

Precedent in the Making

The UN Meeting of Governmental Experts

Introduction

How to stop a criminal from removing the identifying marks on a polymer-frame handgun? This was the kind of question asked, and sometimes answered, at the Open-ended Meeting of Governmental Experts (MGE),¹ convened at UN headquarters in New York from 9 to 13 May 2011. For the first time at a UN small arms meeting, the discussions were expert-led and relatively interactive as delegations focused on the practical details of weapons marking, record-keeping, and tracing, specifically as dealt with in the International Tracing Instrument (ITI) (UNGA, 2005).

The MGE produced an official report (UNGA, 2011a) and a more substantive Chair's Summary (New Zealand, 2011c). Yet, as of early 2012, it had not produced much in the way of concrete follow-up. The ideas, proposals, and lessons learned that states shared at the meeting, although reflected in the Chair's Summary, face an uncertain future. Nor have UN member states decided to convene any future MGEs. Still, the potential impact of the 2011 meeting appears significant.

Drawing on the Chair's Summary and the author's own observations from the meeting, this *Issue Brief* presents details of the MGE discussions with a view to identifying some of the key impediments to full ITI implementation, as well as the various means of overcoming them. It does not reach any conclusions concerning progress UN member states have made in their implementation of the ITI. Its aim, rather, is to examine the 'challenges and opportunities' inherent in such

implementation, specifically as discussed at the MGE.

This *Issue Brief's* main findings include the following:

- A key recommendation emerging from the MGE was for the establishment of a Technical Committee that would draft recommendations for marking in light of new developments in weapons manufacture and design.
 - Although the subject was broached at the MGE, differences between the marking of light weapons and that of small arms remain to be explored in the UN framework.
 - MGE delegations highlighted a series of challenges associated with
- the conversion of paper-based record-keeping systems into electronic form, including a lack of qualified personnel and software problems.
 - Meeting participants cited a lack of information in tracing requests, along with the inaccurate identification of weapons and weapons markings, as the leading causes of tracing failures. Weapons produced under licence in a second country were often misidentified because of the incorrect identification of the manufacturer or country of manufacture.
 - The MGE discussions revealed that, when their national and international lines of communication



Weapons used in crimes are displayed at a crime lab in the Mexican border city of Ciudad Juarez, March 2009.
Photo: Tomas Bravo / Reuters

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were good, national points of contact were often instrumental in resolving even the most complex weapons cases.

- The MGE highlighted the role of technology, both in complicating implementation of certain ITI provisions (as with the import marking of polymer-frame weapons) and in overcoming critical implementation challenges (such as through the use of digital photography for weapons identification).
- UN member states have yet to develop specific means of following up on the ideas, proposals, and lessons learned that are shared at MGEs.

The *Issue Brief* begins with a brief overview of the history leading to the convening of the first MGE in May 2011. It then focuses on the meeting discussions, topic by topic, with particular emphasis on the question of implementation challenges. The conclusion provides a brief assessment of the meeting and situates it in the broader framework of the UN small arms process, noting some unfinished business from the 2011 MGE.

The MGE: a short history

The possibility of a meeting focused on implementation has long been part of UN Programme of Action (PoA)² discussions. At the PoA's First Review Conference in 2006, many states expressed dissatisfaction with the first two Biennial Meetings of States (BMSs), held in 2003 and 2005. Both had involved mostly non-specific discussions of the PoA and its implementation; neither had produced an agreed substantive outcome. Despite relatively broad, though not unanimous, dissatisfaction with the two BMSs, the Review Conference reached no agreement on a new format or focus for future meetings.³

Change came in 2008. At BMS₃, UN member states discussed a limited set of PoA-related subjects. The meeting also produced a substantive outcome document that summarized key points from the discussions and outlined follow-up measures in each of the thematic areas.⁴ The same format was followed in 2010 for BMS₄, which also focused on a limited number of discus-

sion topics and produced a substantive outcome. The shift towards an expert-led discussion was not, however, complete. BMS₃ and BMS₄ blended the politically minded discussions that had dominated UN small arms meetings to that point with a more focused consideration of the details of PoA and ITI implementation. An Informal Meeting on Transfer Controls,⁵ hosted by the Government of Canada in August 2007 in Geneva, had demonstrated the merits of bringing together states, inter-governmental organizations, and civil society for interactive, in-depth discussions of international small arms control issues. Canada framed the meeting as a possible stepping stone to an 'inter-sessional process' that would complement the BMS approach.⁶

A proposal for 'periodic meetings of governmental experts' as part of 'a forward-looking implementation agenda for the Programme of Action' was made during the 'Other issues' session of BMS₃ and reflected in the meeting's outcome document (UNGA, 2008a, para. 29b). Several months later, the UN General Assembly nailed down the idea with its decision:

to convene an open-ended meeting of governmental experts for a period of one week, no later than in 2011, to address key implementation challenges and opportunities relating to particular issues and themes, including international cooperation and assistance (UNGA, 2008b, para. 13).

MGEs and other aspects of PoA follow-up were on the agenda of BMS₄. Although there was agreement on a six-year meeting cycle for the PoA, comprising two BMSs and one review conference, there was no agreement to include regular MGEs in the cycle. Instead, the BMS₄ outcome merely acknowledged that MGEs 'had a potential role to play in [the PoA] implementation architecture' if adequately prepared and 'action-oriented' (UNGA, 2010a, paras. 32, 44). UN member states left it to the 2012 PoA Review Conference to address the question of convening additional MGEs beyond that scheduled for 2011 (para. 44).⁷ With respect to the 2011 MGE, states emphasized the need to limit the number of issues under dis-

cussion, presumably in order to foster a 'pragmatic, action-oriented' exchange (paras. 32, 47).

Some months after BMS₄, the UN General Assembly adopted Resolution 65/64, which provided further detail on the objectives and format of the 2011 MGE. It recapped earlier language emphasizing the meeting's focus on the practical details of PoA implementation, in particular 'key implementation challenges and opportunities' (UNGA, 2010b, paras. 6–7).⁸ In this regard, it encouraged states 'to contribute relevant national expertise' to the meeting (basically by sending experts) (para. 9). It also stressed the importance of civil society contributions to PoA implementation, specifically for purposes of preparing for the MGE (para. 10). In relation to international cooperation and assistance, which Resolution 63/72 had already identified as an MGE theme, Resolution 65/64 encouraged states 'to consider ways to enhance cooperation and assistance and to assess their effectiveness' (para. 15). Finally, the resolution set the dates for the meeting: 9 to 13 May 2011 (para. 6).

The chair of the 2011 MGE, Ambassador Jim McLay of New Zealand, was designated at the time of BMS₄, in June 2010. He immediately undertook consultations with UN member states regarding such questions as meeting format and themes (New Zealand, 2010a). Many delegations expressed support for a format that would 'discourage set-piece national statements in favour of focused interactive dialogue' (New Zealand, 2010b, p. 2). The possibility of convening parallel sessions 'to facilitate interactive, technical discussions amongst experts' was considered, but ultimately rejected due to a lack of meeting space and also because many smaller delegations would have had difficulty covering parallel meetings (New Zealand, 2010d, p. 3).

The subject of civil society participation in the MGE also came up. Whereas UN small arms meetings had hitherto allowed civil society representatives to make statements only during a separate dedicated session, the Canadian Informal Meeting of August 2007 had set aside at least one half-hour for interventions from non-state participants following the initial interventions

of states in each session (Canada, 2007, para. 6). Political opposition precluded such an arrangement for the MGE although, continuing a practice begun at BMS³, representatives of civil society, along with representatives of inter-governmental organizations and states, made presentations at the beginning of the thematic sessions to introduce the subject at hand. These were complemented by national or regional case studies related to the topic.⁹

The chair-designate emphasized, in general terms, the importance of 'the interactive sharing of information and experiences among experts' (New Zealand, 2011a, p. 2). More specifically, he encouraged states to send relevant experts to the MGE (p. 3). The UN Development Programme established a voluntary sponsorship programme 'to facilitate attendance by relevant experts from developing states' (p. 3).

The question of meeting themes was also the subject of much discussion and debate in advance of the 2011 MGE. General Assembly Resolution 63/72 had put international cooperation and assistance on the agenda. Other possibilities included:

tracing, trade across borders, illicit brokering and stockpile management. In addition, some states have suggested a focus on key aspects of national implementation infrastructure, such as national legislation, national reporting or national coordinating bodies (New Zealand, 2010c, p. 2).

At the end of the day, the field was narrowed down to marking, record-keeping, and tracing, principally as addressed in the ITI, but also in the PoA and the UN Firearms Protocol, to the extent these instruments added normative value to the ITI.¹⁰ Sessions on those three themes were complemented by others on national frameworks (national implementation of the ITI in general terms), regional cooperation, and international assistance and capacity-building. In keeping with the mandate, as first articulated in General Assembly Resolution 63/72, international cooperation and assistance was made a cross-cutting theme, relevant to each of the substantive topics. In order to assist states in their preparations,

Ambassador McLay distributed a set of thematic discussion papers in advance of the meeting (New Zealand, 2011b).

The MGE

Most of the delegations that took the floor during the MGE offered information on their national practices in the area of marking, record-keeping, and tracing and related legislative and enforcement efforts. Sometimes they made specific reference to the ITI (or the PoA). More often, they did not.

Overall, the information states provided on their implementation of the ITI at the MGE did not add significantly to the existing store of knowledge, which is based on national reporting.¹¹ It seldom contained the level of detail that would be needed to determine the extent of national implementation of the ITI. For example, the states that took the floor on marking methods mostly articulated the objectives they sought to fulfil in this area, such as making the erasure of markings difficult. Only occasionally did they provide details as to the methods they used (such as stamping and engraving).

In any case, as indicated above, the purpose of the MGE was not to elicit information from states that would allow for an assessment of their implementation of the ITI. Rather, the meeting was designed to facilitate the sharing

of detailed information and experiences that might eventually enhance implementation. In the event, often as part of their account of national implementation, many MGE delegates did have something to say about 'implementation challenges and opportunities'. With varying degrees of candour and specificity, states described the obstacles they had encountered in implementing the ITI or, more simply, in establishing effective systems for small arms marking, record-keeping, and tracing, including lessons learned and successes in coping with implementation challenges.

While this *Issue Brief* provides some indication of the information states offered on national implementation in each of the thematic areas, it focuses on the 'implementation challenges and opportunities' states highlighted at the MGE. Using both the Chair's Summary (New Zealand, 2011c) and the author's own observations from the meeting, it seeks to provide a record of some of the current sticking points in ITI implementation as recounted by MGE delegations.

Marking

National interventions during the MGE session on marking covered both the methods and the content of marking. While states provided relatively little



A Massachusetts State Police Crime Lab forensic chemist holds up a gun entered into evidence as the murder weapon, during a murder trial in Woburn, Massachusetts, June 2008. Photo: Bill Greene / Pool / REUTERS

information on marking at the time of manufacture, they offered more on post-manufacture—and especially import—marking. In accordance with paragraph 8d of the ITI, several delegations indicated they had ensured, or were in the process of ensuring, that all small arms held by government armed and security forces were marked. Some states reported that they marked weapons that were found or seized on national territory but not destroyed. Several others said they were strengthening existing legislation or adopting new legislation to fill gaps relating to weapons marking. A few countries provided information on the enforcement of these laws, especially those relating to the falsification, removal, or defacement of weapons markings.

New developments in weapons manufacture and design. Some states with significant small arms production called attention to recent developments in weapons manufacture and design that made certain aspects of ITI implementation more difficult. They noted, for example, that the increased popularity of modular weapons designs, which provide for the routine changing of major components, could result in the marking of different serial numbers on distinct parts of the same weapon, increasing the risk of misidentification.

Whereas the ITI prescribes the application of a ‘unique marking [. . .] to an essential or structural component of the weapon [. . .] such as the frame and/or receiver’, it also encourages the

marking of ‘other parts of the weapon such as the barrel and/or slide or cylinder’ (UNGA, 2005, para. 10). Depending on the type of firearm, more than one of these components could be marked with the same serial number (for handguns: frame, barrel, and slide). If one or more parts are subsequently changed, however, the identifying numbers will be different.¹²

Another recent trend in firearm manufacture that gave rise to considerable discussion at the MGE was the increasing use of polymer frames, especially in guns destined for the civilian market, given their important advantages in cost, weight, and performance. In contrast to the marking of metal-frame weapons, which typically leaves an imprint on the metal underlying the mark, it is difficult to mark polymer-frame weapons durably, as the ITI stipulates (UNGA, 2005, para. 7). As several states pointed out, metal strips containing serial numbers can help to overcome this obstacle, but these can be removed by a criminal.¹³ Delegations also noted that since the use of polymer frames for military firearms was limited, the tracing of conflict weapons would not be greatly affected by this problem.

Nevertheless, states called on governments and industry to discuss and develop practical solutions for the durable marking of other, mostly civilian, polymer-frame weapons. In fact, the key recommendation emerging from this discussion of new manufacturing trends was for the establishment of a Technical Committee, comprising

representatives of governments and industry; this group would draft recommendations for weapons marking in light of new developments, such as polymer casing and modular design.

Import marking. Import marking under the ITI, although not mandatory, is strongly encouraged (UNGA, 2005, para. 8b). At the MGE, several states emphasized its importance for tracing. If a small arm or light weapon lacks an import mark, efforts to trace it have to rely on a record-keeping trail, which may reach back many years, and possibly several decades, to the date of manufacture.¹⁴ Nevertheless, as several participants underlined during the MGE discussions, certain factors can make import marking difficult.

The key problem is that post-manufacture marking methods, such as stamping, that are sufficiently ‘durable’ (UNGA, 2005, para. 7) to thwart many attempts to remove them may harm the weapon (or at least invalidate manufacturer warranties) because of the force applied during marking.¹⁵ As discussed at the MGE, there are two ways of dealing with this problem. The first is for the manufacturer to make the import mark prior to import. This is possible in cases of direct international sale. If, however, the weapons are acquired some time after manufacture, through a dealer, for example, or if the manufacturer refuses to include import marks in the production run, perhaps because of the additional expense, then the importing entity must make the import marks itself. Several participants pointed out that, in such cases, laser engraving poses no danger to the physical integrity of the weapon but is less resistant to attempts at sanitization (alteration or erasure of markings).

Some states that took the floor during the MGE said that the markings on imported small arms were carefully recorded or that import was refused if serial numbers were not already present on the weapon. While both practices are important in ensuring the traceability of the weapon, neither replaces the application of an import mark identifying the country of last legal import. As explained above, this step can determine the success or failure of a trace.



Polymer frames, increasingly used in firearms destined for the civilian market, present challenges in marking weapons durably. Photo: Robin Ballantyne / Omega Research Foundation



A pistol with its serial number scraped off, Rio de Janeiro, Brazil, May 2004. The gun was seized during the arrest of a 26-year-old drug dealer accused of killing several policemen. Photo: Alaoir Filho / Agência Estado / AE

Falsification, alteration, and erasure of markings. Much of the MGE marking discussion centred, explicitly or implicitly, on the problem of criminal attempts to falsify or sanitize markings. As indicated above, in conjunction with other factors, this difficulty influences the choice of marking methods. It also shapes weapons tracing strategies. Participants emphasized law enforcement tools such as the use of covert markings, applied by some manufacturers in addition to regular (visible) markings, along with proof markings, which, although unique, are often untouched by traffickers. They also mentioned strategies such as the development of new techniques for the recovery of sanitized markings and the use of evidentiary rules in the prosecution of weapons-related offences (shifting the burden of proof for suspects in possession of firearms with sanitized markings). Participants underlined the importance of criminalizing the removal or distortion of weapons markings.

Trade in illicit parts. In its 2003 report, the Group of Governmental Experts on Tracing raises the problem of traffickers reconstituting an unmarked weapon from unmarked components (UNGA, 2003, para. 62h). In response, the Open-ended Working Group that negotiated the ITI included a provision specifying that a 'unique marking [serial number] should be applied to an essential or structural component

of the weapon', meaning the frame or receiver in the case of a firearm (UNGA, 2005, para. 10). The importance of this provision in combating the trade in illicit parts (and the reconstitution of an unmarked weapon) was highlighted at the MGE.

Temporary export and re-import.

At the MGE, one state explained that a judicial ruling mandated the import marking of weapons (for example, hunting rifles) that had been temporarily exported and then *re-imported* into the country, notwithstanding ITI language exempting temporary imports from import marking. As reflected in the MGE Chair's Summary, it is important that national control frameworks cover all aspects of related transactions (temporary export as well as import) when translating ITI commitments into domestic law (New Zealand, 2011c, p. 4).

Craft production. Craft production, which, by definition, is not authorized by the state that has jurisdiction over the activity, poses a challenge to national efforts to ensure compliance with ITI marking standards. Meeting discussions emphasized the importance of bringing this activity under regulatory control—and of informing craft producers of applicable laws and penalties, and training them in weapons marking.

Marking small arms v. light weapons. At the MGE, states mentioned the fact that small arms, on the

one hand, and light weapons, on the other, are marked differently, because of their different physical characteristics, but they did not elaborate or engage in follow-up discussion. In fact, several distinguishing features of the two weapons categories have implications for marking. These include the greater surface area of light weapons; the greater fragility of many light weapons components (such as electronic control systems); and the integration of ammunition with the launcher in some light weapons systems. To date, discussions of the ITI marking commitments have focused on firearms (small arms and a narrow range of light weapons); there has been little consideration of the marking of light weapons generally.

Record-keeping

Given constitutional differences among states, and particularly the presence or absence of a federal structure, national practices in the area of record-keeping often vary significantly. Record-keeping systems may be centralized or decentralized. Decentralization can take different forms, such as the separation of record-keeping systems among sub-national units of government, between government and the private sector (manufacturers or dealers), or between the police and the military.

Yet, whatever form they take, record-keeping systems need to fulfil certain minimum functions. Prompt access to accurate records allows a country to respond to tracing requests from other states 'in a timely and reliable manner' (UNGA, 2005, para. 11). At the national level, accurate records are needed for the prosecution of weapons-related offences. Insufficient or inaccurate record-keeping thwarts the achievement of these objectives.

Legislative framework. As in other areas discussed at the MGE, several states underlined the importance of an adequate legislative framework for record-keeping, applicable to all relevant actors, both governmental and non-governmental. They stressed that national laws needed to establish an obligation to keep records and provide for sanctions for non-compliance, as underpinned by ITI marking provisions.



Criminal Investigation Division officials record details of guns during arms registration at the Registro Balístico in Tegucigalpa, Honduras, on 15 August 2005. Photo: Ginnette Riquelme / AP Photo

Several participants also emphasized the importance of the ITI provision requiring manufacturers and dealers that cease activity to forward their weapons records to the state (UNGA, 2005, para. 13).

Maintenance of weapons registers and data. The challenge of maintaining effective record-keeping systems elicited comment from several national delegations. They underscored the need to recruit qualified and sufficiently numerous personnel, pointing out that targeted, sustained training of these officials facilitated the accurate identification of weapons and weapons markings and, consequently, an accurate record. They cited measures that states could implement to ensure the continued reliability of record-keeping systems, namely regular spot checks of data accuracy and consistency, together with computer surveillance software that searches electronic systems for incompatible records. States also stressed the importance of safeguarding against unauthorized access to and use of record-keeping systems.

Computerization. Several states that took the floor at the MGE described projects, ongoing or completed, to convert paper-based record-keeping systems into electronic form. Some delegations also requested technical

assistance in order to help them undertake such a conversion. The challenges that states highlighted in this area included a lack of qualified personnel and software problems, such as in the electronic conversion of non-alphanumeric scripts into alphanumeric form. One state recounted that such difficulties had prevented it from completing a conversion process. States reported on several strategies that had proven successful in managing such conversions, including:

- adequate training of personnel (in particular, to ensure they understood what information was needed for a record);
- the provision of necessary equipment;
- defining minimum content for the creation of an electronic record;
- the development of software to convert non-alphanumeric markings into alphanumeric form; and
- strong project control, with clear definitions of software, personnel, and security requirements.

Integration of multiple systems.

Several participants highlighted particular challenges to effective record-keeping, such as a lack of uniformity and appropriate linkages across multiple registers. Some states indicated that they were integrating separate police and military systems. Others said they had centralized or were centralizing civilian firearm records, although legal restrictions precluded this in some countries.

Record retention. The MGE discussions revealed that not all states were complying with ITI norms on record retention. Very few delegations made explicit reference to the ITI when indicating how long they kept records of small arms and light weapons, although several states did cite figures consistent with the ITI minimum of 30 years for manufacturing records and 20 years for all other records, including import and export records (UNGA, 2005, para. 12). Many states that took the floor on this issue said they kept weapons records indefinitely, as encouraged in the ITI (para. 12), given the utility to tracing and reductions in the cost of long-term electronic data storage.

Yet one state gave a figure of ten years, citing the outdated UN Firearms

Protocol standard (UNGA, 2001a, art. 7). Another indicated that it destroyed corresponding records one year after the final disposal of a weapon. This, another delegate pointed out, could facilitate the diversion of a weapon that had not actually been destroyed, the elimination of the record rendering the weapon untraceable.

Record-keeping in post-conflict settings.

Several MGE participants noted the need to build capacity for effective record-keeping in post-conflict situations and other contexts in which states are seeking to increase their control over the circulation of small arms and light weapons.

Cooperation in tracing

The discussion of cooperation in tracing at the MGE saw delegations recount national experiences in the conduct of weapons tracing, highlight its potential in a range of contexts, and call attention to particular problems that impeded successful tracing.

States provided little information on the outcomes of specific tracing operations, but in several cases they offered an overview of their experiences. Some states reported a relatively high rate of success in their tracing efforts, while others indicated that they received no response at all to some of their requests. Non-response is, in fact, a breach of ITI commitments to 'acknowledge receipt [of a tracing request] within a reasonable time' and subsequently explain any delay or restriction in the contents of a response, or refusal to respond (UNGA, 2005, paras. 19, 22–23).

Despite such limits to tracing cooperation (and ITI implementation), delegations that took the floor during the session broadly emphasized the importance of weapons tracing in crime and conflict settings. Participants argued that, as a law enforcement tool, tracing could be used not only to prosecute individuals guilty of weapons offences, but also to identify illicit trafficking networks and neighbourhoods prone to gun crime, and to focus police resources on these problems. Yet some pointed out that tracing was only one instrument in a broader law enforcement arsenal that included, for example, ballistics information systems.

A number of states also emphasized the value of tracing small arms and light weapons during and after armed conflict in an effort to curb proliferation and enhance security; several delegations cited weapons traces conducted by UN expert panels in support of investigations of arms embargo compliance. MGE participants also highlighted the potential utility of tracing to the control of international arms transfers, noting that tracing results could be used to evaluate the effectiveness of national import controls in preventing arms smuggling. Some also observed that export licensing authorities could use tracing data to identify destinations and recipients that present a significant risk of diversion before authorizing arms shipments to them.

States mentioned a series of challenges for tracing during the MGE session, as discussed below.

Insufficient information. Along with the problem of weapons misidentification (see below), MGE participants consistently cited a lack of information in tracing requests as a key reason for tracing failures. When discussing this issue, most states emphasized the failure to provide full information on weapon type and model, as well as weapons markings. Some participants highlighted the need for more information on the case motivating the tracing request.

Misidentification of weapons and markings. Several participants highlighted the inaccurate identification of weapons and weapons markings as the leading cause of tracing failures. They cited poor weapons design or model recognition and the misinterpretation of different types of markings as common failings. Some remarked that the development of weapons families that shared similar design features had further increased the risk of misidentification. Yet participants also identified a range of solutions to the problem of misidentification, including continuous training to maintain police identification skills; the use of digital photography; and the use of electronic databases, such as the INTERPOL Firearms Reference Table, to enhance firearm identification.

Licensed production. Several states indicated that, in their experience, weapons produced under licence in another country were often misidentified because of the incorrect identification of the manufacturer or country of manufacture. They said that in some cases the problem lay with the party requesting the trace (due to a misinterpretation of weapon type or model, or of weapons markings); in others, particularly cases of unlicensed manufacture abroad, the markings were fraudulent or absent (such as when the country of manufacture was not indicated). MGE delegations noted that proof marks, located on the frame or barrel of a firearm in participating countries, could be used to overcome the lack of information on the country of origin.

Delays. Several delegations complained of delays in receiving responses to tracing requests they had submitted to other states. Some noted that such delays could, for example, force the state requesting tracing information to release a suspect for lack of evidence once the time limit for their provisional detention had been reached. Delegations stressed that national-level cooperation among relevant government agencies, and between government and industry, was important in minimizing the delays that could occur in responding to tracing requests. In this regard, participants also highlighted the importance of direct lines of communication between relevant officials in different countries.

Neglecting weapons offences. States considered whether it generally made sense to drop a weapons charge in favour of a criminal charge that was easier to prove, such as drug possession or trafficking, partly to avoid conducting a time-consuming, potentially unsuccessful trace. While some participants asserted that this was the general tendency, a number of countries said that they did not normally abandon weapons prosecutions, especially as the penalties for such offences were often quite severe. Their preference was, whenever possible, to bring the most serious charge.

Confidentiality. Several MGE participants noted the importance of transmitting tracing-related information,

including on intermediate and final weapon purchasers, through secure channels. Some delegates reported that their states had passed legislation to that effect. Others mentioned that such exchanges usually involved law enforcement personnel, although in recent years INTERPOL had granted certain UN peacekeeping missions and other UN bodies⁶ access to its police information systems, including secure channels of communication for the dispatch and receipt of tracing requests.

Participants called attention to the fact that some states, especially common law jurisdictions, allowed for the disclosure of tracing information during judicial proceedings. Delegates noted, however, that although confidentiality rules could make weapons-related prosecutions more difficult, they did not make them impossible; they pointed out that, in most cases, prosecutors worked over the long term to complete the investigation.

Long lifespans. At the MGE, several states noted that the long lifespan and complex chain of ownership of many small arms and light weapons, especially those that had crossed several borders, made tracing difficult. In this context, they singled out poor record-keeping and the frequent absence of markings noting the country of last legal import. Delegates said that newer weapons were easier to trace, not only because they had normally seen fewer changes of ownership, but also because there was a better chance that records still existed and, moreover, could be easily accessed in electronic form. They observed that older weapons, especially those without import markings, were often untraceable and that, even if the manufacturer of the weapon still held the original record, there was a high risk of a break in the record-keeping chain (records reflecting changes in ownership) following the point of manufacture. Some countries reported the wholesale loss of records from earlier periods in their history. Others noted that apparently complex traces were sometimes straightforward and that national records occasionally provided information on the weapon's most recent history, obviating the need for tracing assistance from the country of manufacture or of last legal import.

National frameworks

The MGE discussion of national implementation frameworks focused on ITI provisions that address broad aspects of implementation, such as points of contact, as well as the interface between national implementation and bilateral, regional, and international action.

Legislation was a key theme of the session. Several participants outlined plans to develop or adopt new legislation, or to strengthen existing laws. Yet participants highlighted the need to evaluate implementation gaps and needs before developing national legislation and structures. A number of states noted the importance of linking national frameworks for marking, record-keeping, and tracing to national programming in related areas, such as national development.

National points of contact. Much of the national frameworks discussion was devoted to the topic of national points of contact, including their role in tracing and in broader aspects of ITI implementation, such as information exchange. Several states indicated that they had not yet designated a point of contact or had initially delayed doing so. Some delegates said that these delays stemmed from uncertainty surrounding the relationship between the point of contact for the PoA and that for the ITI; others spoke of disagreement about which national agencies—police, defence, or foreign affairs—should fulfil this function.

Several states noted that the ITI's reference to 'one or more national points of contact' (UNGA, 2005, para. 25) pointed to a division of functions, particularly between tracing operations and other aspects of ITI implementation, such as the exchange of information on national marking practices (para. 31b) or assistance needs (paras. 27–29). Numerous participants asserted that the tracing point of contact needed to be police-based given long-standing police experience in the protection of confidential information and international tracing practice, including cooperation among national police forces through INTERPOL's National Central Bureau system. Several states said that they had designated a single point of contact both for the PoA and for broader



Ugandan police markings applied to a Chinese Type 56 assault rifle as part of Uganda's initiative to mark all small arms and light weapons in defence and security force inventories. Photo: Conflict Armament Research Ltd., 2012

aspects of ITI implementation, in particular information exchange.

MGE participants noted several challenges in ensuring the effective functioning of national points of contact. In particular, they argued that the tracing point of contact should have ready access to all of a country's record-keeping systems (such as those for military, police, and civilian weapons). One state said that its ITI point of contact convened regular inter-ministerial meetings in order to ensure the coordination of marking, record-keeping, and tracing policy within the country. At the international level, participants stressed the important role of the UN Programme of Action–Implementation Support System in communicating point of contact information to all UN member states.¹⁷ The discussion revealed that, when their national and international lines of communication were good, points of contact were often instrumental in resolving even the most complex weapons cases; wherever these conditions held, critical information could be exchanged in a matter of days.

National reporting. Several MGE participants expressed concern over the low levels of national reporting on ITI implementation and the resulting shortfall in communication among states. Some countries noted that the administrative burden associated with reporting was alleviated by the ITI's incorporation of a biennial reporting

schedule. Others stated that the reporting task, in particular the collection of information from different government agencies, was eased through the use of national coordination agencies.¹⁸

Implementation mechanisms and policy instruments. In considering challenges in the area of national frameworks, a number of states cited difficulties in ensuring the full implementation of existing laws, including their effective enforcement. Several states noted that a lack of coordination within government could hinder ITI implementation; they spoke of a need for a 'whole of government' approach that employed implementation mechanisms, as well as policy instruments, to structure participation and coherent action across government.

Among the implementation mechanisms they used for improved national coordination, states cited national firearms (or small arms) commissions, national firearms platforms, and national management committees. They indicated that these mechanisms helped ensure continuity in the face of personnel changes, as well as adequate cooperation and expertise among relevant staff. Delegations emphasized the importance of broad participation in such institutions, not only of the government agencies involved in ITI and PoA implementation, but also of industry and other civil society representatives. With respect to policy instruments, several states underscored the

utility of national action plans in coordinating ITI implementation across all sectors of government.

The MGE discussion highlighted a broad range of applications for these mechanisms and policy instruments, including the review of implementation; the identification of implementation needs and gaps; information exchange and policy coordination across government; and the development or revision of national small arms policy.

Additional challenges. Among other challenges states cited in relation to national implementation frameworks were language barriers preventing full uptake of relevant technology (such as user manuals in a foreign language). During this and other MGE sessions, several countries cited the ITI's politically binding nature as an obstacle to its full and effective implementation. A number of states asserted that a legally binding framework would better support national implementation efforts, including inter-agency coordination, and would enhance linkages between the ITI (and the PoA) and other international processes that dealt with arms trafficking.

Regional cooperation

Both the International Tracing Instrument and the Programme of Action acknowledge the importance of regional cooperation to their implementation.¹⁹ During the corresponding session at the MGE, participants outlined some of the activities conducted by regional organizations, or within a national framework, to support work on marking, record-keeping, and tracing. These included the development of model legislation, regional implementation standards, and best practice guidelines; training and other capacity-building activities; and the provision of marking machines.²⁰ More broadly, states emphasized continuity, complementarity, and cost-effectiveness as guiding principles for regional-level work.

Regarding implementation challenges, MGE participants underlined the need for regional organizations to remain responsive to the needs of member states; they called attention to the risk of large organizations losing 'proximity' (and relevance) to these

countries (New Zealand, 2011c, p. 13). States saw another key challenge in ensuring inter-state cooperation where regional cooperation was limited; they suggested bilateral and trilateral relationships as useful alternatives in such cases. Some states also highlighted the importance of cooperation between regional and sub-regional organizations. They identified meetings, workshops, and other forms of interaction as ways to facilitate the exchange of information and experience and to strengthen relationships between these organizations. Participants also mentioned challenges such as the duplication of efforts among organizations in certain regions and differences in legislation, capacity, and interest that made common action between states in a region more difficult.²¹

International assistance and capacity-building

Given its pivotal role in ITI (and PoA) implementation, international assistance and capacity-building was a cross-cutting theme at the MGE. Many of the assistance and capacity-building needs states articulated during the MGE were relevant to two or more substantive areas. These included:

- equipment (such as marking machines and record-keeping software);
- training (such as on the use and maintenance of equipment, weapons identification, and data entry);
- sharing of technical expertise (such as in combating the falsification or sanitization of markings);
- legislation (such as the strengthening of existing legislation and assistance in the adoption of new legislation);
- building institutional capacity (such as for effective tracing); and
- support for the development of national action plans and associated national legislation.

During the session on record-keeping, states formulated a range of assistance needs specific to that topic, including:

- technical assistance for the conversion of paper-based records into electronic form;

- building capacity for record-keeping in post-conflict settings as part of broader weapons collection programmes; and
- addressing the problem of understaffed and under-resourced firearm registries.

With respect to building national capacity for effective implementation, MGE participants underlined the importance of several existing tools:

- mechanisms that help match needs and resources (such as the New York-based Group of Interested States and the Programme of Action–Implementation Support System);
- model legislation, guidelines, and standards;
- multilateral funding mechanisms for ITI and PoA implementation (such as the UN Trust Fund for Global and Regional Disarmament Activities); and
- small arms research, seminars, and workshops.

Participants reported that assistance took several forms—financial, material, and technical—and occurred within bilateral, regional, and international frameworks. They also noted the importance of South–South, as well as North–South, cooperation. Several delegations emphasized the role of assistance efforts in building capacity in both recipient and donor states, citing the enhancement of inter-agency



Seized munitions showcased to the media at a military compound in Bara, Pakistan, January 2012. Photo: Khuram Parvez / REUTERS

cooperation in the latter. Some states criticized the imposition of conditions on assistance, stressing the importance of equal access to assistance by all states that require it.

In keeping with the MGE mandate 'to consider ways to enhance cooperation and assistance *and to assess their effectiveness*' (UNGA, 2010b, para. 15, emphasis added), delegations also identified factors that facilitate (or impair) the provision, uptake, and long-term effectiveness of assistance. States mentioned such elements as:

- national ownership of assistance and capacity-building initiatives in recipient states, including sustained political support for implementation;
- the capacity of recipient states to assess their needs;
- the ability of recipient states to draw on national resources, including human resources, as a complement to international assistance programmes and projects; and
- the adaptation of assistance efforts to the specific needs and contexts of recipient countries ('no "one size fits all" approach'; New Zealand, 2011c, p. 15).

Several delegations stressed that the long-term effectiveness of assistance initiatives depended on the provision of comprehensive and ongoing support. They argued that it was not sufficient to provide marking equipment, for example, but that relevant personnel needed to be trained in its use and maintenance. Moreover, they pointed out that a machine that marked weapons would have little impact without associated equipment, such as computers and record-keeping software to record information on marked weapons. In general terms, participants said it was important to ensure the sustainability of any transfer of knowledge and technology. They also cited broader challenges such as the avoidance of overlap and duplication in the provision of assistance, specifically through improved transparency and coordination.

Conclusion

This review of the MGE discussions reveals that the meeting was, as intended,

largely 'pragmatic [and] action-oriented' in nature (UNGA, 2010a, para. 32). In every session, states identified a range of factors that were impeding or slowing ITI implementation, as well as practical solutions to such problems. The chair contributed to this success, posing questions on the various themes, distilling key points from national interventions, and, in many cases, following up with specific questions to delegates. Ambassador McLay also encouraged participants to respond to points raised or questions posed by other delegations. In contrast to other UN small arms meetings, this one was not only expert-led, but also quite interactive.

That said, meeting expertise and interactivity had somewhat tenuous footing. Although many states had experts on their delegations, a significant number remained silent during the meeting. Some delegations were represented solely by New York-based diplomats. At the end of the day, a relatively small number of experts, typically from industrialized countries, made a disproportionately large contribution—both to the content of the discussions and to their interactive nature. Nevertheless, for the first time at a UN small arms meeting, the term 'implementation challenges and opportunities' was more than a mere slogan.

The 2011 MGE revealed considerable breadth and depth in weapons marking, record-keeping, and tracing practice throughout the world. It was not the role of the meeting to assess the extent to which that activity was tied to the ITI, but the MGE can be expected to have some influence in raising awareness of the Instrument's existence and spurring strengthened implementation. There is some early evidence that the MGE did just that.

The number of national points of contact notified to the UN Office for Disarmament Affairs—one key marker of ITI implementation—saw a huge boost from the meeting, rising from 18 in mid-January 2011 to 67 by 12 May, the second-to-last day of the MGE (McDonald, 2011, pp. 49–50; UNODA, 2011).²² Moreover, INTERPOL figures show an increase in the number of tracing requests that the organization is copied on: from an average of 25 per

month during the two-year period preceding the MGE, to an average of 36 per month thereafter (representing thousands of firearms, through January 2012).²³ It also appears likely that the MGE discussions, including those conducted among participants in the margins of the meeting, will catalyse follow-up action in some cases.²⁴ One of the 2011 MGE's most important legacies could be the development of contacts among the experts who attended the meeting and their subsequent interaction.

As of early 2012, the implications of the 2011 MGE for the UN small arms process were unclear. The UN membership had yet to agree to convene any further MGEs, leaving this question to the PoA's Second Review Conference, scheduled for August–September 2012 (UNGA, 2011b, para. 14). Although the UN's general ('omnibus') resolution on small arms endorsed the formal (largely non-substantive) MGE report²⁵ and took 'note with appreciation of the Chair's summary of discussions' (para. 5), it did not follow up on the many recommendations that emerged from the meeting, some of which, such as the establishment of a Technical Committee for weapons marking, require multilateral action.

The MGE highlighted the role of technology, both in making implementation of certain ITI provisions more difficult (as with the import marking of polymer-frame weapons) and in overcoming key implementation challenges (such as through the use of digital photography for weapons identification). While these findings and others are set out in the Chair's Summary (New Zealand, 2011c), it is not yet clear whether or how this text will translate into concrete follow-up. There is also a need to distil, presumably in UN document form, the various elements of the meeting that contributed to its success, including the expert-led nature of the discussions, their interactive character, and the chair's role in facilitating such processes. Among other things, such a document might help address the—as yet unanswered—question of how to distinguish the mandates of BMSs, review conferences, and MGEs.²⁶

The place of MGEs in the PoA meeting cycle is not yet assured. Specific means of following up on the ideas, proposals, and lessons learned shared at such meetings still have to be developed. Yet, if the aim of UN small arms meetings is to foster the strengthened implementation of the PoA and ITI, the logical first step is to examine the ‘challenges and opportunities’ inherent in implementation. The 2011 MGE shows what can be done in this respect, but concrete follow-up remains uncertain given, among other things, the current lack of institutional footing for MGEs generally. Precedent in the making, but not yet made. ■

List of abbreviations

BMS

Biennial Meeting of States

INTERPOL

International Criminal Police Organization

ITI

International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (‘International Tracing Instrument’)

MGE

Open-ended Meeting of Governmental Experts

PoA

Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects

Endnotes

- 1 The full title of the event was the Open-ended Meeting of Governmental Experts on the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.
- 2 The PoA is the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects; see UNGA (2001b).
- 3 See McDonald, Hasan, and Stevenson (2007, p. 125). In fact, like BMS₁ and BMS₂, the First Review Conference produced no substantive outcome of any kind.
- 4 See Bevan, McDonald, and Parker (2009, pp. 136–43).
- 5 The full title is the Informal Meeting on Transfer Control Principles for Small Arms and Light Weapons.
- 6 See Canada (2007, ‘Conclusion’). The Chair’s Summary can be requested at <ida@international.gc.ca>.
- 7 See also UNGA (2010b, para. 20).
- 8 See also UNGA (2010b, para. 8).

- 9 For more on these presentations, see New Zealand (2011c) and UN (n.d.a).
- 10 On this issue, see the opening (normative) paragraph in sections II to VII of the MGE Chair’s Summary (New Zealand, 2011c). See also UNGA (2001a).
- 11 See Parker (2011, pp. 46–69).
- 12 Although not discussed at the MGE, one solution to this problem is to identify a ‘control component’ (for a firearm: the frame or receiver) and use only the markings on that component to identify the weapon. At the same time, it is important to track component changes (especially of the frame or receiver) through accurate and up-to-date record-keeping.
- 13 The methods used to recover markings on metal-frame weapons that criminals seek to erase cannot be employed on polymer frames. For some polymer-frame firearms, covert markings inserted at the time of manufacture can instead be used to defeat attempts at sanitization (alteration or erasure). Author correspondence with Firearms & Explosives Programmes, INTERPOL, 14 February 2012.
- 14 See Bevan (2009, pp. 118–19).
- 15 See Persi Paoli (2010).
- 16 The UN bodies include sanctions committees, special political missions, and special tribunals.
- 17 See UN (n.d.b).
- 18 See UNGA (2001b, para. II.4).
- 19 Regarding the ITI, see UNGA (2005, para. 26). Regarding the PoA, see UNGA (2001b, para. III.11).
- 20 See New Zealand (2011c, pp. 12–13).
- 21 See New Zealand (2011c, p. 13).
- 22 See also UNGA (2005, para. 31). Note that, as of 15 February 2012, the PoA–Implementation Support System listed ITI point of contact information for 74 UN member states.
- 23 These figures represent tracing requests (973 total), not numbers of firearms traced (several thousand), and may include a limited number of repeat requests. Note that only tracing requests were counted, not requests for additional information, responses to tracing requests, or reports of firearm seizure not involving a tracing request. These figures reflect only tracing requests sent through INTERPOL’s I-24/7 communication system, on which the INTERPOL General Secretariat was copied; they do not reflect bilateral requests between countries on the system. Author correspondence with Firearms & Explosives Programmes, INTERPOL, 9 February 2012.
- 24 For example, within one month of the meeting, MGE discussions had led to plans for a nationwide training initiative for police in Papua New Guinea, involving firearms identification, record-keeping, and tracing. Author correspondence with the New Zealand Permanent Mission to the United Nations in New York, 20 July 2011.
- 25 See UNGA (2011a).
- 26 See UNGA (2010a, paras. 34, 48).

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