

Compliance with the United Nations Programme of Action

Abstract:

As the first global initiative to address the negative effects of small arms and light weapons, the 2001 UN Programme of Action (PoA) has established norms and the policy tools to bring states in compliance with these norms. With the understanding that state compliance with the PoA is crucial for solving the small arms problem, this paper seeks how to bring states in compliance. To this end, the paper evaluates state compliance with the PoA at the national level and identifies different causes of non-compliance, including lack of time, lack of capacity, and lack of political will. Given the valuable roles of national reporting in promoting implementation of the PoA, the paper focuses on how to improve state compliance with national reporting. Among other measures, capacity building for reporting has proved effective not only in improving national reporting but also in enhancing the institutional capacity of the governments. Simple assistance, such as reporting guidance, should be pursued as a cost-effective measure to enhance the governments' reporting capacity. The paper concludes by arguing that improved national reporting would be able to play an important role of compliance monitoring, and this role should be complemented by compliance monitoring by civil society.

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Introduction

Excessive proliferation, availability and misuse of small arms and light weapons (SALW) have caused insecurity and human suffering in many parts of the world. Over 500,000 people die each year from these weapons and millions are wounded and terrorized by their misuse. The wide availability and uncontrolled proliferation of SALW exacerbates armed conflicts, obstructs achievement of peace, generates child soldiers, contributes to the displacement of civilians, impedes humanitarian operations, and fuels crime and terrorism. These problems are complex and cutting across many spheres including public health, gender, children, crime and development. This multi-dimensional nature of the small arms issue demands that the issue be addressed in the context of both security and social, economic, and political development.

With recognition that addressing the negative effects of SALW requires a global approach, the UN Programme of Action (PoA), agreed at the 2001 UN Conference on Small Arms, has established norms and policy tools to prevent SALW proliferation.¹ States agreed to undertake various measures at the national, regional and global levels to implement the PoA. One of the challenging issues in this regard is how to ensure state compliance with those measures. If a country is identified as in non-compliance, appropriate response must be

¹ Laurance, Edward, and Rachel Stohl, "Making Global Public Policy: The Case of Small Arms and Light Weapons," *Occasional Paper No. 7*, Small Arms Survey, December 2002.
<http://www.smallarmssurvey.org/Opapers/Opaper7UNConference.pdf> (30 Sep. 2003).
UN Department for Disarmament Affairs, "Small Arms and Light Weapons."
<http://disarmament2.un.org/cab/salw.html>.

taken to bring that state back in compliance.² How to respond to non-compliance will have important consequences for implementation of the PoA in the long run.

The PoA, however, has no effective mechanism to deal with compliance. Although states agreed to report to the UN Department for Disarmament Affairs (DDA) on their implementation of the PoA, this is a voluntary undertaking and therefore unable to monitor state compliance regularly and systematically. Moreover, the UN DDA has no authority to make judgment on compliance based on national reports. Civil society is now making efforts to assess implementation of the PoA by states. At this stage, however, their initiative has fallen short of serving as compliance monitoring for various reasons.

Given lack of compliance mechanism in the PoA, this paper aims to evaluate state compliance with the PoA and to address the important question of how to respond to non-compliance. Chapter I examines the compliance mechanism of the PoA in comparison to that of the Landmine Ban Treaty. Civil society's role in monitoring compliance is closely analyzed. Chapter II evaluates state compliance with the PoA at the national level. Chapter III identifies the cause of non-compliance and Chapter IV addresses the core question of how to bring states in compliance. Capacity building for national reporting is focused as an effective way to enhance state compliance at this early stage of the implementation process. The paper also stresses the need to strengthen the role of civil society in ensuring state compliance.

² Chayes, Abram and Antonia Handler Chayes, "On Compliance," *International Organization* 47, 2, 1993, p.175-205.

Chapter II. Comparative analysis of compliance mechanism: the Programme of Action and the Landmine Ban Treaty

This chapter aims to examine the compliance mechanism of the PoA in comparison to that of the Landmine Ban Treaty. It is true that the small arms issue and the land mine issue should not be treated as the same due to the different nature of these two issues. For example, anti-personnel mines have no legitimate use because of their indiscriminate nature, while use of SALW for self-defense is admitted as legitimate. However, landmines and SALW are the same in that they both hinder socio-economic development of the affected communities, and thus need to be addressed in the framework of security and development. In this context, it would be useful to look at the vigilant compliance mechanism of the Landmine Ban Treaty to consider how the PoA should address the compliance issue. Particular attention would be paid to the role of civil society in monitoring state compliance.

The Landmine Ban Treaty: official compliance mechanism

The 1997 Landmine Ban Treaty has developed strong norms prohibiting the use, production, stockpiling and transfer of anti-personnel landmines. The cooperative partnership between states parties and civil society has been the key not only for the creation of the treaty but also for its subsequent implementation.³ As for compliance, the treaty relies on transparency and cooperation rather than intrusive verification measures. Self-reporting under Article 7 ('Transparency measures'), which requires states parties to report to the UN

³ Woodward, Angela, "Verifying the Ottawa Convention," *Verification Yearbook 2001*, VERTIC, London 2001, p.112.

Secretary-General on their own compliance, is the core of the treaty's compliance monitoring mechanism.⁴ States parties must provide an initial report as soon as practical, but no later than 180 days after the treaty enters into force for them. After the initial report, they must submit an updated report every year by 30 April, covering the previous calendar year.

However, failure to submit national reports is the most widespread violation of the Landmine Ban Treaty to date.⁵ Resource and personnel shortages and ambiguity regarding the submission procedure, combined with the competing reporting requirements of many other treaties, have delayed the compilation and submission of reports.⁶ As of July 2003, 15 out of 134 states parties had not submitted their initial reports as required by Article 7. When non-reporting occurs, the Article 7 Contact Group, which is an informal open-ended group of states parties, contact states that are late in reporting, and offer them assistance. NGOs also play a role in increasing the rate and quality of reporting. They collect and publicize information on states that are not fulfilling their reporting obligations, including those that are late. They also make the lobbying efforts to facilitate national reporting. *Guide to Reporting under Article 7 of the Ottawa Convention* by VERITEC, which was endorsed at the Third Meeting of States Parties in September 2001, is used as a 'useful tool' for states in meeting their reporting obligations.⁷

⁴ Woodward, Angela, "Verifying the Ottawa Convention," *Verification Yearbook 2001*, VERTIC, London 2001, p100.

⁵ Ibid., p 109.

⁶ Ibid., p110.

⁷ Ibid., p111.

UN's role

Under Article 7, the UN helps states parties meet their reporting obligation by facilitating the gathering and exchange of information about state compliance. The UN Department for Disarmament Affairs (DDA) makes available template report forms, receives completed reports and disseminates them at meetings of states parties and on its Article 7 database (<http://disarmament.un.org/MineBan.nsf>). It also provides technical assistance to governments in preparing their Article 7 reports. Such assistance is provided, inter alia, through the UN mine action country teams.⁸

Compliance monitoring by civil society

Capabilities of Article 7 reports to detect non-compliance have been significantly enhanced by the civil society monitoring. Compliance monitoring by civil society is not only tolerated but also encouraged by states parties, constituting a major, integral part of the compliance mechanism of the Landmine Ban Treaty.⁹ The Landmine Monitor initiative of the International Campaign to Ban Landmines (ICBL) and others has produced an annual *Landmine Monitor Report* on state party's compliance, signatory's adherence and non-signatory's observance of the treaty since 1999. The report collates and disseminates a vast amount of verification-relevant information that would otherwise not be available, and is

⁸ UN Department for Disarmament Affairs, "Mine-Ban Convention," <http://disarmament.un.org:8080/rdb/apm-mbc-art7.html>. (2 Nov. 2003).

⁹ Woodward, Angela, "Verifying the Ottawa Convention," *Verification Yearbook 2001*, VERTIC, London 2001, p106.

widely distributed among states parties and the mine action community worldwide. Because it covers all countries of the world, the report will detect inconsistencies in the reported activities of states parties and non-states parties, an advantage it has over the Article 7 reporting.¹⁰

The impact of civil society monitoring

The use of public naming and shaming is a key feature of *Landmine Monitor Report*, referring to individual states that are not fulfilling their obligations under the treaty. Public naming and shaming could effectively put pressure on a state to change its behavior by undermining its international image. The image of a state is important since it affects the perceptions of various audiences in the international community toward the state, which could negatively affect its international status. One example of public naming and shaming in *Landmine Monitor Report* is the following;

Turkmenistan reported that it completed its stockpile destruction by its March 2003 deadline, destroying almost 700,000 mines in an eighteen-month period. However, it also reported that it plans to retain 69,200 mines for training. The ICBL believes that 69,200 mines is an unacceptable, and likely illegal, number as it is obviously not the “minimum number absolutely necessary,” as required by the treaty. The ICBL has expressed its view that retention of such a number of mines in fact means that Turkmenistan did not fully destroy its stocks, and is therefore in violation of a core treaty obligation.¹¹

It is important to note that *Landmine Monitor Report* focuses not only on negative sides but

¹⁰ Woodward, Angela, “Verifying the Ottawa Convention,” *Verification Yearbook 2001*, VERTIC, London 2001, Verification Yearbook 1999, p107.

¹¹ ICBL, ‘Major Findings,’ *Landmine Monitor Report 2003*, <http://www.icbl.org/lm/2003/findings.html> (9 Nov. 2003).

also on positive sides of state performance. By commending what has been achieved, it encourages further implementation by states parties as well as accession to or ratification of the treaty by non-states parties. A clear contrast between those who are complying and those who are not complying is also effective in putting pressure on the latter group of states.

Another important role of civil society monitoring is its use by states. States parties have acknowledged the authority and usefulness of *Landmine Monitor Report* in their own assessments of other parties' compliance.¹² Since governments are often reluctant to make allegations of non-compliance themselves, they often draw on evidence and information provided by *Landmine Monitor Report*.¹³ For states that are keen supporters of the Treaty, civil society monitoring is particularly a useful and reliable tool to put pressure on states in non-compliance.

The Programme of Action: official compliance mechanism

Unlike the Landmine Ban Treaty, the PoA lacks a systematic and regular transparency mechanism to monitor state compliance. Transparency provisions in the final text of the PoA were significantly weakened during its negotiations at the UN Small Arms Conference.¹⁴ At the national level, states agreed to provide relevant information on the

¹² Woodward, Angela, "Verifying the Ottawa Convention," *Verification Yearbook 2001*, VERTIC, London 2001, *Verification Yearbook 1999*, p.106.

¹³ *Ibid.*, p111.

¹⁴ Clegg, Elizabeth et al, *Implementing the UN Action Programme for Combating the Illicit Trafficking in Small Arms and Light Weapons in All Its Aspects*, http://international-alert.org/pdf/pubsec/Btb_brf15.pdf (15 Oct. 2003), p14.

illicit trade in SALW on a voluntary basis. (sec. II, para. 23) They also agreed to enhance transparency through establishment of a point of contact at the regional level (sec. II, para. 24). At the global level, the DDA is requested to collate and circulate information, including national reports, provided by states on a voluntary basis on their implementation of the PoA (sec. II, para. 33). Being a voluntary undertaking, national reporting has been unable to serve as a regular and systematic transparency measure. It remains to be seen if this voluntary national reporting could work as a compliance monitoring mechanism as the reporting requirement of the Landmine Ban Treaty.

UN's role

Under the relevant section in the PoA, the DDA is mandated only to remind and encourage states to provide useful information. Furthermore, the PoA calls on this role to be played 'within existing resources,' which are quite limited.¹⁵ It is important to note that while the DDA receives and makes public national reports, this is not the same as evaluating state implementation of the PoA. It is not possible within the UN culture that the UN or any group of states would rank state compliance with implementation of the PoA.¹⁶

Compliance monitoring by civil society

In the case of landmine, it was NGOs that took the first initiative for the mine-ban

¹⁵ Woodward, Angela, "Verifying the Ottawa Convention," *Verification Yearbook 2001*, VERTIC, London 2001, Verification Yearbook 1999, p15.

¹⁶ Laurance, Edward J., "Implementing the UN Programme of Action on Small Arms: The Role of Civil Society," April 2003.

movement. The relationship between the NGOs and governments has been strong and cooperative from the begging through the subsequent implementation of the Landmine Ban Treaty.¹⁷ On the other hand, the initial actors who developed the small arms issue from agenda-setting through negotiations of an instrument (PoA) was the national governments acting within the UN process. However, the 2001 UN Conference on small arms served as a catalyst for civil society to become actively involved in the implementation of the PoA. Civil society has played a valuable role in 1) advocating the use and implementation of policy tools developed in the PoA; 2) raising awareness of the negative effects of small arms; 3) building capacity of states to interpret and report on implementing the PoA; 4) providing states with data and knowledge on small arms; 5) developing practical guides to implement policy tools of the PoA; 6) serving as partners with states and UN specialized agencies in carrying out programs and service delivery at the local and national level; and 7) promoting recognition of the multi-dimensional nature of the SA issue.¹⁸

Compared to these roles, compliance monitoring is yet to be developed as a main role of civil society in the small arms issue. In this regard, the Biting the Bullet Follow-up Project (BtB Project), a joint project between Saferworld, International Alert and the University of Bradford, has started developing substantial reports on state implementation of

¹⁷ Woodward, Angela, "Verifying the Ottawa Convention," *Verification Yearbook 2001*, VERTIC, London 2001, Verification Yearbook 1999, p112.

¹⁸ Edward J. Laurance, "Implementing the UN Programme of Action on Small Arms: The Role of Civil Society" April 2003.

the PoA. The first report *Implementing the Programme of Action 2003: Action by States and Civil Society* was launched at the First Biennial Meeting of States (BMS), drawing upon data gathered from 156 countries. The report provided an initial overview of progress towards implementation of the PoA and offered a comprehensive set of learning points and recommendations so as to facilitate full and effective implementation of the PoA.¹⁹

However, the report is far from a *Landmine Monitor*-type compliance monitoring mechanism, particularly in terms of its lack of a public naming and shaming approach. Several reasons could be considered that have prevented the BtB Project from identifying who are complying and who are not complying with the PoA. First, a lack of transparency in many countries has made research and verification of information difficult.²⁰ It is important to note that many states continue to treat the small arms issues as a matter of national security, which inhibits development of transparency mechanism within the PoA.²¹ Their unwillingness to enhance transparency and cooperate with civil society would make it difficult for the latter to have a clear picture of state performance. Second, the broad scope and ambiguous language of the PoA allows various interpretations about what constitutes implementation, making a judgment on compliance/non-compliance difficult.²²

¹⁹ IANSA, *Implementing the Programme of Action 2003: Action by States and Civil Society*, <http://www.iansa.org/documents/report/bandw/mono.pdf> (15 Oct. 2003), p16.

²⁰ *Ibid.*, p16.

²¹ Laurance, Edward, and Rachel Stohl, "Making Global Public Policy: The Case of Small Arms and Light Weapons," *Occasional Paper No. 7*, Small Arms Survey, December 2002, <http://www.smallarmssurvey.org/Opapers/Opaper7UNConference.pdf> (30 Sep. 2003), p36.

²² IANSA, *Implementing the Programme of Action 2003: Action by States and Civil Society*, <http://www.iansa.org/documents/report/bandw/mono.pdf> (15 Oct. 2003), p16.

Third, given the short period since the adoption of the PoA in 2001, it might be too early to evaluate state compliance. Two years is insufficient for many states to properly implement the legal, administrative and programmatic commitments contained in the PoA.²³ If most countries are not complying due to lack of time, alleging so many cases of non-compliance could unnecessarily undermine the credibility of the PoA. Therefore, identifying non-compliance at this stage might be even counter-productive. It is also possible that civil society *cannot* make a judgment on compliance due to its dependence on the governmental fund. For instance, IANSA has received a major grant from the UK government which is distributed to local NGOs to use in organizing and advocacy work. Such financial dependence could make public naming and shaming politically difficult. Finally, the capacity of civil society and NGOs needs to be further developed to conduct effective compliance monitoring. Improving financial and human resources, level of expertise, research skill, and coordination among NGOs would help them conduct compliance monitoring more effectively. For these reasons, it would take some time for civil society to play a *Landmine Monitor*-type monitoring role. However, as the Landmine Ban Treaty's experiences show, civil society monitoring would become crucial to ensure state compliance with the PoA in the long run.

²³ IANSA, *Implementing the Programme of Action 2003: Action by States and Civil Society*, <http://www.iansa.org/documents/report/bandw/mono.pdf> (15 Oct. 2003), p172.

Chapter III: Evaluation of state compliance with the PoA

The scope of evaluation

Given the absence of compliance monitoring, this chapter aims to evaluate state compliance with the PoA at the national level. Due to the time constraints, however, the scope of evaluation is limited to only some of the measures states agreed to undertake. These include (1) national statements at the 2003 UN Biennial Meeting of States (BMS), (2) national reporting in 2003, (3) national reporting in 2001-2002, (4) establishment of national focal point (NFP), and (5) establishment of national coordination agency (NCA). Making a national statement at the BMS is not an implementation measure *per se*, but it is a manifestation of governments' interests in the PoA's follow-up process. On the contrary, no statement at the BMS indicates either lack of interest or lack of awareness. Submission of national reports and establishment of NFA/NCA are basic but important steps which states can take relatively quickly to start implementing the PoA. Progress in these areas therefore indicates governments' minimum commitment to the PoA's implementation process.²⁴

It is important to note that evaluation is also limited to a procedural aspect of compliance, namely, *whether* states made statements at the BMS, *whether* states have submitted national reports, and *whether* states have established NFP/NCA. Evaluation of the quality of national reports and NFP/NCA is beyond the scope of this paper. However, the quality of compliance is an important issue to be addressed in the future. For example, some

²⁴ IANSA, *Implementing the Programme of Action 2003: Action by States and Civil Society*, <http://www.iansa.org/documents/report/bandw/mono.pdf> (15 Oct. 2003), p172.

national reports are detailed and in-depth while others consist of just one-page without much substance. Similarly, the existing NFP/NCA are often inadequate and not functioning properly. Therefore, not only the existence of undertakings, but also their quality must be evaluated to ensure full implementation of the PoA.

Evaluation: state compliance with the PoA at the national level

Chart 1 evaluates state compliance with the five measures —(1) national statements, (2) national reporting in 2003, (3) national reporting in 2001-2002, (4) establishment of NFP, and (5) establishment of NCA. To make evaluation simple and systematic, compliance is divided into four levels according to the numbers of measures a state has undertaken. If a state has undertaken more than four measures, the state is regarded as in “full compliance,” while a state that has taken three measures is regarded as in “high compliance.” Those states that have taken one to two measures are regarded as in “low compliance.” If a state has undertaken none of the five steps, it is judged as in “non-compliance.” Chart 1 distinguishes the level of compliance by different colors.

According to the chart, 41 out of 192 states are in full compliance, while 42 states are in high compliance. 63 states are in low compliance and 46 states are in non-compliance. Roughly speaking, developed countries are in higher compliance, while developing countries or countries that have been seriously affected by SALW are in lower compliance. However, it is noticeable that some affected countries such as Colombia, Serbia and Montenegro, and

Democratic Republic of Congo, are in full compliance. The reasons for this will be examined in the later section.

Chapter IV: The cause of non-compliance

The chart 1 reveals that more than half of the evaluated states are in low- or non-compliance with the PoA as far as the five implementation measures are concerned. If states are not complying with those most basic, preliminary measures, it is easy to imagine that their compliance with other aspects of the PoA is also imperfect. To improve the level of compliance, it is necessary to identify and address what has caused non-compliance. In this regard, this chapter examines why some states are not implementing the PoA or unable to do so. For this purpose, literature on compliance as well as national statements at the BMS are closely examined.²⁵ National statements are particularly useful to identify unique situations in individual states that have led to non-compliance.

Lack of time for implementation

First, lack of time has contributed to poor implementation of the PoA in many states. As mentioned earlier, it has been only two years since the PoA was adopted and more time is necessary for states to carry out the necessary measures. For example, Georgia mentioned at the BMS that it was currently on the way of establishing a proper system to deal with the

²⁵ Chayes, Abram and Antonia Handler Chayes, "On Compliance," *International Organization* 47, 2, 1993, p.175-205.
Regarding national statements at the BMS, only those statements in English were examined.

small arms issue.²⁶ The existing national legislation and administrative infrastructure are often inadequate or out of date. As a result, many states are still in the process of reviewing or updating those existing systems. Given the incremental nature of bureaucracy, such process would take a lot of time.

Lack of capacity

At the BMS meeting, most developing countries referred to their lack of capacity to implement the PoA and asked for international assistance in this regard. Lack of capacity includes lack of human and financial resources, lack of expertise, and lack of institutional capacity. In particular, lack of financial resources seems to be a major stumbling block for many developing countries. Indonesia stressed the importance of “any form of technical and financial cooperation and assistance that aims to further strengthen the country’s capacity to implement the PoA.”²⁷ In addition to financial support, they asked for assistance in human resource development in areas such as intelligence gathering, regulatory measures and operations, as well as assistance in institutional capacity building for relevant governmental bodies such as police, customs, and judiciary services.

Lack of control of the country by the central government

Some governments lack control of their country. Especially in a country where armed conflicts are ongoing or lasted for a long time, legitimacy of the central government is

²⁶ UN Department for Disarmament Affairs, “Statements by Member States,” <http://disarmament.un.org:8080/cab/salw-2003/statements.html>, (15 Nov. 2003).

²⁷ Ibid.

rather weak and its political and judicial system is not functioning. The economy is shattered, and the physical infrastructure is often destroyed by the prolonged conflicts. Without effective control of the country, it is difficult for the central government to take measures to implement the PoA. This is especially the case with failed states. The chart shows that failed states such as Liberia are in non-compliance. Although not a failed state or a state currently suffering armed conflicts, Georgia stated at the BMS;

“There are two post-conflict territories in Georgia, which are beyond of control of central government. These territories are out of control, both from the point of locally existing stocks of small arms and light weapons, as well as dissemination.”²⁸

Ambiguity of the language of the PoA

Many measures of the PoA were rendered voluntary, qualified ‘as appropriate’ or left sufficiently vague during its negotiations.²⁹ As a result, states have difficulty in interpreting the ambiguous language of the PoA, which has resulted in insufficient or inappropriate implementation of the measures contained therein. Similarly, the ambiguity inherent in those measures allows individual states the discretion in deciding how to implement them.³⁰ This could have led to different understandings among states of what constitutes compliance.

Lack of awareness & lack of political will within the government.

²⁸ UN Department for Disarmament Affairs, “Statements by Member States,” <http://disarmament.un.org:8080/cab/salw-2003/statements.html>, (15 Nov. 2003).

²⁹ Clegg, Elizabeth et al, *Implementing the UN Action Programme for Combating the Illicit Trafficking in Small Arms and Light Weapons in All Its Aspects*, http://international-alert.org/pdf/pubsec/Btb_brf15.pdf (15 Oct. 2003), p15.

³⁰ Laurance, Edward, and Rachel Stohl, “Making Global Public Policy: The Case of Small Arms and Light Weapons,” *Occasional Paper No. 7*, Small Arms Survey, December 2002, <http://www.smallarmssurvey.org/Opapers/Opaper7UNConference.pdf> (30 Sep. 2003), p39.

Non-compliance could result from lack of awareness or lack of political will within the government. Those states that have not taken any of the five steps can be considered as not aware of or not interested in the issue. In this regard, there might exist an awareness gap between delegates in New York and governmental officials in capitals.³¹ National delegates in places like New York and Geneva are well sensitized to the PoA in the UN environment. On the other hand, officials in capitals are often not familiar with the PoA process or sometimes have never heard of the PoA.³²

Lack of political will applies to those states that are not interested in the small arms issues due to absence of their serious negative effects, or to those states that do not want to address the issue despite the negative effects of the small arms. The latter is more serious non-compliance to be addressed. In this regard, a challenging task would be to distinguish between those who are willfully disregarding the agreed measures and those who, while willing to comply, are unable to do so for the various reasons.³³

Low priority attached to the small arms issue

To implement the PoA, sufficient human and financial resources must be allocated from the national sources. To this end, the small arms issue must be prioritized among other

³¹ Comment by a participant at the Workshop on Capacity Development for Reporting to the UN PoA on Small Arms, Geneva, September 8-9.

³² Comment by a participant at the Workshop on Capacity Development for Reporting to the UN PoA on Small Arms, Geneva, September 8-9.

³³ Laurance, Edward, and Rachel Stohl, "Making Global Public Policy: The Case of Small Arms and Light Weapons," *Occasional Paper No. 7*, Small Arms Survey, December 2002, <http://www.smallarmssurvey.org/Opapers/Opaper7UNConference.pdf> (30 Sep. 2003), p39.

issues that compete for the same limited budget. It is particularly important to place the issue in the development context, so that people in the development field can identify themselves with the small arms issue. At the BMS meeting, the Botswana Government stated that it could not secure enough budget to computerize the existing arms registry, which is now managed manually, since the measure could not be accommodated in its National Development Plan for 2003-09.³⁴

Dependence on SALW for national security

Some states are heavily dependent on SALW for their fight against rebel, secessionist or terrorist groups in their countries. Such heavy dependence on SALW will make it difficult for states to actively implement the PoA. For example, Nepal stressed at the BMS that “controlling the transfer of such arms [SALW] should not restrict the UN Charter-based right of all countries- small and big alike- to acquire the means for their legitimate right to self-defense, the right to defend their sovereignty, territorial integrity and the maintenance of law and order situation of the country.”³⁵ Israel also argued that “small arms and light weapons must be controlled and restraints instituted in a way that will take into account legitimate security needs of a state.”³⁶

Chapter V: How to bring states in compliance?

³⁴ UN Department for Disarmament Affairs, “Statements by Member States,” <http://disarmament.un.org:8080/cab/salw-2003/statements.html>, (15 Nov. 2003).

³⁵ Ibid.

³⁶ Ibid.

Once the cause of non-compliance is identified, the important question is how to bring states back in compliance. Attention should be paid to the potential roles of national reporting in facilitating compliance with the PoA. In this regard, capacity building of the governments is closely examined as an effective way to enhance national reporting by states.

The role of national reporting

National reporting can promote implementation of the PoA in various ways. First, national reporting is a concrete first step to implement the PoA. Submission of national reports is therefore a manifestation of states' minimum political commitment. Israel stated at the BMS that "By submitting this [national] report, we actually demonstrate our association with the international objective of eradicating illicit small arms and light weapons."³⁷

Most importantly, national reporting could play a role as a compliance monitoring mechanism, which is essential to assess state undertakings in relation to the agreed measures of the PoA. However, as mentioned earlier, it is currently far from functioning as an effective monitoring mechanism. As another role, national reports will reveal how states are interpreting the PoA and what kinds of measures are being undertaken based on that interpretation. If more common interpretation and practices could be identified, this would help reduce the ambiguity inherent in the PoA.

National reporting, which is publicly available on the DDA website, will enhance

³⁷ UN Department for Disarmament Affairs, "Statements by Member States," <http://disarmament.un.org:8080/cab/salw-2003/statements.html>, (15 Nov. 2003).

transparency of state undertakings and therefore facilitate international cooperation and assistance. If official information on the situation faced by a country is publicly available, it is relatively likely to reach a wide range of groups and agencies that are in a position to assist.³⁸ In this regard, the Netherlands argued at the BMS that “It [information] forces us to think about priorities, about how to cooperate and about what assistance is still needed.”³⁹

Finally, the reporting writing process would entail institutional capacity building. For example, reporting on production, stocks and transfers of SALW would stimulate the government’s efforts to ensure that national systems are in place for effective and reliable data collection, record-keeping and reporting.⁴⁰ It is important to note that the inadequate or inconsistent national information systems relating to SALW are a problem in all states, not just less developed ones.⁴¹

Challenges of the reporting exercise

The level of compliance with national reporting has been low, although gradually improving. In 2001, 16 states submitted national reports to the DDA, while as of November in 2003, 101 states had done so. States have had difficulty in preparing national reports for various reasons, among which lack of awareness, lack of inter-agency coordination, and lack

³⁸ Greene, Owen, and Peter Batchelor, *Information Exchange and Transparency: Key Elements of an International Action Programme on Small Arms*, http://international-alert.org/pdf/pubsec/btb_brf9.pdf (20 Oct. 2003), p 8.

³⁹ UN Department for Disarmament Affairs, “Statements by Member States,” <http://disarmament.un.org:8080/cab/salw-2003/statements.html>, (15 Nov. 2003).

⁴⁰ Greene, Owen, and Peter Batchelor, *Information Exchange and Transparency: Key Elements of an International Action Programme on Small Arms*, http://international-alert.org/pdf/pubsec/btb_brf9.pdf (20 Oct. 2003), p 8.

⁴¹ *Ibid.*, p7.

of capacity play a big role.

First of all, it is crucial that relevant public officials are familiar with the PoA and its reporting provision. Many governments forget or neglect to provide information unless relevant public officials and ministries know what information they should provide and when and to whom it should be provided.⁴² Second, given that national reporting is a voluntary undertaking, some form of incentives or pressure is necessary to motivate governments to submit reports. It is important to remember that public officials are often in charge of many competing reporting requirements for various treaties and agreements.⁴³ At this point, biennial meetings and review conferences are the only official follow-up mechanism that can encourage the governments to submit reports.

Lack of inter-agency coordination is another stumbling block for the reporting exercises in many states. Creating a national report requires collecting necessary information from relevant agencies, such as police, customs, intelligence agencies and arms transfer licensing authorities. Moreover, responsibility for an issue relating to SALW often lies in more than one agency, which makes information collection more difficult. Therefore, creating a national report is a complicated, time-consuming task without effective inter-agency coordination and cooperation.

⁴² Greene, Owen, and Peter Batchelor, *Information Exchange and Transparency: Key Elements of an International Action Programme on Small Arms*, http://international-alert.org/pdf/pubsec/btb_brf9.pdf (20 Oct. 2003), p 9.

⁴³ Woodward, Angela, "Verifying the Ottawa Convention," *Verification Yearbook 2001*, VERTIC, London 2001, *Verification Yearbook 1999*, p 110.

How to enhance state compliance with national reporting?

To enhance state compliance with national reporting, it is necessary to address those challenges faced by states. The first way is to motivate states to submit reports by putting pressure on them. Chairperson of the BMS, Ambassador Inoguchi of Japan strongly encouraged states to submit reports in many diplomatic occasions.⁴⁴ States, particularly developed ones, also put pressure on those states that have poor records in reporting. The US stated at the BMS that;

“[P]ermit me to offer a word of encouragement to those countries in regions negatively affected by the illicit SA/LW trade. The U.S. appreciates the connection of this issue to your vital security interests, and urges your delegations to participate fully in the dialogue this week and report candidly on the state of your efforts to implement the Program of Action. Your progress is what will make our work meaningful.”

UNDP Project: “Capacity Development for Reporting”

Although diplomatic pressure from Chairpersons and other states can encourage states to submit reports, it does not address the real difficulties faced by states, namely, lack of awareness, lack of inter-agency coordination, and lack of capacity. A more pragmatic and practical measure is necessary to address these difficulties.

In this regard, the UN Development Program (UNDP) launched a project “Capacity Development for Reporting” to develop governments’ longer-term reporting and monitoring capacity. It is a collaborative project among UNDP, UNDDA, and UN Institute for

⁴⁴ For example, the Open-ended informal consultation on the First Biennial Meeting of States on Small Arms and Light Weapons (SALW), Geneva, 4 March 2003.

Disarmament Research (UNIDIR). Four donors -the Netherlands, Norway, Switzerland and UK- have agreed to provide financial assistance to the project, and Small Arms Survey -a Geneva-based NGO- is an implementing partner. The project is a pilot with limited duration and resources. Phase I is from April 2003 to July 2003, during which the project aimed to address a short-term capacity development needs by assisting governments in preparing and delivering their inputs to the biennial meeting in July 2003. Phase II is after the BMS to March 2004.

The project provides three different categories of assistance; Category I consists of assistance package⁴⁵; Category II consists of assistance package and desk-bound assistance; and Category III consists of assistance package, desk-bound assistance and field mission assistance. Total 25 countries have received assistance so far; 18 countries for Category I, 5 for Category II, and 2 for Category III.

Evaluation of the UNDP project

The Chart 2 shows the result of the Phase I of the project. The ten weeks of program resulted in reports from 15 countries by the BMS in July 2003, while 6 countries reported

⁴⁵ Assistance package provides guidelines for reporting on the implementation of the PoA. The guidelines take the form of a list of questions that closely follow the measures included in the PoA. Each of the questions is cross-referenced to the appropriate action of the PoA. The attached table (Annex A) lists those questions in the form of a key word and provides additional columns in which to record information providers and to indicate how questions could be grouped together. Annex B provides the elements of the suggested work plan on how to approach the reporting process. The guidelines also include a template that can be used to compile the report.

UN Development Program, "Assistance Package: Guidelines for reporting on implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Aspects," http://www.undp.org/erd/smallarms/docs/PoA_package.pdf (30 Sep. 2003).

after the BMS. It is significant that they consist about 20 % (21/101) of all states that had submitted national reports as of November 2003. Moreover, the Chart 1 shows that about 25 % (10/41) of states that are in full compliance received some form of assistance through this project. On the down side, 5 states have not yet submitted reports despite the assistance they received. Chart 1 reveals that those countries are either in low compliance or in non-compliance.

Based on these results, it would be safe to say that the project was successful in assisting the targeted states in reporting on the PoA. It is significant that 15 out of 18 states that received Category I assistance submitted national reports. This indicates that simple reporting assistance can greatly increase the number of reports. Considering the limited resources of the project and the large numbers of states that need assistance, Category I-type of simple assistance would be able to effectively contribute to raise the reporting rate.

The positive effect of the assistance goes beyond the increased rate of reporting. The process of information collection and report writing increased awareness of the PoA within the governments and enhanced their institutional capacity.⁴⁶ It is important to note that the majority of the targeted countries that submitted reports also established NFP/NCA. This indicates that inter-agency coordination was improved through the reporting writing process. However, attention needs to be paid to those countries that have not submitted reports despite

⁴⁶ Comment by a participant at the Workshop on Capacity Development for Reporting to the UN PoA on Small Arms, Geneva, September 8-9.

the assistance. It is not clear if the failure of reporting is due to lack of time or lack of political will. If the latter is the case, how to generate political will of the government poses a challenging task not only for the reporting issue, but for the overall implementation of the PoA.

Conclusion

This paper evaluated state compliance with the five basic measures to implement the PoA, including national statement, national reporting and establishment of NFC/NCA. Compliance with these preliminary measures indicates states' minimum commitment to implementation of the PoA, and therefore has an important implication for the future perspective of the PoA. As far as the procedural aspect is concerned, however, more than half of the evaluated countries are in low- or non-compliance with those five measures (Chart 1). The major cause of non-compliance includes lack of time for implementation, lack of financial and institutional capacity, and lack of political will.

How to respond to non-compliance has important consequences implementation of the PoA. Given that national reporting plays variable roles in promoting implementation of the PoA, this paper focused on how to improve state compliance with national reporting. In this regard, the UNDP project "Capacity Development for Reporting" has proved successful in developing governments' capacity to report on their implementation of the PoA. It is

especially encouraging that simple assistance, such as reporting guidance, has greatly increased the reporting rate. It is also significant that the process of report writing has increased inter-agency coordination, resulting in establishment of NFP/NCA. Therefore, capacity building through simple assistance is a cost-effective way to improve national reporting and should be expanded in the future.

If national reporting is improved and becomes more regular and systematic, it would play an important role as a compliance monitoring mechanism. A monitoring mechanism is crucial to effectively address state compliance with the PoA in the future. At the same time, the role of civil society to monitor compliance should be strengthened to complement national reporting. First, civil society monitoring is necessary to identify what has not been done by the governments or what they have failed to do. Given that the governments tend to report only success and achievements, civil society has an important role to identify weak points. Second, civil society monitoring reveals gaps between its assessment of state implementation and national reports, thereby making the governments accountable to what they report. Third, states could use civil society monitoring as more reliable and detailed source of information and as reference to make allegations of non-compliance of other states. Therefore, to effectively monitor state compliance with the PoA, national reporting and civil society monitoring should be both strengthened and complement each other.

Bibliography

- Chayes, Abram and Antonia Handler Chayes. "On Compliance." *International Organization* 47. 2. 1993. p.175-205.
- Clegg, Elizabeth et al. *Implementing the UN Action Programme for Combating the Illicit Trafficking in Small Arms and Light Weapons in All Its Aspects*. http://international-alert.org/pdf/pubsec/Btb_brf15.pdf (15 Oct. 2003).
- Geneva Forum. *Implementing the UN Programme of Action on Small Arms: What needs to be done?* <http://unidir.org/pdf/activities/pdf2-act198.pdf> (20 Oct. 2003).
- Greene, Owen, and Peter Batchelor. *Information Exchange and Transparency: Key Elements of an International Action Programme on Small Arms*. http://international-alert.org/pdf/pubsec/btb_brf9.pdf (20 Oct. 2003).
- IANSAs. *Implementing the Programme of Action 2003: Action by States and Civil Society*. <http://www.iansa.org/documents/report/bandw/mono.pdf> (15 Oct. 2003).
- ICBL. 'Major Findings.' *Landmine Monitor Report 2003*. <http://www.icbl.org/lm/2003/findings.html>, (9 Nov. 2003).
- Laurance, Edward J. "Implementing the UN Programme of Action on Small Arms: The Role of Civil Society." April 2003.
- Laurance, Edward, and Rachel Stohl. "Making Global Public Policy: The Case of Small Arms and Light Weapons." *Occasional Paper No. 7*. Small Arms Survey. December 2002. <http://www.smallarmssurvey.org/Opapers/Opaper7UNConference.pdf> (30 Sep. 2003).
- Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* (including 'Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects'). UN Document. A/CONF.192/15, 20 July 2001.
- Report of the United Nations First Biennial Meeting of States to Consider the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons In All Its Aspects*. UN Document. A/CONF.192/BMS/2003/1, 18 July 2003.

Small Arms Survey and UNIDIR. “Capacity Building for Reporting on the Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.” Presentation given at Workshop on Capacity Development for Reporting to the UN PoA on Small Arms. Geneva, September 2003.

UN Department for Disarmament Affairs. “Mine-Ban Convention,” <http://disarmament.un.org:8080/rdb/apm-mbc-art7.html>. (2 Nov. 2003).

_____. “National Legislation on SALW.” <http://disarmament.un.org:8080/cab/salw-legislation.htm> (7 Nov. 2003).

_____. “National Points of Contact for the Implementation of the PoA.” <http://disarmament.un.org:8080/cab/docs/list3.pdf> (7 Nov. 2003).

_____. “National Reports on the Implementation of the PoA.” <http://disarmament.un.org:8080/cab/salw-nationalreports.html> (7 Nov. 2003).

_____. “Statements by Member States.” <http://disarmament.un.org:8080/cab/salw-2003/statements.html>, (15 Nov. 2003).

UN Development Program. “Assistance Package: Guidelines for reporting on implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Aspects.” http://www.undp.org/erd/smallarms/docs/PoA_package.pdf (30 Sep. 2003).

_____. “Reporting on Implementation of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects: Key Reporting Areas.” http://www.rndp.org/erd/smallarms/PoA_lite.pdf (30 Sep. 2003).

_____. *UNDP Strategy and Framework for Capacity Development in the Reduction of Small Arms and Light Weapons*. June 2003.

Woodward, Angela. ‘Verifying the Ottawa Convention.’ *Verification Yearbook 2001*. VERTIC. London, 2001, p99-115.