

Connecting the Dots

THE INTERNATIONAL TRACING INSTRUMENT

The *International Tracing Instrument*, applicable to all UN Member States since December 2005, constitutes a modest, but significant, step forward in international efforts to address the small arms problem. With few exceptions, it consolidates and reinforces key international standards in the areas of weapons marking and record-keeping. In the area of tracing cooperation and, to some extent, implementation, it goes well beyond existing norms. The *Instrument* nonetheless reflects a series of compromises. Foremost among these, it is not legal, but political, in character. Nor does it cover small arms and light weapons ammunition.

Controversies over the character and scope of the future instrument preceded the actual negotiations. Yet, as neither a preparatory experts group nor the UN General Assembly was able to resolve these issues, they were left to the negotiators. The chapter outlines the process leading up to the tracing negotiations and recaps the main developments of the negotiations themselves. It also describes the important, but limited, role played by civil society in the process.

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The chapter mostly devotes itself to a section-by-section review of the contents of the *Instrument*, beginning with the thorny questions of character and scope. The question of character may be revisited later, as part of the review of the *Instrument*'s 'future development' that states have agreed to. As for ammunition, while keeping it out of the *Tracing Instrument*, the negotiators recommended addressing it 'in a comprehensive manner as part of a separate [UN] process'. This outcome increases the risk that small arms and light weapons will be separated from their ammunition in future UN small arms negotiations, even though there may be no technical justification for doing so. On a more positive note, the *Instrument* contains a clear, adaptable definition of 'small arms and light weapons', filling a gap left by the definition-deficient *UN Programme of Action*. This definition offers a useful reference point for future UN small arms negotiations, although, given the exclusion of ammunition, it is limited to weapons.



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. © Roberto Schmidt/AFP/Getty Images

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. The *Tracing Instrument* sets out a series of standards governing the content, characteristics, and placement of weapons marks. It also prescribes the marking of existing government stocks, an important source of weapons for conflict zones and the illicit market generally. The failure of UN states to agree on the mandatory marking of small arms and light weapons at the time of import, the starting point of many weapons traces, is a crucial weakness of the new *Instrument*. This is one area where international assistance will be especially important.

While the *Tracing Instrument* contains few detailed commitments on record-keeping, it does insist on the establishment and maintenance of



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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the records needed to ensure 'timely and reliable' tracing. The *Instrument* also stipulates how long records must be kept: at least 30 years for manufacturing records and at least 20 years for all other records, including those relating to import and export.

Section V, devoted to 'Cooperation in tracing', forms the *Tracing Instrument's* operational core. This is also where it adds greatest value to existing small arms measures, establishing detailed modalities for tracing cooperation that have no parallel elsewhere. Such cooperation is, however, subject to certain exceptions. These include situations where confidential information would be comprised, as well as 'reasons of national security consistent with the Charter of the United Nations'. Significantly, a state must explain any use it makes of these exceptions to the state requesting tracing assistance.

The clear priority for 2006 is the *Instrument's* effective implementation.

The *Tracing Instrument's* 'Implementation' section outlines mechanisms and arrangements designed to support its effective functioning, including information exchange. As there was virtually no support during the negotiations for the creation of a new institution, the *Instrument* identifies the UN and Interpol as the key partners in this regard. Although the *Instrument's* crime-fighting vocation is firmly anchored in these provisions, its conflict-tracing functions remain somewhat underdeveloped. States can nevertheless extend tracing assistance to peacekeeping operations if they so wish. The Security Council can also mandate such cooperation. The Working Group that negotiated the *Instrument* recommended that the UN consider the peacekeeping issue further.

Far from marking the end of the UN tracing process, the *Tracing Instrument* anticipates its continuation. The *Instrument's* 'Follow-up' section commits states to *mandatory* reporting on implementation every two years, as well as to a review of *Instrument* 'implementation and future development' within the framework of *UN Programme of Action* review conferences.

In principle, the *International Tracing Instrument* will advance international cooperation in almost all of the areas it covers. Its real value will, however, depend on actual implementation, as well as the extent to which it spurs further normative development. Normative development is an ongoing, long-term challenge. The clear priority for 2006 is effective implementation. An assessment of national preparations in the Americas, Europe, and southern Africa reveals that many states are moving quite slowly in this respect. In late 2005, just weeks before they became (politically) bound by the *Instrument*, these countries had yet to determine how to bring their national laws and practices into compliance. ▀