Discussion paper on the International Tracing Instrument

1. Over the past decade, the international community has come to better understand the critical role of tracing illicit small arms and light weapons 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 has moved into the implementation phases, it is evident that much work remains to be done. This paper explores (a) the importance of tracing small arms and light weapons 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 those agreements. In particular, it focuses on measures that could be considered at the Fourth Biennial Meeting of States in reviewing the implementation of the Programme of Action.

International instruments on tracing

2. The United Nations addressed the misuse and proliferation of small arms and light weapons 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, supplementing the United Nations Convention against Transnational Organized Crime, requires States to institute firearms marking and record-keeping systems for tracing purposes (see articles 7 and 8 of the Protocol). Similar language is used to require marking and record-keeping systems in the 1997 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials of the Organization of American States (see articles VI and XI and article XIII, para. 3).
3. The Programme of Action that resulted from the Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects held in July 2001 calls upon States to establish effective tracing systems for firearms (see section II, paras. 7 and 9). The Programme of Action process subsequently led to the first global arrangement on the tracing of small arms and light weapons, the International Tracing Instrument. The International Tracing Instrument is notable for specifying how traces may be conducted (see A/60/88, annex, paras. 14-23), including restrictions on sharing sensitive trace information. The International Tracing Instrument reinforces international standards in marking and record-keeping. Marking of firearms at the time of import is strongly recommended (ibid., para. 8 (b)).

**Necessary infrastructure for an effective tracing system**

4. 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.\(^1\) 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.

5. 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.

6. 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 and to the pertinent locations and individuals can be analysed to identify trends and patterns of illegal firearms trafficking from individuals to the source. Reports can therefore be generated which can:

- Provide information about illegal firearm activity in a particular region or neighbourhood.

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\(^1\) 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 unlawfully possess or illicitly traffic firearms.
• 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 United Nations arms embargoes.

• Target sources of the preferred types of crime guns.

• 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.

7. To effectively implement the International Tracing Instrument, States must first establish certain structures and institutions, including:

**Legal framework**

8. 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**

9. 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 record-keeping (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 because of 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 appear, or the minimum size and depth of those markings.

**Enforcement authority**

10. 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 upon both clear rules and faithful compliance with those rules.

**Industry cooperation**

11. 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.

12. This last point should not be undervalued. Modern firearms have been manufactured for over 100 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**

13. 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 firearm’s marking followed by a manual examination of that record), but it must be capable of providing the information in a reasonable period of time. Information that cannot be retrieved or can be retrieved only 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 the Fourth Biennial Meeting of States**

14. As noted above, before a State can fully and effectively implement the International Tracing Instrument, 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

15. Most notably, bilateral arrangements have proved effective for timely and reliable traces of small arms and light weapons in many parts of the world. For example, as one of the world’s largest manufacturers of small arms and light weapons, 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 more than 30 countries that have agreed to participate.

Identify a single point of contact

16. In addition, both the Programme of Action and the International Tracing Instrument 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 International Tracing Instrument, including facilitation of firearms trace requests from one Member State to another. Such a single point of contact can be tremendously helpful in the 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

17. 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 Security and Cooperation in Europe, the European Union, 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 proved what vital role these regional organizations can play in the effort to combat illicit firearms trafficking. The Regional Centre on Small Arms based in Nairobi and OAS are working to distribute marking machines to Member States to enable them to mark existing stockpiles of small arms and light weapons in addition to newly imported or manufactured firearms.

INTERPOL

18. The International Criminal Police Organization, with over 170 offices throughout the world, serves participating States by collating data provided by one State and sharing it with another State. INTERPOL, therefore, can serve as a clearing house of firearms trace requests in circumstances where a State-to-State trace request is unavailable or undesirable.

Non-governmental organizations

19. Any effective tracing mechanism should not overlook the supporting role non-governmental organizations can play in fighting firearms trafficking. By focusing on the common agenda of curtailing firearms trafficking by creating an active tracing system, non-governmental organizations 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. Non-governmental organizations 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.