

Title	Analysis on Regime Formation of SALW : the Failed Case of Recasting Discourse of Weapons as a Humanitarian Issue
Author(s)	Kudo, Masaki
Citation	国際公共政策研究. 2006, 10(2), p. 123-138
Version Type	VoR
URL	https://hdl.handle.net/11094/5517
rights	
Note	

Osaka University Knowledge Archive : OUKA

<https://ir.library.osaka-u.ac.jp/>

Osaka University

Analysis on Regime Formation of SALW: the Failed Case of Recasting Discourse of Weapons as a Humanitarian Issue¹⁾

Masaki KUDO*

Abstract

This article deals with the following question: although both Anti-Personnel Landmines (APLM) and Small Arms and Light Weapons (SALW) cases were once considered as dealing with the same "micro disarmament" issues, why has the regime formation process afterwards differed substantially? In order to answer this question, this paper argues that while the recast of discourse from "necessary weapons for national security" to "inhuman weapons" was successful in the case of APLM, formation of the discourse itself failed in the case of SALW. This resulted in the politically binding instrument aiming at the control, rather than the total elimination of SALW.

Keywords : anti-personnel landmines (APLM), micro disarmament,
regime formation, small arms and light weapons (SALW)

* Ph. D. Candidate, Osaka School of International Public Policy, Osaka University.

1) The author is grateful to Prof. Mitsuru Kurosawa and to Associate Prof. Kaoru Kurusu, both at Osaka University, for their valuable comments and constant encouragement.

This article is the revised version of the paper presented at the 55th Pugwash Conference on Science and World Affairs: 60 Years After Hiroshima and Nagasaki, 22-27 July 2005, Hiroshima, Japan.

Introduction

It was only in the 1990's that the problems regarding Small Arms and Light Weapons (SALW) became one of the "micro disarmament" issues together with Anti-Personnel Landmines (APLM)²⁾. In response to the urgent needs for regulation³⁾, the Programme of Action on SALW (PoA) was adopted at the UN Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects held in New York on 9-20 July, 2001. Although the adoption of the PoA was a landmark step for the regulation of SALW, as the UN Secretary General called it "essential in building norms," there remained several limitations as an international arrangement. First, the goal of the instrument is not the total elimination but the control of the use, transfer and production of SALW. Second, it is not a legally binding instrument. In contrast, the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines on Their Destruction of APLM (Ottawa treaty) is a legally binding instrument, aiming at total elimination. Why did the regime formation process afterwards become substantially different, even though both cases were once considered as the same "micro disarmament" issues? To explain this phenomenon, this article highlights the humanitarian dimension of the regime formation process of SALW and defines the process as a failed case of recasting discourse of weapons as humanitarian issue.

While there exist a variety of researches on the regime formation process of APLM in existing literature⁴⁾, with a few exceptions, this literature does not yet exist in the field of SALW⁵⁾. Nonetheless, examination of this process is important for at least two reasons. First, in contrast to the success of norm building with

2) The concept 'micro disarmament' was introduced by the former UN Secretary General, Boutros Boutros-Ghali (UN doc. A/50/60-S/1995/1, 3 January, 1995: para. 60-64).

3) According to the UN report, at least 500,000 people die every year as a result of SALW. (*ibid.*: para. 63).

4) for example, see, Kenki Adachi, *The Ottawa Process; Formation of Anti-Personnel Landmines Ban Regime*. Toyko: Yushindo, 2004 (Japanese); Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin eds., *To Walk without Fear: The Global Movement to Ban Landmines*. Toronto: Oxford University Press, 1998.

5) about the literature on SALW see, Keith Krause, "A Review of Multilateralism and International Organization," *Global Governance*, vol.8 no.2 (2002): 247-263; A Projects of the Graduate Institute of International Studies ed., *Small Arms Survey 2005*. New York: Oxford University Press, 2005.

APLM, it may suggest key factors such as the character of weapons, the recognition of weapons, and the arena for negotiation, which affect the regime formation process in the fields of conventional weapons. Second, by learning the lessons of past failures, it may contribute practically to the future regime formation process of SALW since the process is still ongoing.

Using the UN documentary record and other resources, this essay mainly investigates the following two questions: first, in the case of SALW, why was the total ban regime not formulated?; second, why did the change of discourse of SALW as a humanitarian issue fail? In order to answer these questions, section 1 defines the regime on SALW and examines the major determinants of the regime formation. Section 2 investigates the regime formation process of SALW to date: from 1993 to 1996, SALW problems were formally acknowledged in the arena of the UN; from 1997 to 2000, the outline of the regime had been discussed and formulated based on the UN reports both in 1997 and 1999 which directed the regime formation process; and finally in 2001, the internationally agreed arrangement regarding SALW was adopted at the UN conference, which became the central framework for the regulation of the weapons. Based on these facts, section 3 analyzes the regime formation process and considers the two main questions stated previously.

1. Determinants of Regime Formation

In order to explain the success or failure in efforts of regime formation, three principal factors — power, interest and knowledge — are focused on⁶⁾. This section defines the regime on SALW and studies how these three determinants of regime formation worked for the case of SALW.

Before beginning the main discussions, the regime on SALW must be defined.

6) Andreas Hasenclever, Peter Mayer and Volker Rittberger eds., *Theories of International Regimes*. Cambridge: Cambridge Universities Press, 1997; Oran R. Young and Gail Osherenko, "Testing Theories of Regime Formation: Findings from a Large Collaborative Research Project," Volker Rittberger eds. (with the assistance of Peter Mayer), *Regime Theory and International Relations*. New York: Clarendon Press, 1993: 228-251.

According to Krasner's famous formulation, international regimes are defined as sets of principles, norms, rules, and decision-making procedures in a certain issue area⁷⁾. While it is a controversial question whether the PoA established a firm normative framework or not⁸⁾, this essay takes such standpoint that the PoA revealed and confirmed the sets of principles and norms on SALW. For instance, as further examined in section 2, the PoA prescribed the basic principles for regulation, such as:

- Small arms and light weapons have been or are the primary or sole tools of violence in several of the armed conflicts (para. 15).
- States have the right to export and import small arms and light weapons (para. 45).
- Illicit trafficking in such weapons plays a major role in the violence (para. 58).⁹⁾

The PoA, which was adopted by consensus in 2001, has been accepted by a wide range of actors in the international community. In accordance with the PoA's provisions, many states have taken concrete measures to challenge this issue. For example, in the two years following the adoption of the PoA, 97 UN Member States designated national points of contact to act as a liaison with other States in order to meet the requirement of the PoA. As of July 2003, over 90 countries either have adopted or have domestic laws to govern illicit manufacture, possession and trade of weapons¹⁰⁾. As those facts clearly show, there are certain principles and norms of SALW, which guide the behavior of states and other actors. Given the existence of a regime in the field of SALW, the next question comes as to how

7) More precisely, international regimes are defined as follows:

Regimes can be defined as sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actor's expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and, rectitude. Norms are standards of behavior defined in terms of rights and obligations.

(Stephen D. Krasner ed., *International Regimes*. Ithaca: Cornell University Press, 1982: 2)

8) in detail, see A Projects of the Graduate Institute of International Studies ed., *Small Arms Survey 2003: Development Denied*, New York: Oxford University Press, 2003: chap.7.

9) UN doc. A/52/298, 27 August, 1997

10) UN doc. A/CONF.192/BMS/2003/1, 1 July, 2003: annex, para. 11-12

this regime was formed.

The power-based hypothesis offers a proposition that the participation of a single dominant party led to success in regime formation. In the case of SALW, however, major powers were not active in the process. In fact, they themselves were major producers of SALW, and hence profited from the trade of SALW. For example, the world's three major SALW producers are China, the Russian Federation and the United States. According to data from the Small Arms Survey, while the total value of the US production in SALW, including ammunition, was USD 2.5 billion in 2001, the total sales of SALW in Russia was approximately USD 220 million in 2002¹¹⁾. Since SALW are important items for trade as well as for national armies and police, major powers have had negative attitudes toward the regulation since the beginning, to say nothing of the total elimination of SALW. Therefore, the feasibility of regime formation by the superpowers is very low.

The interest-based hypothesis provides an explanation of regime formation by the cost-benefit behavior of the states in the context of decision-making. While some war-affected countries such as African countries wanted to reduce the cost of the proliferation of SALW, a considerable number of countries received benefits from the use or trade of SALW. For example, the total elimination of SALW is obviously contradictory to the interests of SALW producers. In this context, reaching an agreement among states on the total elimination of SALW is difficult.

The knowledge-based hypothesis gives the proposition that value and scientific knowledge influence the course of regime formation. If neither determinants of power nor interest work, the only way to achieve regime formation is to change the recognition of the object itself. As indicated in the table below, it is often the case that the principles of humanitarian law, such as the prohibition of unnecessary suffering or superfluous injury, become the focal point to form a

11) A Projects of the Graduate Institute of International Studies ed., *Small Arms Survey 2004*. New York: Oxford University Press, 2004: 10-11.

total ban regime in the field of conventional arms¹²⁾.

Table 1 Major International instrument of conventional weapons

The name of the instrument (Year of adoption)	Object	Type of regulation	Humanitarian principles referred
Declaration Renouncing the Use, in Time of War, of Explosive Projectiles under 400 Grammes Weight (St. Petersburg Declaration) (1869)	Explosive projectiles under 400 grammes weight	Prohibition of use	unnecessary suffering
Hague Declaration concerning Expanding Bullets (1899)	DamDum bullets	Prohibition of use	unnecessary Suffering
Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW Convention) (1980)			superfluous injury or unnecessary suffering
Protocol I	Non-detectable Fragments	Prohibition of use	
Protocol II (Amended in 1996)	Landmines and Booby-traps and other devices	Restriction of use	
Protocol III	Incendiary Weapons	Restriction of use	
Protocol VI (adopted in 1995)	Blinding Lasers	Prohibition of use	
Protocol V (adopted in 2003)	Explosive Remnants of War	Responsibility for clearance of remnants	
Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-personnel Mines on Their Destruction (Ottawa Treaty) (1997)	Anti-personnel Mines	Prohibition of use, Stockpiling, Production and Transfer	unnecessary suffering

Based on Dieter Fleck ed., *The Handbook of Humanitarian Law in Armed Conflicts*. New York: Oxford University Press, 1995: 551-552.

For example, with Anti-personnel Mines, there was the critical change in the recognition from "legal weapons which are necessary to security assurance" to "inhuman weapons which must be prohibited." This transformation of discourse led to the Ottawa Treaty being realized,¹³⁾ which was adopted in 1997. However, in the case of SALW, the recognition that these weapons are inhumane, and thus must be prohibited, has not yet been seen in the process of regime formation. The next section will examine the process more in detail, focusing on the recognition of SALW.

12) About International Humanitarian law, see Dieter Fleck ed., *The Handbook of Humanitarian Law in Armed Conflicts*. New York: Oxford University Press, 1995.

13) Kenki Adachi, *op. cit.*; Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin eds., *op. cit.*

2. The Process of Regime Formation

From 1993 to 1996, upon the request of a country suffering from the abuse of SALW, the UN put this issue on the international agenda. From 1997 to 2000, the first comprehensive UN report on this issue was submitted to the UN General Assembly, which determined the direction of the regime on SALW. Finally, in 2001, the PoA was adopted at the UN conference, which became the central framework of the SALW regime. During this process, how was the momentum towards the regulation of SALW built up? In what way has the norms of SALW been established? Why was the total ban arrangement not formulated?

(1) 1993-1996

During this period, the "emergence of norms"¹⁴⁾, these arms became an international issue. This part briefly examines the emergence of SALW issues, focusing on the actions of states, the UN and NGOs.

At the beginning, the process of the SALW issue started from a request from the Republic of Mali for international support. Although a year had passed after the peaceful resolution of their internal conflict was concluded in 1992, Mali still suffered from a precarious internal security situation because of the proliferation of SALW. Upon the request from the then president of Mali to the UN Secretary General for support of the collection and destruction of SALW, the resolution entitled "Assistance to States for curbing the illicit traffic in small arms and collecting them" was adopted at the UN GA in December 1994¹⁵⁾.

In response to the request for help from the affected country, the UN started to commit itself to this issue and the problems with SALW became one of the main agendas in the UN arena. The Secretary General emphasized the importance of this problem in his report "Supplement to An Agenda for Peace" introduced in

14) According to the "life-cycle model," norms evolve in three stages: "emergence," "norm cascade," and "internalization." (Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change," *International Organization* vol.52 no.4 (1998): 897-917).

15) UN doc. A/49/75G, 15 December, 1994.

October 1995¹⁶⁾. Upon the request of the UN resolution entitled "*small arms*," the UN decided to establish the Panel of Governmental Experts on Small Arms in order to prepare a report on SALW¹⁷⁾.

The NGOs also took part in this issue, however, international campaigns were not yet developed at this stage. For example, upon the request by the 26th International Conference of the Red Cross and Red Crescent in December 1995, the International Committee of Red Cross (ICRC) started to examine, on the basis of its first-hand information and the ICRC medical database, the impact of availability of SALW on the situations of civilians. As shown in the next part, this 1999 report had a profound impact on the regime formation process of SALW.

(2) 1997-2000

The year 1997 became one of the landmark years for the SALW regime building process since at this stage, several key factors came to become clear: the definition of SALW was clarified; inherent inhuman nature of SALW was denied; concrete measures to combat SALW problems were presented in the UN report (hereinafter "1997 report"). Furthermore, during this period, the international movements of NGOs became active. In 1998 the International Action Network on Small Arms (IANSA), was founded, which played a role in advocacy in the UN process.¹⁸⁾

In August 1997 the Panel of Governmental Experts submitted the first comprehensive report of SALW at the 52nd General Assembly. The report was prepared between 24 June and 18 July with three sessions in New York and one meeting in Tokyo¹⁹⁾. In the case of SALW, this UN process became the mainstream for the regime formation and, in fact, led the agreed framework to be adopted in 2001. In other words, the regime formation process of SALW has been mainly

16) UN doc. A/50/60-S/1995/1, 3 January, 1995, para. 63

17) UN doc. A/50/70B, 12 December, 1995

18) International Action Network on Small Arms (IANSA) is the global network of NGOs working to stop the proliferation and misuse of SALW. For more detail, see the website of IANSA retrieved in October, 2005. (<http://www.isansa.org>)

19) UN doc. A/52/298, 27 August, 1997.

handled by states in the UN arena²⁰⁾.

The outcome of the 1997 report was that, first, it defined the category of the weapons. Due to a lack of disarmament and arms control agreement on SALW, the definition of SALW category was not clear until this report defined it. According to the report, small arms are those weapons designed for personal use and light weapons are those designed for use by several persons serving as a crew²¹⁾.

Second, the report denied the inherent inhuman character of the weapons themselves and acknowledged that:

in contrast to anti-personnel landmines, small arms are constructed for and capable of precise direct fire without inherent indiscriminate effects.²²⁾

From this time on, the proper control of SALW became the main focus and the discussion on the total ban of these weapons themselves has been excluded from the mainstream of the discussion. As a result, there appear two categories of SALW: the "legitimate" SALW which are owned by states or are authorized by states; and "illegitimate" SALW which are owned by non-state actors without any authorization by states and which are the objectives of international regulation. In 1999, the ICRC research also endorsed these facts and concluded that the availability of weapons alone is not the cause of violations of humanitarian law or deterioration in the situation of civilians²³⁾. But why did humanitarian dimension of SALW become excluded from the regime formation process? The president of the Panel of Governmental Experts on SALW explained this question as follows

20) In contrast, in the case of APLM, after the insufficient achievement of the review Conference of the CCW Convention in 1996, the main negotiation on the total ban of the weapons was carried out by the like-minded nations (so-called Ottawa process), outside the Conference on Disarmament. For further information on the Ottawa process, see Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin eds., *op.cit.*.

21) UN doc. A/52/298, 27 August, 1997: para. 25.

22) *ibid.*: para. 32. (underlined by the author)

23) the International Committee of Red Cross, "Arms Availability and the Situation of Civilians in Armed Conflict; Study Presented by ICRC." ICRC publication ref. 0734 (1999): para. 1, part 6.

(the section 3 will give the further analysis on this issue):

At this stage in 1997 or 1998, we tried to avoid further discussions about humanitarian dimension of SALW because such arguments would beg the point in dispute²⁴⁾.

Third, on the basis of these facts and objects, the 1997 report provided a detailed set of practical recommendations to tackle the problems with SALW, comprised of (1)measures to reduce the excessive and destabilizing accumulation and transfer of SALW and (2)measures to prevent such accumulations and transfers from occurring in the future²⁵⁾. Reduction measures included: the establishment of a disarmament component in PKO (para. 79d of the 1997 report); the development of international cooperation among police, custom and border control officials of states and regional organizations (79e). Prevention measures included: introduction of guidelines by all states for international arms transfers (80a); the establishment in all states of adequate laws and regulations to control over the legal possession and transfer of SALW (80c). These measures were further developed in the 1999 report²⁶⁾ presented by the Group of Governmental Experts on SALW, the successor of the Panel.

While the regime formation process had been mainly handled by UN-appointed experts, the movement of NGOs also became active. In 1997, a group of Nobel Peace Laureates began a campaign for a more responsible arms control treaty. Based on the principles laid out by the Laureates, a coalition of NGOs including Amnesty International, Oxfam and the members of IANSA drafted an International Arms Trade Treaty (ATT).²⁷⁾ However, as further discussed in section 3, the participation of NGOs was limited compared with the case of APLM. Moreover, unlike the Ottawa process of APLM, their activities were mainly carried

24) Interview with Mr. Mitsuro Donowaki on 19 November, 2003, Osaka, Japan. He served as the president of both the 1997 Panel of Governmental Experts and the 1999 Group of Governmental Experts of SALW.

25) UN doc. A/52/298, 27 August, 1997: para. 78.

26) UN doc. A/54/258, 19 August, 1999.

27) About ATT, see the website of NGO retrieved in October, 2005.
(http://italy.peacelink.org/paxchristi/articles/art_1884.html)

out within the UN process²⁸⁾.

(3) 2001-present

Based on the provisions of the 1997 report, which recommended "convening an international conference on the illicit arms trade in all its aspect²⁹⁾," the Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects was held in New York on 9-20 July, 2001. At the conference, the PoA was adopted by consensus on 20 July 2001, presenting states, regional organizations and international organizations with practical steps for overcoming SALW problems.

The PoA consists of four parts: I. Preamble; II. Actions to be taken for preventing, combating and eradicating the illicit trade in SALW in all its aspects; III. Implementation, international cooperation and assistance; VI. Follow-up to the Conference. While it is not a legally binding instrument, the PoA established a firm normative and comprehensive framework to guide states or intergovernmental organizations. For example, at the national level, states must take the following actions shown in the table below.

Table 2 Major actions to be taken by states in PoA

National actions	<ul style="list-style-type: none"> - Establishment of laws and regulations for controlling the production, export, import, transit or transfer of SALW - Establishment and maintenance of effective national system of export and import(II., - Controlling the broker - Ensuring the control on state-owned SALW
Transnational actions	<ul style="list-style-type: none"> - Establishment of tracing system
International cooperation and assistance	<ul style="list-style-type: none"> - Promotion of International assistance including technical and financial assistance - Assistance for states in building capacities of law enforcement and tracing - Assistance for destruction of surplus weapons - Assistance for DDR

Based on UN doc. A/CONF.192/15, 21 July, 2005: 10-16.

28) According to the web site of IANSA, one of their aims is that they will "continue to play a leadership role in the UN Small Arms Conference process." (<http://www.isansa.org>) (retrieved in October, 2005)

29) UN doc. A/52/298, 27 August, 1997: para. 80(k).

During the conference, major powers stressed and focused primarily on their own interests and hardly at all on that of the international community. For example, the United States mainly opposed to two points: the limitation of state supply of SALW only to governments in recipient countries; and the prohibition of the unrestricted trade in and private ownership of SALW³⁰⁾. Another example of this was the delegation of the Russian Federation, who emphasized "the legitimate needs of arms-receiving countries for their self-defense and national security³¹⁾."

3. Analysis on the Regime formation of SALW

Based on the facts provided in the previous section, this part makes an analysis of the regime formation process by contrasting the following three major differences of the regime of SALW with that of APLM: first, that the PoA has not led to a legally binding instrument; second, that the goal of the arrangement is not the total ban; and third, the change of discourse has failed in its formation process.

As described before, what differentiates the regime of SALW from that of APLM is that while the Ottawa treaty is a legally binding instrument, the PoA itself merely remains a politically binding instrument. At the regional level, however, there are some legally binding instruments as shown on table 3 below. These sub-regimes also constitute and reinforce the SALW regime.

30) Pieter D. Wezeman, "The UN Conference on the Illicit Trade in Small Arms and Light Weapons," SIPRI ed., *SIPRI Yearbook 2002*. New York: Oxford University Press: 736-739.

31) UN doc. DC/2787 (Press Release), 10 July, 2001.

Table 3 Major regional/sub-regimes on SALW

Region (Organization)	Name of the instrument	Date of adoption	Character of the document
Africa (Southern African Development Community: SADC)	Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region	August, 2001	Legal
America (Organization of American States: OAS)	Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms in Ammunition, Explosives and Other Related Materials	November, 1997	Legal
Europe (European Union: EU)	(1) European Union Joint Action adopted by the Council on the basis of Article J3 of the Treaty on European Union on the European Union's contribution to combating the destabilizing accumulation and spread of small arms and light weapons	(1) December, 1998	(1) Legal
(Organization for Security and Co-Operation in Europe: OSCE)	(2) Organization for Security and Co-Operation in Europe (OSCE) Document on Small Arms and Light Weapons	(2) November, 2000	(2) Political
Asia Pacific (Pacific Island Forum: PIF)	Legal Framework for a Common Approach to Weapons Control	March, 2000	Legal
Other multilateral forum Wassenaar Arrangement	The Wassenaar Arrangement Best Practice Guidelines for Exports of Small Arms and Light Weapons	December, 2002	Political

Based on the Small Arms Survey's date which can be retrieved from URL: <http://www.smallarmssurvey.org> (as of 1 June, 2005)

The second major difference, whether a regime aims at the total ban or not, links directly to the question: why, in the case of SALW, was the total ban regime not formulated? The argument of this paper is that neither of the three prime determinants – power, interest and knowledge – was not strong enough to form the total ban regime. In terms of determinants of power and interest, most of the states including major powers, have found no reason to make a total ban regime since SALW are necessary weapons for all nations regarding national and internal security. Moreover, they are important trade goods for many countries.³²⁾ Given these situations, it is a logical consequence that states do not want to form a total ban regime for the sake of their own interests, to say nothing of the superpowers.

32) the economic impact of the regulation of SALW would be much more crucial for the producers including major powers than that of APLM, considering the fact that the scale of the market of SALW is bigger than that of APLM. About the SALW industry, see A Projects of the Graduate Institute of International Studies ed., *op. cit.*, 2005: chap.2.

Meanwhile, when neither determinant of power nor interest works, the only way to achieve regime formation is to change the definition of the subject. For instance, in the case of APLM, the efforts of the international community, with strong support from NGO campaigns, removed the weapons from the exclusive grip of a national security discourse and recast the discourse of weapons as a humanitarian issue³³⁾. As a result, in 1997 the Ottawa treaty of APLM was adopted. On the contrary, in the case of SALW, such recognition change has not been seen. In fact, the direct link between SALW and human casualties has not yet been proved by NGOs and has not been acknowledged by the UN either³⁴⁾. This fact poses the following question.

Finally, with regard to the third major difference of the discourse situations, why, in the case of SALW, did the change of discourse of the weapons as a humanitarian issue fail? The following three points must be taken into consideration. First; unlike APLM, SALW are widely used by not only military but also police forces. While APLM are generally used for military purposes, SALW have legitimate uses for both military and police utilities. And besides, they may be held, like in the U.S., by individuals for their own personal security. Given that denying the role of SALW held by police forces is rather unrealistic and even impractical, at least the legitimate uses of these weapons should be recognized. If so, as discussed in section 2, defining all SALW as "inhuman weapons" would be quite difficult when there exist legitimate uses of these weapons on the one hand, and illegitimate uses on the other. Second, the regime formation has been mainly handled within the UN process. As is often the case of arms control negotiations, states tend to focus on their own interests and therefore, try to discuss the matter piecemeal at conventional forums such as the Conference on Disarmament or UN arena. For example, in relation to the negotiations of APLM at Conference on Disarmament, the main forum for negotiations before the Ottawa process, Jozef Goldblat states that:

33) Maxwell A. Cameron, Robert J. Lawson, and Brian W. Tomlin eds., *op. cit.*

34) the International Committee of Red Cross, *op. cit.*; UN doc. A/52/298, 27 August, 1997: para. 25.

Conference on Disarmament, where – as experience had shown – negotiations on any subject can go on for years, and where, because of the requirement of consensus, any participant can block progress.³⁵⁾

Therefore, as the negotiations on APLM at CD have demonstrated, change of discourse from "necessary weapons for security" to "inhuman weapons" is difficult when the negotiations are conducted at a conventional arena, and especially when major states want to retain the former discourse. Third, the scale of NGOs' participation in the process was limited in the case of SALW. As is often the case of regime formation, NGOs play active roles in agenda-setting. For example, in the case of APLM, it is widely acknowledged that the NGOs' campaign was the catalyst for identifying and politicizing the situation as a humanitarian issue³⁶⁾. In a situation in which the establishment of discourse of the weapons as a humanitarian issue contradicts the interest of major powers, it is the NGOs or other non-state actors who act in accordance with their own goals, rather than (and sometimes even against) the state interest. Thereby, NGOs can generate impetus for recasting discourse of weapons as a humanitarian issue. In the case of SALW, however, the NGO participation was relatively limited. According to the estimates of 'Civil society Participation in Multilateral Arms Control Processes' indicated by Patrick MacCarthy, the participation of NGOs in the process of the PoA on SALW was about 50 percent, which is substantially lower than that of the APLM ban Convention case that enjoyed 90 percent participation³⁷⁾.

In summary, because formation of a strict regime for SALW at the beginning was prevented due to the strong self-interest and economic reasons by major powers and other states respectively, recognition change to 'inhuman weapons' saw

35) Jozef Goldblat, *Arms Control: the New Guide to Negotiations and Agreements* (second edition). London, Thousand Oaks, and New Delhi: SAGE publications, 2002: 236.

36) about NGOs role in the regime formation process of APLM see, Kenneth R. Rutherford, "The Evolving Arms Control Agenda: Implications of the Role of NGOs in Banning Antipersonnel Landmines," *World Politics* 53 (October 2000): 74-114; Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Land Mines," *International Organization* Vol. 52, No.3 (Summer 1998): 613-644.

37) Patrick MacCarthy, "Towards a New Diplomacy? – Government-Civil Society Partnerships Promoting the Implementation of the UN Programme of Action on Small Arms – (Keynote speech)," *The Report "A Farewell to Small Arms" the International Conference of NGOs in Tokyo*. Tokyo: Association for Aid and Relief, Japan, 2005.

no success. This resulted in the politically binding instrument of SALW which aims at the control, rather than the elimination of the weapons.

Conclusion

In conclusion, this section attempts to answer the questions raised in the introduction and draws some comments on regime formation of SALW.

First, this paper argues that because SALW are important weapons for national security and trade goods, and the discourse change of weapons as a humanitarian issue failed, a total ban regime has not yet been formed. As a result, the regime of SALW became a politically binding instrument aiming mainly at controlling the illicit trade. Second, recast of the discourse of SALW as 'inhuman weapons' failed, because of the broad utilities of the weapons, the self-serving state interests in the UN-led regime formation process, and the limited NGOs participation.

What is to be concluded from those facts is as follows: first, in the situation where neither determinant of power nor interest work, the third determinant of knowledge comes to play as a key role for regime formation. Second, in such circumstances conventional negotiation forum will not work to change the situations. Thereby, unconventional ways such as negotiations outside the UN forum or negotiations guided by like-minded states with strong ties with NGOs' movement will be strategically required in order to lead the discourse to change.

The situation appears difficult, however, the bright side of the story is that regime formation has only just started. In the case of APLM, while the Ottawa process was carried out in a record time of *less than a year*, the regime formation process of APLM itself dates back to the CCW Convention which was adopted in 1980. Considering the fact that it took more than 30 years for the total ban regime to be formed, it is not surprising that at this stage the international framework for SALW remains politically binding. After all, the regime formation process of SALW has only begun.