

Chair’s Technical Summary of the Open-ended Meeting of Governmental Experts on the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

This technical summary outlines core elements that were discussed during the Open-ended Meeting of Governmental Experts on the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, held in New York on 9-13 May 2011. This summary was prepared by the Chair under his own responsibility and reflects his interpretation of the main points under discussion. It should not to be regarded as a general reflection of States’ views on the meeting.

I. Introduction

Under the United Nations Programme of Action on Small Arms and Light Weapons¹, Member States meet every two years for a biennial meeting of States or a review conference. In 2009 States decided to convene, additionally, an Open-Ended Meeting of Governmental Experts (MGE) to address key implementation challenges and opportunities in the UN small arms process. On the basis of broad-based consultations, marking, record-keeping and cooperation in tracing were identified as the core themes for the MGE, together with the cross-cutting themes of national frameworks, regional cooperation and international assistance and capacity-building.

The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (“International Tracing Instrument” or “ITI”), adopted by the General Assembly in 2005, was developed on the basis of the 2001 Programme of Action. The Instrument is discussed in the framework of Programme of Action meetings and applies to all Member States.

The ITI is a central tool for assisting States in combating and preventing the illicit proliferation of small arms and light weapons in an effective and concrete manner. Tracing illicit weapons allows States to monitor and disrupt illicit trafficking routes and to identify points of diversion. The Instrument sets out comprehensive and detailed international standards to guide States in their implementation of the three main pillars of marking, record-keeping, and cooperation in tracing. The three pillars are highly inter-dependent; successful tracing depends on adequate marking, record-keeping and international cooperation. Moreover, in accordance with the Instrument, weapons can be traced in all forms of crime and conflict situations.

¹ Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (2001).

The ITI builds on the 2001 Programme of Action and the legally binding Firearms Protocol of 2001,² a supplement to the United Nations Convention Against Transnational Organized Crime, to which not all Member States are parties. The Firearms Protocol outlines a number of requirements and measures regarding the marking, record-keeping and tracing of firearms from a law enforcement perspective. In the ITI's preamble, States recognized the complementary nature of these two instruments.

The Instrument encourages cooperation, assistance and capacity-building at the international, regional and bilateral levels to support effective implementation. The Programme of Action further emphasizes regional cooperation for tracing purposes, including the strengthening of information exchange mechanisms.

II. Marking

The Chair recalled key international requirements regarding this theme on the basis of the discussion papers. The ITI prescribes the content of small arm/light weapon markings at the time of manufacture, specifying that they must be unique and allow all States to readily identify the country of manufacture (para. 8a). ITI commitments relating to post-manufacture marking include the marking of government armed and security force stockpiles (para. 8d) and the marking of all illicit small arms and light weapons found on national territory (para. 9). The ITI also emphasizes the importance of import marking, noting that it is a requirement for States Parties to the UN Firearms Protocol (ITI, para. 8b; FP, art. 8(1)(b)). While the ITI indicates the choice of marking methods (stamping, engraving, etc.) is a national prerogative, it prescribes the physical characteristics of weapons markings (para. 7), as well as their placement (para. 10). Complementing these provisions, both the Programme of Action and UN Firearms Protocol include measures to prevent the possession of, and trade in, unmarked or inadequately marked small arms and light weapons (PoA, para. II.8; FP, art. 5).

During the meeting discussion on marking, States identified key challenges and opportunities for implementation, exchanged views and shared relevant national experiences and considered practical solutions to overcome common problems.

States shared information on their national marking practices including on the contents and methods of making. They discussed marking at the time of manufacture as well as post-manufacture marking, including the marking of government armed and security force stocks, the marking of weapons found on national territory, and marking at the time of import.

Several States noted that new developments and trends in the manufacture and design of weapons posed additional challenges for marking. These included:

² The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.

- the development of weapons families with similar design features and consequently an increased risk of misidentification; and
- the trend towards modularity in weapons design, i.e. the routine changing of major components.

Moreover, some States emphasized the specific challenges posed by polymer frame weapons, in particular the practical problems inherent in ensuring a durable mark on these weapons, both at the time of manufacture and import.

One State suggested the establishment of a technical committee, composed of industry and government representatives, in order to consider new developments of this kind and articulate approaches to addressing them.

Several States highlighted the key role that import marking can play in facilitating tracing. It was also acknowledged that import marking posed particular difficulties in balancing the need for weapons traceability, for which durable marking is essential, with considerations regarding the safety and physical integrity of the weapon.

Other challenges highlighted by States included:

- the falsification, alteration or erasure of serial numbers and other markings;
- the trade in illicit parts (i.e. reconstituting an unmarked weapon from such parts);
- the need to make provision in national control frameworks for the temporary lawful export (and re-import) of weapons in accordance with the ITI (for example, for hunting overseas);
- the incorporation of craft production into national regulatory systems; and
- a lack of equipment, expertise, and other capacity shortfalls related to marking.

Some States noted with concern the low number of countries reporting on their implementation of the ITI and encouraged the inclusion of more technical detail in national reporting on the Instrument's implementation.

Many States underlined the importance of marking for effective tracing cooperation and acknowledged that a lack of resources was preventing full implementation of the ITI's provisions on marking. The following assistance and capacity-building needs were identified:

- training, including the continuous training of law enforcement personnel in weapons identification;
- the acquisition of necessary equipment, including marking machines;
- the strengthening of existing legislation and the adoption of new legislation; and
- the transfer of relevant technology, including for purposes of rendering marking more resistant to efforts at falsification and sanitization.

In addition to the discussion on key challenges to implementation, States considered a range of solutions and articulated concrete proposals to overcome such challenges. In

relation to import marking, some States suggested that weapon manufacturers could be required to put import marks on weapons prior to their transfer. Several States also highlighted the potential of new technologies, such as laser engraving, electronic databases and digital photography, for enhancing import marking and weapons identification. Some States also noted that covert markings, applied in addition to the regular markings on the weapon's surface, can be a useful tool to enhance weapon traceability and to counter attempts to falsify or sanitize markings.

Many States highlighted the importance of enacting adequate legislation on marking, including the need for appropriate penalties and evidentiary rules (for example, shifting the burden of proof for the possession of firearms with sanitized markings). Some States outlined efforts they had undertaken to develop new methods for the recovery of sanitized markings.

Some States shared their experience in raising awareness among craft producers of applicable national laws and penalties and in training craft producers in marking the weapons they manufactured. Some States also noted the practical differences in marking small arms versus the marking of light weapons.

Some States suggested that difficulties that arose in the marking of polymer frame weapons were less relevant for tracing in conflict zones where the use of such weapons was limited.

Throughout the discussions, States underlined a range of positive experiences in tackling marking capacity shortfalls, including enhanced information-sharing, better coordination of assistance and the pooling of resources at the international, regional and subregional levels, as well as strengthened partnerships with donor governments, UN agencies, and other international and regional organizations.

III. Record-keeping

The Chair recalled key international requirements regarding this theme on the basis of the discussion papers. The ITI's record-keeping provisions are framed in broad terms, specifying in particular that the choice of methods for record-keeping is a national prerogative. The objectives are clear, however: the establishment and maintenance of accurate and comprehensive records necessary for tracing (para. 11). More specifically, UN Member States have undertaken, to the extent possible, to keep records pertaining to marked small arms and light weapons indefinitely. In any case, they have agreed to maintain manufacturing records for at least 30 years and all other records, including records of import and export, for at least 20 years. The ITI thus extends the Firearms Protocol's 10-year minimum for the maintenance of firearm records, although the latter, in contrast to the ITI, encourages States to also keep records of firearm parts, components and ammunition (art. 7).

In their discussions on the topic of record-keeping, States identified key challenges and opportunities for implementation, exchanged views and shared relevant national experiences and considered practical solutions to overcome common problems.

States recognized that national record-keeping practices vary widely. It was noted that this was partly a reflection of different constitutional structures, with record-keeping systems in federal States tending to be multi-tiered and complex.

Despite this, many States emphasized that national record-keeping systems shared many common features, in particular the core objective of timely and reliable tracing. In this regard, many States noted that insufficient and/or inaccurate record-keeping was a key reason for tracing failures. A second objective mentioned by many States was the use of records in the prosecution of weapons-related offences.

Several prerequisites for successful record-keeping were identified by States. These included:

- establishing adequate legislative frameworks, including the requirement that all relevant actors keep records;
- reliable weapons marking to ensure a unique record;
- effective enforcement, including sanctions for non-compliance;
- a sufficient length of time for the maintenance of records; and
- close cooperation with the private sector, including provisions for the hand-over of weapons records to governments by companies that go out of business.

The discussions reflected diverse national practices regarding the length of time that weapons records should be kept. Some States indicated that their systems provided for shorter periods than those stipulated in the ITI, asserting that the indefinite maintenance of records and associated costs may not match the needs of all States. Other States underlined that they either met or exceeded the ITI minimum standards of 30 years for manufacturing records and 20 years for all other records. Several States reported that they kept records indefinitely, particularly given the reduced costs of electronic data storage. These States emphasized the important long-term benefits for effective tracing arising from the indefinite retention of records. States also considered whether records should be deleted following the destruction of a weapon. Some States suggested that such practices could increase the risk of illicit diversion of weapons and might make tracing harder. On the other hand, where weapons are effectively destroyed, other States regarded the retention of such records unnecessary.

States also outlined measures undertaken to tackle key implementation challenges. Some States indicated that they were currently in the process of developing centralized firearm registers. Many others outlined efforts they had undertaken to convert their paper records into electronic form. Some noted particular challenges in this area, including a lack of qualified personnel, software limitations, and the need for strong project control during the transition process.

Several States also emphasized the importance of qualified—and sufficiently numerous—personnel for the successful and accurate maintenance of weapons registers, both in manual and electronic format. Some also emphasized that the targeted and ongoing training of relevant officials was a key element in ensuring the accuracy of data, and consequently in facilitating effective weapons identification and tracing. States identified several other challenges related to effective and accurate record-keeping, including:

- ensuring uniformity and data linkages across multiple registers in a country;
- the integration of record-keeping systems that are operated separately by law enforcement and military institutions;
- ensuring the accurate identification of weapons and their markings, as well as the accurate entry of this information into registries, to facilitate successful tracing;
- safeguarding against unauthorized access to record-keeping systems and unauthorized use by those who already have access; and
- the recording of weapons in conjunction with the collection and destruction of weapons in post-conflict settings, and in other contexts where States seek to increase their control over the circulation of small arms.

Some States outlined a number of cost-effective measures for strengthening the effective and accurate functioning of record-keeping systems. These included practical measures related to the effective establishment and maintenance of electronic record-keeping systems, such as defining minimum content required prior to the creation of an electronic record, inclusion of effective computer surveillance measures to search the system for incompatible data, and regular spot-checks of records to ensure the accuracy and consistency of the data stored.

Many States underscored the need for financial, material and technical assistance in strengthening their record-keeping activities. Several States made specific requests for technical assistance to help them manage the conversion of paper records into electronic form. In this regard, several States emphasized the importance of adequate training of personnel and the provision of technical equipment. Some States highlighted the need to build capacity in ensuring effective record-keeping in post-conflict situations as part of broader weapons collection programmes. Several States underlined that the understaffing of firearm registries—and under-resourcing of firearm registries generally—was another problem warranting priority attention.

IV. Cooperation in Tracing

The Chair began by recalling key international requirements regarding this theme on the basis of the discussion papers. Building upon both the Programme of Action and the UN Firearms Protocol, the ITI establishes a relatively detailed set of rules governing the issuance of and response to a tracing request. The ITI underlines the need for sufficient information in any tracing request, including markings, type and calibre, as well as the intended use of the information being sought (para. 17). States receiving a tracing request

are to acknowledge receipt within a reasonable time (para. 19). They also undertake to provide all available information sought by the requesting State relevant for the purpose of tracing (para. 20). Any delay or restriction in the content of their response, or refusal to respond, must fall within the scope of the exceptions set out in paragraph 22 and be explained (para. 23). As with record-keeping, the choice of tracing system is a national prerogative, yet the ITI commits States to ensuring they are capable of undertaking traces and responding to tracing requests in accordance with its requirements (para. 14).

During the meeting discussions, States identified key challenges and opportunities for implementation, exchanged views and shared relevant national experiences and considered practical solutions to overcome common problems.

States discussed how tracing cooperation is working in practice, specifically within the framework of the ITI. They shared a range of national experience, with some emphasizing that weapons tracing was a key investigative tool and illustrating its application to both crime and conflict settings.

Several States recalled that tracing does not stand alone, but is in fact part of a broader set of tools that includes such things as ballistics information systems. Many States underlined the value of tracing in detecting and potentially disrupting illicit arms flows—and in prosecuting those involved in such activity. A number of States suggested that some of the potential of weapons tracing was currently underutilized and that there was a tendency to neglect the prosecution of firearms-related offences in favour of other offences that were easier to prosecute. Yet many States stressed that, with the increased globalization of criminal activity, including firearms trafficking, the importance of effective weapons tracing was greater than ever before.

While the meeting discussions focused on the use of weapons tracing for law enforcement purposes, some States indicated that they were also responding to tracing requests from expert's panels reporting to UN sanctions committees within the framework of UN Security Council efforts to maintain international peace and security.

States shared a wide range of experience in tracing. Some States reported high success rates in their tracing operations, especially for weapons produced in recent decades following the introduction in many countries of systematic weapons marking and record-keeping. Others reported that some trace requests they issued received no response at all.

Several States highlighted the role of INTERPOL's information infrastructure, especially the National Central Bureau system, and noted the value of bilateral and regional frameworks for tracing cooperation.

A number of States noted that tracing failures were mainly due to two key factors: insufficient identifying information and the inaccurate identification of weapons, including weapons markings. Many States underlined the importance of sufficient information in trace requests, including minimum weapons-related information and

additional information regarding the case. Some States reported that the loss of records was also hampering effective tracing in certain cases.

Several States indicated that cooperation with manufacturers was good overall and underlined the critical importance of industry-government partnerships to effective tracing and in addressing new technical and policy challenges as they emerge.

Other challenges identified included:

- legal and bureaucratic impediments to the timely provision of data, including in countries where record-keeping was multi-tiered;
- enabling direct lines of communication between relevant officials in different countries;
- conflicts between confidentiality requirements governing the release of tracing information and rules providing for its disclosure in the context of judicial proceedings in the country of receipt;
- delays in the processing of tracing requests, with the risk that suspects would be released for lack of evidence before the completion of such traces;
- the difficulties of tracing weapons that have crossed several borders;
- the long life-span and complex chain of ownership of many small arms and light weapons; and
- licensed production in some cases leading to the misidentification of the manufacturer and/or country of manufacture.

Alongside these challenges, some States highlighted measures that could enhance successful weapons tracing and the benefits of tracing in a range of contexts. These included:

- the emerging use of digital photography as a means of improving weapons identification;
- the use of proof marks to overcome a lack of information on country of origin;
- the use of laboratory techniques to recover partly obliterated markings;
- the use of trace results, including information generated on crime location and perpetrators, to develop targeted law enforcement interventions;
- the use of weapons tracing to indicate the likely involvement of weapons traffickers in particular crimes;
- the use of trace results to assess the effectiveness of national import controls; and
- making information on traced small arms available to appropriate agencies at the national, regional and international levels in order to help prevent diversion.

Many States highlighted the need to build capacity for effective tracing. They underlined the importance of adequate institutional capacity for tracing and stressed the need for sufficient human, material and financial resources, including the training of relevant personnel for improved weapons identification.

V. National frameworks

The Chair recalled key international requirements regarding this theme on the basis of the discussion papers. States have recognized that the primary responsibility for solving the problems associated with the illicit trade in small arms and light weapons in all its aspects falls on all States (UNPoA, para. III.1). Under the International Tracing Instrument, UN Member States have undertaken to put in place, where they do not exist, the laws, regulations and administrative procedures needed to ensure the effective implementation of the ITI (para. 24). Associated commitments include the designation of one or more national points of contact for purposes of tracing and broader aspects of ITI implementation, including the exchange of information on national implementation (para. 25).

In their discussions on the topic of national frameworks, States identified key challenges and opportunities for implementation, exchanged views and shared relevant national experiences and considered practical solutions to overcome common problems.

In their discussions in national frameworks, States engaged in a rich and detailed exchange regarding their national legislation and institutional structures as they relate to the implementing the International Tracing Instrument.

Some States raised general points including the importance of national inventories of implementation gaps and needs and the value-added of linking national frameworks for marking, record-keeping and tracing with national programming in related areas, such as national development. Several States outlined plans to develop and/or enact new legislation and to amend and strengthen existing legislation.

Some States emerging from armed conflict noted that their application of tracing differed from those focusing on its use for law enforcement purposes, although the discussions also revealed points of convergence.

Several States emphasized the need to fully implement existing laws and underscored the importance of their effective enforcement. Regarding enforcement, several States reiterated the point that there was considerable value in prosecuting firearms-related offences in conjunction with associated offences where the opportunity arises.

Many States noted the importance of “whole of government” approaches as a key element in enhancing national coordination, making use of specific mechanisms and policy instruments to structure participation and coherent action across government.

Among the mechanisms to enhance coordination, some States specifically mentioned references to national firearms (or small arms) commissions, national firearms platforms and national management committees. These delegations emphasized the need for broad participation in such institutions so as to bring together all government agencies involved in ITI and PoA implementation, as well as industry and other representatives from civil society.

Many States cited national action plans as a key policy instrument for their marking, record-keeping and tracing work.

A number of States highlighted the utility of these mechanisms and policy instruments across a range of areas, in particular for purposes of:

- reviewing national implementation of existing legislation and procedures;
- fine tuning and developing national small arms policy;
- sharing information and coordinating policy across all of government; and
- identifying needs and gaps in ITI and PoA implementation.

States discussed how national frameworks for weapons marking, record-keeping and tracing link to bilateral, regional and international frameworks. In this regard, many States highlighted the key role of national points of contact and national reporting in facilitating full implementation.

Several States emphasized the need for a national point of contact that was police-based and dedicated to tracing. These States explained that they considered police channels to be better placed to protect confidential information in the context of tracing cooperation. Some of these States noted that they had appointed an additional ITI point of contact for the exchange of general information relating to implementation, including assistance needs. Other States referred to a single ITI point of contact in their interventions, not necessarily police-based.

Challenges mentioned by a number of States in this area included:

- ensuring that point of contact information was effectively communicated to all UN Member States, in particular through the PoA-ISS website; and
- securing agreement among different governmental agencies on a single point of contact for tracing.

Moreover, several States expressed concern about the low levels of national reporting on ITI implementation to date, including the resulting shortfall in information exchange. These States noted that the reporting burden for the ITI — and increasingly for the PoA — was in their view alleviated by the use of a biennial reporting schedule.

As in other thematic areas, many of the States that took the floor underlined the crucial importance of international assistance and capacity-building to the implementation, consolidation and strengthening of national frameworks for marking, record-keeping and tracing.

Specific capacity-building needs highlighted by States included:

- the review and development of legislation;
- the sharing of technical expertise; and

- the provision of equipment.

Some States also emphasized the need for donor coordination in ensuring coherent national action across the areas of marking, record-keeping and tracing. Other States mentioned challenges related to maintaining the necessary level of expertise among relevant personnel and language barriers in accessing relevant technology. Many States underscored that they regarded bilateral, regional and international frameworks as indispensable complements to national efforts.

VI. Regional cooperation

The Chair recalled key international requirements regarding this theme on the basis of the discussion papers. The ITI encourages cooperation at the regional level to support the effective implementation of the ITI (para. 26). The Programme of Action similarly emphasizes regional cooperation for tracing purposes, including the strengthening of information exchange mechanisms (para. III.11).

In their discussions on the topic of regional cooperation, States identified key challenges and opportunities for implementation, exchanged views and shared relevant experiences and considered practical solutions to overcome common problems.

Many of the States and regional organizations that spoke on this issue underlined the value of regional cooperation to ITI and PoA implementation. Several States noted the substantial progress that had been made in strengthening such cooperation and stressed its continuing importance for supporting implementation efforts.

Participants discussed the numerous ways in which regional organizations were assisting States on various aspects of ITI and PoA implementation, including:

- coordinating national action at the regional and subregional levels;
- developing model legislation, regional implementation standards, and best practice guidelines;
- organizing regional meetings and seminars;
- assisting States in the assessment of their needs;
- building institutional capacity;
- conducting training and other capacity-building activities; and
- strengthening cooperation among regional and subregional organizations and UN agencies.

Some participants emphasized that for maximum effectiveness regional organizations needed to be in regular contact with their member States. Other principles highlighted by some participants regarding regional cooperation included continuity, complementarity and cost-effectiveness. With regard to the latter, some participants underlined the need to make the most of limited resources and to focus on initiatives that would have the broadest possible impact.

In relating the details of their work, some regional organizations reported on a range of measures extending beyond weapons marking, record-keeping and tracing that were designed to tackle a broader range of small arms issues.

Several States cited the provision of marking machines through regional organizations, such as RECSA and OAS, as an example of regional cooperation worthy of emulation.

Many States also offered examples of interaction among regional and subregional organizations, indicating that this was facilitating the exchange of experience among experts and enhancing knowledge acquisition. Some participants also noted that regional meetings and workshops were building and strengthening relationships between regional and subregional organizations.

On the other hand, some States suggested there was a risk of regional and subregional organizations becoming too large and thereby losing their proximity to member States and overall effectiveness. Some States noted that the extent of regional cooperation varied according to different regional and subregional contexts. Several States suggested that bilateral and trilateral relationships could present useful alternatives in areas where regional cooperation was more limited.

Several other challenges at the regional level were mentioned by participants. These included:

- a lack of harmonization of national legislation in certain regions;
- a lack of legal regulation in certain issue areas, for example marking;
- logistical and transportation shortfalls (precluding for example the transportation of marking machines to where they were needed);
- a lack of donor attention to certain regions;
- a duplication of efforts among organizations in a single region; and
- a limited awareness of small arms issues and a reluctance on the part of some communities to engage on these.

Most States stressed the need for international assistance, including technical and financial assistance. Some pointed to the need for transparency and coordination in the provision of assistance so as to avoid overlap and duplication.

Several elements were identified by participants as particularly important in strengthening regional cooperation, such as:

- support for the development of national action plans and associated national legislation;
- the enhanced exchange of information and lessons learned;
- establishing and strengthening links among regional organizations;
- building strong partnerships with civil society and research institutions; and
- safety nets for regions lacking effective cooperation mechanisms.

VII. International assistance and capacity-building

The Chair recalled key international requirements regarding this theme on the basis of the discussion papers. The ITI underlines the importance of international cooperation and assistance for its effective implementation (paras. 26–29). States are encouraged to provide technical, financial and other assistance in building national capacity for marking, record-keeping and tracing, and to examine—and facilitate the transfer of—technologies for the improved tracing and detection of illicit small arms and light weapons (paras. 27–28). Cooperation with the United Nations (information exchange) and INTERPOL (operational aspects) is also emphasized (paras. 30–35).

[Text to be inserted]