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Constructive Dialogue following conclusion of 14th session of WG of Government Experts on Technical Assistance (Orgs)

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Constructive dialogue on the review process following the conclusion of the tenth session of the Working Group on Firearms Vienna, 3 and 4 May 2023 Status of the functioning of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto

Background paper prepared by the Secretariat

I. Introduction

1. In October 2018, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime established the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto through Conference resolution 9/1, which included in its annex the procedures and rules for the functioning of the Mechanism. 1 Following a two-year preparatory phase, the review process of the Mechanism was launched on 16 October 2020, through Conference resolution 10/1, which included in an annex the guidelines for conducting the country reviews.

2. In accordance with paragraph 12 of the procedures and rules, in which it is stated that the Conference and its working groups are to add the matter to their agendas as an item consistent with their areas of expertise and without prejudice to their respective existing mandates, items relating to the review process were added to the agendas of the tenth meeting of the Working Group on Firearms and the fourteenth meeting of the Working Group of Government Experts on Technical Assistance.

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1-The role of non-governmental organizations

Non-governmental organizations have secured themselves a solid position in international politics. Their well-designed campaigns and their moral rhetoric enable them to direct the attention of the world public and of their national clientele to normative regulatory gaps (Brühl 2003). As transnational campaigns, they set out to change the attitudes and views of states in order to persuade them to take action. In the past, NGOs were of limited relevance in the field of security policy and multilateral arms control and disarmament as the negotiations were dominated by states. Non-governmental organizations came together to form transnational coalitions in the case of anti-personnel mines, the campaign to ban cluster bombs and the Action Programme on Small Arms. These types of transnational coalitions between non-governmental organizations are usually distinguished by their informal and international character. They are set up on the basis of common values and objectives in order to launch a campaign, to set the agenda on specific issues or, as in the case of humanitarian arms control, to bring about a multilateral agreement.¹⁷

The International Campaign to Ban Landmines (ICBL) was founded in 1992 as a coalition of NGOs with a common goal: As humanitarian aid organizations, they were interested in curbing the effects of the unlimited and indiscriminate use of anti-personnel mines in intra-state conflicts such as in Cambodia or Angola and taking preventive action against the deliberate misuse of mines.¹⁸ In 1996 – at the height of the campaign – the ICBL had more than 600 members from 40 countries (Price 1998: 620). The International

16 In the UNDP report, human security was deliberately broadly defined as “freedom from want” and “freedom from fear” (“community, economic, environmental, food, health, personal and political securities”). Cf. <http://hdr.undp.org/en/reports/global/hdr1994/> (24.10.2009).

17 Khagram/Riker/Sikkink differentiate in this context between transnational coalitions/campaigns, networks and movements which differ according to the degree of their organization: The first group demonstrates the characteristics of a coordinated course of action and joint strategies most strongly in their campaigning. Cf. Khagram et al. (2002: 7).

18 Founding members of ICBL were Handicap International (France), Human Rights Watch (United States), Medico International (Germany), Mines Advisory Group (Great Britain), Physicians for Human Rights (United States) and Vietnam Veterans of America Foundation (United States), cf. Rutherford (2009: 133).

Action Network on Small Arms (IANSA) also began in 1999 as a group of just a few NGOs and grew rapidly over the years. The coalition for the ban on cluster munitions is the most recent transnational network. Launched in 2003 and consisting of 300 members from more than 80 states, it was set up by founding members of the ICBL: Human Rights Watch and the ICBL itself.

The three coalitions show some similarities with regard to their membership; they also pursue comparable strategies. All three campaigns put forward moral arguments in their efforts of persuasion, particularly by referring to the injustice of the use of weapons against civilians. Since the military and

strategic relevance of these conventional weapons was undoubted at the beginning of the campaigns, all three networks were faced with the challenge of developing convincing arguments for restrictions of or a complete ban on these weapons. Therefore, the transnational NGO campaigns aimed at contrasting the military relevance of the weapons with the human suffering they cause in order to put their strategic relevance into perspective and successfully discredit them in public. The arguments were based on existing ethical and normative standards such as the proportionality of war within the framework of international humanitarian law and pointed to the indiscriminate effect of the weapons, the suffering of the civilian population and the socio-economic consequences of the misuse of weapons. The drastic description of these “conditions of injustice” helped to draw world public attention to this topic. This process led to the stigmatization of the weapons and was the starting point for the norm-building processes (Borrie et al. 2009: 20).

IANSA members always referred to the fact that the use of small arms in wars and post-war situations helps to violate human rights, undermines individual security and diminishes the effectiveness of development aid (IANSA 2006: 57; Wisotzki 2008: 34). They also publicly denounced the weapons-producing industries and western democracies which produce weapons and export them to the Third World. The significance of human security was emphasized by depicting the individual and personal suffering of victims of mines, cluster bombs or firearms. The aim of the NGOs was to obtain an emotional impact – even on the diplomats involved in the negotiations (Price 1998: 622).

Whereas the campaigns were always based on actions with strong public outreach effects – particularly at the national level – they also became experts in multilateral negotiations and put forward their own ideas and proposals in the course of the negotiations. It was the NGOs that focused the attention of the negotiations on questions of distributive justice, for example on the special needs of affected states and civil society. In the case of the Ottawa Convention, for example, they succeeded in convincing the state parties to commit themselves to include the funding of victim rehabilitation programs as a norm in the Convention. IANSA drafted, inter alia, its own version of the PoA, expressing the ideas of the transnational network. IANSA members organized regular meetings of experts with diplomatic representatives, for example, in Geneva, in order to reach an understanding about the possibilities and limits of the PoA.

Ideas of justice, or evidence of injustice, were thus important arguments for the non- governmental organizations, helping them to mobilize public opinion in their home

constituencies and reach governments via this indirect route. Even though norm-building took place at the international level, the transnational networks used their national platforms for their efforts of persuasion. Only when they had succeeded in convincing a number of small and medium-sized powers of the necessity of independent action did norm-building begin to make decisive progress, at least in the case of anti-personnel mines and cluster munitions.

4.2.2 From opponents of negotiations to norm-generating actors: Small and medium-sized powers

The small and medium-sized powers are important actors in establishing norms of humanitarian arms control. They assumed the role of the norm-generating stakeholders on the side of the states and, in the case of the conventions on anti-personnel mines and cluster bombs, ensured that both regimes were negotiated outside existing forums. Whilst Canada assumed the leading role in the Ottawa Process, Norway initiated the Oslo Process which led to the ban on cluster munitions. The two states did not shoulder these – by the standards of arms control negotiations – extraordinary processes alone, but were accompanied, or supported, by a number of like-minded states in a kind of “job-sharing” exercise.¹⁹

However, even the most committed advocates of this new kind of arms control were initially outright opponents of a ban and skeptical towards the transnational NGO networks. It was the failure, or rather the lack of results, of the protocol negotiations within the framework of the CCW that opened a “window of opportunity” for the alternative negotiating processes. The Mine Action Group had previously employed great efforts of persuasion, particularly in Canada, and had found a prominent advocate in Foreign Minister Lloyd Axworthy, for whom a ban on anti-personnel mines was a matter of personal moral conviction. Furthermore, both Canada and Norway were founders of the “Human Security Network”, whose aim was to shape a “just and peaceful world order” with the help of new (development cooperation) initiatives.²⁰ The group of like-minded states which was influential in steering the Ottawa Process consisting of Belgium, Canada, Denmark, Germany, Ireland, Mexico, the Netherlands, Norway, New Zealand, the Philippines, Peru, South Africa, Sweden and Switzerland. Whilst Canada assumed a leading role, other states, for example, Belgium and Germany, had already implemented moratoriums on the export and/or production and use of anti-personnel mines in 1995. The Oslo Process to ban cluster munitions was steered by a similar group of states:

¹⁹ Austria, for example, presented the first draft version of the subsequent anti-personnel mine convention; Belgium, Germany and Norway hosted the conferences of states parties. South Africa organized a regional conference to persuade African states. (Rutherford 2009:128ff).

Austria, Ireland, Mexico, New Zealand, Peru, the Vatican and Norway. These groups of like-minded states assumed different functions; for example, drafting the text of the conventions or organizing state conferences.

Norm-building in the realm of small arms and light weapons developed along quite different lines. There were never any doubts about the legitimacy of state security needs and thus about the legal possession of small arms. The aim was not to negotiate an actual ban, but to limit the illicit trafficking of arms – particularly involving non-state actors – and to provide help for the affected states. Even the norm-seeking stakeholders with the greatest interest in an agreement advocated negotiations within the framework of the United Nations. A number of states called for more comprehensive norms but did not succeed due to the principle of consensus on which the negotiations were based. The group of like-minded states originally consisted of Belgium, Canada, Japan, Mali, Norway, South Africa and Switzerland. They favored various elements of a control regime for quite different reasons: Mali, for example, as a state which is particularly affected by the proliferation of small arms as a consequence of violent, internal conflicts, had initiated a moratorium on imports and exports and on the production of small arms within the framework of the ECOWAS states in 1998 and was interested in an universalization of these norms (Wisotzki 2000: 232). In South Africa, the national NGO network, SACBL, had a prominent supporter in Nelson Mandela at its head and many top bureaucrats at his side. Their shared past in the anti-apartheid movement made it easier for members to gain access to decisive government agencies which, in turn, were open for “humanitarian issues” (Rutherford 2003: 30).

2-Assistance needs and non-governmental stakeholders engagement/participation

Challenges of effective public engagement

Governments must manage large numbers of stakeholders and huge territories. Employees may be spread across multiple regions and offices. Everyone may all be working toward the same goal, but not necessarily with the same tools or processes and very often not in the same local context. This makes managing the vast quantities of communications relating to public engagement extremely difficult.

The Covid-19 pandemic has further intensified these challenges. Governments may now have fewer resources at their disposal to dedicate to engaging stakeholders, even though this dialog is essential in order to guide government action and maintain social cohesion.

Even when not in the grips of a global pandemic, government departments and agencies often cite the following challenges:

- 1-Managing enormous territories with large numbers of stakeholders efficiently
- 2-Understanding local contexts
- 3-Identifying and proactively addressing risks, misconceptions, and concerns
- 4-Keeping stakeholders appropriately informed
- 5-Providing a better public service through a user-driven approach
- 6-Maintaining a clear record of who did what, and when
- 7-Establishing trust with stakeholders
- 8-Measuring and analyzing efforts
- 9-Coordinating team in an efficient way

How governments can improve stakeholder engagement practices

Thanks to advances in technology and the shift to digitalization, businesses around the world started adopting stakeholder management software nearly two decades ago.

For the most part, however, governments have only recently started to view such tools as essential. While certainly accustomed to engaging with stakeholders, many government organizations are still struggling to establish and maintain open, inclusive, and transparent processes that encourage participation and enable more representative decision making, as promoted by the United Nations 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs).

Many governments still lag behind when it comes to implementing stakeholder engagement best practices, which are based on the proven 3-stage methodology of “plan-engage-measure.”

While most departments and agencies involved in public engagement do follow these stages to varying degrees, few do so in a systematic and standardized manner. This invariably leads to oversights, duplicated efforts, and ineffective reporting. Poor reporting is particularly problematic as it muddies the view of actual outcomes and prevents agencies from fully building on lessons learned. These shortcomings are not due to an unwillingness to improve practices, but rather to a lack of adequate tools that allow for such a systematic and standardized approach.

Stakeholder management software is the solution. It allows stakeholder engagement and community involvement teams to manage all stakeholder data, engagement plans and related activities according to a proven methodology and from a single, centralized database. It replaces endless spreadsheets, emails and personal notes – which are susceptible to being lost or misplaced – with a single point of truth that’s always accessible, up to date, quality controlled and secure.

From a day-to-day perspective, stakeholder engagement software breaks down silos and improves productivity by keeping all information at your fingertips. At a higher level, it provides organizations with an easy framework to implement a structured and standardized approach to stakeholder engagement. Advanced stakeholder software is extremely feature-rich while remaining intuitive and user-friendly, even to those with limited computer skills.

All of these benefits apply equally to government organizations and will help strengthen their stakeholder engagement practices.

3-Gender, human rights and victim-centred approaches

In December 2020, the High Commissioner issued a Policy on a Victim-Centred Approach in UNHCR's response to Sexual Misconduct – the first ever policy of its kind in the UN system. It focuses on ensuring the safety, rights, well-being and expressed needs and choices of victims/ survivors when responding to sexual misconduct.

Putting victims at the centre of our efforts requires that they feel safe, free to speak up and to seek advice and help. It also means that we listen to them and provide support and assistance in a safe and sensitive manner.

Putting victims first

Sexual exploitation and abuse (SEA) represent a grave breach of trust and of the right to safety, security and dignity of refugees. Sexual harassment (SH) undermines the right of personnel to be safe and treated with dignity and respect in the workplace and in connection with work.

UNHCR is committed to take all necessary action to prevent and respond decisively to sexual misconduct and to put the protection, rights and dignity of refugee-victims and staff-victims at the forefront.

Victim-Centred Approach is a way of engaging with victims that prioritizes listening, avoids re-traumatization, and systematically focuses on their safety, rights, well-being, expressed needs and choices. The purpose is to give back as much control to victims as feasible and ensure empathetic delivery of services in a non-judgmental manner.

Victim care in action

Victims of sexual harassment are supported by UNHCR's Victim Care Officer. This support is automatically provided to victims unless they choose otherwise, shifting the onus from the individual to the organization. The Victim Care Officer, a Clinical Psychologist, provides psychosocial support, confidential guidance on processes and services, supports decision making, accompanies victims through the process, coordinates action on their behalf, and assesses risks and individual needs. This service also provides guidance to witnesses and advice to managers on support and risk mitigation for sexual harassment.

UNHCR's global network of 400 peer advisors also provides critical support in the context of harassment, particularly in preventing and mitigating tensions and grievances, supporting colleagues, and promoting better workplaces.

UNHCR has another network of 400 PSEA focal points with specific responsibilities related to the prevention of sexual exploitation and abuse, including helping refugee-victims access support resources as well as through carrying out training and awareness-raising activities. Their presence across 132 countries is a key factor in helping identify and support victims.

Information-gathering exercise

While the appropriate methods used to gather information vary depending on the circumstances, there are common challenges that arise concerning identifying/contacting victims or witnesses, obtaining statements and planning field missions. The team might need to consider different approaches in order to ensure that women's and men's voices are equally represented. The team might choose to map out possible challenges and develop appropriate strategies in order to gather information, as indicated in the examples below.

Challenges

- Building trust and rapport with the communities and potential victims or witnesses, given inadequate time on the ground
- Obtaining statements from female or male victims and witnesses, given their fear of retaliation, security concerns, perceived lack of time due to household responsibilities and/or lack of self-agency
- Identifying and contacting potential victims or witnesses, given existing gender dynamics

Suggested strategies

Establish contact with intermediaries as early as possible and communicate the wish to speak with women as well as men (intermediaries might include social workers, activists, hospital staff and journalists, for example)

Gather inputs from local organizations and civil society networks, including women's groups or others who are familiar with gender concerns, cultural aspects and protection issues that might be relevant for the information-gathering process

Establish contact with victims or witnesses through local organizations and networks, including women's human rights organizations and LGBTI networks that have established trust within the communities

Consider alternatives to in-person interviews with victims, such as interviews with service providers, written statements or, when relevant, telephone interviews or other secure online channels

Adapt the team's information-gathering strategies if necessary. In some instances, it might be appropriate, for example, to first speak with a male member of a woman's family, or religious leaders, in order to explain the reasons for the interview

Previously successful strategies for consideration

Introduce a "women-only day" during the field mission – a day specifically dedicated to women to enable them to express their views and to better document their experiences

(A/HRC/29/CRP.1, para. 47)

Contact women's networks and groups to request their assistance in collecting written testimonies from a range of women

(A/HRC/29/CRP.4, para. 12)

Promote women's participation by facilitating their ability to bring their children with them. Other women to be interviewed could look after the children while their mothers were being interviewed

(A/HRC/36/CRP.1/Rev.1)

Adjust the methodology to accommodate female victims and witnesses' needs and constraints, for example by carrying out telephone interviews with women after working hours

(A/HRC/29/CRP.1, para. 47)