against Against Racism, Racial Discrimination, Xenophobia and Related Intolerance (DDPA)⁵
<ul style="list-style-type: none"> • 2001 UN Programme of Action on to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA on SALW)⁶
<ul style="list-style-type: none"> • 2002 Madrid Political Declaration and International Plan of Action on Ageing (MPIAA)⁷
<ul style="list-style-type: none"> • 2012 Rabat Plan of Action on the Prohibition of incitement to violence and hate speech (Rabat PoA)⁸

About programmes of action

While no formal definition exists, programmes of action are generally described and understood as being exactly that—action plans, or programmes containing a series of recommended actions for endorsers to implement. Programmes of action are like roadmaps, in that they outline recommended activities for endorsing parties to implement in order to achieve shared objectives, which are identified within the instrument.

This comes through clearly when examining the existing PoAs. For instance, in her foreword to the Durban Declaration and Programme of Action on racism, then-UN High Commissioner for Human Rights Mary Robinson and World Conference Secretary-General wrote:

The Declaration represents the commitments arising from the complex global dialogue which took place. It addresses past manifestations as well as contemporary forms of racial discrimination. The Programme of Action is a road-map illustrating how the international community will follow up on these commitments. It indicates the steps to be taken to put an end to racism, racial discrimination, xenophobia and related intolerance and to prevent their future occurrence.⁹

Similarly, the Madrid International Plan on Ageing is described by the UN Economic Commission for Europe (UNECE) as “a comprehensive list of commitments for United Nations Member States the world over, and focuses on three priority directions.”¹⁰

⁵ For more information, see: <https://www.un.org/en/fight-racism/background/durban-declaration-and-programme-of-action>.

⁶ For more information, see, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N01/507/20/PDF/N0150720.pdf?OpenElement>

⁷ For more information, see: <https://www.un.org/development/desa/ageing/madrid-plan-of-action-and-its-implementation.html>.

⁸ For more information, see: <https://www.ohchr.org/en/documents/outcome-documents/rabat-plan-action>.

⁹ *World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance: Declaration and Programme of Action*, United Nations, 2002, https://www.ohchr.org/sites/default/files/Documents/Publications/Durban_text_en.pdf.

¹⁰ “MIPAA: The Madrid International Plan of Action on Ageing,” <https://unece.org/population/ageing/mipaaris>.

While PoAs usually mandate the convening of follow-up meetings or conferences to assess progress or facilitate exchange, they are not in themselves dialogue processes or meeting platforms. Rather, a PoA constitutes a standalone political instrument that, while not legally binding in the way that a treaty is, is intended to be implemented by whomever endorses it.

Programmes of action are different than political declarations because of their length, level of detail, and specificity. Some existing PoAs are accompanied by a political declaration. Programmes of action tend to include more provisions for monitoring and follow-up than political declarations do. But both types of instruments are similarly endorsed at a political level (often high-level) and do not require national legislative review. They can be a good compromise when a legal instrument is not feasible or desirable.

Common elements and characteristics of PoAs

1. Context setting and problem framing

Programmes of action tend to open with context setting sections that help situate the instrument in relation to other existing frameworks and documents. This can include UN resolutions, reports of the UN Secretary-General (UNSG), reports of relevant UN bodies or processes, regional frameworks, legal frameworks or principles, among other items. Such introductory sections often set the scene for *why* member states are taking action on a particular issue and what concerns they share.

The context setting and problem framing portions of PoAs differ somewhat in how they are presented but are present in all the instruments studied. For example, the WPA includes four “background paragraphs” which offer this context, as well as a sub-section for definitions and key concepts. The DDPA and the MPIAA are preceded by political declarations, which were elaborated along with the text of the corresponding action plan/programme of action but are tied to the conference where the texts were finalised. The declarations include overviews of the problems and concerns of the international community in relation to the focus of each instrument and give rationale for why the two PoAs were created. The UNPoA on small arms has a lengthy preamble, reminiscent of a treaty’s preamble, that highlights points of concern and problems posed by the illicit trafficking of small arms.

While less common, the DDPA also includes explicit condemnation of specific behaviours within its context setting sections.

2. Goals, purposes, objectives

Programmes of action vary to the extent and format by which they establish and present their goals, purpose, and/or objectives. Nonetheless, the diverse actions contained in these PoAs are all clearly bounded by an overarching sense of purpose. For example, the final preambular paragraph of the UNPoA on small arms offers five sub-paragraphs outlining how UN member states will, in general terms, prevent, combat, and eradicate the illicit trade in SALW. The WPA contains an entire sub-section explaining its objectives. The MPIAA is the most detailed in this regard: it establishes several “priority directions” for the instrument, within which there are many “issue areas”, each of which have their own objectives. At the other end of the spectrum, the DDPA expresses concerns about and names the challenges and problems that the instrument seeks to address, but does not name an overarching goal or objective, as such.

Additionally, the more recent instruments on LDCs include targets, alongside commitments and objectives within thematic areas. While most targets are written in a generic way, a few are more precise and there appears to be some alignment with the Sustainable Development Goals.¹¹

3. Action-oriented language

Programmes of action are comprised of action-oriented language. A significant portion of the instruments are dedicated to outlining the range of actions that states are encouraged to take in order to implement the PoA, often with great specificity. Typically, actions are organised within the document by levels (national actions, regional actions, and international actions, etc.), and/or in relation to thematic priorities. The actual actions or activities encompass everything from technical, policymaking, and legislative actions, to sharing information, and encouraging cooperation for financial and technical support.

There is variance in how prescriptive the language of the existing PoAs are. For example, the WPA uses “should” language throughout (i.e. “States should...”) whereas the UNPoA on small arms also uses “should” but contains many qualifiers (i.e. “when possible” or “as appropriate”). The DDPA is written very much in the style of a UN resolution, with paragraphs that “urge,” “encourage,” or “call upon” states to take a particular action. The actions include both recommendations for positive action (things

¹¹ *Draft Doha Programme of Action for Least Developed Countries*, United Nations, 2022, file:///Users/allisonpytlak/Downloads/A_CONF.219_2022_3-EN.pdf.

that states or other actors should do) and recommendations of activities to be avoided or that are discouraged.

The Rabat Plan of Action is slightly different than the other PoAs in that it has an express focus on supporting national implementation of existing international law (in this case international human rights law) by setting out recommended actions for states to take to act on their international legal commitments.¹² It therefore makes clear reference in its title to the existing *prohibition* on incitement to violence and hate speech.

4. Roles and responsibilities

Because PoAs are political instruments, they can only be endorsed by states and states carry the primary responsibility for their implementation. However, most contain multiple references to a wide range of other actors, which variously include UN organs or agencies; the UN Secretariat; regional bodies; intergovernmental organisations; technical experts or operators; civil society organisations; academia; legislators; and the private sector.

Some PoAs refer to these other actors in a general way only, such as through a paragraph in the introductory section that affirms the value and role that these actors play in addressing the challenges and harms that the instrument seeks to address. The UNPoA on small arms has a paragraph like this in its preamble, but the later operative paragraphs offer more explicit encouragement for engagement with non-governmental actors across several actions.

Other PoAs have extensive references to such actors embedded within their operative paragraphs. Sometimes these include active encouragement for states to collaborate with a particular type of non-governmental stakeholder in order to be able to fulfill a particular action. For example, the DDPA devotes several paragraphs to urging states to engage with civil society, non-governmental organisations, the private sector, and youth in specific ways, and also refers to collaboration with the Interparliamentary Union. The DDPA also invites action from and recommendations action on behalf of particular parts of the UN, such as the High Commissioner for Human Rights.

Where a non-governmental actor is the “target” or beneficiary of the instrument (i.e. disabled persons, in the case of the WPA), there are often strong encouragements to include the target as a prerequisite

¹² Report of the United Nations High Commissioner for Human Rights on the expert workshops on the prohibition of incitement to national, racial or religious hatred, A/HRC/22/17/Add.4, para. 13.

of implementation (i.e. including disabled persons within the creation of relevant disability policy). The nature of the WPA also necessitates governmental collaboration with relevant sectors such as health or education as necessary for successful implementation.

5. Mandates and origins

The existing PoAs were developed in different ways, but there are some commonalities as well as formalities that are necessary in the creation of a UN instrument.

All of the existing PoAs are the product of multiple years of multilateral thematic dialogue, which helped to incubate and progress substantive thinking and positions on each instrument's topic. For some instruments, this occurred through the creation and convening of governmental expert groups; for others it involved world conferences and world assemblies, meetings of advisory committees, expert workshops and/or expert roundtables, and preparatory conferences.

When states felt it was time to transform their work and collective understanding into a political instrument, mandates to negotiate and create were obtained most often from the UN General Assembly.

The UNPoA on small arms, for example, was predicated first on the findings of a UNGA-mandated UN Panel of Governmental Experts, and its text was written over the course of three preparatory committee meetings and a conference, all of which was mandated via a UNGA resolution that rose through the UNGA's First Committee on Disarmament and International Security. The WPA was produced over several years through a consultative process overseen by a UNGA-mandated Advisory Committee that involved side conferences and regional meetings, opportunities for written input and formal review by member states, and a formal session of the Committee to finalise it. In this instance, the process began in the UNGA's Third Committee on Human Rights.

The DDPA and MIPAA texts were finalised at conferences held by host governments (South Africa, and Spain) as based on directives established via UNGA resolutions, and in the case of the DDPA following on from earlier "world conferences" on the topic.

In all of the above examples, the final conferences were where states agreed to the text of the new PoA and in some cases, also articulated an accompanying political declaration. Those documents were

then submitted back to the UNGA, often annexed to a conference report for formal adoption by UN member states via the tabling of a resolution that “welcomed” or “endorsed” the instrument.

6. Relationship and integration within the UN

Following a PoA’s creation and adoption by member states, these instruments are usually well-integrated within the broader UN system. Some have a department of the UN Secretariat that supports implementation, others relate to a named officeholder within the UN Office for the High Commissioner on Human Rights (UN OHCHR).

In some instances, this relationship is set out within the instrument itself; in others it has evolved subsequently. In the case of the UNPoA on small arms, this role has fallen mainly to the UN Office for Disarmament Affairs (UNODA). However, given the impact of small arms at the regional level and as a cross-cutting issue, an internal coordination mechanism (UNCASA) was created to ensure that any and all UN departments or offices that engage on small arms control in some way have a mechanism to share information and coordinate. The Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States (UN-OHRLLS)¹³ plays this role for the instruments on LDCs, while the UN OHCHR has been important for supporting implementation of the PoAs on racism, ageing, and disabled persons. “Implementation support” can include many activities: providing substantive expertise and guidance; conference and meeting support; information-sharing and coordination; maintaining a website or information platform; receiving national reports; and managing funding mechanisms, are all examples.

While not evident from desk research, informal discussions conducted as part of the research process for this paper indicate that the UN Office of Legal Affairs (UNOLA) usually plays a role in reviewing and advising on any UNGA resolutions that establish PoA negotiating mandates or welcome new instruments, even if they are not legally binding. The Department for General Assembly and Conference Management (DGACM) often needs to be consulted in relation to convening meetings.

7. Duration, universality, and follow-up

Generally, PoAs do not have fixed durations. Some were created to align with specific UN decades or years (i.e. on disabled persons) and were later supplemented by the creation of other frameworks, mandate holders, instruments, or even legal agreements. The notable exception are the instruments

¹³ See: <https://www.un.org/ohrls/content/least-developed-countries>.

on the LDCs. The first instrument was intended to provide guidance for developing countries on actions they should take during the UN's Third Development Decade, in connection with a broader global development strategy, alongside commitments of support from developed states.¹⁴ As part of review processes and the creation of other relevant development strategies like the 2030 Agenda, a new instrument has been created every ten years.

Due to how PoAs are created within the UNGA, support for an instrument's establishment and adoption has usually been signalled by a member states' support for the corresponding resolution that asks for endorsement (i.e. a "yes" vote). Most do not seem to have organised or required a signing ceremony, as such—however most of these instruments did involve the convening of at least one formal conference *prior* to adoption at the UNGA, which was also a space where states could indicate that they were happy with the final text or, in two instances, support a corresponding political declaration too. It has not been possible to determine if any states voted against or abstained on the resolutions founding these instruments; the small arms PoA was adopted by consensus. PoAs do not have membership in the way that treaties do, but states can choose to not participate in their meetings or act on their recommendations.

The existing PoAs vary in the extent to which they elucidate their review, evaluation, or other follow-up mechanisms. It is the author's view that this is owing to the significant differences in subject matter they each address and/or the political climates at the time in which they were negotiated. The original LDC instrument called for states to conduct their own national review process "at appropriate intervals" and in cooperation with relevant aid and development agencies. The UNPoA on small arms is precise in calling for a review conference after a six-year interval, and for the convening of biennial meetings of states to consider "national, regional and global implementation of the Programme of Action." As the case study on this instrument explains, those follow-up meetings generated decisions to create other types of review mechanisms or convenings.

Annex II provides a closer look at two of these instruments: the World Programme of Action concerning Disabled Persons, and the UNPoA on small arms. The case studies consider how each instrument was established; reflects briefly on their contents and structure; provides an overview of impact and implementation; makes note of any cooperation and assistance mechanisms; and provides an overview of how the instrument accounts for the role of non-governmental stakeholders.

¹⁴ Report of the United Nations Conference on the Least Developed Countries, United Nations, 1982, p.5, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N82/069/25/PDF/N8206925.pdf?OpenElement>.

II. Status of the cyber PoA

In October 2020, a cross-regional group of member states led by Egypt and France put forward a proposal in the UN's Open-ended working group (OEWG) on information and communications technologies (ICTs) in the context of international security. The proposal suggested that the OEWG could “explore establishment of a Programme of Action for advancing responsible State behaviour in cyberspace with a view to ending the dual track discussions (GGE/OEWG) and establishing a permanent UN forum to consider the use of ICTs by States in the context of international security.”¹⁵

This initial idea has continued to evolve beyond the conclusion of the 2019–2021 OEWG (OEWG I). The number of co-sponsoring states has grown to 60 member states¹⁶ as of April 2022, and together the co-sponsors have developed more detailed thinking about the proposed instrument. As well, states have increasingly used the UNGA First Committee's annual session in October and the substantive sessions of the 2021–2025 OEWG (OEWG II) to present their views and ideas on the possible instrument. While the UNGA and in particular the OEWG II remain the locus of exchange about the proposal, other relevant non-UN forums have also provided opportunities to share and discuss the concept.

This section provides a brief overview of the current status of the cyber PoA proposal. It will briefly outline how the proposal has evolved through to March 2022 and identify some of the major ideas that have been tabled both in terms of substance and process. This section is based on publicly available documents such as concept notes, as well public statements from governments and other stakeholders in various forums.¹⁷

History

Following the initial tabling of a proposal in the OEWG I, the PoA co-sponsors put forward additional documents in December 2020. The documents included an update to the original paper on “The future

¹⁵ “The future of discussions on ICTs and cyberspace at the UN,” 30 October 2020, <https://front.un-arm.org/wp-content/uploads/2020/10/joint-contribution-poa-the-future-of-cyberdiscussions-at-the-un-10302020.pdf>.

¹⁶ Current co-sponsors include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, Colombia, Croatia, Republic of Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, Egypt, Estonia, Fiji, France, Finland, Gabon, Georgia, Germany, Greece, Guatemala, Honduras, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Latvia, Lebanon, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Montenegro, Morocco, Netherlands, Norway, Paraguay, Poland, Portugal, Republic of Korea, Republic of Moldova, Republic of North Macedonia, Romania, Salvador, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Timor-Leste, Ukraine, United Arab Emirates, United Kingdom.

¹⁷ Some cyber PoA co-sponsoring states have developed additional working papers and concept notes, which have been made available to the author for informational purposes. However, this section of paper draws solely on sources that are published.

of discussions on ICTs and cyberspace at the United Nations”;¹⁸ a concept note on the “organizational aspects of a Programme of Action for advancing responsible State behaviour in cyberspace”;¹⁹ and a textual proposal for possible inclusion in the final report of the OEWG I.²⁰

This latter document was submitted in the hope that the OEWG I final report would recommend the establishment of the PoA in the context of the OEWG’s consideration of “regular institutional dialogue,” which is one of its six thematic areas of focus. Due to pushback, however, the final report of the OEWG instead takes note of the PoA proposal as one of a “variety of proposals for advancing responsible State behaviour in ICTs, which would, inter alia, support the capacities of States in implementing commitments in their use of ICTs, in particular the Programme of Action.”²¹ Paragraph 77 of the final report states, “In this regard, the Programme of Action should be further elaborated including at the Open-Ended Working Group process established pursuant to General Assembly resolution 75/240.”

This point is also made in the final report of the UN’s sixth Group of Governmental Experts (UN GGE) adopted in May 2021.²² Similar to the OEWG I report, the GGE report takes notes of various proposals made but mentions in particular the PoA. The GGE report encourages that “the concerns and interests of all States should be taken into account through equal State participation at the United Nations.”²³

The OEWG II began work in December 2021 and held a second substantive session in March 2022. At the December session, France and Egypt submitted a working paper on behalf of all PoA proposal co-sponsors.²⁴ This paper is wide-ranging and includes more detail than earlier documentation.

Throughout the first and second OEWG II substantive sessions, many delegations offered views on the cyber PoA proposal. The March 2022 session likely contained the most detailed references to the cyber PoA yet, with some delegations providing either substantive comments on what the instrument

¹⁸ “Updated: The future of discussions on ICTs and cyberspace at the UN,” 2 December 2020, <https://front.un-arm.org/wp-content/uploads/2020/12/joint-contribution-PoA-future-of-cyber-discussions-at-the-un-2-2-2020.pdf>.

¹⁹ “Concept-note on the organizational aspects of a Programme of Action for advancing responsible State behaviour in cyberspace”, December 2020, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/other/icts/oewg/documents/wp-joint-poa-concept.pdf>.

²⁰ “Proposed text,” December 2020, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/other/icts/oewg/documents/wp-joint-poa-text.pdf>.

²¹ *Final substantive report*, A/AC.290/2021/CRP.2, 21 March 2021, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/other/icts/oewg/documents/oewg-finalreport-substantive.pdf>.

²² *Final Report: Group of Governmental Experts on Advancing Responsible State Behaviour in Cyberspace in the Context of International Security*, A/76/135, 14 July 2021, para. 97, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/other/icts/gge/documents/gge-report-adopted.pdf>.

²³ *Ibid.*

²⁴ “Working paper for a Programme of Action (PoA) to advance responsible State behavior in the use of ICTs in the context of international security”, December 2021, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/other/icts/oewg-ii/documents/poa-workingpaper-december2021.pdf>.

should do or include, while others expressed particular questions about it. This is briefly summarised later in this section.

Despite the recommendations from the GGE and OEWG I to use the OEWG II as a space to further elaborate the PoA proposal, dedicated time and space have not been included in the formal meeting agendas or programmes of work, or in the guiding questions presented by the OEWG II Chairperson. The next session is scheduled for July 2022, which is where states will seek to adopt an annual progress report. There have been urgings that this report call for the establishment of the PoA and other suggestions about how to use the time in future OEWG II sessions to discuss the PoA proposal.

Substantive aspects

The most recent available resource about the cyber PoA proposal is the December 2021 working paper. Highlights are provided below, but readers are encouraged to read the full document.

The introduction describes the proposed cyber PoA as “a permanent, action-oriented, inclusive, transparent, and results-based mechanism, building on previous outcomes and in line with the evolving framework. It could work in a complementary and coordinated fashion with other relevant UN processes, such as the OEWG established pursuant to resolution 75/240.” The introduction also stresses as crucial the strengthening of international cooperation and supporting the capacity of all states.

When reviewing this document, its predecessors, or conference statements, what has been consistent is the emphasis that the new instrument be based on past agreements, meaning in particular the consensus-based outcomes of the OEWG I and UN’s six GGEs on cyber security. In some contexts, these agreements have been referred to as the *aquis*, while some of the primary decisions of those documents—namely on the applicability of international law to cyberspace and the identification of eleven norms of state behaviour in cyberspace—are increasingly described both in documentation and governmental statements as “the framework”.²⁵ The framework is further rounded out by the two other pillars of capacity-building and confidence-building measures.

²⁵ The final reports of the fourth and fifth GGEs (2013, and 2015) contain the agreement on applicability of international law, and the naming of the eleven norms. See *Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*, A/68/98*, 24 June 2013 and *Report of the Group of Governmental Experts on Developments in the Field of Information and Telecommunications in the Context of International Security*, A/70/174, 22 July 2015, para 13.

The December 2021 working paper describes three “elements” of a cyber PoA. The first element is identifying the diverse challenges faced by states in implementing the framework and promoting relevant actionable recommendations and cooperation to respond to these challenges; the second is to provide concrete support for capacity-building efforts including through a working group dedicated to it; and the third is fostering meaningful multi-stakeholder engagement.

Within each of these, diverse possible actions are suggested. Some could, presumably, be written into the content of a future instrument as an action area or recommendation, whereas others are more about use of meeting time and the value of the PoA as a platform. Suggested actions include mapping needs and challenges; national reporting on framework implementation; creating lists of national points of contact; creating web portals and repositories; creating a working group to bolster capacity-building; and creating opportunities for input and dialogue with non-governmental stakeholders. More on this is offered in Section III.

A point worth noting is that the December 2021 proposal lists the title of the proposed instrument as a Programme of Action (PoA) “to advance responsible State behavior *in the use of ICTs* in the context of international security.” Earlier working papers and concept notes had described the title as “to advance state behaviour in cyber space”. The change in the proposed title could be owing to many factors, including simple wordsmithing as well as alignment with the titles of the GGEs and OEWG. However, an instrument’s title can have implications for its scope and content and therefore is worth putting consideration into.

Procedural aspects

The current working paper describes that the cyber PoA will be based on a political declaration, which “would recall existing and emerging threats to international security related to the malicious uses of ICTs, building notably on the threat assessments contained in GGE and OEWG reports, and reaffirm States’ commitment to the framework agreed in successive GGE reports and the 2021 OEWG report.”

The paper suggests that consultations with member states and other stakeholders could take place at several venues and events which, were still forthcoming at the time when the working paper was drafted in late 2021. It then suggests that at the end of these consultations, a resolution could be

adopted at the UNGA First Committee to establish the cyber PoA, although does not name the year or session.

It's not entirely clear from this document how the proposed political declaration and the PoA will interact with one another, or if they are being viewed as interchangeable. As the first section of this paper has shown, some programmes of actions have a political declaration that precede or are attached to them, but these are distinct types of instruments or documents. A political declaration is referenced again in the working paper in reference to potential future updates, where it proposes that the future PoA shall function under the rules of procedure relating to the Main Committees of the UNGA, "with such modifications as the Member States may deem necessary and ensure that decisions on substantive issues are adopted by consensus, including updates to the Political Declaration."

Following the cyber PoA's establishment, the working paper suggests that there could be review conferences (RevCons) to examine the state of implementation of the framework, identify main priorities for action in the following years, and adopt programmes of work for subsequent meetings. It is also suggested that the RevCon could decide to update the framework "by including new principles, recommendations and commitments in the event that UNGA, by consensus, endorses a report of a relevant UN process, and/or by consensus agreement during a PoA Review Conference."

The working paper suggests having periodic meetings of relevant technical experts in order to foster substantive work. The possibility of working groups is mentioned, and there are brief sections about the importance of a gender-sensitive sponsorship programme, coordination with other relevant UN processes, and that the UNODA could provide secretariat services. Earlier working papers and concept notes described a biennial meeting of states approach to follow-up meetings.

Annex I provides a general overview of what some UN member states and civil society actors have said about the cyber PoA as of April 2022. As stressed in the annex, positions shift and evolve; what is included in this paper is not exhaustive and timebound. It was however necessary for the author to review these statements in order to better distill what some of the key questions, concerns, ideas, and approaches concerning the cyber PoA are—particularly in order to identify the priority considerations outlined in Section III.

III. Priority considerations for advancing a cyber PoA

In the course of reviewing statements and materials, as well as conducting informal discussions, several points have emerged that can be considered as “priority considerations,” where further clarity, consultation, or decision-making is required in order to progress with the cyber PoA process. Some of these are activities and decisions upon which cyber PoA co-sponsoring states will need to take action, but some also speak to points that have been raised by non-cosponsoring states as well as civil society.

Seven such priority considerations are presented below covering a range of topics, both substantive and procedural. They are not presented in any specific order, and many are interrelated. Where reference is made to a point or question that has been raised or expressed on a certain topic, this is sourced from the public statements such as outlined in Annex I or in bilateral informal discussions that the author undertook to research this paper.

Consideration #1: Clarifying goals, objectives, and purpose

A primary consideration that has surfaced repeatedly regards the purpose of the proposed new instrument, and relatedly, what its added value will be. This question has surfaced somewhat in the context of how the cyber PoA will relate to other cyber processes (in particular the OEWG II, a point which is addressed further in this section). Yet, it is also a matter of approach and of substance—for the UN, member states, and the international community to support the creation of a new instrument, what impact or change is expected in return? What mutual concerns will be prevented or addressed by establishing a PoA?

As outlined in section II, the most recent working paper describes the cyber PoA as “aimed at advancing responsible State behavior in the use of ICTs, and ultimately strengthening international security and stability in the cyber domain, through actionable proposals and enhanced support for tailored capacity-building efforts.”

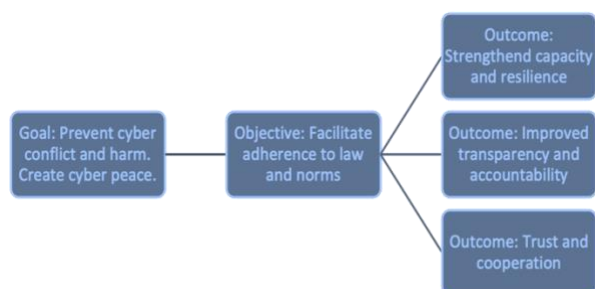
This description is helpful in painting a picture of the PoA’s characteristics and general aims and it is increasingly detailed, as compared to earlier concept notes.

However, the description could be made more precise and has generated some confusion, particularly amongst states and stakeholders not familiar with other PoAs. For instance, some states and non-

governmental stakeholders have expressed that the working paper presents too many objectives and/or areas of focus; or that it is trying to accomplish too many things. Some find it confusing that it is variously described by its supporters in statements or in writing as a mechanism, a forum, a platform, and an instrument—which are not dissimilar, but are distinct. It has also been noted that the working paper references a political declaration but it’s not clear if this will accompany the PoA, or if it envisioned as an alternative to a PoA.

Key questions and considerations:

- As a priority, member states are encouraged to further clarify the cyber PoA’s possible goals and objectives.
 - For example, if the agreed intention is that the PoA will be an action plan or roadmap to guide and support national implementation of the existing UN cyber framework, then going back to the original purposes and objectives of the bodies that created the framework (i.e. the GGEs and the OEWG I) would be a logical starting point.
- A new instrument is also an opportunity to go further and be more ambitious.
 - States should consider if there is an overarching “big picture” goal for the instrument: what harms or concerns does this instrument seek to address, prevent, or resolve? A useful guiding question when navigating the above is to ask: what will happen if the international community does *not* establish and implement a PoA? What will happen if the current framework is *not* implemented? Articulating a clear response to this can help address questions about the cyber PoA’s added value. For example, should the PoA aspire to prevent and reduce international cyber conflict? Ensure peace and stability in cyberspace? Stop the militarisation of cyber space? Uphold an open, free, stable, and secure cyberspace? Enshrine a human-centric approach to cyber security?
- One way to determine a broader goal is to review preambular language from the UNGA resolutions that created the OEWG I and the GGEs; or consensus-language from the final reports of either body, particularly paragraphs that describe threats or frame problems. However, for the new instrument to go further or really add value, states should not be afraid to articulate new or bolder ambitions.



- Within this, it is also useful to remember that goals and objectives are different. For instance, the *goal* of a cyber PoA could be to prevent international cyber conflict and ensure peace and stability in cyberspace, while a relevant *objective* could be to support national implementation of the agreed framework, by building cyber capacity, promoting transparency, and fostering cooperation. Within this framework, the contents of the cyber PoA could outline tangible, practical actions that are needed in order to accomplish these objectives (i.e. submit national reports, create a contact point network, develop relevant national legislation or policies, or establish funding mechanisms).
- Finally, thinking about goals and objectives should include some consideration of how the cyber PoA will be situated within the broader UN landscape.
 - For instance, it is often said that cyber peace and stability are integral to other global priorities and in particular, to closing the digital divide and achieving sustainable development. The UNSG's *Our Common Agenda* prioritises the importance of cyber de-escalation and proposes creating a Global Digital Compact.²⁶
 - Can implementation of a cyber PoA help to advance achievement of the 2030 Agenda, relevant Human Rights Council resolutions, the UNSG's Roadmap for Digital Cooperation, or the UNSG's *Our Common Agenda*? What are the benefits of articulating the relationships and synergies between these frameworks and the cyber PoA? What are the drawbacks?

Consideration #2: Building out the content

What comes through strongly in all available literature and statements about the proposed cyber PoA is the desire to base it on the existing UN framework for responsible state behaviour in cyberspace. But what does that look like and how can the framework in its current form be translated into the format and tone of a UN programme of action?

In line with Consideration #1, clarifying the instrument's goals and objectives will be instructive for building out the substantive content of the new instrument. The overview of existing PoAs found in Section I demonstrates that there are multiple formats into which these types of instruments can be written and organised. For instance, the cyber PoA could organise its content by actions to be taken

²⁶ Guterres, 2021.

on national, regional, and international levels, which is how most other PoAs are written. Or, it could organise content by thematic areas of focus (i.e. have a sub-section on capacity-building, a sub-section on norms implementation, on cooperation and assistance, etc).

Key questions and considerations:

- States and stakeholders should begin thinking about what the substance and content of the cyber PoA will include and how it will read.
 - Developing a “pre-draft” or unofficial working draft version of the instrument would help co-sponsors to respond to many of the questions about what a PoA is, what it will include, the level of detail required, and more. Such a document also become the basis of consultations and offer states and stakeholders something tangible to respond and react to.
 - One possible option for moving this forward would be to focus drafting on the two areas of the instrument that are being regularly identified as priorities for the cyber PoA to generate action on: norms implementation and cyber capacity-building.

- States have expressed that the PoA could be a way to foster better clarity and understanding about what the eleven UN norms for responsible state behaviour are and provide guidance to support their implementation. Despite being so foundational to the UN framework, the norms themselves can be difficult to locate, identify, or explain to those not familiar with UN documentation and processes. Giving them a prominent place within the cyber PoA and providing a series of recommended actions for implementing each of them, at all levels, would generate better awareness and understanding about what they are, thus improving the prospects for their implementation.
 - In undertaking the above, work could be based on already agreed text and language from the final reports of the UN GGEs and OEWG I. Even if the language will later be negotiated or adjusted, working with content that is recognisable to those engaged in the processes would help to demonstrate the general approach being taken.
 - That said, anything that has already been adopted by consensus has likely been compromised from its original aim. There is a point to be made about starting the drafting at a higher bar than what has already been achieved, in case it’s possible to adopt stronger or more impactful text. Rarely if ever are instruments updated or amended in future—ambition is needed at the outset.

- The final report of the sixth UN GGE (2019–2021) provides context and additional understanding about each of the norms. This content would be a useful starting point for drafting a section about norms. In some places the GGE content is more explanatory in tone, but other paragraphs provide guidance that would be suitable for inclusion in a PoA-type instrument.
- For example, paragraphs 22–28 of the GGE final report relate to norm 13(b) on attribution. Paragraphs 23–28 describe actions or activities that states can or should take in relation to attribution. In a PoA, those actions could each become their own paragraph or “action point” depending on how each is articulated. Some are national actions, whereas others require regional or international information exchange.
- Another good source for cyber PoA content on norms implementation would be the “norms guidance text” proposed by Canada during OEWG I, which was supported by several other delegations and developed with inputs from states and civil society.²⁷ Recognising that the guidance did not enjoy universal support and may be challenged as a basis for PoA-language, it is nonetheless a very good model of the kind of specific detail that is often found in a PoA.
- Strengthening capacity is regularly observed as an important prerequisite for effective norms implementation. This includes capacity in the areas of policy, law, technology, and cooperation.
 - The current cyber PoA working paper identifies this as an area of priority for the future instrument. More specifically, the paper suggests that the cyber PoA will provide “concrete support” for capacity-building efforts, including through a working group. It further describes how the PoA could increase the visibility and improve coordination of existing CB efforts; pair available resources with requests for assistance; use its meetings as a space for exchange and identify gaps; and possibly even create a dedicated funding mechanism.
 - These are worthwhile suggestions and would be valuable contributions in this area. However, some of these actions may be more feasible than others (technically, or politically); some would require significant support from the UN Secretariat to implement; and others may just require further refinement or clarifying. There is also a concern about duplicating existing efforts.

²⁷ *Chair’s Summary*, A/AC.290/2021/CRP.3*, 10 March 2021, pp.10-16, <https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/other/icts/oewg/documents/oewg-chairsummary-updated.pdf>.

- As a priority, states should begin to think more concretely about these ideas through consultation with one another and with relevant civil society. Capacity-building is in particular an area where a range of other stakeholder are active, and there are numerous national, regional, and sub-regional initiatives taking place that the PoA could support or reinforce, but should strive to not duplicate. Hearing directly from those involved in such efforts on where they see a new political instrument fitting in is vital.
- For example, while there may be widespread support for the cyber PoA to create a dedicated fund, how such a fund will work and who will support it would be important questions to explore before committing to include this in the instrument. If a working group is created as a subsidiary body, what will be its mandate and how should it focus work? Some of these details could be resolved in future—both a fund and working group could be decisions taken at future cyber PoA meetings, for instance, with the instrument merely encouraging member states “to explore and consider establishing in future” such mechanism, possibly even putting a date on this action point (i.e. by the time of its first biennial meeting of states).

Consideration #3: New norms and future-proofing

The possibility of the establishment of new norms for responsible state behaviour in cyberspace has also surfaced as a topic for further consideration. There are multiple dimensions to this issue. One is about “future proofing” the instrument so that the cyber PoA can remain relevant amid technological change and/or react to new threats or emerging priorities in cyber governance.

Another dimension is political—while all UN member states have endorsed the existing norms, not all participated in their development in the GGEs. Therefore, the possibility of being able to contribute to the development of new ones might be attractive to some states and a motivating factor to support the cyber PoA.

At the same time, some states have expressed that without a better understanding of how and to what extent the current norms are or are not being implemented, it is difficult to determine what gaps need to be filled and what new norms, if any, are needed.

Finally, there may also be a technical or legal dimension to this issue for states to consider. In principle, a PoA can, through the outcome documents of its follow-up meetings (i.e. final reports of RevCons or other formal meetings) establish or endorse new norms. However, those new norms would not necessarily be politically binding on all UN member states if, for example, some states did not participate in the meeting or in the development of the cyber PoA, or if some states dissociated from the report. Additional approval mechanisms and endorsements, such as through the UN General Assembly, may also be required to enhance the legitimacy and universality of any future new norms across the UN membership.

Key questions and considerations:

- Current supporters of a cyber PoA should begin mapping views on this point. This and should include the perspectives of states that are not yet cyber PoA co-sponsors.
 - If leaving the door open to develop new norms in the future is crucial for growing the cyber PoA support base, then that means it is an issue that will have to be accounted for relatively early on in the political process.
 - Or, if there is strong opposition to a PoA having the ability to generate new norms and a preference that this be left out, then identifying possible spaces or places where or how that could happen in future might be necessary.
 - Meanwhile, even if the creation of new norms may ultimately be off the table, it would be an important contribution and value-add of the cyber PoA to be able to respond to new threats or current threats that are not well-addressed by the existing framework. Technology is evolving quickly and any instrument on “state behaviour in cyberspace” will need to find a way to be flexible and adaptive, characteristics that are often elusive in UN diplomacy. The concept of future-proofing is especially relevant in this context and states are encouraged to find a way to this possibility into the instrument from the start, including by looking at examples from other areas where international security overlap with technology.

Consideration #4: Complementarity with OEWG II

How the proposed cyber PoA will both relate to and be distinct from the OEWG II is a point that has been raised often.

Some states have expressed concerns about this from the perspective of capacity and resourcing, should the cyber PoA be established while the OEWG II is still in session. Others have highlighted the political dimensions of this issue and expressed concern that the establishment of a cyber PoA should not be seen as threatening the OEWG II or signaling a return to the “two track system,” meaning the years in which there was both a UN cyber OEWG and a GGE. Some have expressed that the PoA should, or could, be an output of the OEWG. Generally, there is support for ensuring that the two are distinct in their aims and mandate, but complementary. Complementarity is reinforced in the most recent working paper. Some ideas on this were also expressed by states during the March 2022 second substantive session of the OEWG II.

In some ways, the OEWG and proposed PoA are already different from one another simply by their nature. A PoA is an instrument requiring implementation, whereas an OEWG is a dialogue process and a meeting platform. Often, OEWGs are convened with a view to producing an outcome or moving to a result on the basis of a recommendation from Group participants—it’s not uncommon that they launch treaty processes or create other mechanisms. Often they have mandates of fixed duration and to continue, require renewal. In this context, a procedurally ideal situation would be that the OEWG II recommend creating the PoA and offer diplomatic “blessing” to the new initiative. That could occur in the short-term, and while the OEWG II still has a few years before the end of its mandate, or it may be strategic to wait until closer to 2025 at which point states will need to decide if the OEWG should be renewed.

Key questions and considerations:

- As a priority, PoA co-sponsors should delineate more clearly what the precise differences between the OEWG and the cyber PoA will be. This can be facilitated by having consultations to better clarify the cyber PoA’s objectives and scope.

Consideration #5: Timing and process

As outlined in Section II, the most recent working paper on the cyber PoA proposal describes that the instrument would be based on a political declaration and adopted through a resolution at the UNGA First Committee. The working paper described different venues in which consultations on the

instrument could be conducted, presumably with a view to establishing the PoA during the 77th session of the UNGA First Committee in 2022.

States and stakeholders should decide if they wish to pursue a political declaration in addition to a PoA, or in place of one. If the latter option is deemed either more useful or viable, then the process moving forward will be somewhat different than to establish a PoA. States may also want to explore if other types of frameworks are possibly a better fit for their aims and goals. For instance, if a dialogue platform is preferable to a political instrument, then an Open-ended Informal Consultative Process, such as that on Oceans and the Law of the Sea, might be a better alternative.

Key questions and considerations:

- For either a declaration or a PoA, it is strongly encouraged that states consult with the UNODA and the UNOLA to be clear on the necessary procedural steps. Each of the six PoAs examined in this research paper was developed in different contexts and circumstances, but all began with a mandate from the UNGA to negotiate and/or create the instrument.
- From there, the path may involve many meetings or just a few. Given that the cyber PoA is envisioned to encapsulate and enshrine many years-worth of negotiation and consensus outputs, it probably is unnecessary to set up an extensive negotiating process. But being consultative and open to inputs from all UN member states as well as other stakeholders is critical to the legitimacy of the process and ultimately, the effectiveness of the instrument.
- Based on the experiences of other PoAs, at least one major convening will likely be necessary to finalise the text ahead of submitting it to the UNGA for endorsement. Sometimes this has also been where political declarations are adopted, too.
- If that major convening will require funding and human resources from the UN Secretariat, then there are budgetary implications that should be considered for any resolutions that set out the negotiating mandate. States could also look to convene a major cyber PoA conference outside of the UN and utilise the opportunity of relevant conferences and events to hold consultations.

But the way forward is not wholly procedural. There are significant political considerations as well. States that support creating a cyber PoA will need to consider the geopolitical climate and assess when the timing might be best to proceed, or how lengthy and complex a process is necessary. This relates not only how states feel about the OEWG II and complementarity between the UN processes but is about if the environment is conducive for achieving the type of instrument that states envision. A

critical mass needs to be achieved in order to secure the votes, or consensus, at the UN. Moving forward too rapidly and without sufficient consultation may alienate would-be supporters or incentivize those already opposed to the cyber PoA to take stronger action against it.

Box 1: What is an Open-ended Informal Consultative Process?

A possible alternative to a PoA could be to initiate an open-ended informal consultative process. These processes are General Assembly-established standing platforms for activities such as information-exchange and discussion, and can also call for decisions, take action, or create working groups to examine new issues or topics that arise over the course of time. They are distinct from Open-ended working groups because they do not have a fixed duration or an expected single output. Whereas a PoA is a politically binding instrument requiring implementation, a consultative process is a platform. They are flexible in being able to consider and respond to new or emerging topics that relate to whatever issue they are established address and are less focused with implementing an agreed action plan. There are of course, both benefits and drawbacks to this approach.

An example of this is the UN Open-Ended Informal Consultative Process on Oceans and the Law of the Sea. It was established in 1999. Over the last 20 years, its annual meetings have considered different relevant sub-topics including through discussion panels that have invited inputs from experts in civil society and industry; provided recommendations to the General Assembly for specific actions or decisions; and has influenced policymaking in other relevant forums.

Consideration #6: Engagement with civil society

The participation of non-governmental stakeholders in the UN's international cyber security fora has been uniquely challenging. The original GGEs were closed, including to non-participating governments. When the OEWG I was established and sold to the UN membership as an open and inclusive fora, hopes were high that this would also extend to meaningful participation of non-governmental experts and stakeholders, as outlined in the resolution establishing the group. Regrettably this has not been the case; a few countries anonymously blocked the participation of any non-ECOSOC accredited civil society—including academia and industry—from OEWG meetings. This issue has continued to plague the ability of the OEWG II to adopt participation modalities and be convened formally, and only resolved in late April 2022.

Positively, the most recent cyber PoA working paper indicates a strong intention to engage with non-governmental stakeholders in meaningful ways. The paper notes, “While the PoA would remain a State-driven process, cooperation with the multistakeholder community brings practical benefits for security, lifts capacity, and takes forward development.” The paper explains that the cyber PoA would allow for regular consultation with relevant stakeholders and that its chairperson could convene a day of consultative meetings in advance of major PoA conferences and meetings, in addition to stakeholders being able to submit working papers and other documents. Interestingly, the cyber PoA working paper describes a few substantive and technical areas of work where it particularly foresees cooperation with stakeholders as being necessary.²⁸

Key questions and considerations:

- As a priority, states should already begin consulting with civil society to hear their views about the cyber PoA proposal. Consultations should be inclusive of a wide range of stakeholders and not be limited to only hearing ideas about the participation of civil society in future meetings and conferences that might be convened by a future PoA, but also about the instrument’s purpose, scope, form, and substance. As the case study on the UNPoA on small arms in Annex II describes, the role of civil society stakeholders to the substantive content of that instrument was significant.
- Most of the existing PoAs are explicit in recognising the role of non-governmental actors, as outlined already in Section I. Most of them refer to, or encourage collaboration with, specific types of actors throughout the instrument. This approach to the instrument’s text embeds and cements a cooperative, multi-stakeholder model within the text of these instruments and will help to facilitate engagement with stakeholders in national and regional implementation efforts. Several examples of this are provided in Section I.
 - The cyber PoA should also adopt this approach. For example, the instrument could include a preambular paragraph that welcomes and acknowledges the role played by non-governmental actors. Its more operative and action-oriented paragraphs could then refer to particular types of actors that will be relevant to implementation or advancing the action contained in any given paragraph or action points. This would serve to mainstream civil society engagement throughout the document in a way that mirrors real-world collaboration and cooperation.

²⁸ “The PoA could encourage States to cooperate with other stakeholders in particular to: develop coordinated government and corporate policies to improve the security of the ICT supply chain, and build trust; harmonise mechanisms for the responsible disclosure of vulnerabilities and prevent the proliferation of malicious tools and techniques; encourage research in relevant areas; enhance capacity building efforts based on needs and existing gaps; promote a culture of cybersecurity in the larger public.”

- Finally, if the cyber PoA sets up a system for follow-up meetings and conferences, such as those outlined in the working paper, then it will be important to think about how civil society can meaningfully participate in those convenings, what rules of procedure or meeting formats are needed, etc. This could also be a consideration for any subsidiary bodies (i.e. working groups) that the cyber PoA could potentially establish.

Consideration #7: Subsidiary bodies and follow-up meetings

The current cyber PoA working paper describes two types of follow-up meetings: review conferences (RevCons) and “periodic” meetings, in which technical experts may participate. The paper also references the creation of working groups in a few places.

Earlier iterations of the concept included more detail and thinking about the follow-up meetings and conferences and resembled the periodicity and functions of the UNPoA on small arms.

It’s useful to already be thinking about these future convenings because these are an important dialogue opportunity for states and stakeholders and help to foster community and energy around an instrument. These can also be the space to exchange and discuss implementation, whether the challenges or the successes, to report back on projects or outcomes from any subsidiary bodies like working groups, or to take decisions that help to evolve the instrument’s implementation or create new mechanisms.

However, while follow-up meetings are important, they should not supersede the importance of designing a strong instrument. National and regional action to meet PoA commitments is the priority. Diplomats are also fond of the architectural adage “form follows function” and this has relevance here. Without knowing more about the content and substance of the cyber PoA, it’s challenging to already decide about the frequency and purpose of future meetings. Settling some of the fundamental questions about the purpose of the instrument could provide guidance in this regard.

Key questions and considerations:

- It would also be useful to consider how to avoid future and follow-up meetings from becoming overly politicised or focused on the wrong topics.

- One way to do this is to design subsequent meetings as technical and practical exchange—spaces to assess progress on meeting PoA commitments, identify mutual challenges, and share knowledge. This could be done through careful descriptions and mandates of the meetings within the PoA text; at a later stage, this can be reinforced through the programmes of work and meeting agendas. If national reporting is included in the cyber PoA as proposed, then enabling space on the agenda for exchange and examination of national reports could be encouraged.

IN FOCUS: A GENDER-SENSITIVE CYBER POA

The gender dimensions of international cyber security are last being better explored, addressed, and prioritised. For years much of the evidence base about the intersection of these topics has come from the human rights community, such as in relation to interpersonal online gender-based violence (GBV) and gender inequality within the ICT sector, which is often siloed from topics of “international security”. Recently this is changing however, including through a series of research and policy efforts to understand and respond to the gender-based concerns posed by state behaviour in cyberspace and the misuse of ICTs. This became particularly evident during the 2019-2021 OEWG.

Therefore it would be both a step backward, and detrimental to the eventual success and impact of the cyber PoA, for it to *not* consider gender in a meaningful way. Below are five recommendations for forging a gender-sensitive cyber PoA:

- *Highlight the significance of preventing and addressing gender-related cyber harms within the problem-framing or objectives portions of the instrument.* A growing body of research supports that malicious cyber operations can have gendered impacts, that, some are even deliberately gendered in nature, and that there is gender inequality in the sector. The cyber PoA can give these issues a prominent place by naming them as among the harms and problems it seeks to address. Doing so would reinforce a human-centric and human rights-based approach. The preamble or political declaration could also recall and reference the Women, Peace and Security (WPS) Agenda, or relevant Human Rights Council resolutions.
- *Mainstream gender throughout the operative parts of the instrument.* In order to encourage states to implement their PoA commitments in a gender-sensitive way, the instrument should be written in a gender-sensitive way that provides guidance on how to do so throughout, rather than siloing gender into its own section or paragraph. For instance, paragraphs calling for action on cyber capacity-building could explicitly call for gender diversity in relevant activities. If the cyber PoA sets out guidance for how to implement each of the norms, then some of these paragraphs can also account for gender (i.e. taking action on recommendations from relevant HRC resolutions, in line with Norm E).
- *Innovate new action to fill gaps.* The cyber PoA could call for continued research in understanding the gendered impact of cyber operations; call on standards setting bodies to conduct gender audits of their policies and practices; call on states to integrate cyber within their national WPS action plans; or include gender-related questions within any reporting practices or templates established by the instrument.
- *Promote gender diversity in cyber PoA meetings, subsidiary meetings, and the negotiation process.* The cyber PoA text could also call for gender equality and diversity within future meetings or subsidiary meetings; sponsorship programmes; or projects that are supported by an eventual funding mechanism.

IN FOCUS: REPORTING AND TRANSPARENCY

Diverse actors have raised the concern that there are no accountability or transparency mechanisms relating to implementation or compliance with existing cyber norms. The creation of a binding instrument like a PoA presents a unique opportunity to close this gap and introduce transparency and accountability for state behaviour in cyberspace.

The current cyber PoA working paper suggests that “States would be encouraged to report on their national implementation efforts (possibly by using tools such as the “National survey of implementation of UNGA resolution 70/237) and conduct gap analyses, to determine their needs and the priority areas for action. Such reports and gap analyses could be conducted on a rotating basis, to avoid overburdening States, which could also consider clustering and aligning their processes to benefit from each other’s experiences and efforts.”

Many instruments have some form of national reporting built into them as a way to foster transparency and accountability, as well as share experience and knowledge. Experience across these forums show that the general trend in reporting rates is either a decline over time or a lack of take-up at the outset, which sets a low bar of expectations. This is often worse when the instrument is not legally binding and reports are voluntary. Reasons given for poor or declining reporting rates across the different disarmament fora that WILPF monitors include reporting fatigue across multiple related forums; lack of capacity; need for, or problems with, a report template or method of submission; and unclear purpose or use of information contained in the reports.

The cyber PoA should take these common challenges into consideration.

Encouraging an analysis or use for reports now could be helpful in offsetting grievances against mere “reporting for reporting’s sake” and enable a true glimpse into national practice and impact of the instrument. However, analysis should go beyond an assessment of capacity challenges alone to general implementation of the instrument and state behaviour in cyber space. Public reporting would also enhance transparency and confidence between states. In this vein, states could also seek to combine a PoA reporting provision with some of the proposals that have surfaced in the OEWG to improve accountability, such as peer review mechanisms.

IV. Conclusions and recommendations

This research paper has provided critical thinking and suggestions in relation to the proposed cyber PoA. It has analysed other existing PoAs for common characteristics that are relevant for the creation of a new instrument and offers more in-depth case studies and background on two such instruments.

The paper also offers an outline of the current state-of-play on the cyber PoA proposal as of late April 2022. This section provides a cursory overview of views and positions from states and non-governmental stakeholders that have been expressed in writing or through conference statements.

Finally, this paper presents seven priority considerations. These are topics that, in the author's view, require attention. They indicate where further clarity, consultation, or decision-making is necessary in order to progress the cyber PoA.

This final section presents overarching recommendations from the author, which draw on the whole of this paper and the research process. These recommendations build on and pull together the suggestions and recommendations already integrated within Section III, in relation to the different priority considerations.

- Review and become familiar with existing PoAs, including to determine if this type of instrument is the right vehicle for achieving the vision and aims that have been articulated and endorsed so far. There could be merit in exploring other mechanisms, including political declarations and an Open-ended Informal Consultative Process.
- Clarify the instrument's purpose and objective, including through consultation and inclusive dialogue. Determine how the new instrument will fit into the broader landscape and in particular, how it will complement and relate to the OEWG II. Bear in the mind questions about impact and added value.
- Engage with relevant parts of the UN Secretariat. The UN Office for Disarmament Affairs is the substantive office that would be most directly implicated and involved in the creation and implementation of a cyber PoA. The UN Office of Legal Affairs can offer guidance on process questions, as well ensure that the content of any resolutions or documentation is sound.
- Create a draft or working version of the instrument, even a partial one. This can be useful for demonstrating what a cyber PoA might include and how it would be organised. The process of creating a working version would also be useful in determining if and how agreed language from the *aquis* or framework can be incorporated into a cyber PoA.

- Develop a timeline to highlight key moments and milestones that are necessary for making progress. This could include everything from obtaining a mandate from the UNGA to create the instrument, to identifying other relevant conferences that are opportunities for consultation or to promote the PoA. While the timeline need not be a lengthy one given the existing amount of material and thinking that has gone into this general area over the years, there is nonetheless a need for a consultative phase within the process.
- Be consultative and inclusive. This is imperative for any new instrument to have legitimacy, credibility, and effectiveness. Current co-sponsors should create opportunities to hear views from the full UN membership on all aspects of the new instrument. This could take place through focused consultations (online or in-person); side meetings at existing relevant forums; inviting written submissions; or regional meetings, among others.
- Engage meaningfully with civil society. Their inclusion during the negotiation process lends legitimacy and can shape an instrument that will reflect lived realities and real threats. Moreover, given the nature of the cyber security field and ownership of key infrastructure and services, many different stakeholders will have an important role to play in implementing a cyber PoA.
- Be ambitious. The prospect of any instrument's evolution is slim, and whatever loopholes exist when it is adopted are likely to remain. Rarely are instruments themselves updated, even if documents stemming from their future meetings reflect progress in thinking or technological change. Proponents of a cyber PoA should bear this in mind and seek to be as ambitious as possible at the outset towards creating a strong and effective agreement with an eye to future flexibility.
- Account for accountability. A cyber PoA could go a long way in filling the current accountability gap between the existing norms and actual practice by solidifying commitments and introducing reporting or review mechanisms. It will be crucial to incentivise reporting practices by making use of the information they contain or offering opportunities to discuss them, such as in mandated meetings.

Annex I: Current views and positions on the cyber PoA

As noted earlier, government positions on the cyber PoA proposal are evolving. This has not only meant the addition of more co-sponsors, but also that, when states refer to the PoA in statements or written materials, there is more detail in the ideas and thinking presented.

Below is a brief overview of statements expressed during either the December 2021 or March 2022 sessions of the OEWG II, organised somewhat thematically rather than chronologically or by session.²⁹ This overview is non-exhaustive, and positions can always develop or shift after this. This annex has been included to give an indication of some of the major lines of debate and thinking on the proposed cyber PoA as of April 2022, which has also informed the content of Section III of this paper.

Most of the current PoA co-sponsors have consistently made positive reference to the cyber PoA proposal during statements delivered under diverse topics that the OEWGs cover. This has most frequently included the European Union (EU), Argentina, Australia, Austria, Canada, Colombia, Chile, El Salvador, Egypt, Estonia, France, Japan, Netherlands, Singapore, Switzerland, Singapore, and the United Kingdom (UK), amongst others. Some of these have highlighted the urgency of moving forward quickly.

Some of these delegations offered detailed suggestions about the role they see a cybe PoA playing. France said the PoA would enable follow-up on the implementation of norms and be a permanent platform to support capacity building. It said the PoA should also be dynamic and allow for discussions on new challenges and the potential adoption of new norms, and allow states to establish a dialogue and structured cooperation with stakeholders. Egypt has suggested the PoA should be guided by other UN disarmament processes in establishing its meeting periodicity. It suggested the PoA could convene regular meetings every two years and a review conference every six years and consider establishing technical working groups to support intersessional work.

Some delegations also expressed views on how the PoA and the OEWG II might relate to one another. Switzerland suggested the PoA could be understood as an implementation track, whereas the OEWG II could be a forum for discussion and exchange. Canada suggested that the OEWG II could continue

²⁹ Sources include: *Cyber Peace & Security Monitor*, Vol. 2, No. 3, Women's International League for Peace and Freedom, 21 December 2021; *Cyber Peace & Security Monitor*, Vol.2, No. 5, Women's International League for Peace and Freedom, 5 April 2022; "Session reports: UN OEWG 2021-2025 2nd substantive session," Geneva Internet Platform, 2022.

to work on the *acquis* but the PoA would focus on implementation. Japan said it believes that that the PoA can complement the work of the OEWG as a forum to implement OEWG ideas. The EU has suggested the OEWG II could facilitate dedicated and timely exchanges on the PoA, while also ensuring the OEWG II is briefed on the state of play of the PoA. South Africa stressed the importance of unity and cohesion between the cyber PoA and the OEWG II, a point echoed by Sri Lanka.

Ecuador has said that states could benefit from an ongoing platform of implementation, such as the proposal for a PoA. Chile has noted that the main aim of the cyber PoA would be to facilitate the implementation of a consensus framework for the responsible behaviour of states in the use of ICTs. It sees the PoA as supporting capacity building based on the state's own needs assessment.

The EU and Canada have said they would like to take forward norms implementation through the proposed cyber PoA. Egypt said the PoA might help the OEWG to monitor and facilitate implementation of agreed norms through voluntary national reporting mechanism. Japan stated that the main objective of the PoA will be to facilitate implementation of the consensus framework for responsible state behaviour. Switzerland thinks the PoA could play a useful role in capacity-building for norms implementation.

At the March 2022 OEWG session, Egypt, Switzerland, Australia, and Singapore recommended that the OEWG's annual progress report include a recommendation to include a cyber PoA.

A few delegations have expressed interest in a PoA, while also spotlighting concerns or desire for more information. South Africa has described the PoA proposal as a welcome contribution to OEWG II deliberations. It said it looks forward to gaining greater clarity on the modalities of this proposal, including how the PoA would function and where it would be situated within the UN system. Israel has expressed interest in the proposal in past but also stated that it's premature for it to adopt a position without clearer modalities.

Thailand has shared that the OEWG should remain the cornerstone for dialogue and cooperation on use of ICT by states; however, it would welcome further dialogue on the cyber PoA proposal, including specific details such as on organisational matters. Thailand said it would be interested to see how the PoA, or another mechanism, can translate the UN norms into practice at the global level, and how the PoA can assist states, especially developing ones, in effectively adhering to such norms.

Finally, some other delegations have expressed that they do not support creating a cyber PoA. Cuba has been critical of the PoA proposal or approaches that possibly invalidate the OEWG II. It has observed that the concept note doesn't mention preparatory meetings for content development, as is standard for such UN initiatives. Cuba said it felt that any initiative must be the recommendation of this OEWG and based on broad discussion and consensus.

Russia said that the OEWG II should remain the only mechanism for dealing with ICT and cybersecurity issues, whether in its current form or through its transformation into a permanent mechanism. Iran feels that the UNPoA on SALW is a poor model with inherently challenging procedures and has failed in its objectives. It urged a legal instrument in place of a politically binding one. China has voiced support for the PoA during discussions but would see it as eventually facilitating the creation of a legally binding instrument.

Some of the non-governmental stakeholders following the UN cyber processes have also expressed views about the PoA proposal.

There have been some articles and blog posts published from academics and policy experts about the cyber PoA that provide critical thinking and offer suggestions for immediate next steps.³⁰

ICT4Peace has long advocated for the establishment of a permanent forum on international cyber security issues within the UN including to improve accountability. From that perspective, it has through statements and written submissions indicated that it sees value in the proposed PoA—and would encourage moving forward more swiftly—while also reinforcing the importance of capacity-building as a necessary component of a future instrument.³¹

The Women's International League for Peace and Freedom has expressed similar views, stating that a politically binding instrument could be an umbrella for bringing together diverse normative frameworks and take into account existing regional frameworks and cooperation, while also facilitating practical actions including capacity building.³² WILPF has urged that any future instrument also

³⁰ Aude Géry and François Delerue, "A New UN Path to Cyber Stability," 6 October 2020, <https://directionsblog.eu/a-new-un-path-to-cyber-stability/>; and Valentin Weber, "How to Strengthen the Program of Action for Advancing Responsible State Behavior in Cyberspace", Just Security, 10 February 2022.

³¹ "Submission by ICT4Peace to the Open-Ended Working Group (OEWG) on security of and in the use of information and communications technologies 2021-2025," ICT4Peace, January 2022, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/other/icts/oewg-II/documents/submission-ict4peace.pdf> and "Statement by Ms. Anne-Marie Buzatu, Vice-President and COO, ICT4Peace Foundation," 27 September 2021, <https://ict4peace.org/wp-content/uploads/2021/09/ICT4PSpeechSept292021Moscow-.pdf>.

³² "Submission to the first substantive session of the UN Open-ended Working Group on security of and in the use of information and

meaningfully address and curb aggressive cyber behaviour, foster cyber peace, and take gender into account.

The CyberPeace Institute sees the value of a PoA in providing a long-term vision and strategy that can support the UN processes.³³ It can offer the coordination among states and act as an implementation mechanism that is needed to sustainably implement the OEWG and GGE norms and recommendations and be a place for exchange on best practices and lessons learned. It is concerned about fragmentation within the diplomatic community however and potential negative impact of dual processes. The CyberPeace Institute has also indicated that it sees the cyber PoA as having potential to be truly inclusive of the multistakeholder community, but that the views and inputs of stakeholders needs to be accounted for from the start.

In 2021, the Cybersecurity Tech Accord published a statement containing recommendations for the how the proposed cyber PoA might implement, uphold, and set expectations for responsible behaviour online, and also contain a structure for “necessarily inclusive dialogue”.³⁴ The recommendations touch on monitoring implementation of existing norms while also developing new ones, and building capacity.

Some of these recommendations, such as on the potential for new norms and driving capacity-building, are also echoed in a lengthy policy document prepared by Microsoft about the cyber PoA.³⁵ Their paper additionally suggests the PoA could drive greater understanding of understanding how international law applies to cyberspace and limit the use of private sector offensive actors, alongside practical steps such as establishing regional liaisons and a database of national contact points. The Microsoft paper offers additional detailed suggestions for fleshing out some of the ideas included in the co-sponsors’ working paper such as in relation to meeting periodicity, agendas, timing of establishment, and stakeholder engagement.

communications technologies (2021-2025),” WILPF, December 2021, https://reachingcriticalwill.org/images/documents/Disarmament-fora/other/icts/oewg-ll/documents/WILPF_OEWG_December2021.pdf.

³³ Taken from email exchange with the author, March and April 2022.

³⁴ “A Statement on the Programme of Action: A standing UN body to uphold international expectations is the best hope for stability in cyberspace,” Cybersecurity Tech Accord, 18 October 2021, <https://cybertechaccord.org/a-statement-on-the-programme-of-action-a-standing-un-body-to-uphold-international-expectations-is-the-best-hope-for-stability-in-cyberspace/>.

³⁵ *Programme of Action for advancing responsible state behavior in cyberspace*, Microsoft, 2022. See also “Microsoft’s submission for the second substantive session of the Open-Ended Working Group on security of and in the use of information and communications technologies,” Microsoft, March 2022, <https://documents.unoda.org/wp-content/uploads/2022/04/Second-Microsoft-Submission-to-the-OEWG-Chair-March-2022.pdf>.

Annex II: PoA Case studies

United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UNPoA)

How was it established?

The UNPoA on small arms and light weapons (SALW) did not emerge overnight. It grew out of years of joint civil society and governmental advocacy and awareness-raising to put the issue on the UN's agenda, premised on a tragically ever-growing evidence-base detailing the negative real-world consequences and harms caused by unchecked small arms proliferation in diverse countries around the globe.¹

The official timeline includes a series of movements within the UN setting, beginning with the establishment of a UN Panel of Governmental Experts on Small Arms by the UNGA.²

Based on inputs received during regional workshops as well as its own sessions, the Panel produced two reports, in 1997³ and 1999,⁴ for the UNSG. The reports outlined the scale and scope of the problem, as well as summarised relevant UN initiatives to address small arms such as UN Security Council decisions pertaining to specific conflicts in which small arms were a factor, or the pending negotiation of the Firearms Protocol as supplement of the UN Convention against Transnational Organized Crime. The reports also surveyed national and regional measures, including if and how the recommendations of the 1997 report were being addressed.

The 1999 report acknowledged that the UNGA had, in 1998, adopted a resolution calling for the UN “to convene an international conference on the illicit arms trade in all its aspects no later than 2001.”⁵ That conference took place in July 2001 and its primary purpose “was to consolidate and coordinate small arms initiatives and develop an action agenda.”⁶

While the conference was contentious, states were able to reach agreement on multiple points, which together formed the instrument that was adopted at the end of the conference as part of the final conference report. This was done without a vote. It is important to note that agreement was facilitated by the convening of three preparatory committees (PrepComs) in advance of the final conference. In

addition, earlier regional initiatives and commitments on small arms had already developed standards and norms to use as a basis for the development of the UNPoA.

What does it include?

The UNPoA on SALW has four sections.⁷ The preamble situates the instrument in a context of other relevant instruments, UN resolutions, and decisions. Importantly, it also outlines the humanitarian concerns and objectives that underpin the agreement, and the resolution of those adopting the instrument to “prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects.” This includes in relation to poverty, conflict, socioeconomic development, negative impacts on women, human dignity, and child rights, amongst others.⁸

Section II, “Preventing, combating and eradicating the illicit trade in small arms and light weapons in all its aspects,” is the substantive heart of the instrument. This section outlines the specific actions that states agree to undertake in order to meet the objectives set out in the preamble. These actions are detailed in 40 paragraphs that are organised at national, regional, and global levels and include activities that cover, for example, collecting and destroying illegal weapons; strengthening import and export controls; and improving the security and safety of weapons storage facilities. The sub-section on global actions makes references to the submission of voluntary national reports on UNPoA implementation.

Section III, “Implementation, international cooperation and assistance,” recognises that to address the illicit trade in SALW, states cannot work in isolation—although they do bear primary responsibility for meeting their UNPoA commitments. This section includes actions that states should, or would be encouraged to, undertake to foster cooperation among each other and with other relevant stakeholders such as regional organisations and civil society.

Section IV outlines measures that are a follow-up to the 2001 conference where the UNPoA was adopted. This includes having a first review conference and biennial meetings of states, as well as requesting a UN study and encouraging cooperation and resource mobilisation to support implementation of the instrument.

Implementation and impact

The UNPoA on small arms is often criticised for not being well-implemented at the national level, while a disproportionate amount of attention and resourcing are given to its biennial meetings and review

conferences. However, to say it has had no impact would be misleading: it has led to the creation of the national SALW commissions; to the adoption of relevant legislation and law-making; it has been a steppingstone to create other instruments; it has facilitated the establishment of various UN entities, coordinating mechanisms, and resource opportunities; it has fostered cooperation on many levels; and it continues to be the only universal framework for international cooperation around SALW control.

The UNPoA meetings, however, including its biennial meetings of states (BMSs) and its review conferences (held every six years), have become notoriously politicised. As such, the challenges that exist within the diplomatic process—as distinct from the instrument’s technical implementation—tend to obscure and distract from a fair evaluation of its impact. Overtime, the emphasis has fallen more to reviewing and adopting conference reports and documents than any true assessment of the instrument itself.

The meetings are not used as a space to exchange on implementation efforts or address challenges; rather the focus is on the negotiation of an outcome document, a process that often begins months before the BMS is convened. Many of the same divisions that existed during the 2001 negotiations have lingered and frequently dominate subsequent UNPoA meetings, thereby limiting what can be discussed and decided. Some also feel that some UNPoA meetings or documents have chosen to explore thematic topics that are not seen as core to its success.

Efforts to update the instrument to reflect current realities in small arms control are often challenged on a political basis. However, other agreements and processes have come into existence that seek to fill gaps in the small arms UNPoA or address new dimensions of the issue. This includes the International Tracing Instrument (2005); the Geneva Declaration on Armed Violence (2006); the Arms Trade Treaty (2013); the Group of Governmental Experts on surplus ammunition stockpiles (2020); and numerous technical standards and guidelines.

The UNPoA’s first two BMSs, as well as its first review conference, failed to produce agreement on any substantive outcomes because of an inability to reach consensus. This spurred a decision to convene more focused and less political “meetings of governmental experts” in 2011 and 2015. In 2018, the final day of the UNPoA’s Third Review Conference lasted a marathon 18 hours because of deep-rooted substantive differences of position as well as procedural delaying tactics and manoeuvring on the part of certain member states.⁹

The small arms UNPoA requests UN member states to voluntarily report on implementation. This commitment is further reiterated in the annual UNGA First Committee resolution on the illicit trafficking in of small arms.¹⁰ Small arms UNPoA reports are submitted by the designated National Focal Point on small arms for each country—one of the action points contained in the UNPoA is the establishment of national focal points and of a national coordination body.

Over time, reporting rates have been inconsistent and various steps have been taken to improve these rates and the quality of information being provided.¹¹ Most analysis of the content of the reports has been done through civil society initiatives, sometimes jointly with the UN Institute for Disarmament Research, while UNODA maintains a website with all reports and some analysis.¹²

International cooperation and assistance

The UNPoA enjoys wide support from several institutions, including the UN regional centres on disarmament; the UNODA and a related coordination mechanism; various national and regional commissions on small arms; and has dedicated funding mechanisms.

The UN Coordinating Action on Small Arms (UN CASA) is the UN-internal coordination mechanism on small arms, the arms trade, and ammunition, comprised of 23 UN entities.

The funding mechanisms include the UN Trust Facility Supporting Cooperation on Arms Regulation (UNSCAR),¹³ which was established in 2013 when the Arms Trade Treaty was adopted. In 2019, the “Saving Lives Entity” (SALIENT) was established within the United Nations Peacebuilding Fund as a comprehensive, cross-sectional, and multi-year approach to addressing the challenge of illicit small arms and armed violence in most-affected countries.¹⁴

Role of non-governmental actors

In the years leading up to the adoption of the UNPoA, civil society played a central role in putting the issues of SALW proliferation on the UN agenda through sustained advocacy and research. Much of this focused on the human cost of SALW proliferation, but some groups focused on technical aspects of small arms control. “By the start of the UN Small Arms Conference process in early 2000, it was clear to all involved that civil society could not be ignored. Its members had been conducting extensive research for several years, and as a result had produced a wide body of knowledge on the causes and consequences of the proliferation and misuse of small arms, as well as extensive policy recommendations on how to solve the problems associated with these weapons.”¹⁵

Much of this was coordinated through a single international civil society alliance, the International Action Network on Small Arms (IANSA). That said, pro-gun groups and shooting associations have also participated in many UN small arms meetings, often presenting opposing views to the rest of civil society. Civil society was active throughout the intergovernmental process leading to the instrument's adoption. Some organisations were invited to make presentations and dialogue with states at the various experts panel meetings.¹⁶ During the three conference PrepComs and the final negotiating session in July 2001, civil society provided presentations, briefings, and publication displays immediately outside the venues for these meetings at the UN. The presentations and access to the formal meetings was tempered, however, by the UNGA rules of procedure.¹⁷

The text of the UNPoA refers to civil society in several places, either recognising their contributions to relevant work or encouraging collaboration with them.¹⁸ As such, in the years following the UNPoA's adoption, civil society has taken an active role in working with governments and other stakeholders to aid in implementing the UNPoA at national and regional levels. A report published by the UNIDIR and the Small Arms Survey in 2010 takes stock of national implementation activities in the first ten years of the UNPoA's existence and cites many practical examples of civil society participation and collaboration with governments.¹⁹

World Programme of Action Concerning Disabled Persons (WPA)

How was it established?

The World Programme of Action concerning Disabled Persons was adopted in 1982, however, the issue of the rights of persons with disabilities had been on the agenda of various organs of the United Nations for many years before steps were taken to draft a politically binding instrument.

Among other actions, the UNGA created an Advisory Committee for the International Year of Disabled Persons (IYDP) in 1977 through the adoption of resolution 32/133, which was first presented in the UNGA Third Committee.²⁰ The resolution also designated that 1981 would be the "International Year for Disabled Persons".

The Advisory Committee met over a period of four years and initiated a process to develop the text of what became the PoA. While the Committee itself had only fifteen members, it ran an inclusive process of consultations that included, among other activities, the convening of a World Symposium of Experts

(which generated its own Affirmative Action Plan), liaising with National Committees on IYDP, and receiving input from member states and relevant stakeholders through both through meetings and written inputs.²¹ At the end of 1981, the draft WPA had been formally circulated for comments to member states, IYDP National Committees, non-governmental and intergovernmental organizations, specialised agencies and bodies of the UN system, and regional commissions.²² On the basis of comments received, a revised draft PoA was prepared for the Fourth Session of the Advisory Committee held in 1982. The report of the session describes the draft WPA as “not only a declaration of principles but also a blueprint for action. It reflected a genuine concerted effort of the international community.”²³

On the basis of comments received at the fourth session, the Advisory Committee finalised the text of the PoA. The instrument was attached to the Committee’s final report to the UN Secretary-General. Later that year, UNGA resolution 37/52 (“World Programme of Action Concerning Disabled Persons”) was tabled. The resolution annexed the final and endorsed WPA, and the text of the resolution called for the adoption of the WPA by member states (OP1); encouraged all member states as well as relevant non-governmental organisations and UN agencies to ensure early implementation of the WPA (OP2); and decided to evaluate implementation at the UNGA’s forty-second session (OP3).²⁴

What does it include?

The WPA is organised into three major sections, described below.²⁵

The section on **Objectives, Background, and Concepts** clearly delineates the instrument’s overriding objective and provides relevant context and technical information. Since the purpose of the WPA “is to promote effective measures for prevention of disability, rehabilitation and the realization of the goals of ‘full participation’ of disabled persons in social life and development, and of equality,” this section also explains in greater detail how the key concepts of prevention, rehabilitation, and equalisation of opportunities are understood. There is also a subsection on “concepts adopted within the UN system,” which helpfully outlines relevant decisions, activities, and recommendations from any and all relevant UN organs or agencies.

A second section outlines the **Current situation** with respect to disability and disability rights. This is organised in line with the instrument’s overall focus on prevention, participation, and equalisation of rights.

After laying this groundwork, the third section (**Proposals for implementation**) contains the “action-oriented” heart of the instrument. It suggests diverse actions for member states to implement in order to achieve the instrument’s objectives. Paragraphs 86–154 set out national actions for member states to take, and paragraphs 155–183 describe international actions, the latter of which include paragraphs relating to economic cooperation and assistance. Each of these two “levels” (national and international) are divided into thematic sub-sections. The majority of these paragraphs describe state action and behaviour (i.e. “Member states should...”) but others make reference to local governments and authorities, as well as other actors including educators, community workers, healthcare providers, UN human rights entities, other UN agencies, and more general civil society organisations.

Finally, there are brief sections about **Research** and **Monitoring and evaluation**. The research section is somewhat novel in a PoA. It outlines various areas where further research would be useful and encourages member states or other actors to support such research. The monitoring and evaluation section is surprisingly vague and while it stresses the importance of assessing progress, the parameters are not clear and mainly the paragraphs just encourage the UN system, regional commissions, and member states to determine monitoring and evaluation mechanisms and state that the UNSG should report efforts of the UN to hire more persons with disabilities and improve access. However, the final paragraph identifies the potential need to revise the WPA on a five-year basis.

The WPA itself was not revised, but rather it became the basis for the elaboration of other and more focused instruments. At the first five-year review held in 1987 it was suggested that guidance was needed to determine priorities for action in the years ahead.

The Meeting recommended that the UNGA convene a special conference to draft an international convention on the elimination of all forms of discrimination against persons with disabilities. A draft outline of the convention was prepared by Italy and presented to the UNGA at its forty-second session. Further presentations concerning a draft convention were made by Sweden at the forty-fourth session of the Assembly. However, on both occasions, no consensus could be reached on the suitability of such a convention.

Instead, the Economic and Social Council agreed to create an ad-hoc opening-ended working group of governmental experts to elaborate “standard rules on the equalization of opportunities” and to work in collaboration with the specialised agencies, other intergovernmental bodies, and non-governmental organisations, especially organisations of disabled persons.

Implementation and impact

The WPA is regarded as having launched a new era in global efforts to address disability rights by creating a first-ever global strategy to enhance disability prevention, rehabilitation, and equalisation of opportunities. Importantly, the WPA emphasises the need to approach disability from a human rights perspective and reflects, both in its content as well as in its negotiation process, a multisectoral and multidisciplinary approach to addressing disability.

As noted above, its adoption helped to set the stage for further developments in the area of disability rights, including the establishment of the Standard Rules and later, in 2008, the Convention on the Rights of Persons with Disabilities. The rules “serve as an instrument for policy-making and as a basis for technical and economic cooperation.”²⁶

It has been difficult to obtain a clear understanding of how well-implemented and impactful the WPA has been. That its first five-year review generated a recommendation for guidance on how to prioritise implementation suggests that implementation was challenging, or lacking, or that the WPA was too far-ranging. The UNSG has issued regular reports on the WPA.

Cooperation and assistance

The UNGA established a fund on disability to support preparations for the International Year. This was later renamed the Voluntary Fund for the United Nations Decade of Disabled Persons (1983–1992). Its resources were intended to support “catalytic and innovative action” to implement further the WPA.²⁷ Its mandate was extended and expanded following the end of the UN Decade on Disabled Persons, and when the UN Convention on the Rights of Persons with Disabilities was established in 2008 the Fund also became the primary support mechanism for Convention implementation, while continuing to support the WPA and relevant activities of the UN Special Rapporteur for Disability.

Role of non-governmental actors

The text of the WPA is explicit about the necessity of non-governmental actors working alongside states in order to achieve the instrument’s goals. For example, paragraph 155 in the “General Aspects” subsection on international action, recognises that the WPA “constitutes an international long-term plan based on extensive consultations with Governments, organs and bodies within the United Nations system and intergovernmental and non-governmental organizations, including organizations of and for disabled persons” and encourages continued close cooperation at every level. Paragraph 160 encourages international non-governmental organizations to “join in the co-operative effort to

accomplish the objectives of the World Programme of Action. Existing relationships between such organizations and the United Nations system should be used for this purpose.” There are also references throughout the document about state engagement with particular actors within civil society (i.e. health care, education) in order to fulfil actions set out in the WPA.

¹ Lora Lumpe, “Curbing the Proliferation of Small Arms and Light Weapons,” *Security Dialogue* 30, no. 2, June 1999, pp. 151–64, <http://nisat.prio.org/Publications/Curbing-theProliferation-of-Small-Arms-and-Light-Weapons/>.

² UN General Assembly, Resolutions Adopted By The General Assembly on the report of the First Committee, 15 January 1996, A/Res/50/70, <https://undocs.org/A/RES/50/70>.

³ Panel of Governmental Experts on Small Arms, Report, A/52/298, August 1997, <https://www.un-ilibrary.org/content/books/9789210584913c001/read>.

⁴ Panel of Governmental Experts on Small Arms, Report, A/54/258, August 1999, <https://www.un-ilibrary.org/content/books/9789210584913c002/read>.

⁵ UN General Assembly, Resolutions Adopted By The General Assembly on the report of the First Committee, 12 January 1999, A/RES/53/77, <http://www.poa-iss.org/CASAUpload/ELibrary/A-RES-53-77-E.pdf>.

⁶ Matt Schroeder and Rachel Stohl, “Small Arms, Large Problem: The International Threat of Small Arms Proliferation and Misuse,” *Arms Control Today*, June 2006, <https://www.armscontrol.org/act/2006-06/features/small-arms-largeproblem-international-threat-small-arms-proliferation-misuse>.

⁷ The text of the Programme of Action is included within the Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (A/ CONF.192/15). Annexed to the report, after the instrument, is a list of the “Initiatives undertaken at the regional and subregional levels to address the illicit trade in small arms and light weapons” as well as a statement from the president of the Conference, in which he congratulates state on their achievement but also expresses certain disappointments.

⁸ UN PoA, Section II, para 33.

⁹ Allison Pytlak, “Inside the theatre of the absurd—the final day of RevCon3”, *Small Arms Monitor* Vol. 10, no. 6, 3 July 2018, <https://reachingcriticalwill.org/disarmament-fora/salw/2018-rev-con/small-arms-monitor/12669-small-armsmonitor-vol-10-no-6>.

¹⁰ Jim McLay, 2012 and Beyond: Advocacy and Action in the UN Small Arms Process, *Small Arms Survey*, August 2012, p.3, <http://www.smallarmssurvey.org/fileadmin/docs/G-Issuebriefs/SAS-BP2-2012-and-beyond.pdf>.

¹¹ The outcome document of BMS3 in 2008 called for a biennial reporting cycle to reduce the reporting burden. Although a reporting template was not attached to the UNPoA in 2001, guidance was subsequently developed to assist states, and different templates have subsequently been prepared by the UN Office of Disarmament Affairs. For more, see Paul Holtom and Moshe Ben Hamo Yeger, Implementing the Programme Of Action and International Tracing Instrument: An Assessment of National Reports, 2012–17, *Small Arms Survey*, June 2018, <http://www.smallarmssurvey.org/fileadmin/docs/U-Reports/SAS-Report-PoA-ITI-2012-17.pdf>

¹² See: <https://www.un.org/disarmament/ict-security/>.

¹³ UNSCAR Fact Sheet, 2018, <https://front.un-arm.org/wp-content/uploads/2018/07/UNSCAR-Fact-Sheet-July2018.pdf>.

¹⁴ “New ‘Saving Lives Entity’ to Make Difference in Curbing Armed Violence, Rampant Proliferation of Small Arms”, 24 October 2019, <https://www.un.org/press/en/2019/dc3814.doc.htm>.

¹⁵ Laurance and Stohl, p.18.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, A/CONF.192/15, Preamble para.16; Section II, paras. 20, 40; Section III paras 2, 18; Section IV para 2(c).

¹⁹ Sarah Parker and Katherine Green, A Decade of Implementing the United Nations Programme of Action on Small Arms and Light Weapons, *Small Arms Survey* and UNIDIR, 2012, <https://www.unidir.org/files/publications/pdfs/a-decade-of-implementing-the-unpoa-analysis-of-nationalreports-en-301.pdf>.

²⁰ UN General Assembly, “International Year for Disabled Persons”, A/RES/32/133, 16 December 1977.

²¹ Report of the Advisory Committee on the International Year of Disabled Session on its Fourth Session, A/37/35L/Add.1, July 1982, paras. 14-24.

²² *Ibid.*, para 25.

²³ *Ibid.*, para 27.

²⁴ UN General Assembly, “World Programme of Action Concerning Disabled Persons”, A/RES/37/52, 3 December 1982.

²⁵ The full text can be found as an Annex to the Advisory Committee’s fourth report but is also available on this website: <http://www.un-documents.net/wpacdp.htm#l>.

²⁶ “The Standard Rules on the Equalization of Opportunities for Persons with Disabilities,” UN Enable, <https://www.un.org/esa/socdev/enable/dissre00.htm>.

²⁷ United Nations Voluntary Fund on Disability, <https://www.un.org/development/desa/disabilities/about-us/united-nations-voluntary-fund-on-disability.html>.