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Small Arms Survey Intervention

UNTOC Constructive Dialogue on Firearms Panel Discussion

5 May 2023

Thank you, Chair. Good morning distinguished delegates and members of civil society in Vienna and online. My name is Emile LeBrun, senior consultant with the Small Arms Survey, an independent research project founded in 1999 at the Graduate Institute of International and Development Studies in Geneva, Switzerland. For over 20 years, the Small Arms Survey has provided impartial, evidence-based, and policy-relevant knowledge on all aspects of small arms and armed violence to governments, policymakers, researchers, and civil society. We appreciate the opportunity to provide inputs into this panel discussion and look forward to the contributions of the other civil society organizations represented here today.

The Survey has been asked to offer some reflections on Article 3 (on use of terms) and in particular the importance of refining and harmonizing terms, definitions and control lists related to regulated arms, and we are happy to do so. As the Secretariat's very useful background paper has reminded us, there is no mandatory requirement for terms used in the Protocol to be defined in domestic law. However, the definition of key concepts contained in national firearms legislation should ideally ensure that legislative requirements apply to the full range of issues covered by the Protocol. We should acknowledge at the outset

that national—and regional--authorities look to the definitions in the Protocol when developing their own policy and legislative responses. So, it is appropriate for us to review these definitions periodically to ensure that they remain fit for purpose.

Much of the discussions around definitions and terms of use in the Protocol will naturally focus on how the weapon itself is defined, for example, what do we mean by ‘firearm’ and is this congruent with other definitions of firearms found in other instruments? Does it cover convertible firearms and 3D-printed guns, so-called ‘ghost guns’ and so on? How does the term ‘firearm’ relate to small arms and light weapons, and conventional weapons, and so on.

Perhaps surprisingly, then, I would like to focus on a different term, that is ‘illicit manufacture’, and offer some reflections based on recent Small Arms Survey research and engagement in West Africa.

Let me quickly quote quickly the Protocol’s definition of ‘illicit manufacturing’. According to Article 3, “Illicit manufacturing” shall mean ‘the manufacturing or assembly of firearms, their parts and components or ammunition:

- (i) From parts and components illicitly trafficked;
- (ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or
- (iii) Without marking the firearms at the time of manufacture, in accordance with article 8 of the Protocol.’

Within the West Africa region, 12 of 15 ECOWAS Member States are party to the UNTOC Firearms Protocol. In addition, all Member States in the region are party to the ECOWAS Convention on Small Arms and Light Weapons, which

came into force in 2009, and which among many other things aims to regulate local firearms manufacture. In fact, the production of firearms in the region, which is long-standing and has deep cultural roots, is overwhelmingly non-industrial in nature. That is to say, unlicensed craft production occurs in all 15 States, while only one State in the region possess an established small arms industry. But while the ECOWAS Convention essentially targets craft production, it does not explicitly distinguish in its terms and definitions between industrial and craft production. In reality, however, its provisions are often tailored to standards for industrial manufacturers, in particular with regard to marking, which set high administrative and technical bars for craft producers or gunsmiths.

This is crucial since it is not large, industrial manufactures that are likely to fall foul of licensing and marking requirements, but rather smaller artisanal producers.

This situation affects the development of and enforcement of national regulations: only two of the fifteen ECOWAS Member States distinguish artisanal or craft production from industrial manufacture; and less than half, that is, seven of the fifteen, make provisions for the marking of firearms at the time of manufacture. The fact is that among craft producers in the region, awareness of the relevant regulatory provisions is low, and what craft producers consider high license fees further deter them from complying with legislative requirements. Ultimately, failing to acknowledge the realities of manufacture on the ground contributes to the fact that licensing of non-industrial manufacture is very low, and risks pushing craft manufacturers further underground.¹

¹ The results of the research findings reflected in this statement will be published by the Small Arms Survey in mid-2023.

Of course, vague, limited or incomplete terms of use are not the only challenge. But this represents a missed opportunity. As it happens, the Firearms Protocol is also silent on the question of production types. If the manufacture is unlicensed, or does not involve marking requirements in accordance with Article 8 of the Protocol, it is considered illicit. Had the Firearms Protocol addressed distinctions between industrial and craft-produced firearms, including in its terms and definitions, might have the ECOWAS Convention, and national legislation responses in West Africa, had a more refined character on this point? Perhaps.

As has been mentioned a number of times in the lead-up to today's Constructive Dialogue, we are still in the early days of the Review Mechanism and the implementation of the Protocol, and there is time to collectively clarify definitional aspects in order to respond to the evolving situation on the ground. I would suggest that, in addition to the definitions surrounding the weapon, that we also maintain a focus on what we understand illicit manufacture to mean. The Secretariat background paper indicated that, because it relates directly to criminal offences in Article 5 and the tracing provisions in Article 12, the 'illicit manufacturing' definition will be taken up by the Working Group on Firearms in a future meeting. We hope that the Working Group does take due consideration of these reflections and notes how research and engagement conducted by civil society and academia organizations like the Small Arms Survey can provide important insights of relevance to these issues. Of course, this is a question of global relevance: West Africa is not the only region where so-called craft or artisanal production takes place; it is also prevalent in parts of South Asia and has been documented in other regions.

I will stop there and hope these reflections and inputs are useful and I look forward to the discussions to follow. Thank you.