



A steam roller crushes rifles and machine guns in front of Belgrade's City Hall in May 2002.
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Under the Spotlight:

MONITORING IMPLEMENTATION OF SMALL ARMS MEASURES

8

INTRODUCTION

The First Biennial Meeting of States (BMS),¹ held in New York on 7–11 July 2003, marked a key second step in the UN Small Arms Conference process, following the adoption of the *UN Programme of Action* two years earlier (UNGA, 2001b). Largely judged a success, or relative success, by independent observers, the BMS saw a large number of states, as well as international organizations, report on their implementation of the nascent, but far from stillborn, *Programme of Action*.

Reporting, monitoring, and verification will almost certainly be essential to the success of ongoing efforts to tackle the small arms problem—as they have been in other areas.² The effective implementation of small arms measures, including the *Programme of Action* and arms embargoes, will depend on the sharing of information and independent scrutiny that are inherent in these processes. Reporting, monitoring, and verification appear especially important at the global level, where some governments may feel less inclined to meet the expectations of fellow states in relation to small arms.

The chapter's major conclusions include the following:

- The July 2003 Biennial Meeting was largely successful in generating significant information and analysis on the implementation of the *UN Programme of Action*.
- However, existing efforts do not provide a complete picture of *Programme* implementation, nor of implementation challenges and solutions.
- Verification of compliance with UN arms embargoes has become more resolute in recent years, but this improvement remains vulnerable to weakening political will.
- Governments, international organizations, and civil society, working both independently and in partnership, have key roles to play in ensuring that small arms measures are effectively implemented.
- Reporting, monitoring, and verification will be essential to these efforts.

The chapter makes frequent use of the terms 'reporting', 'monitoring', and 'verification'. Although their exact meaning may vary according to the particular context, the basic concepts are fairly straightforward. When 'reporting', states and other actors give an account of action they have taken to implement particular agreements. 'Monitoring' involves the independent observation and evaluation of implementation efforts, while 'verification' usually refers to a process of information gathering and analysis to establish whether specific commitments, especially legal ones, have been complied with.³

The chapter is divided into two main parts. The first part looks at the UN Conference process, highlighting key developments from the BMS and other small arms processes, including regional ones. It examines the roles of reporting and monitoring in the UN Conference process, and reviews a few important initiatives in this area. The second part of the chapter reviews efforts to verify compliance with mandatory UN Security Council arms embargoes. It looks at

the institutions and mechanisms that underpin verification efforts, considers the question of their effectiveness, and briefly describes some of the key proposals for improving these systems.

The effective implementation of Security Council arms embargoes is critical to achieving the goals of the *UN Programme of Action*—and not only because the issue is mentioned in the *Programme* itself. While UN arms embargoes typically cover a broad range of weapons, including weapons of mass destruction and major conventional systems, many of the arms that wreak havoc in embargoed zones are, in fact, small arms and light weapons.

Although UN member states are legally bound to implement mandatory Security Council embargoes, we will see that verification systems have a crucial role to play in bolstering state compliance with these measures—just as reporting and monitoring appear essential to the effective implementation of the *UN Programme of Action*.

THE UN CONFERENCE PROCESS⁴

The small arms issue moved squarely onto the international agenda with the convening, on 9–20 July 2001, of the *United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*. This Conference, and more specifically the *Programme of Action* which emerged from it (UNGA, 2001b), provide key reference points for activity around the world on small arms.⁵ The next sections of the chapter briefly review some of this activity before examining, in greater depth, the issues of transparency, reporting, and monitoring.

The *Programme of Action* provides a key reference point for activity around the world on small arms.

The First Biennial Meeting of States

In the *UN Programme of Action*, states agreed to meet every two years 'to consider the national, regional and global implementation of the Programme of Action' (UNGA, 2001b, sec. IV, para. 1(b)). The first of these meetings was held in New York on 7–11 July 2003. The First BMS gave the international community, including governments, international organizations, and NGOs, an opportunity to exchange information, share experience, and assess what progress had been made in implementing the *Programme of Action* in its first two years. There was no mandate to negotiate new instruments or reopen issues on which no agreement could be reached in July 2001.⁶

The five-day Meeting consisted of ten plenary sessions. In the first five, devoted to national implementation, representatives of 102 governments,⁷ speaking on behalf of 144 states, gave statements outlining the steps they had taken to counter the proliferation and misuse of small arms, specifically within the framework of the *Programme of*

Action. During the BMS, 98 states also distributed national reports outlining their implementation of the *Programme*.⁸ Most of the rest of the Meeting was taken up with statements from civil society and regional/international organizations, along with thematic discussions. During the tenth and final session, Meeting Chairperson, Ambassador Kuniko Inoguchi, presented government delegations with a revised version of her 'Chairperson's Summary'. However, the document failed to gain the support



Ambassador Kuniko Inoguchi chairs the First Biennial Meeting of States in July 2003.

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of all states and does not form part of the Meeting Report proper (UNGA, 2003b, Annex). As a result, it will have little impact on the next phases of the UN Conference process (Batchelor, 2003).

NGOs, states, and international organizations, sometimes in partnership, also organized a series of side events in the margins of the BMS. These were designed to raise awareness around small arms issues and promote common understandings in a few key areas imperfectly addressed in the *Programme*, such as controls over small arms transfers and brokering.

The 2003 BMS has paved the way to the next stages of the UN Conference process, which include a second biennial meeting in 2005 and a review conference in 2006. Most significantly, the Meeting appears to have helped sustain the momentum generated around small arms in July 2001, keeping the issue firmly on the international agenda in the new, post-11 September era.⁹

The Broader Picture

The period following the 2001 UN Conference has seen considerable activity on the small arms issue. The following review, covering the period from July 2001 to the end of 2003, presents, very briefly and selectively, some of the key international and regional initiatives that have been undertaken since the Conference.

In the months following the 2001 Conference, consultations of mostly regional scope were held in such countries as Belgium, Chile, Costa Rica, and South Africa to review the outcome of the Conference and discuss how to implement the *Programme of Action*. A meeting held in Tokyo, Japan, in January 2002, brought together governments, international organizations, and civil society from around the world for this same purpose.¹⁰ In advance of the July 2003 BMS, UN regional meetings were held in Asia-Pacific (Indonesia), south-eastern Europe (Slovenia), and central Africa (Republic of Congo) in order to look at *Programme* implementation in these regions and help participants prepare for the 2003 BMS. A fourth UN regional meeting on small arms, co-hosted by the League of Arab States, was held in Egypt in December 2003.

Since July 2001, the UN General Assembly has continued to shepherd the UN Conference process. In December 2003, pursuant to the recommendation of a Group of Governmental Experts,¹¹ the General Assembly decided to establish an 'open-ended working group' to negotiate an international tracing instrument (UNGA, 2003d, para. 8). The UN Security Council has also taken up the small arms issue, adopting resolutions on such topics as the protection of children affected by armed conflict, and small arms proliferation and mercenary activities in West Africa (UNSC, 2003a, 2003b). Statements made by the Council President have focused on responsibility in small arms transfers and the effective implementation of arms embargoes (UNSC, 2002d, 2004).

In the two years since the July 2001 Conference, the broader UN system has gone some ways towards integrating the letter and spirit of the *Programme of Action* into its work. The United Nations Development Programme (UNDP) has provided technical assistance and funding for weapons collection and destruction efforts in various parts of the world. The United Nations Children's Fund (UNICEF) and the World Health Organization (WHO) have piloted their own small arms initiatives. Much of this work involves action-oriented research. For example, the United Nations Institute for Disarmament Research (UNIDIR) is conducting an assessment of selected weapons collection programmes. Various UN agencies and departments are collaborating on many of these projects.¹²

Other international initiatives have contributed to the implementation of the *Programme of Action*, although they are not formally part of the UN Conference process. For example, the United Kingdom has led in-depth discussions on integrating small arms issues into development programmes (UK, DFID, 2003). In a similar vein, in 2003 a UN

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Group of Governmental Experts began a review of the relationship between disarmament and development, including the UN's role in this area. The *UN Firearms Protocol*, an international treaty designed to combat the illicit firearms trade (UNGA, 2001a), continues to gather the ratifications it will need in order to enter into force.¹³

While the *Programme of Action* provides an essential framework for international action on small arms, it is only a starting point.

Since July 2001, the Wassenaar Arrangement has strengthened its controls over small arms transfers and moved to increase their transparency. Specific initiatives include the adoption, in December 2002, of guidelines for the export of small arms and, in December 2003, of measures aimed at tightening controls over the transfer of MANPADS (MANPADS), exchanging information on small arms transfers (TRANSFERS), and ensuring that arms brokering is effectively regulated (BROKERS).

While the *Programme of Action* provides an essential framework for international action on small arms, it is only a starting point. Several international initiatives have been launched in the period since the 2001 Conference in an effort to build upon the minimum standards articulated in the *Programme*. An important example in the area of brokering, led by the Dutch and Norwegian governments, is described in the chapter dealing with this theme (BROKERS). An initiative launched by the UK at a meeting at Lancaster House, London, in January 2003, seeks to build consensus among states on the strengthening of controls over small arms transfers (UK, DFID *et al.*, 2003). A Consultative Group Process, initiated by the Biting the Bullet project, also in 2003, brings together government and civil society experts for the purposes of developing shared understandings on guidelines for the authorization of small arms transfers and on transfers to non-state actors.



As Brazil adopts sweeping gun control legislation, President Luis Inácio Lula da Silva joins relatives of gun victims in Brasília in December 2003.

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Activity at the regional level continues to make an essential contribution to overall efforts to tackle the small arms problem. Among the highlights since July 2001 are the following:¹⁴

- the adoption, by the Southern African Development Community (SADC), of a *Firearms Protocol* (SADC, 2001);
- the development of model legislation for weapons control by the Pacific Islands Forum;
- the establishment of the South Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC)¹⁵;

- the development of a regional legal protocol on small arms control by the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO); and
- annual exchanges of small arms-related information among participating States of the Organization for Security and Co-operation in Europe (OSCE) and the development, by the OSCE, of a *Handbook of Best Practices* (OSCE, 2000, 2003).

Important initiatives on arms brokering, mounted by such regional organizations as the European Union (EU) and the Organization of American States (OAS), are covered elsewhere (BROKERS).

Transparency

The importance of transparency is increasingly recognized across a wide range of fields (Haug *et al.*, 2002, p. 5). Yet it remains somewhat controversial with respect to small arms, even though most observers ground this issue firmly in human—as opposed to national—security.

The arguments for transparency in the small arms trade are presented elsewhere in this edition of the *Survey* (TRANSFERS).¹⁶ This section focuses on the importance of transparency for monitoring implementation of the *Programme of Action* and other small arms measures. In brief, transparency allows states to demonstrate that they are abiding by their commitments in the *Programme* and other instruments. It also allows third parties to assess such implementation independently. If specific successes, problems, and challenges are to be shared among all stakeholders in the UN Conference process, including other states, relevant and specific information on states' implementation of the *Programme* is essential.

There is no single transparency mechanism for small arms and light weapons. The issue receives some attention in the *UN Programme of Action* (UNGA, 2001b), notably in section II, para. 31, where states agree:

To encourage regions to develop, where appropriate and on a voluntary basis, measures to enhance transparency with a view to combating the illicit trade in small arms and light weapons in all its aspects.¹⁷

In fact, transparency on small arms is much better in many regions than at the global level—though here, too, it has its limits. While regional organizations, such as the OSCE, the EU, and the OAS, have exchanged information on the implementation of their small arms measures, much of this data is restricted to states participating in these processes (Small Arms Survey, 2003, pp. 236–7).

Some recent developments herald further improvements in transparency for small arms. In December 2003, the UN General Assembly decided, for the first time, to expand the scope of the UN Register of Conventional Arms to include certain types of light weapons (TRANSFERS). Information in the UN Register is public. This is not, however, the case with the Wassenaar Arrangement, which, as mentioned earlier, also in December 2003, decided to expand its information exchange arrangements to include small arms transfers.

The UN Conference process has so far proven to be quite open. The provision the *Programme of Action* makes for 'voluntary' reporting appears to assume at least some degree of transparency as a result of its use of the word 'circulate':

[States] request the Secretary-General of the United Nations, within existing resources, through the Department for Disarmament Affairs, to collate and circulate data and information provided by States on a voluntary basis and including national reports, on implementation by those States of the Programme of Action. (UNGA, 2001b, sec. II, para. 33)¹⁸

In 2003, 103 states reported on their implementation of the *Programme of Action*.

So far, no restrictions have been placed on the information generated in the context of the UN Conference process. The reports that states have submitted on their implementation of the *Programme*, along with the statements they gave at the BMS, are posted on the UNDDA website.¹⁹

Reporting

Whereas, in 2002, only 16 states submitted reports to UNDDA on their implementation of the *Programme of Action*, 103 did so in 2003 (as of 31 December). This is slightly up from the figure of 98 reports submitted at the time of the July 2003 BMS. Each of the numbers from 2003 represents just over half of all 192 states worldwide.

Table 8.1 State reporting on implementation of the UN *Programme of Action* as at end 2003

Regions	Total states*	2002		2003	
		Reports	Regional percentage	Reports	Regional percentage
Africa	52	3	6	23	44
Americas	35	3	9	18	51
Asia	29	2	7	12	41
Europe	48	7	15	37	77
Middle East	14	0	0	10	71
Oceania	14	1	7	3	21
Totals	192	16	8%	103	54%

Notes: For the current list of reports, see <<http://disarmament2.un.org/cab/salw-nationalreports.html>>

*Comprising all 191 UN Member States, plus the Holy See (observer to the UN).

The BMS served to catalyse activity on small arms. In the months preceding the Meeting, there was a sudden flurry of conferences and workshops. UNDP and UNDDA also launched phase 1 of their reporting project, assisting 25 less-developed countries in the preparation of their national reports (Box 8.1). Many of the reports submitted by states at the BMS were specifically prepared for that meeting. To some extent, it appears this pressure also fed into actual implementation, with several national points of contact established in the run-up to the BMS. However, by the time of the BMS, two years after the adoption of the *Programme of Action*, it appeared that many countries had yet to establish a national point of contact, arguably the simplest of the *Programme's* requirements.²⁰

The July 2003 BMS also spurred reporting by regional and international organizations on their implementation of the *Programme of Action*. The statements and reports of these bodies, including many UN departments and agencies, highlight initiatives taken or under way and, in some cases, point to challenges and lessons learned in addressing the small arms problem.²¹

National reporting in 2003

There were few constants in national reporting in 2003. Some reports were several dozen pages long, while others took the form of brief letters to the UN. Some countries followed the *Programme of Action* paragraph by paragraph. Others offered only the broadest overview of national implementation. Many reports included annexes with additional, detailed information. Two states produced 'nil reports', indicating they had nothing to report on their implementation of the *Programme*.

Comparison among states and the identification of gaps in implementation is made more difficult as a result of the different formats states used for reporting. No format was provided or formally approved by the UN. The US developed a matrix for reporting that matched government action on small arms, including the provision of assistance and other cooperation, to specific sections of the *Programme* (US, 2003). Several other states adopted this reporting framework in 2003. Other countries opted for a set of guidelines distributed by the Geneva Forum (see below). These also formed the basis of a more extensive set of guidelines used in the UNDP-UNDDA reporting assistance project (see Box 8.1). Many states followed no set format.

As one would expect, some reports were far more informative than others. Many countries simply asserted, in general terms, that they were meeting their *Programme* commitments—reproducing relevant language from the *Programme of Action* without additional explanation or elaboration. In many cases, there appears to have been no genuine attempt to grapple with the small arms issue as it affected the particular country.²² Whether national reports were detailed or superficial, states only rarely acknowledged and explained specific difficulties they had encountered in implementing the *Programme*, limiting the instructive potential of the reporting exercise.

The following discussion, organized by *Programme* issue area, gives some idea of the quantity and quality of information that was presented by states in 2003. It is based on an analysis of the 103 reports submitted by states in 2003 (Kytömäki, 2003).

National point of contact, national coordination agency. As noted above, as of July 2003, many countries had established a national point of contact to liaise with other governments on small arms issues, and this was indicated in most of the national reports. Many reports also referred to national coordination agencies, though most often to indicate that these were being established or were under consideration. Some countries also reported that, while they had not set up a dedicated coordination agency, different government departments were meeting and cooperating for this purpose.

National laws, regulations, and administrative procedures. In general, states either provided fairly detailed information about their national laws and regulations or simply noted that they had 'taken the necessary measures' in accordance with the requirements of the *Programme*. Many states gave a detailed account of legislative changes under way or initiated following the adoption of the *Programme* in July 2001. Some reports were mostly devoted to the question of legislation.

Criminalization. States tended to neglect the issue of criminal offences and penalties in their reports. Many countries did not address the question at all, or instead indicated that there were penalties (without more detail) when discussing legislation. Several countries, however, provided considerable detail on relevant offences and corresponding penalties.

Stockpile management. Along with legislation (especially export controls), stockpile management and security was an area that states seemed comfortable in addressing in their reports. Yet, in this area as well, transparency varied considerably. Some states simply acknowledged the importance of the issue in general terms, while others described applicable security measures and procedures in detail.

There were few constants in national reporting in 2003.

States rarely acknowledged and explained specific difficulties they encountered in implementing the *Programme*.



Older rebel fighters wrestle a gun from a younger peer over a disciplinary matter in the Liberian capital of Monrovia in August 2003.

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Transfers. The subject of transfer controls was also widely covered in the national reports. Some countries dealt with the issue as part of their discussion of legislation, while others provided information on transfer practices in a separate section. The issues of end-use certification and delivery verification were mentioned less often, though some countries described the steps they took to ensure that small arms that were exported from the country reached intended recipients.

Brokering. Many states reported that, while they did not yet have legislation specifically addressing the problem of illicit brokering, they were taking steps to fill this gap.

Marking, record-keeping, and tracing. This topic also received widespread attention, though once again the depth of reporting varied considerably. Some states simply noted that all weapons manufactured within their jurisdiction were marked. Many others, however, gave detailed information on the content of marks and methods of marking. Many states also indicated that they supported the negotiation of an international instrument for tracing illicit small arms.

Collection and disposal. Many countries also discussed the collection and disposal of small arms (illicit or surplus) in their reports. Detailed information on numbers and types of weapons seized and/or destroyed during 2002 was provided in several cases, often in the form of annexes to the main report. Means of disposal of surplus stocks included destruction, transfer to other ministries within the government, and sale to friendly third countries. Some countries said they had no surplus to dispose of. Destruction methods varied widely and included smelting, melting, shredding, cutting, and severing. Several states noted that amnesty periods were in force in order to encourage the surrender of weapons.

DDR. While several countries—both donor and assisted states—discussed disarmament, demobilization, and reintegration (DDR) in their reports, in general, the reports do not give a full picture of all of the activity now under way in this area.

Public awareness and confidence-building programmes. Most states had little to say on this issue, though several developing countries noted the existence of radio and TV programmes designed to broaden public awareness.

Civil society. As one might expect, some countries mentioned NGOs and civil society in their reports, while others did not. Where states raised this issue, it was mostly in terms of projects and project funding. Donor governments noted the NGOs they were supporting, while developing countries referred to NGOs that were working in the country.

Implementation at the regional and global levels. Most states devoted relatively little space to regional and global action in their reports. Some countries addressed the issue in discussing national-level implementation. In general, states using the US matrix or the Geneva Forum reporting guidelines took greater account of international action than those using some other format. The most commonly cited international activities included adherence to international instruments and participation in meetings and conferences. Many of the reports reflected the importance of terrorism in the post-11 September world. Transnational organized crime was another focus of attention, with several countries indicating they had signed and/or ratified the *UN Firearms Protocol* (UNGA, 2001a). Many countries noted that they complied with UN arms embargoes and exchanged information with Interpol. States mentioning cooperation at the regional level often cited information-sharing and similar projects as examples—specifically between customs and border officials of neighbouring countries.

Assistance. Many governments discussed assistance for small arms work in their reports, though donor countries tended to provide more detailed information on the projects they had funded or coordinated. While countries which had received assistance did not generally reveal much about ongoing projects or existing needs, there were some exceptions. In particular, some countries indicated quite clearly where they needed technical or financial assistance in implementing the *Programme of Action*.

Many of the reports reflected the importance of terrorism in the post-September 11 world.

Reporting and implementation

Before examining various efforts to monitor implementation of the *Programme of Action*, it is worth considering the role played by national reporting in the UN Conference process, and in particular its relationship with *Programme* implementation.

While reporting is not implementation, they may be related in several ways. In the first instance, publicity surrounding reporting may raise awareness of the UN Conference process and the *Programme of Action* among government officials responsible for implementation. For example, at a wide range of events held in the run-up to the 2003 BMS, Chairperson Inoguchi repeatedly called upon states to prepare reports in time for the Meeting. The first phase of the UNDP reporting project also helped bring the UN Conference process to the attention of governments that were not aware of it, or at least were not focused on reporting and the BMS. The monitoring processes described in the next sections of the chapter have fulfilled the same function.

Related to this first catalyst for implementation is a second, no less important one. Specifically, the task of reporting, when taken seriously, can build capacity to implement across different government agencies. The *Programme of Action* covers a wide range of activity. Ministries such as foreign affairs, defence, the interior, and industry all need to be brought together to generate the information required for the report—just as they need to work together for the effective coordination, development, and implementation of national small arms policy. Enhancing the capacity of governments for inter-ministerial cooperation, including information sharing, was in fact one of the key outcomes of the UNDP reporting project, especially its field-assistance component.

Third, reporting can spur implementation for the simple reason that states want to have something to report on. This may have been less of a factor to date than it will be later on, as countries which have lagged behind in implementing the *Programme of Action* are prodded through positive example (the reporting of other states) and critical scrutiny (third-party monitoring) to take action to implement the *Programme* and report on these efforts.

Box 8.1 Capacity development for reporting

In April 2003, UNDP and UNDDA, in collaboration with UNIDIR, launched a project which aimed to build the capacity of states to report on their implementation of the *UN Programme of Action*. The first phase of the project was timed to coincide with the July 2003 BMS, offering support to selected countries as they prepared their inputs for this meeting. Phase II of the project began in September 2003 and is scheduled to continue until September 2006. This second phase aims to develop the long-term capacity of those countries most affected by the small arms problem, allowing them to participate in the UN Conference process through reporting, information sharing, and implementation of the *Programme*.

During the first phase of the project, 25 states requested and received assistance. This included the provision of a Reporting Assistance Package (all 25 states), dedicated desk-bound assistance (five states), and field missions (two states). Twenty-three phase 1 participants responded by submitting a report to the 2003 BMS, making a national statement, and/or appointing a national point of contact. Twenty participating states submitted reports to the BMS, representing almost one-third of reports received from developing countries.

Phase II of the project will retain its focus on reporting while stepping up efforts to promote implementation of the *Programme of Action* over the longer term. This work will include raising awareness of the *Programme*, involving new partners in the project, and integrating it into broader UNDP programmes and activities.

Further information on the project, including the full text of the Assistance Package, can be obtained from <http://www.undp.org/bcpr/smallarms/PoA.htm>

Source: Wille (2003)

Fourth, the reporting task affords governments an opportunity to review their implementation efforts, identifying gaps, as well as needs to be met in filling these gaps. This 'stock-taking exercise' can also extend, beyond the national level, to the regional and global ones, as states collectively identify gaps in implementation and resolve to address these (matching needs and assistance).

Finally, the exchange of information inherent in the reporting process can allow states, collectively, to learn from the experience of others in implementing the *Programme of Action*. Of course, if lessons are to be learned and shared, governments need to provide a complete and detailed account of the challenges and problems they have encountered in implementation, along with the measures (successful or not) they have taken to address these. As indicated in the preceding section, current reporting efforts fall short of what is needed in this regard.

Monitoring processes

Monitoring involves the independent observation and evaluation of efforts to implement particular commitments. National reporting feeds into this process. The information that states provide in their reports and statements mostly focuses on their own implementation of the *Programme of Action*. The bigger picture—implementation across the board—must be derived through a systematic review and analysis of all national reports. These need to be supplemented with other sources of information, as independent assessments of national implementation clearly cannot rely on national reporting alone.

The responsibilities of the UN under the *Programme of Action* with respect to monitoring are quite modest, namely 'to collate and circulate data and information provided by States ... on implementation by those States of the Programme of Action' (UNGA, 2001b, sec. II, para. 33). The task of analysing such information has been taken up by other actors, especially NGOs.

The role of civil society in monitoring the implementation of the *Programme of Action* is key. NGOs, in the first instance, can undertake the kind of systematic and intensive review of *Programme* implementation that no single state has an interest in providing. Clearly, NGOs are also better placed than states themselves to undertake impartial evaluations of state behaviour—though NGO independence is far from absolute. NGOs are important players in the UN

The role of civil society in monitoring the implementation of the Programme of Action is key.

Conference process, helping, for example, to set agendas and provide information (Small Arms Survey, 2002, pp. 242–3). They are also increasingly involved in implementation (BtB and IANSA, 2003). Yet they are not states, and it is states that have primary responsibility for implementing the *Programme*—and whose conduct requires monitoring.

Given their relative independence, NGOs are usually able to point to problems of implementation in a more direct and forthright way than states themselves or the organizations they are part of, including the UN—praising and shaming individual governments as they deem necessary. Nevertheless, the relationship between governments and civil society in particular countries can affect quite dramatically the capacity of NGOs to fulfil their informal monitoring function.

Monitoring is often *ad hoc*. For example, the Centre for Humanitarian Dialogue, in the first issue of its *Small Arms and Human Security Bulletin*, analysed the national reports submitted to the July 2003 BMS (Widmer and Buchanan, 2003). International Alert has examined control practices in selected regions as part of its project for Monitoring the Implementation of Small Arms Controls (MISAC).²³ The Small Arms Survey also reviews progress in the development and implementation of small arms measures at the national, regional, and global levels (BROKERS).

The next two subsections will look at two other mechanisms. The first, the report produced by the Biting the Bullet (BtB) project and the International Action Network on Small Arms (IANSA) involves something close to a classic NGO monitoring exercise, while the second, the so-called ‘Geneva Process’, brings states, international organizations, and NGOs together in an information-sharing arrangement which fulfills many, though not all, of the functions of a traditional monitoring mechanism.

The BtB-IANSA report²⁴

The lack of formal monitoring provisions in the *Programme of Action* led the BtB project team (Bradford University, International Alert, and Saferworld) and IANSA to join forces to provide a civil society contribution to monitoring efforts. The resulting report (BtB and IANSA, 2003), launched at the 2003 BMS, draws together information on a large number of states, highlighting weaknesses and broad trends in *Programme* implementation.

Project aims

The BtB-IANSA project sought to assess progress by states and civil society in implementing the *Programme of Action*. Specific goals included:

- identifying measures taken around the world to meet *Programme* commitments and exposing emerging gaps;
- identifying and highlighting key lessons and good practices that could be learned to enhance future implementation;



To launch the ‘Swords into Ploughshares’ exhibit in London in January 2002, a Mozambican artist ‘plays’ a saxophone sculpture made from an AK-47 assault rifle.

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- examining international cooperation and assistance related to the *Programme* in order to identify emerging successes and problems;
- improving understanding of the role played by partnerships between states, regional/international organizations, and civil society; and
- enhancing the capacity of civil society organizations throughout the world to undertake research and advocacy related to small arms and the *Programme of Action*.

Methods and activities

The BtB-IANSA project focused on a narrow range of *Programme* commitments that it considered essential first steps towards broader implementation.

Due to funding constraints, the report was produced and published in only five months. Much of the information it contains was collected in-country, largely by civil society organizations. With the support of IANSA networks, more than 100 NGOs in all regions provided primary information and research support. In the first stage of the research, a questionnaire was distributed to NGOs in the IANSA network and to other experts from civil society, international organizations, and governments. Expert consultants were contracted to produce the regional and country case studies. Regional workshops were also held in Jordan, Malawi, Peru, and Sri Lanka for purposes of building the capacity of participants to contribute to the report and research and monitor implementation in their areas.

The BtB-IANSA team compiled and validated the information returned by civil society and expert partners, and augmented it with information drawn from a wide range of sources, including the Geneva Process (see next subsection). A draft report was reviewed by an expert advisory panel and selected consultants before being finalized and released to governments at a Geneva Forum meeting, in Geneva, in June 2003. The report was formally launched a month later, in New York, at the First BMS.

All measures that contributed to the implementation of the *Programme of Action*, whether or not directly inspired by the UN Conference process, were, in theory, of interest to the BtB-IANSA team. The project nevertheless focused

Box 8.2 Key findings of the BtB-IANSA report

The report (BtB and IANSA, 2003) focuses on identifying emerging strengths and weaknesses in the implementation of the *Programme of Action* at the national, regional, and international levels, including examples of good (and bad) practices. An important question is the extent to which there has been positive movement since 2001, and whether appropriate linkages and partnerships are developing between issues and actors. On the basis of these assessments, the report makes a number of conclusions and recommendations.

Overall, the report finds that a number of promising steps have been taken since July 2001 in many countries and most regions that contribute to *Programme* implementation and provide useful lessons or precedents for the future. These gains, however, remain modest. Much more needs to be done to address the various aspects of the small arms problem as reflected in the *Programme*. In particular:

- ▶ Implementation of the first steps in the process has been limited and mixed, with many national points of contact officially established (though often with limited capacity), but few reviews of laws and procedures or national action plans.
- ▶ There is considerable regional variation in the implementation of the *Programme of Action*, with greater—if limited—successes correlating with the presence of substantial regional agreements and cooperative relationships between governments and civil society.
- ▶ Donor responses to the *Programme* have been mixed, with increased assistance available, but concentrated in a few areas and often poorly coordinated.

Source: Bourne and Greene (2003)

on a narrower range of *Programme* commitments that it considered essential first steps towards broader implementation. These included:

- the creation of national points of contact and national coordination agencies;
- governmental reviews of national laws and procedures;
- the formulation of national action plans; and
- the development of strategic partnerships across government, and between civil society, government, and regional or international organizations.

Contributions to the UN Conference process

The BtB-IANSA report was welcomed by governments, international organizations, and NGOs as a valuable contribution to the 2003 BMS and the broader *Programme of Action* review process. It continues to serve as a resource for governments and civil society in their implementation and monitoring efforts.

The BtB-IANSA project makes several important contributions to the review and promotion of *Programme* implementation. In the first instance, the process of gathering information for the report helped increase awareness among governments of their responsibilities under the *Programme* and of the concerns and activities of local NGOs. The identification of measures—or lack of measures—by particular states in the final report also prompted officials from those countries to come forward with additional information on their initiatives and plans. Perhaps most significantly, the report's emphasis on good initiatives and practices will contribute to lessons learned processes.

The BtB-IANSA project equally underlines the role that civil society can play in monitoring implementation of the *Programme of Action*. The process of preparing the report was explicitly designed to develop IANSA and wider civil society networks and to build the capacity of NGOs in developing and transitional societies to engage with their governments on small arms issues and monitor their implementation of the *Programme*. The four regional training workshops were particularly important in this respect.

The time and resource constraints faced by the project were, however, a key limitation. These precluded the kind of detailed and comprehensive civil society monitoring that, for example, the Landmine Monitor has provided in relation to the *Mine Ban Convention* (Convention, 1997). As a result, although the BtB-IANSA report identifies whether national coordination mechanisms or relevant laws are in place, it does not systematically investigate their underlying substance and effectiveness. Moreover, while the report notes strengths, gaps, and weaknesses in national implementation of the *Programme*, it does not assess compliance by states with all of their commitments. While such an assessment may be premature at this early stage of the UN Conference process, it will require more far-reaching efforts if attempted later on.

Another drawback of the final report is its limited use of the 2003 national reports on *Programme* implementation. Those national reports that were available as the BtB-IANSA report was being finalized, in the spring of 2003, were taken into account. However, the majority of the 2003 reports were released shortly afterwards, during and around the time of the July BMS.

A lack of NGO capacity in much of the world was a further constraint on the BtB-IANSA reporting exercise. This is often more than a problem of resources. In certain parts of the world, governments remain reluctant to provide information on small arms. Their relationship with civil society is strained at best. NGOs in these countries and regions face huge obstacles in gathering information on *Programme* implementation.

The report's emphasis on good initiatives and practices will contribute to lessons learned processes.

A lack of NGO capacity in much of the world was a further constraint on the BtB-IANSA reporting exercise.

The BtB–IANSA team plans further monitoring initiatives for the 2005 BMS and 2006 Review Conference. Although the details remain to be worked out, BtB and IANSA are convinced that it will be necessary to go beyond monitoring the initial steps in *Programme* implementation—the approach taken in 2003—to undertake a more critical and comprehensive assessment of performance in each of the *Programme*'s key areas. This would, in particular, provide the basis for a review of the adequacy of existing *Programme* commitments and mechanisms. A key element of these new initiatives will be the further development of civil society's capacity to monitor and review implementation of the *Programme of Action* (Bourne and Greene, 2003).

The Geneva Process²⁵

The Geneva Process was established to help maintain political momentum on the small arms issue between UN biennial meetings.

What has become known as the Geneva Process on small arms brings together governments, international organizations, and NGOs in regular informal consultations for purposes of promoting and monitoring implementation of the *Programme of Action*. An initiative of the Geneva Forum,²⁶ the Geneva Process was established in order to help maintain political momentum on the small arms issue between UN biennial meetings and, at the same time, draw on the resources present in this area in Geneva.

Between May 2002, when the mechanism was launched, and the July 2003 BMS, the Geneva Process met nine times. As of October 2003, 25 states, seven international organizations, and seven NGOs were participating. Governments, international organizations, and NGOs participate on an equal footing and share chairing and planning responsibilities.

Monitoring Programme implementation

The Geneva Process has played an important role in encouraging and facilitating regular reporting on the implementation of the *Programme of Action* and in making this information publicly available. At each meeting, Geneva Process participants—governments, international organizations, and NGOs—report on implementation activities in which they are involved. A researcher also presents independently gathered data on *Programme* implementation. All of this information is fed into a public, searchable database which is continuously updated (see Box 8.3).

Box 8.3 The Geneva Process database

In cooperation with the Geneva Forum, the Small Arms Survey has established a database containing information on measures taken to implement the *UN Programme of Action* since its adoption in July 2001.

The database (*Implementation of the UN Programme of Action*) includes documents circulated as part of the Geneva Process, as well as statements and reports from regional and international meetings—including the national reports and statements submitted in connection with the 2003 BMS. Various press sources provide additional information on small arms-related action.

As of the end of November 2003, the database contained over 1,100 documents. It can be accessed at <http://www.smallarmssurvey.org/databases.htm>

The Geneva Process is not a fully-fledged monitoring instrument. As noted already, only a limited number of countries and organizations participate. Its independent data-gathering capacity is also modest. Nor has the Geneva Process sought to analyse or evaluate the information it has generated in any systematic way. While participants have reviewed progress made in implementing the *Programme of Action* in general terms, the monitoring role of the Geneva Process has mostly been limited to the gathering and dissemination of information. The information the Process provides has, however, fed into other monitoring initiatives, such as the BtB–IANSA project (see above).

Information-sharing and implementation

Much of the work of the Geneva Process has focused on promoting implementation of the *Programme of Action*. The sharing of information and experience from around the world has been central to this activity. At one session, officials from South Africa briefed Geneva Process participants on their country's experience in implementing small arms collection and destruction projects. In addition to highlighting the many 'hidden costs' associated with these programmes, this discussion also revealed that much practical small arms work can be carried out by developing countries without outside financial assistance.

The Geneva Process has also sought to promote *Programme* implementation by helping states prepare their national reports. For example, as a result of discussions initiated by the Geneva Process in June 2002, the Small Arms Survey developed a set of reporting guidelines, which the Geneva Forum then informally circulated to all UN member states. These subsequently formed the basis of the more detailed guidelines used in the UNDP-UNDDA reporting assistance project (see Box 8.1).

The Geneva Forum initially envisaged the Geneva Process as a temporary mechanism, which would serve, above all, to help participants prepare for the First BMS in July 2003. At their last meeting before the 2003 BMS, however, participants decided to continue the Geneva Process beyond the First BMS. Governmental participants, in particular, saw the Process as a means of keeping international attention focused on the small arms issue in the years between the 2003 and 2005 biennial meetings.

The monitoring role of the Geneva Process has mostly been limited to the gathering and dissemination of information.

UN ARMS EMBARGOES²⁷

Separate yet related to the UN Conference process discussed above is the topic of UN arms embargoes. This section first explores some of the links between the two processes, before reviewing, in some detail, the various ways that monitoring and verification bolster state compliance with arms embargoes.

Arms embargoes aim at halting the flow of weapons and the provision of training and related services to a 'target' government or faction. Part of the 'targeted' or 'smart' sanctions toolbox, they are often accompanied by transport-related sanctions, including aviation sanctions and naval blockades, designed to reduce the cross-border movement of weapons through inspections and, more generally, to deter embargo violations. While arms embargoes are sometimes stand-

alone measures, they often form part of a broader sanctions regime comprising restrictions on trade (including trade in lucrative commodities, such as oil and diamonds), the movement of funds, travel, and/or diplomatic representation.

Multilateral arms embargoes long predate international efforts to address the small arms problem, which began in earnest in the mid-1990s and reached a milestone with the adoption of the *UN Programme of Action* in July 2001. The two instruments, though separate, nevertheless complement and reinforce one another. The effective implementation of one furthers the aims of the other.



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UN Secretary-General Kofi Annan addresses the UN Security Council, which voted to impose an arms embargo on armed groups in eastern Congo, on 28 July 2003.

The *Programme* takes up the question of arms embargoes in several of its provisions. It comes up indirectly in section II of the *Programme*, which sets out a series of national-level commitments, including one relating to the licensing of small arms exports:

[States agree] To assess applications for export authorizations according to strict national regulations and procedures that cover all small arms and light weapons and are consistent with the existing responsibilities of States under relevant international law, taking into account in particular the risk of diversion of these weapons into the illegal trade. (UNGA 2001b, sec. II, para. 11)

The term ‘relevant international law’ would encompass all arms embargo regimes, including any regional ones, that the state is legally bound to implement. Box 8.4 highlights three provisions of the *Programme of Action* which mention arms embargoes specifically. In each case, the reference is to arms embargoes adopted by the UN Security Council.

Box 8.4 The UN *Programme of Action* on arms embargoes

Preamble:

12. Recalling the obligations of States to fully comply with arms embargoes decided by the United Nations Security Council in accordance with the Charter of the United Nations,

Section II: [States undertake:]

At the national level

15. To take appropriate measures, including all legal or administrative means, against any activity that violates a United Nations Security Council arms embargo in accordance with the Charter of the United Nations.

At the global level

32. To cooperate with the United Nations system to ensure the effective implementation of arms embargoes decided by the United Nations Security Council in accordance with the Charter of the United Nations.

Small arms are very often the weapons of primary concern in embargoed zones.

Security Council arms embargoes are not ‘small-arms specific’ in that they typically cover a wide range of weapons (and related materials and services), including, in addition to small arms and light weapons, major conventional systems and weapons of mass destruction (including precursor material). Yet the link between UN arms embargoes and the UN small arms process is strong, since small arms are very often the weapons of primary concern in embargoed zones. A good example is Somalia, under UN arms embargo since January 1992. Small arms and light weapons have driven the insecurity that has plagued the country since the overthrow of the Siad Barre regime in January 1991.²⁸ Nevertheless, it was only after the terrorist attacks of 11 September, 2001 that the Security Council made a serious effort to ensure the embargo was being respected—specifically through improved monitoring.²⁹

The Somalia arms embargo was part of a flurry of Security Council activity that occurred in the years following the end of the Cold War. This activity involved much more than arms embargoes, but arms embargoes have been the Council’s preferred sanctions measure throughout this period (see Box 8.5).

A crisis in UN sanctions policy in the mid-1990s gave way to an increased emphasis on ‘targeted’ or ‘smart’ sanctions, including arms embargoes. These developments are reviewed in the recent sanctions literature (Brzoska, 2003; Cortright and Lopez, 2002). This section focuses on one crucial component of this recent evolution in UN sanctions policy: monitoring and verification.

Box 8.5 Security Council arms embargoes

UN Security Council arms embargoes that are mandatory, not mere recommendations,³⁰ legally bind all UN member states. In accordance with Article 25 of the UN Charter, all UN member states are obliged to abide by these embargoes (UN, 1945). This includes the adoption of necessary national implementing legislation.³¹ The Security Council's 'law-making power' is a rarity in international law; states normally decide, on a case-by-case basis, whether or not to undertake particular legal obligations. In the case of the UN, it is the Security Council, with its restricted membership³²—not the UN membership as a whole—that decides whether and when to impose a mandatory arms embargo upon a particular state or faction.

During the Cold War, the frequent clash of interests between the US and USSR meant that the Security Council only rarely imposed mandatory sanctions. Such sanctions, including arms embargoes, were applied in only two cases: Southern Rhodesia (now Zimbabwe)³³ and South Africa.³⁴ The Council has been far more active since the end of the Cold War. Since 1990, it has imposed mandatory arms embargoes against the states of Afghanistan,³⁵ Ethiopia and Eritrea,³⁶ Haiti,³⁷ Iraq,³⁸ Liberia,³⁹ Libya,⁴⁰ Rwanda,⁴¹ Sierra Leone,⁴² Somalia,⁴³ and Yugoslavia (former Yugoslavia⁴⁴ and Serbia and Montenegro⁴⁵).

The Security Council has also imposed mandatory arms embargoes against non-governmental forces operating in Angola,⁴⁶ Democratic Republic of Congo,⁴⁷ Rwanda,⁴⁸ and Sierra Leone.⁴⁹ In addition, the Council has prohibited the supply of weapons to Osama bin Laden, members of al Qaeda, the Taliban, and their associates,⁵⁰ as well as 'terrorists' in general.⁵¹ During the post-Cold War period, the Security Council has recommended arms embargoes in relation to conflicts in Afghanistan,⁵² Armenia and Azerbaijan,⁵³ Ethiopia and Eritrea,⁵⁴ and Yemen.⁵⁵

The report of the expert panel set up to investigate violations of sanctions against the Angolan rebel movement União Nacional Para a Independência Total de Angola (UNITA), released in March 2000 (UNSC, 2000a), was a watershed in UN sanctions verification. The report identified a specific country (Bulgaria) as the principal source of weapons to UNITA in contravention of the embargo. It named other governments, heads of state, and private actors it considered complicit in a broad range of sanctions violations, highlighting the role of brokers in this activity (BROKERS). The example of the Angola experts report has been followed by subsequent expert panels, as these have continued to provide detailed and specific information on sanctions violations.

In the next subsections of the chapter we inquire into where these recent efforts to improve the monitoring and verification of arms embargoes (and sanctions generally) have brought us. We first examine verification systems in general terms (including relevant institutions) before turning to the specific mechanisms that underpin them.



A UN report accused Presidents Blaise Compaoré of Burkina Faso (left) and Gnassingbé Eyadéma of Togo (right) of helping Angola's UNITA rebels to circumvent international sanctions.

© Reuters

Verification systems

Verification systems serve to determine whether states are abiding by particular commitments, such as the implementation of UN Security Council arms embargoes, which, though decided by the Security Council, must be implemented by UN member states. Where effective, these systems detect and deter non-compliance, facilitate parties' demonstration of compliance, and generally build confidence that the relevant commitment is being effectively implemented by all parties. Where the commitment amounts to a legal obligation and the organization's legal framework so provides, the

body imposing the obligation may elect to take further action to ensure that compliance is achieved and transgressors punished. Whereas negotiated arms limitation agreements usually lay down procedures for dealing with confirmed cases of non-compliance,⁵⁶ this is at the discretion of the Security Council under its own sanctions regimes.

The Security Council has established a range of *ad hoc* institutions to verify compliance with mandatory sanctions.

Using its UN Charter powers, the Security Council has established a range of *ad hoc* institutions to verify compliance with mandatory sanctions, either at the time the sanctions are adopted or some months—or even years—afterwards. These bodies may oversee sanctions implementation, collect and assess compliance reports from UN member states, and/or make recommendations for improving the effectiveness of sanctions regimes. In several instances, the Council has used monitoring mechanisms to gather and generate information on implementation. Regional organizations monitoring conflicts in their region, including the flow of weapons, have often contributed to these processes.

The Sanctions Committees are among the most important of these institutions. Made up of states represented on the Security Council, these bodies oversee the implementation of UN sanctions regimes. Among other tasks, they compile and analyse compliance information received from UN member states (in the form of national reports) and other sources. The UN Secretariat assists them in their work. The Council has created Sanctions Committees for most of the mandatory arms embargoes it has adopted since 1990 (though not always promptly). Sanctions Committees have varied considerably in their effectiveness over the years, often as a function of the Committee chair and the number of staff the Committee has at its disposal.

Sanctions Committees have varied considerably in their effectiveness.

The Sanctions Committees' limitations were especially evident in the case of Rwanda. That Sanctions Committee's failure to gain the cooperation of Rwanda's neighbours in investigating sustained and widespread violations of the sanctions regime led the Security Council to establish an Independent Commission of Inquiry (INCOI) (UNSC, 1995c) with substantially more intrusive investigative powers. Since 1999, the Council has made increasing use of sanctions monitoring bodies of this kind, establishing independent Panels of Experts for sanctions in Angola,⁵⁷ Liberia,⁵⁸ Sierra Leone,⁵⁹ and Somalia.⁶⁰ The Security Council has also set up a Monitoring Group⁶¹ and Counter-Terrorism Committee⁶² to monitor implementation of measures, including arms embargoes, against international terrorism.

The Security Council deployed its most far-reaching verification body in Iraq following the 1990–91 Gulf War. The United Nations Special Commission (UNSCOM)⁶³ conducted on-site weapons verification and destruction from June 1991 to December 1999. Its successor, the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC),⁶⁴ operated from November 2002 to March 2003. Although small arms were covered under the broad arms embargo imposed on Iraq in August 1990 (UNSC, 1990), both UNSCOM and UNMOVIC focused on Iraq's weapons of mass destruction and long-range missile systems. The invasive on-site inspection powers granted UNSCOM and UNMOVIC have no parallel in UN sanctions history and are unlikely to feature in other UN monitoring efforts any time soon.

Verification mechanisms

The Security Council has employed a range of mechanisms, in varying combinations, to assess implementation of its mandatory arms embargoes. These include the following:⁶⁵

- national reporting;
- compilation and analysis of information;
- remote or on-site monitoring; and
- clarification.

In the final stage of the verification process, the Security Council decides whether a particular state is in breach of its obligation to uphold the embargo. Non-implementation, as determined through the mechanisms outlined above, may be attributed to private traffickers operating beyond governmental control. Or the Council may decide that the government is itself involved in embargo-busting and take corrective action.

Verification systems for arms embargoes are often part of broader sanctions regimes. In many of the cases reviewed below, the text will therefore refer to 'sanctions' rather than 'embargoes'.

National reporting

National reporting is a common feature of embargo verification systems. The Security Council requests or requires UN member states to provide the UN Secretary-General or relevant Sanctions Committee with an initial report (or 'declaration') on measures taken to implement the embargo, and to submit additional reports on further action. The Security Council usually also asks states to forward any information they may possess on suspected sanctions violations.

The amount of information countries are expected to provide in their reports differs across the various sanctions regimes. In the context of sanctions imposed on rebel groups in Sierra Leone, UN member states were to notify the Sierra Leone Sanctions Committee of all arms they exported to the country, while the Sierra Leone government was to inform the Committee of any arms it imported. The latter were to be marked and registered in order to facilitate compliance monitoring (UNSC, 1998b, para. 4). However, the standard reporting requirement is simply to: 'seek from all States information regarding the action taken by them concerning the effective implementation of the general and complete embargo on all deliveries of weapons and military equipment to' the embargoed destination or actors (UNSC, 1992d, para. 11(a)).

In principle, by enabling states to demonstrate their compliance with an arms embargo, these reports can reduce doubts or suspicions about implementation, encourage other states to report, and help build confidence in the embargo (UNIDIR and VERTIC, 2003, pp. 3–4). However, as many Sanctions Committees have discovered,⁶⁶ states often fail to fulfill their reporting obligations.⁶⁷ Nor can the reports that states do submit necessarily be taken at face value. The Sanctions Committee for the Ethiopia and Eritrea sanctions, for example, indicated its work had been 'constrained' by the lack of a mechanism to verify reported data (UNSC, 2001b, para. 8).

Compilation and analysis of information

At this stage of the verification process, the monitoring body (usually the Sanctions Committee) collects and analyses available information in order to detect any inconsistencies or ambiguities. Successive reports from the same state are checked against each other and against those submitted by other states. In practice, Sanctions Committees receive much of their information from sources other than the national reports. Other material fed into the verification system includes reports of any monitoring mechanisms that are part of the sanctions regime, information from the media and NGOs, and intelligence collected and forwarded by states.

Monitoring

Monitoring serves to verify and supplement information received from national reports and other sources on arms embargo implementation. It may be *ad hoc* or continuous, and conducted remotely or on-site. Specific monitoring activities that have been authorized by the Security Council include: the establishment of expert panels to investigate

National reporting is a common feature of embargo verification systems.

States often fail to fulfil their reporting obligations.

sanctions violations; border monitoring of the movement of goods into a target state (including naval and air blockades); and on-site sanctions coordinators.

The specific form that monitoring takes varies widely among sanctions regimes. In many cases, the Sanctions Committee, alone, has had responsibility for monitoring. However, many Sanctions Committees have interpreted their mandates restrictively, effectively precluding an active monitoring role. A good example is the Libya Sanctions Committee. While it had a standard mandate to examine state reports on sanctions implementation and receive and consider reports on violations, it did not seek out the reports of states which failed to submit them and largely left investigation of alleged violations to UN member states (Cortright and Lopez, 2000, p. 117). This can be contrasted with the approach of the Sierra Leone Sanctions Committee, which actively sought the compliance and cooperation of governments and organizations in the subregion (Cortright and Lopez, 2000, p. 174).

Monitoring on the scale seen in the former Yugoslavia and Iraq is likely to remain exceptional.

Monitoring has been most extensive when conducted as part of comprehensive sanctions regimes. The monitoring of such sanctions depends for its effectiveness on the cooperation of states neighbouring the target and, as always, the provision of adequate resources. The comprehensive sanctions against the former Yugoslavia in the early 1990s were backed by an array of mechanisms designed to assess, enforce, and improve implementation. These included a naval blockade, sanctions assistance missions (SAMs), a Sanctions Assistance Missions Communications Center (SAMCOMM), and a Sanctions Coordinator. The EU, NATO, the OSCE, and the WEU conducted these operations in partnership with the UN. Extensive monitoring was also a feature of the comprehensive sanctions imposed on Iraq in 1990–91. Yet, monitoring of this scale has been, and is likely to remain, exceptional—particularly with the Security Council now shying away from the comprehensive sanctions it imposed, almost reflexively, in the early 1990s.⁶⁸

Since the late 1990s, the Security Council has taken something of a middle road between bare-bones monitoring (Sanctions Committees) and the sophisticated efforts that it mounted for some of the comprehensive sanctions regimes. Beginning with the UNITA sanctions investigations, in 1999–2000, the Council has increasingly looked to expert panels to generate independent information on compliance with its sanctions regimes. These panels are typically mandated to investigate sanctions violations, and recommend measures to end specific breaches and improve implementation generally. Their reports have been made public, putting pressure on parties named as complicit in sanctions violations to mend their ways. At the same time, the independence of these panels from the Security Council allows Council members to distance themselves from panel findings and recommendations when seeking to resolve compliance problems through ‘quiet diplomacy’ (Cortright and Lopez, 2002, p. 206).⁶⁹

Expert panel reports have been made public, putting pressure on parties named as complicit in sanctions violations to mend their ways.

Clarification

Any ambiguities or inconsistencies detected through the information collection, analysis, and verification processes must be resolved if the verification system and the sanctions regime in general are to retain their credibility. False evidence of non-compliance may be deliberately fed into the verification system for political reasons. This needs to be weeded out, while well-founded allegations of non-compliance should be confirmed and publicized so that further breaches of the embargoes regime can be deterred.

For these purposes, the sanctions oversight body (Sanctions Committee) may seek clarification from the state concerned or conduct additional verification activities, including fact-finding missions or on-site inspections. A key issue at this stage of the verification process is whether non-implementation, once confirmed, amounts to non-compliance. In other words, is there evidence that a particular government is complicit in sanctions-breaking detected from or across its territory?

Determining non-compliance

Once the overall assessment of implementation is complete, the Security Council must decide whether any instances of non-implementation detected through the processes outlined above amount to non-compliance. This determination may not be straightforward. Can and should a particular state be held accountable for the acts of individual traffickers who have evaded its control? Is government complicity or active involvement in such trade established?



Then President Charles Taylor of Liberia: The subject of 'secondary' UN sanctions.

Strictly speaking, verification stops at the Security Council's determination of non-compliance. Further action to punish transgressors and/or ensure that they comply with UN sanctions is a separate matter. While several expert panels have recommended that the Council impose sanctions on governments found to have been complicit in arms embargo violations,⁷⁰ as of the end of 2003 the Security Council had imposed such 'secondary sanctions' in only one case—against the Charles Taylor government in Liberia as a result of its violation of sanctions against Sierra Leone rebels (UNSC, 2001a).

Verification and compliance

States care about their reputations.⁷¹ Evidence that a state is breaching a mandatory arms embargo can jeopardize its standing in the international community. While Bulgaria protested loudly when the Angola sanctions panel identified the country as the principal source of weapons to the UNITA rebel movement, it subsequently strengthened its controls over arms transfers. The naming of specific companies and individuals in expert panel reports has also directed international attention to their activities. Although this has not put an end to these operations,⁷² it has at least made them more difficult.

The practice begun by the Angola sanctions panel of 'naming and shaming' governments and individuals involved in UN sanctions-breaking has been continued by subsequent panels. While this practice has met opposition in some quarters—particularly among developing countries, worried that it could be used to withhold development assistance—many observers consider it a key means of improving sanctions compliance (Cortright and Lopez, 2002, pp. 172, 205–7).

This new openness in UN sanctions monitoring can be expected to enhance the deterrent effect that verification normally brings. States and other actors not only run the risk that sanctions-busting will be detected, they can anticipate that such activity will be widely publicized. Perhaps most important, this allows interested NGOs to keep up the pressure on transgressors, pushing for a change of behaviour and/or punishment. Arguably, the prospect of being 'named and shamed' is of greater concern for most states than the threat of UN enforcement action. As noted above, the Security Council has so far been reluctant to take enforcement action in response to confirmed instances of sanctions-breaking, though the precedent that exists, with respect to Liberia, is recent.

Of course, no verification or enforcement system, no matter how effective, can ensure perfect compliance with UN sanctions. States may decide to breach an arms embargo for a variety of reasons. The violating state may have some special affinity with the target, such as ethnic or religious ties. States neighbouring the target may decide that overriding national security, economic, or other interests dictate a breach of the sanctions regime—for example, arming factions under embargo

Evidence that a state is breaching a mandatory arms embargo can jeopardize its standing in the international community.

for purposes of wielding influence or protecting national territory. Factors leading to inadvertent sanctions breaking include unclear Security Council resolutions and a lack of capacity, including legislative capacity, in the implementing state.⁷³

Improving verification

In his *Supplement to An Agenda for Peace* (UN, 1995), former UN Secretary-General Boutros Boutros-Ghali called for enhanced monitoring and implementation of sanctions at a time when many UN sanctions regimes were quite ineffective. Since then, a series of studies have considered how to improve the design, implementation, and monitoring of sanctions regimes. These have direct or indirect application to arms embargoes, depending on the study. Several of these initiatives have been launched by governments, in collaboration with NGOs and scholars. They include:

- *the Interlaken process*, initiated by Switzerland, on targeted financial sanctions;⁷⁴
- the *Bonn–Berlin process*, launched by Germany and coordinated by the Bonn International Center for Conversion (BICC), on the design and implementation of arms embargoes and travel- and aviation-related sanctions;⁷⁵ and
- the *Stockholm process*, initiated by Sweden, focusing on the implementation of targeted sanctions, with specific recommendations for arms embargoes.⁷⁶

Expert panels have issued their own recommendations for improving UN sanctions. Most often, these focus on the sanctions the particular panel is dealing with;⁷⁷ yet some panels have suggested improvements to broader UN sanctions practice.⁷⁸ Civil society has also led several recent evaluations of arms embargo implementation. Among these are the BICC project ‘Evaluating the effectiveness of arms embargoes’,⁷⁹ the reports of sanctions experts David Cortright and George Lopez (Cortright and Lopez, 2000, 2002), and a briefing paper by the Biting the Bullet project (Kirkham and Flew, 2003).

Experts panels
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their own
recommendations
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UN sanctions.

Several key recommendations⁸⁰ emerge from these studies regarding the improvement of sanctions (and arms embargo) monitoring and verification. One of the most important is that Sanctions Committees and other oversight bodies can do little if they lack the authority to carry out their mandates, especially *vis-à-vis* concerned governments. Many of the studies similarly underline the crucial role played in sanctions monitoring by expert panels and independent commissions of inquiry, and the importance of giving these bodies the competence, authority, and capacity they need to carry out in-depth investigations of the highest standard. The studies also underline the importance of reviewing sanctions implementation throughout the life of the regime, and making any changes that may be needed.

Another issue raised in the sanctions evaluations—one which in fact lies at the heart of compliance—is the clarity, or lack of clarity, in the underlying terms of the sanctions. Language regarding weapons is not usually a source of confusion in the arms embargo resolutions. Rather, the Security Council may leave states in doubt as to their applicability to dual-use items and weapons-related services. Where interpretation is left to the discretion of individual states, there is a risk that a ‘lowest common denominator approach’ will prevail as states opt for the least onerous interpretation of their obligations.

A central theme throughout the sanctions literature is the need to ensure that sanctions oversight bodies have the resources they need to do their job. Many commentators, noting the limitations inherent in the present, *ad hoc* system of sanctions adoption and verification, advocate the establishment of standing bodies and information systems. Often mentioned in this context is the establishment of a UN Sanctions Coordinator and sanctions assistance missions, modelled on the initiatives conducted in the former Yugoslavia. Increasing the capacity of sanctions oversight mechanisms would, in particular, allow these bodies to systematically review national implementation measures, including national legislation and penalties.

Capacity is also a key determinant of sanctions implementation by *states*, especially those neighbouring the target. Lack of capacity of neighbouring countries to control land, sea, and air space has been a major problem in the implementation of UN sanctions. Yet only very exceptionally have UN verification bodies been mandated to provide technical or other assistance to states for sanctions implementation. Important precedents include the SAMs, deployed by the EU and OSCE in support of UN sanctions in the former Yugoslavia, and the Counter-Terrorism Committee, mandated to build capacity among UN member states for the implementation of Security Council Resolution 1373 (UNSC, 2001c).

Where national implementation lags, outside pressure can be useful. Many of the sanctions studies stress the important role civil society has to play in monitoring arms embargo implementation. Human Rights Watch and other NGOs have scrutinized state compliance with specific embargoes (Human Rights Watch, 2003). Civil society experts have also participated in UN verification efforts and in broader discussions of sanctions reform.

Capacity is a key determinant of sanctions implementation by states, especially those neighbouring the target.

CONCLUSION

The UN Conference process, though still in its early stages, is showing encouraging signs of life. A key indication of this is the development of arrangements and mechanisms for reporting and monitoring of *Programme of Action* implementation. The chapter highlighted important developments at the 2003 BMS in this regard—particularly with respect to national reporting—and examined a few significant reporting and monitoring initiatives mounted by civil society, international organizations, and governments. It stressed the crucial role civil society plays in evaluating *Programme* implementation.

The verification of UN member state compliance with mandatory Security Council arms embargoes, examined in the second part of the chapter, is a separate, though related, process. Here, too, the aim is to see whether states are adhering to their commitments, though in this case the underlying commitment is legally binding. UN member states are required, under the law of the UN Charter, to implement arms embargoes decided by the Security Council. As a result, the same states (Security Council members) that establish a sanctions regime also decide on the verification measures that will accompany it.

Where political interest in ensuring compliance with sanctions regimes is strong, associated verification systems can be quite far-reaching (for example, the sanctions in Iraq and the former Yugoslavia). Yet the problem with these systems is precisely that they tend to be weak where political will itself is weak (for example, the Somalia embargo in the pre-11 September period). Civil society monitoring does not share this limitation.

Of course, in practice, the dichotomy just outlined—civil society monitoring for the UN Conference process, state-driven verification for mandatory UN arms embargoes—breaks down, to some extent. As discussed in the chapter, state reporting of *Programme of Action* implementation is a key component of the broader monitoring task. Similarly, civil society is an important part of efforts to verify compliance with UN arms embargoes. Reports of embargo violations by NGOs play a crucial role in reinforcing verification (and compliance) across the board.

Thus, the chapter's first main conclusion is that governments, international organizations, and NGOs all have essential roles to play in ensuring that small arms measures are effectively implemented. In some contexts, for example the Geneva Process, states and civil society (together with international organizations) work towards this common end in relatively close partnership. In others, the relationship is more adversarial, as with independent NGO monitoring of state compliance with arms embargoes. Other situations, such as the BiB-IANSA monitoring project, fall somewhere in between.

Yet in all cases—and this is the chapter’s second conclusion—reporting, monitoring, and verification are crucial components of these efforts. An arms embargo without a serious verification system is not a serious initiative. The absence of verification betrays states’ lack of interest in abiding by their (legal) obligations. While there are some encouraging signs in the evolution of sanctions verification practice over the past decade or so, verification efforts, along with the sanctions regimes themselves, remain vulnerable to weakening political will. Civil society could potentially enhance its role in filling this gap, as and when it appears.

The UN Conference process also depends on national reporting and independent monitoring for its success. Judging from the large number of national statements and reports presented to the 2003 BMS—along with the monitoring efforts now emerging from civil society—the Conference process is in reasonable health. Yet we are still a long way from full implementation of the *Programme*, and the reduction in small arms proliferation and misuse that this can be expected, over the long term, to bring. Sustained reporting and monitoring of *Programme* implementation will be essential to the continuing viability of this process.

8. LIST OF ABBREVIATIONS

BICC	Bonn International Center for Conversion
BMS	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
BtB	Biting the Bullet (joint project of Bradford University, International Alert, and Saferworld)
DDR	Disarmament, demobilization, and reintegration
DFID	Department for International Development (UK)
EAPCCO	Eastern Africa Police Chiefs Cooperation Organisation
ECOWAS	Economic Community of West African States
EU	European Union
IANSAs	International Action Network on Small Arms
IGAD	Intergovernmental Authority on Development
MISAC	Monitoring the Implementation of Small Arms Controls (project of International Alert)
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
OSCE	Organization for Security and Co-operation in Europe
SADC	Southern African Development Community
SAM	Sanctions Assistance Mission
SAMCOMM	Sanctions Assistance Missions Communications Center
UNDDA	United Nations Department for Disarmament Affairs
UNDP	United Nations Development Programme
UNICEF	United Nations Children’s Fund
UNIDIR	United Nations Institute for Disarmament Research
UNITA	União Nacional Para a Independência Total de Angola
UNMOVIC	United Nations Monitoring, Verification and Inspection Commission
UNSCOM	United Nations Special Commission on Iraq
WEU	Western European Union
WHO	World Health Organization

8. ENDNOTES

- ¹ 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.
- ² With respect to international environmental commitments, see, for example, Victor, Raustiala, and Skolnikoff (1998, pp. 676–84).
- ³ For more on these concepts, particularly ‘verification’, see UNIDIR and VERTIC (2003).
- ⁴ This section draws on information and analysis in Stohl (2003).
- ⁵ For a comprehensive review of the Conference and its outcomes, see Small Arms Survey (2002, ch. 5).
- ⁶ These issues, which included the regulation of civilian possession of small arms and transfers to non-state actors, were nevertheless mentioned by several states, as well as NGOs. See: Widmer and Buchanan (2003, p. 3); Batchelor (2003).
- ⁷ Lithuania and Luxembourg, counted here among the 102 states, did not take the floor, but circulated written statements at the Biennial

- Meeting. For the text of the national statements, see the UNDDA website <<http://disarmament2.un.org/cab/salw-2003/statements.html>>. These were issued as conference room papers:
- 8 A/CONF.192/BMS/2003/CRP.1 to 98. For the current list of reports, see <<http://disarmament2.un.org/cab/salw-nationalreports.html>>
- 9 For further analysis, see: Batchelor (2003); Griffiths-Fulton (2003); Widmer and Buchanan (2003).
- 10 For more on this first round of post-July 2001 meetings, see Laurance and Stohl (2002, pp. 9–10).
- 11 For the report of the Group, see UNGA (2003a).
- 12 For more information on the activities of UN agencies, see the UNDDA website <<http://disarmament2.un.org/cab/salw-2003/statements-Organizations.html>> <<http://disarmament2.un.org/cab/salw-orgs.html>>
- 13 For more on the *UN Firearms Protocol*, see Small Arms Survey (2002, pp. 237–41). As of 31 January 2004, 52 states had signed this instrument, while 12 had ratified or acceded to it. For the latest information, see <http://www.unodc.org/unodc/crime_cicp_signatures_firearms.html>
- 14 For more information on regional initiatives in 2002–03, see UNGA (2003c).
- 15 See <<http://www.seesac.org/>>
- 16 See also Haug *et al.* (2002).
- 17 See also: sec. II, paras. 23, 27; sec. III, paras. 11–12.
- 18 This request has been reaffirmed by the UN General Assembly, most recently in its Resolution 58/241 (UNGA, 2003d, para. 13).
- 19 See <<http://disarmament2.un.org/cab/salw.html>>. This site also contains information submitted by states on their national legislation and points of contact, plus information from international agencies and NGOs.
- 20 The BtB–IANSA report on *Programme* implementation was able to confirm the existence of national points of contact in 111 states. As of 23 July 2003, the DDA website listed points of contact for 112 states. BtB–IANSA researchers could confirm the establishment or designation of national coordination agencies in only 37 states. This compares with a total of 192 states in the world in 2003. See BtB and IANSA (2003, pp. 25–27, 172–74).
- 21 The statements and reports of regional and international organizations can be found on the UNDDA website: <<http://disarmament2.un.org/cab/salw-2003/statements-Organizations.html>> <<http://disarmament2.un.org/cab/salw-orgs.html>>
- 22 See Widmer and Buchanan (2003, pp. 2–3).
- 23 For project reports, see <<http://www.international-alert.org/policy/misac.htm>>
- 24 This subsection is based on Bourne and Greene (2003).
- 25 This subsection is based on Mc Carthy (2003).
- 26 The Geneva Forum is a joint undertaking of the Quaker United Nations Office, UNIDIR, and the Programme for Strategic and International Security Studies of the Graduate Institute of International Studies, all based in Geneva.
- 27 This section draws on information and analysis in Woodward (2003).
- 28 See, for example, UNSC (2003g, paras. 71–73).
- 29 The Security Council first established a Team of Experts, which laid the groundwork for a subsequent Panel of Experts and an initial report (UNSC, 2002b; 2002c; 2003d). The Panel of Experts was re-established in April 2003 and given a range of tasks aimed at improving implementation of the arms embargo, including investigating violations and assessing the capacity of states in the region for implementation (UNSC, 2003e). It reported in November 2003 (UNSC, 2003g).
- 30 The terms the Security Council uses in an arms embargo resolution indicate whether the measure is mandatory or not. If the embargo is mandatory, the Council will ‘decide that states shall’, or ‘demand’ or ‘order’ states to take particular action in the operative part of the resolution. Reference is also usually made, in the resolution’s preamble, operative section, or both, to Chapter VII of the UN Charter, from which the Security Council derives its enforcement powers. Where, by contrast, the Council is only recommending an embargo, it will ‘request’, ‘urge’, or ‘call upon’ UN member states to take such action.
- 31 States must typically transform international obligations into domestic law in order for these to have effect at the national level. Some states have adopted laws which give the government the power to issue regulations giving effect to UN Security Council decisions. This aspect of the national-level implementation of arms embargoes, previously overlooked, is now receiving greater attention. See, for example, BtB and IANSA (2003, chs. 3.1.2 and 3.1.3).
- 32 The Security Council has 15 member states, including five permanent members (China, France, the Russian Federation, the UK, and the US).
- 33 UNSC (1966).
- 34 UNSC (1977).
- 35 UNSC (2000d). This applied to ‘the territory of Afghanistan under Taliban control’, as designated by the Committee established under UNSC (1999c).
- 36 UNSC (2000b).
- 37 UNSC (1993a).
- 38 UNSC (1990).
- 39 UNSC (1992e; 2001a).
- 40 UNSC (1992c).
- 41 UNSC (1994a).
- 42 UNSC (1997).
- 43 UNSC (1992b).
- 44 UNSC (1991b; 1992a).
- 45 UNSC (1998a).
- 46 UNSC (1993c).
- 47 UNSC (2003f).
- 48 Non-governmental forces were the sole target from 1995: UNSC (1995a; 1995b).
- 49 Non-governmental forces were the sole target from 1998: UNSC (1998b).
- 50 UNSC (2002a).
- 51 UNSC (2001c).
- 52 UNSC (1996).
- 53 UNSC (1993b).
- 54 UNSC (1999a).
- 55 UNSC (1994b).
- 56 Note, however, that when all other procedures are exhausted, the matter is often referred to the UN Security Council for further action. See, for example, the *Biological Weapons Convention* (Convention, 1972, Article VI).
- 57 UNSC (1999b, para. 6).
- 58 UNSC (2001a, para. 19).
- 59 UNSC (2000c, para. 19).
- 60 UNSC (2002c, para. 3; 2003e, para. 3).
- 61 UNSC (2002a; 2003a), concerning sanctions against Osama Bin Laden, members of al Qaeda, the Taliban, and their associates.
- 62 UNSC (2001c), concerning measures against international terrorism.
- 63 Established under UNSC (1991a).
- 64 Established under UNSC (1999d).
- 65 For more information on verification systems, technologies, and techniques, see UNIDIR and VERTIC (2003).
- 66 In relation to the Rwanda sanctions, see UNSC (2002e, para. 7).
- 67 This is also true of verification systems for negotiated arms limitation agreements. Where no provision is made for overseeing implementation (through a standing verification agency or treaty secretariat) or for assisting states in implementation, the rate of reporting tends to be low. An exception is the *Mine Ban Convention* (Convention, 1997). Although it lacks a treaty secretariat, a high percentage of States Parties have submitted the transparency reports due under the Convention’s Article 7. For more information, see <<http://disarmament2.un.org/MineBan.nsf>>
- 68 See Brzoska (2003).
- 69 For more on the expert panels, see: Brzoska (2003); Vines (2003).
- 70 See, for example, UNSC (2000a, para. 179).
- 71 See Small Arms Survey (2003, p. 220).
- 72 See Vines (2003, p. 260).
- 73 For more on the factors influencing compliance and non-compliance, see Woodward (2003).
- 74 The process consisted of two expert seminars: Interlaken I, 17–19 March 1998, and Interlaken II, 29–31 March 1999, both held in Interlaken, Switzerland. For final reports, see <<http://www.smartsanctions.ch>>
- 75 See Brzoska (2001).
- 76 See Wallensteen, Staibano, and Eriksson (2003).
- 77 See, for example, the report of the Somalia experts panel: UNSC (2003g, paras. 173–92).
- 78 See, for example, the report of the Angola/UNITA sanctions panel: UNSC (2000a).
- 79 For more information, see the BICC website <http://www.bicc.de/projects/project_files/616_armsemb.html>
- 80 These are reviewed in more detail in Woodward (2003).

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