



## UNTOC REVIEW MECHANISM

### **Constructive dialogue on the review process following the conclusion of the tenth session of the Working Group on Firearms**

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(on behalf of CROSS)

#### Acknowledgments

Distinguish delegates, dear representatives of civil society,

I am very honored to take the floor at this second session of the “Constructive dialogue” on firearms, on behalf of the Observatory on Organized Crime (CROSS), a Research Center based in the University of Milan (Italy) which I am pleased to represent on this occasion.

I will briefly present some insights for our discussion on the topic of complementarity between the Firearms Protocol and the three other global regimes for arms control, namely the UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, the International Tracing Instrument, and the Arms Trade Treaty. I will approach this topic from the angle of international law (which is my expertise)

By the term complementarity here I refer to two main assumptions: first, the fact that each of these global instruments has its own specific relevance in countering firearms trafficking and related offences; second, the believe that these regimes reinforce each other in tackling firearms trafficking and related offences.

In my view, complementary so defined emerges at three main levels.

First, the *different nature* of these instruments. the Firearms Protocol (like the Arms Trade Treaty) is a *hard law* (legally binding) instrument. States who ratify the Protocol assume a legal obligation to adopt into their domestic legal framework all necessary measures, including legislative and administrative ones, to ensure its implementation. This entails far reaching consequences in term of commitment, since the failure to comply with the obligations undertaken through ratification of the Firearm Protocol (as is the case of the Arms Trade Treaty) constitutes an internationally wrongful act entailing the international responsibility of State under international law. On the other hand, the POA-ITI are *soft law* instruments, addressing recommendations to *all* UN member States. Notwithstanding the non-binding nature of such recommendations, their *erga omnes* effects and widespread practice emerging from the normative framework the POA-ITI can be very relevant to detect the eventual existence or emerging customary norms in arms control.

A second level concerns the complementarity of the *legal frameworks*. These three global instruments have a lot to learn from each other. For instance, the PoA-ITI, similarly to the Firearms Protocol, establishes several measures dealing with licensing systems, marking, national record keeping, tracing, and brokering activities of SALW. In these overlapping areas the normative framework and implementing process of the POA-ITI complement the legally binding standards of the Firearms Protocol and provides States parties guidance and references to evolving good practices, offering a framework for supplementing and strengthening the Protocol's basic legal requirements. The normative framework of the POA also provides a useful source of

reference for States parties to deal with aspects unregulated by the Firearms Protocol such as for instance stockpiling management of firearms.

In a similar vein the Arms Treaty Treaty, which addresses firearms trafficking from the perspective of arms trade regulation complement and support the legal regime of the Firearms Protocol, especially in that the Arms Treaty Treaty, unless to the Firearms Protocol, clearly establishes arms export prohibitions and criteria based on human rights.

The *third* level of complementarity to debate relates to the different institutional framework managing the implementation process of these instruments. In this area in my view the most relevant issue to point out deals with the different reporting systems. Unlike what happen within the context of the PoA and the ATT, which foresee respectively for a system of voluntary or mixed reporting on implementation, the RM of the FP provides for a mandatory mutual evaluation in different cycles of all relevant substantive provisions of the FP. This is a unique feature for conventional arms control regimes.

Mr Chairman, the adoption of legislative and operational policies that are suitable for exploiting and maximizing complementarity and synergies among international instruments on arms control and among them and regional legal frameworks (a point that I did not have time to touch) constitutes a necessary requirement for implementing strategies that can effectively counter firearms trafficking.

It is welcome that this objective is clearly emerging among States parties within the on-going implementation process of the Firearms Protocol. For example, the Preamble of COP Resolution 10/2 of 2020 underlines the complementarity of the Firearms Protocol with other instruments such as the Arms Trade Treaty, the Programme of Action and the International Tracing Instrument, as well as other relevant regional instruments, aimed at reducing the risk of diversion.

The guidance of the working group in this direction is extremely important. It is thus welcome that in last years the agenda of the WG showed growing attention to topics entangling the issue of complementarity among different global regime for arms control.

It is also strongly recommended that the States parties maintain high synergies, cooperation and dialogue between the various entities and bodies that at the national level have the task to oversee and monitoring the process of implementation of these three global regimes for arms control.

To conclude, I believe that the effective operational functioning of the RM could not only significantly influence and persuade States parties to implement and comply with the FP more effectively. Indeed, the achievements of good performances in the functioning of the RM could also contribute to keep the momentum and indirectly to increasing states accountability also within the context of the on-going implementation processes of the PoA and ATT, which have faced relevant declining rates and quality of reporting by States in recent years.