

Non-Paper of the Chairman

Open-Ended Working Group on an International Instrument for the Identification and Tracing of Illicit Small Arms and Light Weapons

I. Foreword

This paper seeks to provide a starting point for the first meeting of the Open Ended Working Group (henceforth OEWG), established by General Assembly resolution 58/241 of 23 December 2003.

Following the UN Programme of Action (A/CONF.192/15, July 2001), and the report of the Group of Governmental Experts on tracing illicit small arms and light weapons (A/58/138, 11 July 2003) and other relevant international agreements, the paper highlights areas of common practice and understanding in relation to marking, record-keeping and cooperation in tracing, at both national and international levels.

It also identifies gaps in various areas of importance to the negotiation of an international instrument, including issues that will need to be addressed by the OEWG in the course of its work.

It should be noted that this paper does not constitute a proposal for the elaboration of a first draft text of the international instrument. It does not in any way seek to prejudice the outcome of the negotiations.

II. Introduction

The mandate of the OEWG, as provided in General Assembly resolution 58/241, is “to negotiate an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons”.

A key reference for the work of the OEWG will be the report of the Group of Governmental Experts on tracing illicit small arms and light weapons (henceforth “GGE”). The report was welcomed by the General Assembly in resolution 58/241.

Tracing is understood by the GGE as the systematic tracking of one or more illicit weapons found or seized on their territory, from their source (the manufacturer or last legal importer or last legal owner, as applicable), 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.

Furthermore, the GGE noted that current levels of cooperation (both bilateral and multilateral) in tracing illicit weapons, particularly in conflict situations, are far from adequate and could be made more effective. Many existing mechanisms and arrangements could be enhanced or strengthened. There is also the need to identify

possible new mechanisms and arrangements to enhance cooperation in tracing illicit weapons.

The GGE reaffirmed that States have the primary responsibility for solving the problems associated with the illicit trade in small arms and light weapons in all its aspects.

The GGE identified existing political and legal undertakings on marking, record-keeping and cooperation in tracing (See Annex to the Report of the GGE).

III. Nature and Scope of the International Instrument

The GGE agreed that tracing has three key elements: marking, record-keeping, and international cooperation.

The problem of illicit small arms and light weapons has global dimensions. The geographic scope of the international instrument will be global.

The GGE also agreed that tracing illicit small arms and light weapons may be required in the context of both crime and conflict situations.

The OEWG should address the issue of the definition of small arms and light weapons. With respect to the description of small arms and light weapons, the GGE followed the practice of the Panel of Governmental Experts on Small Arms (A/52/298, 27 August 1997).

The OEWG should also address the issue of what constitutes illicit small arms and light weapons. The GGE agreed 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. The GGE broadly defined illicit small arms and light weapons as weapons the presence or possession of which is in violation of national law, or as weapons that are the subject of an illicit transaction or activity, according to national and/or international law. The term 'illicit' can be applied to production, possession, (of certain types of weapons), use (including illicit end-users), stockpiling, trade, brokering, transfer (import, export, transit) and reactivation, when these activities occur in violation of relevant law.

Pursuant to General Assembly resolution 58/241, the character of the international instrument will be determined in the course of negotiations. The instrument should be complementary to, and not inconsistent with, the existing commitments of States under relevant international instruments. It should take into account the national security and legal interests of States.

IV. Marking

The GGE agreed that marking should remain a national prerogative, given the wide variations in terms of national systems (practice, methods and content of markings). However, it noted that, on the basis of existing national practice, it is possible to identify common minimum standards. The GGE also agreed that the UN Programme of Action should provide the starting point for identifying common standards with respect to marking and that the provisions on marking contained in the UN Firearms Protocol (A/RES/55/255, 8 June 2001) should also serve as a reference to that end. Accordingly, the GGE agreed that the common minimum standards with respect to marking include the following:

- i) All small arms and light weapons are marked at the time of manufacture and, if necessary, import;
- ii) All unmarked or inadequately marked weapons that are confiscated, seized or collected are marked or destroyed;
- iii) All markings would be unique, as well as reliable, visible, easily recognizable, readable and user-friendly;
- iv) A unique marking would be applied to one or more of the following locations: frame, receiver, barrel and slide;
- v) The information contained in the marking at the point of manufacture would include the following information: country of manufacture and serial number;
- vi) The information contained in the marking at the time of import, if such a marking is necessary, would include the country and, when possible, date of import;
- vii) Exchange of information on national marking systems;
- viii) The same part of the same model of a small arm or light weapon would always receive the manufacturer's unique mark so as to avoid the trafficking of spare parts that would make it possible to reconstitute an unmarked weapon;
- ix) The manufacturer's unique mark would be applied to an essential (structural) component of the weapon, the destruction of which would make it definitively inoperable.

Based on the discussions in the GGE, the following issues might need to be discussed further:

- i) The exchange of information with respect to national marking systems might be subject to certain limitations or exceptions because of national security considerations;
- ii) The exchange of information on national marking systems should not be viewed as a transparency mechanism, and information on production, stockpiles, transfers and the like was not intended to be included in the exchange of information on national marking systems;

- iii) Existing customs cooperation between countries could be used as a possible model for the exchange of information about national marking systems;
- iv) There are significant differences in cost among the various methods and technologies employed for markings;
- v) The arms industry could make a contribution in assisting with the issue of sanitization.

Other issues that were not specifically addressed by the GGE may also need to be discussed further in the course of negotiations.

For example, there may be a need for States to agree on modalities for the exchange of information on national marking systems. Moreover, some States may not have the technical capacity to mark weapons at the time of manufacture or import and therefore technical assistance for marking might be required. The role that the arms industry could play in identifying the most economical and best practice (in technical terms) for marking and assisting with the issue of sanitization could also be discussed during the course of negotiations. Furthermore, the marking of all weapons to be transferred from government stocks to civilian use might also be discussed further.

V. Record-keeping

The GGE agreed that record-keeping should remain a national prerogative, given the wide variations in terms of national systems and practices. However, it noted that, on the basis of existing national practice, it is possible to identify various common minimum standards with respect to record-keeping.

The GGE agreed that the UN Programme of Action should provide the starting point for identifying common standards with respect to record-keeping and that the provisions on record-keeping contained in the UN Firearms Protocol should also serve as a reference to that end. Accordingly the GGE agreed that the common minimum standards with respect to record-keeping include the following:

- i) Establishing and maintaining accurate and comprehensive records of all marked small arms and light weapons under a State's jurisdiction;
- ii) Organizing and maintaining all records in such a way as to ensure that accurate information can be retrieved and collated by competent national authorities in a timely and reliable manner;
- iii) Records contain information about the marked weapon itself (type, model, calibre, unique markings, etc.) and elements of its history, such as production, possession, use, ownership, stockpiling, trade, transfer (import, export, transit, end-user certificates and end-use undertakings), reactivation and destruction;
- iv) Records pertaining to the weapon are kept as long as needed for the purposes of tracing.

Based on the discussions in the GGE, the following issues might need to be discussed further:

- i) There might be specific problems and challenges associated with linking or integrating various small arms and light weapons record-keeping systems, particularly in countries where the centralization of records (especially in relation to personal data) is precluded by legal/constitutional constraints;
- ii) Cooperation and technical assistance might be essential, particularly for countries in the process of establishing, upgrading, maintaining and/or converting (from paper to electronic records) their national record-keeping systems;
- iii) The establishment or development of regional record-keeping arrangements and the harmonization of national record-keeping systems could be encouraged among neighbouring States, or within regional or subregional organizations.
- iv) Records held by companies that go out of business should be returned to the State.

Other issues that were not specifically addressed by the GGE may also need to be discussed further in the course of negotiations. For example, the conditions governing the recording and storage of information by non-state entities (e.g. manufacturers, dealers), including the duration of storage, vary widely among countries.

VI. Cooperation in Tracing

The GGE agreed that tracing should remain a national prerogative, given the wide variations in terms of national practice and experience. However, it noted that, on the basis of existing national practice, it is possible to identify various common minimum standards and procedures with respect to cooperation in tracing. The GGE agreed that the UN Programme of Action should provide the starting point for identifying common minimum standards and procedures with respect to cooperation in tracing.

Accordingly, the GGE agreed that the common minimum standards with respect to cooperation in tracing include the following:

- i) States would strengthen their ability to cooperate in identifying and tracing illicit small arms and light weapons;
- ii) States would establish and maintain a national tracing system capable of undertaking and responding to tracing requests within agreed modalities;
- iii) States would establish, or designate if they have not already done so, a national point of contact to act as a liaison with other States on matters relating to the tracing of illicit small arms and light weapons; this national point of contact has responsibility for the exchange of information and liaison with multilateral organizations on matters relating to the tracing of illicit weapons;
- iv) States would cooperate among themselves and with any relevant international organization (Interpol, the World Customs Organization, the United Nations) in order to enhance their ability to trace illicit small arms and light weapons;

- v) The presence of an illicit weapon on a State's territory, as defined by a competent national authority, would be considered sufficient justification to initiate a tracing request;
- vi) States would provide prompt, timely and reliable responses to requests for assistance in tracing illicit small arms and light weapons;
- vii) Sufficient information would be sought or provided in the context of a tracing request;
- viii) The information exchanged in the context of a tracing request would be treated as confidential between the States concerned: States guarantee the confidentiality of the information received and, in principle, respect all restrictions placed on the use of the information;
- ix) States would exchange information, on a voluntary basis, both with each other and with international organizations (e.g., Interpol, the United Nations) with respect to their experiences in tracing illicit weapons discovered on their territory;
- x) States would cooperate with the United Nations, particularly with respect to the tracing of illicit weapons found in countries that are subject to a United Nations arms embargo, as well as with other organizations.

Based on the discussions in the GGE, the following issues might need to be discussed further:

- i) Existing bilateral instruments, including those covering mutual legal assistance, could be used to facilitate the tracing process;
- ii) There is a role for arms manufacturers in assisting with tracing requests;
- iii) In the future, the mandates of United Nations Security Council peacekeeping operations could include a provision enabling them to initiate traces of illicit weapons found in specific conflict and post-conflict situations;
- iv) The findings and recommendations of the reports of the Security Council sanctions Committees could be useful in identifying relevant issues relating to the tracing of illicit weapons in conflict and post-conflict situations;
- v) An international centre could be created to assist cooperation in tracing. The Group felt, however, that efforts should be made to strengthen Interpol and other existing international organizations (including the World Customs Organization) rather than creating a new international institution;
- vi) Tracing financial flows, including the financing of arms deals, might be useful in tracing illicit small arms and light weapons;
- vii) International cooperation and assistance are needed with respect to those countries that have limited domestic capacities for initiating or responding to tracing requests;
- viii) There is a need for bilateral and multilateral confidence-building mechanisms to encourage cooperation in tracing;
- ix) Exchange of information on transfers (imports and exports) of small arms and light weapons could be encouraged within regional and/or subregional arrangements.

Other issues that were not specifically addressed by the GGE may also need to be discussed further in the course of negotiations. For example, to facilitate cooperation in tracing, there may be a need to consider the establishment of international arrangements or mechanisms other than an international centre. The criteria that would apply to their establishment could include: minimum duplication, maximum efficiency, and complementarity.

VII. Implementation Issues

National and international measures to support the implementation of the international instrument will need to be discussed in the course of negotiations. At the national level, these could include laws, regulations, administrative procedures and corresponding penalties for purposes of implementing the international instrument within national jurisdiction.

At the international level, there are a number of arrangements and/or mechanisms that could support the implementation and practical operation of the international instrument. These might include provisions for the periodic review of the operation of the international instrument as well as arrangements for international cooperation and technical assistance.

The possible roles of international and inter-governmental organisations and civil society, including non-governmental organisations and the arms industry, in implementing the international instrument should also be discussed in the course of negotiations.