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Comments of GRIP on the Draft Text on Small Arms And Light Weapons Traceability

(Small Arms Programme of Action Implementation – Geneva Process – 19.01.2005)

Preamble

The Process includes two important aspects:

- Prevention: proactive actions on SALW transfers should be taken;
- In all its aspects: All SALW should be potentially traceable in the event of a request.

I. General Provisions

We can note the following points:

- Explosives are excluded from the document without being considered although this was suggested in the Group of Governmental Experts (GGE) report;
- No scope and coverage are defined. Indeed, the illicit arms trade and the civilian market can not be clearly dissociated from the legal trade and the military market (paras. 32 and 83 of the GGE report);
- Definitions are not clear. We presume that they are not restricted to cited arms, and that generally speaking calibres of less than 100mm are taken as reference;
- As the definition of ammunition also includes ammunition used as weapon in the second part of the definition, it would be judicious to use only the term “ammunition” and eliminate in the whole text the term “their” which designates only ammunition for SALW (first part of the definition);
- In order to avoid confusion, arms should be considered as illicit if they contravene the provisions of this instrument, if not there won't be harmonisation at the international level but dependence from different national legislations. Therefore, different judgments will occur;
- Conditions for the entry into force are not defined (depending on the nature of the document);
- It should be also defined clearly to whom the instrument is opened.

Generally speaking, it would be preferable to separate essential dispositions from technical dispositions. The latter could be modified according to a procedure much more flexible than the essential dispositions.

II. Marking

Minimum standards given for the marking are below the existing standards in several instruments, i.e. the Nairobi Protocol, the OSCE Document on SALW. Notably, marking of the year of manufacture¹ should be obligatory, also at time of import. On the other hand:

- Each time that a marking is not adequate, it should be effected according to paragraphs 6a et 6b. As stipulated in paragraphs 6c, 6d and 7, unique serial number is not sufficient;
- Paragraph 6d implies that there might be weapons that are not appropriately marked in governmental stocks. In any case, transfers from military to civilian market should be avoided;
- At least one important part of the arm should be marked in addition to the marking of the essential part;
- “Secondary” markings (“covert” in the text) should be obligatory and not only encouraged. This should be undertaken on component parts that are not easily manipulated after the weapon’s manufacture;
- Markings shall be expressed alphanumerically;
- No marking is foreseen for replacement parts;
- The instrument should encourage establishment of a nationally accredited technical committee comprised of independent experts to determine the manner in which the markings must be effectuated, permitting to follow new technologies.

Ammunition

In any case, ammunition should be maintained in the instrument. Their marking should be obligatory and not only encouraged. It should include a unique lot number, the manufacturer’s identity, as well as the country and year of manufacture and if possible, other information, i.e. end-user and calibre (as required in the new Brazilian legislation – N° 10,826/03). Packaging for ammunition and SALW should include all these information (i.e. as required for the transport of dangerous goods guided by the regulations recommended by the UN Committee of Experts: <http://www.unece.org/trans/danger/danger.htm>).

III. Record-keeping

Standards given for record-keeping are below standards given in already existing documents. Following points can be raised:

- In paragraphs 13 and 15 it is stipulated: “marked SALW”. The term “marked » should be suppressed;
- Concerning information to be registered, the end-user, the transport company and the route undertaken during the transfer should be registered;
- As for SALW, ammunition should also be registered;

¹ Especially, if duration of record-keeping is limited to 10 years.

- Registers should be computerized, and preferably, centralized at the national level wherever this is possible. This should be done for arms and not persons in order to avoid constitutional problems;
- Data shall be maintained indefinitely in the registry or at least until such time as the weapons are classified as antique portable firearms or their replicas, at which point the data shall be archived. Due to the longevity of the lifespan, 10 years are not sufficient.

IV. Cooperation in tracing

The draft does not define clearly a tracing mechanism. This should be multilateral. No indication is given to show how to proceed at the international level. It is difficult for the most of the states to handle tracing at the international level. Following points can be underlined:

- Functioning and tasks of the national point of contact should be defined;
- The proposed system is voluntary for the states, and a set of exceptions risk to handicap tracing operations. An international entity should take over the operations to avoid blockings;
- What should be foreseen in case of refusal to cooperate?

Remark :

The GGE, in para. 24 of their report, explicitly refers to the fact that, in their understanding, tracing weapons includes preventive measures and is not restricted to reacting to a diversion once a weapon is recovered in a crime situation. So there should be preventive measures, notably through the lines of supply to the authorized end user. Such tracing requires physical verification at time of export, transit and import. The purpose is to cross-check information between those points to prevent diversion, or if this occurs, to detect at its very early stage and determine responsibilities. Periodic inspection of use will also permit to prevent diversion from stocks or undue re-exports.² One of the main purposes of physical inspections is that legally held and transferred SALW are adequately marked and recorded. It is essential to control that what is on the paper corresponds to the reality. This is indispensable for the accuracy of records. States should be encouraged to organize regular inspections that would permit to intervene rapidly without waiting that arms will serve to commit crimes before being eventually seized.

V. Implementation

For the implementation, the role of the UN and of Interpol should be specified. In case of tracing, UN and Interpol should coordinate the operation. Some questions can be asked:

- What will happen when a State refuses to collaborate for national security reasons? Who will judge this?
- What will be the competences of the international organizations within the tracing operations?
- What is the investigation mechanism?
- The assistance of UN and/or Interpol is upon request. It is desirable that this assistance should be systematic;

² See the OSCE Document, Section IV, Art. B.1.i-ix. *Op cit.*

- Is Interpol the best organization to cooperate on tracing operations? What is its present capacity?

VI. Follow-up

In view of improving the process in the course of time, there should be a regular follow-up of its implementation. On this purpose:

- States should give information regularly and this should be obligatory;
- UN Secretary General should establish an annual report based on information received from states on their experiences in tracing in order to better understand diversion to illicit market;³
- The follow-up before the review conference could be done through a committee of experts, with a limited number, which should be designated by the UN Secretary General (or the General Assembly). The Committee could meet one or several times a year to examine problems occurring in the implementation of the instrument and establish a report, i.e. every two years, with recommendations that could be adopted by the General Assembly. We can cite the UN Committee of experts for the transport of dangerous goods, the Committee on Human Rights, the Committee on the Rights of Children, the Committee on Racial Discrimination as examples. States can contribute to the work of the committee with their national experiences and make suggestions.

VII. Technical Annex

To be developed. Standard forms shouldn't be restrictive but define minimum standards.

³ See the UN Agency on drug control.