Mexico and the U.N. Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons*

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Just as the diagnosis made by United Nations Organization (UN) Secretary-General António Guterres in his disarmament agenda states,[1] we are living in dangerous times and the world could well be on the brink of another Cold War, except this one is brewing within a broken international system whose norms and institutions have lost their effectiveness.

In this dangerous global scenario, non-government actors have emerged as decision-makers, and conflicts last longer and are more lethal for civilians. There are several different types of violent groups–insurgents, extremists, terrorists, criminal organizations, militias (professional and spontaneous), self-defense organizations and combinations thereof–, but many of today's battles blur the conceptual lines between organized crime, terrorism and international armed conflicts.

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1 António Guterres, *Securing our Common Future: An Agenda for Disarmament*, New York, United Nations Office for Disarmament Affairs (UNODA)-UN, 2018, pp. 15 & ss., available at *https://s3.amazonaws.com/unoda-web/wp-content/uploads/2018/06/sg-disarmament-agenda-pubs-page.pdf* (date of access: March 10, 2020).

The United Nations estimates that there are approximately one billion small caliber weapons circulating in the world and that are responsible for almost half of all violent deaths recorded between 2010 and 2015 (200 000 deaths a year).[2] According to Small Arms Survey,[3] some 535 000 people die every year as a result of armed violence, and three quarters of these deaths take place in societies that are not at war. Even more worrisome, is the upward trend shown by this phenomenon.

It should be remembered how the issue of small weapons has historically been dealt with at the United Nations Organization in New York.[4] The purpose of this essay is to analyze some of these debates, how they have been interpreted and Mexico's participation in them.

Even though conventional weapons, including small caliber ones, have been responsible for the majority of battle-related deaths since 1945, they

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2 Izumi Nakamitsu, "Briefing to the Meeting of the Security Council on Small Arms and Light Weapons", New York, February 5, 2020, p. 2, available at *https://unoda-web.s3.amazonaws.com/wp-content/uploads/2020/02/oda-high-rep-delivers-remarks-at-security-council-on-salw.pdf* (date of access: March 10, 2020).

3 "Armed Violence", in Small Arms Survey, at *http://www.smallarmssurvey.org/armed-violence.html* (date of access: March 10, 2020).

4 There is no authoritative definition of small arms and light weapons, but the U.N. classes "small" conventional weapons as those intended for personal use (revolvers and automatic pistols, rifles, machine guns, assault rifles and light machine guns) and that can be employed by an individual, while "light" weapons are categorized as conventional weapons designed to be used by a group of people (heavy machine guns, certain types of grenade launchers, antiaircraft guns and portable antitank guns, and man-portable air-defense systems, among others). Conventional weapons differ from weapons of mass destruction (nuclear, biological and chemical weapons) in that they have the capacity for indiscriminate devastation and can take numerous human lives in one single event, reason why they are contrary to international humanitarian law and are banned by specific agreements. Likewise, certain conventional weapons are expressly banned in treaties precisely because of their indiscriminate effects (booby traps, blinding lasers, weapons that injure by fragments that are not detectable by X-ray, antipersonnel land mines and cluster ammunition). For further details on these definitions, we recommend you consult the website of the Small Arms Survey project, particularly UNODA, "Fact Sheet Transparency: United Nations Register of Conventional Arms", January 2020, at *https://unoda-web.s3.amazonaws.com/wp-content/uploads/2020/01/Transparency-UN-Register-Fact-Sheet-Jan2020.pdf* (date of access: March 10, 2020).

did not appear on the U.N. agenda until the 1990s,[5] for the following reasons, among others:[6]

1. The United Nations emerged from the ashes of a devastating war that culminated in the deployment of nuclear weapons. At the time, the priority of its member states was to avoid a new flare-up between the powers (now permanent members of the Security Council) and prevent the proliferation of weapons of mass destruction.
2. International relations were deemed processes in which the State was the main target of security and military threats the main danger to national security.[7] Conventional weapons were not, therefore, considered a problem that merited the attention of the international community and although the possession of conventional and light weapons by a State was legitimate for national defense purposes, this was not perceived as a security threat.
3. The end of the Cold War brought new international wars in its wake and the world witnessed the reemergence of latent conflicts and others of an internecine nature. Many of these conflicts were fueled by the ready availability of weapons from Western Europe and member countries of the now dissolved Warsaw Pact, which had reduced their arsenals, and black market surpluses.[8] Consequently, the weapons

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5 It should, however, be remembered that, after World War I, the victors imposed tight restrictions on the possession of conventional weapons by the vanquished in the 1919 Treaty of Versailles, and the League of Nations conducted negotiations on the reduction of national weapons stockpiles and transparency in their transfer. See Steve Tulliu and Thomas Schmalberger, *Coming to Terms with Security: A Lexicon for Arms Control, Disarmament and Confidence-Building*, Geneva, United Nationals Institute for Disarmament Research-UN 2003, available at *https://www.unidir.org/files/publications/pdfs/coming-to-terms-with-security-a-lexicon-for-arms-control-disarmament-and-confidence-building-en-547.pdf* (date of access: March 10, 2020).

6 See Denise García, *Disarmament Diplomacy and Human Security. Regimes, Norms and Moral Progress in International Relations*, London, Routledge, 2011.

7 See Edward Mogire, "The Humanitarian Impact of Small Arms and Light Weapons and the Threat to Security", speech given at the XV Amaldi Conference on Problems of Global Security: "Changing Threats to Global Security: Peace or Turmoil", Helsinki, September 27, 2003, p. 4, available at *http://villafarnesina.it/rapporti/amaldi/papers/XV-Mogire.pdf* (date of access: March 10, 2020).

8 D. García, *op. cit.*

> presently circulating in the world were acquired both legally, via transfers between States, and illegally, by means of a chain of illicit acts—distribution, theft, diversion, pilfering and resale—and sent, generally in small, but regular shipments, via the most permeable borders to zones of crisis or conflict.[9]

It was in this context that the U.N. General Assembly created the Register of Conventional Arms in 1991 to collect data on weapons imports and exports.[10] As useful as the register is, reporting this information is a voluntary exercise, appealing more to a concept of transparency as opposed to control. On average, only 60 States report this information annually, among them the world's main weapons producers.[11]

It was not until 1994 that the issue of small and light weapons was first addressed by U.N. Secretary-General Boutros Ghali.[12] That same year, the General Assembly adopted resolution 49/75 G "Assistance for States for curbing the illicit circulation of small weapons and collecting them" (the first allusion to the subject).[13] The resolution states that the mass circula-

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9 See UNODA, "Armas pequeñas", at *https://www.un.org/disarmament/es/armas-convencionales/armas-pequenas/* (date of access: March 10, 2020).

10 UNODA, "Fact Sheet Transparency...".

11 According to Small Arms Survey, the 15 main manufacturers of conventional weapons, listed in alphabetical order, are: Austria, Belgium, Brazil, Canada, China, Democratic People's Republic of North Korea, Germany, India, Italia, Pakistan, the Russian Federation, Switzerland, Turkey, the United Kingdom and the United States. See "Industrial Production", in Small Arms Survey, at *http://www.smallarmssurvey.org/weapons-and-markets/producers/industrial-production.html* (date of access: March 10, 2020).

12 For an exhaustive study of the early treatment of small and light weapons by the UN, we recommend you consult María Angélica Arce Mora, "Las negociaciones sobre armas pequeñas: una visión histórica", in *Revista Mexicana de Política Exterior,* no. 75, July-October 2005, pp. 87-103, at *https://revistadigital.sre.gob.mx/images/stories/numeros/n75/arce.pdf* (date of access: March 10, 2020).

13 U.N. resolutions on this issue are available at UNODA, "Armas pequeñas", at *https://www.un.org/disarmament/es/armas-convencionales/armas-pequenas/* (date of access: March 10, 2020). For the complete text of resolution 49/75 G, see U.N. Assembly General, "Assistance for States for Curbing the Illicit Circulation of Small Weapons and Collecting Them", A/RES/49/75, December 15, 1994, pp. 12-13, at *https://undocs.org/A/res/49/75* (date of access: February 21, 2020).

tion of small weapons constitutes an obstacle to development and a threat to populations and national and regional security.

This multilateral narrative was later enriched by the "Supplement to an Agenda for Peace: position paper of the Secretary-General on the occasion of the 50th anniversary of the United Nations."[14] In his report, the Secretary-General recommended the United Nations concentrate on micro-disarmament, *i.e.* on solving the problem of small weapons. Later, in 2005, Secretary-General Kofi Annan once again brought up the issue in *We the Peoples*, referring to small weapons as "weapons of mass destruction" due to the number of deaths they cause, and calling attention to the lack of a global regime to limit their proliferation. It is not merely a security issue, he said, but one of human rights and development.[15]

It should be noted that the Security Council has held several debates on the problem of trafficking in small weapons[16] and has adopted resolutions,[17] which, while focused mainly on regional conflicts, broadly speaking employ the language and concepts approved by the General Assembly. The issue is also broached in the guidelines of peace operations mandates, but by virtue of its bearing on development, it has remained primarily on the agenda of the General Assembly since the second half of the 1990s.

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14 U.N. General Assembly and Security Council, "Supplement to 'An Agenda for Peace': position paper of the Secretary-General on the occasion of the 50th anniversary of the United Nations", A/50/60 and S/1995/1, January 25, 1995, paragraphs 60-62, available at *https://digitallibrary.un.org/record/168325* (date of access: March 10, 2020).

15 Kofi A. Annan, *We the Peoples. The Role of the United Nations in the 21st Century*, New York, United Nations, 2000, p. 52, available at *https://www.un.org/en/events/pastevents/pdfs/We_The_Peoples.pdf* (date of access: March 10, 2020).

16 The most recent was at the 8713th Security Council Meeting, see U.N. Security Council, "8713th Security Council Meeting. Report of the Secretary-General on Small Arms and Light Weapons (S/2019/1011)", on U.N. Web TV, February 5, 2020, at *http://webtv.un.org/meetings-events/security-council/watch/small-arms-8713th-security-council-meeting/6129840227001* (date of access: March 10, 2020).

17 U.N. Security Council, "Resolution S/RES/1467", S/RES/1467 (2003), March 18, 2003, focused on the problem in Africa; "Resolution S/RES/2117", S/RES/2117 (2013), September 26, 2013, on the transfer and stockpiling of small weapons, among other issues; and "Resolution S/RES/2220", S/RES/2220 (2015), May 22, 2015, calls for the implementation of arms embargos, support for the Arms Trade Treaty and provisions to strengthen international cooperation.

In 1995, the General Assembly set up an Intergovernmental Group of Experts, which compiled the first report on the types of small and light weapons used in conflicts, the nature of their accumulation and the effects of their excessive transfer. The possibility of holding an international conference on the issue was even considered. A report submitted in 1997[18] refers to prevailing cultural traits in the attitude toward such weapons, which are often considered symbols of status or ethnic identity, or a guarantee of personal safety, and while this in itself does not generate violence, it does show a preference for trying to settle disputes using weapons, especially in societies that lack an effective rule of law.[19]

A second Inter-Governmental Group of Experts laid the foundations for working on a national, regional and international level, with additional actions to combat the trafficking and illicit manufacture of small weapons, including weapons used by drug traffickers and transnational criminal organizations, and address the lack of national controls.[20] It is only fair to point out that many of these issues, by all accounts relevant to the national security agenda, were included thanks to Mexico's active participation in the Group in the person of Ambassador María Angélica Arce Mora.

The Group's report, adopted by the General Assembly in 1999, called the United Nations Conference on Illicit Trade in Small and Light Weapons in All Its Aspects, which took place in 2001. Mexico left its imprint on the Conference from the preparatory process and was instrumental in seeing that the latter was presided over by a representative of an affected country (Mozambique), with Mexico acting as a Vice-president at the Conference itself, which was presided over by Colombia.[21] Here, the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small and Light Weapons in All Its Aspects (PoA) was adopted without the need for a vote to be taken.[22]

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18 M. A. Arce Mora, *op. cit.*, p. 94.

19 U.N. General Assembly, "General and Complete Disarmament: Small Arms", A/52/298, August 27, 1997, at *https://undocs.org/pdf?symbol=en/A/52/298* (date of access: March 10, 2020).

20 M. A. Arce Mora, *op. cit.*, p. 94.

21 *Ibid.*, p. 96.

22 "Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects", New York, July 21, 2001, available at *http://www.weaponslaw.org/assets/downloads/2001_UNPoA_on_SALWpdf* (date of access: February 5, 2020).

The PoA plays a significant role in debate on this issue at the United Nations in that it is the only U.N. document that specifically deals with illicit traffic in small and light weapons. Its signatories are committed to improving national controls, legislation and the regulation of these types of weapons, to keeping proper records on their possession and transfer, and to guaranteeing the enforcement of embargos and the exchange of information. Likewise, under the PoA, manufacturing or possessing illicit weapons is classed as a crime and reference is also made to the identification and destruction of surpluses. The fact that the General Assembly passed it without a vote confers a high degree of legitimacy on the political commitments contained therein, since it is inferred that it was approved by weapons producers, importers, exporters, users and victims.

The PoA has held three five-yearly review conferences, in 2006, 2012 and 2018, four Biennial Meetings of States (BMS) and a meeting of experts in 2011, providing the international community with an institutional forum that did not exist prior to 2001.

Yet its merits aside, the PoA is not a legally binding instrument, lacking as it does verification and enforcement mechanisms. And despite asseverations to the contrary, it is not a forum for debating transfers or trade in weapons between States. Furthermore, due to its outright rejection by weapon-producing States, namely the United States and China, the PoA does not include aspects like regulating the possession of weapons by civilians, the issue of ammunition or transfers to non-government actors.[23]

Even so, some progress has been made in raising greater awareness of the negative impact of these weapons, and the need for more effective national controls and improved international cooperation. In this regard, Mexico's participation in multilateral debate at the UN should not be underrated:

1. In 2003, the General Assembly began negotiating an international instrument on minimum standards for the identification and tracing of illicit small and light weapons under the presidency of Switzerland. Mexico held

[23] Luis Alfonso de Alba Góngora, "Las negociaciones sobre armas pequeñas y ligeras: una visión multidimensional", in *Revista Mexicana de Política Exterior*, no. 75, July-October 2005, pp. 113 and ss., at *https://revistadigital.sre.gob.mx/images/stories/numeros/n75/dealba.pdf* (date of access: March 10, 2020).

the vice-presidency. Negotiations were concluded in 2005 without an instrument that was legally binding, but the precedent was important.

This explains why agreements on the marking, registration and tracing of such weapons, by means of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI), are all voluntary. The majority of Latin American and Caribbean States followed Mexico's lead and abstained from voting, making it clear that these standards were lower than those of the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA), and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.[24] Notwithstanding, the political commitments of the ITI are reviewed together with the PoA and provide a framework for cooperation and negotiation that is of some, albeit limited use.

2. In 2005, the General Assembly convened a new Group of Experts to ensure international cooperation was focused on preventing, combating and eradicating the illicit brokering of small and light weapons. Mexico participated in the Group and it is significant that this particular issue was covered, brokers[25] being a key factor in controlling diversions and an aspect that had not been included previously.
3. In 2010, the fourth BMS[26] was presided over by Mexico, by Ambassador Pablo Macedo Riba, who proposed an ambitious work agenda encompassing issues related to the PoA that had not been debated at sufficient length at the United Nations, specifically the control of cross-border flows

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[24] CIFTA was negotiated within the Organization of American States; the Protocol, at the United Nations Convention against Transnational Organized Crime or the Palermo Convention, and is followed up on by the UN headquarters in Vienna. For a more in-depth analysis of these two documents and the regional negotiation process, we recommend you consult L. F. de Alba, *op. cit.*

[25] U.N. General Assembly, "Illicit Trafficking in Small Arms and Light Weapons in All Its Aspects. Note by the Secretary-General", A/62/163, August 30, 2007, available at *https://undocs.org/pdf?symbol=es/A/62/163* (date of access: March 10, 2020).

[26] U.N. General Assembly, "Report of the Fourth Biennial Meeting of States to Review the Implementation of the Programme of Action to Prevent, Combat and Eradicate Illicit Trafficking in Small and Light Weapons in all Its Aspects", A/CONF.192/BMS/2010/3, June 30, 2010, available at *http://www.poa-iss.org/BMS4/Outcome/BMS4-Outcome-S.pdf*

of weapons [27] and the relationship between the control of illicit arms trafficking and South-South international cooperation. Ambassador Macedo also put forward proposals designed to strengthen the institutional development of the PoA via the regular submission of country compliance reports and underscored the importance of fostering a culture of peace.[28] Under Mexico's presidency, the first substantive document focused on addressing arms trafficking at borders was adopted by consensus at this BMS, in addition to the establishment of a PoA follow-up mechanism in the context of international cooperation. Emphasis was also placed on the importance of accepting joint responsibility in dealing with this issue.

4. There are at least two other later developments at the United Nations that cannot be understood in the absence of the debates sparked off by the PoA. Firstly, after the Conference at which the Programme was negotiated, many States and non-government organizations also pushed for a review of legal transfers of small and light weapons, and for action to be taken in light of the humanitarian proportions of the problem. Negotiations progressed and culminated with the Arms Trade Treaty (ATT) in 2014, the first legally binding instrument for the regulation of international trade in conventional weapons and a reduction in the suffering these cause.[29]

   The second is the inclusion of the issue in the 2030 Sustainable Development Agenda.[30] Drawn up in 2015, the Agenda is based on the premise that there can be no development without peace or peace without development. For the first time, specific development targets included elements related to the building of peace, and were of universal applicability.

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27 Roberto Dondisch, "Speech by Roberto Dondisch during the Debate on Border Controls at BMS4", New York, June 14, 2010, available at *http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/salw/bms2010/statements/14June_Mexico.PDF* (date of access: March 10, 2020).

28 See Small Arms Monitor: The Blog, at *http://smallarmsmonitor.blogspot.com/2010/* (date of access: March 10, 2020).

29 "The Arms Trade Treaty at a Glance", in Arms Control Association, August 2017, at *https://www.armscontrol.org/factsheets/arms_trade_treaty* (date of access: March 10, 2020).

30 U.N. General Assembly, "Transforming Our World: the 2030 Sustainable Development Agenda", A/RES/70/1, October 21, 2015, available at *https://unctad.org/meetings/es/SessionalDocuments/ares70d1_es.pdf* (date of access: March 10, 2020).

Sustainable Development Goal 16 is deemed one of the most ambitious of the 2030 Agenda: promote peaceful and inclusive societies. One of its targets, 16.4, is to significantly reduce illicit arms flows by 2030.[31]

Mexico has been one of the main countries to insist on the implications of the circulation of illicit weapons for development. The fact that the term "illicit arms flows" appears exclusively in this target can be attributed to the reticence of powerful actors within the United Nations to link a reduction in military spending with furthering development.[32]

The U.N. Statistical Commission defines these flows in indicator 16.4.2 as the "Proportion of seized, found or surrendered arms whose illicit origin or context has been traced or established by a competent authority in line with international instruments." The United Nations Office for Disarmament Affairs in New York (UNODA) and the Office on Drugs and Crime in Vienna (UNODC) have been appointed guardians of indicator 16.4.2, responsible for ensuring the data collected is sufficiently comparable and coherent to measure the progress of compliance with the 2030 Agenda.

5. At the Third PoA Review Conference in 2018, the issues of weapons transfers to non-government actors and ammunition were once again discussed at the behest of Mexico. The United States has opposed any element that does not fall within the scope of PoA and, along with the United Kingdom and certain E.U. delegations, has insisted on including references to other technological developments not included in the Programme, specifically 3D printed firearms[33] made using polymers. What is most worrying about this technology is that, aside from making weapons more readily available, they are harder to mark and trace.

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31 *Ibid*., p. 29.

32 Mark Bromley and Marina Caparini, "SDG16.4 and the Collection of Data on Illicit Arms Flows: Progress Made but Challenges Ahead", in Stockholm International Peace Research Institute (SIPRI), June 15, 2018, at *https://www.sipri.org/commentary/topical-backgrounder/2018/sdg164-and-collection-data-illicit-arms-flows-progress-made-challenges-ahead* (date of access: March 10, 2020).

33 This issue has been on the table at PoA since the Fifth Biennial Meeting of States; see UN General Assembly, "New Difficult-to-Erase 'Marking' Technologies Constrain Diversion of Weapons to Illicit Trade, Meeting Hears. Fifth Biennial Meeting of States on Illicit Trade in Small Arms", DC/3506, June 17, 2014, at *https://www.un.org/press/en/2014/dc3506.doc.htm* (date of access: March 10, 2020).

Nonetheless, the approved text contains important agreements presented by Mexico, such as the verification of international transfers at border crossings. The relevance of coordination efforts in the implementation of PoA and all legally binding instruments is an implicit nod to the Arms Trade Treaty, the Firearms Protocol of the Palermo Convention, CIFTA[34] and the inescapable relationship between PoA and the 2030 Agenda.

By the same token, references to assistance for victims and the importance of respect for international law and international humanitarian law were also included, as well as an express statement as to the importance of getting women more involved, not just as victims, but as agents in disarmament and non-proliferation processes. Due to the incorporation of these issues, the final document was put to a vote, reflecting the validity of the arguments Mexico has espoused on the limitations of PoA and other disarmament processes that operate under the "rule of consensus", and that are implemented using veto powers, but that are not necessarily an aspiration of the international community.

The 2020 BMS will analyze the extent to which PoA and ITI have contributed to the prevention and combating of illicit trafficking to non-authorized actors, opening up a window of opportunity to address some pending issues, namely controls, verification of the use the weapons in question are put to and their final recipients.

The issue of small and light weapons appeared on the UN agenda only relatively recently and Mexico has been actively involved in its evolution, advocating a comprehensive, multidimensional approach that puts human beings, development and compliance with international law at the center of the debate, multilateral discussion being an excellent counterbalance to bilateral decisions.

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[34] Mexico has insisted on the subject of synergies between the various treaties, mechanisms and forums on conventional weapons at multilateral forums and has convened two meetings in Mexico to establish lines of communication between these different bodies. SRE, "México, sede de la Primera Reunión de Órganos de Gobierno y Secretariados de Mecanismos para prevenir y combatir el tráfico ilícito de armas", communiqué 81, April 3, 2018, at *https://www.gob.mx/sre/prensa/mexico-es-sede-de-la-primera-reunion-de-organos-de-gobierno-y-secretariados-de-instrumentos-y-mecanismos-internacionales-para-prevenir-y-combatir-el-trafico-ilicito-de-armas* (date of access: March 10, 2020).

We believe Mexico should continue promoting a shared responsibility approach at the General Assembly as a means of addressing the diversion of weapons to non-government actors and the impact of the ever-increasing availability of large caliber weapons to the civilian population. This is also an opportunity to continue dialogue on the impact of new technologies that will indubitably usher in substantive changes.

To this end, Mexico will be actively participating in the Biennial Meeting of States scheduled for June 2020 in New York, with a view to ensuring debate on the diversion of and illicit trafficking in small and light weapons remains a top priority on both the PoA and ITI agendas.

Likewise, the work of the First Commission of the 75th UN General Assembly paves the way for further analysis of the problem of light weapons over their entire life cycle, from their design and manufacture to their authorized final destination and users, including their transfer and stockpiling, parts and components, especially ammunitions.

Every year, new resolutions on small and light weapons[35] are put to the General Assembly and Mexico will continue to press the issue of their diversion and illicit trafficking during the negotiation process.

Finally, we need to determine how best to address this priority issue for the country at the UN Security Council, which Mexico will be sitting on as a non-permanent member in the 2021-2022 period.

[35] The main ones are "Illicit Trade in Small and Light Weapons in All Its Aspects", submitted by Colombia, Japan and South Africa, and "Problems Posed by the Excessive Stockpiling of Conventional Ammunitions", submitted by Germany.