



MISIÓN PERMANENTE DE MÉXICO

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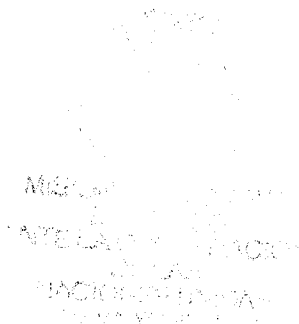
The Permanent Mission of Mexico to the United Nations presents its compliments to the Permanent Missions of the Member States to the Organisation, and has the honour to refer to resolution 64/50, through which the General Assembly decided that the Fourth Biennial Meeting of States to consider the national, regional and global implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit trade in Small Arms and Light Weapons in all Its Aspects shall be held in New York from 14 to 18 June, 2010.

In this regard, the Permanent Mission has the honour to transmit herewith the document prepared by Mr. William Kullman, in his capacity as Friend of the Chairman-designate of the abovementioned meeting, H.E. Ambassador Pablo Macedo, "Working Non Paper on International Tracing Instrument". The Chairman-designate kindly requests that any comments and observations to this paper be submitted to Mr. Pablo Arrocha, by **24 May 2010**, either by e-mail parrocha@sre.gob.mx or fax 212-688-8862.

The Permanent Mission of Mexico avails itself of this opportunity to renew to the Permanent Mission of the Member States to the Organisation the assurances of its highest consideration.

New York, 18 May 2010

**To the Permanent Missions of
the Member States
to the United Nations
New York.**



WORKING NON PAPER
INTERNATIONAL TRACING INSTRUMENT
BY USA/FRIEND OF THE CHAIR
FOURTH BIENNIAL MEETING OF STATES (BMS IV)
SPRING 2010

Over the past decade, the international community has come to better understand the critical role of tracing illicit small arms and light weapons (SA/LW) in the fight against firearms trafficking. As a consequence, efforts have begun at the global, regional, and national levels to take up the task to begin or expand tracing systems as the key step to detect, disrupt, and eradicate illicit trafficking networks. Although the United Nations Programme of Action to Prevent, Combat, and Eradicate the Illicit Trade in Small Arms and Light Weapons in All its Aspects (POA) has moved into the implementation phases, it is evident that much work remains to be done. This paper explores: (a) the importance of tracing SA/LW as reflected in international and regional instruments; (b) the necessary infrastructure for an effective, reliable, and timely tracing system (including laws, regulations, and an enforcement regime); and (c) the possibilities for continued and expedited progress in implementing these agreements. In particular, it focuses on measures that could be considered at the Fourth Biennial Meeting of States (BMS 4) in reviewing implementation of the POA.

INTERNATIONAL INSTRUMENTS ON TRACING

The United Nations addressed the misuse and proliferation of SA/LW in the 1990s and provided an impetus to those States seeking to establish a tracing mechanism to combat international firearms trafficking. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition (UN Firearms Protocol), supplementing the Convention Against Transnational Organized Crime, requires States to institute firearms marking and record keeping systems for tracing purposes (see Articles 7 and 8 to the Protocol). Similar language is used to require marking and record keeping systems in the Organization of American States' 1997 Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials 1997 (CIFTA) (see Articles VI and XI and Article XIII, Paragraph 3).

The POA that resulted from the July 2001 Conference on the Illicit Trade in Small Arms and Light Weapons in All its Aspects

calls upon States to establish effective tracing systems for firearms (see Article II, ¶¶ 7 & 9). The POA process subsequently led to the first global arrangement on the tracing of SA/LW, the International Tracing Instrument (ITI). The ITI is notable for specifying how traces may be conducted (see paragraphs 14-23), including restrictions on sharing sensitive trace information. The ITI reinforces international standards in marking and record-keeping. Marking of firearms at the time of import is "strongly recommended" (see paragraph 8b).

NECESSARY INFRASTRUCTURE FOR EFFECTIVE TRACING SYSTEM

When we speak of firearms tracing, we refer to the systematic process of tracking a recovered crime gun's history from its source (the manufacturer or importer) through the chain of distribution (wholesaler/distributor) to the first retail buyer and ultimately to the last individual possessor of the firearm.ⁱ Of course, there are several mechanisms to accomplish this, many of which begin at an earlier stage in the lifespan of the firearm. For example, in some tracing mechanisms, there is a record kept at every transfer of the firearm, expediting the tracing process to the last lawful possessor. In any event, the tracing of firearms is generally understood to begin with a recovered firearm, usually by law enforcement in the context of a crime, and end, if successful, with the firearm's last possessor.

The question often arises why a gun should be traced, especially if the perpetrator has been apprehended. The first reason is often because the individual arrested was not lawfully in possession of the firearm, and there is every incentive to find out how an unauthorized individual obtained the firearm. Tracing can also provide additional information helpful to law enforcement such as other crime guns recovered nearby; the names and addresses of known criminal associates of the purchaser and who else may be involved in the crime committed using the firearm being traced; or the firearms may have been reported stolen, leading to additional leads. In short, tracing coupled with proper analysis can be the most effective means to identify potential illegal firearms traffickers and routes.

An effective tracing mechanism can also store information about sales of multiple firearms, stolen firearms, and firearms with sanitized or obliterated serial numbers. Moreover, once recovered crime guns are traced, the information pertaining to the firearms as well as the pertinent locations and individuals can be analyzed to identify trends and patterns of illegal

firearms trafficking involved from individuals to the source. Reports can be therefore be generated which can:

- Provide information about illegal firearm activity in a particular region or neighborhood;
- Identify differences in adult, youth, and juvenile illegal activity patterns and preferences;
- Expand access to firearm-related enforcement information;
- Allow the initiation of local and regional reporting on illegal trafficking and possession;
- Allow law enforcement agencies to focus their limited resources to have the greatest impact on the reduction of firearm violence by adults, youths or juveniles;
- Identify potentially corrupt dealers or the black and gray market in firearms, including violations of UN arms embargoes;
- Target sources of the preferred types of crime guns; and
- Produce a balanced law enforcement strategy to reduce violent crime in communities.

In short, the value of tracing all crime guns cannot be overstated in reducing the criminal possession and misuse of firearms.

To effectively implement the ITI, States must first establish certain structures and institutions, including:

Legal Framework

Essential to any effective tracing system is a network of laws, regulations, and law enforcement structures with the capability of regulating the manufacture, transfer, and record keeping of firearms.

Laws

Firearms are a durable commercial commodity and pose inherent dangers if misused. Moreover, firearms are used as tools in most law enforcement agencies, and also serve the interests of hunters and other recreational sportspersons. Accordingly, it is necessary for any tracing system that a series of laws regarding the manufacturing of firearms be enacted. These laws should include a clear definition of a firearm; the mandatory marking of a firearm; mandatory recordkeeping (as the marking of a firearm is of little value if the record of that marking is not retained or retained in a manner not readily accessible); and a flexible regulatory framework. This last requirement is

necessary due to the variety and complexity of firearms and the size of the military and commercial firearms industries. As a result, no single law can be comprehensive and flexible enough to respond to the needs of a tracing system. Accordingly, States need to establish regulations that can provide more specific guidance. For example, while a State might require marking of all items defined by law as firearms at the point of manufacture, it might not specify where on each firearm the markings must be appear, or the minimum size and depth of those markings.

Enforcement Authority

A legal framework necessary to any tracing system must not only include laws and regulations, but must provide an effective means by which to enforce those laws and regulations. The enforcement authority can be accomplished through industry self-regulation accompanied by sufficient checks and balances, or by means of a police or regulatory body whose members ensure compliance by means of criminal or civil punishment for violators. Regardless of the method used to ensure compliance with the laws and regulations, an effective tracing system relies both upon clear rules and faithful compliance with those rules.

Industry Cooperation

Because many States have a robust commercial firearms industry, an effective tracing system must take into account the importance of industry cooperation. Several areas are critical: the proper marking of firearms at the point of manufacture, or at the point of import, the value of record keeping maintained for strictly commercial or proprietary reasons (such as repair), and the expertise often found only in industry members.

This last point should not be undervalued. Modern firearms have been manufactured for over one hundred years. The number and variety of these firearms are tremendous, and a successful tracing system requires a fair degree of expertise in firearms identification. Some of the world's foremost experts work for or have worked for the major firearms manufacturers and have extensive knowledge important to a tracing mechanism. Accordingly, an effective tracing system must include in some fashion a liaison with the firearms industry as a whole.

Infrastructure

A necessary component for any effective tracing mechanism is having sufficient infrastructure for collecting and disseminating information. At its core, a tracing system is a data collection and retrieval system. The system must collect, retain, and enable expeditious retrieval of information about firearms (for example, a serial number or a make and model). In this regard, a tracing mechanism must have an established means to accomplish this task. As discussed below, this infrastructure may be rudimentary (a paper record of a firearms marking followed by a manual examination of those records), but it must be capable of providing the information in a reasonable period of time. Information that cannot be retrieved or can only be retrieved over a long period of time is of little utility. Indeed, the mark of failure of any tracing system is the inability to deliver accurate information in a timely fashion. This is why the advent of modern information technology (be it telephone, fax, or computer) promises to be a boon to the establishment of an effective tracing system in many States.

POSSIBLE MEASURES FOR CONSIDERATION AT BMS IV

As noted above, before a state can fully and effectively implement the ITI, it must first establish the necessary infrastructure for a national or regional tracing system. As that process may take several years, it may be prudent to focus on the interim and immediate steps that can be achieved using current mechanisms.

FOCUS ON BILATERAL ARRANGEMENTS

Most notably, bilateral arrangements have proven effective for timely and reliable traces of SA/LW in many parts of the world. For example, as one of the world's largest manufacturers of SA/LW, the United States has commenced deployment of an Internet, web-based tracing mechanism called eTrace. This system provides real-time tracing requests and results for the over thirty nations that have agreed to participate.

IDENTIFY A SINGLE POINT OF CONTACT

In addition, both the POA and ITI call for the establishment of a single point of contact to exchange information and carry out liaison on all matters relating to the implementation of the ITI, including facilitation of firearm trace requests from one Member State to another. Such a single point of contact can be tremendously helpful in light of the often myriad players

involved in conducting an international firearms trace. Designation of an official or office to serve as the conduit for tracing requests or assistance would be an easy step to take for most Member States. This is one small first step that will lead to greater international cooperation.

ENGAGE REGIONAL ORGANIZATIONS

In addition to the United Nations, there exist several regional organizations that can serve the interests of a tracing mechanism. The Organization of American States (OAS), the Organization for the Security & Cooperation in Europe (OSCE), the European Union (EU), the Inter-American Drug Abuse Control Commission (CICAD), and others, all provide a forum for the mutual exchange of information and intelligence sharing which can facilitate a tracing mechanism. Naturally, while each of these organizations may currently play a limited role in firearms tracing, the recent adoption of the CICAD Model Laws and Regulations has proven the vital role these regional organizations can play in the effort to combat illicit firearms trafficking. The Regional Secretariat on Small Arms based in Nairobi, Kenya, as well as the OAS are working to distribute marking machines to Member States to enable them to mark existing stockpiles of SA/LW in addition to newly imported or manufactured firearms.

INTERPOL

This international police organization with over 170 offices throughout the world serves participating States by collating data provided from one State and sharing it with another State. Interpol, therefore, can serve as a clearinghouse of firearms trace requests in circumstances where a State-to-State trace request is unavailable or undesirable.

NONGOVERNMENTAL ORGANIZATIONS

Any effective tracing mechanism should not overlook the supporting role nongovernmental organizations (NGOs) can play in fighting firearms trafficking. By focusing on the common agenda of curtailing firearms trafficking by creating an active tracing system, NGOs can work together with governments and industry members to ensure that firearms are marked and that records are maintained and made accessible to law enforcement. NGOs with legal backgrounds could also support efforts by Member States to draft the necessary legislation to establish a tracing

system and to assist regional organizations in drafting model laws and regulations.

¹ A firearms trace is often a trace by means of existing records, either kept electronically or manually on paper. It must also be noted that tracing of firearms means tracing of crime guns. Guns are not ordinarily traced for commercial purposes but only in relation to a crime. This follows as one of the key reasons for tracing a firearm is to identify where the firearm was diverted from the legal to the illegal market. Such information is critical to prosecuting individuals who