Programme of Action on Small Arms and Light Weapons
Meeting of Governmental Experts 2015
United States Working Paper

Introduction

The United States has supported efforts to implement the objectives of the United Nations Programme of Action on Small Arms and Light Weapons (“POA”) since its inception. From actively participating in the 2001 Conference through the Biennial Meeting of States, the Review Conferences, and the Open-Ended Meetings of Governmental Experts (MGEs), the United States has sought to address, in very practical ways, the key implementation challenges regarding UN small arms and light weapons instruments. In particular, the United States encourages concrete action to implement the core elements of efforts to combat illicit trafficking in small arms and light weapons (SALW). These include marking, record-keeping, and cooperation in tracing in accordance with the POA and the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (“International Tracing Instrument” or “ITI”), adopted by the General Assembly in 2005. This paper addresses several elements by which the United States is addressing the challenges to implementation of the marking and tracing provisions in the POA and ITI that are posed by new SALW technologies.

1. Marking

The ITI builds on the 2001 Programme of Action and the legally binding Firearms Protocol of 2001,¹ a supplement to the United Nations Convention Against Transnational Organized Crime, to which not all Member States are party. The Firearms Protocol requires certain specific measures on marking, record-keeping, and tracing of SALW from a law enforcement perspective. In the ITI’s preamble, States recognized the complementary nature of these two instruments.

The requirement to mark manufactured SALW that companies will sell commercially or export, whether it be to governments or militaries, or to consumers for recreational, sport shooting, or other lawful purposes, is fundamental to ensuring that States can trace these weapons should they be recovered in crime. This obligation extends also to importing States, not solely Member States that manufacture SALW for export. (See ITI, para. 8b; Firearms Protocol, art. 8(1)(b)). The ITI leaves the choice of marking methods (stamping, engraving, etc.) to national discretion; however it identifies the physical characteristics of weapons markings (para. 7), as well as their placement (para. 10).

Regrettably, there still remain many States that have not fully met their obligations or commitments to mark SALW at the point of importation, as the international community has discussed at the prior MGE in 2011 and other SALW meetings. States

and research organizations have reported the reasons for this lack of marking at import to be a lack of resources or capacity or a lack of technical knowledge. In an effort to remedy this gap, the United States has worked with regional organizations such as the Regional Center for Small Arms (RECSA) in Nairobi, Kenya, and the Organization of American States (OAS) to fund certain marking technologies to assist States in their obligations to mark imported weapons.

Some States have also reported that the difficulty in marking weapons at the point of importation involves the advent of more modular weapons that users can assemble into different configurations and also at a later stage of production. (See A/CONF.192/BMS2014/1, the Secretary General’s Report on new SALW technologies). Although marking has become more challenging in some respects as identified in the above report, it is the experience of the United States that marking SALW consistent with the international commitments and obligations outlined in, for example, the ITI and the Firearms Protocol, is feasible and in some respects more expeditious. Given the changing nature of the manufacturing processes, it is even more necessary to ensure a proper marking for tracing purposes.

Some States have noted that manufacturing of modular components risks misidentifying which part of a weapon should bear the unique marking. The United States remains a strong supporter of marking and tracing of SALW and notes that the ITI calls on all States to mark SALW upon import to the extent possible. The United States also encourages States to designate the frame or receiver of a SALW as an “essential or structural component” referenced in para. 10 of the ITI while recognizing that States may, at their discretion, also apply additional markings to the barrel and/or other parts of the weapon to aid in identification. By ensuring the marking of the essential component of a SALW (e.g., frame or receiver), States increase the odds that law enforcement can successfully trace the weapon and the point of diversion. As all the small arms instruments recognize, tracing of SALW that States have recovered from crime scenes is critical to combating the illicit trafficking of these arms.

Over the past several years, the United States has identified circumstances in which members of the SALW industry have sought assistance to avoid duplicate serial numbers on weapons that already have a marking. Specifically, many licensed manufacturers contract with other licensed manufacturers to perform various steps in the manufacturing process on SALW that already have a serial number and other required markings, and who then distribute those arms to another licensed manufacturer, or into the wholesale or retail market. The manufacturers performing a manufacturing process for another manufacturer often ask the regulatory agency - in our case, the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”) - for approval not to place their marks of identification on the SALW. ATF has approved many of these “nonmarking variance” requests after finding that they meet certain conditions. Multiple markings of the same type, such as multiple serial numbers, may be confusing to law enforcement and could potentially hinder effective tracing of SALW used in crimes. Therefore, ATF found that provided other means to identify SALW (including recordkeeping) are reasonable, and nonmarking variance requests will not hinder the effective administration of the SALW regulations.
The United States reasons that unique serial numbers on SALW serve several purposes. First, Federal firearms licensees use marks to effectively track their SALW inventories and maintain all required records. Second, the marks enable law enforcement officers to trace specific SALW that they recover from crime scenes from the manufacturer or importer to individual purchasers, and to identify lost or stolen SALW. Further, marks help prove in certain criminal prosecutions that SALW used in a crime have travelled in interstate or foreign commerce.

2. Cooperation in tracing

On tracing, the United States highlights the need to keep tracing within appropriate law enforcement channels to protect sensitive information and support ongoing investigations. There are now many organizations that appear to offer services to identify and “trace” SALW. However, it is important to recall the definition of tracing in the ITI which does not simply identify the manufacturer of a SALW, but involves the systematic tracking of an illicit SALW from the point of manufacture or importation through the lines of supply or distribution to the point it enters the illicit market. This generally requires the cooperation of several States, through their Point of Contact, to gather the applicable information from manufacturers, distributors, wholesalers, import or export authorities, etc. The United States reemphasizes the point that tracing, per the ITI, needs to be maintained within the proper channels to provide the best opportunity for appropriate officials to identify and shut down illicit SALW trafficking routes.