

4. Work of the UN Group of Governmental Experts on Small Arms and Light Weapons Tracing

Analysis of the Final Report and Comparison with the Model Convention of GRIP

4.1. Introduction

The Programme of Action that resulted from the United Nations Conference on Small Arms and Light Weapons held in July 2001 foresees the preparation of a study to examine the feasibility of developing an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.⁶⁷ In application of resolution 56/24V of 10 January 2002, the UN Secretary-General created a Group of Governmental Experts (GGE) to this effect.⁶⁸

Meetings of the Group of Governmental Experts

The GGE met for the first time in Geneva from 1-5 July 2002. At this meeting, Indian Ambassador Rakesh Sood was selected to preside over the Group. The Group began by setting out two principles underlying its work: first, it must confine itself to marking and tracing and must not study other issues, regardless of their importance; secondly, its work should entail examining the feasibility of developing an international instrument, and not the negotiation of such an instrument. To this effect, the Group first turned to the question of whether such an instrument was desirable.

In the course of this first meeting, representatives from civil society,⁶⁹ from the meat industry regarding tracing, and the French and Swiss governments regarding their initiative on tracing small arms and light weapons were invited to present their views.

The second meeting of the Group took place in Geneva from 24-28 March 2003. Experts on criminology, ammunition, as well as on illicit trafficking gave presentations. GRIP sent its model convention on marking, registration and tracing to the President of GGE, at his request,⁷⁰ and the

Group's secretariat subsequently confirmed that the document was circulated among the experts.

The Group met for the last time from 2-6 June 2003. While this last meeting was dedicated to elaborating conclusions and the drafting of a report, WFSA⁷¹ members gave presentations.

Follow-up to the work of the Group of Governmental Experts

The United Nations Secretary-General presented the report of the Group of Governmental Experts⁷² to the 58th session of the General Assembly, which opened on 16 September 2003. However, an unofficial report was already distributed to participants⁷³ at the First Biennial Meeting of States to Consider the Implementation of the Programme of Action in New York, at the invitation of its President, Mrs. Inogushi. Furthermore, Mr. Sood presented information concerning the conclusions of the GGE. It is obvious that the experts would have found it difficult to withhold their results until September when one of the main themes addressed at the Biennial Meeting was marking and tracing.

The Group therefore concluded that an international instrument on small arms and light weapons tracing is not only desirable but also feasible. It recommended that the decision to develop such an instrument should be taken by the UN General Assembly during its 58th session.

The different delegations participating in the Biennial Meeting commended the GGE on its work, and in their various declarations, in particular during

67. A/CONF.192/15, Programme of Action, para. IV.1.c).

68. The list of 23 experts can be consulted on the Group's website: <http://disarmament.un.org/cab/salw-tracingexperts.html>

69. They included GRIP, Small Arms Survey and the Quaker UN Office. The speeches can be found on the GGE website. The website also includes a series of official documents and positions of States, as well as selected publications on the issue, including two produced by GRIP. National legislation of certain countries can also be found on the website alongside other useful information.

70. Request formulated by Mr. Rakesh Sood during the conference organised by the OSCE in Bucharest on marking, tracing and arms transfers, held from 24-26 February 2003, at which GRIP gave a presentation on traceability.

71. World Forum on the Future of Sport Shooting Activities

72. Document A/58/138, 11 July 2003.

73. Document A/AC.26/7/2003/CRP.1 of the Biennial Meeting, which was the subject of the above-mentioned report A/58/138.

the discussions touching upon the theme of tracing, requested the General Assembly to negotiate an international convention without delay and to set up a working group. The procedure will be similar to the Firearms Protocol and the President and the delegations may consult experts in order to take stock of all technical and juridical possibilities. According to our sources, the final document is expected to be adopted during the Review Conference to be held in 2006, as foreseen in the Programme of Action.

We should also note that during the first Biennial Meeting, GRIP distributed its draft convention on the traceability of small arms and light weapons, along with its 'Grounds for Action', to the delegations and organisations present. Given that it was the only draft document tabled on the subject, the project aroused a great deal of interest.

The following section provides an analysis of the main points contained in the report of the Group of Governmental Experts, and systematically compares them with the proposals of the model convention elaborated by GRIP in order to draw parallels between the two texts.

4.2. Analysis of the report of the Group of Experts

For practical reasons we shall follow the structure of the report:

I. Introduction

A. Mandate

The purpose of the present report is to examine the feasibility of developing an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons.

The report then outlines the history of the establishment and work of the Group.

B. Approach and working methodology

The report reviews the documents adopted⁷⁴ by the GGE, the views of States, national legislation and other documents submitted voluntarily by States, as well as national reports on the implementation of the Programme of Action. In addition, the Group took account of certain Security Council docu-

ments and various documents on small arms and light weapons developed by international and regional institutions, as well as the written contributions of some experts, including GRIP and WFSA.

The Group also referred to the reports of follow-up meetings to the UN Conference on small arms and light weapons and to two other international instruments, namely the model regulations on the Transport of Dangerous Goods and the Convention on the marking of plastic explosives.

Finally, the Group emphasised that although its work focused on illicit weapons, it would also consider legal aspects, but only insofar as they have an impact on the issue of illicit weapons (para. 15 of the GGE report).

Comparison with the GRIP model

- The objective of GRIP's model convention is also to control small arms and light weapons transfers with a view to identifying and tracing illicit small arms and light weapons and to ascertain responsibility in order to prevent their deviation towards the illicit market.
- It should be noted that the model convention makes no distinction between legal and illegal aspects and takes into consideration all small arms and light weapons. All must be potentially traceable, without exception. However, a tracing operation should be undertaken only where there is cause for suspicion. The report of the GGE arrives at the same conclusion but underlines "cases having an impact on illicit weapons" because of the sensitivity of certain countries concerning the transparency of legal circuits. Nevertheless, direct links between the legal and illicit market are obvious.
- GRIP has always referred to the transport of dangerous goods and the recommendations of the UN experts to this effect, which are reflected in international regulations and the national legislation of many countries, as an example to follow.⁷⁵ This was also considered by the GGE as an example of a system that has been

74. These mainly include the reports of the UN Group of Governmental Experts on small arms and light weapons, and existing international initiatives (see the website of the GGE).

75. See the report "Marking and Tracing Small Arms and Light Weapons," Les Rapports du GRIP, March 2002, Special Issue, paragraphs 3.1.2 and 3.2.2.

successfully implemented, thanks to our work and presentations. The same is true for the specific case of plastic explosives.

II. Nature and scope of the problem

A. Defining the problem

This paragraph first describes the consequences of the excessive and uncontrolled proliferation of small arms and light weapons. The GGE emphasises that this is a global problem for which States are principally responsible, and points out that States have committed themselves to strengthening or developing agreed norms and measures to prevent, combat and eradicate the illicit trade. Moreover, States have identified tracing as a key mechanism to this effect.

The Group defines tracing as the systematic tracking of one or more illicit weapons found or seized on the territory of a State from their source, through the lines of supply, to the point, if any, at which they were diverted into the illicit market, and ultimately to the person or group that last possessed them (para. 20 of the GGE report).

Tracing depends on three elements: adequate marking, accurate and comprehensive record-keeping on all weapons under the jurisdiction of the State, and the exchange of information and international cooperation between States as well as with relevant international organisations. All of these elements have legal, technical, institutional and policy dimensions.

Another important point underlined by the GGE is the fact that there are notable differences between tracing required in “crime” and in “conflict situations”. Furthermore, according to the GGE report, existing cooperation mechanisms include only criminal investigations and not conflict zones, and are far from effective (paras. 22, 24 and 25 of the GGE report). There is therefore an urgent need for new mechanisms and arrangements to improve tracing.

Moreover, the GGE note that tracing could be affected or limited by a range of confidentiality issues.

Comparison with the GRIP model

- According to GRIP, tracing is a key element because it targets physical controls on the

transfer and use of small arms and light weapons. It is a missing element in existing mechanisms, which the GGE has confirmed in its report.

- The definition of tracing set out in GRIP’s model convention⁷⁶ is similar to that of the GGE. We should note, however, that in the case of the GRIP model it is a legal text and the term ‘illicit’ is replaced by ‘non-compliant’⁷⁷ in order to avoid confusion due to the fact that the term illicit can be interpreted in various different ways.
- The model convention foresees the same principal elements for the tracing mechanism as those set out in the GGE report. However, it also suggests the creation of an entity (Agency) specialised in small arms and light weapons to verify these elements.⁷⁸ The GGE addresses the issue of verification of these elements in subsequent sections of its report.
- Since it began working on the issue, GRIP has emphasised the importance of distinguishing between crime and conflict situations, as well as the inadequacy of verification mechanisms which are moreover absent in the case of conflicts, as indicated by experts (para. 25 of the GGE report). The model convention takes into account all aspects of the problem and establishes a new mechanism, as suggested by the GGE in its report.
- The GGE notes its unease with regard to the issue of confidentiality, which appears to be a political problem (para. 27 of the GGE report). The model convention overcomes this hurdle by referring to existing examples elsewhere, such as the transport of dangerous goods and the Chemical Weapons Convention, as well as in traditional trade, notably when control agencies intervene during the course of a transfer.

B. Existing initiatives

The report reviews the main existing initiatives covering tracing and its principal elements. However, it underlines the limitations of the Firearms Protocol, notably the definition of firearms, which does not cover all types of small arms and light weapons, as

76. See Article 1, para. 5 of the draft Convention.

77. Art. 1.6 of the draft Convention.

78. Art. 1.8 and art. 9 of the draft Convention.

well as the types of transfers it includes, since the scope of the Protocol does not cover certain State-to-State transactions and focuses only on transnational organised crime (paras. 30 and 31 of the GGE report). Finally, the report considers all aspects of the problem, as foreseen in the Programme of Action.

Comparison with the GRIP model

- GRIP has consistently emphasised the limitations of the Vienna Firearms Protocol. Article 2 of the model convention foresees the broadest scope of application possible without jeopardising the effectiveness of the mechanism.

III. Issues relating to definitions and elements of tracing: marking, record-keeping and cooperation

A. Definitions

Small arms and light weapons

The GGE bases its definition on that elaborated by the Group of Governmental Experts in 1997⁷⁹ and provides the list of categories to be covered, with a calibre of less than 100mm. The definition also includes ammunition and explosives.

Illicit small arms and light weapons

The report underlines the need for a common understanding of the significance of the term 'illicit',⁸⁰ and as such the need to define what is 'legal'. It also notes the importance of understanding the link between legal and illicit weapons. Weapons are manufactured domestically by States or in factories authorised by States,⁸¹ and are acquired by individuals, private actors or government agencies. The GGE also emphasises the problem of production under expired foreign licences.

According to the report, weapons become illicit mainly through intra- or inter-State transfers. Other means include theft, corruption, false end-user certificates, small-scale trans-border transfers and transfers towards non-State actors or countries under embargo.

The report therefore defines illicit weapons as those the presence or possession of which is in violation of national laws, or that are the subject of an illicit transaction or activity according to national or international law. This could apply to the produc-

tion, possession, use, stockpiling, trade, brokering, transfer and reactivation of small arms and light weapons.

The GGE focuses first on conflict situations and terrorist activities. This is vital because it allows to move beyond the narrow context of crime, focused on without much success to date, in order to finally establish the links between conflict and crime to determine the points at which weapons are deviated towards the illicit market.

Comparison with the GRIP model

- The definition of small arms and light weapons in the model convention is also based on that developed by the Group of Experts in 1997, however the model's definition is not limited to the weapons listed,⁸² not to exclusively military type weapons.
- As with GRIP's draft convention, the GGE report also takes into consideration ammunition and explosives (para. 33 of the GGE report). It is crucial that all parameters of the arms circuit are controlled.
- The definition and interpretation of the term 'illicit' are problematic. A simple reading of paragraphs 34 to 39 of the report, which refers to illicit weapons, reveals the confusion that the use of this term generates. In an effort to standardise and to ensure legal conformity, the model foresees the use of the term 'non-compliant small arms and light weapons' compared to the requirements of the convention. While on the whole the terms of a convention of this nature should be reflected in the national legislation of States Parties, it would be prudent to use a term other than 'illicit', if only to distinguish it from other existing instruments where the term 'illicit' is used.

79 United Nations Document A/52/298, notably paras. 24-26

80 The report notes that "weapons are deemed to be illicit if they are found or seized on a State's national territory and are defined as illicit under national and/or international law by a competent authority." This would introduce a certain lack of harmonization within the framework of an international convention because laws differ from country to country.

81 The majority of weapons are manufactured legally. The Group also notes the existence of illicit production

82 The expression 'encompasses notably' is used: See Article 1 of the draft convention

- It should be noted that, for the use of the term illicit (non-compliant, in the case of the model convention) both the report and the model target the manufacture, sale, purchase, transfer and stockpiling of weapons (para. 38 of the GGE report).⁸³ As explained in detail in the GRIP document entitled “Grounds for Action” and in comments on the articles of the GRIP draft convention, the “illicit use” of small arms and light weapons should be targeted. The GGE report mirrors this view. Periodic controls of weapons stockpiles would enable verification of “end-use” compliance.

B. Marking

Technical issues

1. Practice

The report of the experts observes that marking practices vary from country to country. Furthermore, it notes in particular that the marking of weapons destined for use by security forces and the army is undertaken post-facto by these groups according to their specific needs, and differ from one service to another. Moreover, different norms often apply within the same country to weapons destined for civil versus military use. Marking upon import exists in several countries and generally includes the year of importation and the ordnance mark for that country. In some countries proofmarks for the quality control are stamped.

2. Methods

While methods vary extensively from country to country, stamping is the most common method used. There are also differences between markings used for small arms and those used for light weapons due to the size and materials used in production of the latter.

In some cases markings can be removed, obliterated or altered. In order to render this practice more difficult, producers can mark less visible parts and components that are more difficult to access, or else on delicate but essential components that would be damaged by attempts to remove the markings. The same component could be marked in more than one location in order to facilitate the retrieval of the erased information.

The report notes that the concept of hidden markings has also been developed in recent years. Other techniques, such as laser etching, embedded electronic chips and chemical tracers have also been used for this purpose. In this way, marking can be reinforced.⁸⁴

3. Content

The content of markings also varies considerably. Three main approaches to the content of markings are used, each of which aims to be unique:

- alphanumeric (numbers and letters) code only;
- a combination of alphanumeric code and geometric symbols;
- the combination of alphanumeric code with other marks such as the calibre, model, country of manufacture or other.

The components or spare parts are sometimes also marked but their contents vary considerably compared to the principal markings.

Policy issues

In light of these wide variations that exist from one country to another, the GGE considers that marking should remain a national prerogative. However, on the basis of existing practices, it should be possible to define common minimum standards for marking.

The minimum standards include reliable, visible and easily recognizable markings, with a unique serial number and country of manufacture at the time of manufacture, and if necessary on import (para. 62 of the GGE report). The latter should also include the importing country and the date of import. Furthermore, one of the structural components of the weapon, difficult to handle, and the destruction of which would make the weapon inoperable, should also be marked.

Discussions that took place within the GGE indicated that, while necessary, the exchange of information on national marking systems could be subject to certain limitations on account of national

⁸³ See also Article 1, para. 6 of the draft convention.

⁸⁴ In English these are referred to as ‘back-up marks’.

security considerations (para. 63a of the report).⁸⁵ The Group proposed that existing customs cooperation serve as a model for the exchange of information on marking systems (para. 63c of the GGE report).⁸⁶

The group also underlined the significant differences in cost between various marking methods and techniques.⁸⁷

A list of existing norms and undertakings on marking found in different international initiatives is provided in a separate annex to the report.

Comparison with the GRIP model

- GRIP came to similar conclusions as those of the GGE regarding practice, methods and content in its various publications on marking. In particular, the lack of harmonisation between countries as well as the absence of markings for arms destined for military use constitute important problems as far as follow-up is concerned.
- The notion of 'security markings' (or covert secondary) was introduced in the work produced by GRIP on the subject as early as 2000 (para. 52 of the GGE report). It is touched upon in Article 4.2.b of the draft convention.
- 'classical' markings and their contents are also featured in Article 4.2.a. This is similar to the proposals of the GGE but also includes the year of manufacture among the norms. Moreover, for reasons of harmonisation and understanding, the model convention is limited to alphanumeric code only.
- The model convention also defines marking as a national prerogative since it foresees in Article 4.2.c) the establishment of technical committees at the national level, which would determine the manner in which markings must be effectuated.
- As in the report of the GGE, the model foresees marking several parts of a weapon. It also recommends marking components and spare parts but leaves this to the discretion of the national technical committees. Defining and imposing in advance the location of markings and the techniques to be used would handicap future technological advances.
- The model convention provides separate definitions for the marking of ammunition and

explosives and foresees, notably, a unique serial number per batch.

- In contrast to the report, and so as not to hamper tracing, the model does not set out any limits as to the exchange of information on marking systems.⁸⁸ The exchange would take place via national agencies specialised in small arms and light weapons.

C. Record-keeping

Technical issues

1. Practice and systems

Registers and record-keeping systems vary from one country to another and depend on the government structures, constitutional systems and national traditions. In general, State registers are established for civilians, while the army and security forces hold their own records. Information on transfers are generally known by the authorities responsible for granting licences.⁸⁹ The dispersal of information across a number of bodies makes cross-checking and tracing difficult, however. In countries where information cannot be centralised on constitutional grounds (para. 66 of the GGE report), a particular problem involves accessing

⁸⁵ However, the Group does not explain why this would compromise national security. Political reasons in order to avoid weapons tracing could explain this opposition.

⁸⁶ In our opinion, it is difficult to adapt a technical issue to a customs model. Customs agents never verify markings and do not have the technical competencies required to ensure a correct exchange. Specialised agents are therefore required to carry out this role.

⁸⁷ This assertion cannot be justified for a number of techniques, such as laser marking, which allows for inexpensive and technically profitable marking when it comes to large-volume manufacturing, and which foresees the marking of several components since reproduction is very rapid. There is therefore a quick return on investment. Furthermore, orders involving more complex markings would be filled more quickly with the laser marking technique. Similarly, delicate components that could normally not be marked with usual techniques can be by using laser.

⁸⁸ Indeed, we do not see how such an exchange of information can have an impact on national security considerations. However, if there is reticence in this regard, the existence of an international agency would ensure the confidentiality of information and would render the exchange of information between countries unnecessary.

⁸⁹ However, contrary to that stipulated in the report, this does not involve registers but rather existing information on transactions within ministries and customs.

information contained in different record-keeping systems.⁹⁰

2. Content of records

The contents also differ from one country to another. It is usual to register technical information on the weapon and its owner. In some countries, additional information about transport, middlemen, end-users and so forth are registered and maintained at different levels.

3. Maintenance of records

The organisation and maintenance of records varies considerably depending on the systems in use. Most registers are kept on paper, however their conversion to electronic records is increasingly envisaged in a number of countries.

There are also differences in terms of how long records are kept. This can vary from 5 to 20 years, up to an indefinite period.⁹¹ In order to ensure and maintain the accuracy of their records, some countries, such as Canada, use the Firearms Reference Table. Certain countries have established centralized monitoring systems that enables them to control the records kept by manufacturers and dealers, with sanctions in the event of non-compliance.

Policy issues

The Group concluded that record-keeping should remain a national prerogative, but noted that it is possible to identify various common minimum standards with respect to record-keeping on the basis of existing practices.

These common minimum standards include the establishment and maintenance of accurate and comprehensive records of all marked small arms and light weapons under a State's jurisdiction, which would permit the timely retrieval of information by competent national authorities (para. 76 of the GGE report). Information that should be recorded include technical information about the weapon and its markings, as well as elements of its history, such as production, ownership, stockpiling, transfer and eventual destruction.

Records pertaining to the weapon should be kept as long as needed for the purposes of tracing.

Discussions within the GGE came to the conclusion that linking different record-keeping systems

could be problematic because of the differences, and more specifically, in countries where the centralisation of personal data is precluded on constitutional grounds (para. 77a of the GGE report).⁹²

The report encourages States to envisage the establishment of national registers as well as the harmonisation of record-keeping systems among neighbouring countries and within regional organisations.⁹³

A list of existing norms and undertakings on record-keeping found in different international initiatives is provided in a separate annex to the report.

Comparison with the GRIP model

- The information to be recorded as per the model convention is similar to those contained in the GGE report. The system consists of systematically registering data on transfers as well as the systematic follow-up of the weapon and not its owners.⁹⁴ This would allow information to be centralized without encountering constitutional impediments, since the information relates to weapons and not to persons. The reservations expressed by the experts are therefore unfounded.
- As far as standards are concerned, the report does not differentiate between civilian and military weapons and recommends centralization at the national level, which is also the case in the model convention. However, the model foresees centralization at the international level, which

90. This is true when data concerning individuals is centralised. The centralisation of data on small arms and light weapons only, and not on persons, would avoid constitutional obstacles. Weapons, rather than people, would be monitored (see art. 7 of GRIP's draft Convention).

91. This essentially concerns manufacturer's registers. In Italy, for example, manufacturers must keep data indefinitely. Including a time limit on the maintenance of records would provide an excuse for manufacturers not to communicate information in the event of an investigation, since in reality most manufacturers keep data for an indefinite period. Paragraph 76d of the GGE report resolves this problem, as foreseen also in article 7.3 of GRIP's draft Convention.

92. The GRIP draft Convention gets round of this problem by centralising data on arms, not persons.

93. Note that this recommendation forms an outset for the international centralisation of information.

94. Data contained in existing registers mainly concern persons.

the experts recommend at the regional level or among neighbouring countries and regional organisations (para. 77c of the GGE report). There is therefore a great degree of similarity between the conclusions of the experts, who recognise the need for a certain degree of centralisation at the international level, and the GRIP draft Convention.

D. Cooperation in tracing

Technical issues

1. Practice

While most countries have regulations governing the tracing of weapons, these vary considerably from one country to another and generally only cover weapons used in crime, and not in armed conflict situations. Tracing capacity also differs greatly from country to country and cooperation between States is far from effective. Paragraph 80 of the report underscores the importance of resources needed for tracing. This should not be seen in an isolated context, however, but should also take into consideration the costs related to the damages caused by the current lack of a tracing infrastructure.

In conflict situations, supply lines tend to be long and complex, mainly because of the presence of brokers and front companies. Furthermore, the number of weapons involved is usually much higher than in crime situations, and the weapons are often diverted from military and other official surplus stockpiles. The assistance of military police, customs and intelligence services is therefore needed to trace the weapons. This requires cooperation between the armed forces of different countries around the world.⁹⁵

One common problem in tracing requests is the misidentification of the weapons concerned. There is therefore a need to enhance capacities to correctly identify them.

2. Modalities/institutions

The starting point for tracing is usually the presence of an illicit weapon on a country's territory. However, no common practice exists to determine whether the weapon should be declared illicit by the requesting or the requested State, or by both. There

are very few common rules and procedures on the respect of the modalities of tracing requests.

In most countries the national office of Interpol is responsible for facilitating tracing requests for weapons discovered in crime situations. With regard to requests in situations of conflict, these are normally initiated by Foreign Ministries or through multilateral organisations.

The GGE noted that the role of Interpol with respect to the tracing of illicit weapons in conflict or post-conflict situations may have some limitations (para. 88 of the GGE report). Tracing could be better facilitated through relations between States and through regional and sub-regional arrangements. It is therefore necessary to have a mechanism specifically designed to trace small arms and light weapons.

Policy issues

The Group concluded that tracing should remain a national prerogative. However, on the basis of existing national practice, it is possible to identify various common minimum standards and procedures with respect to cooperation in tracing.

These common minimum standards include (para. 93 of the GGE report) reinforced cooperation between States, the establishment of national tracing systems capable of undertaking and responding to tracing requests, the establishment of national points of contact, the voluntary exchange of information on tracing experiences between States and with international organisations, and cooperation with the United Nations. The presence of an illicit weapon on the territory of a State, defined as such by the competent authority, should suffice to initiate a tracing request. States must respond rapidly and reliably to requests and would guarantee the confidentiality of information received.

The Group concluded that existing bilateral instruments could facilitate the tracing process, and that weapons producers have a role to play in

⁹⁵ Note that a unique and specialised mechanism would alleviate the workloads of numerous persons currently working on questions related to small arms and light weapons in various ministries, the police and customs, as well as in other organisations. This would automatically reduce personnel costs and the costs related to tracing. Coordinating the work of several different, non-specialised entities is a much more difficult and costly task.

assisting with tracing (para. 94 of the GGE report). The mandates of peacekeeping operations could in future include provisions concerning tracing requests. An international centre could be established to assist cooperation in tracing (para. 94e of the GGE report).⁹⁶ The Group felt, however, that efforts should be made to strengthen Interpol and other international organisations, including the World Customs Organisation, rather than setting up a new international institution.⁹⁷

Moreover, the Group indicated that information on small arms and light weapons transfers could be encouraged in regional and sub-regional arrangements.⁹⁸ Finally, the report suggests tracing financial flows including the financing of arms deals.⁹⁹

A list of existing norms and undertakings on cooperation found in different international initiatives is provided in a separate annex to the report.

Comparison with the GRIP model

- As suggested in the GGE report, the GRIP model also foresees the exchange of information on non-compliant small arms and light weapons between States Parties, but without restriction. The model also foresees the exchange of information between States Parties on the manufacture, transfer and stockpiling of all small arms and light weapons.¹⁰⁰ Thus, unlike the GGE report, States would not wait until they receive a tracing request to exchange information.
- GRIP has already underlined in previous studies undertaken and in its 'Grounds for Action' on the draft convention the inadequacy of existing structures, notably that of Interpol in the tracing of small arms and light weapons in conflict situations. The GGE report confirms these findings. Moreover, tracing operations are often ended even in cases involving criminal situations once the persons responsible for the crime have been apprehended. The objective is rarely to trace the weapons back to the original arms trafficker. Supply lines are rarely dismantled and the same supply lines feed both conflict and crime.
- The model convention foresees the establishment of national agencies specialised in small arms and light weapons. These could be compared to the national points of contact

suggested in the GGE report, and which are already foreseen in some international initiatives. However, these points of contact often comprise one person within a ministry, who often has responsibility for more than just small arms and light weapons. Thus, when a tracing request is received the person can be quickly overwhelmed. The only way to reinforce capacity would be through the establishment of specialised units that would be responsible for continuously assembling information in order to respond rapidly to requests.

- The model also foresees the setting up of an international Agency to assemble various information on small arms and light weapons that would be transmitted to it on a regular basis by the national agencies.¹⁰¹ Both of these aspects—the centralisation of information on the one hand, and the establishment of an international centre on the other—are mentioned in the GGE report, but the ambitions of the Group in these areas remains limited for political reasons.¹⁰²

⁹⁶ This is an important point and demonstrates that the need for an international institution to control small arms and light weapons has begun to take shape in international discussions.

⁹⁷ This reservation was included to satisfy the sensitivity of certain experts within the GGE. We do not see, however, how reinforcing certain structures could considerably improve the existing situation, which has not demonstrated satisfactory results in tracing operations to date. Furthermore, the establishment of a new structure specialized in small arms and light weapons could prove more interesting from both a financial and administrative point of view, and should be studied.

⁹⁸ This point is also important and constitutes the embryo for an international centralisation of information on small arms and light weapons transfers.

⁹⁹ Several governments already turn towards control agencies specialised in this area. The Société Générale de Surveillance (SGS), for example, traces financial flows, development and humanitarian aid for a number of governments, including the United States, Japan and the European Union. This involves not only verifying that aid is used for the purposes intended, but also carrying out controls prior to the reception of aid with a view to preventing its being deviated towards illicit uses.

¹⁰⁰ Foreseen also in the OSCE Document on small arms and light weapons.

¹⁰¹ See the paragraph on the International Agency in the GRIP document 'Grounds for Action' for the draft convention project (www.grip.org).

¹⁰² The SGS (mentioned above), for example, has several regional centres (Manila for Asia, Santiago for America and Hamburg for Europe) that gather data on controls carried out by its local offices on different continents. All the information on different transactions are housed in these centres, which assure that their confidentiality is maintained.

- Furthermore, according to the GGE, tracing requests should come from States. This is the same in the model convention, except that in the latter the International Agency would undertake the tracing operation via the national agencies, which all fall under State competence.
- The GGE suggests in its report that financial flows concerning arms deals should be traced. Article 12.3 of the model convention foresees the involvement of financial organisations in the verification of arms transactions they finance. The two concepts could be combined.

Remark about Interpol:

Interpol includes police from 178 countries and has a firearms identification system in place, IWETS, since 1987.¹⁰³ Concretely, when the police in a member country find weapons used in a crime, they include the relevant information in a database where it can be compared with other information.

This is a useful system, but one can question whether IWETS is the most appropriate system given the objectives outlined in the UN Programme of Action. Apart from the obvious need to equip it with greater means to meet these objectives¹⁰⁴, two fundamental problems arise:

- First, the database only considers weapons and explosives discovered in the scope of a criminal offence and only insofar as this information has been relayed to Interpol. However, almost all illicit weapons were once licit. If they are not registered while they are still licit, we greatly reduce the possibility to trace them. In addition to the police, registering licit weapons requires links with numerous other organizations and agencies.
- Secondly, IWETS exists primarily in the context of the fight against crime, whereas a large number (if not the majority) of weapons used for negative purposes fall into a different context – that of violent conflicts¹⁰⁵.

We can therefore question whether Interpol is the most well-adapted structure to fulfil these missions, which fall at present over-and-above its traditional scope of competence. It would also seem reasonable to move beyond the scope of criminality and to create therefore a new structure for weapons found in the context of violent conflicts.

IV. Conclusions

- 1) The GGE concludes that the development of an international instrument is desirable for a number of reasons:
 - The small arms and light weapons problematic has a global dimension;
 - International standards are therefore needed to enforce controls;
 - Such an instrument would reinforce existing initiatives that are presently difficult to enforce;
 - It would promote more responsible behaviour on the part of States with respect to their role in combating the spread of small arms and light weapons.
- 2) Likewise, the GGE concluded that the development of an international instrument is feasible for a number of reasons:
 - A number of initiatives within the United Nations framework already exist, which reflects a common understanding of the problem;¹⁰⁶
 - States are already implicated at various levels via existing international initiatives and have therefore demonstrated the political will to act;¹⁰⁷
 - The UN Programme of Action on small arms and light weapons provides the basis for the work of the GGE, and therefore the development of such an instrument could be seen as a contribution to the implementation of the Programme of Action;

¹⁰³ IWETS is the acronym for "Interpol Weapons and Explosives Tracking System."

¹⁰⁴ At present only one person is charged with the coordination of the entire system (see the GRIP report "Marking and Tracing of Small Arms and Light Weapons," special issue, 2002, Box 3.3). In certain countries such as Great Britain, one person is responsible for matters related to arms trafficking at the national level, but this is not the case in all countries.

¹⁰⁵ A large proportion of the weapons used in crimes are military weapons. These weapons end up back in our societies through a "boomerang" effect via internal conflicts.

¹⁰⁶ These include the Conference and the reports of the governmental experts on small arms and light weapons, and the Firearms Protocol.

¹⁰⁷ Such as the Inter-American Convention, the SADC Protocol, the ECOWAS moratorium, the Nairobi Protocol . . . However, the limited applicability of these initiatives should be taken into consideration. Most have implementation problems and require global measures via an eventual international instrument.

- International capacity-building assistance for the development of small arms marking, registration and tracing capabilities should be provided to States requiring assistance.

V. Recommendations

- Given the technical, legal and political aspects of small arms and light weapons traceability and the political will expressed by States, the GGE concluded that the development of an international instrument that would permit the identification and tracing of small arms and light weapons is feasible.
- The GGE also noted that the political or legal character of the instrument would be determined during negotiations.¹⁰⁸
- It also notes that the instrument should complement existing initiatives and should not undermine them.
- Finally, the instrument should take into account the national security and legal interests of States.

The GGE therefore recommends that the decision to negotiate the establishment of such an

instrument should be made during the 58th session of the UN General Assembly.¹⁰⁹

4.3. Conclusion

In conclusion, we note that the GGE report mirrors practically all of the points made in GRIP's model convention. Some sensitive issues requiring political discussions were noted with prudence in the report, however. On the whole, we can conclude that the GRIP model, which is the only existing document on the traceability of small arms and light weapons, could serve as the basis for the negotiations of the Open-ended Working Group on Tracing Illicit Small Arms and Light Weapons recently established within the United Nations for the purposes of developing the instrument. Indeed, political contacts we held during the Biennial Meeting of States in July 2003 imply that this may prove possible.

108. In order to ensure effectiveness, a legally binding character is desirable and is foreseen in the GRIP draft convention.

109. As set out in UN General Assembly Resolution 58/241.