



Iraqi National Police take note of the serial number of an automatic weapon confiscated during a massive house-to-house search in a suburb of Tikrit in November 2003.  
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# Connecting the Dots

## THE INTERNATIONAL TRACING INSTRUMENT

### INTRODUCTION

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On the morning of 17 June 2005, the UN tracing negotiations hovered near failure. With its mandate due to expire later that evening, the Open-Ended Working Group on Tracing Illicit Small Arms and Light Weapons (OEWG)<sup>1</sup> lacked agreement on a wide range of outstanding issues, not least of which was whether the new instrument would be legal or political in character. Yet, by the end of the day, UN Member States had made the (often painful) compromises needed to conclude the negotiations. The UN small arms process had advanced another notch.

The *International Tracing Instrument* (UNGA, 2005b), adopted by the UN General Assembly on 8 December 2005 (UNGA, 2005d),<sup>2</sup> represents a modest, but important, step forward in global efforts to address the small arms problem. With limited exceptions, the new *Instrument* consolidates and reinforces key international standards in the areas of marking and record-keeping. In the area of tracing cooperation and, to some extent, implementation, it goes well beyond existing norms. This chapter explores the contents of the *Tracing Instrument* in some detail, highlighting its various strengths and weaknesses. The chapter's major conclusions include the following:

- The failure of UN states to agree on the *mandatory* marking of small arms and light weapons at the time of import is a key weakness of the new *Tracing Instrument*. This is one area where international assistance will be especially important.
- The *Tracing Instrument's* conflict-tracing functions remain somewhat underdeveloped. Nevertheless, states can use its provisions to extend tracing cooperation to peacekeeping operations if they so wish.
- Following the decision to exclude ammunition from the tracing negotiations, there is a risk that small arms and light weapons will again be separated from their ammunition, even though, in future, there may be no technical justification for doing so.
- In principle, the *International Tracing Instrument* will advance international cooperation in almost all of the areas it covers. The *Instrument's* real value added will, however, depend on actual implementation as well as the extent to which it spurs further normative development.
- Many states have been slow to prepare for the *Instrument's* adoption by the General Assembly. In the autumn of 2005, just weeks before they became (politically) bound by the *Instrument*, these countries had yet to determine how to bring national laws and practices into compliance.

The chapter's first sections outline the process leading up to the UN tracing negotiations, and recap the main developments in the negotiations themselves. The chapter then analyses the various provisions of the *Tracing Instrument*, including the OEWG recommendations on ammunition and peacekeeping. The chapter concludes with a review of initial (tentative) efforts at implementation at the national level.

## THE PATH TO THE NEGOTIATIONS

Marking and tracing began moving up the list of international priorities in the late 1990s, with the recommendation of the UN Panel of Experts for a study on marking (UNGA, 1997, para. 80(l)(i)) and the adoption of standards for marking, record-keeping, and tracing in the *OAS Firearms Convention* (OAS, 1997). By the end of the decade, governments and civil society had homed in on these issues.

In early 2000, the governments of France and Switzerland launched an initiative to promote the development of new measures for the marking and tracing of small arms and light weapons (France and Switzerland, 2000; 2001a; 2001b). That same year, the Brussels-based research NGO Groupe de recherche et d'information sur la paix et la sécurité (GRIP) released a comprehensive study of the tracing issue, which also argued for such measures (Berkol, 2000). Pro-gun groups, in particular the World Forum on the Future of Sport Shooting Activities (WFSA), likewise weighed in with their views, especially on firearms marking (WFSA, 2000).

The Franco-Swiss initiative and various inputs from civil society fed into the preparatory process for the 2001 UN Small Arms Conference. While there was considerable support at the Conference for recommending that negotiations start on a *legally binding* international tracing instrument, the final *Programme of Action* merely recommended that the UN study 'the feasibility of developing' an international tracing instrument. There was no indication that it should be legally binding (UNGA, 2001d, sec. IV.1.c). The politically binding *Programme of Action*, like the legally binding *UN Firearms Protocol* adopted two months earlier (UNGA, 2001b), contained a number of commitments in the areas of marking, record-keeping, and tracing. Such provisions have also featured in many small arms measures adopted at the regional level over the past decade. Yet none of these initiatives met the need for a single, global instrument that would set out comprehensive, detailed, and authoritative standards in the areas of marking, record-keeping, and tracing.

**The Governmental Experts left ammunition with only a tenuous hold on the future negotiations.**

The next step in the UN tracing process was the feasibility study recommended in the *Programme of Action*. The resulting Group of Governmental Experts on Tracing Illicit Small Arms and Light Weapons (GGE) met three times, between July 2002 and June 2003, before issuing its report in July 2003 (UNGA, 2003a). Civil society inputs were 'important' here too, as the GGE itself acknowledged (p. 8). At the GGE's first and second sessions, the Small Arms Survey and the United Nations Institute for Disarmament Research (UNIDIR) presented the findings of a technical study on the scope and implications of an international tracing mechanism (Small Arms Survey and UNIDIR, 2003). GRIP, the Quaker United Nations Office (Geneva), and the WFSA also made presentations to the Group in the course of its work.

In its July 2003 report, the GGE unanimously concluded that it was both 'desirable' and 'feasible' to develop an international tracing instrument. More specifically, the Group recommended that the General Assembly decide at its 58th session to negotiate such an instrument under UN auspices. Yet, as some members of the Group would not support a recommendation for the negotiation of a legal text, the GGE left open the crucial question of instrument character—merely noting that this 'will be determined in the course of negotiations' (UNGA, 2003a, paras. 96–98).

Another contentious issue was that of definitions, especially whether to include ammunition and explosives within the scope of the study. As explained below in the section dealing with ammunition, the GGE kept ammunition (and explosives) on the table by referring to them in the definitions section of its report and noting that they were 'part of' the small arms problem (para. 33). Yet, by failing to provide any guidance on the technical issues specific to ammunition, the GGE left it with only a tenuous hold on the future negotiations. The GGE report contained much language that the OEWG would later use. Especially useful were the provisions articulating 'common minimum

### Box 4.1 Civil society and the UN tracing process

Civil society is often seen as a key partner for states in small arms work. While the UN tracing process illustrated the continuing importance of this partnership, it also underlined its limits.

Civil society helped get the tracing issue onto the international agenda in the late 1990s. Initially, a relatively small group of specialists participated in the emerging policy debate, but, as governments singled out tracing for priority attention, NGO interest expanded. The period preceding the UN tracing negotiations saw relatively close collaboration between civil society and governments. In the context of the Franco-Swiss initiative, states actively engaged with civil society in discussing and developing potential tracing standards. The Belgian government also funded important work by GRIP on such standards. As the UN tracing process got under way, civil society remained firmly in the picture. Civil society experts were invited to contribute to meetings convened within the framework of the *UN Programme of Action*, including those that paved the way for the UN tracing negotiations (see text on the GGE).

Pro-control NGOs welcomed the start of the UN tracing negotiations, in June 2004, hoping that these would result in agreement on a legally binding, comprehensive instrument (Anders, 2005b). During the process, these NGOs organized their advocacy efforts under the twin banners of the International Action Network on Small Arms (IANSA) and the Control Arms campaign.<sup>3</sup> The pro-gun groups, meanwhile, coordinated their activities through the WFSA. NGO participation in the tracing negotiations was, however, soon curtailed. After meeting for four days in open session (14–17 June), the OEWG decided to close all of its remaining meetings to NGOs, notwithstanding IANSA's request to allow it and the WFSA to continue to attend as observers.

Both IANSA and the WFSA presented their recommendations on the instrument to OEWG delegates on 17 June, just before the meetings were closed. After June 17, they lobbied delegates outside the meeting room. Throughout the negotiations, pro-control and pro-gun groups distributed position papers and other reports to OEWG participants. Informal lunchtime briefings were also organized at the Working Group's first and second sessions. In a handful of cases, civil society experts, reflecting industry or pro-control perspectives, formed part of national delegations.

There was considerable overlap in the recommendations of the pro-control NGOs and the positions taken by many states during the negotiations. The pro-gun influence was also evident in some cases. The end result, however, seemed quite independent of civil society influence. In particular, the *International Tracing Instrument* failed to satisfy pro-control demands for a legal instrument that included ammunition. The Control Arms campaign also criticized the inclusion of a 'national security' exception in relation to tracing cooperation (Amnesty International, IANSA, and Oxfam International, 2005). Both pro-control and pro-gun groups were also disappointed that they had been denied access to the negotiations.

The UN tracing negotiations left a bitter taste in the mouths of many civil society groups. Having raised the profile of the tracing issue and contributed to its development, their impact on the final *Instrument* appeared minimal. Yet civil society's most important contribution to the tracing process may well lie ahead—in promoting the *Instrument's* effective implementation and encouraging its normative enhancement (see chapter conclusion).

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**Source:** Anders (2005b)

standards' for marking, record-keeping, and cooperation in tracing. Nevertheless, the GGE's less than constructive ambiguity on ammunition, along with its silence on the question of instrument character, would haunt the OEWG for the duration of its mandate.

In December 2003, pursuant to the GGE's recommendation, the UN General Assembly decided 'to establish an open-ended working group . . . to negotiate an international instrument to enable States to identify and trace, in a timely and reliable manner, illicit small arms and light weapons'. The General Assembly did not specify whether ammunition or explosives were in or out of the negotiations. Nor did it take any decision on the question of instrument character. Using the GGE's own language, the General Assembly simply noted that this 'will be determined in the course of negotiations' (UNGA, 2003b, para. 5).

## NEGOTIATING THE INSTRUMENT<sup>4</sup>

The OEWG was given three sessions of two weeks each to negotiate the *International Tracing Instrument* (six weeks total). Despite the important basis furnished by the GGE report and the *UN Firearms Protocol*, this was not much time considering the wide range of issues the OEWG needed to resolve—some of which were highly controversial.

On 3 February 2004 the Working Group met to finalize the organizational aspects of its work. Among other things, it elected Ambassador Anton Thalmann of Switzerland as its chairman, set the dates for its three substantive sessions, and decided it would apply to its own work the Rules of Procedure that had been used at the 2001 UN Small Arms Conference (UNGA, 2005a, paras. 3–8; 2001c). In advance of the OEWG's first substantive session, the chairman distributed a non-paper designed to serve as 'a starting point' for the tracing negotiations. Using the GGE report as a 'key reference', the non-paper highlighted common practices and understandings in the areas of marking, record-keeping, and cooperation in tracing. It also identified issues of importance to the negotiations that were controversial or that the GGE had not dealt with (Switzerland, 2004a).

### The devil in the details

On 14 June 2004 the Open-ended Working Group began its substantive work. The first substantive session, which ended on 25 June, was not, formally speaking, a negotiating session as no draft text was on the table. States instead exchanged views on the broad range of issues central to the future tracing instrument. The first meetings of the session were devoted to national statements of a general nature. A discussion of instrument character, on Wednesday 16 June, highlighted the sharp division among states on the crucial question of whether the instrument should be legally or politically binding. Representatives of intergovernmental organizations and civil society subsequently took the floor to present their concerns and recommendations.

The last half of the session was taken up with thematic discussions on the topics of marking, record-keeping, and cooperation in tracing. In order to focus the proceedings on the nuts and bolts of the future instrument, the chairman prepared questionnaires for each thematic area. In responding to the chairman's questions, states staked out their initial positions on the content of the instrument and provided the chairman with valuable raw material for the first draft, which the Group agreed he would prepare and distribute in advance of its second substantive session.

States were sharply divided as to whether the instrument should be legally or politically binding.

During the period bridging the first and second substantive sessions, the chairman consulted key stakeholders and partners in order to gain additional inputs on the contents of his first draft instrument. At a meeting at the headquarters of the International Criminal Police Organization (Interpol) in Lyon, France, in early September 2004, the chairman and Interpol officials discussed ways that Interpol could support the implementation of the instrument. In mid-October 2004, Ambassador Thalmann held informal consultations with UN Member States, focusing on several areas where consensus appeared especially elusive. The chairman produced his first draft instrument in December 2004 and the UN Secretariat then distributed it to Member States (Switzerland, 2004b).

The OEWG began wrestling with the specific language of the instrument at its second substantive session (24 January–4 February 2005). Delegates exchanged views on the chairman's draft text during the first part of the session. They also debated the question of instrument character, though without moving any closer to consensus. Drawing upon the OEWG's discussion of the first draft and the written proposals he had received for new language, the chairman presented the Group with a revised draft text during the second week of the session (Switzerland, 2005a). The second session's final meetings were devoted to a consideration of this revised draft. This discussion was to feed into the chairman's third draft text, which he undertook to produce well in advance of the third session.

The chairman's third draft text, based on the inputs he had received from states at the second session, was distributed to UN Member States in mid-April (Switzerland, 2005b). As in previous drafts, Ambassador Thalmann was forced to leave the question of instrument character open. The draft was worded so as to allow, as far as possible, for both legal and political options. In line with his earlier versions, the chairman's third draft text also included provisions relating to small arms and light weapons ammunition. This was the second issue, after instrument character, that had split the OEWG, with some states claiming that ammunition was not part of the Group's mandate and others insisting on its importance to the future instrument.

In general, the chairman's third draft sought to move the Working Group closer to consensus on many substantive issues that remained unresolved. Nonetheless, at the opening of the third substantive session, the chairman indicated—not for the first time—that his draft preserved existing standards in the *UN Firearms Protocol* (UNGA, 2001b), the *UN Programme of Action* (UNGA, 2001d), and the report of the Group of Governmental Experts (UNGA, 2003a).

### Make or break

At its third and final session, lasting from 6–17 June 2005, the OEWG continued to negotiate on the basis of the chairman's draft texts. It did not use square brackets or rolling text. Throughout the third session, the Working Group conducted successive readings of the chairman's third draft, adopting paragraphs *ad referendum*<sup>5</sup> whenever the necessary consensus had crystallized. At the end of the first week and the beginning of the second, Ambassador Thalmann asked four delegations to act as facilitators on the most contentious issues:

- Belgium, marking at the time of import;
- Brazil, definition of small arms and light weapons;
- India, instrument character; and
- South Africa, ammunition.

On the many other issues that could not be agreed during the first week, the chairman asked interested states to work together to develop consensus language on the paragraph at issue. In some cases, the chairman issued his own proposals on such provisions. The chairman structured the process further in the second week, asking specific states to act as 'focal points' on outstanding paragraphs. Here, too, the aim was to develop consensus language for speedy adoption by the Working Group as a whole. During the session, the UN Department for Disarmament Affairs (DDA) circulated a daily list of the paragraphs that had been adopted *ad referendum* to that point.

The facilitators reported on the results of their consultations on Thursday 16 June. While agreement on a definition of small arms and light weapons appeared within reach, states remained far apart on the three other facilitation issues, namely, import marking, ammunition, and instrument character. By this time, the role of peacekeeping operations in the instrument had also emerged as a bone of contention. On Thursday evening, the chairman issued his *Package Proposal* covering all outstanding issues (Switzerland, 2005c). He did not, however, make any proposal on instrument character in light of the sharp divisions that persisted within the Group on this question. On other issues, including that of ammunition, the chairman sought to find compromises that would quickly win the acceptance of the Group as a whole. The package drew heavily on the compromise language developed to that point by the facilitators and focal points.

The Group began its last day of negotiations on Friday 17 June with a discussion of instrument character. Positions remained entrenched, however, with most states continuing to support a legally binding instrument, one state indicating it could not accept a legal instrument, others emphasizing the need for consensus (in essence, on a political instrument), and a few states, for the first time, proposing that the Group leave the question to the General Assembly.

The role of peacekeeping operations in the instrument became another bone of contention.

A US soldier reads the markings on unexploded ordnance discovered off National Highway 4 near the army base in Kandahar, Afghanistan, in March 2003.  
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When the OEWG began its last meeting on the afternoon of 17 June, failure seemed a distinct possibility, with much of the future instrument's content—as well as its character—still unresolved. Yet the final hours of negotiations proved decisive. Shortly before the chairman suspended the meeting at the end of the afternoon, the Group reached agreement on most elements of his package. In the course of the evening, the OEWG ironed out its differences on import marking, peacekeeping operations, and ammunition. With time running out, late that evening the Group adopted the last paragraphs of the *Instrument*, agreed it would be political in character, and adopted its report to the General Assembly—by consensus in all cases.

## THE INTERNATIONAL TRACING INSTRUMENT

This part of the chapter provides a section-by-section analysis of the *International Tracing Instrument*, including the two recommendations the OEWG made to the UN General Assembly on ammunition and peacekeeping. We start with those aspects, such as character and definitions, that underpin the *Instrument* as a whole.

### **Instrument character**

The negotiations nearly foundered on the question of instrument character. Frustration over the refusal of a few countries to accede to the wishes of the many states that favoured a legal instrument raised the possibility of a backlash that would have upended the negotiations.

The United States expressed its opposition to a legal instrument at the OEWG's first substantive session, repeating the message throughout the rest of the negotiations. Egypt, Israel, and Japan also indicated their preference for a

politically binding instrument at various times, though in more hesitant, ambiguous terms. Since no vote was called on the question, it is impossible to assess the real extent of opposition to a legal text within the OEWG. Yet the declared supporters of a legal instrument vastly outnumbered the opponents. They included the EU and ten associated states,<sup>6</sup> the countries of Latin America and the Caribbean, and the countries of sub-Saharan Africa.

Those states that preferred a political text to a legal one gave the following reasons:

- There was insufficient time to negotiate a legal text.
- A legal instrument would enter into force only after a considerable delay (once the ratification threshold had been reached), whereas a political text would become effective as soon as it was adopted by the General Assembly.
- Some states would find it difficult to ratify a legal instrument.
- A political text, agreed by consensus, would apply to all UN Member States, including all producers of small arms and light weapons.
- Legal commitments would be more conservative than their political counterparts.
- A political instrument could be as effective as a legal one provided the commitments it contained were precisely formulated and the political will for implementation was strong.
- States did not need a legal instrument in order to change their laws.
- As the tracing instrument was being negotiated within the framework of the *UN Programme of Action*, it should, like the Programme itself, be political.
- Experience with the *UN Programme of Action* had shown that effective international cooperation did not require a legal instrument.
- A legal instrument would be difficult to revise.

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Proponents of a legal instrument offered the following arguments:

- A legal text would have greater normative force.
- The instrument needed to be legal in order to be ‘effective’.
- In order to ensure that states complied with their commitments, the text needed to be legal.
- In order to ‘enforce’ the instrument, it needed to be legal.
- Governments needed a legal instrument in order to make the necessary changes to national laws and practices.
- If it was to build upon the *UN Programme of Action*, it was important that the tracing instrument be legal; a political instrument would set a negative precedent for further *Programme* follow-up.
- A political text would also set a bad example for other UN arms control processes.
- Only a legal instrument would do justice to the small arms problem and demonstrate the international community’s determination to address it.
- A political instrument would, conversely, send out a signal of weak commitment to the small arms issue.
- A legal instrument would reinforce local and regional initiatives.

These views appeared to have little, if any, influence over other delegations—at least those delegations that had a position on instrument character. Lacking consensus on a legal text, its proponents agreed to a political instrument in order to secure the substantive gains that had been made in the negotiations and—equally important—preserve the consensus-based approach that had prevailed to that point in UN small arms negotiations.



As indicated above, the question of precedent was invoked in support of both the legal and political options. Whatever influence the final (political) result may exert on other small arms processes, it is important to note that the *Instrument* itself is not cast in stone. In its last paragraph, UN Member States undertake to ‘review the . . . future development of this instrument’ as part of *Programme of Action* review conferences (UNGA, 2005b, para. 38). Such ‘future development’ could involve the transposition of some or all of the *Instrument’s* political norms into legally binding form.

## Ammunition

Ammunition was the second issue that sharply divided the OEWG. Once again, the United States and EU were at loggerheads, with the United States opposing the inclusion of ammunition in the draft instrument and the EU supporting this. Most other OEWG delegations were in one or the other camp, with only a handful indicating that they were flexible on the issue. Ammunition opponents argued that, as the word had not been included in the Working Group’s mandate, it could not form part of the negotiations. Ammunition supporters, by contrast, interpreted the term ‘small arms and light weapons’ in the same mandate as implicitly covering ammunition (UNGA, 2003b, para. 8).

The agreement reached on ammunition in the final hours of the negotiations contains two elements. The first was the inclusion of a recommendation in the Group’s report:

The Working Group recommends that the issue of small arms and light weapons ammunition be addressed in a comprehensive manner as part of a separate process conducted within the framework of the United Nations. (UNGA, 2005a, para. 27)

The second part of the deal on ammunition was new preambular language: ‘*Stressing* that all aspects relating to illicit small arms and light weapons should be addressed in a coordinated and comprehensive manner’ (UNGA, 2005b, pream. para. 8). This replaced a preambular paragraph that had been proposed at the second session and that the chairman had retained in his second and third draft texts, as well as his *Package Proposal*: ‘*Stressing* the close association between illicit small arms and light weapons and their ammunition, and the need to deal with both issues in a coordinated manner’ (Switzerland, 2005c, pream. para. 7).

**Ammunition was the second issue that sharply divided the OEWG.**

The new preambular paragraph broadened the text from ammunition (now deleted) to ‘all aspects relating to illicit small arms and light weapons’ (UNGA, 2005b, pream. para. 8). Although its normative force is limited, being part of the preamble, the new provision offers additional leverage to those states seeking to ensure that future negotiating mandates incorporate all elements they consider essential to the task at hand, including ammunition. The OEWG recommendation for the creation of a separate UN process on ammunition is rather more tangible (UNGA, 2005a, para. 27), although, as of late 2005, it was unclear where it would lead.

The OEWG’s handling of the ammunition question may have implications for future small arms negotiations. Some states that supported the inclusion of ammunition in the tracing negotiations noted that ammunition (and explosives) were part of the 1997 UN Panel definition of ‘small arms and light weapons’. They argued that they ought therefore to apply to the tracing negotiations. In its report, the GGE left the question of ammunition’s inclusion in the tracing negotiations open—at least in theory. The GGE listed those elements of the Panel definition that related to ammunition and explosives in its own definitions section, indicating that they were ‘generally regarded as a part of the problem of small arms and light weapons’ (UNGA, 2003a, para. 33). But the Experts Group did not mention ammunition or explosives in the sections of its report dealing with marking, record-keeping, and cooperation in tracing. Nor did it use these terms in its conclusions and recommendations.

Ammunition, particularly in the area of marking, raises technical issues that differ from those relating to weapons alone.<sup>7</sup> The GGE's failure to address such issues made the task of dealing with ammunition in the follow-up negotiations exceedingly difficult. Other small arms measures UN states have expressed an interest in developing, including controls over brokering and international transfers, do not require that weapons and their ammunition be treated differently. Yet, now that a separate UN process has been proposed for ammunition, there is a risk that small arms and light weapons, on the one hand, and their ammunition, on the other, will once again be separated—even though there may be no technical justification for doing so.

### Definition of small arms and light weapons

In contrast to the *UN Programme of Action*, the *International Tracing Instrument* contains a detailed definition of 'small arms and light weapons' (UNGA, 2005b, para. 4). There were two main stumbling blocks on the path to consensus on this provision. The first was the choice of template. Taking its cue from the GGE (UNGA, 2003a, para. 32), the chairman's initial draft used a definition derived from the 1997 UN Panel of Experts. Although, in broad outline, it received the support of many delegations at the OEWG's second session, other states expressed a preference for the *UN Firearms Protocol* definition. The final compromise, facilitated in the last stages of the negotiations by Brazil, is in fact a hybrid of the UN Panel and *Firearms Protocol* definitions.

The second controversy surrounding the definition of 'small arms and light weapons' was whether or not to restrict the instrument to weapons 'which are manufactured to military specifications for use as lethal instruments of war' (UNGA, 1997, para. 24). This language, favoured by several states, had appeared in the UN Panel definition and again in the GGE report. Yet several other delegations pointed out that its use by the UN Panel was a function of the mandate it had received 'to consider the types of small arms and light weapons actually being used in conflicts being dealt with by the United Nations' (UNGA, 1997, para. 23). Its insertion in the tracing instrument, these states argued, would remove most civilian weapons from its scope and effectively strip it of any crime-fighting function it might lay claim to.

At the end of the day, these arguments prevailed. The 'military specifications' language became part of a new preambular paragraph, which made the *Instrument's* application to both crime and conflict settings clear, while skirting any restriction on the definition of 'small arms and light weapons':

*Noting also* that the tracing of illicit small arms and light weapons, *including but not limited to* [emphasis added] those manufactured to military specifications, may be required in the context of all forms of crime and conflict situations (UNGA, 2005b, pream. para. 2)

The *Tracing Instrument's* definition of 'small arms and light weapons' borrows liberally from both the *UN Firearms Protocol* (UNGA, 2001b, art. 3(a)) and the UN Panel (UNGA, 1997, paras. 25–26). The first part, drawn in large part from the *Protocol*, uses precise, treaty-like language to define the technical characteristics of small arms and light weapons. While the *Protocol* is the main inspiration for this part of the definition, the *Tracing Instrument* makes several important changes. First, the *Instrument* inserts the term 'man-' before 'portable'. While, at first glance, this seems to make it more restrictive than the *Protocol*, the opposite is true. The states that negotiated the *Firearms Protocol* intended that the word 'portable' limit the definition of 'firearm' to 'firearms that could be moved or carried by one person without mechanical or other assistance' (UNGA, 2001a, para. 3). The *Tracing Instrument*, by contrast, covers light weapons 'designed for use by two or three persons serving as a crew', as well as small arms and light

Negotiations on definitions stumbled over the choice of template.

weapons that can be carried by a single person (UNGA, 2005b, para. 4). This leaves aside only a narrow range of light weapons (such as large recoilless rifles) that are not ‘man-portable’, but may be carried by a light vehicle in accordance with the UN Panel definition (UNGA, 1997, para. 27(a)).

A second important difference between the *Tracing Instrument* and *Firearms Protocol* definitions is the deletion of the word ‘barrelled’ from the *Instrument*. In the *Protocol*, this term excludes all light weapons that employ a tube or rail, as opposed to a barrel,<sup>8</sup> such as man-portable air defence systems (MANPADS). The *Instrument*’s addition of the word ‘launches’ after ‘expels’ confirms its application to a broad range of light weapons, many of which are ‘launched’ from a tube. Like the *Protocol*, the *Instrument* also excludes antiques and their replicas. These terms are to be ‘defined in accordance with domestic law’, although ‘[i]n no case will antique small arms and light weapons include those manufactured after 1899’.

**The *Instrument*’s definition of small arms and light weapons is clear and adaptable.**

The second part of the *Tracing Instrument*’s definition of ‘small arms and light weapons’ borrows from the UN Panel. Subparagraph 4(a) of the *Instrument* reproduces, word for word, the UN Panel list of ‘small arms’. Subparagraph 4(b) does the same for ‘light weapons’. Unlike the UN Panel, the *Tracing Instrument* specifies that these lists are illustrative, not exhaustive, by using the term ‘inter alia’ in both cases. The *Tracing Instrument* will therefore apply to weapons systems, including future systems, that meet the definition’s general criteria, but do not appear in the subparagraph a/b lists.

The *Tracing Instrument*’s definition of ‘small arms and light weapons’ constitutes one of the OEWG’s most important achievements. The new definition is clear, relatively comprehensive, and adaptable. It also combines language used by the arms control (UN Panel and GGE) and law enforcement (*UN Firearms Protocol*) communities. Perhaps most important, it fills a gap left by the definition-deficient *UN Programme of Action*. The *Tracing Instrument* definition thus offers a key reference point for future small arms negotiations, especially within the UN framework. This reference point is limited, however, to weapons; the *Instrument* does not cover ammunition.

### **Other definitions**

The *Tracing Instrument*’s definition of ‘tracing’ is a simplified version of the definition used by the GGE in its report (UNGA, 2003a, para. 20). It omits, in particular, the notion that a tracing operation will normally end with the identification of ‘the person or group that last possessed’ the weapons being traced as it was thought that, in practice, this could be the exception, rather than the rule.

Under the terms of the *Instrument*, before a state can request assistance in tracing a weapon, it must first determine that it is ‘illicit’ (UNGA, 2005b, para. 16).

For the purposes of this instrument, small arms and light weapons are ‘illicit’ if:

- (a) They are considered illicit under the law of the State within whose territorial jurisdiction the small arm or light weapon is found;
- (b) They are transferred in violation of arms embargoes decided by the Security Council in accordance with the Charter of the United Nations;
- (c) They are not marked in accordance with the provisions of this instrument;
- (d) They are manufactured or assembled without a licence or authorization from the competent authority of the State where the manufacture or assembly takes place; or
- (e) They are transferred without a licence or authorization by a competent national authority. (UNGA, 2005b, para. 6)

As the *Tracing Instrument* specifies that states make tracing requests based on *their* determination of the illicit nature of a particular weapon (para. 16), the interpretation of these subparagraphs ultimately lies with the requesting state. While the *Instrument* gives the requested state the right to refuse to respond to a tracing request in certain circumstances, it cannot challenge a requesting state's determination that the weapon it wants to trace is illicit (para. 22).

### Other general issues

Negotiation of the *Tracing Instrument's* 'General provisions' section involved many minor disagreements and a few serious ones. Among the latter was the question of whether the drafters should mention 'terrorism' as one of their key concerns, along with crime and conflict. In the final version of paragraph 1, setting out the purpose of the *Instrument*, the OEWG dropped an earlier reference to 'crime and conflict' and moved it to the preamble. Those states that wanted to make the instrument's application to terrorism clear were partly appeased by specifying, in the same preambular paragraph, that '*all forms* of crime and conflict' were at issue (UNGA, 2005b, pream. para. 2; emphasis added). Yet there was no agreement to include the word 'terrorism' in the instrument, so it was left out.<sup>9</sup>

Just as controversial was a proposal to insert in the instrument's 'General provisions' section language the *UN Firearms Protocol* used to exclude many government transfers from its scope (UNGA, 2001b, art. 4(2)). At the end of the day, the Group settled on the following, alternative formulation:

This instrument does not restrict the right of States to acquire, manufacture, transfer and retain small arms and light weapons for their self-defence and security needs, as well as for their capacity to participate in peace-keeping operations, in a manner consistent with the Charter of the United Nations. (UNGA, 2005b, para. 3)

In essence, this paragraph makes the obvious point that, while the *Instrument* enhances the traceability of small arms and light weapons, it does not affect the underlying right of states to 'acquire, manufacture, transfer and retain' these weapons in conformity with the UN Charter.

The preamble of the *International Tracing Instrument* contains a relatively modest nine paragraphs. This compares with the 22 preambular paragraphs found in the *UN Programme of Action*. Prompted by a warning from some delegations, the OEWG decided to keep most substantive issues out of the preamble in order to avoid a time-consuming 'rebalancing exercise' in which particular principles or concepts (e.g. terrorism) would be 'balanced' with their rivals (e.g. self-determination). By and large, the *Instrument's* preambular paragraphs merely restate the negotiating mandate and recall the main developments in the UN tracing process. Two exceptions, discussed above, emphasize the *Instrument's* 'crime and conflict' functions (pream. para. 2) as well as the need for a 'coordinated and comprehensive' approach to the small arms problem (pream. para. 8). In addition, preambular paragraph 9 stresses 'the urgent necessity for international cooperation and assistance' in implementing the *Instrument*.

The three versions of the draft instrument the chairman produced included 'placeholders' for 'technical annexes' covering such things as:

- voluntary best practice: marking;
- voluntary best practice: record-keeping;
- sample terms of reference for the national point(s) of contact;
- standard form of information sought in the context of a tracing request; and
- standard form of information to be provided in response to a tracing request.

In order to avoid a time-consuming 'rebalancing exercise', the preamble was left largely free of substance.



This assault weapon from Iraq was seized by the US Bureau of Customs and Border Protection in April 2003. © Ric Feld/AP Photo

Several states submitted written proposals for one or more annexes during the negotiations. Nevertheless, as some states indicated that the OEWG would have to agree on the content of such annexes before they could be incorporated in the final instrument—notwithstanding their purely voluntary nature—this initiative was abandoned at the final session.

### Marking

If small arms and light weapons are to be traced, they need to be marked with basic identifying information. In conjunction with a weapon's physical characteristics, such markings are used to identify the weapon as well as the governments or companies that can assist in reconstructing its history.

Paragraph 8 of the *International Tracing Instrument* sets out the basic rules governing the content of marks. Sub-paragraph (a) largely reproduces the *UN Firearms Protocol* standard for marking at the time of manufacture.<sup>10</sup> Specifically, it allows countries that are using non-alphanumeric marking systems to maintain them. Those countries are, however, obliged to use a numeric and/or alphanumeric code that allows for the universal identification of the country of manufacture. States using alphanumeric marking systems must require weapons to be marked with the name of the manufacturer, the country of manufacture, and a serial number. For both groups of countries, weapons marking must be 'unique'.

Paragraph 8(b) of the *Tracing Instrument* deals with the other essential starting point for weapons traces, namely, the import mark. During negotiations, the OEWG had two standards to choose from: the *UN Firearms Protocol*, which makes such marking mandatory (UNGA, 2001b, art. 8(1)(b)), and the GGE report, which basically makes it optional: 'All small arms and light weapons are marked at the time of manufacture and, *if necessary*, import'

(UNGA, 2003a, para. 62(a); emphasis added).<sup>11</sup> After much argument, the OEWG opted for an intermediate solution. Under the *Tracing Instrument*, import marking is neither mandatory nor entirely optional. After underlining the mandatory nature of import marking under the *UN Firearms Protocol*, paragraph 8(b) directs states to require ‘to the extent possible’ that imported small arms and light weapons are marked with the country of import and ‘where possible’ the year of import. Such weapons are also to receive ‘a unique marking’ (serial number) if they do not already bear such a marking.

Many states were disappointed that the OEWG could not agree to make import marking mandatory, as in the *Firearms Protocol*. Yet the final text, developed through the facilitation efforts of Belgium, is somewhat stronger than the open-ended GGE formulation. In any case, it was more than many countries, concerned about potential costs, were initially willing to accept. This is one area where international assistance will be important.

Paragraph 8(d) of the *Tracing Instrument* addresses the important issue of existing government stocks. The Small Arms Survey has identified the leakage of such stocks as a key source of weapons for war zones and the illicit market generally (Small Arms Survey, 2005, ch. 6; 2002, pp. 137–38). If such weapons have not been marked, as is often the case, they cannot be traced after they leave the government stockpile. The standard articulated in paragraph 8(d) is relatively low. The relevant weapons are to be ‘duly marked’; *Instrument* norms for marking at the time of manufacture ‘do not necessarily’ apply. At the same time, the paragraph introduces a potential loophole in favour of weapons that are held by government forces, but are not ‘for their own use’. Nevertheless, the application of paragraph 8(d) to *existing* stocks is clear.

Paragraph 9 covers the confiscation of illicit small arms and light weapons. It builds on *UN Firearms Protocol* article 6(2), specifying that such weapons, if not destroyed, are to be ‘uniquely marked’ (not merely ‘marked’, as in the *Protocol*) and recorded in accordance with the *Tracing Instrument*’s record-keeping provisions. States also commit to securely store such arms pending their marking and recording (or destruction)—another element missing from *Protocol* article 6(2).

Countries around the world use a variety of methods to mark small arms and light weapons, including stamping, engraving, and laser etching.<sup>12</sup> The *Tracing Instrument* leaves the choice of such methods to states, while specifying that the resulting marks must be ‘easily recognizable, readable, durable and, as far as technically possible, recoverable’. It also insists on the visibility of such marks. They are to be ‘on an exposed surface’ and ‘conspicuous without technical aids or tools’ (UNGA, 2005b, para. 7).

The *Tracing Instrument* also prescribes the placement of marks. ‘A unique marking should be applied to an essential or structural component of the weapon’. A component is ‘essential or structural’ if its ‘destruction would render the weapon permanently inoperable and incapable of reactivation’. In the case of small arms and some light weapons, such components include the frame or receiver. States are also ‘encouraged, where appropriate to the type of weapon,’ to mark other weapons parts (para. 10).

Import marking is  
neither mandatory  
nor entirely optional.

## Record-keeping

Record-keeping, after marking, is the second prerequisite for effective tracing. Records contain information about the marked weapon itself, along with elements of its history, beginning with manufacture. The *Tracing Instrument*’s record-keeping section has only three paragraphs. This reflects record-keeping’s close connection with areas traditionally seen as the preserve of national sovereignty, such as the regulation of civilian weapons possession. Constitutional constraints also led many states to approach the issue with caution.

The *Tracing Instrument* therefore contains few prescriptions or detailed commitments on record-keeping. It also states that the ‘choice of methods for record-keeping is a national prerogative’ (para. 11). It nevertheless lays down one essential standard:

States will ensure that accurate and comprehensive records are established for all marked small arms and light weapons within their territory and maintained in accordance with paragraph 12 below in order to enable their competent national authorities to trace illicit small arms and light weapons in a timely and reliable manner. (UNGA, 2005b, para. 11)

By and large, the details of how to accomplish this are left to governments, but the commitment to establish and maintain the records that are needed to ensure ‘timely and reliable’ tracing is clear.

**The Instrument establishes detailed modalities for tracing cooperation that have no parallel elsewhere.**

The *Tracing Instrument* also prescribes the length of time records must be kept. The *UN Firearms Protocol* stipulates a ten-year minimum (UNGA, 2001b, art. 7). The GGE report suggests a longer period of time—‘as long as needed for the purposes of tracing’—but allows individual states to decide what this means in practice (UNGA, 2003a, para. 76(d)). Since small arms and light weapons have life spans of several decades if properly maintained, many OEWG delegations argued that records should be kept indefinitely, or at least for much longer than ten years. At the end of the day, the Group agreed on a 30-year minimum for manufacturing records and 20 years for all other records, including those relating to import and export. As a general principle, states undertook, ‘to the extent possible’, to keep records ‘indefinitely’ (UNGA, 2005b, para. 12). This is not the only area where the *Instrument* strengthens existing standards, even while extending these to the entire UN membership.

### Cooperation in tracing

Section V, devoted to ‘Cooperation in tracing’, forms the operational core of the *International Tracing Instrument*. This is also where it adds greatest value to existing small arms measures, establishing detailed modalities for tracing cooperation that have no parallel elsewhere.<sup>13</sup>

As with marking and record-keeping, the tracing cooperation section leaves the means of compliance with individual states: ‘the choice of tracing systems will remain a national prerogative’ (UNGA, 2005b, para. 14). It nevertheless sets clear limits to that discretion: ‘States will ensure that they are capable of undertaking traces and responding to tracing requests in accordance with the requirements of this instrument’ (para. 14). Paragraph 15 underlines the importance of confidentiality. States receiving tracing information agree to ‘respect all restrictions placed on its use’ and to ‘guarantee [its] confidentiality’.

Paragraphs 16–17 set out the threshold requirements for tracing requests. Paragraph 16 reflects the outcome of the OEWG debate concerning the role of peacekeeping operations in the *Tracing Instrument*, mentioning only states with respect to the initiation of tracing requests.<sup>14</sup> In practice, this means that a state is not *required* to respond to a request it receives from a peacekeeping operation or other non-state entity. Yet nothing in the *Instrument* prevents a country from responding to such requests if it wants to. It can apply the provisions of the *Instrument* or develop other modalities for such situations as it sees fit. The Security Council can also order UN Member States to provide tracing assistance to a UN peacekeeping operation or UN sanctions committee if it adopts a binding resolution to this effect.

Under paragraph 16, a state seeking tracing assistance must also determine that the small arm or light weapon is ‘illicit’ in accordance with the definition of this term discussed above. Further, pursuant to paragraph 17, any request

for tracing assistance must contain ‘sufficient information’ for this purpose. The non-exhaustive list that completes paragraph 17 indicates what this means:

- (a) Information describing the illicit nature of the small arm or light weapon, including the legal justification therefor and, to the extent possible, the circumstances under which the small arm or light weapon was found;
- (b) Markings, type, calibre and other relevant information to the extent possible;
- (c) Intended use of the information being sought.

The information mentioned in paragraph 17(b) is indispensable to any weapons trace. That contained in the second part of paragraph 17(a) may prove useful as well. The fourth element (para. 17(c)) allows the requested state to determine whether it should restrict the use of the information it will provide. By contrast, the first element, concerning the ‘illicitness’ of the relevant weapon (first part of para. 17(a)), is something of a hindrance to efficient tracing. As noted earlier, the definitions section of the *Tracing Instrument* leaves the determination of ‘illicit’ firmly in the hands of the requesting state. Yet there is a suggestion in paragraph 17 that the requesting state has to justify that determination when making its tracing request.

Paragraph 21 allows the requested state to ‘seek additional information from the requesting State where a tracing request does not contain the information required in paragraph 17’. Yet, crucially, the *Tracing Instrument* does not give the requested state the right to delay or restrict the content of its response, or refuse to respond, simply because it considers the information provided by the requesting state to be insufficient. In particular, it cannot challenge the requesting state’s determination that a particular weapon is ‘illicit’ and thus block the tracing request.

Paragraphs 18–23 of the *Tracing Instrument* deal with responses to tracing requests. Paragraph 18 articulates the general principle of ‘prompt, timely and reliable responses’. As for the content of such responses, paragraph 20 specifies that ‘the requested State will provide . . . all available information sought by the requesting State that is relevant for the purpose of tracing illicit small arms and light weapons’. The requirement that the information be relevant to tracing stems from a concern, expressed by many OEWG delegations, that the *Instrument* not be used to pursue political goals or other ends not related to weapons tracing. The provision of tracing information is, moreover, subject to a series of exceptions:

States may delay or restrict the content of their response to a tracing request, or refuse to provide the information sought, where releasing the information would compromise ongoing criminal investigations or violate legislation providing for the protection of confidential information, where the requesting State cannot guarantee the confidentiality of the information, or for reasons of national security consistent with the Charter of the United Nations. (UNGA, 2005b, para. 22)

These exceptions were part of OEWG discussions from an early stage and, in one form or another, featured in each of the chairman’s three draft texts. An earlier reference to a ‘breach of domestic law’ was subsequently narrowed to refer to ‘legislation providing for the protection of confidential information’ alone. Throughout the negotiations, many states stressed that the future instrument needed to address the issue of confidentiality. The two exceptions relating to confidentiality in paragraph 22 are complemented by paragraph 15, discussed above.

There was also broad support for the ‘national security’ exception that appears in paragraph 22, a term that initially appeared in the GGE report (UNGA, 2003a, para. 98) and was borrowed by the General Assembly when formulating

**A state asked to help trace a weapon cannot challenge a requesting state’s determination that it is ‘illicit’.**



the Group's mandate (UNGA, 2003b, para. 7).<sup>15</sup> The reference to the UN Charter limits the scope of this exception somewhat. A more important check on the potential abuse of paragraph 22—as a whole—is the requirement that States explain any use they make of this provision:

If a State delays or provides a restricted response to a tracing request, or refuses to provide the information sought, on the grounds identified in paragraph 22 above, it will inform the requesting State of the reasons for this. The requesting State may subsequently seek clarification of this explanation. (UNGA, 2005b, para. 23)

Fundamentally, paragraph 22 provides those countries that are intent on evading their commitment to respond to tracing requests with broad cover to do so. Yet paragraph 23 will make it rather more apparent—at least to the requesting state—whether a requested state is applying paragraph 22 in good faith or not.

### Implementation

The *Tracing Instrument's* 'Implementation' section outlines mechanisms and arrangements designed to support its effective functioning. Paragraphs 24–26 lay the foundation for implementation at the national level, including the establishment of the necessary legislative and administrative framework, as well as the designation of one or more national points of contact. Paragraphs 27–29 deal with 'International cooperation and assistance', which many developing countries stressed was essential to their implementation efforts. Despite the express wish of those OEWG delegations for strong language, however, the section retains important qualifiers found in the *UN Programme of Action*. The *Instrument* strongly recommends, but does not make obligatory, the provision of such assistance.<sup>16</sup>

Exchange of information on national points of contact and national marking practices is essential to tracing.

At the first OEWG session, states unanimously stressed the primacy of existing mechanisms and organizations in underpinning *Instrument* implementation at the international level. There was virtually no support for the creation of a new institution, not even one with a modest clearing-house function. The resulting challenge was to fit the future tracing instrument—with its dual crime- and conflict-fighting functions—into the existing web of international organizations and arrangements. Both Interpol and the UN were quickly identified as key partners in this regard.

The UN's role in supporting *Instrument* implementation is set out in paragraphs 30–32. Under paragraph 32, the UN Secretariat is to facilitate the provision of assistance that States request for this purpose (para. 32).<sup>17</sup> The Secretariat (in particular DDA) will also receive from states and issue to them the following information:

- (a) Name and contact information for the national point(s) of contact;
- (b) National marking practices related to markings used to indicate country of manufacture and/or country of import as applicable. (UNGA, 2005b, para. 31)<sup>18</sup>

This information is essential to tracing. Among other things, the national points of contact are responsible for initiating and receiving tracing requests conducted under the framework of the *Instrument*. Markings used to indicate a weapon's country of manufacture and/or import provide the starting points for the trace.

Interpol's role is no less important to the effective implementation of the *Instrument*. Paragraph 35 outlines several types of assistance the organization may provide 'at the request of the concerned State':

- (a) Facilitation of tracing operations conducted within the framework of this instrument;
- (b) Investigations to identify and trace illicit small arms and light weapons;
- (c) Wherever possible, building national capacity to initiate and respond to tracing requests. (UNGA, 2005b)

Subparagraph (a) covers the typical case where a state takes charge of a tracing operation. Interpol ‘facilitation’ in this situation could involve the state’s use of secure Interpol channels to relay and receive information related to a tracing request. In future, states will also be able to call upon Interpol for automated firearms tracing and help in weapons identification.<sup>19</sup> Interpol assistance in tracing investigations, mentioned in subparagraph (b), could be useful where a tracing operation is especially complex or where the country that wants to trace a weapon lacks the capacity to do so—a situation also addressed in subparagraph (c). Only Interpol members can normally call upon Interpol for the assistance mentioned in paragraph 35. Non-members can also do so, however, if they have a cooperation agreement with the organization.<sup>20</sup>

Tracing small arms and light weapons that have helped fuel a conflict—perhaps in violation of a UN arms embargo—poses several special challenges. In the case of a ‘failed state’, there may be no governmental authority capable of undertaking a tracing request. A second problem is the longer, more complex lines of supply one usually finds in conflict situations.<sup>21</sup> In principle, there are few, if any, obstacles to Interpol involvement in conflict tracing. Where local law enforcement agencies have ceased to function or instead function under international authority, Interpol can liaise directly with the civilian police component of any peacekeeping operation present on the territory. For example, building on a general *Co-operation Agreement* concluded by the two organizations in 1997 (Interpol and UN, 1997), Interpol is currently supporting UN peace-building efforts in Kosovo. Among other things, this gives the UN (police) point of contact access to Interpol’s communications network and databases (Interpol and UN, 2002).

Tracing weapons that have helped fuel a conflict poses special challenges.

The conflict tracing functions of the *International Tracing Instrument* are largely implicit in the provisions reviewed above, in particular paragraph 35. While all references to ‘peacekeeping operations’ and other non-state entities were ultimately purged from the text, the OEWG did recommend ‘that the issue of the applicability of provisions of the draft instrument to United Nations peacekeeping operations be considered further within the framework of the United Nations’ (UNGA, 2005a, para. 28). This gives UN Member States an opportunity to further develop the legal and practical framework needed for conflict tracing within the UN system. Paragraph 34 of the *Tracing Instrument* performs a similar function in relation to Interpol, directing states that are members of the organization to ‘promote the implementation of this instrument when participating in Interpol’s organs’ (UNGA, 2005b). The *International Tracing Instrument*, in combination with the OEWG peacekeeping recommendation, thus sets the stage for the further development of conflict tracing, in particular through enhanced UN-Interpol cooperation.

## Follow-up

The true value of the *International Tracing Instrument* will become clear only over time as a function of two factors:

- the extent to which the Instrument is implemented by UN Member States; and
- the extent to which it spurs the further development and strengthening of international norms on marking, record-keeping, and cooperation in tracing.

The *Tracing Instrument*’s ‘Follow-up’ section provides an important basis for progress on both counts. Paragraph 36 establishes the principle of biennial reporting. In contrast to the *UN Programme of Action* (UNGA, 2001d, para. II:33), such reporting is mandatory:

States *will* report . . . on their implementation of this instrument including, where appropriate, national experiences in tracing illicit small arms and light weapons as well as measures taken in the field of international cooperation and assistance. (UNGA, 2005b, para. 36; emphasis added)



This Mannlicher-Carcano bolt-action, clip-fed rifle, found in the Texas School Book Depository Building in Dallas, was identified by the Warren Commission as the rifle used to shoot President John F. Kennedy. It is inscribed with various markings, including 'MADE ITALY'; 'Cal. 6.5', referring to the gun's caliber; '1940', the year of manufacture; and the serial number C2766. © Warren Commission/AP Photo

The *Tracing Instrument* links these reports and the biennial meetings that will 'consider' them to the UN Conference process, provided that process continues. Reports on the implementation of the *Instrument* can be incorporated into national reports on the implementation of the *UN Programme of Action*. The biennial tracing meetings will be held within the framework of *UN Programme* meetings as long as such meetings 'are in fact convened' (paras. 36–37).

In practice, reporting on *UN Programme* implementation has followed something of a two-year cycle, with reporting activity considerably higher in years that have coincided with a *UN Programme* Biennial Meeting of States (2003 and 2005).<sup>22</sup> Paragraphs 36 and 37 of the *Tracing Instrument* formalize this two-year implementation review process—at least with respect to the *Instrument*. While reporting and meetings held to 'consider' reports do not necessarily translate into actual implementation, they can help (Small Arms Survey, 2004, pp. 257–58). Agreement on *mandatory* reporting is an especially important advance over the *UN Programme of Action* and could conceivably bolster reporting rates for the *Programme* itself.

Last but not least, paragraph 38 of the *Tracing Instrument* addresses the second of the two factors underpinning its long-term effectiveness: normative development. States undertake to 'review the implementation and future development' of the *Instrument* within the framework of conferences held to review the *UN Programme of Action*. Such 'future development' could involve the strengthening of the *Tracing Instrument's* existing provisions, the formulation of new commitments, and/or the transformation of some or all of the *Instrument's* norms into legally binding form (see McDonald, 2006). Far from marking the end of the UN tracing process, the *International Tracing Instrument* anticipates its continuation.

## IMPLEMENTING THE INSTRUMENT<sup>23</sup>

Following its adoption by the UN General Assembly, in December 2005, the *International Tracing Instrument* applies to all UN Member States (UNGA, 2005b; 2005c; 2005d). In the short term, any initiatives for further normative development are likely to be modest.<sup>24</sup> The key challenge for 2006 is the effective implementation of the current *Instrument*.

In the autumn of 2005, just prior to the *Tracing Instrument's* adoption by the General Assembly, the Small Arms Survey and three collaborators undertook a preliminary assessment of national preparations for *Instrument* implementation. Government officials in the Americas, Europe, and southern Africa were asked what steps their country

had taken or was planning to take for purposes of implementing the *Instrument*, including relevant changes to national laws or regulations, or measures designed to strengthen national capacity.

While, as a rule, states indicated they were aware of the new *Tracing Instrument* and were committed to implementing it, relatively few countries offered details of specific implementation plans or challenges.<sup>25</sup> Thirty of the 37 states that were contacted provided information to researchers.<sup>26</sup> The picture among respondent states was extremely mixed. Simple affirmations of compliance alternated with admissions that the country had still to determine whether existing laws, regulations, and practices met *Instrument* requirements. Several states had already conducted, initiated, or planned to conduct legislative reviews, though in several cases these were to follow the *Tracing Instrument's* (anticipated) adoption by the General Assembly at the end of 2005. Some countries indicated that these reviews would be conducted at some future date as part of broader reviews of national firearms legislation. Only a handful of countries acknowledged that changes to national laws or practices were needed to meet *Instrument* requirements. A few countries informed researchers of recent changes in national legislation that served this purpose.

Many of the states contacted by researchers had yet to take any decision regarding the designation of the national point(s) of contact required under the *Tracing Instrument* (UNGA, 2005b, para. 25), especially that involved in actual tracing. Several countries indicated that the point of contact responsible for information exchange (see paras. 31, 36) would be the same as that used for *UN Programme of Action* reporting. These points of contact were typically located within the country's ministry of foreign affairs. Those states that had identified a point of contact for tracing operations tended to locate it within the branch of government responsible for law enforcement.

Almost all respondent countries acknowledged that capacity-building would be important to the implementation of the *Tracing Instrument*. Among the capacity-building initiatives in place or under consideration, states cited, in particular, coordination and information exchange among government agencies. This included cooperation between federal and local or regional authorities in several states with a federal structure. One country also referred to plans to link small arms records held by the national armed forces to the national police force, thus enhancing police tracing capacity. Other initiatives mentioned by states included the training of law-enforcement personnel in tracing methods and the development of databases for firearms identification. In preparing to implement the *Instrument*, several states indicated they were cooperating or consulting with industry, NGOs, and other stakeholders, or planned to do so.

While the study found that most countries in the Americas and Europe were relatively focused on the specifics of *Instrument* implementation, southern African states generally seemed more preoccupied with the implementation of the *SADC Firearms Protocol* (SADC, 2001), in force since November 2004. While the two instruments overlap in the areas of marking, record-keeping, and to some extent tracing, they nonetheless differ significantly in their coverage and treatment.<sup>27</sup> Officials in southern Africa indicated that their governments knew of the *Tracing Instrument* and were committed to implementing it. Some of these officials acknowledged, moreover, that relevant national legislation was outdated and needed amending; yet *Tracing Instrument* requirements would be considered only as part of future, general reviews of national firearm legislation.

The specific regional mechanisms now being developed for implementation of the *SADC Protocol*—aimed, above all, at improving the flow of information among SADC states—could be used, at least within the sub-region, for the implementation of the *International Tracing Instrument*. In theory, the two instruments complement each other. In practice, however, there is a risk that *Tracing Instrument* implementation will take a back seat as SADC countries grapple with the implementation of their new *Protocol*. In several cases, it appears that the legislative reviews that

**The key challenge for 2006 is the effective implementation of the *Instrument*.**

are a prerequisite for the full implementation of the *Tracing Instrument* are, in fact, being subordinated to *SADC Protocol* timing. In the context of this research, government officials in southern Africa stressed their commitment to implementing all international—as well as regional—small arms agreements; yet, on the eve of the *Tracing Instrument's* adoption, their attention seemed to be directed elsewhere.

This problem of competing priorities is not unique to southern Africa. When discussing their implementation of the *Tracing Instrument*, several countries in the Americas and Europe referred to measures they were taking to implement the *UN Firearms Protocol* (UNGA, 2001b). In one or two cases, responding officials appeared to assume that the process of bringing national systems into compliance with the *UN Protocol* would also serve to meet the requirements of the *International Tracing Instrument*—despite the significant differences between these instruments in those areas where they do overlap. Most officials contacted by the research team were, however, aware of the differences, with one official citing the much broader range of light weapons covered by the *Tracing Instrument*. In general, it appeared that states were taking advantage of the *UN Protocol* implementation process to make any changes (sometimes different changes) that might also be needed for purposes of implementing the *Tracing Instrument*.

As of November 2005, it appeared that most countries in the Americas, Europe, and southern Africa were aware of the *International Tracing Instrument* and taking some of the steps needed for its implementation. Overall, however, these states were not attending to this task with the speed and rigour that the *Instrument's* imminent adoption by the General Assembly warranted.

## CONCLUSION

The *International Tracing Instrument* (UNGA, 2005b), now applicable to all UN Member States (UNGA, 2005d), constitutes a modest, but significant, step forward in international efforts to address the small arms problem. Although the final result fell far short of what many had hoped for, the new *Instrument* is nevertheless a useful tool in the fight against illicit small arms.

Overall, the *International Tracing Instrument* consolidates—even strengthens—the standards contained in the *UN Firearms Protocol* (UNGA, 2001b) and the report of the Group of Governmental Experts on Tracing (UNGA, 2003a). Important value added can be found in its sections on definitions, cooperation in tracing, and implementation. Key weaknesses include the failure to make import marking mandatory and to give conflict tracing firmer operational footing within the *Instrument*.

The *Tracing Instrument's* real value will, however, become apparent only over time as a function of (a) its effective implementation by all UN Member States and (b) the extent to which it spurs further normative development. As indicated in the previous section, many states have been slow to prepare for the *Instrument's* adoption by the General Assembly. In the autumn of 2005, just weeks before they became (politically) bound by the *Instrument*, these countries had yet to determine how to bring national laws and practices into compliance. Implementation, in other words, is off to a relatively slow start.

Implementation is one challenge, normative development another. UN Member States have undertaken to review the future development of the *Tracing Instrument* in the context of *Programme of Action* review conferences. This was part of the bargain that allowed the many countries that wanted a strong legal document covering ammunition to accept the final, far-from-perfect result. More diplomatic wrangling is needed before the last word can be written on the UN tracing process. ■

## LIST OF ABBREVIATIONS

<b>DDA</b>	Department for Disarmament Affairs (United Nations)	<b>MANPADS</b>	Man-portable air defence system
<b>EU</b>	European Union	<b>OEWG</b>	Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons
<b>GGE</b>	Group of Governmental Experts on Tracing Illicit Small Arms and Light Weapons	<b>SADC</b>	Southern African Development Community
<b>GRIP</b>	Groupe de recherche et d'information sur la paix et la sécurité	<b>UNIDIR</b>	United Nations Institute for Disarmament Research
<b>IANSA</b>	International Action Network on Small Arms	<b>WFSA</b>	World Forum for the Future of Sport Shooting Activities
<b>Interpol</b>	International Criminal Police Organization		
<b>IWeTS</b>	Interpol Weapons Electronic Tracing System		

## ENDNOTES

- 1 Full name: Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.
- 2 See also UNGA (2005c, para. 2).
- 3 The Control Arms campaign is jointly run by Amnesty International, IANSA, and Oxfam International.
- 4 For OEWG-related materials and information, see the UNDDA Web site: <<http://disarmament2.un.org/cab/salw-oewg.html>>
- 5 That is, subject to the final approval of the delegate's government.
- 6 Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Iceland, Macedonia, Norway, Romania, Serbia and Montenegro, and Turkey.
- 7 See Anders (2006); Small Arms Survey (2005, pp. 25–29); Anders (2005a).
- 8 In containing the expansion of gases on combustion, a barrel helps impart kinetic energy to a projectile. This results in the phenomenon of recoil transmitted to both weapon and shooter when a barrelled weapon is fired. For this reason, barrels are composed of hard steel alloys. By contrast, launch tubes, such as those used in MANPADS, may guide the projectile's initial direction but do not help drive it forward. The actual thrust comes from the projectile itself. Because a launch tube is open at both ends, little energy is imparted to the tube and consequently to the shooter. Launch tubes are usually made of fibreglass or plastic composites.
- 9 See also the discussion below of the *Instrument's* preamble.
- 10 There are three differences. First, the *Tracing Instrument* applies to manufacture occurring under the 'jurisdiction or control' of the state. The *Firearms Protocol* is silent on this question of territorial scope. Second, under the *Tracing Instrument* states using alphanumeric marking systems must require the marking of 'the country of manufacture'—in contrast to the *Protocol's* 'country or place of manufacture'. Third, unlike the *Protocol*, under the *Tracing Instrument* states agree to 'encourage the marking of such additional information as the year of manufacture, weapon type/model and calibre' (UNGA, 2005b, para. 8(a); 2001b, art. 8(1)(a)).
- 11 See also para. 62(f).
- 12 See Small Arms Survey and UNIDIR, 2003, pp. 89–91.
- 13 The *UN Firearms Protocol* contains one general provision on tracing (UNGA, 2001b, art. 12(4)). The GGE's more extensive 'common minimum standards' served as raw material for the *Tracing Instrument* (UNGA, 2003a, para. 93), but lack its normative force.
- 14 See also UNGA (2005b, para. 18).
- 15 This language also found its way into preambular paragraph 6 of the *Tracing Instrument*: 'Noting also that, pursuant to resolution 58/241, this instrument takes into account the national security and legal interests of States.'
- 16 See, for example, paragraph 27: 'States *in a position to do so* will, upon request, seriously *consider* rendering technical, financial and other assistance . . .' (UNGA, 2005b; emphasis added). Adapted from para. III.3 of the *UN Programme of Action* (UNGA, 2001d).
- 17 Paragraph 32 does not express this very clearly. In fact, it appears to identify the UN Secretariat itself as the source of such assistance ('providing the assistance . . .'). When this paragraph was agreed on 16 June 2005, States were negotiating on the basis of the chairman's third draft text. The equivalent provision read: 'States request the Secretary-General . . . (c) To facilitate the provision of international cooperation and assistance

- designed to enhance the ability of States to effectively implement this instrument.' When paragraph 32 was discussed and adopted *ad referendum*, no delegation said it expected the Secretariat itself to offer such assistance.
- 18 See also UNGA (2005b, para. 32).
- 19 As of June 2005, Interpol was upgrading its Interpol Weapons Electronic Tracing System (IWeTS) to include such features. See Interpol (2005).
- 20 As of 19 September 2005, Interpol had 184 member countries, almost as many as the UN's 191 members. For the latest membership information, see the Interpol Web site: <<http://www.interpol.int/Public/Icipo/Members/default.asp>>
- 21 For more information on the specific requirements and challenges of conflict tracing, see Small Arms Survey and UNIDIR (2003, pp. 23–27).
- 22 See the DDA Web site for a year-by-year listing of the states that have reported on their implementation of the *UN Programme of Action*, together with copies of the actual reports: <<http://disarmament2.un.org/cab/salw-nationalreports.html>>
- 23 This section draws on information from: Anders (2005c); Dreyfus (2005); Stott (2005); correspondence with the Government of Canada, 21 November 2005.
- 24 One possibility would be agreement on a simple mechanism for the voluntary exchange of information on marking, record-keeping, and tracing best practices (McDonald, 2006).
- 25 Correspondence with the Government of Canada, 21 November 2005.
- 26 *Responding states*: Angola, Argentina, Austria, Belgium, Botswana, Brazil, Canada, Chile, Colombia, Estonia, Finland, Germany, Latvia, Lesotho, Lithuania, Luxembourg, Malawi, Mexico, Mozambique, Namibia, The Netherlands, Norway, South Africa, Swaziland, Sweden, Tanzania, United Kingdom, Venezuela, Zambia, and Zimbabwe. *Non-responding states*: Czech Republic, Denmark, Ireland, Italy, Mauritius, Spain, and the United States.
- 27 For a comparison of the two instruments, see Stott (2005, pp. 18–27).
- 28 The author served as an adviser to Ambassador Anton Thalmann, Chairman of the Open-ended Working Group on Tracing Illicit Small Arms and Light Weapons. The views expressed in this chapter are the author's alone and should not be attributed to Ambassador Thalmann or the Government of Switzerland.

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