

# AN ASSESSMENT OF THE POA (OR, WHY WE ARE NOT IN NEW YORK)

June 2014



Reaching Critical Will

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This briefing paper draws from Instituto Sou da Paz's recent think piece *What Next? Thoughts for Global Civil Society Working on Arms Control and Armed Violence Reduction*.

The full piece is available at [www.soudapaz.org/upload/pdf/whatnext\\_2014.pdf](http://www.soudapaz.org/upload/pdf/whatnext_2014.pdf).

### Reaching Critical Will

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Reaching Critical Will is the disarmament programme of the Women's International League for Peace and Freedom (WILPF), the oldest women's peace organization in the world. Reaching Critical Will works for nuclear and conventional disarmament, the reduction of global military spending, and the demilitarization of politics and economics in order to achieve human security and social, economic, and environmental justice.

## Contents

|  |    |
|--|----|
| Summary. . . . .                             | 3  |
| Introduction. . . . .                        | 4  |
| Some questions . . . . .                     | 5  |
| A fresh perspective . . . . .                | 6  |
| The return of the nation state? . . . . .    | 9  |
| Different place, same conversation?. . . . . | 9  |
| So what next for small arms at the UN?. . .  | 10 |
| Conclusion. . . . .                          | 17 |
| Notes. . . . .                               | 18 |



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# SUMMARY

This briefing draws from Instituto Sou da Paz's recent think piece *What Next? Thoughts for Global Civil Society Working on Arms Control and Armed Violence Reduction*. The present excerpts serve as an account of SDP's relative withdrawal from the UN Programme of Action on small arms and light weapons (UNPoA) as a priority focus, but most importantly as a provocation for civil society and government colleagues to engage in a collective *quo vadis* assessment of the UNPoA.

As such, we question:

- Has our collective focus in the last decade—emphasizing the international trade and trafficking of arms, on one hand, and banning specific types of particularly inhumane weapons, on the other—been ideal, and should it continue to guide our efforts?
- How impactful has civil society been? Should we leave the comfort zone we have become accustomed to, often following United Nations diplomatic processes (or proposing new ones), and construct different paths altogether?
- Do we have a collective tendency to “take what goes on at the UN too seriously and what goes on in our own countries not seriously enough?” Is “in-capital work more effective than direct advocacy in New York, but underappreciated and underutilized by civil society?”
- How many lives has the PoA saved? Do “many states disregard the PoA because it is (only) politically binding?” Have “politics trumped sensible policy” permanently? Will the PoA be brought back into a vigorous path, or remain on “life support,” barely limping from meeting to meeting?
- Do states accept current small arms efforts at the UN “because it is safe; posing no serious challenges to the policies they treasure most, (and) governments sacrifice none of their prerogatives?” Is international small arms activity “accepted because it has been tamed?”
- Are civil society and the PoA stuck in a loveless marriage, going through the motions with a fair amount of apathy, resignation, and lack of excitement or novelty? Is the PoA destined to fizzle out into irrelevance? Or can renewed purpose and ambition rekindle the relationship?

In turn, we think that:

- Simply considering these questions can be quite productive and a level of self-criticism (possibly *mea culpa*) and external scrutiny extremely healthy

when contemplating future actions. Taking stock of recent advocacy efforts is essential for a clear-eyed strategy for the years to come.

- It is essential and urgent that governments and civil society demand much more from the PoA than simply restating decade-old commitments and themes, in order to make it germane to the real world work of reducing gun violence.
- At least for the moment, investing time and effort into this process is a flawed choice—even if as a framework for action on a national basis the PoA remains an essential guiding document, and many countries could benefit greatly from taking it more seriously. The discussions among diplomats at the UN have, in our opinion, reached a crippling stagnation.
- While this diagnosis is particular to our organization, it could be applicable to other civil society actors bent on reducing global levels of armed violence.
- A strategic shift away from international diplomatic efforts to focus on the national level is long overdue, and completely justified by the real world objectives that should guide our collective efforts.

Therefore, we recommend:

- Conducting an urgent honest appraisal of the PoA's ability to deliver real change. Whether reverting to nationally-based advocacy or continuing to pursue improvements within the UN, we urge actors to attempt to “create” once more, rather than being satisfied with only “maintenance”.
- Abandoning any notion of amending the PoA itself and the possibility of rendering the instrument legally-binding—even if extremely desirable—as these have little prospects for success.
- That governments and civil society join forces to **supplement** the PoA in a way to remedy some of its most damaging “unfinished business,” the gravest gaps left behind in the present international framework concerning small arms. Among these gaps, international full-cycle ammunition controls and tackling new technologies (including “smart guns” and 3D printing) are particularly urgent and feasible, and should thus be prioritized.
- That clear human security objectives must drive any further normative development, which should at the outset have a strong bias towards ensuring that any new “supplement” is negotiated as a legally-binding commitment rather than another “soft law” framework.

# INTRODUCTION

*“International arms control agreements are vessels—or tools—to achieve armed violence reduction. If in design or experience they do not live up to this promise, they have failed their purpose, and we must not insist in eternally attempting to ‘use a hammer to fix a television’. Rather, if needed, we must find novel ways to achieve said objective.”*

This briefing paper draws from a longer brainstorming exercise, *What Next? Thoughts for Global Civil Society Working on Arms Control and Armed Violence Reduction*. The paper suggests elements to consider when debating and setting an advocacy agenda to implement over the coming years.

To conduct that brainstorm and present a few possibilities, Instituto Sou da Paz (SDP) began by contracting an independent external evaluation of our international advocacy work. With those recommendations in hand, we then conducted a fair amount of research, distilling dozens of articles and publications, including

two recent and most relevant books.<sup>1</sup> We also interviewed (in person or over email) a couple dozen civil society experts in the fields of arms control, disarmament and armed violence reduction.

Together with our thoughts, we compiled a set of recommendations on future advocacy priorities for civil society to consider. The following thoughts are those specifically concerning the UN Programme of Action, put forth for consideration as a backdrop to the upcoming Biennial Meeting of States in June 2014 in New York.



## SOME QUESTIONS...

SDP believes civil society and governments alike should take a critical look at the arms control and disarmament landscape, and ask ourselves some difficult questions. Are we collectively making the most effective decisions? In attempting to bridge the gap between policy (what we know) and advocacy (what we focus on for political pressure), have we chosen the themes and methods that deliver optimum results, that is, a reduction of armed violence in affected communities? Are there not perhaps novel themes, ways, and fora to work internationally to achieve better results? (And: do we even know the results achieved over the last decade?)

In the realm of “conventional arms,” has our collective focus in the last decade—emphasizing the international trade and trafficking of arms, on one hand, and banning specific types of particularly horrible weapons, on the other—been ideal? Should it continue to guide our efforts? Or should civil society leave the comfort zone it has become somewhat accustomed to, often following United Nations diplomatic processes (or proposing new ones), and construct different paths altogether? Should we not be trailblazers, the vanguard defining the agenda, rather than automatic followers? Innovating and being creative rather than simply mimicking donor priorities?

Moreover, shouldn’t civil society apply onto itself the same level of transparency and ‘monitoring/evaluation’ that we demand of our governments? How impactful and efficient has civil society collectively been? The honest answer is that we are not sure. We have little systematic evidence, partially because there are still few objective tools to estimate the potential impact of our advocacy.

For every highly optimistic, even self-congratulatory, appraisal, there are others less so. One interviewee noted “our record would seem to indicate that we have collectively inhibited as much as we have facilitated”, while another goes further: “bluntly put, with at least five decades of work, civil society has nothing to show, and no evidence that it has any effect.”<sup>2</sup>

While these views may be overly pessimistic, we think asking the questions themselves can be quite productive, and a level of self-criticism (and possibly *mea culpa*) and external scrutiny extremely healthy when contemplating future efforts. Taking stock of recent advocacy efforts, then, is essential for a clear-eyed strategy for the years to come.

## A FRESH PERSPECTIVE

After initial discussions on some of these questions, SDP’s next step was to contract a consultancy to conduct an independent external evaluation of our international advocacy work.<sup>3</sup> The results of this exercise—which included questionnaires sent to about 200 partners, colleagues, and government officials as well as 30 detailed interviews—were consolidated in a final report, instrumental in helping us understand our strengths and weaknesses as perceived by the other stakeholders in our arena.

While we were pleased by overwhelmingly positive reviews of SDP’s international work—which was mostly focused on attempting to influence two UN processes, the Arms Trade Treaty (ATT) and the UN Programme of Action on small arms and light weapons (UNPoA)—many survey participants and individual interviewees confirmed our suspicions that perhaps these priorities should not monopolize our international efforts. One common perception brought out by the evaluation was that “civil society’s balance of advocacy

strategies relies too heavily on direct advocacy at the UN and too little on in-capital work.” In fact, according to the report:

Civil society seems to have succeeded in shifting their old mass campaigning and awareness activities into this new venue (UN), but only clumsily translated their direct lobbying capacity. First, overrepresentation due to the novelty (and likely a certain amount of herd-effect) of negotiating directly in the UN headquarters has sucked valuable resources away from other, less visible but more effective strategies. Second, unlike in national capitals, “there are not many decision-makers in New York.” “Diplomats have their marching orders,” which make their positions less malleable.<sup>4</sup>

A common thrust of those interviewed was to criticize “the excess quantity of NGO representatives, the ineffectiveness/superficiality of the participation of the majority of these individuals, and opportunity

costs of sending large NGO delegations to New York.” Individual respondents (anonymous to us) were even more direct: “the tendency is to take what goes on at the UN too seriously and what goes on in their own countries not seriously enough.”

Seemingly, much of the discontent stems from strongly held views on the PoA. During the evaluation, many respondents noted sentiments such as “the ATT has taken everybody’s oxygen and cast a long shadow over the PoA.” For some, this was frustrating as—in theory at least—according to one stakeholder, “the ATT was never going to be a major preventer of armed violence. The PoA and national gun laws are much more important. The ATT is important in preventing specific, occasional atrocities.”<sup>5</sup>

Of course, there may be no causation between increased attention to one effort and decreased to the other, and such a positive view of the PoA may be an overstatement, as “there’s a lot of frustration with the PoA ... a lot of NGOs think it’s a dead process.” Perhaps unsurprisingly, many respondents considered that “civil society international activity centered on the PoA is on the brink of collapse, and are mostly skeptical about the prospects of revival.”<sup>6</sup>

In our own opinion, as we wrote following the “successful” conclusion of the 2012 PoA RevCon:

Adopting a document does not alone establish a positive outcome. The substance in the final outcome document would have to be quite strong to call the exercise a real success. The important question is whether that document provides a practical way forward to stopping the illicit trade of small arms and light weapons and its dire human consequences. Under this lens, it becomes difficult to celebrate the past two weeks. All in all, the outcome document mostly restates and ‘reaffirms’ decade-old commitments. Establishing a schedule of meetings is not exactly ground-breaking. A decade is a long time to remain stagnant when the world around us and our knowledge of it are expanding at a rapid pace.

Is this outcome not the second option that Ambassador McLay of New Zealand warned about when he wrote that ‘another acrimonious failure would be as damaging to the credibility of the Programme of Action process as would one that simply and blandly restates existing commitments’? For this RevCon, the items at the top of our wish list went unfulfilled. As I had written at the outset of the Conference, ‘the PoA’s lack of an independent mechanism to assess its actual implementation on a national level poses the largest threat to its rele-

vance. This lethal gap must be effectively overcome during the next two weeks, with the creation of a credible blueprint for the coming into existence of an implementation assessment mechanism as soon as possible.’ No such luck.<sup>7</sup>

Continuously over the past cycle of meetings, doubts about the PoA, and the UN system more broadly, piled up: “how much does the PoA have to show in terms of impact in the real world? Other than expensive meetings and tons of paper, what has been produced? How many lives has the PoA saved? ... Can the United Nations provide the drastic changes to the *status quo* needed to truly make a difference on the ground? Is First Committee a productive forum to tackle global gun violence? If not, what are the alternatives?”<sup>8</sup>

Over the past several years, many experts have provided assessments of the value and prospects of the PoA. Aaron Karp explored both the strengths and weaknesses of the UN process as early as 2006, noting that the PoA:

focuses exclusively on a narrow slice of the small arms agenda. It provides no new mandate for action on legally owned weapons—widely agreed to cause much of the world’s worst gun problems—and it offers little basis for global action. But the catalytic effects of the conference were vital to the universalization of small arms policy. It was also the vehicle for the rapid expansion and redirection of research organizations and advocacy NGOs dedicated to these issues. Above all, it brought the issue to the top of the international agenda, insuring that it will be fully integrated into internal responses to violence and arms conflict for years to come. While these accomplishments cannot be gainsaid, it is not clear how much momentum they create. The PoA was more of a culmination to a process rather than the beginning of a new one.<sup>9</sup>

A kinder interpretation states that the “PoA is better understood as providing a basic international normative and procedural framework around which broad coalitions of concerned governments, UN and international secretariats and agencies, and NGOs can mobilize, set agendas, take initiatives, spawn associated specific agreements (such as the ITI), and constructively engage with more cautious or reluctant government and agencies. The UN PoA provides basic, but nevertheless important norms.”<sup>10</sup>

Another helpful perspective notes that the PoA “is not merely a set of prescriptions for national action. As a general framework for small arms control, it has inspired regions, sub-regions, and communities to tackle



the small arms problem in line with their own needs and circumstances.... As a catalyst for this wider range of activity, it is sufficient that the PoA simply identify a problem and sketch out remedial measures in broad outline" though the author recognizes the PoA faces "a credibility gap in some quarters given its politically binding nature."<sup>11</sup>

Finally, Guy Lamb has noted that despite its original strengths and intentions, the PoA has "become stuck on largely technical issues (stockpile management, ITI, cross border), which alienates most civil society organizations as there are only a few specialists that can actually add value to the debates."<sup>12</sup> Even a leading diplomat in the process, in an otherwise 'glass half-full' analysis, noted that "given major shortcomings in the quality and frequency of national reporting, and the lack of comprehensive independent assessments, it is almost impossible to obtain an accurate picture of PoA implementation and effectiveness... and strong political cross-winds continue to prevent any meaningful discussions that might result in practical and effective improvements to small arms programs in sensitive areas such as effective border controls and controls on small arms ammunition."<sup>13</sup>

One particularly hard-hitting critique stated that UN "small arms activity may have been a wave, not a vector. Although it undoubtedly constitutes a perma-

nent addition to international priorities, it is not clear that it has become a self-sustaining process. Rather than the small arms movement transforming states, it appears that states have transformed the small arms movement. They accept it because it is safe; posing no serious challenges to the policies they treasure most. Governments sacrifice none of their prerogatives.... Even gun rights advocates can rest assured in a process that leaves legal ownership alone. International small arms activity is accepted, in other words, because it has been tamed."<sup>14</sup>

While we would refrain from going this far, upon further reflection, given the outcome of the 2012 meeting, and those of the PoA meetings in the last several years, SDP became convinced that, at least for the moment, investing time and effort into this **diplomatic** process is a poor choice of priorities. While this diagnosis and prescription, of course, is particular to our organization and circumstances, we would nonetheless suggest that it could also be applicable to other civil society actors bent on reducing global levels of armed violence.

Note the emphasis above: this is not to say that the national implementation of its politically-binding commitments should not be a priority. As a framework for action on a national basis, the PoA was and remains an essential guiding document, and many countries could benefit greatly from taking it more seriously. Moreover, often the sidelines of meetings, between side events, networking and information and research sharing, can be highly productive. It is the discussions among diplomats at the UN that have, in our opinion, reached a crippling stagnation.

Even within these parameters, however, civil society continues to have an important role to play. As Kirsten noted of the last several years, it is not that the UN process "had come to a halt or no longer mattered," but rather that "its range of influence was more limited, with NGO involvement more dissipated and fragmented."<sup>15</sup> For the important opportunities that remain, or can be feasibly created, the International Action Network on Small Arms (IANSA) is poised to remain the major civil society driver for progress.<sup>16</sup>

Indeed, Amb. McLay for example recognizes civil society's essential role: "right since its inception, the standards, implementation and legitimacy of the PoA process have, to a very large extent, been driven by the energy and commitment of civil society groups, who have been influential in defining the PoA's conceptual framework; have been instrumental in building and sustaining political support for the PoA; and have been important partners in its implementation. It is vital that civil society groups remain central



partners on small arms issues, both in formal PoA meetings and on the ground.”<sup>17</sup>

Regardless of differing appraisals of the potential impact for the UN-based process, there was a clear and generalized assessment from our external evaluation that, as a collective, civil society was spending too much of its limited time, effort and funds in New York (and Geneva). Undoubtedly, the financial costs of orbiting around major diplomatic process in those cities are exorbitant, in fact prohibitive to many of the civil society actors, particularly those from the ‘global South’ actually affected by armed violence.

There are also significant non-financial costs, in terms of distance from the realities that need to be transformed. As noted by Bob Zuber, it is essential to insist that “advocates are connected to communities of practice far removed from the global centers of self-importance like UN headquarters in New York. In places like this, we often forget who we’re working for. Or we never knew in the first place. We need to know. We need reminders in case that knowledge has been misplaced.”<sup>18</sup>

Further, this distance can have deleterious effects if it means “we are immune from the consequences of our bad practices,” in the words of one expert, who wonders “the degree to which any of us have credibility with these diverse communities any longer.... Do we still enjoy working levels of trust from global constituents?”<sup>19</sup>

As such, unsurprisingly, one repeatedly made recommendation was for SDP, and civil society more widely, to shift the center of gravity of their arms control activities to the regional or national level. Once that geographical focus was adjusted, the main recommendation was for NGOs to “think creatively about effective ways to integrate arms control efforts across issues to create virtuous cycles and resilient governance systems.” In other words, civil society “must find ways to effectively network these devolved efforts across geographic space, issue space, and institutional forums.”<sup>20</sup>

It is difficult to ascertain the universal accuracy of the premise that “in-capital work is more effective than direct advocacy in New York, but underappreciated and under-utilized by civil society.” We agree with the first sentence and, therefore, have at least attempted not to allow the second sentence to apply to us, working constantly with decision-makers in Brasília. Perhaps in (most?) other countries a similar dynamic also holds and it is an issue of external perception and lack of knowledge of other organizations’ priorities and efforts.

Nonetheless, the notion of reassessing fora for small arms efforts strikes us as promising. Undoubtedly, a single organization has virtually no governance over a global process, making it difficult to achieve, and particularly to assess, any potential impact.



Photo by Instituto Sou da Paz

## THE RETURN OF THE NATION STATE?

The other obvious “pressure point” for the majority of our actions, repeatedly suggested during the external evaluation, is at the national level. In the words of one respondent, “SDP needs to get Brazil’s house in order... (this) will be more important than anything SDP can do on the global level.” As such, one of the evaluation’s conclusions was, regarding federal-level advocacy, “SDP should redouble efforts to establish long-term working relationships with the Brazilian government at the federal level.” In the eyes of at least one participant, a by-product of such change of focus would be “to build the profile of the importance of national regulations, which will mean the protagonism shifting back to the ‘global south’.”<sup>21</sup>

This view had overwhelming support also among experts interviewed for our *What Next?* think piece. For Keith Krause, while the focus on “New York and Geneva made perfect sense until 2007, as there was a true political opening,” the “change agents” now would be others; if in fact the “international norms are somewhat set, the focus should be domestic.”<sup>22</sup> Nicholas Marsh and Adèle Kirsten agree, with the latter stating that “today, the locus should be local and national, with the ‘armed violence reduction’ lens as a starting point.”<sup>23</sup> Indeed, it seems that, as one expert noted, civil society collectively “fell into a trap” by “believing that change by a global instrument would necessarily trickle down” to the local level it needed to impact.<sup>24</sup>

For some observers, the shift away from international diplomatic efforts to focus on the national level is long overdue, and completely justified by the objectives that should guide our collective efforts:

Dramatic new proposals cannot be accomplished through the United Nations or any other universal

membership international organization. They must be enacted at the national or regional level. It is no accident that the countries to succeed in the most ambitious reforms have done so through purely national campaigns.... Because international consensus tends to inhibit progress on small arms, organizational, financial and analytical support should be channeled down the most promising national paths.

On the core issues of small arms proliferation, the best role for the United Nations is not lighting the way forward ... but clearing the path of obstructions. Rather than wobbling beneath the full weight of change, the United Nations can contribute more by keeping the international community from becoming an impediment to change. Above all, it can promote an environment favoring restraint, in which countries are encouraged to develop controls tailored to distinct national priorities. But the burden of transformation will continue to lie with national governments, the ones who actually control and regulate the guns.<sup>25</sup>

In this sense, in our opinion, not only SDP but other advocates must make some important decisions. As Kirsten notes, “given the limited resources and competing human development needs, as well as the changing global context, advocates will need to make some strategic choices. For example, the shift to focusing attention at the national and local level is not surprising but needs to be bolstered and more clearly articulated as a strategic choice—one that will result in achieving the overall policy objective of reducing gun violence. The international agreements have played an important role in setting standards and providing a framework, but the hard work now has to happen at the national and local level: this is where people are shot and killed, injured and survive.”<sup>26</sup>

## DIFFERENT PLACE, SAME CONVERSATION?

Considering alternative “pressure points” for advocacy may be good advice and should indeed be contemplated widely. But what exactly should civil society focus on thematically within the broad area of ‘arms control and armed violence reduction’? Simply changing venues, while maintaining the exact same messages and priorities, would literally be ill-fitting.

Therefore, what is the substance of the policy “asks” that should be pushed—or better understood and

strategized—over the coming years? When contemplating the myriad possibilities and combinations—many of which are discussed in our paper *What Next?*—we should be cognizant that the objective must define the vessel, not the opposite.

In other words, “what” we want to achieve should define “how” we seek to achieve it, not vice-versa. It is therefore essential to recall, for example, that “where small arms policy gets done is a synonym for

what gets done. The tacit assumption that the United Nations is the most natural place to pursue small arms issues fundamentally shaped the nature of the global response. The choice of venues led to the emphasis not on small arms per se, but rather on the illegal trade.”<sup>27</sup>

Of course, there were many historical reasons for said choice of venue, but the counterfactual should at least be considered. Had we clearly defined the “conversation” we wanted to have in a different direction, would our collective choice of “place” have been the same?

## SO WHAT’S NEXT FOR SMALL ARMS AT THE UN?

Currently, civil society and the PoA process seem as if stuck in a loveless marriage, going through the motions with a fair amount of apathy, resignation, and lack of excitement or novelty. While some advocates are actively considering divorce—and many have simply left without saying goodbye—it would be unfair to state that the current rut has doomed the process. Rather, with a renewed sense of purpose and ambition, a few avenues are available for a rekindled relationship. In the absence of pursuing them energetically, however, the PoA would seem destined to fizzle out into irrelevance.

### *“Unfinished business”*

A potentially productive set of efforts would be to remedy the gravest gaps left behind by the present international framework concerning small arms. Despite its serious flaws in letter and practice, the PoA will continue to provide a fairly comprehensive framework for further action, if action is wanted. As noted by Keith Krause and Glenn McDonald from the Small Arms Survey, the UN small arms framework mostly covers the entire spectrum of concerns regarding the weapons, applying “to almost all stages of the weapons life cycle” and serving as a “menu of policy options” of sorts for virtually any issue that can be singled out for further development, or taking seriously politically.<sup>28</sup>

Indeed, as argued by a UNIDIR study, “the PoA should not be viewed in isolation. Ten years after its adoption, it now stands as a framework document that is, effectively, supplemented by other instruments and processes that enhance and expand on its provisions.”<sup>29</sup>

Whether (and how) to “enhance” the PoA itself through further normative development is the question. We are skeptical that this path provides much prospect for hope given recent history, particularly the lack of ambition and political courage of so-called “progressive” states. Regardless, there are arguably three ways of doing this: amending, supplementing, and “super-charging” the PoA.

For the first two paths, clearly overcoming the “original sins” or “unfinished business” of the instrument are essential. Of course, it is no coincidence that these substantial problems persist: “often bitter disagreements over the proper place of issues such as regulation of civilian possession and restricting transfers to non-state actors almost derailed consensus on the PoA in 2001; and these issues, together with others such as the illicit trade in ammunition, played a significant role in the failure of the 2006 Review Conference.”<sup>30</sup>

It should likewise come as no surprise that “issues that have proven relatively immune to the influence of research to date include the control of ammunition, the regulation of civilian possession, and monitoring implementation of the PoA.”<sup>31</sup> In other words, collectively our “heads” know that these issues belong in the PoA—we have the evidence-base, particularly on the inclusion of ammunition—but our “hearts” have not shown sufficient will. Politics have trumped sensible policy.

If the PoA text itself is deemed “sacrosanct” or a political “can of worms” that cannot be amended as it should, there are still alternative ways to supplement, strengthen, and update it. For example, the International Tracing Instrument (ITI) model (a sort of protocol to the original instrument) could be followed for any of these issues of substance and supplement the PoA. Even better, as McDonald suggests, diplomats could “carve out relatively narrow areas for treaty negotiation” and supplement the PoA framework with “legally-binding add-ons” on essential issues such as ammunition or manufacturing controls.<sup>32</sup>

Another set of “unfinished business” possibilities, that could potentially supplement the current framework, are suggested by Aaron Karp, who notes,

The range of proposals that can be advanced through the United Nations constitutes a minimal agenda for global reform. Drawn from ideas already under discussion, possible elements of a minimal international small arms agenda include: Universal, standardized marking of all newly manufactured

small arms, light weapons and ammunition; Universal registration of private and official small arms and light weapons; Require secure storage and continuous, personalized responsibility for all private and official small arms, light weapons and ammunition; Require the destruction of surplus official weapons and ammunition; and Limit the number and types of weapons allowed to civilian buyers. By assuring better control over all small arms, this kind of minimal program would discourage theft, illegal sales and diversion to illicit users. It would reduce the most pathological aspects of small arms proliferation. A minimal program like this is no panacea for small arms violence, but it would far surpass the effects of current initiatives.<sup>33</sup>

Supplementing undoubtedly holds more prospects for success than amending the PoA text itself. The final way of enhancing the PoA is to “super-charge” it by rendering the instrument legally-binding—which at least in theory would overcome a central block to its implementation and thus impact. Though the difficulties are obvious, breaking consensus simply by using UN General Assembly voting rules is entirely possible with a bit of gumption by ‘progressive’ states. Diplomats could go step-by-step, for example starting with the ITI or the less controversial sections of the PoA, until momentum is reached for a full overhaul.

### ***Hope for normative development?***

Tackling (seemingly intractable) issues is not, of course, the only meaningful work to be done at the United Nations for advocates seeking reduced levels of armed violence. In fact, there is still—or again—something to be said for dedicating creative energy to novel approaches, even at the UN.

Indeed, as put by Ed Laurance, “civil society was truly needed at the point of development” of the original small arms international instruments.<sup>34</sup> Regardless of all the obstacles in the path towards agreement, as well as the imperfections of the instruments themselves, all knowledgeable observers would likely agree that neither the PoA nor the ATT would exist without the seminal civil society push. Civil society could once more serve as the catalyst to normative development which, as Denise Garcia has shown, may be sparked by “norm entrepreneurs” who “persuade towards the need for action in new areas and are essential to gather needed funds, initiate advocacy campaigns, and keep the momentum towards change.”<sup>35</sup>

The necessary caveats, in our assessment, are that clear human security objectives must drive any normative development—the lessons of greater attention to ‘effects’ rather than (only) ‘hardware’ should be

heeded. Moreover, there should be a strong bias towards ensuring that any new instrument is negotiated as a legally-binding commitment rather than another ‘soft law’ framework.

Of course, norms

do not necessarily need to be part of an international treaty in order to thrive and have constitutive and transformative effects on the behavior of actors. Both politically and legally binding norms may pose proscriptions or prescriptions of behavior. Norms may establish a prohibition or a ban on previously existing conduct, and they may also set recommendations or new directions for action. Soft law may herald developments that may signal the intentions of states to act differently in a given area; and can usher in new normative avenues. The only distinguishing feature of legally binding norms (contained in international treaties or conventions) from political norms, therefore is their resulting effect on creating new national legislation that is usually what occurs when states ratify treaties.<sup>36</sup>

Nonetheless, we believe that in the case of small arms it is precisely this “only distinguishing feature” that has (mainly) proved an almost insurmountable burden for the real-life impact to several instruments, particularly the PoA. As observed by McDonald, “it has become clearer to me over time that many states disregard the PoA and ITI because they are politically binding. The commitments may be firm—States *undertake* to control, report, etc.—but the attitude, in some quarters, is that we can take or leave this because it is politically binding.”<sup>37</sup>

Rather than a fault of the type of commitment in itself, of course, the failure here rests on the shoulders of the many states that do not take international agreements seriously unless it is illegal for them not to—particularly in the few cases with strong enforcement mechanisms or clear repercussions for lapsed implementation. Unfortunately, many states need to be forced to honour their public commitments.

It is therefore unsurprising, as recalled by New Zealand Amb. McLay, that “the question of whether the effectiveness of the PoA would be better served by transforming it into a more robust global framework—perhaps, to move from the present ‘soft’ normative commitments to hard law—will almost certainly continue to be raised again within the process. No such development is possible within the existing consensus framework, which raises the question whether the cause might be better served by abandoning the consensus requirement altogether.”<sup>38</sup>

A new global instrument, however, does not have to necessarily emerge—at least originally—from the UN. In fact, the avenue of a regional or sub-regional cornerstone, to be joined later by other regional “building blocks,” is also feasible. “It is important that norms become institutionalized.... The UN is usually the main site where norms evolve in general, but this may not be the case for SALW and other cases of conventional disarmament. However regional organizations ... are also valuable sites for norm consolidation and in the case of SALW they are more robust sites of norm development.”<sup>39</sup>

Regardless of the exact path chosen, the good news is that, if “norms emergence is spearheaded by the generation of credible knowledge as a first initial step,”<sup>40</sup> civil society is ready to rumble. Indeed, “if new SALW negotiating opportunities opened up in the UN SALW process, many good research-based publications prepared between 2003 and 2009 remain directly relevant on ‘next-step’ core normative issues such as end-user/end-use controls, regulating arms brokering activities, controls on transit and transportation, reporting mechanisms, or ammunition.”<sup>41</sup>

In addition, some “nuts and bolts” areas could also be interesting areas to explore for universally binding standards, including robust stockpile management and surplus definition and destruction, arguably the best ways to preclude guns being diverted to the illicit market. Here again, the technical and research homework is done—best practices encapsulated in ISACS, for example, could serve as the basis for legally-binding protocols or treaties.

An even more ambitious possibility was sketched by Guy Lamb, who suggests that civil society could contemplate whether to embark on a campaign for a global instrument, either legally-binding (treaty) or “supplementary to the UN PoA,” and which “could be pursued outside of the UN process,” specifically on the issue of gun violence.

Lamb notes that “a large majority of states have solid violence reduction processes built into their policy and legislation. Regional protocols/conventions (SADC, ECOWAS, Nairobi) have provisions too.” These would therefore serve as a basis, for a global instrument in which “States agree to adopt measures (both legislative and programmatic) that are geared towards reductions in gun violence, such as targeted law enforcement; improved licensing (background checks; minimum age; maximum numbers; safe storage), etc. The key outcomes would be a reduction in death and injuries due to firearms, as well as reductions in emotional violence.”<sup>42</sup>

The fulfillment of this vision, of course, would be a tremendous achievement, but having a clear objective as a blueprint, roadmap, or conceptual framework in itself can have extremely positive impacts. Realistically, for any of these prospects to come to fruition in the next few years would be an uphill battle. Some observers believe that “SALW researchers and associated transnational advocacy networks are no longer widely regarded by international policy makers, or funders, as a particularly dynamic and politically important focus for further international negotiations or norm-setting. In a context of relatively modest diplomatic objectives for further developing SALW norms and programs in UN and other international SALW diplomatic processes, there is relative low diplomatic demand for new SALW policy research.”<sup>43</sup>

Nonetheless, of the many areas of substance around small arms, it strikes us that two “gaps” of the international framework in particular are ripe for potential normative development: ammunition controls and new technologies.

### ***“Guns don’t kill people, bullets do”***

Bullets are, of course, missing from the PoA, and treated as a lesser category under the scope of the Arms Trade Treaty. And yet, several clichés—such as “guns without bullets are nothing more than heavy sticks” or “guns don’t kill people, bullets do”—are, also, true.

Let us keep going: “guns and bullets have a symbiotic relationship—neither can fulfil their lethal mission without the other. Like the syringes and substances used for lethal injections, they are physically distinct components of a unitary and interdependent system developed to inflict damage to humans.”<sup>44</sup> Or, as noted by an African delegate during the ATT negotiations, whether major conventional arms or SALW, the weapons themselves are no more than “delivery systems”—it is ammunition and munitions that kill and maim.<sup>45</sup>

Considering that 12 billion bullets—or enough to kill all of humanity, almost twice—are produced yearly, all the realities and arguments made for better control and reduction of firearms are true for their ammunition. What we know about ammunition points to a few clear directions in terms of renewed actions; for example, according to the Small Arms Survey, the average annual international trade in small arms ammo between 2004 and 2009 amounted to US\$1.8 billion; 26 countries had exports of ammunition for small arms worth more than US\$ 10 million (in 2007); and “the global trade in small arms and light weapons ammunition is considerably less transparent than the trade in the weapons themselves.”<sup>47</sup>



We also know that, in countries like Brazil or the United States, much of the firearm ammunition used is produced domestically, thereby excluded from the trade numbers above—in Brazil particularly, the company CBC (Companhia Brasileira de Cartuchos) has virtually a monopoly of the bullets used in the country, by police and civilians (including criminals) alike. For example, CBC—which notes itself as “one of the three largest ammunition producers in the world”—in 2006 sold around 40% of its total production to the Brazilian government and security forces, while in 2010 it reportedly exported almost US\$140 million to around 50 countries.<sup>48</sup>

Moreover, as PRIO has noted, “weapons often last for decades, but ammunition can only be used once. An army fighting a war will need to keep up regular sup-

ply advocacy timidity when it comes to ammunition are plentiful, arguably including a lack of follow-through both in the PoA and the ATT.

Despite the conceptual absurdity and dozens of governments to this day calling for the formal inclusion of ammunition in the PoA text, most of civil society has pursued the issue in a lukewarm and erratic manner, even if

one could argue that the knowing absence of ammunition in the PoA’s provisions is a clear avenue to circumvent commitments and undermine objectives. At times, omission becomes commission. To pontificate about legal musings, of course, is not the issue. The issue is this: without ammunition, the governments charged with implementing the PoA



plies of ammunition, otherwise its effectiveness as a fighting force will degrade and ultimately cease.”<sup>49</sup>

In other words, if small arms production worldwide miraculously came to an abrupt halt, official stock-piles were made totally secure, and all security forces surplus weapons were destroyed, the enormous numbers of firearms in circulation—particularly among civilians—could continue to facilitate high levels of gun violence for many years if access to ammunition remains unabated.

Relative to firearms, ammunition is cheaper, simpler to produce, expendable, easier to conceal in small quantities, highly fungible, and has a much shorter shelf-life—and therefore is produced, sold and used in absolutely enormous numbers. And yet, attempts to stop the free flow of bullets—or at least ensure better controls—have been relatively muted from both governments and civil society. Examples of civil society’s

are ‘shooting themselves in the foot’ in practical terms because they are knowingly refraining from a simple normative improvement that could help in achieving its human security objectives.<sup>50</sup>

During the ATT negotiations, advocates many times demonstrated the absolute need to include ammunition in the instrument’s scope; we ourselves argued that “people don’t die of gun wounds, they die of bullet wounds. An ATT without ammunition in its scope would be like a gun without bullets—it would not serve the purpose it was designed for.”<sup>51</sup>

Yet, both governments and advocates like us have been relatively silent on the urgency of better controlling international ammunition flows since the final negotiations, a full 14 months ago. Ironically, the less than ideal coverage of ammunition in the ATT may present an opening to advocate for proper controls.

It may indeed be time to raise our collective voice once more. As several interviewed experts noted, among the several topics generally seen as “unfinished business” in the PoA, a concerted effort to tackle ammunition is possibly the most pressing. For example, Michael Ashkenazi argues that ammunition control, “badly weakened by manufacturer interests” should be advocated “more than anything I can think of.”<sup>52</sup>

A *quid pro quo* to keep ammunition outside of the scope of the ITI led to the 2005 statement that ammunition would “be addressed in a comprehensive manner as part of a separate process conducted within the framework of the United Nations.” While this recommendation did yield some important follow-up (such as the development of the IATGs), in general the UN has since paid little attention to small arms ammunition.<sup>53</sup> Thus, “civil society could advocate for new agreements that explicitly cover ammunition, at different stages of the life cycle—covering not just storage, but also manufacture, international transfer including brokering, and surplus disposal/destruction.”<sup>54</sup>

Advocating for strengthened international controls of ammunition has several potential assets. One is that much of the work has already been done. As McDonald argues, in terms of research and policy work, civil society could “take existing research and repackage for advocacy purposes, distill the research ... that illustrates the importance of ammunition in fueling conflict in zones already awash with weapons.”<sup>55</sup>

Also in terms of codifying ammunition control or developing normative frameworks, much has already occurred at least on the national and “sub-global” levels. As we have noted, “regionally and sub-regionally as well, most instruments on SALW—whether on their illicit or illicit trade—such as CIFTA, ECOWAS Convention, SICA (Central America), Decision 552 (Andean Plan)—clearly recognize ammunition control and regulations as part and parcel of those for firearms.”<sup>56</sup>

Furthermore, a considerable majority of the world’s governments already agree that ammunition should be prioritized. While not exactly “low-hanging fruit,” given the commercial interests and stance of a few major (and powerful) producers, it is helpful to know that there is considerable political appetite for steps forward.

Indeed, “no wonder that it is precisely the regions of the world most affected by gun violence at the forefront of the call for the inclusion of ammunition in the PoA. From Mercosur to CARICOM, from Central American to African nations, these countries know that said inclusion would improve the tools at their disposal to undertake efforts to help keep their citizens alive.”<sup>57</sup>

Likewise, during ATT negotiations, an overwhelming majority of countries demonstrated a readiness “to shoulder obligations regarding measures to avoid the diversion and illicit trade of SALW ammunition,” with a particular resoluteness coming from African, Latin American and Caribbean nations. While this push was only partially successful, that desire could again be mustered to carry over to renewed attempts or alternative—hopefully broader—frameworks.

For example, the ambassador of Peru during First Committee 2012 argued it was “undelayable” that the United Nations addresses the issue of ammunition in an “individual manner”.<sup>58</sup> A proposal on a way forward towards legally-binding international controls of ammunition—not only of its trade, but from production to destruction—could indeed be ground-breaking. These efforts are long overdue and eminently feasible. If, in the words of Peter Batchelor, ammunition control (like civilian possession) has proven “immune” to research,<sup>59</sup> it is because the political will has not reached tipping point. Creating political will is the job of civil society advocates. The evidence-base, policy recommendations, and even normative blueprints are present; our collective mission is to push them into the realm of political reality.

### ***Emerged technologies***

Another area that would clearly benefit from international normative development, given the utter current vacuum, is the intersection of small arms and new technologies. The evolution of firearms technology over the last decades is minimal, particularly because manufacturers have balked at safety improvements. More recently, however, two technological innovations are significant enough to demand the international community’s attention: “smart guns” and 3D printing.

Despite relative novelty, there is nothing futuristic about so-called “smart guns” or “information technology enhanced weapons” —unless you think an iPhone is also futuristic.<sup>60</sup> Many technologies already exist or are under development to ‘personalize’ guns, rendering them workable only to their authorized user—in addition to fingerprint technology, sensors, and radio frequency identification, one company is even offering a smart phone app that can lock or unlock the gun’s trigger, detect motion, and geo-locate it remotely.<sup>61</sup> In this sense, these are not “emerging” technologies, but have indeed already emerged.

This should come as no surprise, as according to Ashkenazi, “with the incorporation of digital technology into all areas of life, SALW have started changing too. SALW have acquired electronics. Targeting, ammuni-



tion counts, and sensors to improve accuracy and lethality are becoming commonplace. Yet safety and security systems have remained the same, unchanged since the early twentieth century. While cars and houses have electronic locks, weapons have none. Computers can be tracked after theft, arms cannot. Thus SALW have not taken full advantage of developments in electronics.”<sup>62</sup>

The most comprehensive discussion of these emerging technologies can be found in the materials supporting a seminar facilitated by BICC and the German MFA on the topic in June 2013, the Berlin SmartCon, which SDP attended.<sup>63</sup> While the papers and discussions were broad and fruitful, indeed

the one most prominent and common finding of the Conference, both in the presentations and in the discussions that followed, is the agreement that smart weapon technology has different effects, and differential benefits under different conditions and scenarios: what is likely to work in one country, or as a solution for a particular problem, may well not work elsewhere or for a different problem. Nevertheless, there is almost complete agreement that in many ways, smart weapon technology for SALW control will be a growing phenomenon in the coming years, notably as both the technology, and the economic sector it represents, matures and expands.<sup>64</sup>

Otherwise, governments have been mostly quiet on this development, though as the technology advances, so will policy and normative reactions. For example, three US states have legislative proposals determining that three years after the technology is available on the market, all new guns produced or sold must be “smart” —one of them, New Jersey, has enacted the law, which will presumably be triggered by entry into market. On a national level in the US, a similar bill has been introduced in both the House of Representatives and the Senate, requiring that all new guns to be personalized two years after enactment. In Brazil, several legislative proposals currently in Congress determine making the inclusion of chips mandatory in all new firearms.

A forthcoming report by the UN Secretary General on “new technologies” may provide much fodder for discussion, at it shall cover “the implications of recent developments in small arms and light weapons manufacturing, technology and design for effective marking, record-keeping and tracing.” It should be reviewed carefully by civil society organizations and governments alike, and will hopefully have some recommendations towards establishing international standards. Regardless, a minimalist framework could

certainly be the fodder for normative development at the UN.

In some ways a more “futuristic” scenario—despite the fact that it also already exists—stems from recent developments in 3D printing. With the equipment at home, and production blueprints downloaded from the Internet, individuals can theoretically produce a firearm out of “plastic” —mostly undetectable by X-ray machines—in total secrecy, from the comfort of their living room.

As the case of the “Liberator” pistol denotes, a printed gun that actually fires a shot is no longer science-fiction.<sup>65</sup> It has also, however, already caused governmental reaction, as the US State Department ordered the blueprints to be taken down from the Internet (after they were downloaded thousands of times), as well as new or renewed proposals to prohibit gun manufacture by individuals or groups not legally registered, or banning “undetectable” guns.



*The Liberator, Victoria and Albert Museum*

At least for the time being, 3D guns are unlikely to become a significant threat in most places, exactly because the world is awash in “normal” firearms. Not only are the guns (still) of poor quality (often only one shot, poor targeting, dangerous for use) but they make very little economic sense for the vast majority of individuals who chose to purchase and use a firearm, as in most jurisdictions “professional” firearms are available, accessible, and cheap.<sup>66</sup>

In many countries, including Brazil, producing a firearm without manufacture controls and regulations is simply illegal—if you are about to break the law anyway, it would make more sense to purchase or make a cheaper, better gun. As noted by Nicholas Marsh, it is “not too hard to make a firearm in a decently equipped workshop (with machine tools) and some manufactured components (e.g. barrels, springs).”<sup>67</sup>

The risks may be slightly greater in a few countries (such as the UK and Japan) with highly restrictive regulations on firearms, where the difficulty and cost of obtaining illegal guns—combined with more access to high technology and purchasing power—could spark 3D gun entrepreneurship.<sup>68</sup> Still, a specific cost-benefit analysis of a jurisdiction's illegal firearms market would be necessary—and could indeed show that, like elsewhere, it makes more sense to buy illegally than to produce illegally.

Nonetheless, in the medium term, as production costs diminish and quality increases, 3D firearms could become much more attractive and mainstream. Like with “smart guns,” once the products break into market—and they will, even if as only a niche or “luxury” product in more affluent societies—it would be highly beneficial to have at least properly begun international discussions towards their regulation and safer potential use. In tandem, reinforced controls on ammunition will become even more important, as 3D guns will always need bullets to inflict damage.

As such, these technologies constitute a clear area in which the international community (i.e. the United Nations) should provide a normative framework for their development and use, lest they are allowed to start killing and maiming before governments have attempted to preempt or reduce the harm.

Indeed, McDonald singles out “new technologies” as a top area for small arms normative development at the UN,<sup>69</sup> with some movement possible as early as when governments gather for the Biennial Meeting of States. Undoubtedly, international standards should be developed urgently—whether legally-binding or a soft law “protocol” complementary to the PoA framework.

As noted by Patrick McCarthy, it is indeed highly unlikely that “smart gun technology” would be properly “included” in the PoA text itself,<sup>70</sup> though one option proposed (mention in BMS and RevCon outcome documents) strikes us as entirely insufficient. Rather, another option mentioned, to include “smart tech” as a part of the International Small Arms Control Standards (ISACS), would be preferable, inferior only to the possibility of formal normative development with a stand-alone framework.

In the case of 3D printed firearms, a simple legally-binding normative framework on manufacture controls (banning individual and/or unregistered production) would probably suffice, and include within its scope international regulations for “traditional” firearm production as well. Though such a level of proactive engagement with emerging technologies may not be the rule, the recent attention at the Convention on Certain Conventional Weapons (CCW) to discussing “killer robots”—weapons that after all do not yet exist—may suggest that the UN can be ahead of the curve on some arms control issues.

As well argued by Jacob Parakilas,

it is unlikely that the 3D printing of weapons can be completely stopped or controlled. But with robust action, the potential problem can be contained and controlled rather than allowed to run rampant. Too many times in history, the world has been forced to put the genie back in the bottle by developing a legal and ethical framework to cope with a new weapon after it had already been used to devastating effect. With 3D printed weapons, we have a rare window of opportunity to develop a framework to manage the harms of an otherwise incredibly promising technology while it is still in its infancy. But that window is closing fast.<sup>71</sup>



UN Photo, John Isaacs

## CONCLUSION

While our decision to forego the PoA diplomatic meetings at the UN for the time being speaks only of our organization's circumstances and priorities—and is certainly not important in the grand scheme of things—we hope that readers of the current briefing will agree that a collective *quo vadis* assessment of the PoA and our collective relative strategic priorities should be embarked upon—even if quite likely will produce different answers and results.

Regardless of the level of civil society engagement, the PoA will “survive”. The question, however, is whether the process will be brought back into a vigorous, relevant path, or remain on “life support,” barely limping from meeting to meeting. In order to make it germane to the real world work of reducing gun violence, as noted, we believe it is essential that governments and civil society demand much more from the process than simply restating decade-old commitments and themes.

As such, we would urge governments and civil society colleagues to muster a renewed sense of purpose regarding efforts to reduce global levels of gun violence, giving an honest appraisal of the PoA's ability to deliver real change. Whether reverting to nationally-based advocacy or continuing to pursue improvements within the UN, we suggest attempting to “create” once more, rather than being satisfied with only “maintenance”.

While any notion of amending the PoA itself should likely be abandoned, and the possibility of rendering the instrument legally-binding—while extremely desirable—has little prospects for success, governments and civil society should join forces once more to supplement the PoA in a way to remedy some of the most damaging ‘unfinished business’. Tackling ammunition controls and new technologies, in our opinion, are particularly important, urgent, and feasible.



Photo by Instituto Sou da Paz

# NOTES

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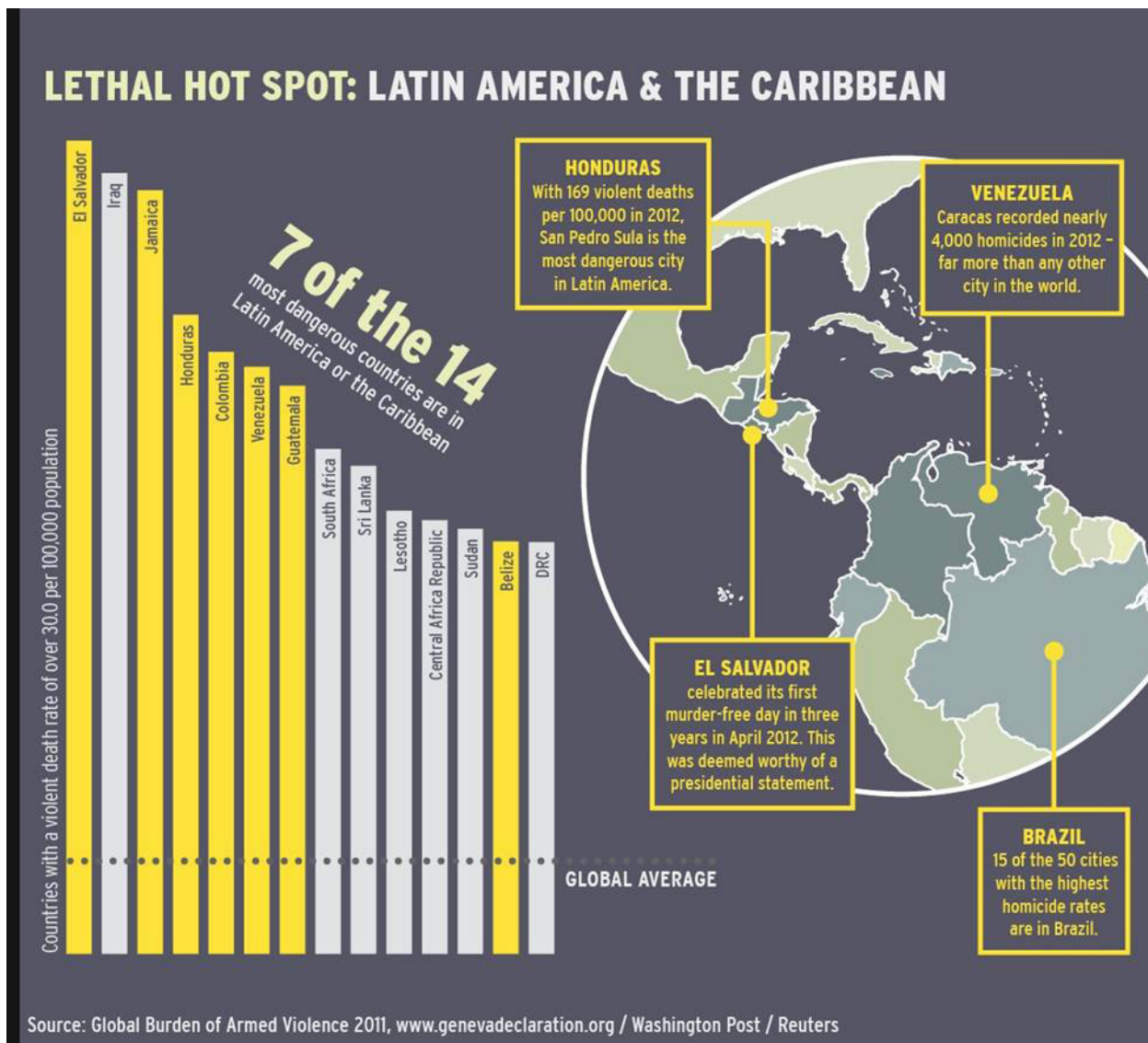
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# AN ASSESSMENT OF THE POA (OR, WHY WE ARE NOT IN NEW YORK)

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Reaching Critical Will is the disarmament programme of the Women's International League for Peace and Freedom (WILPF), the oldest women's peace organization in the world. Reaching Critical Will works for nuclear and conventional disarmament, the reduction of global military spending, and the demilitarization of politics and economics in order to achieve human security and social, economic, and environmental justice.

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Reaching Critical Will