



UNODC
United Nations Office on Drugs and Crime

DIGEST OF FIREARMS TRAFFICKING AND RELATED CRIMES CASES

2023

A review of cases and good practices emerging from national jurisprudence

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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1.1 Foreword

It is with great pleasure that I present the “*Digest of Firearms Trafficking and Related Crimes Cases*”, a comprehensive review of criminal cases, emerging good practices and lessons learned in the global fight against illicit firearms trafficking and related forms of crime. This Digest stands as a testament to the tireless efforts of national practitioners and the international community to implement the *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention Against Transnational Organized Crime* and address the complex and multifaceted challenges posed by this grave menace.

The United Nations Office on Drugs and Crime (UNODC) is committed to make the world safer from drugs, organized crime, corruption and terrorism. Firearms trafficking, with its intricate web of criminal networks and devastating impact on societies, is a crosscutting challenge in this endeavour. This Digest serves as a valuable resource, offering insights into the evolving nature of such criminal activities and highlighting successful approaches to combat them.

In examining cases from around the world, the Digest underscores the need for a holistic response. From the illegal manufacturing of and trafficking in firearms, their parts and components and ammunition, to links with other forms of organized crime and terrorism, the contributors to this Digest have provided cases that illustrate challenges and opportunities in investigations, prosecutions, and adjudication. The diverse array of cases featured reflects the global reach of this issue.

One of the key strengths of this Digest lies in its emphasis on good practices emerging from national jurisprudence. By sharing successful strategies we aim to inspire collaboration and peer-to-peer learning in the ongoing fight against illicit firearms trafficking. As we navigate the challenges presented by firearms related crimes, we can enhance our collective ability to dismantle criminal networks and hold perpetrators accountable by learning from each other.

I commend the dedication and expertise of the contributors to this Digest. Together, we can build a safer and more just world, free from the scourge of illicit firearms trafficking and related forms of crime. Let this Digest be a source of inspiration and a catalyst for renewed determination to protect our communities from the devastating impact of these crimes.

Mr. John Brandolino

Director of the Division for Treaty Affairs
United Nations Office on Drugs and Crime

Abbreviations

AFRIPOL	African Union Mechanism for Police Cooperation
ATF	United States Bureau of Alcohol, Tobacco, Firearms and Explosives
ATT	Arms Trade Treaty
CIU	Central Intelligence Unit
UNTOC COP	Conference of the States Parties to the United Nations Convention against Transnational Organized Crime
DDA	Direzione Distrettuale Antimafia (Italian Antimafia Investigation Division)
DEA	United States Drug Enforcement Agency
DIMABEL	Directorate of War Materiel of Paraguay
DNA	Italian National Anti-Mafia and Counter-Terrorism Directorate
EAW	European Arrest Warrant
ECHR	European Charta of Human Rights
ECtHR	European Court of Human Rights
EIO	European Investigation Order
EMPACT	European Multidisciplinary Platform Against Criminal Threats
EU	European Union
EUROPOL	European Union Agency for Law Enforcement Cooperation
FARC	Fuerzas Armadas Revolucionarias de Colombia
FBI	United States Federal Bureau of Investigation
FIU	Financial Intelligence Unit
FUSINA	Fuerza de Seguridad Interinstitucional Nacional in Honduras
GFP	Global Firearms Programme
GIABA	Inter-Governmental Action Group against Money Laundering in West Africa
IBIN	INTERPOL Ballistic Information Network
IFRT	INTERPOL Firearms Reference Table
INTERPOL	The International Criminal Police Organization

ISIL	Islamic State of Iraq and the Levant
ISIS	Islamic State of Iraq and Syria
JIT	Joint Investigation Team
MLA	Mutual Legal Assistance
NABIS	United Kingdom National Ballistics Intelligence Service
NCA	United Kingdom National Crime Agency
NCB	INTERPOL National Central Bureaus
NFFP	National Firearms Focal Points
NIBIN	United States National Integrated Ballistic Information Network
NTC	National Tracing Center
NWEST	National Weapons Enforcement Support Team of the Canadian Firearms Program
OJEU	Official Journal of the European Union
SALW	Small Arms and Light Weapons
SAPS	South African Police Service
SEESAC	South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons
SHERLOC	UNODC Sharing Electronic Resources and Laws on Crime-Database
SIPRI	Stockholm International Peace Research Institute
SIT	Special Investigative Techniques
UNCAC	United Nations Convention Against Corruption
UNGA	United Nations General Assembly
UNIDIR	United Nations Institute for Disarmament Research
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNTOC	United Nations Convention against Transnational Organized Crime
VOIP	Voice Over Internet Protocol
WCO	World Customs Organization

Introduction

In its fifth session, in October 2010, the Conference of States Parties to the United Nations Convention against Transnational Organized Crime (UNTOC COP) recognized the value of analyzing case law on organized crime to assist States in better implementing the Convention, and requested UNODC to “continue to work with States to address threats posed by transnational organized crime, particularly with regard to various forms of crime, and to develop technical assistance tools with a high degree of added value, such as Digests of relevant case law and legal commentaries”¹.

Pursuant to this resolution 5/1, UNODC developed the Digest of Organized Crime Cases². Building on the positive experience of this Digest, the Working Group on Firearms, a subsidiary body to the UNTOC COP, at its fifth meeting held in Vienna from 8-10 May 2017, requested UNODC in its recommendation 21 to “collect and analyze relevant cases and good practices to investigate and prosecute firearms trafficking cases, including cases linked to terrorism and organized crime, and to produce a compendium of good practices and measures that helps States to efficiently prevent and address the trafficking in firearms, their parts and components and ammunition”³. It further recommended that UNODC should “facilitate the exchange of information, lessons learned and best practices regarding emerging threats and new forms of crimes, such as urban crime committed by gangs, arms trafficking through parcel services and the darknet, the assembly of firearms from spare parts, the modi operandi of traffickers, including in cases linked to terrorism and organized crime, and other emerging topics.”

Against this backdrop, the Firearms Trafficking Section of UNODC started the process of developing a Digest of Firearms Trafficking and Related Crimes Cases to enhance the understanding of different trafficking and manufacturing modalities and reflect on good practices, lessons learned and pitfalls in investigating, prosecuting and adjudicating these crimes.

The Digest compiles and analyzes firearm related crime cases from different countries with the objective of illustrating and promoting the concrete application and implementation of the United Nations Firearms Protocol and the parent Convention against Transnational Organized Crime (UNTOC).

1 [CTOC/COP/2010/17](#), Resolution 5/1, *Ensuring effective implementation of the Organized Crime Convention and its Protocols*.

2 [Digest of Organized Crime Cases \(UNODC 2012\)](#).

3 [CTOC/COP/WG.6/2017/4](#).

On a practical level, the Digest aims to contribute to identifying promising approaches and strategies, as well as operational protocols and effective measures related to the effective investigation, prosecution and adjudication of firearms trafficking and related crimes cases. It further contributes to strengthening international cooperation in criminal matters by improving mutual understanding of national jurisprudence.

At a policy level, the Digest aims at helping States parties to implement more effectively the United Nations Firearms Protocol. It is intended to shed light on loopholes and shortcomings in national and international legal frameworks and practices related to firearms and identifies potential areas for their reinforcement. Finally, the Digest is designed to help government officers and legislators to address or re-address domestic policies, including the adoption of holistic and pro-active responses, with the aim to tackle more effectively firearms trafficking and related crimes (including emerging threats and challenges).

The Digest is directed to a wide range of readers. It is intended to serve as a reference point for law enforcement officials, prosecutors and judicial officials to help them address the many challenges posed by firearm related offences. The Digest will also be useful to authorities responsible for national criminal policy against firearms related crime as well as to legislators and other proponents of legislative reform. Academics, researchers, practitioners, policymakers and administrative State officials such as central authorities, customs and others may also find this Digest useful.

Structure and methodology

The Digest is divided into eight chapters, including an introductory chapter illustrating global and regional legal frameworks relevant for firearms control. Each chapter is divided into sections and includes text boxes containing relevant case studies, as well as good practices and lessons learned. A list of the cases with references to their content and relevant aspects is included in an annex. Some cases are analyzed in the various chapters of the Digest from different perspectives.

The Digest is based on an analysis of more than 170 cases and national legislation submitted by experts and collected through desk-research, using open case law databases (government databases, legal information institutes), secondary literature (e.g., law journals and academic publications) and media sources (where needed). Detailed case summaries, official judicial documents and relevant pieces of legislation are accessible through the **UNODC SHERLOC databases**, by using the hyperlinks in the online-version of the Digest.

Cases are labelled by the initials of the country where the case was adjudicated and with a consecutive number, to align with previous case collection numbering (e.g. ALBx001). Cases that have been examined for the Digest but are not uploaded to the UNODC SHERLOC caselaw database are labelled by the initials of the country and consecutive Roman numerals; they appear in italics (e.g. *ALB(i)*). *Annex 2 contains the list of cases examined for the Digest, detailing the years and the names of the cases.*

The Digest presents a snapshot of the criminal justice response to firearms related crime, including its dynamic nature, at a given time and in given parts of the world, but does not pretend to provide an exhaustive analysis of all forms of trafficking or responses to it. Due consideration was given to ensuring a balanced geographical distribution and to encompassing cases reflecting different legal traditions, as well as to capturing the most representative national, regional and global experiences in the fight against various forms of organized crime.

Moreover, the Digest only refers to practices directly demonstrated by the cases presented, discussed and commented on by the participating experts. Although some submitted cases have not been concluded by a definite judgment, they were not excluded, but any possible good practice emerging from those cases may require a definitive judicial decision to establish their validity.

Participating experts were asked to use a standardized template to present the cases. Often, they supplied additional documents, including legislative and administrative sources, either at their own initiative or upon request of the Digest's drafters. Desk research was also performed.

Several meetings of practitioners (UNODC Community of Practitioners against Firearms Trafficking) were critical to the development of the Digest:

- On 12-13 December 2017, UNODC's Global Firearms Programme (GFP) and the United Nations Development Programme's regional project "South-East European Clearinghouse for Small Arms Control (SEESAC)" organized a regional meeting for criminal justice practitioners from six Western Balkan countries in Belgrade, Serbia, for an exchange of good practices and experiences in combatting illicit firearms trafficking.
- From 2-4 July 2018, in close collaboration with the National Commission for the Collection and Control of Illicit Arms (CNCCAI) of Niger, UNODC organized a workshop under the title "Analysis of firearms trafficking cases in Niger and neighboring countries – perspectives on law enforcement and prosecution".
- On 29-30 May 2018, UNODC organized a regional workshop for prosecutors from Western Balkans countries and the European Union (EU) in Vienna to exchange on good practices and experiences in prosecution of illicit firearms trafficking and its links to other forms of organized crime.
- On 13-14 and 16-17 December 2021, UNODC held two back-to-back Regional Meetings of the Community of Practitioners against Firearms Trafficking and related Crimes for respectively Latin America and the Caribbean in Panama.
- On 14 January 2022, UNODC organized a meeting in the margins of the Second Expert Group Meeting to develop Guidelines on the investigation and prosecution of firearms trafficking cases. During the meeting the general structure of the Digest was presented and discussed.

In all those meetings, experts presented many concrete cases of trafficking in firearms and engaged in in-depth analysis of the national regulations, factual and normative context of the cases, the investigative and prosecutorial strategies applied to those cases and shared good practices and lessons learned.

Finally, during the Expert Group Meeting held in Vienna, from 8-10 May 2023, experts considered and validated the first draft of the Digest. They agreed on the general structure and content of the Digest, provided additional case examples and good practices emerging from those experiences, and proposed some additions and modifications. A broad discussion enabled experts to elaborate on their concrete experiences and to describe specific aspects of individual cases that were of particular relevance and what approaches to those cases they had found to be effective or ineffective.

1. International and regional frameworks on firearms⁴

⁴ See also Section 1.2 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

1.1 Global instruments on firearms control and trafficking

Illicitly trafficked and acquired firearms are frequently involved in a wide range of criminal conducts, from homicides and other violent crimes, to organized crime and terrorism. The illicit manufacturing of and trafficking in firearms, their parts and components and ammunition is a criminal activity that often precedes the commission of other crimes, and is also closely related to other firearms offences, owing to the nature of firearms as regulated goods. The illicit acquisition and trafficking of firearms oftentimes starts at a domestic level, through the diversion of legal firearms to the illegal market, before they are transferred and continue their way across the borders to other States.

Contemporary firearms trafficking has two predominant features: a growing transnational dimension (involving two or more States) and a global character (it is a problem of concern for most States of the world).

Over the last few decades, there has been a growing acknowledgement by the international community that concerted policies and actions at an international level are indispensable for adequately tackling firearms trafficking and related offences, and that the vulnerability of even one single State to address this criminal activity can negatively impact other States as well.

Since the late 1990s, the international community has elaborated comprehensive multilateral and multilevel responses to enhance arms control and address illicit firearms trafficking and related forms of crime. This complementary global framework encompasses five major instruments, containing a wide range of preventive and criminal justice measures. These instruments include (in order of their adoption date) the UNTOC⁵ adopted in 2000 by the United Nations General Assembly, and its supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition (hereafter the Firearms Protocol)⁶ adopted in May 2001, and the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light

Weapons in All Its Aspects (hereafter the Programme of Action)⁷, adopted as a political document by the General Assembly in July 2001. In 2005, the Programme of Action was complemented by another political commitment, the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (hereafter the International Tracing Instrument). In 2013, the General Assembly adopted the Arms Trade Treaty (ATT), which complements with its focus on legal arms trade the existing international framework. Ultimately, in December 2023, the General Assembly adopted the “Global Framework for Through-life Conventional Ammunition Management”, developed by the Open-ended Working Group to elaborate a set of commitments for the management of conventional ammunition⁸.

Each of the above-mentioned instruments has specific relevance in countering firearms trafficking and related offences. The Firearms Protocol is the only legally binding global instrument that addresses illicit firearms from the angle of criminal justice, combining preventive with enforcement measures. The Protocol's purpose is to promote, facilitate and strengthen international cooperation in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition (Art. 2). States parties are required to criminalize certain activities, establish crime prevention measures, and cooperate internationally. It comprises a set of standards necessary to ensure adequate control over the production and transnational movement of firearms, their parts and components and ammunition. This includes measures requiring the marking of firearms and the maintenance of records that permit to trace them, as well as measures related to international transfers and brokering. These preventive measures are complemented with the mandatory requirement for Member States to establish certain criminal offences as set out in Article 5, as well as the obligation to provide international cooperation and information exchange. In addition, the provisions of the UNTOC are fully applicable in the detection, investigation, prosecution and adjudication of the Protocol's offences, and can serve as a legal basis for the purpose of requesting or providing international cooperation in criminal matters. Each State party to the Firearms Protocol shall take the necessary measures, including legislative and administrative measures, in accordance with the fundamental principles of its domestic law, to ensure the full compli-

5 [A/RES/55/25](#).

6 [A/RES/55/255](#).

7 [A/CONF.192/15](#)

8 See UNGA Res. 76/233, 24 December 2021.

ance with and implementation of its obligations under the Protocol⁹.

The Programme of Action, which was adopted in the same year as the Firearms Protocol, is a political commitment, which, similarly to the Protocol, aims at preventing, combating and eradicating the illicit trade in small arms and light weapons. It provides for the adoption of measures of various kinds, at the national, regional, and global levels. It encourages United Nations Member States to improve domestic legislation, ensure effective control over the production, exports, imports, transit and stockpile management of small arms and light weapons, and suppress the illicit trade in such weapons. Measures recommended include provisions on licensing systems, marking, national record keeping, tracing, and brokering activities, and the criminalization of certain conducts related to small arms and light weapons as well as the enhancement of international cooperation (technical, financial, and judicial). The subsequent International Tracing Instrument urges States to take measures that ensure the traceability of small arms and light weapons and enhance international cooperation with regard to their tracing. The measures contained in the Programme of Action and the International Tracing Instrument complement and reinforce the legally binding provisions of the Firearms Protocol. Furthermore, the political process that accompanies the two instruments can also provide States parties to the Protocol with guidance relevant for the implementation of the Protocol's provisions and vice versa.

The ATT addresses firearms trafficking from the perspective of arms trade regulation. It aims at defining the highest possible common standards for regulating the international trade in conventional arms (encompassing small arms and light weapons), including with a view to preventing and eradicating the illicit trade in such arms and preventing their diversion. These standards are complemented by security and human rights considerations. States parties to the ATT have an obligation not to authorize transfers of arms, their parts and components and ammunition, when they have "knowledge" that these items could be used to commit genocide, crimes against humanity and war crimes, but also if the transfer would violate international agreements relating to the transfer of, or illicit trafficking in, conventional arms, which would include the Firearms Protocol (Art. 6). States parties are also obliged to conduct an assessment before granting authorization to

export arms. Authorizations cannot be granted if there is an overriding risk (that is a prevailing or predominant risk) that the arms could be used to commit or facilitate the commission of serious violations of international humanitarian law and human rights law or other serious offences, which might also include the onward trafficking of legally exported arms (Art. 7). Such onward trafficking may occur, for instance, because of the diversion of weapons to the black-market or unauthorized end users (rebels, armed groups, organized crime groups, terrorists, etc.). These export prohibitions and criteria of the ATT are complemented by a set of norms on diversion, brokering, transparency (record keeping and reporting) and international cooperation. The ATT, however, builds on the *acquis* of previous instruments as it does not contain new definitions of terms such as small arms and light weapons or firearms, and also does not require the adoption of criminal offences or a legal basis for international cooperation in criminal matters to enforce the above-listed obligations, but refers broadly to pre-existing instruments such as the UNTOC, the Firearms Protocol and the Programme of Action.

Finally, the "Global Framework for Through-life Conventional Ammunition Management"¹⁰ contains a set of political commitments for strengthening and promoting existing initiatives on and addressing existing gaps in through-life conventional ammunition management, including international cooperation and assistance. Its purpose is to contribute to reducing the dual risks arising from ineffective through-life conventional ammunition management, including unplanned conventional ammunition explosions and the diversion and illicit trafficking of conventional ammunition to unauthorized recipients, including to criminals, organized crime groups and terrorists. This Global Framework aims, furthermore, to support safe, secure, and sustainable through-life ammunition management at the sub-regional, regional, national, and global levels, building upon and complementing existing frameworks.

1.2 Complementarity and synergies

The cases examined in this Digest demonstrate the importance of transposing and applying the commitments and obligations contained in the international

⁹ See Art. 34, para. 1 of UNTOC which is applicable *mutatis mutandis* to the Firearms Protocol.

¹⁰ See A/CONF.239/2023/CRP.1/Rev.5document, 9 June 2023.

and regional frameworks¹¹ on arms and crime control to domestic legislation. In this context, synergies and complementarities can be observed both horizontally (among global instruments) and vertically (between global and regional instruments).

Albeit different in scope, the existing instruments can be seen as complementary building blocks of a comprehensive global framework to prevent and address the diversion of arms – and more specifically for the present Digest – firearms.

Against this backdrop, the joint and parallel implementation of these instruments is key to ensure a global minimum standard on firearms control. At the same time, the harmonization of national legislations is a prerequisite to enable practitioners of different States to foster coordination and cooperation with one another and to strengthen national responses against firearms trafficking and other firearms offences by mitigating the risk that criminals exploit legal loopholes and heterogeneous legislations to escape justice. This Digest offers some insights on this issue through the cases studied.

The synergies between different international and regional instruments are acknowledged and highlighted by the international community through various resolutions. For example, the Preamble to the UNTOC COP Resolution 10/2 of 2020¹² underlines the complementarity of the Firearms Protocol with other instruments such as the ATT, the Programme of Action, and the International Tracing Instrument, as well as other relevant regional instruments, aimed at reducing the risk of diversion.

11 A list of most relevant regional binding instruments includes: Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can be Used for Their Manufacture, Repair and Assembly (A/65/517-S/2010/534, annex); Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials; Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials (United Nations, Treaty Series, vol. 2029, No. 35005); Regulation (EU) No 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing Article 10 of the United Nations' Protocol against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), and establishing export authorization, and import and transit measures for firearms, their parts and components and ammunition (OJEU, L 94/1, 30/03/2012); and Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on the control of the acquisition and possession of weapons (codification) (OJEU, L 115/1, 6/4/2021).

12 Resolution 10/2 "Strengthening international cooperation against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition", Preamble, para. 13.

The ATT clearly recognizes the mutual reinforcing character of the different international instruments and processes as well. Pursuant to Article 6 "a State Party shall not authorize any transfer of conventional arms [...], if the transfer would violate its obligations under measures adopted by the United Nations Security Council acting under Chapter VII of the Charter of the United Nations, in particular arms embargoes". Such embargoes usually prohibit the direct or indirect supply, sale or transfer of arms, including small arms and light weapons to States, regions, organizations or individuals and often encourage neighbouring countries to prevent and detect illicit trafficking and diversion in violation of the embargo. Thereby, the parallel implementation of the ATT and the Firearms Protocol can support the enforcement of sanction regimes, as will be illustrated by some cases in the present Digest.

In the same vein, according to Article 6 of the ATT a "State Party shall not authorize any transfer of conventional arms [...], if the transfer would violate its relevant international obligations under international agreements to which it is a Party, in particular those relating to the transfer of, or illicit trafficking in, conventional arms". It is evident that this provision indirectly refers, among others, to legal obligations arising from the UNTOC and the Firearms Protocol. Concretely therefore, a State party to both the ATT and the Firearms Protocol shall only authorize an export, if the exported arms are duly marked and registered (Article 7 and 8 of the Firearms Protocol) and if the importing State and all transit States have authorized the transfer (Article 10 of the Firearms Protocol).

Finally, pursuant to Article 7 of the ATT, the exporting State shall assess the potential that the arms could be used to commit or facilitate offences under the UNTOC or the Firearms Protocol. This mandatory export assessment is of particular relevance if the exporting State sees an overriding risk that the arms might be onward trafficked (Article 5 of the Firearms Protocol) in the importing State.

In addition, the Programme of Action and the International Tracing Instrument contain various recommendations to address diversion at a domestic level, including through appropriate physical security and stockpile management of small arms and light weapons, and refer explicitly to the Firearms Protocol.

Vertically, regional and global instruments can be complementary. The Inter-American Convention on the Illicit Manufacturing of and Trafficking in Firearms and

Ammunition (CIFTA), adopted in 1997, was the precursor that inspired the Firearms Protocol.

More direct synergies can also be exemplified by the implementation of the Firearms Protocol's provisions on convertible weapons and deactivation into the legal framework of the European Union. The Firearms Protocol includes convertible weapons in the definition of firearms and requires States parties to take the necessary measures to prevent the illicit reactivation of deactivated firearms. However, the Protocol does not establish technical specifications to clarify when a weapon is "convertible" nor which deactivation measures render a firearm "permanently inoperable". Following the 2015 terrorist attacks in Paris¹³ and Copenhagen, *inter alia*, the use of trafficked firearms that had been incorrectly deactivated as well as of acoustic weapons being converted into real firearms raised concern among European Union policy makers. Existing loopholes and shortcomings in the European Union legislation and differences in national approaches created access to reactivated and converted firearms and posed several obstacles for law enforcement and judicial cooperation. In response, the European Union amended its legislation on deactivated and converted firearms (EU Directive 2017/853)¹⁴. The new European Union legislation marked also a significant step forward in the application and implementation of the firearms control measures contained in the Firearms Protocol¹⁵. Examples like this are considered in the Digest as good practices arising from regional legal frameworks, which might provide source of inspiration for States beyond the regional context of their adoption, to review their national legislations.

Finally, synergies and complementarities can also be observed across the arms-crime-terrorism and the arms-crime-conflict nexuses. Since firearms trafficking heavily contributes to and fuels terrorism, armed conflict and various forms of crime, such as organized crime, drug trafficking, poaching and illegal mining, among others, diversion and illicit transfers of firearms cannot be addressed in isolation.

The adoption, in 2001, of the Firearms Protocol as the third Protocol supplementing the UNTOC clearly shows the shared understanding of Member States of the strong links between firearms trafficking and transnational organized crime. Many of the cases examined in the Digest illustrate these linkages. Similarly, in resolution 2370 (2017) on preventing terrorists from acquiring weapons the Security Council recognizes that illicit transfer, theft from national stockpiles and illicit craft production can be a source of small arms and light weapons that can enable terrorist groups to considerably increase their armed capabilities. The Security Council further calls upon all States to consider becoming party to the related international and regional instruments, with a view to help eliminate the supply of weapons to terrorists, and to fully implement their respective obligations.

From a legal point of view, these cases demonstrate the mutual reinforcing character existing between the Firearms Protocol and its parent Convention, whose provisions are applicable, *mutatis mutandis*, to prevent and suppress firearms trafficking and other firearms offences (unless otherwise provided therein)¹⁶. In their daily work practitioners can take concrete advantage of potential synergies existing between the Firearms Protocol, the UNTOC and other regional instruments with the aim to strengthen operative cross-border investigation coordination and cooperation efforts among law enforcement authorities on firearms trafficking cases (for instance, using special investigative techniques provided for by the UNTOC)¹⁷, as well as reinforce international judicial cooperation in tackling firearms trafficking and related offences, thanks to norms on extradition and mutual legal assistance established to that purpose by the UNTOC¹⁸.

13 See also in Section 2.8.3 of Chapter 2, *infra*.

14 See Directive (EU) 2017/853 of the European Parliament and of the Council of 17 May 2017 amending Council Directive 91/477/EEC on the control of the acquisition and possession of weapons and Commission Implementing Directive (EU) 2019/69 laying down technical specifications for alarm and signal weapons under Council Directive 91/477/EEC on the control of the acquisition and possession of weapons (OJEU, L15/22), annex.

15 For an examination of some cases of reactivated and converted firearms, see Sections 2.3.1.4 and 2.3.1.5 of Chapter 2, *infra*.

16 See Preamble (para. 5) and Art. 1 paras. 1-2 of the Firearms Protocol.

17 See Chapter 4 of the Digest.

18 These provisions are examined in Chapter 5 of the Digest.



2. The complex and multifaceted nature of criminal cases involving illicit firearms

2.1 Framing the context

Unlike illicit drugs, firearms are not illicit *per se*. In all countries, firearms fall under more or less strict regulatory regimes that regulate their manufacturing, possession and use. Before they divert into the illicit market at a certain stage of their life cycle, most illicit firearms have once been legally manufactured. Depending on the applicable domestic, regional and international framework, such diversion can constitute administrative and/or criminal offences, in particular the offences of the Firearms Protocol and domestic implementing criminal provisions. While domestic criminal offences related to firearms may diverge significantly, this Digest uses the offences established in the Firearms Protocol as a starting point to analyze how jurisdictions address different categories of misconduct related to firearms. It analyzes cases of both firearms that have been illicitly manufactured from the outset as well as cases of firearms that become illicit at different stages of their life cycle.

The Firearms Protocol is at the centre of these international regimes. It envisages a phased strategy involving a dual level of control. The first includes the adoption of a series of administrative measures. It comprises a set of standards necessary to ensure adequate preventive control over the production and transnational movement of firearms, and concerns mandatory provisions aimed at regulating the manufacturing, marking, record-keeping and international transfer of firearms. Each State party to the Firearms Protocol shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under the Protocol. This obligation indirectly comports that States parties, when adopting in their legal frameworks the preventive measures established by the Firearms Protocol, shall provide correspondent domestic administrative offences to sanction potential breaches that individuals or legal entities commit of such norms. Section 2.2 of this Chapter provides a general overview of criminal offences in the Firearms Protocol. Sections 2.3 to 2.6 focus on cases involving criminal offences established by the Firearms Protocol (illicit manufacturing of and illicit trafficking in firearms, their parts and components and ammunition, and tampering with markings on firearms) including ancillary firearms offences. The offences enforce the regulatory firearms control framework by creating a criminal liability and sanctions for the infringement of the preventive measures estab-

lished in the Firearms Protocol. The sections investigate the applicability of the Firearms Protocol's criminal offences to a vast array of illegal conducts and how national authorities investigate, prosecute and adjudicate these conducts. The criminal activities that are assessed in the following contain traditional and new illegal production methods of firearms, various trafficking modalities and emerging *modi operandi* to smuggle domestically and transnationally firearms, their parts, and components and ammunition. This Digest analyzes cases of both firearms that have been illicitly manufactured from the outset as well as cases of firearms that become illicit at different stages of their life cycle.

Section 2.7 analyzes offences that are associated to or facilitate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. These include the offences of illicit possession and illicit carrying of firearms, which are typically contained in domestic legal regimes, providing misleading or false information in licensing procedures or failing to comply with record-keeping requirements but also economic crime, particularly money laundering and corruption.

As mentioned above, illicit firearms are closely linked to and enable various forms of crime. These linkages that are sometimes considered as aggravating circumstances are addressed in Section 2.8.

Section 2.9 provides an overview of the different actors involved in producing illicit firearms or moving them around. It further addresses the linkages between illicit firearms offences and other crimes. Cases examined range from simple unauthorized transfers between individuals to complex trafficking cases, some of which present strong ties with other crimes such as drug trafficking or involve organized criminal groups and terrorist networks. Finally, Section 2.10 focusses on the impact and transformations of technological developments on illicit firearms markets in recent years.

2.2 Criminal offences under the Firearms Protocol

The definition of certain firearms related offences in the Firearms Protocol and the corresponding obligation of State parties to establish such offences in domestic criminal legislation is a crucial aspect of the legislative harmonization efforts that the Protocol pursues. This, not only to ensure harmonized approaches against fire-

arms trafficking and related offences domestically but also to strengthen international cooperation in criminal matters to that purpose¹⁹.

According to Art. 5 of the Firearms Protocol, States parties have a legal obligation to introduce three groups of criminal offences into their domestic systems. The first group is the illicit manufacturing of firearms, their parts and components, and ammunition (three offences). The second group of offences concerns trafficking in firearms, their parts and components and ammunition (two offences). Finally, the third group pertains to tampering with firearms markings (two offences).

The material examined for the purpose of the Digest revealed that most States criminalize at least the conducts of illicit manufacturing and trafficking. However, the offences are not necessarily identical to the offences in the Protocol and/or might have different titles. For instance, some States criminalize trafficking as unauthorized import or export, as customs offence or as violation of foreign trade law. Due to the different scope of the offences, in some States only unauthorized incoming firearms transfers are criminalized while outgoing transfers or transfers that do not touch the territory of the respective country are exempted from punishment.

National differences in the establishment of criminal offences create the risk of forum shopping by criminals. This concept refers to the ability of traffickers to exploit gaps and loopholes between different jurisdictions to source illicit firearms. In some countries, for instance Canada and the United States, only the receiver of firearms is regulated while in other countries, including Austria, various firearm parts except the receiver are regulated. These legal discrepancies can be problematic and incentivize trafficking in parts, as criminals could easily obtain the receiver and the other parts from the countries where these parts are not regulated, assemble them into new firearms and traffic them to third countries where they cannot be traced back to their origins. Against this backdrop, the harmonization of regulatory frameworks and criminal

offences is crucial to effectively prevent criminals from exploiting loopholes and enhance law enforcement and judicial cooperation.

As for the *mens rea*, the Firearms Protocol establishes a minimum requirement, namely that States parties criminalize each conduct therein provided, if committed intentionally. However, pursuant to Art. 34, para. 3 of UNTOC which applies, *mutatis mutandis*, to offences embodied in the Firearms Protocol, States parties may adopt more severe measures for the purpose of preventing and combating firearms trafficking and related offences. These may include the provision of lower subjective elements of the offences, such as gross negligence, recklessness, etc.

States parties to the Firearms Protocol shall implement each of the Protocol's offences as serious crime. However, some States consider them as administrative offences, customs violations or misdemeanors, with different levels of penalties. Furthermore, States parties are also required to establish the criminal, civil or administrative liability of legal persons for participation in the Protocol's offences.

It is up to the States to determine the appropriate sanction depending on their existing national sanctions regime. The Firearms Protocol does not establish common penalties. However, sanctions adopted in domestic law for firearms offences must consider and should be proportionate to the gravity of such offences (UNTOC, Art. 11, para. 1). For legal persons, this may include monetary sanctions, for example, dissolution, disqualification from participation in public procurement, publicization of the decision or freezing of assets.

2.3 Illicit firearms manufacturing²⁰

The Firearms Protocol criminalizes three different conducts as illicit manufacturing, which concern all stages of the production process, from the individual raw materials to the assembled and finished weapons. First is the manufacturing or assembly of firearms from parts and components illicitly trafficked. The specific purpose of punishing this conduct is to prevent that firearm traffickers circumvent the basic import

¹⁹ Various forms of international cooperation under the UNTOC are based on the double criminality principle. According to this principle States parties shall afford extradition and to a certain degree mutual legal assistance requested by another State party "provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State party and the requested State party" (Art. 16, para. 1). Moreover, pursuant to Art. 18, para. 9 of UNTOC "States parties may decline to render mutual legal assistance [...] on the ground of absence of double criminality". Issues dealing with judicial cooperation in criminal matters are taken up in Chapter 5, *infra*.

²⁰ See also Sections 2.5.1 and 4.4 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

and export requirements of the Protocol by transferring firearm parts across borders before assembling them. In these cases, it can theoretically happen that the same person is cumulatively responsible for two offences, such as illicit manufacturing of firearms from illicitly trafficked parts and components and trafficking in these parts and components of firearms. Second is the manufacturing or assembly of firearms, their parts and components and ammunition without a licence or authorization from a competent authority of the State where the manufacture or assembly takes place. Third, the manufacturing or assembly of firearms without the markings required by the Protocol²¹. This enforces the marking requirements of the Protocol to ensure that recovered firearms can be identified by their markings and traced back. In contrast to firearms and ammunition, licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law, meaning that countries may impose manufacturing licences or authorizations for the production of parts and components but are not required to do so. Inevitably, this also has effect on the scope of the criminal offence of unlicensed manufacturing.

The importance of domestic legislations establishing the three above-referred offences emerged through the cases studied in linkage with different non-industrial modalities of manufacturing firearms illicitly, such as artisanal and rudimentary firearms, 3D printed firearms, reactivated and converted or otherwise modified firearms²². None of the cases examined included illicit industrial manufacturing of firearms. Cases examined involve predominantly the offence of manufacture or assembly of firearms without legal permit and from illicitly trafficked parts and components²³. In the Expert Group Meetings, only in one case (*CRI(i)*) involving homemade rudimentary firearms (*armas hechizas*) was the applicable offence manufacture or assembly of firearms without markings.²⁴

Even though the manufacturing of firearms without markings happens frequently, in particular in the con-

text of assembling ghost guns, many States still do not provide for this specific offence in their legislations. But even in those jurisdictions where the offence exists, investigators and prosecutors in most cases prefer to apply the offence of illicit possession to avoid evidentiary issues in proving if the defendant only possesses the unmarked firearm or has also assembled it. Various experts reported that the waterproof application of the offence of manufacturing or assembling unmarked firearms would usually require catching the offender in the act and that even in these cases, the offence is often consumed by the offence of unlicensed manufacturing. If both offences exist, the manufacture or assembly of unmarked firearms and without a licence would constitute a case of two concurrent and cumulative offences committed together.

Most illicit firearms begin their life cycle as legal products before they enter the black market, but in some cases they are illicitly manufactured from the outset. Illicitly produced firearms are hard to trace, as they usually do not have any serial numbers and are not registered in national record-keeping systems. Over the past few decades, in addition to artisanal and rudimentary firearms production, new illegal production methods of firearms have emerged, posing numerous challenges to lawmakers and criminal justice practitioners. These include different non-factory modalities such as additive manufacturing (3D printing), conversion of gas and alarm weapons into live-firing firearms, assembly of semi-finished parts and components and so called “buy, build, shoot kits” into firearms, and reactivation of deactivated firearms. These modalities have in common that the process results in a firearm as defined under the Protocol.²⁵ In accordance with Article 5(1)(a) of the Protocol, States parties are required to criminalize these conducts as illicit manufacturing if they are carried out without authorization or without marking the firearms.

In addition to such conducts, various other forms of unauthorized modification are frequently reported that do not fall under the Protocol's offence of illicit manufacturing but, nevertheless, might be criminalized by national law. This includes, for instance, the conversion of semi-automatic into fully automatic firearms or the shortening of shotgun barrels.

21 If a State chooses to require manufacturers to mark not only the firearm as such but also its essential parts and components or ammunition, the criminal offence of manufacturing without marking should extend to these markings.

22 See next Section of this Chapter.

23 See for instance *ARG(i)* (2019), *ARG(ii)* (2017), *ARG(iii)* (2021), *CHL(ii)* (2021), *ESP(i)* (2017) and *ESP(ii)* (2018).

24 However, the domestic legal provision applicable to this case, namely Art. 68 of “Ley de Armas y Explosivos n. 7530, Capítulo VII, fabricación, comercio, importación, exportación” only establishes the offence of manufacturing or assembly of firearms without a legal permit.

25 Pursuant to Art. 3 subpara. (a) of the Firearms Protocol, firearms are defined as any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive.

2.3.1 Artisanal and rudimentary firearms

Craft production of firearms can take place at small scale with very basic technical expertise (e.g., rudimentary firearms made by hunters) but also at larger scale in specialized workshops or with a high degree of sophistication. Firearms produced illicitly in artisanal settings are well developed in some parts of the world. Blacksmiths in West Africa, for example, produce a range of inexpensive small arms including pistols and shotguns. In some countries, these types of firearms are widely available to people who do not have access to factory-made firearms, constituting a relevant source of illicit firearms. Their legal status as produced by illicit manufacturing is not always clearly established by national law.

Some cases in Latin America unveil how the artisanal production of firearms makes use of online resources to either distribute homemade firearms or as a source of information for the production process. In *ARG(ii)* (2017) the accused was arrested for manufacturing revolvers and shotguns at his home and publishing tutorials on a YouTube channel with 1.5 million views. While the illicit manufacturing of firearms is not explicitly criminalized in Argentina, Art. 189bis (para. 3) of the Argentinian Criminal Code criminalizes “the stockpiling of firearms, parts or ammunition thereof, or the possession of instruments to produce them, without the due authorization”. The offence prescribes as punishment detention or imprisonment from four to ten years. In this case, the YouTube tutorials raised the interest of law enforcement authorities that started to investigate the operator of the channel and could prove the criminal offences.

Of particular interest is that some cases of artisan crafts dealt with single parts and components instead of complete firearms. In *ARG(i)* (2019) the criminals set up an online shop “Airgun Store”, through which they irregularly marketed silencers for firearms, which were assembled in an artisanal manner using different tools and resources without the required authorization.

A few Latin American and Caribbean cases also confirmed the relevance of “*armas hechizas*” (result of illicit rudimentary forms of production). These homemade firearms are essentially arms manufactured with parts, components or materials that were not originally designed to be parts of a firearm but have been adapted for this purpose.

Although rudimentary firearms are less reliable because they are predisposed to malfunctioning, several recent

high-profile cases shed light on the fact that they can be the weapon of choice for terrorists to avoid the risk of being uncovered in the process of purchasing illicit firearms on the black market. Moreover, their manufacture does not require specific technical knowledge. Anybody with the time and minimal resources required can learn to fashion a rudimentary deadly weapon on various websites.

CASE STUDY ***JPN(i)* (2022) – Killing of former Japanese Prime Minister Shinzo Abe**

On 8 July 2022 T.Y., a 42-year-old man shot and killed with an improvised homemade firearm former Japanese Prime Minister Shinzo Abe, who was delivering a campaign speech in the city of Nara. According to an initial reconstruction of the facts, the suspect fired two shots from a device that resembled a sawed-off shotgun, made by taping steel pipes together with parts purchased online. Investigators recovered several other homemade firearms from the suspect's home following the attack. T.Y. was arrested at the scene for attempted murder; the charge was later upgraded to murder after Abe passed away. T.Y. told investigators that he had shot Abe due to a grudge he held against the Unification Church, to which Abe and his family had political ties, over his mother's bankruptcy in 2002. T.Y. then underwent a nearly six-month mental evaluation that prosecutors said showed he was fit to stand trial.

On 30 March 2023, T.Y. was also indicted by Nara District Public Prosecutors Office on charges of violating the Sword and Firearms Possession Control Law (a 1958 Japanese law concerning firearms and firearm parts/ammunition, and bladed weapons, revised a number of times, most recently in 2008) and Japanese explosives Control Law of 1950 regulating explosives. The latest charges stem from six homemade guns and 2.2 kilograms of gunpowder produced by T.Y. before Abe was killed in July 2022. The suspect is believed to have test-fired the homemade guns eight times in Nara between December 2021 and June 2022. Investigators also suspect T.Y. fired a weapon at a facility in Nara that houses a group related to the Unification Church the day before Abe's death.

The aforementioned *ARG(ii)* (2017) and *ARG(i)* (2019) cases confirm that the availability of tutorials on online and social media platforms and channels contribute to loosely structured groups or single individuals with limited resources engaging in the illegal production and sale of artisanal and rudimentary firearms, domestically or internationally. The lack of adequate legislation to monitor the internet and the dark web in many countries represents a fertile soil for such criminal activities. At the same time, the online sharing of manufacturing details may also create important investigative leads. In *ARG(ii)* (2017), the fact that the accused uploaded the video tutorials on YouTube enabled investigators, also thanks to internet patrolling, to identify the accused and prosecute the case. In fact, several practitioners explained that police authorities of their countries systematically or on an *ad hoc* basis patrol social media platforms and relevant forums to search for manufacturing tutorials.

GOOD PRACTICE

States should consider establishing nationally ad hoc or standard procedures for cyber-patrolling with the purpose of monitoring social media platforms and relevant forums to search for manufacturing tutorials.

2.3.2 Ghost guns, “buy, build, shoot”-kits and semi-finished components

Ghost guns (un-serialized firearms that are difficult to trace due to missing identification marks) are a growing concern in the realm of gun control and public safety in various countries. These firearms are typically built from so-called “buy, build, shoot” kits or semifinished parts that can be legally purchased in some countries without any background checks or registration. The firearm kits can be easily assembled at home, bypassing traditional gun sales regulations. The lack of a serial number makes it difficult to trace these weapons, posing challenges for law enforcement agencies in investigating crimes involving ghost guns. The availability and anonymity of ghost guns have raised concerns about their potential use by criminals or individuals who are prohibited from owning firearms. A recent report by the United States

Bureau of Alcohol, Tobacco, Firearms and Explosives found that recoveries of ghost guns increased by 1,000 per cent from 2016 to 2021. A total of 45,000 such firearms were recovered in that period; nearly 700 were linked to homicides or attempted homicides²⁶. Efforts to regulate ghost guns and address this issue have gained attention from lawmakers and law enforcement agencies, aiming to close loopholes and enhance public safety²⁷.

In North America for instance, an emerging line of litigation revolves around this issue. In *USAx277* (2021)²⁸, the defendant bought 13 firearm kits at a gun show in Pennsylvania, where ghost guns are legal, before driving back to New Jersey, where they have been banned since 2018. He was stopped soon after and a search of both his vehicle and his home yielded the kits, ammunition and an AR-15 style semi-automatic rifle without a serial number. The defendant was charged with several firearms offences, including unlawful possession of an assault firearm and purchasing firearm parts to manufacture untraceable firearms.

Several lawsuits have been filed against companies selling those firearm kits. In *USAx273* (2022)²⁹, for instance, the Attorney General for the District of Columbia filed a suit against the American company Polymer80 in 2020 for illegally advertising and selling untraceable firearms. The company sold gun kits and parts that come without serial numbers or other identification numbers and can be assembled into fully functional, untraceable firearms – including semi-automatic AR-15 rifles and a variety of handguns – in less than 2 hours. The plaintiff alleged that Polymer80 violated consumer protection law by falsely claiming that its weapons are legal in the above-mentioned jurisdiction and by selling illegal guns to DC consumers. The court ruled in favour of the plaintiff, affirming that Polymer80 violated

26 United States, Bureau of Alcohol, Tobacco, Firearms, and Explosives, “ATF, releases national firearms in commerce and trafficking assessment report on privately made firearms, imports, export statistics provided”, 18 May 2022.

27 For an overview on recent regulatory efforts to control “buy, build, shoot” kits and semi-finished firearms components see *Implementation of articles 3 (Use of terms) and 4 (Scope of application) of the Firearms Protocol*, Background paper prepared by the Secretariat of the Working Group on Firearms, <https://undocs.org/CTOC/COP/WG.6/2023/3>.

28 For more information on this case, see UNODC, SHERLOC case law database, Case No. *USAx277* (2021).

29 For more information on this case, see UNODC, SHERLOC case law database, Case No. *USAx273* (2022).

consumer protection law by selling illegal firearms and by making false and misleading claims about the legality of its products. The court ordered Polymer80 to permanently end sales of its illegal ghost guns to DC consumers, inform consumers that its products are illegal in DC, and pay more than USD 4 million in penalties.

Similarly, in **USAx274** (2023)³⁰, the New York Attorney General filed a lawsuit against ten national gun distributors who allegedly unlawfully sold tens of thousands of unfinished frames and receivers, violating several laws by selling weapons to felons and others without background checks. The plaintiff asserted that these businesses sell these unfinished firearms in the understanding that their customers will convert them into working weapons and have even offered instructions on how to do so. They routinely sell their products inside a “jig”, a plastic structure that guides the user’s tools through the simple steps required to finish the frame. By one of the defendants’ own admissions, the jigs “make it ridiculously easy for a non-machinist to finish their [handgun frame] in under 1 hour with no drill press required.” This process is designed to work around federal gun serialization, recordkeeping, and background check requirements. This case is still being adjudicated, but a preliminary injunction preventing the defendant from selling those types of weapons in the meantime has been granted by the court in March 2023.

GOOD PRACTICE

In an effort to crack down on ghost guns, the United States Department of Justice issued a final rule in April 2022, clarifying that “buy, build, shoot” kits are considered firearms under the Gun Control Act, and that commercial manufacturers of such kits must, therefore, become licensed and include serial numbers on the kits’ frame or receiver. ►

30 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx274** (2023).

The definition of a firearm in the United States Code of Federal Regulations was amended to include a weapon parts kit that is designed to or may readily be completed, assembled, restored or otherwise converted to expel a projectile by the action of an explosive. In turn, the definition of a frame and receiver was amended to include a partially complete, disassembled or non-functional frame or receiver, including a frame or receiver parts kit that is designed to or may readily be completed, assembled, restored or otherwise converted to function as a frame or receiver. As clarified in the final rule, in conformity with the new definitions of a firearm and a frame or receiver, parts kits must also be marked as any other firearm and records must be maintained.³¹

2.3.3 Additive manufacturing and 3D printing³²

As additive manufacturing (3D printing) technology significantly improved in recent years and is becoming less expensive, 3D printed firearms evolved from a potential to an effective source of illicit firearms and particularly firearms parts and components³³. In many cases, 3D printed components are combined with factory-made but unregulated parts of firearms or gas and alarm weapons³⁴. Today, blueprints for the manufacturing/production process can be found online and 3D printers, CNC-mills and automated metal carving tools only cost a fraction of what they cost some years ago.

Although these weapons have only recently emerged and are not as widely spread, in some regions of the world, 3D printed firearms and their parts and compo-

31 United States, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, “Definition of ‘Frame or Receiver’ and identification of firearms”, Federal Register, vol. 87, No. 80 (April 2022), sects. 478.11 and 478.12.

32 See also Section 4.5.1 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

33 For an overview of the use of additive manufacturing in firearms production see *Responsiveness of the Firearms Protocol and national legislation to new and emerging threats relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition*, Background paper prepared by the Secretariat, **CTOC/COP/WG.6/2020/2**, 14 January 2020; para. 48.

34 See Report from the Commission to the European Parliament and the Council on the application of Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021, COM(2021) 647 final, 27.10.2021, p. 10.

nents pose a serious and concrete threat. For instance, the European Multidisciplinary Platform Against Criminal Threats (thereafter EMPACT)³⁵ Operational Action Plan (2023) on firearms trafficking³⁶ identified 3D printed firearms as one of the main emerging challenges linked to illegal firearms production in Europe. Several countries, including Canada, Trinidad and Tobago, and the United Kingdom, have reported an increase in the seizures of 3D printed firearms in recent years. Some also reported the seizure of 3D printers aimed at the manufacture of parts of firearms.

Some recent cases (**DEUx048** (2020) and *CZE/SVK(i)* (2022)) demonstrate that 3D printed firearms are used in terrorist acts and other subversive activities.

CASE STUDY

Halle synagogue shooting – **DEUx048** (2020)

On 9 October 2019, a far right, antisemitic extremist unsuccessfully tried to enter the synagogue in Halle, Germany, during the Jewish holiday of Yom Kippur and fatally shot two persons nearby. In the aftermath of this terrorist attack authorities discovered that the attacker had used a homemade weapon made of steel, wood, and 3D printed components. Using a 3D printer, blueprints and tutorials he found online, he produced 3D printed parts of firearms and together with original parts and metal components assembled seven firearms that he later used during the attack, including two automatic pistols, a submachine gun, and a shotgun. He further produced at least 1,364 rounds of ammunition and several explosive devices such as hand grenades. All firearms were in working order, although the submachine gun showed signs of malfunction during the attack and repeatedly jammed.

The defendant live-streamed the shooting and published the firearms manufacturing instructions on the internet along with his manifesto, ►

hoping to encourage other like-minded individuals to carry out similar attacks, having himself been inspired by the Christchurch shooting of March 2019 in New Zealand. During the attack, the shooter was prevented from entering the synagogue, in which 52 people were congregated, by a heavy barred door. He then shot dead a woman passing by the synagogue and threw an explosive device at a nearby kebab shop, before killing a 20-year-old man inside. The shooter was charged with two counts of murder and the attempted murder of 68 people. He was convicted on 21 December 2021 and handed down a life sentence. Although the court addressed the manufacturing of the weapons in detail and heard forensic experts on the functioning of the firearms, the defendant wasn't charged with any firearm offences despite their applicability in this case, the prosecution choosing instead to focus on the murder and attempted murder charges only.³⁷

CASE STUDY

Seizure of 3D printer – *CZE/SVK(i)* (2022)

In *CZE/SVK(i)* (2022), Slovak and Czech authorities arrested one suspect and seized a 3D printer, electronic devices, and several 3D printed metal parts of weapons in Slovakia and the Czech Republic. According to the investigation, the arrested man is a 22-year-old man suspected of committing numerous crimes of terrorism and extremism, sympathising with and promoting extreme right-wing white nationalist movements of a neo-Nazi nature. The suspect allegedly published online instructions and guidelines for the illicit manufacture of improvised cold steel weapons, the production of 3D printed conversion devices known as auto sears or auto switches, which transform semi-automatic firearms into automatic firearms, and the production of explosives and mines. The investigation was carried out with the involvement of the FBI and Eurojust, which supported the establishment of a joint investigation team (JIT) to coordinate the investigation across different jurisdictions.

35 EMPACT promotes an integrated approach to European Union internal security, involving measures that range from external border controls, police, customs and judicial cooperation to information management, innovation, training, prevention, and the external dimension of internal security, as well as public-private partnerships where appropriate.

36 Council of the European Union, Doc. 137533/22, 7 November 2022.

37 For more information on this case, see UNODC, SHERLOC case law database, Case No. **DEUx048** (2020).

3D printed firearms also emerge in other criminal contexts. In *USA(i)* (2022), the defendant was sentenced to 78 months in federal prison for the illegal possession of four unregistered, 3D printed smooth-bore pistols, possession of a firearm by an unlawful user of a controlled substance, carrying a firearm during and in relation to a drug trafficking crime, and possession with intent to distribute methamphetamine. Investigations initiated on 30 March 2019, when officers responded to a reported shooting. Upon arriving, the officers discovered the defendant's girlfriend with a gunshot wound to her abdomen and the defendant holding their infant son. Law enforcement officers searched the residence and located a pistol, four 3D printed firearms, one 3D printer, two laptops, marijuana, and marijuana paraphernalia. The victim was interviewed at the hospital and stated that the defendant was intoxicated and "playing" with the recently purchased pistol. He then shot and wounded her, nearly striking their infant son. Analysis of the defendant's electronic devices located blueprints for the 3D printed firearms. The 3D printed firearms were examined and found to be "smooth-bore pistols", a category of firearms that must be registered in the National Firearms Registration and Transfer Record. The defendant had not registered those firearms and the firearms did not bear any serial numbers, making them untraceable.

In *GBRx116* (2022)³⁸, the US Department of Homeland Security initiated a joint investigation against a suspected firearms trafficker. The target of the activity was an individual referred to as T1. T1's mobile telephone was seized and analysed by US authorities and a conversation between T1 and the defendant, who was in the UK, was found. Using a different identity, the defendant had placed an order for the internal parts of a Glock 17 that he intended to combine with 3D printed parts to form a fully functioning firearm. The parts are not regulated in the US and could, therefore, be purchased there without a licence or authorization. The shipment was intercepted on its arrival in the UK. Gun parts as well as the 3D printer and an ammunition press were recovered from the defendant's business address. He was convicted in the UK for attempting to possess a prohibited firearm and sentenced to 3 years and nine months of imprisonment.

Both cases highlight that the production of 3D printed firearms entails the use of digital blueprints that can

be found online and might involve postal trafficking of additional parts and components. Another growing challenge is the manufacture of so-called hybrid 3D printed weapons, which combine 3D printed parts and readily available legal components, such as steel tubing, metal bar stock, and springs. In the investigation and prosecution of cases involving 3D printed firearms, both aspects require appropriate training and resources of national stakeholders. In particular, this includes expertise in handling electronic evidence and examining electronic devices and online forums to search for blueprints.

GOOD PRACTICE **UK Project INTERKNOW**

Project Interknow is the UK National Response to the emerging threat of privately manufactured and 3D printed firearms. It is a joint enterprise between law enforcement agencies such as the Counter Terrorism Policing, widely acknowledged for their innovative work in this area, and the National Crime Agency (NCA), which leads the national response to the threat from the criminal use of firearms.

This project includes case studies, investigative opportunities (for instance, a database on the collection of the blueprints) and intelligence requirements to enhance law enforcement and the private industry's collective response to the challenge of 3D printed firearms.

The use of blueprints to produce 3D printed firearms also raises legislative issues. In most countries, the pure possession or downloading of a blueprint is not criminalized. Hence, if a search warrant is executed in an illegal workshop but the police only recover 3D printers and blueprints for the additive manufacturing of firearms or their parts and components, the suspects cannot be charged if the actual firearms are not found. Only in some cases might prosecutors be able to argue that the threshold of attempted illicit manufacturing has been reached. In order to close this potential gap, Australia, in 2018, criminalized the possession of blueprints with the purpose of manufacturing 3D printed firearms. More recently, Jamaica also criminalized the possession of digital blueprints or any devices for the manufacture of a 3D printed firearm (including its parts and components) and the posses-

³⁸ For more information on this case, see UNODC, SHERLOC case law database, Case No. *GBRx116* (2022); and the more detailed case summary in Section 3.2.2, *infra*.

sion of such blueprints with the intent to manufacture a prohibited weapon³⁹.

Similarly, as reported by one participant of the Expert Group Meeting, the offence of conspiracy can be used to hold criminal groups accountable that are in possession of 3D printers and blueprints for firearms, even if the actual manufacturing has not yet started.

GOOD PRACTICE

States should assess the need to establish in domestic legislation criminal, civil or administrative liability for the download, possession, use and transfer of blueprints for 3D printed firearms or firearms parts and components.

For the prosecution and adjudication of cases involving 3D printed firearms, forensic experts need to assess if the recovered weapons are functional and may be considered as firearms pursuant to domestic law. In order to avoid judicial discretion on the question if 3D printed firearms fall under the scope of application of firearms control regimes, Jamaica, in the legislative amendment cited above, expressly clarified that 3D printed firearms are considered to be firearms for all purposes of the law⁴⁰.

Another underlying problem that makes it difficult to deal adequately with cases involving 3D printers and 3D printed firearms is the fact that 3D printers are widely used for legal activities. There is currently no regulation in place that would require an authorization or a notification for the acquisition, possession and use of such printers, in order to prevent the risk of a diverted use of these items for illicit purposes. This is even more important considering the fact that the costs for 3D printers are becoming more and more competitive, making them easily accessible as the variety and costs of such printers continue to evolve. A 3D printer can be purchased for as little as USD 250, while the firearms printed with them can have a black-market value of up to USD 2,000.

GOOD PRACTICE

Some countries, including Australia, Jamaica and North Macedonia, have established the criminal offence of possession of blueprints for the illicit manufacturing of firearms.

2.3.4 Reactivation of deactivated firearms

In Europe, the circulation of reactivated firearms that were previously deactivated⁴¹ began to emerge in the late 1990s, following the end of the Balkan wars, when many weapons were deactivated, which excluded them from the control regime on firearms⁴². The awareness in respect to the threat of reactivated firearms emerged dramatically in 2015, in the aftermath of the terrorist attacks in Paris, in which reactivated firearms were used. According to Europol, in recent years the reactivation of deactivated weapons as well as the conversion of blank-firing firearms have become the main sources of illegal firearms trafficked to and within the EU and a channel to supply weapons to organized crime and terrorist groups⁴³.

In the case *ESP(i)* (2017) law enforcement authorities identified a specialized organized crime group that was involved in large-scale trafficking of reactivated firearms. On 12-13 January 2017, the Spanish National Police carried out "Operation Portu". Europol actively participated in the investigation by providing operational and technical analysis, and on-the-spot support. During this operation, five individuals were arrested, six houses searched and more than 10,000 firearms seized, alongside EUR 80,000 in cash. This large arsenal included assault rifles, anti-aerial machine guns, 400 shells and grenades, as well as pistols, revolvers, essential parts, and components such as barrels, and

39 See "The Firearms (Prohibition, Restriction and Regulation) Act, 2022", Art. 9 (3) of Part II.

40 *Ibidem*, Art. 2 of Part One.

41 The Firearms Protocol sets forth deactivation standards in Article 9 but does not define the term "deactivated firearm". Pursuant to Art. 1 para. (1)(6) of Directive (EU) 2021/555, deactivated firearms refer to "firearms that have been rendered permanently unfit for use by deactivation, ensuring that all essential components of the firearm in question have been rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way".

42 See European Commission/SIPRI, *Study to support an Impact Assessment on a possible initiative related to improving rules on deactivation, destruction and marking procedures of firearms in the EU, as well as on alarm weapons and replicas*, 2014, p. 19.

43 See European Union Serious and Organised Crime Threat Assessment, Europol, 2017.

parts to reactivate weapons. Investigators also found an illegal workshop with different machinery to manipulate and reactivate weapons as well as stamps and other items used to forge certificates of deactivation.

The organized crime group involved in this trafficking used a sports shop as a distribution centre to sell deac-

tivated firearms that did not comply with the existing deactivation standards, as well as live firing firearms, in Spain and to other European countries. The suspects also sold essential parts and components for the reactivation of deactivated firearms.

CASE STUDY

Operation Alpes – ESP(ii) (2018)

Operation Alpes was a Spanish National Police-led international operation with the support of the Austrian authorities, as part of the so-called Operation Armstrong, carried out within the framework of EMPACT. The investigation resulted in the uncovering of an organized crime group based in Spain that had links to the United States and Austria. This international network trafficked firearms parts and components for the purpose of reactivating and reassembling weapons, taking advantage of the differences in legislation between different jurisdictions. These legal loopholes enabled the main suspect to obtain deactivated firearms as well as firearms components required for the reactivation in foreign markets where such transactions are subject to fewer restrictions.

Modus operandi: The main suspect (A.V.A.), a Spanish national and resident, held two firearms licences granted to him for the purpose of hunting and sports activities. With these licenses, he purchased firearms components online in Austria and shipped them to Spain through postal and fast parcel services, where he used them to illegally assemble and reactivate previously deactivated weapons. He identified and contacted his suppliers through internet forums on firearms, while payments for the purchase of these items were made via PayPal. To avoid interception and wiretapping of his communication, he used secure instant messaging platforms such as Telegram and WhatsApp, as well as a straw email address.

Investigation: With the support of special investigative measures such as wiretapping and surveillance of the targets, two simultaneous house searches in Spain revealed several unlicensed firearms of different types, deactivated automatic weapons with matching parts and components to enable their reactivation, together with ammunition and cartridges in significant quantities, more precisely, two automatic submachine guns together with several specific pieces to be reactivated; different types of rifles without the proper licenses; 14 frames of Glock pistols; various parts and components, such as cannons and mufflers; as well as several thousand rounds of ammunition.

Following the seizure, the police processed the information obtained from laptops and PayPal virtual payment terminals to identify additional links and suspects. This included the potential involvement of organized crime groups and further transactions between the main suspect (A.V.A.) and criminal gangs active in drug trafficking. Police authorities were able to link A.V.A. to another supplier in the United States. A letter of request has been sent to US authorities to assist the relevant investigative agencies in Spain in further building up the case in order to successfully prosecute all offenders and disrupt the illegal supply chains.

These cases illustrate some recurring problems related to the reactivation of deactivated firearms. First, the lack of globally accepted deactivation standards poses the risk of illegal reactivation. Where every jurisdiction applies different deactivation procedures and standards or does not properly control the compliance of such standards, criminals can exploit legal gaps and loopholes to procure deactivated firearms that can be readily reactivated. Different approaches with regards

to maintaining records on deactivated firearms also hinders efforts to trace illicitly reactivated firearms.

The Firearms Protocol, in Article 9, requires States parties that do not recognize a deactivated firearm as a firearm and, therefore, exclude them from their firearms control regime, to establish the necessary measures to prevent their illicit reactivation. This includes the establishment of a specific offence of illicit reac-

tivation, as well as specific deactivation standards. According to the Firearms Protocol, all essential parts of a deactivated firearm are to be rendered permanently inoperable and incapable of removal, replacement or modification in a manner that would permit the firearm to be reactivated in any way. Furthermore, the deactivation measures are to be verified by a competent authority and deactivated firearms must be marked and recorded.

GOOD PRACTICE

States should strengthen their efforts at an international level to develop common deactivation standards and techniques. In this respect good legislative practice could be found in Implementing Regulation (EU) 2018/337 dealing with common guidelines on deactivation.

Second, as illustrated in the two cases, different national approaches with regards to the maintenance of records for essential firearms components permit criminals to procure components for the reactivation of firearms without facing the risk of being identified. The cases, therefore, highlight the importance of keeping records of firearms components for their successful tracing, in cases where firearms components were used to illicitly reactivate firearms. Article 7 of the Firearms Protocol only requires the maintenance of information in relation to parts and components, where this is “appropriate and feasible”.

GOOD PRACTICE

The Firearms Protocol does not require States parties to mark all essential firearms parts and components or ammunition. However, several countries do require the marking of these parts. Also, recent developments in the European Union legislation on firearms (Art. 4 para. 1, Directive EU 2021/555) have set a useful example by introducing the obligation for all essential firearms components to be marked with a clear, permanent, and unique marking and registered in the data-filing systems of the Member States. The aim of this provision was to eliminate significant inconsistencies concerning the interpretation and implementation of European Union requirements in this area, ►

which created room for criminals to source unmarked (and therefore untraceable) parts from the disassembly of firearms in which only one essential component was marked.

2.3.5 Conversion of weapons into firearms⁴⁴

The term “firearms conversion” refers to conducts that transform an imitation firearm or any other object that resembles a firearm, but is incapable of expelling a projectile, to a lethal-purpose weapon that expels a shot, bullet or projectile by the action of an explosive, in line with the Protocol’s definition of firearms⁴⁵. Particularly certain types of gas, alarm and acoustic expansion weapons⁴⁶ are regularly converted into fully functional firearms. The collected cases demonstrate that converted alarm and gas weapons have become a relevant source of firearms trafficking in different parts of the world. Often, even persons with minimal technical understanding may convert these weapons using basic tools.

CASE STUDY

Operación Acero – HL(ii) (2021)

This case covers Operación Acero, which tackled a small, organized crime group highly specialized in converting blank-firing weapons into lethal firearms for other criminal gangs present in the Santiago region of Chile. The criminal group was formed by four individuals. One subject oversaw the acquisition of gas and alarm pistols while another member manufactured the barrels in his metal workshop. ►

44 See also Section 4.5.2 of the UNODC Guidelines on the Investigation and Prosecution of Firearms Offences.

45 See N. Florquin and B. King, *From legal to lethal. Converted Firearms in Europe*, Small Arms Survey, April 2018, p. 16.

46 Art. 1 para. (1)(4) of Directive (EU) 2021/555 defines “alarm and signal weapons” as devices with a cartridge holder which are designed to fire only blanks, irritants, other active substances or pyrotechnic signaling rounds and which are not capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant; and Art. 1 para. (1)(5) “salute and acoustic weapons” as firearms specifically converted for the sole use of firing blanks, for use such as in theatre performances, photographic sessions, film and television recordings, historical re-enactments, parades, sporting events and training. For a technical description of these non-lethal purpose imitations of firearms see also *From legal to lethal* cit., pp. 19-21.

The barrels were later installed in the blank-firing weapons.

The case confirms that with the strengthening of deactivation standards in Chile, criminals have also had to resort to other sources of illicit firearms, namely the conversion of blank-firing weapons. Some years ago, barrels were simply closed with a metal bolt to deactivate the firearm, which could be easily removed by drilling out the metal bolt in the barrel.

One of the difficulties that emerged in this case was that, since blank-firing weapons are not registered in Chile, it was problematic to trace the modified blanks that were seized. Moreover, it is noteworthy that in Chile (as in many other countries) the importation of blank-firing weapons is not regulated and does not require any licence or authorization. This case has pushed the authorities to place special emphasis on this phenomenon, considering eventual legislative modification that would allow control over the sale of blank firing weapons in Chile.

More generally, this case is paradigmatic in that it highlights a common issue of countries that do not regulate the purchase and sale of blank-firing weapons. National legal regimes reveal very different approaches to alarm weapons which, in many countries, are accessible on the legal market with no or minimum requirements. Main substantive discrepancies emerging from various legislations relate to the classification of licences to acquire, possess and sell alarm weapons and, possibly even more importantly, technical standards that prevent the conversion of such weapons. Another common problem is the limited traceability of alarm and gas weapons (in many countries, alarm and gas weapons are not subject to a marking and registration obligation).

Domestic laws define the key concept of ‘convertibility’ in very different ways. The Firearms Protocol defines a “firearm” by including a weapon that “may be readily converted to expel a shot, bullet or projectile by the action of an explosive”. Therefore, States parties to the Protocol are required to include into their firearms control regime blank weapons that could be readily converted into a lethal weapon. However, the Firearms Protocol does not provide for common technical stan-

dards to determine when a weapon may be defined to be readily convertible.

In 2022, to tighten regulations on privately made firearms, the US Bureau of Alcohol, Tobacco, Firearms and Explosives established a definition of the term “readily”, which encompasses eight criteria that determine whether a weapon is “readily convertible”. These are: (a) the time it takes to complete the process; (b) how difficult it is to do so; (c) what knowledge and skills are required; (d) what tools are required; (e) whether additional parts are required and how easily they can be obtained; (f) how much it costs; (g) the extent to which the subject of the process must be changed to finish it; and (h) whether the process would damage or destroy the subject of the process, or cause it to malfunction⁴⁷.

In Europe, the absence of legislative harmonization related to blank-firing weapons has generated significantly different approaches in European Union Member States and has increased uncertainty among law enforcement authorities, preventing effective counter action from being concerted. All this to the benefit of criminals (including organized crime groups and terrorists), who have exploited regulatory loopholes on blank-firing weapons to convert these weapons into fully functional firearms. In 2008, the European Union harmonized its definition of firearms with the definition provided in the Firearms Protocol and, going beyond the definition, further clarified that an object should be considered to be capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if: (a) it has the appearance of a firearm; and (b) as a result of its construction or the material from which it is made, it can be so converted⁴⁸. With Directive (EU) 2021/555, the European Union took another important step forward in regulating blank firearms, setting standards that determine which alarm weapons qualify as being capable of conversion based on manufacturing characteristics⁴⁹.

Furthermore, the European Union adopted technical specifications for alarm and signal weapons, aimed at ensuring that they were not capable of being converted. In order for such devices not to be considered

47 United States, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, “§ 478.11 Meaning of terms”, Federal Register, vol. 87, No. 80 (April 2022), sects. 478.11.

48 Art. 1, para. 1 (a) of Directive 2008/51/EC of the European Union Parliament and of the Council amending Council Directive 91/477/EEC on the control of the acquisition and possession of weapons (Official Journal of the European Union, L 179/5).

49 Art. 14 Directive (EU) 2021/555.

a firearm, the cumulatively reinforcing technical specifications require, *inter alia*, the following:

- Devices must not be capable of being modified through the use of ordinary tools;
- All essential components of the devices must be such that they cannot be fitted or used as essential components of firearms;
- Barrels of the devices must not be capable of being removed or modified without significantly damaging or destroying the device;
- Barrels must incorporate irremovable barriers such that a shot, bullet or projectile is not able to pass through the barrel;
- All such barriers must be permanent and incapable of being knocked out without destroying the chamber or barrel of the device.⁵⁰

European Union Member States are obliged to conform to the above-referred common technical standards on conversion adopted by the Commission through implementing acts. European Union Member States are also required to ensure that alarm and gas weapons manufactured in or imported into the European Union are subject to checks to determine their compliance with the technical specifications.

GOOD PRACTICE

The Commission Implementing Directive (EU) 2019/69 laying down technical specifications for alarm and signal weapons is a good legislative example for efforts to establish common criteria to prevent the conversion of gas and alarm weapons.

In recent years, law enforcement agencies of some European Union Member States have carried out successful coordinated operations at a transnational level aimed at dismantling criminal organisations trafficking in converted weapons. These operations have led to

the seizure of large quantities of illegal weapons. In *ROU(i)* (2021), a law enforcement operation known as “Conversus”, led by the Romanian National Police (Poliția Română) resulted in the seizure of a total of 1,534 gas and alarm pistols, and more than 17,000 rounds of ammunition. The action was the result of an intelligence led investigation, involving 24 countries coordinated by Europol in the framework of EMPACT, which aimed at identifying the buyers and dealers involved in the illegal trade with converted firearms.

In the context of conversion the so-called “Flobert firearms” also deserve special attention. These are real firearms that have been modified to no longer fire traditional cartridge-based ammunition, but instead shoot percussion caps filled with a small projectile. These weapons whose firing capabilities are significantly downgraded are unrestricted in some countries because policy makers associate these weapons with a lower security risk. Law enforcement authorities in several countries who were consulted for this study are concerned that some of these weapons may be easy to ‘retro-convert’ to their original calibres, which could lead to the conversion and trafficking of fully automatic, military-grade firearms.

According to a recent European Union report⁵¹, some firearm manufacturers in Slovakia and the Czech Republic that were producing certain firearms models in a Flobert calibre were detected recently. In the case *CZE/NLD/SVK(i)* (2021) several actions led to the arrest of six suspects of an organized crime group in the three countries concerned and the seizure of approximately 350 firearms, including submachine guns and assault rifles, alongside several thousand rounds of ammunition. The success of these operations was facilitated by the operative support of the European Union agencies: Eurojust assisted the authorities in setting up a JIT and Europol supported the actions with an Operational Task Force. Investigations into the case started when 22 converted Flobert guns were seized in the Dutch port of Hoek van Holland in a transport vehicle bound for the United Kingdom. The Flobert guns were originally modified to be used legally for recreational or sporting activities but had been illegally converted into lethal live-firing arms for criminal purposes. Law enforcement believes that this criminal syndicate

50 Commission Implementing Directive (EU) 2019/69 laying down technical specifications for alarm and signal weapons under Council Directive 91/477/EEC on the control of the acquisition and possession of weapons (Official Journal of the European Union, L15/22), annex.

51 See Report of the Commission to the European Parliament and the Council on the application of Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on the control of the acquisition and possession of weapons, COM(2021) 647 final, 27 October 2021, para. 3.1.2

specialized in the conversion of Flobert guns, supplied over 1,500 firearms to criminal groups in the Netherlands, Austria, Denmark, Germany, Portugal, Sweden, and the Czech Republic.

GOOD PRACTICE

States parties should consider classifying the firearms that can expel Flobert ammunition as firearms according to the definition of a firearm included in the Firearms Protocol, and consequently apply to such weapons the legal regime therein established.

2.3.6 Modification of firearms⁵²

For this Digest, as already underlined at the beginning of this Section, illicit modification refers to conducts that change the firing mode of an already functional firearm while illicit manufacturing produces a live-firing firearm. Modified weapons are often subject to modifications regarding the firing rate, being transformed from semi-automatic firearms into fully automatic weapons. One way that such a modification can take place is by using auto switches, also known as auto sears. These devices bypass the internal mechanisms designed to limit the firing rate of a firearm, allowing it to fire continuously with a single pull of the trigger. The use and possession of auto switches are highly regulated in many countries, including the United States, where they are classified as illegal machine guns under the National Firearms Act (NFA).

Auto switches are considered a significant concern due to their potential for misuse and the threat they pose to public safety. By enabling rapid and continuous fire, they can drastically increase the lethality and destructive capability of firearms. Consequently, their possession and use by individuals without proper authorization or licensing is strictly prohibited, and their possession and sale prosecuted, as was the case in [USAx275](#) (2022)⁵³ and [USAx276](#) (2020). In the first case, the FBI initiated an investigation into the defendant, a self-pro-

claimed member of the “Boogaloo Bois”, a loosely connected group of individuals who espouse violent anti-government sentiments. On 3 February 2021, the defendant delivered two auto sears to a police informant and demonstrated how the devices should be inserted into a firearm. At the time of his arrest, in April 2021, law enforcement officers recovered six additional auto sears and a silencer from the defendant’s vehicle and home. On 14 July 2021, the defendant pleaded guilty to unlawful possession of a machine gun and was later sentenced to 24 months in prison followed by three years of supervised release.

Similarly, in [USAx276](#) (2020), investigators seized seven “Glock switches” and half a pound of explosive from the defendant, who bought the Glock switches from a company in Shenzhen, China. On a website, the company advertised the “Glock Auto Switch” saying the product would convert all models of Glock pistols to fully automatic weapons. The defendant pleaded guilty to unlawful possession of a machine gun and was sentenced to 40 months of imprisonment.

2.3.7 Illicit manufacturing of ammunition

The Firearms Protocol’s manufacturing offence is mainly discussed in the context of illicit firearms manufacturing. However, the illicit manufacturing of ammunition is also gaining increasing importance. In accordance with Article 3(d) of the Firearms Protocol, the illicit manufacturing of ammunition is defined as their manufacturing or assembly, either from illicitly trafficked components or without a licence or authorization from a competent authority of the State where the manufacture or assembly takes place. Among others, the offence covers the handloading and reloading of ammunition as well as the conversion of blanks into live ammunition. After non-factory ammunition was discovered at various crime scenes in Europe, the European Union, in its 2018 strategy document “Securing arms, protecting citizens”, committed to continuing to address the illicit manufacture of ammunition, including the illicit use of reloading tools⁵⁴.

⁵² See also Section 4.5.3 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

⁵³ For more information on this case, see UNODC, SHERLOC case law database, Case No. [USAx275](#) (2022).

⁵⁴ Council of the European Union, Council conclusions on the adoption of an European Union strategy against illicit firearms, small arms and light weapons and their ammunition, document No. 13581/18 (Brussels, 2018), p. 14.

The terms “handloading” and “reloading” are understood as the process of making firearm cartridges by assembling the individual components (case, primer, propellant, and projectile). While the term “handloading” is the more general term, “reloading” refers to the handloading of previously fired cartridges⁵⁵. In **USAx279** (2020), the supplier of armour piercing ammunition used in a mass shooting that resulted in 61 deaths and 411 injured by gunfire was sentenced for engaging in the business of manufacturing ammunition without a licence. When investigators executed a search on the premises of the supplier, they seized hundreds of kilograms of ammunition and ammunition components and found a workshop that was in the process of being automated⁵⁶. While generally a licence is not needed for the handloading of ammunition in the United States, it is required once a person engages in the business of selling or distributing reloads for the purpose of earning a livelihood and making profit⁵⁷.

In addition to handloaded ammunition, the conversion of blank cartridges into live ammunition constitutes another source of illicit ammunition. For instance, in Operation Bosphorus, several European Union Member States cooperated in tackling the trafficking of blank firing weapons. Of the nearly 34,000 pieces of ammunition recovered in the operation, 8,000 were converted rounds of blank ammunition⁵⁸. According to another study, out of 3,130 cartridge cases that were recovered at crime scenes in four European countries, 205 cartridge cases were converted blank-firing ammunition⁵⁹.

GOOD PRACTICE

Blocking of Online Tutorials

YouTube adopted a firearms policy that prohibits the posting of content that instructs viewers on how to make ammunition⁶⁰. Similarly, the search engine Bing no longer allows advertisements for products designed to create ammunition or that aid in ammunition reloading⁶¹.

Countries should further consider regulating the reloading of ammunition by civilians.

2.4 Firearms trafficking⁶²

Article 5, para. 1, subpara. (b) of the Firearms Protocol requires States parties to criminalize the trafficking in firearms, their parts and components and ammunition. Establishing two separate offences, the Protocol defines trafficking as any cross-border transfer, encompassing the import, export, acquisition, sale, delivery or movement, without (i) a legal authorization of any of the States involved or (ii) of firearms that are not marked in accordance with the Protocol's provisions. While the first offence (unauthorized transfer) applies to the trade of firearms, their parts and components and ammunition, the second offence (the transfer of unmarked firearms) only includes firearms into its scope of application since Article 8 of the Protocol only requires the marking of firearms, not of their parts and components nor ammunition. States parties are however free to extend the offence to the transfer of unmarked parts and components and ammunition, if they require such marking at a domestic level.

Investigators and prosecutors often face significant challenges in collecting sufficient evidence for a trafficking charge, particularly to prove the actual involvement of suspects in a transnational transfer, if they are not caught in the act. To avoid these challenges, investigations often solely focus on illicit possession of firearms. As outlined in greater detail in the Guidelines on the Investigation and Prosecution of Firearms Offences, this approach misses out opportunities

55 **CTOC/COP/WG.6/2022/2**.

56 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx279** (2020).

57 United States Bureau of Alcohol, Tobacco, Firearms and Explosive, “Is a person who reloads ammunition required to be licensed as a manufacturer?”, 16 July 2020.

58 Benjamin Jongleux, Nicolas Florquin, “Monitoring the response to converted firearms in Europe”, Non-Proliferation and Disarmament Papers, No. 70 (Stockholm, Stockholm International Peace Research Institute, 2020), p. 8.

59 André Desmarais and others, “Monitoring illicit ammunition through the ballistic datasets of four European countries”, Forensic Science International, vol. 330 (2022), p. 13.

60 Available at <https://support.google.com/youtube/answer/7667605>.

61 Microsoft, restricted categories, “Weapons, knives, firearms and ammunition”, 14 February 2022.

62 See also Sections 2.5.2 and 4.3 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

to address the preceding trafficking offence and to understand the full picture, disrupt trafficking networks and drain sources of illicit firearms in a more sustainable manner. Despite these difficulties, cases studied in the Digest show initial indications of a change in paradigm towards enhanced efforts in investigating firearms trafficking. For instance, within the European Union platform EMPACT FIREARMS, successful operations have contributed to a growing awareness of law enforcement officials and prosecutors to focus more closely on the origins of illicit firearms than in the past. Similarly, several cases examined from different regions also confirm a general positive trend towards greater investigative actions of practitioners to investigate and prosecute this offence.

General observations

In terms of the extent and scope of the trafficking, several of the examined cases demonstrate that geographical proximity is a major factor in illicit transnational transfers of firearms worldwide, with transcontinental transfers occurring less frequently. Cases from the Latin America and Caribbean regions confirm the findings of the UNODC Global Study on Firearms Trafficking 2020, namely that illegal firearms are trafficked primarily between neighbouring countries or countries in the same region⁶³. By way of example, in *PRY(iii)* (2020) traffickers were convicted for a case of triangulated trafficking between neighbouring Paraguay, Argentina and Brazil. In several cases in Caribbean countries the US⁶⁴ and Venezuela⁶⁵ emerged as the main countries of origin of trafficked firearms into the region. In Europe, most illicitly trafficked weapons into Western Europe originated primarily from the Balkans⁶⁶, while trafficking across different continents occurred less frequently⁶⁷. The less frequent transcontinental cases were mostly instances of firearms trafficking towards armed conflicts contexts⁶⁸.

63 UNODC, *Global Study on Firearms Trafficking, 2020* (United Nations publication, Sales No. E.20.IV.1), p. 9.

64 In *LCA(i)* (2021), *BHS(i)* (2021), *BHS(ii)* (2018) and *BRB(i)* (2013) firearms, their parts and components and ammunition were trafficked from the US without licence or authorization and, in some instances, with altered markings to St. Lucia, the Bahamas and Barbados.

65 In *CUW(i)* (2021) and *CUW(ii)* (2020-2021) firearms (including ammunition) were trafficked without authorization to Curacao from Venezuela and Colombia, respectively.

66 For instance, *BIH(i)* (2016) and *BIH(ii)* (2016); *MNE/ALB(i)* (2017); *ITA(i)* (2014).

67 [USAx253](#) (2017) and [USAx254](#) (2017).

68 See Section 2.10 of this Chapter, *infra*.

Trafficking modalities are multi-fold and include trafficking across land and sea borders, often involving the use of a plethora of concealment methods, as well as postal and fast parcel services and, most recently, sometimes drones. Where jurisdictions with strict firearms control regimes border countries where firearms can be relatively easily purchased, straw purchases often mark the point of diversion, where legal firearms enter the black market (see below 2.8.1). Seizures take place both at official border crossings, sea and airports as well as the green border or unofficial ports or landing strips. In some cases, corrupt customs officials, border guards and port staff are involved in trafficking schemes (see section 2.7.6). Moreover, the purchase of firearms, their parts and components and ammunition through clear and dark web forums, messenger services and social networks gained increasing importance in recent years (see section 2.4.4). Often these arms are then delivered in parcels.

Another important dimension that adds complexity to the cases, and that will be further developed in this Digest, is the fact that several of the examined cases relied on the corruption and complicity of customs officials to facilitate the transnational trafficking operation⁶⁹.

Unauthorized transfers

In the cases available for the Digest, the offence of transnational transfers of firearms without legal authorization emerged as the most common legal basis to investigate and prosecute firearms trafficking. Noteworthy, as required by Article 3, subpara. (e) of the Firearms Protocol, the authorization of all parties involved in the transfer shall be in accordance with the terms of the Protocol, which particularly refers to the import and export requirements of Article 10. As outlined by the Legislative Guide for the Implementation of the Firearms Protocol, the licence or authorization process should be placed “on a clear legal basis, both to ensure compliance and because failure to comply with any aspect of the process will be a criminal offence”⁷⁰.

A review of the legislation of various jurisdictions showed that the transposition of the trafficking offence into national law varies significantly, both in terms of the name of the offence(s) and the punishable conducts. In particular, various countries resort to the offence of smuggling instead of trafficking. While both terms are often used synonymously, their aim and stra-

69 See Section 2.7.4 of this Chapter, *infra*.

70 See Legislative Guide, at para. 99.

tegic purpose are altogether different, and they require different analytical and operational frameworks. Other approaches include the application of offences like illegal importation and illegal possession or carrying of firearms or a combination of them. Problematically, these offences sometimes only qualify as administrative infringements or misdemeanors instead of felonies, resulting in relatively low sanctions, this although States parties to the UNTOC, when determining the sanctions for the Protocol's offences, are required to take into account the gravity of the offences.

In *BHS(i)* (2021), the expert presented a case that was investigated as a combination of transnational transfers without legal authorization, illicit possession for the purpose of trafficking, and illicit carrying of firearms. Eventually, the accused was charged with attempted importation of firearms and ammunition into the Bahamas and sentenced to a term of four years of imprisonment, pursuant to Section 3A(2)(1)(b) of the Firearms Act Chapter 213, as amended in 2011. Similarly, in *KNA(i)* (2017), the Supreme Court of the St. Kitts and Nevis, with the purpose of adjudicating an unauthorized transnational transfer of disassembled firearms from the United States, charged and convicted the accused on the counts of illegal importation (namely importation without a legal import permit)⁷¹ and illegal possession of firearms⁷².

A good practice was found in Brazilian legislation, which provides for an extensive criminalization of firearms offences, and covers parts, components, and ammunition. In Brazil, firearms trafficking results in both administrative and criminal procedures. While customs authorities are in charge of collecting fines and confiscating the firearms, law enforcement authorities investigate the trafficking offence. In *BRA(ii)* (2018), the Brazilian police confiscated 60 assault rifles, including 45 AK-47 rifles, 14 AR15 rifles and one G3 rifle. The weapons were trafficked from Miami, concealed in a cargo of swimming pool heaters, and were found at the cargo terminal at Rio de Janeiro's Galeão International Airport. The defendants were convicted for trafficking firearms, which the court states is "a specific modality of contraband, in which the import or export is severely punished due to the extremely dangerous nature of the goods involved".

71 The offence applied to this case (Firearms Act CAP:19.05 2) establishes: "A person shall not import into, export from or tranship in Saint Christopher and Nevis any firearm or ammunition except under and in accordance with the terms of a Firearm Import Permit, Firearm Export Permit or Firearm Transhipment Permit as the case may be".

72 See Firearms Act CAP 19.05 3.

In many trafficking cases, however, investigators and prosecutors face the issue of gathering sufficient evidence to prove that the suspects themselves were actively involved in the trafficking. In cases of postal deliveries, recipients of the parcel typically defend themselves by claiming that they had not ordered any firearms and were not aware of the parcel's content. In these cases, additional evidence, such as communication or financial data is required to prove any links between the trafficker and the recipient. Where investigators do not find sufficient evidence to prove that a person found in possession of a firearm participated in its trafficking, the offence of illicit possession can be a last resort. However, even this offence requires solid evidence to prove that the defendants were really in possession of an illicit firearm. In *ABW(i)* (2021), drugs, unmarked firearms and ammunition were trafficked from Venezuela to Aruba. Four Venezuelans were prosecuted for illicitly carrying firearms but had to be released because the evidence was not sufficient to prove that the defendants were actually in contact with the weapons and drugs.

Transfers of unmarked firearms

Only a few cases were available for this Digest that involved the offence of transferring unmarked firearms. Based on data of 38 countries, the UNODC Global Study on Firearms Trafficking 2020 found that in 2016 and 2017, 85 per cent of seized firearms were marked, while the remaining 15 per cent either had altered markings or were not marked at all⁷³. However, practitioners from different regions attending the export group meetings for the Digest reported that in recent years, the share of unmarked firearms has drastically increased in their respective countries.

The cases that were analyzed for the Digest seem to suggest that the transfer of unmarked firearms is either not criminalized at all in many countries or is consumed by the offence of unauthorized transfers. In fact, in all cases that included unmarked firearms, the judgements were solely based on the missing authorization for the transfers⁷⁴. A review of the legislations of States that reported cases of transfers of unmarked firearms revealed that only the legislation of Guatemala expressly provides for the transfer of unmarked firearms as a criminal offence⁷⁵.

73 UNODC, *Global Study on Firearms Trafficking*, 2020, p. 39.

74 *ABW(i)* (2021), *CUW(i)* (2021), *CUW(ii)* (2020-2021), *GTM(i)* (2021), *LCA(i)* (2021).

75 See Article 120 of Decree 15-2009, Law on Arms and Ammunition of Guatemala.

Other countries do not criminalize the conduct at all or, like the United Kingdom, only as a customs offence⁷⁶.

GOOD PRACTICE

States that have not yet done so should fully transpose the trafficking offence of the Firearms Protocol into their domestic legislation to enable the effective investigation and prosecution of firearms trafficking as well as international cooperation in this context.

2.4.1 Domestic unauthorized transfers

While the Firearms Protocol focuses on transnational trafficking, several cases point also to domestic forms of unauthorized transfers. In fact, firearms can be transferred without the required authorization both across borders as well as domestically.

The Firearms Protocol does not criminalize unauthorized domestic transfers but is limited to transnational trafficking. Other international instruments are silent on this point as well. The Programme of Action requires States to criminalize the illicit possession of small arms and light weapons. This is of use to punish the person who gets into possession of a firearm through an unauthorized domestic transfer. It does not, however, help to go after the person who provided the firearm. Therefore, domestic legislation needs to be more detailed than that in order to fully capture and address the variety of situations related to the diversion and trafficking both within and across national boundaries. In Uruguay, for instance, the Penal Code and the Firearms Act encompass both the offences of transnational trafficking and domestic firearms trafficking⁷⁷. This kind of legislation may help law enforcement agencies and prosecutors to bring perpetrators to justice if it is not possible to prove that firearms have been moved illegally across the borders of two or more States.

Several of the examined cases point to possible situations of internal or domestic unauthorized transfers, or instances where the illicit acquisition at the national level precedes a potential subsequent international trafficking activity. However, it would be difficult to conclude from these cases whether domestic or transnational trafficking prevails in a given country or region, due to the lack of comprehensive data, as well as the fact that in many instances practitioners prefer to deal with such instances as simple illicit possession cases, without having to prove and prosecute the transnational trafficking.

For example, some domestic cases from the Balkans brought to light organized crime groups engaged in the acquisition and circulation of firearms, ammunition, explosives, parts of weapons, including material of war within the country. The transfers were part of the lucrative business model of the group⁷⁸.

On the other hand, while the Firearms Protocol does not directly apply to cases of domestic transfers, its offence of tampering with markings can be of relevance. This might be particularly useful, where national jurisdictions have not criminalized national unauthorized transfers neither. In many cases that were assessed for the Digest, criminals and traffickers obliterated or attempted to tamper with firearm markings to impede tracing efforts⁷⁹. In case **CRix008** (2019) from Costa Rica, which will be discussed in greater detail below, the representatives of a private security company sold various firearms to criminals on the black market. To avoid that the firearms could be traced back to the company, they filed off the serial numbers on 16 firearms. Among other charges, the defendants were convicted for illicit trade in firearms, the tampering with markings and the possession of unmarked firearms. The offence of illicit trade in firearms and explosives in Costa Rica does not require a transnational component. Article 93 of the Firearms Act states that anyone who acquires, trades, transports, stores and sells any of the articles, goods or substances regulated in the act, without having the permit to carry out this type of activities and/or without complying with the requirements demanded by law commits an offence.

With the aim of identifying cases of domestic trafficking, an interesting programme was implemented in Canada. The National Weapons Enforcement Support Team

⁷⁶ UK Home Office, Guide on Firearms Licensing Law, 2022, p. 201.

⁷⁷ See Article 8 of Ley n. 19247 "Tipificación de delitos y modificación del código penal" (2014) and Decreto n. 345/020 Reglamentación de la ley 19.247, art. 38bis de la ley 19.315 y art. 30bis de la ley 19.775, relativos a la tenencia, porte, comercialización y tráfico de armas de fuego, municiones, explosivos y otros materiales relacionados.

⁷⁸ *SRB(i)* (2016).

⁷⁹ *ABW(i)* (2021); *BHS(i)* (2021); **CRix008** (2019); *DOM(i)* (2017-2018); *LCA(i)* (2021); **USAx253** (2017).

(NWEST) of the Canadian Firearms Program within the Canadian Royal Mounted Police established a Firearm Retailer Education Initiative to identify straw or suspicious purchases. NWest members reached out to the Canadian Sporting Arms and Ammunition Association (CSAAA), a firearms retailer association that represents members from the private sector across Canada. Together with the retailers and based on previous case law, NWest developed a compilation of risk indicators and red flags related to straw purchasers, with the aim to enable retailers to identify and report suspicious purchases for further investigations. The initiative also contains capacity building and training for employees of retailers. Several reports have been filed since the launch of the initiative. For instance, in April 2020, a wholesaler reported a suspicious purchase, which led to a search warrant. The subject of the investigation was found in unlawful possession of a firearm and was in the process of manufacturing a prohibited assault rifle.

GOOD PRACTICE

Countries should consider the development of risk indicators and red flags related to straw purchasers, with the aim of enabling retailers to identify and report suspicious purchases.

2.4.2 Trafficking in parts and components of firearms

As demonstrated by the cases that were available for the Digest⁸⁰, parts and components of firearms are particularly suitable to be trafficked for two main reasons: First, they can be used to produce or assemble firearms illegally. In the light of recent technological developments, this has gained increasing importance as 3D printed parts or gas and alarm weapons can be combined with factory-made firearm components to assemble fully functional firearms (see above, 2.3.4). Second, to avoid detection of trafficked firearms, weapons are often disassembled into their parts and components and concealed between other (metal) items, as demonstrated by many of the cases collected (see below section 2.4.4). This practice makes it more difficult for x-ray operators to identify firearms as single parts and components are less visible than a full firearm. In

USAx255 (2019), for instance, the defendant shipped firearm parts to Thailand. One of his accomplices would purchase gun parts from United States manufacturers through online purchases and direct the purchased items to be sent to the defendant in California to conceal the ultimate destination of the purchases. Upon receipt of the gun parts, the items would be repackaged and concealed between other items for shipment to Thailand. These gun parts included, for example, numerous firearm parts, including key components for AR-15 military-style assault rifles. The defendant was convicted of unlawful export and conspiracy to launder money and was sentenced to 55 months in prison.

The Firearms Protocol (Art. 3 subpara. (b)) defines parts and components as “any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm”. Their unauthorized trans-border transfer is criminalized just like the trafficking of firearms. Except for marking requirements, most preventive measures under the Protocol (including, where appropriate and feasible, record-keeping) also apply to single parts and components.

One of the major challenges that emerged through the examined cases is the inconsistent regulation of firearm parts and components across different jurisdictions. Due to a lack of harmonization, criminals can purchase firearm components in jurisdictions with low regulatory barriers.

GOOD PRACTICE

States should align their domestic legislative frameworks on firearms parts and components with the Firearms Protocol to avoid the exploitation of gaps and loopholes between different jurisdictions.

2.4.3 Trafficking in ammunition⁸¹

The Firearms Protocol's trafficking offence also extends to ammunition. While firearms are durable goods, ammunition is constantly used up and hence is very

80 *PER(i)* (2021); *PER(ii)* (2020); *KNA(i)* (2017); *ESP(i)* (2017); *ESP(ii)* (2018); **URYx003** (2021); **USAx252** (2016); **USAx255** (2019).

81 See **CTOC/COP/WG.6/2022/2**.

attractive for trafficking networks⁸². Ammunition can be trafficked independently, as it occurred in *PER(i)* (2021), *PER(ii)* (2020), and **URYx003** (2021) or, most commonly, together with firearms⁸³.

Often ammunition is trafficked along the same routes or even in the same shipments as firearms. Therefore, the different patterns and modalities of ammunition trafficking are as multifaceted as those of the illicit trafficking of firearms. They range from maritime trafficking on speedboats, concealment in containers on large cargo ships or in cars that are shipped on vehicle carriers, to airfreight trafficking, including postal shipments of ammunition⁸⁴. In 2020, a Haitian national pleaded guilty to attempting to export some 36,000 rounds of ammunition to Haiti by concealing the contraband in a car he intended to ship to the island (**USAx278** (2022)). Similarly, in **DEUx051** (2014), a defendant was sentenced for three cases of trafficking of 45,000, 60,000 and 70,000 rounds of ammunition to Lebanon in violation of an arms embargo. The ammunition was concealed in vans that were shipped to Lebanon by cargo ship⁸⁵. Also land border trafficking of ammunition, including through so-called “ant trafficking” remains a typical trafficking pattern for smaller consignments of ammunition. One particularly relevant case of ant trafficking is mentioned in the 2021 Mexican lawsuit against gun companies of the United States (**USAx258** (2022)). An individual was indicted for purchasing 37,200 rounds of ammunition between 2016 and 2018 and trafficking them into Mexico by means of 87 border crossings⁸⁶.

Even though it is consumed over time, ammunition, like firearms, often remains in circulation for decades and may be used a long time after manufacture. Interestingly, this holds true for ammunition both in non-conflict and conflict-affected countries. For example, some of the ammunition that has been retrieved at crime scenes and sites of terror attacks in Europe appears to

be old ammunition manufactured in the period from the 1960s to the 1990s⁸⁷. Ammunition retrieved at crime scenes in four European countries was manufactured, on average, 33 years before its use⁸⁸. Similarly, to take an example from a conflict setting, most of the 4,793 rounds of small-calibre ammunition documented by Conflict Armament Research in Ukraine between 2018 and 2020 were manufactured at least 20 years ago, spanning a production period going back 55 years. In fact, none of the ammunition documented had been manufactured after the time of the outbreak of the conflict in 2014⁸⁹. Another study conducted by Small Arms Survey concluded that more than 70 per cent of the firearms ammunition that was seized in Ukraine was manufactured before 1991, and only 1 per cent after 2010⁹⁰.

Some interesting cases that were collected dealt with military material such as grenades. In *HND(i)* (2008), authorities detected a vessel with a Honduran flag in Colombian coastal waters heading to Honduras with a large quantity of drugs, ammunition and grenades on board. Investigators presumed that the drugs were ultimately destined for the United States, while the war material should remain with the drug cartels in Central America. Other interesting examples dealing with military materials such as explosives were found in **PHLx012** (2018), *SLV(i)* (2019) and in cases in the Western Balkans. For instance, in *ALB(i)* (2017-2018) an operation called “Porosia” led to the arrest of six Albanian nationals and to the seizure, among others, of a large amount of TNT, five pieces of plastic explosives, five boxes of 500 detonator capsules, ten grenades, 720 cartridges model 56 and 10 grenade unifiers. According to the Albanian expert, criminal groups in the country increasingly use improvised explosive devices to protect their activities and eliminate opponents. Some of the material dates back to former military arsenals of 1990.

82 Survey Summary on Ammunition, EMPACT OA 1.5, The Hague, March 2023, Europol Operations Directorate, European Serious Organised Crime Centre, O2-14, AP Weapons & Explosives (unpublished).

83 For instance, *ABW(i)* (2021); *BLZ(i)* (2020); *GRD(i)* (2021); *GUY(i)* (2020); **URYx002** – **URYx003** – **URYx004** (2021); *PER(ii)* (2020); *PER(iii)* (2021).

84 UNODC, *Illicit Trafficking in Firearms, Their Parts, Components and Ammunition to, from and across the European Union: Regional Analysis Report 2020*, (Vienna, 2020), pp. 104 and 126.

85 Germany, Federal Court of Justice, Sentence 3 StR 314/13 of 24 July 2014.

86 United States District Court for the District of Massachusetts, *Estados Unidos Mexicanos, v. Smith & Wesson Brands, INC. and others*, Complaint, 4 August 2021, para. 147.

87 Nicolas Florquin and André Desmarais, “Lethal legacies: illicit firearms and terrorism in France” in *Triggering Terror: Illicit Gun Markets and Firearms Acquisition of Terrorist Networks in Europe*, Nils Duquet, ed. (Brussels, Flemish Peace Institute 2018), p. 213.

88 André Desmarais and others, “Monitoring illicit ammunition through the ballistic datasets of four European countries”, *Forensic Science International*, vol. 330 (2022), p. 1.

89 Conflict Armament Research, *Weapons of the War in Ukraine. A Three-Year Investigation of Weapon Supplies into Donetsk and Luhansk* (London, 2021), pp. 61 ff.

90 Matt Schroeder and Olena Shumska, *Making the Rounds: Illicit Ammunition in Ukraine*, Emilia Dungal, ed. (Geneva, Small Arms Survey, Graduate Institute of International and Development Studies, 2019), p. 10.

Some cases indicate that investigations into ammunition trafficking tend to remain at the surface instead of investigating the full scale of a case. In *PER(ii)* (2020) police personnel patrolling the border city of Tumbes stopped two Ecuadorian and Venezuelan nationals, each carrying 250 firearms cartridges, for which they had no authorization. The forensic ballistics expert report established that the sample corresponded to a previously seized batch of 5,000 rounds of shotgun ammunition. The traffickers were accused under Art. 279 of the Peruvian Penal Code on charges of unauthorized ammunition trafficking but no further investigations were carried out to link both cases. Often investigators are hesitant to properly investigate ammunition trafficking as due to the lack of serial numbers and, in most countries, batch markings, ammunition is more difficult to trace than firearms. Ballistic examination and ballistic comparison may help investigators to develop new investigative leads and to find connections between ammunition trafficking cases⁹¹. Furthermore, the adoption of a new global framework on conventional ammunition, which also contains commitments regarding the investigation of ammunition diversion and trafficking, may generate new momentum to take a closer look into ammunition trafficking.

2.4.4 Use of postal and courier services⁹²

The use of fast parcels or postal deliveries is emerging as a growing *modus operandi* for trafficking firearms and particularly firearms components around the world. In particular with the increasing purchase of firearms through online platforms, including dark web marketplaces, postal and parcel trafficking has rocketed.

In the above-mentioned Caribbean cases *BHS(i)* (2021) and *BRB(i)* (2013) straw purchasers legally bought firearms in the United States and then trafficked them by courier services to their final destination. This method is very attractive to criminals because it offers the possibility of hiding individual parts and components in several packages, and then ship them separately, concealed between other similar looking items, making their detection with x-ray scanners difficult. More-

over, even in case of detection, the identification of sellers and purchasers is almost impossible due to the impersonal delivery, which in some cases includes the delivery to anonymous package receiving services.

Controlled deliveries can be a promising investigative strategy to unveil the recipient of parcel-trafficked firearms. This was the case in *PAN(i)*, in which authorities identified a US citizen who intended to send two firearms with a courier service to a person in Panama. The Office of the Prosecutor in Panama initiated investigations and closely cooperated with their counterparts in the United States. A controlled delivery eventually led to the arrest of the suspect in Panama. To further identify the seller and therefore investigate the entire trafficking chain, in a second step, the financial and communication information of the suspect could have been cross-checked.

CASE STUDY

Use of parcel delivery companies – NLD/POL(i) (2022)

Another recent international two-year operation NLD/POL(i) (2022) led by law enforcement authorities from Poland and the Netherlands has resulted in the takedown of a trafficking network accused of trafficking firearms into Poland using parcel delivery companies. 82 individuals were arrested in Poland and the Netherlands, and 250 firearms were seized. For the trafficking scheme, the trafficking network purchased deactivated firearms and blank firing weapons of various types across Europe, both legally and illegally, and stored them in the Netherlands. From there the firearms were sent to Poland, where the trafficking network maintained an illegal gunsmith workshop to reactivate or convert the weapons into live-firing firearms. The firearms were eventually advertised for sale on Polish online marketplaces as 'antique' or 'deactivated', for which the sale is authorized without a licence. The illegal, live-firing weapons would then be offered for sale to trusted clients. Once sold, they were sent via parcel delivery companies to middlemen for further distribution in Poland or directly to the clients who purchased the firearms. The organized crime group also supplied ammunition alongside the weapons. According to the investigators this gang is suspected of having distributed several hundred illegal firearms.

91 On possible investigative strategies for strengthening the tracing of ammunition see "Preventing and combating the illicit manufacturing of and trafficking in ammunition", background paper prepared by the Secretariat, CTOC/COP/WG.6/2022/2, 25 February 2022, especially paras. 73-79.

92 See also Section 4.3.6 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

Another leading case was Operation Armstrong VII (2020) whose aim was to target the trafficking of firearms to and within the European Union through post and courier services. The operation was carried out in 26 countries within the framework of EMPACT, included the check of over 42,000 parcels and resulted in the seizure of hundreds of firearms⁹³.

GOOD PRACTICE **Controlled Deliveries**

Controlled deliveries can be an effective investigative technique to identify the recipient of firearms that are trafficked through fast parcel or courier companies. After identifying the suspected recipient of the firearms, his financial information and communication can be cross-checked in order to identify other suspects involved in the trafficking.

See also Section 3.37 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

Another good practice to detect suspicious shipments is the development of risk indicators and red flags both for customs as well as private courier companies. For instance, some countries in the European Union systematically screen packages from the United States that, in accordance with the customs declaration form, contain sporting equipment for an item value of more than USD 100 with a low total gross weight of the package. Customs intelligence has shown that shipments matching these criteria often contain firearm parts. Furthermore, by following the financial transactions of customers of online shops for firearm parts and components, investigators may be able to identify suspects.

CASE STUDY

Trafficking of firearm components via parcel delivery service from US to UK – GBR (ii)

This case was triggered by the UK Border Force interception of three parcels bound for two addresses in the North of England, via the fast parcel delivery service. The parcels were found to contain component parts for two Glock 26 Pistols. These component parts were concealed within electrical items. All three packages originated from the same shipping agent in Houston, Texas, US.

Working with the ATF and UK Police it was established that there had been 15 shipments sent from the US to the UK which were all linked through the same shipping agent. A total of 11 Glock Pistols were purchased in the US and trafficked to the UK. Two of the 11 Glock Pistols were detected at a UK Airport, and one was intercepted in the US. During a series of controlled deliveries four Glock Pistols were recovered and suspects arrested, leaving 5 pistols missing at that time. Six men pleaded guilty to possessing firearms with the intent to endanger life and the importation of firearms from the USA and sentenced to 12 years imprisonment.

At later stage, following a shooting in the North of England police investigations lead to executing a search warrant at the house of a suspect and four firearms were seized and submitted for ballistic examination, which revealed that one Glock 9mm Pistol firearm was among the missing firearms trafficked into the UK from the USA, containing parts from two different guns.

2.4.5 Illegal trade of firearms as a form of trafficking

Firearms transfers are generally legal if all States involved in the transfer, particularly the states of export, import and transit, have authorized the transfer. In many States, export decisions are guided by national export criteria, which often also take into account international commitments and obligations of the respective State. Particularly the ATT establishes core obligations related to the international

⁹³ This case is examined in detail in Section 3.5.1 of Chapter 3, *infra*.

trade in arms, including firearms. In Article 6, the ATT prohibits States parties to authorize an arms export, if the export would violate a United Nations Security Council arms embargo or obligations relating to the transfer of, or illicit trafficking in, conventional arms, or if the arms would be used in the commission of any of the grave offences listed in the Treaty. Article 7 further requires States parties, before authorizing a firearms transfer, to assess whether the exported arms could be used to commit or facilitate a serious violation of international humanitarian law, international human rights law, or an offence relating to terrorism or transnational organized crime.

The lawfulness of an export in line with the ATT and national trade regulations is not directly connected to the trafficking offence of the Firearms Protocol. In short, an export authorization can violate the obligations of the exporting countries but legitimize the transfer in the sense that the transfer does not constitute the offence of illicit trafficking because the transfer has been formally authorized. However, arms transfers that violate the obligations of a State party to the ATT can raise suspicions and entry points for investigations if the involved individuals have indeed obtained the required authorizations. If this is not the case, the trafficking offence(s) under foreign trade law might apply.

In **NLDx009** (2018) the defendant was the owner of two logging companies operating in Liberia during the conflict between 1999 and 2003, which facilitated the import, storage and distribution of weapons used by Charles Taylor's regime in Sierra Leone. The prosecution claimed that by facilitating the import of arms, the defendant infringed the United Nations Security Council embargo prohibiting the sale or supply of arms to Liberia and became an accomplice in war crimes committed with those weapons. He was acquitted of war crimes in 2006 in a Dutch court due to the lack of evidence linking him to the main perpetrators but convicted for violating the United Nations Security Council arms embargo against Liberia and sentenced to eight years of imprisonment. He was later acquitted of all charges by a Court of Appeal, but that judgment was declared null and void by the Dutch Supreme Court in 2010. On 21 April 2017, another Court of Appeal convicted the defendant in absentia and sentenced him to 19 years of imprisonment for illegal trafficking of weapons and ammunitions and complicity in war crimes committed by the Liberian armed forces, through making an "active and conscious contribution to the war". In the assessment of the court, by providing and facilitating the distribution of weapons to

Charles Taylor's regime, the defendant exposed himself to the significant probability that war crimes and/or crimes against humanity would be committed by third parties with the weapons.

As shown in the case study below, in addition to unauthorized transfers of arms and ammunition also the transfer of dual-use items, tools and technology can be of particular importance in the context of embargo violations.

CASE STUDY

Violation of arms embargoes – DEU(i)⁹⁴

In August 2023, French authorities detained a German businessman on the basis of a European arrest warrant and transferred him to Germany for the purpose of criminal prosecution. The defendant is strongly suspected of having commercially violated German foreign trade law.

As managing director of a German company for the production of and trade in modern machine tools he maintained long-standing business relations with Russian arms manufacturers. Due to the Russian annexation of Crimea, the European Union imposed extensive trade restrictions in 2014, which, in addition to an embargo on military equipment, also prohibit the export of dual-use goods.

In spring 2015, the defendant concluded three contracts with a Russian arms manufacturer for the delivery of a total of six machine tools including accessories. The machines were needed for the serial production of sniper rifles. In order to conceal the transactions, the defendant used other companies founded by him as well as another Russian company and delivered the items with the involvement of third-party companies via Switzerland and Lithuania. The order volume amounted to around EUR 2 million. A contract with the Russian arms manufacturer also included the installation of the machines and the training of employees.

⁹⁴ See [Press release](#): "Anklage wegen mutmaßlicher Verstöße gegen das Außenwirtschaftsgesetz erhoben" of the Federal Public Prosecutor General (13 November 2023).

Also, both German cases (**DEUx049** (2021) & **DEUx050** (2019)) that are discussed in the context of misleading, false or lacking documentation and information (see below, 2.7.2) have trade components. In both cases, registered arms manufacturers presumed that the national licensing authority would not issue an export authorization for the intended final destination of the exported firearms. They, therefore, provided false information in the licence requests and end-user-certificates with the result that the export was authorized, in contravention of German export regulation. When the conduct was uncovered criminal investigations were initiated and representatives of both companies were convicted.

In an emerging type of litigation to ensure corporate accountability, licensing decisions issued by States have been challenged to enforce existing arms export regulations⁹⁵. This issue was brought forth in Belgium in *BEL(i) (2018)*⁹⁶. The State at the time of litigation supplied Saudi Arabia with small arms and light weapons⁹⁷, while Saudi Arabia was accused of committing severe breaches of international law in Yemen⁹⁸. Several NGOs filed administrative complaints requesting that the courts suspend the execution and repeal several licensing decisions of October 2017 taken by the Prime Minister of the Walloon region for the export of weapons to Saudi Arabia. One of the impugned licensing decisions notably foresaw the export by the arms manufacturer FN Herstal of smooth-bore weapons with a calibre of less than 20 mm as well as other arms and automatic weapons with a calibre of 12,7 mm or less. The court suspended six licences and eight were annulled. It found that a proper assessment had been made by the Walloon region regarding the risk that peace, security and regional stability may be threatened, but that it had failed to assess another essential criterion, namely the buyer's past practice regarding respect for public international and humanitarian law. The court held that, given the lack of such an assessment, the decision clearly violated existing regulations and the licences needed to be suspended and annulled, respectively.

95 Christian Schliemann, Linde Bryk, '**Arms Trade And Corporate Responsibility: Liability, Litigation and Legislative Reform**', Friedrich-Ebert-Stiftung (FES), November 2019.

96 For more information on this case, see UNODC, SHERLOC case law database, Case No. **BEL046**.

97 **Sixteenth Annual Report according to Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment, 2015/C 103/01**, for the categories, ML1, ML2, ML3.

98 **Human Rights Watch, 'Yemen: Coalition Drops Cluster Bombs in Capital', 7 January 2016**.

GOOD PRACTICE **Enforcement of export regulations** **through administrative and criminal law**

Where international and domestic export control regulations are violated, criminal justice responses and administrative proceedings can play an important role in enforcing international arms trade obligations.

2.5 Tampering with firearm markings⁹⁹

To hinder tracing efforts by law enforcement authorities, serial numbers of firearms are often erased or altered, which considerably complicates the investigation and prosecution of firearms trafficking offences.

The Firearms Protocol contains two mandatory criminal offences related to the marking of firearms, namely: (i) the falsification and (ii) the obliteration, removal or alteration of firearms markings that are required by the Protocol. While the Protocol does not require States to criminalize the tampering of markings on individual parts or components and ammunition, States that apply such markings are free to go beyond the mandatory requirements of the Protocol and establish corresponding offences.

In a large number of cases that were assessed for the present Digest the markings of seized firearms were obliterated, removed or altered¹⁰⁰. However, by far not all countries also criminalize the offence of tampering with markings in accordance with Article 5 of the Firearms Protocol. If they do, the conduct is sometimes only considered as an aggravating circumstance of other offences instead of a stand-alone offence. Therefore, investigations often pay little attention to the tampering of markings, which can also be an important indicator that the seized firearms have been internationally or domestically trafficked. Various cases from different regions of the world revealed that the obliteration, removal, and alteration of markings on industrially manufactured firearms is a typical trafficking feature to impede their tracing. In *SLV(i) (2019)* some State offi-

99 See also Section 2.5.3 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

100 *ABW(i) (2021)*; *BHS(i) (2021)*; **CRIx008** (2019); *DOM(i) (2017-2018)*; *PRY(ii) (2021)*; *LCA(i) (2021)*; **USAx253** (2017).

cers in charge of the custody of firearms were involved in the corrupt diversion and subsequent selling of some of these weapons after the removal of their serial numbers. By removing the serial numbers, the officials intended to cover their tracks and obfuscate that the firearms were in official custody before. Similarly, in **CRix008** (2019)¹⁰¹, the head of a registered firearms importer, who sold the firearms through private security companies to criminals, filed off the serial numbers on the firearms, in order to impede tracing efforts.

CASE STUDY

Illicit Trafficking and Obliteration of Markings – USA(ii) (2018)¹⁰²

On 1 June 2017, in the cargo terminal at Galeão, Rio de Janeiro's international airport, the Brazilian police seized 45 Kalashnikov type rifles and 15 AR-15 type rifles concealed in hollowed out water heaters that had been shipped from the United States without import or export authorizations.

The Brazilian investigation that led to the seizure at Galeão airport began with the death, in 2015, of a Brazilian police officer in São Gonçalo. The Brazilian police investigated the origin of the firearm used in the killing, and their inquiries led them to a gang involved in firearms trafficking. During the surveillance of the gang, the water heaters at Galeão airport arrived, were inspected and the firearms were seized.

Inspection revealed that the rifles' serial numbers had been obliterated. With the shipping documents the freight forwarding company could be identified that led the police to suspect F.B. who had arranged the shipment and delivered the cargo. On the day after the seizure in Brazil F.B. had phoned the company and asked them to destroy all documentation. Instead, employees recorded the phone call and cooperated with law enforcement officers. Financial records revealed that F.B. had previously purchased the same model of water heaters that were used to conceal the smuggled firearms. ►

It is very likely that the seized shipment was part of a much larger and longstanding smuggling operation organized by F.B. In February 2018, US law enforcement officers raided two storage units that had been rented by F.B. in Florida, where they found 52 rifles, over 2,000 rounds of ammunition, five handguns and dozens of high-capacity magazines. Forty-nine of the rifles had been wrapped for shipment and many had obliterated serial numbers. Furthermore, the freight forwarding company revealed that between 2013 and 2017 F.B. had shipped to Brazil hundreds of water heaters, air conditioning units and electric motors, all of which could have been modified to traffic firearms.

F.B. pleaded guilty in May 2018 to four charges of unlicensed export of defence articles and to one charge of conspiracy to obliterate serial numbers and ship the firearms without notifying the carriers that the cargo contained weapons. He was sentenced to 12 years and eight months in jail. In September 2018, ten members of the arms trafficking gang were convicted in Brazil, including the son of F.B.¹⁰³

According to an expert from Mali, the Sahel region experiences many organized crime groups using weapons with altered markings to commit crimes. Weapons of this type also emerged in the context of attacks carried out by terrorist groups. The expert underlined that in some cases the techniques and methods used to remove the serial numbers are identical, leading to the presumption that the tampering procedure was carried out by the same groups or individuals. In an ongoing investigation relating to a terrorist attack in the north of Mali, this information has allowed to establish connections between individuals and criminal groups, and a connection with previous attacks. While the information was important at an intelligence and operational level, the expert concluded that further legislative efforts in the region are needed to unanimously criminalize the tampering with firearms markings. Such legislative efforts should be combined with awareness raising and training activities for practitioners.

¹⁰¹ See detailed case study in Section 2.8.3, *infra*.

¹⁰² United States of America versus Frederik Barbieri, case 18-cr-20060-RNS.

¹⁰³ See *BRA(ii)* (2018), *supra*.

GOOD PRACTICE**Restoring Erased Serial Numbers**

In many cases, erased serial numbers can be restored by forensic experts through magnetic and / or chemical techniques.

See also Section 3.28 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

2.6 Ancillary offences¹⁰⁴

Art. 5, para. 2(a) of the Firearms Protocol requires States parties to establish as ancillary offences the attempt to commit and the participation as an accomplice in the offences established in the Firearms Protocol. Depending on the basic concepts of each legal system, the criminalization of an attempt might be understood to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence¹⁰⁵. In **GBRx116** (2022), for instance, the defendant was convicted in the UK for attempting to possess a prohibited firearm after placing an order online for the internal parts of a Glock 17 that he intended to combine with 3D printed parts to form a fully functioning firearm. The shipment was intercepted on its arrival in the UK and the defendant was sentenced to 3 years and nine months of imprisonment.

In some legal systems, attempts are punished with the same penalty as the completed offence, while in other systems, they are subject to a lower penalty. Furthermore, pursuant to Art. 5, para. 2(b) of the Firearms Protocol, States parties shall also criminalize organizing, directing, aiding, abetting, facilitating, or counseling the commission of the offences established in the Protocol. Most States will have already criminalized the ancillary offences of Article 5, para. 2 as part of the general criminal law applicable to all criminal offences.

In **URYx004** (2021) Operation Investigación Escape led to the criminal conviction of two males, L.D.G.M. and J.C.R.Z., on the count of international trafficking

in firearms, ammunition, explosives and other related materials. The court convicted L.D.G.M. as principal offender of firearms trafficking to a penalty of 12 months of imprisonment and J.C.R.Z. as accomplice to a penalty of 12 months of home confinement. The case underlines how courts can take into account different levels of participation in their penalties¹⁰⁶.

One of the crucial aspects of the adjudication of an attempt is the start of criminal liability: it is important to consider when an attempt can be deemed to have taken place. The question of the extent to which unsuccessful attempts should be penalized depends to a large extent on whether the emphasis is placed on the offender's criminal intent or whether it should be required that the external nature of the act is likely to lead to the realization of the criminal result. That issue was at the heart of **SWEx001** (2023), in which police found automatic assault rifles during a search and replaced them by fake copies. Four months later, the defendant came to retrieve the weapons and was arrested and charged with attempting to unlawfully possess the firearms. However, the Swedish Supreme Court reversed the defendant's conviction, stating that criminal liability as a starting point should not occur if the danger of the offence's completion was excluded already when the offender's intention was formed. In this case, the danger of the offences being completed was excluded due to the fact that police had, more than four months earlier, seized the objects.

2.7 Associated offences

In addition to the offences under the Firearms Protocol, most jurisdictions also criminalize the illicit possession and carrying of firearms in order to enforce national licensing regimes. Criminal offences related to providing misleading or false information in licensing procedures or failing to comply with record-keeping requirements also help prevent the diversion of firearms. Finally, due to the high value of illicit firearms, money laundering schemes are often required to hide the proceeds of firearms crime while corruption is prevalent to bribe border guards or arms control authorities.

¹⁰⁴ See also Section 2.5.7 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹⁰⁵ See the interpretative notes to the Protocol (A/55/383/Add.3, paragraph 6).

¹⁰⁶ For more information on this case see Section 4.4 of Chapter 4, *infra*.

2.7.1 Possession and carrying of firearms

Unlike the Programme of Action, the Firearms Protocol does not mention the criminal offence of illicit firearms possession. However, in a considerable number of cases that were assessed for the Digest¹⁰⁷, law enforcement and judicial authorities have resorted to the offences of illicit possession and carrying. In addition to the offence of illicit possession, some jurisdictions establish the possession of a certain number of illicit firearms as an aggravating circumstance.

The cases examined have brought to light three different scenarios in which the offences of illicit possession or carrying of firearms were applied. First, in some cases the criminal conduct is simply limited to illicit possession or carrying. This is the case in particular when licensed firearms holders omit to renew their license and, therefore, become unauthorized.

Second, some jurisdictions have not (sufficiently) criminalized the Protocol's offences. Due to legislative gaps, criminal justice systems resort to the offences of illicit possession or carrying of firearms as 'catch all' offences to investigate, prosecute, and adjudicate conduct involving illicit firearms more broadly. In these cases, legislative amendments are required to provide the criminal justice system with the required legal fundament to bring perpetrators to justice.

Finally, cases in which despite a national legal framework containing the Protocol's offences and firearms that were seized during the investigation being of illicit origin, the suspects are prosecuted and adjudicated on the basis of illicit firearms possession or carrying. This may include cases where a violation of the national firearms control regime is at the core of the investigation as well as cases in which illicit firearms emerged in the context of other, sometimes more serious, crimes (for instance, a homicide or during investigations against drug cartels). In these cases, the offences of illicit possession and carrying serve investigators as a fallback option for mainly two reasons. First, that despite all available and appropriate investigative measure having been taken, the illicit origin of a firearm cannot be determined. In this case, only the person that was found in possession of the firearm can be charged. Or

second, that the charge of illicit possession is the most effective way to justify a firearms seizure and take firearms out of circulation, even if it may appear clear from additional circumstances that the firearm(s) had been illicitly manufactured or trafficked, thus avoiding complex (parallel) investigations into the illicit origin of a firearm¹⁰⁸. In light of resource constraints within the criminal justice system in many countries, the tendency towards a fast and efficient closing of investigations is understandable. But at the same time, by not investigating the illicit origin of a firearm, investigators miss out on understanding trafficking patterns and draining the source of illicit firearms in their respective country in a more sustainable manner¹⁰⁹.

In some firearms acts, the offence of illicit possession is based on the legal presumption that if a person is found in possession of a certain number of firearms, it is presumed that they were possessed with the intent to traffic them. In Belize, for instance, pursuant to Section 31A of the Firearms Act, which was included in 2018, "a person who [...] is in possession of more than two illegal firearms, commits the offence of illicit trafficking", punished with imprisonment for a term of ten years. Similarly, Section 9a, para. 3 of the Firearms Act of the Bahamas, which was inserted in 2011, criminalizes the possession for the purpose of supplying another with firearms, if a person is found in possession of two or more firearms or 25 or more rounds of ammunition without a certificate of purchase. This kind of offences help overcome evidentiary issues that arise when all elements of a transnational transfer must be proven otherwise. However, they also bear the risk that for investigators it might suffice to prove that a person was in possession of two illicit firearms, without investigating their illicit origin. Accordingly, in various of the analyzed cases, illicit firearms were not properly traced back once their illicit possession could be proved¹¹⁰.

In addition to offences that solely focus on the illicit possession or carrying of firearms, some jurisdictions also criminalize the use of firearms in the commission of other offences or establish such conduct as an aggravating circumstance of the respective primary offence. Article 14, para 1 of the recently amended Firearms Act of Jamaica, for instance, criminalizes any use or attempt to use firearms to commit other offences.

107 *ATG(i)* (2018); *ABW(i)* (2021); *BHS(i)* (2021); *BHS(ii)* (2018); *BLZ(i)*, *BLZ(ii)* (2020); *CUW(i)* (2021); *CUW(ii)* (2020-2021); *DOM(i)* (2017-2018); *GRD(i)* (2021); *GUY(i)* (2020); *KNA(i)* (2017); *JAM(i)* (2019); **USAx280** (2020).

108 *BLZ(i)* (2020); *BRB(i)* (2013); *LCA(i)* (2021).

109 Successful investigative strategies to investigate the origin of illicit firearms are further addressed in Section 3.5.

110 See, for instance, *BLZ(i) – BLZ(ii)* (2020); *BHS(i)* (2021); *BHS(ii)* (2018).

2.7.2 Misleading, false or lacking documentation on firearms¹¹¹

Various provisions of the Firearms Protocol contain record-keeping requirements. Such records are indispensable to establish effective firearms control and trace illicit firearms back to their last legitimate holder. The Protocol does, however, not enforce these measures through corresponding criminal offences. To criminalize wrongful conducts that result in wrong or incomplete records, many countries have established as criminal offences the provision of false or misleading information to obtain authorizations or licences, the failure to maintain records and submit reports (e.g. by manufacturers or dealers) or the tampering of existing records, through falsification, alteration or obliteration. In some jurisdictions, these criminal offences are not

limited to the context of firearms control but criminalize such conduct more broadly as part of national criminal codes for any public records or information provided to official authorities.

The *Legislative Guide on the Implementation of the Firearms Protocol* suggests that the punishments for record-keeping offences should be the same as those applied for the Protocol's offences to ensure that offenders cannot avoid harsher sanctions simply by failing to keep or destroying the records needed to establish that criminal conduct has taken place. Moreover, for the mental element of the offence, States could consider a lower level than intention, for instance, gross negligence, to ensure that persons with an obligation to keep and maintain records cannot evade their responsibility by invoking an absence of intention.

CASE STUDIES

Provision of wrong or misleading information – DEUx049 (2021) and DEUx050 (2019)

A widely discussed case (DEUx049 (2021)) as an example of providing false information was the export of more than 4,000 assault rifles by the German gunmaker Heckler & Koch to Mexico in the period from 2006 to 2009. Anticipating that the German export control authorities might not authorize the export of the firearms to the Mexican States of Jalisco, Chiapas, Guerrero and Chihuahua because of human rights considerations at the time, company officials acted in collusion with the Mexican central procurement office to obtain an end-user certificate that excluded those States from the list of final recipients. On the basis of that certificate, export to Mexico was authorized. However, some of the firearms ended up in Guerrero State, which had been seen as the most important customer from the outset, according to internal Heckler & Koch e-mail communications. In 2014, during a police operation in the town of Iguala in Mexico, seven students were killed and 43 were forcefully “disappeared” and reportedly handed over to a criminal syndicate. Investigations found that at least seven policemen fired G36 rifles that originated from the shipment from Heckler & Koch. In 2019, two company officials were convicted of export on the basis of a fraudulently obtained licence. In addition, EUR 3.7 million, the sales price of the firearms, were confiscated from the company¹¹². According to the criminal provisions of the German Foreign Trade and Payments Act, if a licence is required, “an action without a licence shall be equivalent to an action on the basis of a licence obtained by threat, bribery or collusion or obtained fraudulently by means of incorrect or incomplete data”.

A similar case (DEUx050 (2019)) involves the arms manufacturer Sig Sauer, headquartered in Germany and the United States of America. In 2009, the United States branch of the company made a deal with the Colombian police to deliver firearms worth EUR 270 million. Owing to production problems at its United States facility, at least 47,000 pistols from the German plant were shipped to the United States factory for onward transport to Colombia. ►

¹¹¹ See also Section 2.5.8 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹¹² Ben Knight, “Heckler and Koch fined €3.7 million over illegal arms sales to Mexico”, DW News, 21 February 2019; Regional Court Stuttgart, Germany, 13 KLS 143 Js 38100/10, Judgment of 21 February 2019.

Sig Sauer managers were accused of having concealed the final destination of the weapons by submitting false end-user certificates to the German export authority, naming the United States as the final destination. An authorization request for export to Colombia would probably have been denied. The regional court of Kiel, Germany, sentenced the Chief Executive Officer of the United States branch and two managers at the German branch to suspended prison sentences and fines. The proceeds of the illicit transfer, EUR 18.5 million, were confiscated from Sig Sauer¹¹³.

The cases give two examples of firearms manufactures that obtained export authorizations by providing wrong or misleading information. In both cases the judgement was based on the fraudulently obtained licences.

Some of the identified cases, such as *CHL(i) (2021)*¹¹⁴ and **CRIx008** (2019), pointed to the importance of establishing supplementary offences on firearms licensing and records-keeping to strengthen the national responses to firearms trafficking related offences. Such offences are particularly important where the general offences in national criminal codes of making false or misleading statements do not sufficiently cover information provided in the context of national licensing regimes. The offences should include the provision of misleading or false information or the omission of relevant facts in requests for any kind of licences or authorizations foreseen in national firearms acts but also the use of false or misleading documents. In **CRIx008** (2019)¹¹⁵ an organized crime group in Costa Rica set up a complex trafficking scheme that involved a registered firearms importer and various private security companies. Firearms were legally imported and allegedly sold to the private security companies but in fact were transferred to criminals. In order to cover the diversion to the black market, the organized crime group provided false information in their licence applications, claiming that the firearms would be sold to the private security companies, which was never intended. At the same time, corrupt government officials falsely verified the presence of the firearms with the private security companies, thereby falsifying official records.

2.7.3 Illicit firearms and money laundering¹¹⁶

In broad terms, money laundering refers to illicit conducts linked with the circulation and concealing of goods that are the proceeds of a crime¹¹⁷. Money laundering is a criminal activity strictly connected with many illicit activities that produce profits, including firearms trafficking and related offences. Money laundering facilitates illicit firearms offences in different ways. For instance, it may be a vehicle to reinvest the proceeds of another crime in firearms offences, or it may happen that criminals reinvest the proceeds of firearms trafficking to commit other offences. More importantly, for criminal networks that are involved in the trafficking of firearms, money laundering is indispensable to conceal the trafficking proceeds by converting them into a legitimate source.

States parties to the Firearms Protocol must criminalize the offences of laundering of proceeds of crime in accordance with Art. 6 para. 1 of the UNTOC and must include the offences of the Protocol as predicate offences.

A leading case found is *ESP(iii) (2020-2022)*¹¹⁸, which involved a transnational criminal group specialized in the trafficking of large amounts of small arms and light weapons, including to armed conflicts in North Africa and the Middle East. Seven suspects were arrested and property worth EUR 10 million was seized. In order to launder the proceeds of the illicit arms deals, the group had set up a complex money-laundering scheme that enabled them to invest the proceeds in real estate and legal businesses. The proceeds were first sent to tax havens

113 Case-summary by Sibylle Bauer and Mark Bromley, *Detecting, Investigating and Prosecuting Export Control Violations: European Perspectives on Key Challenges and Good Practices* (Solan, Sweden, Stockholm International Peace Research Institute, 2019), p. 25 ff.; regional court of Kiel, Germany, 3 KLS 3/18, *Judgment of 3 April 2019*. For more information on these cases, see UNODC, SHERLOC case law database, Cases No. **DEUx049** (2021) and **DEUx050** (2019).

114 This case is examined in Section 3.2.3 of Chapter 3, *infra*.

115 See detailed case study in Section 2.8.3, *infra*.

116 See also Section 2.6.1 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

117 According to Art. 21 of UNTOC "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence.

118 This case is examined in detail in Section 3.5.2 of Chapter 3, *infra*.

and countries with lower financial accountability, from where they were transferred to bank accounts in Europe – mainly Switzerland and the United Kingdom – and then to Spain, where they were introduced into legal commercial activities. This case points to the illicit movement of the proceeds of illicit firearms offences through different jurisdictions and underscores the importance of financial investigations to tackling money laundering in the context of firearms trafficking, as well the added value of coordinating efforts and international cooperation.

In another case (*ITA(ii)* (2017))¹¹⁹, the Judicial Authority in Milan, in 2017, dismantled a transnational criminal association that had been operating in Italy and abroad as an international clearing house for illegal money transfer services, including in cases of illicit arms trafficking. After an individual, who was later identified as a cash courier, submitted a suspicious currency declaration for the possession of EUR 297,000 at Milan Malpensa Airport, evidence was found in the seized mobile telephone that the individual could be involved in illegal transfers of cash linked to violent extremism. Follow-up investigations identified the network, which had transferred through informal hawala systems considerable amounts of illegal funds, amounting to at least EUR 10 million, from drugs trafficking, arms trafficking and migrant smuggling. A total of 13 arrest warrants were executed for criminal association for the purpose of committing money-laundering and for providing unlawful payment services.

GOOD PRACTICE

States should ensure that the criminal offences of money laundering apply to illicit firearms trafficking and other firearms related offences. Even if the predicate offence of illicit firearms trafficking cannot satisfactorily be proven, the offence of money-laundering can constitute an avenue for bringing perpetrators to justice.

2.7.4 Illicit firearms and corruption¹²⁰

The nexus between corruption and organized crime has been widely acknowledged by the international community, leading to the adoption of the United Nations Convention Against Corruption in 2003. Corruption is a crucial factor enabling firearms trafficking and related offences. In many circumstances, the complicity of corrupt public officials facilitates the accomplishment and impunity of individuals engaged in firearms offences. The cases studied indicate that bribery may involve national and foreign public officials and that it can take place at different levels.

States parties to the Firearms Protocol have an obligation to criminalize the offences of active and passive bribery of national public officials, in accordance with Art. 8 para. 1 of the UNTOC. States parties to UNCAC, pursuant to Art. 17, shall also criminalize embezzlement, misappropriation, or other diversion of property by a public official. Active and passive bribery of national and foreign public officials requires that an undue advantage be promised, offered, or given to or solicited or accepted by the public official to induce the official to act or refrain from acting in the exercise of their official duties. In the context of firearms trafficking and related offences these duties may include: (i) border control measures; (ii) investigative measures; and (iii) arms control measures. Generally speaking, the assessed cases¹²¹ illustrate that the risk of corrupt firearms diversion or trafficking is highest, where officials either have direct access to firearms documentation and firearms in official custody or where they get close to trafficking flows.

In some of the cases, officials who had access to armouries or other storage facilities abused their position to divert firearms. While these cases might involve corruption, they would be more appropriately described as misappropriation and are therefore discussed below in Chapter 2.8.4, in the context of the involvement of national officials.

More relevant for the present Chapter are customs officials and border guards responsible for undertaking border control measures (such as the conduct of patrols, checks and screening of transportation, import

¹¹⁹ World Customs Organization (WCO), *Illicit Financial Flows via Trade Mis-invoicing: Study Report 2018* (Brussels, 2018), p. 162.

¹²⁰ See also Section 2.6.2 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹²¹ For instance, *JAM(i)* (2019); *KNA(i)* (2017); *LCA(ii)* (2014-2020).

export, and transfer documentation and authorizations), who performed as accomplices of firearms traffickers. In **NGAx006** (2021), for instance, the defendants offered bribes to customs officers, in exchange for them not performing the search of a container with over 660 illicitly imported rifles from Turkey into Nigeria, in addition to forging the related paperwork. They were convicted on numerous counts, including conspiracy to illegally import prohibited firearms, the uttering of forged documents, and corruptly giving a bribe to a public official.

Similar to the above case are the following cases in which corrupt officials accepted an undue advantage in exchange of refraining from acting in the exercise of their official duties.

CASE STUDY

Bribery to avoid investigation ZAFx024 (2018)

In **ZAFx024** (2018) a tow truck company owner was charged with several firearms offences such as trading in firearms without a dealer's licence and illicitly possessing firearms and ammunition, and admitted to having paid police officers while they were employed by the South African Police Service (SAPS) in return for special favours. He furnished them with gifts which included money, paid for their clothing, travelling costs and fuel. The businessman gave one of his co-accused and his family more than ZAR 60,000 (around USD 7,000) between 2011 and 2013. The defendant admitted that at the time of the payments he could foresee that he would receive preferential treatment, including in relation to the firearms offence, because of those transactions. Both the co-accused were sentenced to six years of imprisonment after pleading guilty to corruption offences but were acquitted of the firearms related offences. In this case, the gravity of the bribery usurped the firearms offence¹²².

While corrupt officials are often aiding or facilitating firearms offences rather as accomplices, they can also be the main perpetrators, taking advantage of their

position to commit the offences themselves. In this situation, the focus of the trial is often more on the firearm offences. That situation is exemplified by **USAx257** (2022)¹²³, in which the defendant, a former US sheriff, admitted to having acted as an unlicensed firearms dealer, buying almost 150 weapons and re-selling almost 100 over a period of roughly six years. A number of those transactions involved 'straw purchases', where the defendant acquired firearms for others by falsely claiming that they were for himself. This was an important part of the firearms dealing because California law limits the initial purchase of certain newer handguns to law enforcement officers only. In his plea agreement, the defendant admitted that one of his goals in selling so many guns was profit, but another was to curry favour with prominent county residents whom he expected to potentially support his planned run for Sheriff of San Diego County. He was sentenced to two years in prison for unlawful firearms transactions and for an array of corrupt conduct.

2.8 Links to other forms of crime

Firearm offences are linked to various other forms of crime, such as poaching, illicit mining, trafficking in human beings, trafficking in protected species or migrant smuggling. The links are multifold. Illicit firearms can be used by criminal groups to enable the aforementioned crimes, for instance, by securing trafficking routes, or ensuring control over territory. They can, however, also be trafficked on the same routes as other commodities.

2.8.1 Drug trafficking¹²⁴

Drug trafficking emerged through the cases studied as the criminal activity most frequently linked to firearms trafficking and related offences. The presence of drug cartels that also traffic firearms is one of the most significant features of cases from Latin America¹²⁵ and the Caribbean region¹²⁶.

¹²³ For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx257** (2021).

¹²⁴ See also Section 6.4.4 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹²⁵ For instance, *MEX(i)* (2017).

¹²⁶ *ABW(i)* (2021) 1; *MTQ(i)* (2021).

¹²² For more information on this case, see UNODC, SHERLOC case law database, Case No. **ZAFx024** (2018).

Often, firearms trafficking takes place to satisfy demand from criminals who need the arms to strengthen their security and power and safeguard their unlawful activities, including drug trafficking. From this perspective, firearms trafficking represents an enabler for the commission of drugs offences. At the same time criminal organizations also use their consolidated channels and trafficking routes to traffic firearms.

The preamble of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (hereafter the Drugs Trafficking Convention) indirectly recognizes the links between drugs trafficking and firearms trafficking, and the importance of strengthening and enhancing effective legal means for international cooperation in criminal matters to suppress the international criminal activities of illicit trafficking¹²⁷. The Drug Trafficking Convention identifies among a list of aggravating circumstances the involvement of organized criminal groups, the involvement of the defendant in other international organized criminal activities, and the use of firearms or violence¹²⁸. More recently, Resolution 65/2 of the United Nations Commission on Narcotic Drugs focused on international cooperation to address the links between illicit drug trafficking and illicit firearms trafficking¹²⁹.

In **AUSx212** (2017)¹³⁰, an organized group reinvested the proceeds of drug trafficking and the sale of crystalline methyl amphetamine in Tasmania into arms trafficking. This case confirmed the rationale of the Drugs Trafficking Convention that firearms offences constitute an aggravating circumstance to drug trafficking offences, carrying more severe punishment. The sentence of the Court of Appeal of the State of Tasmania ruled that the cumulative involvement of the accused in firearms trafficking, in addition to drug trafficking, provided for a very severe penalty. According to the sentence of appeal by virtue of Section 110A of the Firearms Act, trafficking in unregistered handguns with the serial numbers removed was axiomatically, a crime that should attract a heavier sentence than the simple possession of a stolen firearm (Section 107A). This was because, as the sentencing judge remarked in passing the sentence, these were quintessentially the type of firearms that are used in violent crime.

127 See preamble (third paragraph) Drugs Trafficking Convention.

128 Art. 3, para. 5, subparagraphs a, b and d. Drugs Trafficking Convention.

129 E/CN.7/2022/14.

130 For more information on this case, see UNODC, SHERLOC case law database, Case No. **AUSx212** (2017).

Similarly, in the Sahel region some violent extremist groups are involved in both drug trafficking and illicit arms transfers. For instance, in 2015, a large shipment of weapons, ammunition and cash was seized in Northern Niger. The nine individuals arrested were suspected of being affiliated to a terrorist group. Investigations revealed that they had been selling drugs to individuals in a foreign country. Part of the money raised from the sale of drugs was used to purchase vehicles, weapons and ammunition. The rest of the seized cash, roughly USD 562,500, was to be used to finance future terrorist actions in Niger and the Sahel in general. All of the arrested individuals were charged with criminal association in relation to a terrorist enterprise, possession and transport of firearms and ammunition, money laundering and terrorist financing¹³¹.

2.8.2 Trafficking in persons¹³²

Firearms can be used by traffickers engaged in the trafficking in persons to enforce their will and make the trafficking victims submissive. That was, for example, the case in **IRBx028** (2016), in which the ECHR examined a situation in which 42 Bangladeshi nationals living in Greece had been recruited to work as agricultural workers in very difficult conditions. When the workers went on strike demanding payment of their unpaid wages, one of the armed guards opened fire to keep the workers in line, seriously injuring 30 of them. The Greek national courts acquitted the two employers, together with the guard who had opened fire and an armed overseer, of the charge of trafficking in human beings but convicted them of grievous bodily harm and unlawful use of firearms.

In similar cases from Latin America and South Africa, the possession of a firearm was used to prove the element of threat of a person that is required by the offence of trafficking in persons. In **IRBx040** (2016), the Inter-American Court of Human Rights deemed agricultural workers who had been forbidden to leave the farm and threatened with a firearm to be victims of trafficking in persons. Similarly, in **ZAF007** (2015), although no physical violence was exerted against the victims, they testified that the accused had a firearm in the back pocket of his trousers and talked threateningly. The accused was convicted of trafficking for

131 GIABA, Terrorist Financing in West and Central Africa (Dakar, 2016), p. 22.

132 See also Section 6.4.5 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

sexual exploitation. And also in **ZAF012** (2014), the testimonies of children trafficked for sexual exploitation were corroborated, among other details, by the defendant's possession of a firearm.

2.8.3 Smuggling of migrants¹³³

Human trafficking must be distinguished from the offence of smuggling migrants, which refers to supporting the illegal transfer of a person across a border. The main difference between “smuggling” and “trafficking” is that migrant smuggling violates the laws of the State that is illegally entered, while human trafficking violates the human rights of the trafficked person.

In parallel to the cases of trafficking in persons, smugglers of migrants often use firearms to control the migrants and secure their business, as was the case in **FRAx041** (2020). In this case the perpetrators used firearms to threaten the migrants they were smuggling and shot a member of a rival smuggling gang. Furthermore, migrant smuggling is often linked to organized criminality more broadly, with smuggling networks engaging in several types of criminal activity, including trafficking in firearms. In a significant number of cases firearms are seized during the arrest of migrant smugglers, as was the case in *BRA(i) (2023) and FRA/GBR(i) (2020)*. In both cases, the criminal groups were involved in several types of crime, including money laundering and drug trafficking respectively. Such poly-crime organizations can be observed in various countries, exploiting all kinds of trafficking opportunities that appear to be lucrative. In **USAx256** (2022), the defendants identified a supply source for fentanyl and trafficked it into the United States. Throughout the conspiracy, the defendants engaged in various additional offences to finance the initial purchase of the fentanyl and build their organization. This included smuggling migrants to the United States and, reversely, trafficking in firearms and auto switches from the United States to Mexico on the way back. The example shows that often different illicit commodities are trafficked along the same routes through the same networks.

In an increasing number of migrant smuggling cases, also the migrants themselves have carried firearms with them and, therefore, trafficked the firearms in the moment they crossed a border. This can be explained by the security needs of the migrants during their often-dan-

gerous flight. Furthermore, firearms can be used as a lucrative commodity and be bargained in exchange for other goods when leaving their home country.

2.8.4 Wildlife crime¹³⁴

Firearms can also play an essential role in wildlife crime, most obviously by being used for poaching but also to enable trafficking in protected species. Wildlife is protected internationally by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (‘CITES’), which provides a framework for the protection of certain species against over-exploitation through trade. It does not define wildlife crime as such, but it strongly influences national legislation on wildlife crime and provides a means for international cooperation against trafficking¹³⁵. For the purposes of this Digest, the term ‘wildlife crime’ refers to harvesting and trade contrary to national law¹³⁶. The United Nations General Assembly has recognized the seriousness of wildlife crime, calling Member States to “make illicit trafficking in protected species of wild fauna and flora a serious crime” in its resolution ‘Tackling illicit trafficking in wildlife’ adopted on 23 July 2021¹³⁷. This Resolution also notably connects wildlife trafficking to other forms of transnational organized crime, and specifically “the illicit trade in small arms and light weapons, which may pose a serious threat to national and regional stability in some parts of Africa”.

In poaching cases, it is often illicit firearms that are used to kill protected animals such as rhinoceroses or elephants and to steal their horns or tusks, as was the case in **NAMx014** (2021), in which the defendants were arrested for sawing off rhino horns after killing them with a firearm. Sometimes, the firearms and ammunition are even specifically modified for that purpose. In **ZAFx016** (2019) for instance, the defendant modified a normal .22 Marlin bolt action firearm by shortening the barrel and putting a second barrel on top of the actual barrel to convert it into a tranquilizer gun to paralyze rhinoceroses and steal their horns. Seized firearms can prove useful in the prosecution of wildlife offences, for example, to link the accused to a crime through ballistic analysis of the ammunition recovered at the crime

¹³⁴ See also Section 6.4.7 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹³⁵ **Convention on International Trade in Endangered Species of Wild Fauna and Flora**.

¹³⁶ See also UNODC, *Guide on Drafting Legislation to Combat Wildlife Crime* (2018), p. 2.

¹³⁷ United Nations General Assembly Resolution on *Tackling illicit trafficking in wildlife*.

¹³³ See also Section 6.4.5 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

scene. In **ZAFx027** (2022) for instance, a ballistic analysis linked the firearm that the accused illicitly possessed to the bullets recovered from the carcasses of three illegally hunted and dehorned rhinos.

GOOD PRACTICE

Bullets found in the carcasses of poached animals can be important investigative leads to identify the poachers. Ballistic and forensic examinations allow to determine if the bullets have been shot from a specific firearm, which can be useful if suspects of the poaching are found with firearms.

Firearm offences can also be prosecuted along with the wildlife crimes, like they were, for example, in *MLW(i)* (2017), in which the defendants were convicted of possession of a prohibited weapon as well as possession and killing of a protected species. It is, however, worth noting that in this case the sentences handed out for wildlife crimes were much higher than for the firearms offence (18 years compared to 18 months, for instance, for one of the defendants). The prosecution seems to consider the wildlife crimes as the main offence and the firearms offence as ancillary, and as such tends to focus more on the prosecution of the former. That was also exemplified in **KENx021** (2016), in which the defendant appealed against the trial court's decision after being convicted for offences of possession of wildlife trophies and possession of ammunition. The High Court of Kenya held that while the prosecution had indeed sufficiently proved the first offence, it had failed to meet its burden of proof for the ammunition offence by not calling expert witnesses.

2.9 Actors involved in illicit firearms offences

The examination of the collected material revealed that crimes related to illicit firearms involve a multitude of actors. Depending on the case, these can include private subjects, criminal organizations, terrorist groups, non-State armed groups and State officials. Depending on the case, often two or more different actors rely on each other to source and traffic firearms. These roles are fixed by no means. In one case, an organized crime group might traffic firearms to a terrorist organization

by bribing governmental officials, while the same group might at another point in time source firearms from a non-State armed group.

These links between different actors can make the investigation and prosecution of firearms trafficking and related offences complex and time-consuming. Sometimes the involvement of organized crime groups or terrorists can also divert the focus from firearms offences. However, at the same time, firearms can offer important investigative leads. They are durable and can be traced back, which might offer investigators insights into the supply networks of drug cartels and terrorist groups.

2.9.1 Individual criminals

As illustrated in the cases above, the participation of individual criminals in the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition is multi-fold. Sometimes petty criminals traffic one or two firearms in the trunk of their car across a land-border; in other cases, highly specialized criminals engage in large scale cross-continental arms trafficking or have set up elaborated workshops to illicitly produce or convert firearms. In some of these activities criminals closely cooperate with organized crime groups or terrorists, however, their ties and organizational structure might not be sufficiently close to charge them under terrorist or organized crime offences.

2.9.2 Straw purchasers and custodians of illicit firearms¹³⁸

Firearms straw purchasers and custodians of firearms for organized crime groups are addressed jointly in this section. Both actors commit firearms offences themselves, however, usually these offences aim at supporting the activities of larger organized crime groups or trafficking networks, by either sourcing illicit firearms or storing them.

Straw purchasers

Straw purchases represent an important source for trafficked firearms. Typically, an individual, usually with a clean criminal record, legally buys a firearm with the intention of illegally passing it on to a person who would otherwise be precluded from owning a firearm,

¹³⁸ See also Section 2.5.8 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

or whose profile would raise suspicion if they were to attempt such a purchase themselves¹³⁹. In *BRB(i)* (2013) straw purchasers were involved in firearms trafficking from the United States to the Bahamas and Barbados. In this case, multiple and repeated purchases of firearms by the same person in the United States raised suspicion that the firearms would be trafficked onwards. However, since investigators could not find sufficient evidence to prove the actual trafficking, the recipients were in fact charged with illicit possession of firearms and possession of ammunition without a valid permit, as well as importation of firearms and ammunition without a valid licence.

CASE STUDY

Straw purchases and trafficking from the US to Mexico – **USAx289** (2022)

From March 2016 to December 2018 gun dealers sold 37,200 rounds of ammunition, 2,649 high-capacity rifle magazines, 120 body-armor plates, and 3 handguns to a US-based trafficker. Together with a separate individual in Nogales, Arizona, he then smuggled the items into Mexico in the course of 87 border crossings. The defendant was directly involved with high level members of the Sinaloa cartel in Mexico.

He was charged in a one-count indictment with smuggling firearms and ammunition from the United States into Mexico. In addition, because the firearms and ammunition had been removed from the jurisdiction of the United States, the court ordered forfeiture of substitute assets in the amount of USD 21,027.50¹⁴⁰.

Custodians of illicit firearms

Another related modality is the use of custodians by organized crime groups. They often rely on *ad hoc* access to firearms for their activities. However, to avoid that these arsenals be recovered on their premises during potential searches, the storage of firearms with inconspicuous custodians has been observed various times. Whenever they need them, the organizations pick up their arms at these places.

¹³⁹ UNODC, *Global Study on Firearms Trafficking, 2020*, p. 64.

¹⁴⁰ For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx289** (2022).

CASE STUDY

Storage of firearms for organized crime groups by custodians – *ITA(i)* (2014-2017)

In *ITA(i)* (2014-2017) investigators searched a flat and found around 60 firearms, including weapons of war and firearms with removed markings, more than 3,700 rounds of ammunition as well as seven kilograms of cocaine sufficient for around 47,000 “street doses”. Further investigations unveiled that the owner of the apartment stored the weapons and drugs for the Parisi/Palermi Clan, a mafia type organization based in Bari, Italy, that is engaged in drug trafficking, extortion and money laundering. In a second seizure in 2017, three years later, additional firearms, silencers and ammunition were found, stored in another apartment for the same mafia clan. This is a criminal phenomenon often recorded in investigations on organized crime in Italy. People with a clean criminal record are used to store weapons and drugs for mafia-type organizations in exchange for money or protection¹⁴¹. The six individuals involved in storing the arms and drugs for the clan were sentenced as members of an organized crime group to four years and six months up to 17 years and 10 months in prison.

2.9.3 Private entities

Legal entities also emerge as relevant players in many firearms trafficking cases. Depending on the context they may either engage in illicit activities as part of their business model or might be used by criminals as a vehicle to engage in illicit activities, for instance, to cover criminal conduct¹⁴².

The first scenario is illustrated by cases **DEUx049** (2021) and **DEUx050** (2019)¹⁴³ in which two firearms manufacturers provided false or misleading information to fraudulently obtain export authorizations that would have been declined otherwise. Interestingly, in

¹⁴¹ On this point see also *ITA/AUT(i)* (2019) in Section 3.5, *infra*; and the more detailed case study *ITA* (2014-2017) in Section 3.2.3, *infra*.

¹⁴² See the case **CRix008** (2019) already discussed in Section 2.5 of this Chapter, *supra*.

¹⁴³ See more detailed case summaries in Section 2.7.2, *supra*.

both lawsuits, individual representatives of the companies as well as the company itself were charged. In **DEUx050** (2019), for instance, the revenue of the firearms exported was forfeited.

In *BRB(i)* (2013) a private shipping company (and a legitimate customs broker) generated and processed fraudulent shipping documents to cover firearms traf-

ficking. In *DOM(i)* (2017-2018) authorities condemned the accused, ordered the closure of several private companies involved in arms trafficking and confiscated the weapons available to them. The companies were also involved in other crimes, including drugs trafficking, smuggling of migrants, cybercrime, trafficking in persons and corruption.

CASE STUDY

Illicit sale of firearms by authorized firearms dealer – **CRIx008** (2019)

The gun shop Importadora de Armas Martin Armar S.A. was an authorized firearms dealer in Costa Rica, authorized to import and sell firearms. The company legally both imported firearms into the country and purchased firearms from national armouries to (legally) sell them to private security companies. Due to their business, these companies were not suspicious when purchasing and possessing large quantities of firearms. However, under the guise of its legal businesses, Importadora de Armas Martin Armar S.A. also sold firearms illicitly to various individuals in Costa Rica and Panama, without the required authorization. Panama had banned the possession of handguns for civilians, which significantly increased the prices on the black market to around USD 3,500 for one pistol, making their trafficking a lucrative business. Originating from this source, at least 35 firearms were seized by police forces in Panama in the hands of criminals.

The organized crime group acted as follows. After the legal import or purchase of firearms, Importadora de Armas Martin Armar S.A. submitted documents to the Department for the Control of Arms and Explosives, stating that the firearms were supposed to be sold to private security companies. The representatives of these companies collaborated in the crime and received money for each firearm that they falsely registered under the name of their respective private security companies. The law requires that an inspector of the Department for the Control of Arms and Explosives conducts checks to verify the serial numbers and characteristics of the weapons. In the present case, one inspector of the Department collaborated with the organized crime group and wrongfully attested their presence, even though the arms had already been handed over to criminals. Based on the false information, the Department for the Control of Arms and Explosives issued firearms licences for the private security companies, while, in fact, the firearms were destined for the black market. To obstruct efforts to trace recovered firearms back to Importadora de Armas Martin Armar S.A. the serial numbers on various firearms were filed off.

The investigation started after the police of Costa Rica seized 35 firearms and around 500 kilograms of cocaine from an organized crime group. By tracing the seized firearms, investigators were able to prove that three of the weapons were registered with two different private security companies but were imported by the same importer, Importadora de Armas Martin Armar S.A. The investigators further identified the recent import of 189 firearms by the company and worked out that they were mainly sold to five different private security companies that registered the weapons. Physical controls at these companies unveiled that various of the arms were no longer at their designated locations. In fact, some of these firearms later appeared in seizures in Panama.

Two defendants, J.C.M.V., President and Representative of Martin Armar S.A., and H.J.H.A were convicted, among others, for illicit trade in firearms (Articles 93 and 94 of the Law on Arms and Explosives No. 7530), falsification of public or authentic documents and use of false documents (Articles 366, 367 and 372 of the Criminal Code). Article 366 “Forgery of Public and Authentic Documents” states that anyone who forges in whole or in part a false public or authentic document, or alters an authentic one, in such a way that damage may result, shall be sentenced to one to six years of imprisonment. If a public official in the exercise of their duties commits the act, the penalty shall be two to eight years of imprisonment. Pursuant to Article 367 “Ideological Falsehood”, the same penalties shall be applicable to anyone who inserts or causes to be inserted ►

in a public or authentic document false statements concerning a fact that the document is intended to prove, in such a way that harm may result. Article 372, “Use of a False Document”, finally establishes that anyone who uses a false or falsified document shall be sentenced to one to six years of imprisonment.

Lessons learned:

An uninterrupted chain of recorded information on each transfer of a firearm throughout its lifecycle combined with regular physical controls of stocks of individual or commercial licence holders permits to identify cases of diversion. More importantly, in the present case, the large-scale trafficking scheme could only be uncovered because investigators in Costa Rica did not simply seize the firearms on the basis of illicit possession but investigated their illicit origin by tracing the arms through their supply chain¹⁴⁴.

An interesting perspective on the role of private entities is provided by the strategic litigation of the Government of Mexico against several firearms manufacturers and dealers in the United States, in **USAx258** (2022). In two civil lawsuits the Government of Mexico claims damages caused by firearms that have been legally manufactured and sold in the

United States and subsequently trafficked to Mexico. The argument goes that the firearms manufacturers and dealers, due to allegedly irresponsible distribution practices, actively facilitate the unlawful trafficking of their guns to drug cartels and other criminals in Mexico and, thus, aid and abet crimes committed by the cartels with these weapons.

CASE STUDY

Mexico v. Smith & Wesson Brands & others – USAx258 (2022)

In two landmark civil lawsuits the Government of Mexico is currently suing several US firearms manufacturers and dealers for damages caused by potentially negligent and illicit commercial practices that actively assist and facilitate firearms trafficking into Mexico. The Government of Mexico claims that, although the companies are fully aware of the illicit flow of their guns into Mexico, they have not implemented sufficient monitoring or control measures in their distribution systems.

The first civil lawsuit *Mexico v Smith & Wesson & others*¹⁴⁵ was filed in August 2021 before the Federal Court in Boston. The Government of Mexico accuses major firearms manufacturers with production facilities in the US (Smith & Wesson, Beretta USA, Century Arms, Colt, Glock, and Ruger) of negligent and unlawful business practices through which the defendants actively assist and facilitate firearms trafficking to drug cartels and other criminals in Mexico. The Mexican State argues that the defendant gun manufacturers had been “*causing massive damage by actively facilitating the unlawful trafficking of their guns to drug cartels and other criminals in Mexico*”, and, thus, facilitated the crimes committed by the cartels with trafficked weapons, since “[a]lmost all guns recovered at crime scenes in Mexico—70% to 90% of them—were trafficked from the US”.

The Government of Mexico claims that the defendant manufacturers “*had a duty to exercise ordinary and reasonable care in designing, manufacturing, marketing, advertising, promoting, distributing, supplying, and selling their guns in order to reduce the risk that their guns would be trafficked into Mexico*”; furthermore, that the “[d]efendants knew or chose to be wilfully blind to the fact that their design, marketing, and distribution of guns posed a serious risk of harm to people in Mexico and to the Government, but they nevertheless continued to sell their guns without exercising reasonable care”; that the “[d]efendants’ negligence [...] is the ►

¹⁴⁴ For more information on this case, see UNODC, SHERLOC case law database, Case No. **CRIx008** (2019).

¹⁴⁵ See in the United States District Court for the District of Massachusetts, *Estados Unidos Mexicanos, vs. Smith & Wesson Brands, Inc. & others*, Case 1:21-cv-11269, filed 08/04/21.

proximate cause of the epidemic of gun-trafficking into, and gun violence within, Mexico [...] [causing actual injury and damages including, but not limited to, significant expenses for police, emergency, health, prosecution, corrections, and other services, as well as other extensive economic losses]; and that the “[d]efendants were aware of the devastating and dangerous consequences of failing to monitor and discipline their distribution systems, of facilitating the unlawful trafficking of guns into Mexico, [...] [but] nevertheless continued, and continue today, to engage in all of that conduct”. The complaint outlines in a great level of detail how, in the view of the Government of Mexico, the business practices of the defendants actively assist and facilitate firearms trafficking, including through specifically designing and marketing their firearms for the Mexican black market and turning a blind eye on straw purchases and other diversion practices despite better knowledge of such conducts.

In the lawsuit, the Government of Mexico demanded that the court require the defendants, among others, to “*abate and remedy the public nuisance [...] create and implement standards sufficient to reasonably monitor and discipline their distribution systems; [...] award damages to the [Mexican] Government in an amount to be determined at trial; award civil penalties to the Government as permitted by law; [and] award to the Government restitution and disgorgement of Defendants’ profits*”. The lawsuit was dismissed on 30 September 2022 by a US District Court, on the grounds that it is precluded by the US Protection of Lawful Commerce in Arms Act, which grants firearms manufacturers and dealers broad immunity against lawsuits claiming harms resulting from the ‘criminal or unlawful’ misuse of guns by a third party¹⁴⁶. The Government of Mexico appealed against the decision on 15 March 2023.

The second civil lawsuit *Mexico v. Diamondback Shooting Sports Inc. et al*¹⁴⁷ was filed in the US District Court of Arizona on 10 October 2022 and targets US gun dealers for extraterritorial damages suffered by Mexico in the context of gun trafficking and cartel violence. The Government of Mexico alleges that the defendant Arizona gun dealers “*systematically participate in trafficking military-style weapons and ammunition to drug cartels in Mexico by supplying gun traffickers. Defendants know or should know that their reckless and unlawful business practices – including straw sales, and bulk and repeat sales of military-style weapons – supply dangerous criminals in Mexico and the U.S.*” The claims put forward by the Government of Mexico in the lawsuit are similar to the claims in the lawsuit against the manufactures. Namely, the Government of Mexico asserts that “*[e]ach Defendant has a duty to exercise ordinary and reasonable care in selling and marketing its guns in order to reduce the risk that its guns would be trafficked into Mexico; [...] knew or chose to be wilfully blind to the fact that its sales and marketing of guns posed a serious risk of harm to people in Mexico and to the Government, but it nevertheless continued to sell and market its guns without exercising reasonable care; [and that] each Defendant’s negligence [...] is the material and proximate cause of the epidemic of gun-trafficking into, and gun violence within, Mexico*”. In particular, the Government of Mexico is of the view that the defendant “*knowingly transferred guns to straw purchasers*” and that “*transfers were made under circumstances indicating a known risk that the guns would be possessed by persons prohibited from possessing firearms and used in gun violence incidents*”. Such conduct would violate statutory duties by “*failing to monitor and modify [...] sales practices so as to prevent or reduce the trafficking of its guns into Mexico*”. In addition to the demands in the first lawsuit, in the complaint against the gun dealers, the Government of Mexico demands that the court “*appoint a monitor who shall have full authority to oversee and direct that Defendant’s sales practices, with the costs to be borne by the Defendant*”.

Lessons learned:

The two lawsuits are an example for strategic litigation, aiming at enforcing corporate due diligence in the manufacturing and distribution of firearms. They can be seen as an attempt to specify corporate duties of care and determine when such duties of care have been violated, either intentionally or by negligence.¹⁴⁸

¹⁴⁶ See in the United States District Court for the District of Massachusetts, *Estados Unidos Mexicanos, Plaintiff, vs. Smith & Wesson Brands, Inc. & others*, Case 1:21-cv-11269, Memorandum and Order on Defendants’ Motions to Dismiss.

¹⁴⁷ See in the United States District Court for the District of Arizona, *Estados Unidos Mexicanos, Plaintiff, vs. Diamondback Shooting Sports, Inc. & others*, Case 4:22-cv-00472, filed 10/10/22.

¹⁴⁸ For more information on this case, see UNODC, SHERLOC case law database, Case No. [USAx258](#) (2022).

2.9.4 Organized crime groups and drug cartels¹⁴⁹

Firearms trafficking is profoundly linked with organized crime. Organized crime groups can be engaged at different ends of a transfer. In various cases, organized crime groups source firearms and sell them to whoever pays most. This may include criminals or other criminal groups, terrorists and non-state armed groups, sometimes even on opposite sides of the same conflict. Conversely, on the receiving end, firearms trafficking is also an important source for illicit firearms to strengthen the operational capacities of an organized crime group.

Pursuant to Art. 1, para. 3 of the Firearms Protocol, in conjunction with Article 5 of the UNTOC, States parties shall criminalize the participation in an organized crime group and shall ensure that the offence also applies to groups that commit firearms-related offences. The UNTOC provides two offences of participation in an organized crime group, conspiracy and criminal association, depending on the legal tradition of the State party.

These offences create criminal liability for persons who intentionally participate in or contribute to the criminal activities of organized crime groups. They create liability distinct from the attempt or completion of a criminal activity by individual members of the group and, thereby, acknowledge the collaborative structure of organized crime groups. Such groups are responsible for a wide array of criminal conduct while it might not always be possible to prove that individual members have intentionally fulfilled all elements of a criminal offence. Without an offence of participation in an organized crime group, a greater degree of collaboration and sophistication in an organized crime group can lead to criminalization gaps, when all members of the group claim to have only been involved in specific elements of a crime, without knowing the broader context of their conduct.

This defence strategy can be observed in **USAx253** (2017)¹⁵⁰. In this, a 31-year-old Mexican citizen was condemned for conspiracy to illegally export

5.56 calibre rifles from the United States to Mexico along with his brother and two other individuals. The accused, after having pleaded guilty, appealed against his sentence, arguing that he was “merely a negotiator”, “middleman”, and “facilitator” in the criminal activity and that the district court clearly erred by refusing to grant him a mitigating role adjustment. According to the court, the accused was actively involved in finding suppliers for the illicit firearms and in the actual or attempted negotiations, delivery, and sale of eight firearms to undercover agents over a four-month period. As part of those negotiations, he communicated directly with undercover agents through five in-person meetings, telephone conversations, and text messages, and was present for the sale and transfer of three firearms and the attempted sale of five firearms that preceded his arrest in this case. Therefore, the accused had the burden and failed of proving by a preponderance of the evidence that he was substantially less culpable than other participants in the criminal activity.

Although the involvement of criminal organizations emerged as a typical feature of the cases examined for the Digest¹⁵¹, prosecutors did not always prosecute the offence of participation in an organized crime group as a separate offence or aggravating circumstance, in addition to the firearms offences. In some jurisdictions, the participation in an organized crime group is not yet criminalized or does not apply to the full scope of firearms offences. Another obstacle is the complexity of cases involving organized crime groups. In many cases, notwithstanding several indicators pointing to the organized dimension of firearms trafficking, investigations encountered difficulties in proving all elements of the offence of participation in an organized crime group and rather focussed on the catch-all offence of illicit firearms possession.

The case *MTQ(i)* (2021)¹⁵² offers a good practice in that the expert presented an effective investigative strategy to overcome difficulties arising in complex investigations dealing with organized crime groups engaged in firearms trafficking and related offences. In this case, domestic authorities used the conviction of some defendants for minor firearms offences as an entry point to investigate the activities of an

149 See also Sections 2.6.4 and 6.4 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

150 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx253** (2017).

151 *ABW(i)* (2021); *BHS(i)* (2021); *BHS(ii)* (2018); *BIH(i)*, *BIH(ii)*, *BIH(iii)*; **CANx149** (2016); *CHL(i) – CHL(ii)* (2021); *DOM(i)* (2017-2018); *ITA(i)* (2014-2017); *MTQ(i)* (2021); *PER(iv)* (2019); *LCA(ii)* (2014-2020).

152 This case is examined in detail in Section 3.2.3 of Chapter 3, *infra*.

organized crime group, of which the defendants were members.

The participation of organized crime groups in firearms trafficking and related forms of crime can be broadly divided into three categories: (i) “opportunistic” organized crime groups that engage in firearms trafficking as a side-business, in addition to their core activities; (ii) trafficking networks that follow a multi-commodity approach and traffic all kind of contraband as long as they find a source and lucrative sales market; and (iii) organized crime groups that solely or mainly focus on the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

The first two groups have in common that they often use the same routes, transport vehicles and *modi operandi* to smuggle different kinds of illegal commodities. In Latin America and the Caribbean, the joint trafficking of drugs and firearms and, in some cases, the arms for drugs trade, is particularly prevalent¹⁵³. Typically, organized crime groups that traffic firearms are also involved in money laundering¹⁵⁴.

An illustrative case for an organized crime group that mainly focusses on arms trafficking is *ESP(iii)* (2018-2022)¹⁵⁵, which involved the transfers of large quantities of arms and ammunition to areas of armed conflict, combined with complex money laundering schemes. In violation of an arms embargo imposed on Libya, in 2014, the group attempted to ship 55 containers containing 1,000,000 rounds of 14.5 x 114 mm ammunition, 1,025,000 rounds of 12.7 x 108 mm ammunition and 30,000,600 rounds of 7.62 x 39 mm ammunition from Oktyabrsk, Ukraine, to Tripoli, Libya. The materiel had been produced in various plants of the former Soviet Union in the 1970s and the 1980s¹⁵⁶. Operating from Spain, the criminal network was also involved in the trafficking of explosives precursors, used by terrorists to manufacture improvised explosive devices, tanks and armoured vehicles to conflict zones in North Africa and the Middle East, subject to international arms embar-

goes. The complex trafficking scheme addressed the jurisdiction of various countries (a Sierra-Leone flagged ship, loaded in Ukraine and destined to Libya, intercepted in Greece and with cargo bought by a Turkish company) and involved various actors and companies. At a domestic level, *SRB(i)* (2016) brought to light a case involving an organized crime group that acquired a large quantity of firearms, ammunition, explosives, and parts of weapons, within the territory of Serbia, for the purpose to sell them on domestically and obtain material gain.

As noted above, organized crime groups can also be the recipients of firearms as tools to carry out their activities. In *CHL(i)* (2021) and *LCA(i)* (2021) firearms trafficking emerged as an instrument to commit other offences or as a tool for maintaining or strengthening the control over territory. Similarly, in *ITA(i)* (2014-2017) Italian law enforcement authorities seized and confiscated a large number of trafficked firearms in possession of a Mafia organization, presumably originating from the Balkans region¹⁵⁷.

The cases that were analyzed for the present Digest¹⁵⁸ seem to suggest that most mafia-style organizations are rather recipients of illicitly trafficked firearms as tools of power to strengthen operational capacities for their core businesses and to maintain control over their territory. In order to avoid getting into the focus of law enforcement, there seems to be little interest of these organizations in a more active role in firearms trafficking. Where they actively traffic firearms, for example, to drug cartels, this seems to have a ‘confidence-building’ character to secure supply sources for drugs or other more lucrative commodities.

153 *ABW(i)* (2021); *BHS(i)* (2021); *BHS(ii)* (2018); *DOM(i)* (2017-2018); *MTQ(i)* (2021); *LCA(ii)* (2014-2020); *CHL(i) – CHL(ii)* (2021); *PER(iv)* (2019).

154 *PRY(i)*. In this regard, a very interesting case identified was *AUSx212* (2017). This case is examined in detail in Section 2.7.4 of this Chapter, *supra*.

155 See Section 3.5.2 of Chapter 3, *infra*.

156 Final report of the Panel of Experts established pursuant to resolution 1973 (2011) concerning Libya, S/2014/106, p. 26.

157 This case is examined in detail in Section 2.9.2, *supra*.

158 Also see F. Strazzari and F. Zampagni, *Between organized crime and terrorism: illicit firearms actors and market dynamics in Italy*, in N. Duquet (Ed.), “**Triggering Terror: Illicit Gun Markets and Firearms Acquisition of Terrorist Networks in Europe**”, cit., pp. 237-285.

CASE STUDY**Firearms trafficking involving mafia organizations in Italy – ITA/AUT(i) (2019)¹⁵⁹ and ITA (iii)**

ITA/AUT(i) (2019) – organized crime groups traffic firearms to mafia organizations

In March 2019, Italian and Austrian authorities dismantled an international network, which was involved in trafficking firearms to supply different mafia groups in Italy. During the operation, police officials arrested 22 suspects and seized 139 firearms and 1,600 rounds of ammunition. Among those who were arrested were two Austrian gunsmiths, who had illicitly sold 50 fully automatic Kalashnikov rifles and over 800 pistols to organized crime groups, many of which had their serial numbers removed.

The arrests originated in a complex Italian investigation which started in June 2018 and aimed at dismantling the supply of firearms to the Camorra mafia group in Naples. That investigation was based upon Italian inquiries that started in February 2016 when two Camorra members were arrested in possession of a Kalashnikov.

With the support of Eurojust, the Austrian and Italian authorities opened parallel criminal proceedings in both countries. The investigation showed that members of the Italian organized crime group placed orders with the Austrian gunsmiths, who also ran a legal firearms shop selling guns and hunting equipment. Couriers drove from Italy to Austria in cars loaded with mozzarella cheese and tomatoes to pick up the firearms. Documents seized along with the firearms detailed prices and transactions involving 16 different purchasers, including representatives of the Neapolitan Camorra and the Calabrian 'Ndrangheta organized crime groups.

When Austrian police officers searched the shop of the Austrian gunsmith, they found 88 unregistered handguns, some of which had had their serial numbers removed, six Kalashnikovs and assorted ammunition. The investigation revealed that the gunsmiths had lawfully purchased 838 firearms from a German company that were, however, never entered into the Austrian central weapons register. Instead, the serial numbers were removed from the guns, which were then illicitly sold and trafficked to the Italian organized crime groups. In addition, the gunsmiths had illicitly obtained 50 Kalashnikovs and five Skorpion sub-machineguns, all of which had been ordered by the Italian organized crime groups. The Kalashnikovs had originally been trafficked from former-Yugoslavia, some of which had been supplied by a Slovenian citizen.

The gunsmiths were convicted in Austria of arms trafficking offences and received prison sentences of, respectively, three years and two years.

CASE STUDY**ITA (iii) – Operation EUREKA: Mafia organizations are involved in firearms trafficking to drug cartels**

While the previous case addressed the supply-chains that mafia organizations in Italy use to procure firearms, the following case focusses on the involvement of mafia organizations in trafficking firearms to drug cartels through a complex triangle of organized criminal groups in Pakistan, Brazil and Italy.

In 2013, the Belgian public Prosecutor's Office, in cooperation with Europol and Eurojust, started an investigation against the mafia organization 'Ndrangheta related to drugs and arms trafficking, money laundering and tax offences. The Italian criminal network was mainly devoted to international drug trafficking from South America to Europe, as well as Australia. Authorities uncovered that the network was working in partnership with the Colombian organized crime group 'Gulf Clan' and a crime group operating in Ecuador and multiple European countries. Furthermore, the 'Ndrangheta clans were involved in international firearms trafficking from Pakistan to South America, providing weapons to the notorious criminal group PCC (Primeiro Comando da Capital) in exchange for cocaine shipments. Investigators tracked the flow of money in an extensive global money laundering system. The criminal group was investing its profits in real estate, restaurants, hotels, ►

159 'Mafia, Clans, Bruderschaften' (Öffentliche Sicherheit Das Magazin des Innenministeriums, November/Dezember 2020, pp. 6-10).

car wash companies, supermarkets, and other commercial activities. In order to pay for cocaine or to transfer illicit assets, the criminals often relied on facilitators using the hawala system.

As part of the investigation, investigators were able to unveil plans for cross-continental arms transfer from Pakistan to Brazil: Rocco Morabito of the 'Ndrangheta clan, who had ties to organized crime groups in both Pakistan and Latin America arranged a transfer of a container of Kalashnikovs for the Brazilian PCC. The guns, which were to be supplied from Afghanistan by unidentified Pakistani nationals, were offered to be shipped to European harbours in exchange for large quantities of cocaine in January 2021. It is unclear whether the deal was concluded.

Over 2,770 officers were involved on the ground during the action day. Eurojust and Europol supported this international operation against the 'Ndrangheta, which now stands as the largest hit involving the Italian poly-criminal syndicate to date. During an action day executed by ten countries, 132 members of one of the world's most powerful criminal networks were taken into custody.

Lessons learned:

The cases illustrate the involvement of poly-crime groups into various criminal activities and illicit financial flows. For these groups, firearms are not just lucrative trafficking commodities but more importantly tools of power. Furthermore, the possibility to procure firearms to allied criminal organizations can build trust among these groups and guarantee access to more lucrative drug markets and sources.

The first case also shows the importance of tracing every seized firearm back to the point of diversion. The extensive international cooperation through parallel investigations and judicial processes permitted the investigation and prosecution of different participants along the trafficking chain at the same time to unravel the entire network.

2.9.5 Terrorists and terror groups¹⁶⁰

The nexus between terrorism, organized crime and firearms trafficking has been widely recognized by the international community. A Wilton Park report in collaboration with the UNODC on the arms-crime-terrorism nexus states for instance that “[t]he international community has increasingly acknowledged the destabilizing impact of [...] firearms as a matter of particular concern in the context of organized crime and terrorism. Manifesting in different forms and local variations, illicit firearms trafficking is often the element of convergence between these phenomena, that also contributes to exponentially increase the destructive power and incidence of criminal and terrorist actors on peace and security”¹⁶¹. In 2017, the United Nations Security Council adopted Resolution 23(2017) on the supply of weapons to terrorists,

strongly condemning the flow of weapons to terrorist groups like ISIL and Al-Qaeda and urging Member States to fight this phenomenon.

This link has been especially evident in recent terrorist attacks that were carried out with transnationally trafficked firearms. In the notorious Bataclan attack in Paris on 13 November 2015, 130 people were killed with firearms and more than 400 were wounded. The terrorists carried out coordinated attacks targeting the Stade de France, busy restaurant terraces in the 10th and 11th arrondissements, and the Bataclan theatre¹⁶². The weapons used, primarily automatic AK-pattern assault rifles, had been manufactured in the Western Balkans in the 1980s, but it is unclear how exactly they ended up in the hands of the terrorists¹⁶³.

¹⁶⁰ See also Sections 6.2 and 6.3 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹⁶¹ Wilton Park, Report, *The nexus between SALW, organized crime, and terrorism*, January 2019.

¹⁶² N. Duquet (Ed.), *Triggering Terror: Illicit Gun Markets and Firearms Acquisition of Terrorist Networks in Europe*, Flemish Peace Institute, (SAFTE Project), Brussels, 17 April 2018.

¹⁶³ *Armed to kill: A comprehensive analysis of the guns used in public mass shootings in Europe between 2009 and 2018*, Flemish Peace Institute, Brussels, 3 October 2019.

In the judicial handling of terrorism cases linked to firearms, two scenarios can be distinguished. The first scenario involves cases in which the perpetrator of terrorist acts is also prosecuted for offences related to the possession or acquisition of the illicit firearms, as was, for instance, the case in **GBRx117** (2016)¹⁶⁴; and in **GBRx118** (2014)¹⁶⁵. In the first case, a plot by radicalized British citizens to stage a drive-by shooting of police or soldiers in London in the name of ISIS was foiled by the police. The perpetrators were able to acquire a converted pistol and ammunition from a low-level street gang. They were given life sentences for conspiracy to murder and preparation of acts of terrorism as well as for various firearms related offences, including illicit transfer of firearms and ammunition as well as possession of firearms and ammunition with the intent of endangering life. Interestingly, one of the defendants acted as a repository of firearms, ammunition and silencers to provide them already loaded to the terrorists when instructed to do so. This indicates that the terrorists tried to address the risk of searches by depositing their arms with an external person. In **GBRx118** (2014), the perpetrators murdered a 25-year-old soldier close to his barracks, attacking him with knives.

When an armed police response team arrived, one of the two terrorists brandished an unloaded firearm and was shot by the police. Both were convicted of murder with terrorist connection and pleaded guilty to illegal firearms possession.

The second scenario regards cases in which defendants sell firearms to terrorist organizations. That was, for instance, the case in **PHLx012** (2018), in which, during a raid, the Philippine National Police discovered an illegal arsenal of assault weapons, including grenade launchers, M14 and M16 rifles, as well as ammunition and explosives. These arms were intended to be handed over to the Abu Sayyaf Group, a militant separatist faction designated as a terrorist organization for supporting acts or activities of Al-Qaida. During the raid, the police also arrested the defendant, who was the leader of a gun-running syndicate. However, the evidence was not sufficient to convict the defendant of illicit arms trafficking and his potential complicity with a terrorist offence. Instead, he was found guilty of illegal possession of firearms and explosives and was sentenced to more than three centuries in prison.

CASE STUDY

Supply of firearms to terrorists in the context of the 2015 Paris attacks – *MNE(i)* (2015)

On 6 November 2015, close to the Austrian-German border, German police stopped a suspicious car and found eight Kalashnikovs, eight rifle frames, 150 rounds of ammunition, two pistols, one revolver, two hand grenades and 200 gr TNT explosives with a detonator. *The navigation system of this car showed that it was driving from Montenegro through Croatia and Slovenia with Paris as the final destination. The driver V.V., a Montenegrin citizen, was arrested. After receiving information by their German counterparts, the Montenegrin NCB Interpol Podgorica carried out detailed checks in Montenegro in relation to V.V. (criminal intelligence, criminal records, crossings of the State border, verification of his communications through available databases, identification of persons possibly connected with the suspect, the car used including the agency that rented the vehicle, tracing of the weapons through national databases). All data collected was exchanged with the German and French police through Europol. Following a plea-bargaining agreement, in 2016, a German court convicted V.V. for 17 cases of unauthorized import and transit of war material, 232 cases of unauthorized possession of semiautomatic firearms and ammunition and unauthorized import and handling of explosives to four years in prison. This raised significant attention as the seizure occurred one week before the terrorist attacks in Paris, in which Islamist extremists equipped with automatic rifles originating from the Western Balkans killed 130 people. The court found that the defendant had received EUR 2,000 from an unidentified principal but had no knowledge of their intended use in a terrorist attack.* ►

164 For more information on this case, see UNODC, SHERLOC case law database, Case No. **GBRx117** (2016).

165 For more information on this case, see UNODC, SHERLOC case law database, Case No. **GBRx118** (2014).

Although the number and type of weapons and explosives led the prosecutors to believe that they had been intended for a specific attack, no link to the 2015 Paris attack could be established.

In parallel, with the aforementioned information, the competent State Prosecutor in Podgorica was informed and six persons in the territory of Montenegro were investigated for their involvement in the procurement of the weapons. Four persons were prosecuted for the offence of smuggling firearms in accordance with Art. 265 of the Criminal Code of Montenegro, illicit possession of weapons and explosive materials, and non-authorized production, possession, and marketing of narcotic drugs.

Lessons learned:

The case illustrates difficulties faced by prosecutors and judges to prove that suppliers of firearms to terrorists knew whom they are supplying with the weapons.

Trafficking by a far-right extremist movement to Hamas – USAx288 (2021)

With the aim to finance activities of the Boogaloo Bois, a far-right anti-government extremist movement in the United States, the two defendants sought to supply firearms and related equipment to the foreign terrorist organization Hamas.

The defendants met with an informant, whom they believed to be a member of Hamas. During this meeting, they proposed assisting Hamas as a means of furthering the goals of the Boogaloo Bois. In a second meeting with an undercover agent of the FBI that the defendants believed was a member of Hamas, they proposed manufacturing suppressors, untraceable firearms, and fully automatic firearms for Hamas. To this end, they purchased a drill press, which they used to manufacture at least five firearms suppressors. Furthermore, they ordered 3D printed auto-sears online to sell them to Hamas. When delivering these suppressors and auto sears to the informant and the undercover agent, they believed that they would be used against Israeli and United States military personnel overseas. Throughout the course of the conspiracy, they used encrypted messaging applications to communicate about various aspects of the conspiracy.

On 3 September 2020, the defendants were arrested by FBI agents. The authorities recovered various weapons, ammunition, tactical gear, auto-sears and equipment for the production of the suppressors during the arrest and subsequent searches. In a plea agreement, the defendants pleaded guilty to Count 1 of the Superseding Indictment, which charges the defendant with conspiracy to provide material support and resources, namely property, services and weapons, to Hamas, a designated foreign terrorist organization, for use against Israeli and US military personnel overseas, in violation of 18 U.S.C. § 2339B. In turn, the Government agreed to dismiss the remaining firearms-specific counts in the Superseding Indictment, including possession of unregistered firearms-silencers and unlawful possession of a machine gun.

Based on the plea agreement, the defendants were sentenced to 36 and 48 months in prison, respectively, followed by five years of supervised release¹⁶⁶.

An emerging trend linking terrorism to illicit firearms is the use of self-manufactured firearms. This allows the perpetrators to avoid detection by the authorities and is better suited to isolated perpetrators who have lim-

ited financial means or access to supply networks and black markets for firearms¹⁶⁷.

¹⁶⁶ For more information on this case, see UNODC, SHERLOC case law database, Case No. [USAx288](#) (2021).

¹⁶⁷ See cases examined in Section 2.3.1 of this Chapter, *supra*.

2.9.6 Governmental officials

As mentioned above in the context of links between illicit firearms and corruption (Section 2.7.6), governmental officials can be involved in firearms trafficking and related forms of crime in various ways. Since some officials come into direct contact with vast numbers of firearms and ammunition in national storage facilities and armouries, the risk of misappropriation, theft and illicit lending out of firearms should not be underplayed.

In *KNA(i)* (2017) two workers of the Customs Department were adjudicated and sentenced for being involved in smuggling two component parts of a firearm from a cargo shed at the RLB International Airport, on the island of Saint Kitts, in a cardboard box. Similarly, in *PRY(ii)* (2021)¹⁶⁸, officers of a National Army Registry (a public military institution) appointed to register stored firearms, diverted firearms in their custody to make them available to members of criminal organizations. Finally, in *JAMx006* (2016), a police officer was charged with numerous counts of illicit possession of firearms and ammunition after 19 firearms and 10,600 rounds of ammunition were seized. The defendant and his three co-accused (two of which were civilians working at the police armoury) were detained after a team of police officers on patrol noticed suspicious movements at a house owned by one of the co-accused and decided to search the premises and a motor vehicle in the yard. During the search, the officers recovered the firearms and ammunition that were stolen from the police armoury, probably to be sold to the black market for several thousand dollars.

CASE STUDY

Sale of firearms from national custody on black market – *ZAF(i)* (2015)¹⁶⁹

C.P., a police colonel who controlled the firearms register in the South African province of Gauteng, misappropriated large quantities of firearms and ammunition from national custody and sold them to the black market. ►

Until C.P.'s arrest in 2015, he had been the custodian of a SAPS armory in Gauteng province, which contained seized and surrendered firearms and other guns which were meant to be stored or destroyed by the police service. Over a period of six years, he sold at least 2,000 firearms and associated ammunition worth approximately ZAR 9 million (USD 600,000) to customers, who included organized crime groups and far right extremists.

The investigation started in 2013, when personnel at the Ballistics Unit of a regional SAPS Forensic Science Lab in Western Cape province noticed that official markings had been altered in an identical manner on 22 seized firearms. Analysis of the firearms revealed that all of them had previously been sent by SAPS officers to be destroyed at the SAPS head office in Gauteng. Officers from the Western Cape province ballistics unit inspected the firearms store in Gauteng and discovered five firearms at different stages of having their markings altered. The subsequent investigation by the Western Cape team of detectives revealed that instead of being destroyed, firearms were being altered and stolen by C.P. In January 2015, Prinsloo confessed after detectives raided his house. He admitted that he had been diverting firearms since 2002 and, in 2016, was sentenced to jail for 18 years.

2.9.7 Non-state armed groups

In conflict and post-conflict settings, lines between organized crime groups and non-state armed groups are often blurred. As explained in the joint UNIDIR/UNODC issue paper *Addressing the linkages between illicit arms, organized crime and armed conflict* in more detail, “arms and ammunition link conflict to crime as well as crime to conflict”. In this continuum, illicit firearms can have different functions. They enable and fuel an armed conflict but are also a lucrative trafficking commodity both to and from conflict. Non-state armed groups need a steady supply of firearms and ammunition to arm themselves, which is often facilitated by organized crime groups. In phases of active fighting, the illicit flow typically is directed towards the respective conflict. Once hostilities cease, large stockpiles of legacy arms provide opportunities for diversion. In summary, in different

¹⁶⁸ This case is examined in detail in Section 3.5.1 of Chapter 3, *infra*.

¹⁶⁹ Marianne Thamm, 'A Top Cop who supplied weapons to country's gangsters' (Daily Maverick, 4 July 2016). Siyavuya Mzantsi, 'Former top cop gets 18 years for illegal gun trade' (Independent Online, 22 June 2016).

conflict phases non-state armed groups and organized crime groups can be involved in the trafficking of firearms, both at the source and destination locations or *en route*. At the same time, non-state armed groups may fund their activities by engaging in illicit economies. Access to illicit arms is crucial for these groups to perpetuate power and secure their criminal side ventures and sustain fighting¹⁷⁰.

The links between arms, organized crime and conflict and the roles of non-state armed groups and organized crime groups can be exemplified by the two following cases. Notably, both cases are linked to the same conflict:

In USA (*iv*), a dual US-Romanian citizen was sentenced to 10 years in prison for conspiring to sell large quantities of military-grade weaponry to the Fuerzas Armadas Revolucionarias de Colombia (FARC). In 2014, V.F.G., a Romania-based weapons broker, conspired with his co-defendants, a former Romanian government official and a former member of the Italian Parliament, to sell an arsenal of weapons, including machine guns and anti-aircraft cannons, to the FARC, with the understanding that the FARC would use the weapons against United States personnel in Colombia. During a series of recorded telephone calls and in-person meetings, V.F.G. and his co-conspirators agreed to sell the weapons to three undercover agents, who they believed were acquiring these weapons for the FARC but were, in fact, working with the Drug Enforcement Administration (DEA). According to the plan, the former Romanian government official would provide weapons expertise and the former Italian member of Parliament would help secure fraudulent end-user certificates in order to make the illegal sale of weapons look legitimate. The conspirators secured a signed contract from a European weapons supplier to provide more than USD 17 million worth of weapons to a straw purchaser. Before the transfer could take place, V.F.G. was arrested in Montenegro and extradited to the United States.

Pertaining to the same conflict, in USA (*iii*)¹⁷¹, the United States indicted FARC leaders for using the

proceeds of drug trafficking to buy firearms. The defendant in this case was a top associate and weapons supplier of the FARC. Between 1998 and 2004, on behalf of the FARC, he coordinated a network of arms suppliers and cocaine traffickers throughout Colombia and neighboring countries for the exchange of at least 11 tons of cocaine for over 240 tons of weapons and ammunition that he supplied to the FARC. After he was indicted in 2006 with more than 50 other individuals for conspiring to commit crimes associated with the importation, manufacture, and distribution of cocaine into the United States, he was extradited in 2008 and was sentenced to 330 months in prison for conspiring to import cocaine into the United States.

The cases illustrate how, in the case of the Colombian conflict, a non-state armed group used profits from drug cultivation to purchase firearms, including with the involvement of organized crime groups. In turn, the access to trafficked arms allowed the FARC to continue fighting and control territory, including to enforce their lucrative policy of acting as exclusive buyer of the raw coca paste used to make cocaine.

2.10 Internet, dark web and social media¹⁷²

The cases collected in this Digest indicated that criminals use the internet in various ways in the context of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. As described above, in the context of illicit manufacturing, tutorials and blueprints are of particular relevance, whereas, when trafficking firearms, criminals often use internet forums (both in the open and dark web), social media platforms and messenger services to find offers of illicit firearms and initiate the deal. The firearms, their parts and components and ammunition are then usually delivered by fast parcel. Finally, in some States, these items can be purchased online legally, causing the risk that citizens of countries with stricter arms control regimes order in these jurisdictions.

Several Argentinian cases (*ARG(i)*, *ARG(ii)* & *ARG(iii)*) already discussed in the context of illicit manufactur-

170 Lauren Pinson, *Addressing the linkages between illicit arms, organized crime and armed conflict*, (UNIDIR and UNODC, 2022), p. 1.

171 United States Attorney Southern District of New York, *Top Associate and Weapons Supplier of the FARC Sentenced to 330 Months in Prison for Conspiring to Import Tons of Cocaine into the United States*, 24 August 2010; *United States Court of Appeals, v. Juan Jose Martinez Vega, also Known as Chiguero, also known as Gentil Alvis Patino*, 28 January 2022.

172 See also Sections 4.3.4 and 4.3.5 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

ing¹⁷³ demonstrate how the internet is used to share tutorials on firearms manufacturing online and market firearm parts. The case *ARG(iii)* (2021), however, also unveils how cyber-patrolling and the use of (online) undercover agents can help detect criminal conduct and identify potential suspects.

Similarly, cases **URYx002**, **URYx003** & **URYx004** (2021) illustrate how cyber-patrolling helped to uncover a significant quantity of cartridges and ammunition that was found being offered for sale on the social media platform Facebook. During **URYx002** (2021), the police officers carried out cyber-patrolling activities and discovered a Facebook post advertising cartridges of different calibres for firearms for sale. Further analysis revealed that the same individual had previously offered firearms for sale. Following this discovery, the user behind the profile was identified and investigated, which led to the identification of another individual among his friends, who was engaged in similar activities. The second person also included a link in his posts leading to a WhatsApp group. Within this group, he accepted orders for cartridges of various calibres. The investigation led to additional investigations **URYx003** (2021) and **URYx004** (2021), which shared similar characteristics. The successful execution of these operations can be attributed, in large part, to the combined utilization of different electronic surveillance measures¹⁷⁴.

GOOD PRACTICE

Regular cyber-patrolling can help law enforcement authorities detect the sale of illicit firearms or tutorials for their manufacture online.

While the aforementioned cases addressed firearms offences conducted with the use of publicly available parts of the internet, the dark web gains increasing importance for illicit firearms offences because it grants criminals a higher level of anonymity.

CASE STUDY

Purchase of firearm for shooting on dark web platform – **DEUx035** (2019)

A dark web forum was created by the defendant, A.U., who operated under the username “luckyspax”. From 18 March 2013 to his provisional arrest on 8 June 2017, the defendant operated and acted as the sole administrator of this dark web forum from his residence in Germany. The forum set up in the Tor network was used by its users primarily for discussions and the (predominantly public) exchange of messages, but also for conducting illicit sales. Until it was shut down on 8 June 2017, the platform was one of the largest underground forums in Germany, with over 23,000 registered users.

Communication on the platform mainly took place through the forums, which were accessible to every user and were only partially encrypted. In addition, users could communicate by means of the internal messaging function for private messages, which was mandatorily encrypted using a standard encryption system.

Between 27 September 2015 and 18 August 2016, the defendant put online at least 15 advertising texts from users for the sale of narcotic drugs. By creating the category “Weapons” on the forum, the defendant also supported trading transactions for weapons from 11 February 2015 until his provisional arrest in June 2017. Neither the defendant nor users of the forum had any applicable permit to trade in narcotic drugs or weapons.

The transactions conducted via the platform included the sale of a handgun and the corresponding ammunition by the user P.K. to the user D.S. Using the acquired weapon, D.S. carried out a mass shooting at a shopping center on 22 July 2016, killing nine persons and severely injuring five others. In connection with the sale of the weapon to D.S., P.K. was convicted of nine counts of negligent homicide and five counts of negligent bodily harm and was sentenced to seven years of imprisonment. ►

¹⁷³ See Section 2.3.1, *supra*.

¹⁷⁴ These three cases are examined in detail in Section 5.4 of Chapter 5, *infra*.

A.U. was charged with aiding the unlawful advertising of narcotic drugs (28 counts), aiding the intentional unlawful acquisition of a semi-automatic pistol (two counts) and intentional unlawful acquisition of narcotic drugs (four counts). He was also charged with aiding intentional unlawful trading in a firearm in conjunction with negligent killing (nine counts) and with negligent bodily harm (five counts) in relation to the sale of the weapon used by D.S. to carry out the mass shooting. A.U. was sentenced to six years of imprisonment¹⁷⁵.

Investigating illegal activities (including illicit firearms offences) on the dark web has become a priority for law enforcement all over the world. One of the most prominent transcontinental law enforcement operations on the dark web, Operation Dark HunTOR in 2021, involved law enforcement authorities of several countries, namely Australia, Bulgaria, France, Germany, Italy, the Netherlands, Switzerland, the United Kingdom and the United States. In the operation police forces arrested 150 suspects involved in buying or selling illicit goods on the dark web and seized more than EUR 26.7 million in cash and virtual currencies, as well as 234 kg of drugs and 45 firearms. The seized drugs include 152 kg of amphetamine, 27 kg of opioids and over 25,000 ecstasy pills¹⁷⁶.

GOOD PRACTICE **Deconflicting**

One key aspect in online undercover investigations is the need for deconfliction both at a national and international level. Deconflicting includes the exchange of information between different law enforcement authorities on the use of undercover agents. Without proper deconflicting measures, investigators risk interacting with other undercover agents without knowing it. By implementing deconfliction protocols, law enforcement agencies can avoid compromising ongoing operations, protect confidential informants, and enhance overall operational efficiency.

175 For more information on this case, see UNODC, SHERLOC case law database, Case No. [DEUx035](#) (2019).

176 Eurojust, 150 arrested in dark web drug bust as police seize EUR 26 million, 26 October 2021



3. Investigative Strategies

While the first part of the Digest examined different firearms related offences and the actors involved in them, the second part looks into strategies used to investigate, prosecute and adjudicate such crime.

The present chapter on investigative strategies explores promising practices for following proactive and intelligence-led approaches, conducting expanded and parallel investigations, and using inter-institutional cooperation mechanisms, as they emerge from the examined cases. It also details some cases that illustrate good practices related to the seizure and tracing of firearms as well as forensic and ballistic examinations.

3.1 Proactive and intelligence-led approach¹⁷⁷

The vast majority of firearms are seized within national territories, in contexts other than illicit trafficking. They are rarely intercepted at their point of diversion, but only when they re-emerge at the surface in connection with other criminal activities. This means that illicit firearms trafficking remains most often invisible and undisclosed¹⁷⁸. In many cases, criminal investigations stop as soon as the offence of illicit firearms possession can be proven. This approach offers a fast and effective method for investigators and prosecutors to charge persons found in possession of an illicit firearm. But at the same time, it misses the opportunity to dismantle the trafficking networks that are involved in the supply of arms. The illicit flow, therefore, continues unchallenged.

To disrupt firearms trafficking and related offences a proactive intelligence-led approach is needed. Unlike reactive investigative approaches that focus on a crime that has already occurred, a proactive investigation aims to enquire into criminal threats before an offence occurs so that crime can be prevented and the attempt eventually prosecuted. Intelligence-based investigations are crucial components of a proactive approach, through identifying criminal activities as well as the networks, groups and individ-

uals involved but also to determine crime trends and patterns, therefore allowing for more targeted policing action in the future. This also includes the systematic gathering, evaluation and analysis of relevant information and data to generate valuable “intelligence” that enables law enforcement authorities and prosecutors to adopt necessary decisions and steps to concretely investigate and prosecute firearms trafficking and related offences.

In the context of firearms trafficking and related forms of crime, effective criminal justice responses combine the systematic tracing (at a domestic and, if needed, at an international level) of all seized firearms, extended and parallel investigations (including financial investigations), special investigative techniques (including controlled deliveries, undercover operations, and various forms of surveillance), and ballistic and scientific examination to identify the illicit origin of the seized firearm and dismantle the procurement networks. The establishment of inter-institutional coordination and cooperation mechanisms at a domestic level can help to interlock these investigative steps, while different forms of international cooperation permit dealing with cross-border cases. Finally, the systematic collection and analysis of crime data and information helps build a better intelligence picture.

These aspects are discussed and illustrated with specific cases in the next two chapters.

3.2 Firearms seizure

An investigation into a potential firearms offence can have different entry points – the recovery of a firearm at a crime scene or border crossing, information provided by informants and undercover agents, or larger investigations into the activities of organized crime groups – to name just a few. The cases examined in the Digest identified the recovery and seizure of firearms as the most common entry point for starting an investigation into firearms trafficking and related offences.

To ensure that customs or law enforcement authorities follow standardized procedures after the recovery or seizure of firearms, components or ammunition, many States have developed standing operating procedures or recovery protocols. The **INTERPOL Firearms Recovery Protocol** can serve as a reference.

¹⁷⁷ See also Section 3.4 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹⁷⁸ Global Study on Firearms Trafficking, UNODC, 2020, p. 86.

GOOD PRACTICE **INTERPOL Firearms Recovery Protocol**

The Firearms Recovery Protocol provides guidance to law enforcement authorities and forensics laboratories when investigating a recovered firearm or expelled ammunition. The Protocol outlines the steps for both parties to enable them to share information to solve cases of firearms trafficking and to generate a broader threat assessment on firearms flows and related crime. The Firearms Recovery Protocol contains seven steps: (1) search in the national firearms registry and lost/stolen database; (2) iARMS search/trace; (3) evidence recovery and suspect interview; (4) latent fingerprint examination of firearm; (5) DNA examination of firearm; (6) national and/or international IBIN ballistic comparison of cartridge casings / bullets; (7) collection and analyses of information gathered in steps 1-6 to develop investigative leads; (8) reporting of the intelligence to investigators; and (9) analysis of the intelligence generated for indicators of firearms trafficking.

In accordance with Article 6 of the Firearms Protocol, States parties are required to ensure that firearms, their parts and components and ammunition, which are believed to be illicitly manufactured or trafficked, can be temporarily seized and subsequently confiscated. Article 6 of the Protocol must be read in conjunction with Article 12 of the UNTOC, whereby States parties shall adopt measures to enable the identification, tracing, freezing or seizure of proceeds of a crime or property used in or destined to commit offences. This also includes the search for firearms that might have been used in crime or that originate from criminal conduct (such as illicit manufacturing or trafficking). With regards to the final disposal of confiscated firearms, the Firearms Protocol requires States parties to take measures that prevent confiscated firearms from falling into the hands of unauthorized persons, prioritizing the destruction of confiscated firearms.

The importance of secure disposal mechanisms can be illustrated by *ZAF(i)* (2015)¹⁷⁹ in which a police colonel in control of the armory in South African Gauteng province misappropriated at least 2,000 firearms as well as associated ammunition from national custody and sold

them on the black market. The firearms and ammunition had been seized or surrendered and were meant to be stored or destroyed by the police service.

3.2.1 National procedures for firearms seizures¹⁸⁰

The material collected confirmed that most of the States provide for legislative and institutional frameworks to allow national police forces, prosecutors or judges to order the search for and seizure of firearms suspected of being illicitly manufactured or trafficked. The examined cases show a great variety across jurisdictions with regards to the procedures, the criteria that must be met and competent authorities that may decide on the measure. In some jurisdictions, general rules in national codes of criminal procedure apply to all searches and seizures regardless of the potential crime, while in other jurisdictions specific powers to search and seize firearms and ammunition are set forth in firearms acts.

Usually, a decision of a court, investigative judge or prosecutor is required to search dwellings and housing for illicit firearms. Only in exigent circumstances, particularly where delaying a search entails the risk that evidence might be destroyed or that an illicit firearm might be used, a police officer may conduct a search without a court order¹⁸¹. However, some jurisdictions apply lower procedural requirements where firearms might be involved. This includes allowing law enforcement officers to search property and seize firearms without a search warrant, where they have reasonable grounds to believe that a firearms offence is being or has been committed. Section 42 of Guyana's Firearms Act, for instance, provides that a police officer may, without a warrant, enter, examine and search any premises or place for the purpose of ascertaining, in accordance with the reasonable requirements of public safety or order, whether there are firearms, ammunition or explosives in such premises or places and to seize and detain them where there are reasonable grounds for suspecting that an offence affecting public order or security has been or is about to be committed. Pursuant to Section 47 of the UK Firearms Act (1968), the police may search any person who is reasonably suspected of having a firearm with them or to be committing an offence and

¹⁸⁰ See also Section 3.9.1 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹⁸¹ See Section 28(4) and (5) of the Swedish Code of Criminal Procedure or Section 105(1) of the German Code of Criminal Procedure.

¹⁷⁹ This case is examined in detail in Section 2.9.6, *supra*.

require them to hand over the firearm or ammunition for examination. The same powers apply where the police have reasonable cause to suspect that there is a firearm in a vehicle in a public place. For the purpose of exercising the powers conferred by this section a constable may enter any place. Similarly, in Italy, pursuant to Article 41 of the Testo unico delle leggi di pubblica sicurezza (T.U.L.P.S), agents and officials of the Judicial Police who are notified about illegal firearms, ammunition or explosive materials in any public or private venue or home are obliged to immediately institute a search for such materials to seize them. The seizure report shall be forwarded without delay and in any case not later than forty-eight hours after the search to the prosecutor's magistrate in charge for validation purposes.

GOOD PRACTICE **INTERPOL Firearms Recovery Protocol**

The INTERPOL Firearms Recovery Protocol provides guidance to law enforcement authorities and forensics laboratories when investigating a recovered firearm or expelled ammunition. The protocol outlines the steps for both parties to enable them to share information to solve cases of firearms trafficking, and to generate a broader threat assessment on firearms flows and related crime.

3.2.2 Incidental versus targeted firearms seizures

In the cases examined in the Digest, the detection and seizure of illegal or suspected illegal firearms, their parts and components and ammunition occurred in different spatial contexts (at national borders or within the territory of a State) and under different circumstances (incidental or as a result of a targeted operation).

Incidental seizures of firearms typically emerge as the result of routine customs inspections at land border crossings, seaports and airports, or of law enforcement searches of persons, dwellings or vehicles during routine patrolling or searches on the basis of other criminal investigations. As an example for a domestic incidental seizure, in *CUW(i)* (2021), during a routine patrol, police detectives saw two individuals on a parking lot of a restaurant behaving suspiciously. Police searched them, found a handgun with one of the individuals and

arrested him. A subsequent targeted search at his address produced around 20 rounds of ammunition. The individual was sentenced to a term of 18 months in prison, of which 9 months were suspended.

Another recurring scenario is that of incidental seizures resulting from routine custom controls at land border crossings, seaports and airports. In the case *MNE/ALB(i)* (2017)¹⁸², the Montenegrin police searched a bus at the Albanian-Montenegrin border with a final destination in Germany and found seven pistols, 30 bullets and 1.5 kg of narcotics substances in a piece of luggage. Through ensuing investigative measures and cooperation with police authorities in Albania and Germany, including with the support of EUROPOL, investigators were able to identify and dismantle a trafficking network.

As illustrated by the following case study *MTQ(i)* (2021), disrupting seaborne firearms trafficking requires a high degree of coordination among different security forces on sea, land and air. The case of firearms and drug trafficking from Saint Lucia to Martinique represented a rare opportunity for law enforcement officials to arrest the traffickers (Saint Lucian) and the buyers (French-Martinique) in the act. However, the case also unveils evidentiary difficulties when prosecuting and adjudicating cases of firearms trafficking in which traffickers abandon their contraband once they are detected.

CASE STUDY **Operation MANIKOU – MTQ(i) (2021)**

On 12 May 2021, the French navy vessel “La Combattante”, acting within the framework of an inter-ministerial operation known as “MANIKOU”, spotted and followed a suspicious Saint Lucian fishing vessel, which was sailing towards the shores of Martinique by night with no lights on. A customs aircraft filmed four people disembarking. When sailing back to Saint Lucia the vessel was stopped by the French navy in French territorial waters. The captain and his mate, however, had time to drop three parcels in the sea, which immediately sank and could not be retrieved. The captain J.M.A. and his crewman H.N. were arrested. Meanwhile, on land, customs officers ►

182 This case is examined in detail in Section 5.2.1, *infra*.

spotted and arrested Q.C. and A.C. as they were trying to escape. Q.C. was found with EUR 29,950 hidden in his underwear. Close to them was a Peugeot 207 in which the officer found a Glock pistol with serial numbers filed off as well as two magazines, each loaded with 15.9 mm cartridges. During their efforts to recover other illicit goods, the customs officers found J.D., who was hiding, with wet clothes, and tried to flee and resisted his arrest. Close to him was a backpack which contained 1.5 kg of cannabis. The analysis of aerial surveillance by the customs plane and of the suspect's phones led to the conclusion that of the four persons that disembarked the fishing vessels only J.D. was found and 3 persons managed to flee. Furthermore, the three parcels that were abandoned and sank when the vessel was intercepted seem to have contained weapons. Q.C. and A.C. were sent to the pick-up location by a Saint Lucian criminal to pay for the delivery of weapons and illicit drugs.

The accused were tried using a fast-track trial procedure and found guilty on different counts, including: acquisition, holding and transport of illicit weapons and ammunition (in relation to the firearm and ammunition seized during the operation); attempt of drugs importation; illicit transport of migrants, money laundering, and opposition to customs officers (only for J.D.). Since the three abandoned parcels, containing most likely firearms, could not be retrieved, the offence of firearms trafficking was not prosecuted. Instead, the prosecutor made the choice to prosecute the five arrested suspects for the offences that could be proved and dissociate the rest of the case to pursue investigations against unknown parties.

The main difficulties in the detection of trafficked firearms are the limited resources of customs and border control forces to guard porous land and sea-borders, difficulties in identifying disassembled firearm parts on x-ray and scanner images, and the large volume of legal global trade of goods and the large flow of persons that only allows the taking of samples based on risk indicators.

The challenges faced by countries differ significantly across regions and sub-regions. In the Caribbean

region, for instance, traffickers often traffic firearms and drugs in fishing vessels through porous borders and unofficial ports, whereas in Europe trafficking across land borders, in containers and through postal and fast parcel deliveries, is more prevalent. Depending on the respective *modus operandi* the border management and protection responses also need to be tailored. For instance, in *JAM(i)* (2019) a successful routine screening of the content of a container by Ports Authority Jamaica (PAJ) on 30 April 2019 led to the seizure of three pistols and 200 rounds of ammunition. The police agents were called to the Kingston Wharf by customs officers, who showed them two plastic barrels containing food items. The barrels appeared with an unusually dark area on the images of the scanning machines. Upon closer inspection the police officers found the firearms and ammunition and initiated a criminal investigation to identify the persons involved in the trafficking. Notwithstanding this successful operation, the expert highlighted that firearms seizures at the official ports of Jamaica are rare and presumed that many shipments remain undetected.

The second variant of incidental firearms seizures are recoveries at crime scenes and during searches in the context of investigations into other crimes, especially drugs offences. In some of these cases, the seizure was the entry point to investigate the origin of the firearm in parallel to the original investigation.

CASE STUDY

Operación Wolf – *CHL(i)* (2021)

In the context of Operación Wolf against an organized crime group dedicated to drug trafficking, law enforcement seized a firearm for which the suspect could provide a valid firearms licence. Nevertheless, the police officer traced the firearm and identified the gun shop where the firearm was purchased. Ensuing investigations unveiled that the owner of the gun shop was a public official with connections to the criminal milieu. During an examination of documentation at the national armoury, police officers could prove that the owner of the gun shop, together with other persons, purchased and sold several firearms using false documentation. The police applied surveillance and telephone tapping, leading to the arrest of suspects when they tried to arrange the purchase of additional weapons. ►

At the time when the expert presented these facts, the case was in the final stage of investigation, close to indictment and oral trial. This case brought to light the link between public officials, gun dealers and an organized crime group that acquired firearms for protection and territorial disputes. The modus operandi included the falsification of documents to conceal the destination of the illicit firearms. During the investigation, special investigative techniques were used such as electronic surveillance, undercover operations, and geolocation.

Lessons learned:

This case illustrates how incidental seizures of firearms during the investigation of other crimes can be a starting point for dismantling firearms supply networks. The involved investigators could have easily limited the investigation to the original drug offences without investigating the potential illicit origin of the firearm. Only by broadening the investigation they were able to drain a source of illicit firearms in Chile.

shipment of firearm parts. Homeland Security permitted the trafficker to continue communicating with his client under supervision and later took over the communication through his phone entirely. The shipment was intercepted at a Birmingham sorting office and found to contain internal parts of a Glock 17 semi-automatic pistol disguised with an electronics kit. The parts themselves were legal to possess. They were forensically marked by UK National Crime Agency officers and delivered to the client in a resealed package. A few days later, the client ordered a Glock 17 barrel as well as several other parts from the trafficker. The US authorities posted the parts, excluding the barrel as this would have violated US laws. On 21 February 2022, the package was intercepted by UK Border Force officers, who examined it and attached tracking equipment before delivering it. After the delivery, the purchaser was arrested and the package seized. Law enforcement authorities also searched his business address and seized a 3D printer, firearm parts from the first order and an ammunition press.

In contrast to incidental seizures, targeted firearms seizures require that law enforcement authorities already have a sufficiently solid suspicion and start an investigation based on this suspicion. This was the case in the following case study, where law enforcement authorities received information about a suspected firearms trafficker and cooperated with their counterparts abroad in order to seize a shipment that had already been posted.

CASE STUDY

Targeted seizure of trafficked parts and components – GBRx116 (2022)¹⁸³

After receiving information about a suspected trafficker of firearms, the US Department of Homeland Security initiated a joint investigation into a suspected firearms trafficker, seized his phone and identified communication with one of his clients in the UK regarding the ►

The cases illustrate that incidental firearms seizures ideally mark the starting point for further investigations into the origin of illicit firearms and their supply networks. In contrast, targeted seizures usually occur somewhere along an investigation based on initial suspicion and evidence.

However, some cases also revealed that seizures do not necessarily lead to broader investigations and often come to an end once the offence of illicit firearms possession can be proved. Furthermore, particularly in the context of investigations against poly-crime groups, firearms offences are often neglected during investigations when their penalties are significantly lower than the penalties for e.g. drug offences. Where investigators recover firearms in the context of other crimes, the tendency is to seize them as instrumentalities of the principal offence and to charge the suspect with illicit possession, when the person is not the legitimate owner of the gun, instead of investigating the source for the illicit firearm.

¹⁸³ For more information on this case, see UNODC, SHERLOC case law database, Case No. [GBRx116](#) (2022).

GOOD PRACTICE**Seizures as starting point for investigations**

Each recovered illicit firearm is a piece of evidence to open an investigation with the aim to establish its source and dismantle the procurement networks.

GOOD PRACTICE**Establishment of centralized systems to collect seizure data**

The Italian National Anti-Mafia and Counter-Terrorism Directorate (DNA), with its decentralized 26 district directorates (DDA), is the most relevant judicial body in Italy in the fight against transnational organized crime and firearms trafficking. This structure pursues the objectives of concentrating and centralizing organized crime investigations in the hands of specialized prosecutors within highly qualified structures and of promoting the centralized collection of data and information related to organized crime. The DNA has launched, in 2018, a project to collect, analyze and exchange information on seized firearms to enhance the intelligence picture. Through systematic analysis of the collected data, DNA aims at identifying the sources of illicit firearms. At an operational level the project promotes a more proactive approach among the district directorates in investigations dealing with firearms trafficking.

In a first step, the district directorates and several Italian police agencies are required to provide DNA with information about seized firearms, main supply channels, and *modi operandi* of trafficking networks. Information on seized firearms is stored in the Italian data management system, based on Integrated Ballistic Identification System (IBIS) technology. In a second step, a working group analyses the information and makes specific operational and investigative recommendations to the district directorates.

3.2.3 Collection, registration, analysis and sharing of seizure data¹⁸⁴

The collection, registration, analysis and dissemination of information on seized firearms allows customs and law enforcement authorities to build a better intelligence picture on firearms trafficking and related forms of crime. This includes a better knowledge of trafficking routes, *modi operandi*, actors involved, etc. It also allows to develop and constantly finetune risk indicators to better target operations and increase the likelihood of intercepting illicit arms flows.

At a policy-level, a solid knowledge of firearms related risks and threats allows the closing of legal loopholes and the allocation of sufficient resources to prevent and combat the illicit manufacturing of and trafficking in firearms their parts and components and ammunition. Finally, the systematic collection and analysis of seizure data feeds into global efforts to monitor illicit arms flows, for instance, through the UNODC Illicit Arms Flows Questionnaire.

The assessed cases show that States follow very different approaches when collecting and analyzing seizure data. In some countries this information is not centrally collected and would have to be retrieved from the documentation of each individual firearms related case. Other countries have established centralized record-keeping systems to collect information on each recovered firearm.

3.3 Forensic and ballistic examination¹⁸⁵

Forensic and ballistic examinations of recovered firearms, cartridges, bullets, and other ballistic material are important components in criminal investigations. Combined with other pieces of evidence they can help understand the history of a firearm and can establish links between different crime scenes, including in dif-

¹⁸⁴ See also Section 3.10 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹⁸⁵ See also Section 3.9 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

ferent countries. They can also help discover structures and compositions of organized crime and terrorist groups, including potential connections between them. Finally, where national ballistic databases of all registered firearms exist, ballistic examination might also help identify the licensed holder of a firearm that was used at a crime scene.

3.3.1 Forensic examinations

Forensic analysis involves the physical examination of a firearm, bullet or cartridge case as well as DNA and fingerprint examinations. In particular for privately made firearms, the physical examination is required to determine if the recovered item actually falls within the scope of the domestic firearms control regime and under which category (e.g. if a firearm can be switched to function fully automatically, which might render it a prohibited weapon in some jurisdictions) and if it was fully functional, which might be taken into account in the sentencing. Furthermore, the correct identification of a firearm or round of ammunition is a prerequisite to tracing them. Many cases examined in the Digest underscored the utility of the **INTERPOL Firearms Reference Table (IFRT)** to facilitate the physical identification of firearms. The IFRT is an interactive online tool that contains thousands of firearms references and images to assist law enforcement officers in accurately identifying the technical characteristics of recovered firearms in order to facilitate their tracing and support firearms related investigations.

The second component of forensic analysis are DNA and fingerprint examinations that can provide evidence to identify the persons who held a specific firearm in their hands – be it the perpetrator of a crime or the person who illicitly manufactured or trafficked a firearm. This is of particular importance where trafficked firearms are recovered that are not in immediate proximity to the suspect – e.g. firearms in pieces of luggage in a means of public transportation, or firearms in dwellings or cars that are used by several people. This was the case in **FRAx037** (2021), **USAx280** (2020), and **SWEx003** (2022), where firearms were found either in the car or private property of a suspect and DNA examinations were used to prove that the suspect actually had the firearms in their possession. In contrast, in **AUSx213** (2021), the Court of Appeal overturned the conviction of a defendant based on DNA found on the trigger of a firearm, as the court held that there was

a reasonable possibility of a secondary transfer of his DNA onto the firearm.

Furthermore, the forensic examination may include the restoration of obliterated serial numbers and other markings on firearms. As described in Section 2.5, criminals often tamper with the markings on firearms in order to obstruct efforts to trace them. However, forensic experts are often able to restore these markings.

CASE STUDY

Restoration of erased serial numbers – CANx070 (2014)

In 2009, the defendant obtained a licence to acquire and possess non-restricted and restricted firearms in Canada. Shortly after acquiring that licence, he purchased a Heckler & Koch, Mark 23 restricted handgun. He made no further firearm purchases for three years, but in early September 2012, he bought 10 restricted handguns and a shotgun in two separate transactions within a very short space of time. Those purchases triggered the interest and concern of the Firearms Enforcement Unit (FEU). In a visit at his address, the police seized four firearms but none of the other 11 handguns that the defendant purchased earlier in September. He claimed that some of his guns had been stolen¹⁸⁶.

In 2014, the police opened investigations against a member of an organized crime group, searched his home and seized large quantities of drugs as well as three handguns, a shotgun, and a large quantity of ammunition. The serial number on one of the handguns and the shotgun had been obscured. However, the police restored the serial number and determined that those were firearms that were originally purchased by the defendant. The police also seized text messages between the defendant and the member of the organized crime group, indicating that both were in contact with regards to the purchase of the firearms.

¹⁸⁶ For more information on this case, see UNODC, SHERLOC case law database, Case No. **CANx070** (2014).

3.3.2 Ballistic examinations

In 2022, the Working Group on Firearms addressed the topic of ballistic examination, which was explained in detail in a background paper¹⁸⁷:

“Ballistic examination is a crucial part of investigations of firearms-related criminality. Usually used to investigate violent crimes that have been conducted with a firearm, ballistic examination may also provide important evidence to trace back illicitly trafficked firearms through ballistic evidence found on cartridge cases. Somewhat similar to fingerprints, every firearm has unique characteristics that leave distinct markings on the projectiles and cartridge cases that are fired. Comparing these markings on cartridge cases that are recovered at crime scenes or that have been test-fired with seized firearms can help to identify the firearm and to link it to other crime scenes or even to its last legitimate owner. Ballistic comparison allows investigators to develop new investigative leads and to find connections between separate crime scenes, even across borders. Thus, it may also provide a starting point for investigating cases of firearms trafficking.” In Italy, for example, every time a recovered firearm is handed in for ballistic and forensic examination, it

is test-fired and the samples are compared with the database of the Archivio Ballistico Nazionale Elettronico and the **INTERPOL Ballistic Information Network** (hereafter IBIN). IBIN is a global platform for the centralized collection, storage and cross-comparison of ballistics data. In the Bahamas, the forensic laboratory carries out a functionality test of all recovered firearms to determine if the firearm functions as designed and it is capable of inflicting injury. If required, serial numbers are restored to ensure the identification and tracing of the firearm. With a mandatory turnaround time of less than 24 hours for ballistic examinations, investigators can use the ballistic evidence immediately after the recovery of the firearm without losing valuable time. Similarly, in Sweden DNA-free cartridge containers are used in the IBIS equipment, enabling faster preliminary results from IBIS before the DNA examination of the cartridge cases.

While the comparison is often done manually, automatic ballistic identification systems can significantly automate the process of matching a piece of recovered ballistic evidence with information in a database, even going beyond national boundaries. As data from INTERPOL and the United States National Integrated Ballistic Information Network shows, countries using

CASE STUDY

Supply of antique firearms to criminals – GBR(i) (2017)

This case involved a firearms dealer who supplied antique firearms to criminals. The investigation began when the expert at the National Ballistic Service (NABIS) noticed that since 2009, particularly in the Midlands, an increasing number of the police recoveries were pre-war handguns for which there was no commercially available ammunition. Most of the recoveries involved privately made ammunition for these guns. The manufacturing process involved the use of four different tools, each of which has its own unique tool markings, which are detectable under a microscope. A microscopic examination, thus, proved that the same equipment was used for the manufacturing of the ammunition and the same person or manufacturer was involved. The guns had been used in several fatal shootings in the UK. The defendant had imported hundreds of weapons from the US, manufactured ammunition for them, falsified entries in his firearms register and damaged tools to erase markings to defeat scientific examination. The accused P.E. was condemned by an English court to 30 years of imprisonment on different counts such as conspiracy to transfer prohibited weapons and ammunition, fraudulent evasion of a prohibition or restriction on the importation and exportation of firearms, and possession of a prohibited firearm.

Lessons learned:

This case demonstrated the benefits of ballistic examinations in investigating firearms trafficking.

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automated ballistic matching systems can significantly increase their analytical capability in linking different crime scenes in which the same firearm has been fired. Even more ambitious attempts have been approaches to establish national reference ballistic databases of all registered firearms. Such databases have the purpose of using the ballistic fingerprints of ammunition that are recovered at crime scenes to identify the firearm from which it was fired and trace it back to its last legitimate owner¹⁸⁸.

GOOD PRACTICE **Establishment of Ballistic Information Networks**

The National Integrated Ballistic Information Network (hereafter NIBIN) is a programme established in 1997 by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). Running on the IBIS platform, NIBIN enables US law enforcers to rapidly determine if a piece of recovered ballistic evidence came from a firearm that has been previously used in a crime. NIBIN contains digital images of recovered pieces of ballistic evidence. The rapid dissemination of ballistics information, in turn, allows for tracking of gun-specific information and connection of a particular firearm to multiple crimes irrespective of geographic location.

The Firearms Protocol does not regulate the forensic and ballistic examination of firearms. Nonetheless, most of the cases examined in the Digest confirmed their importance in the investigation of cases involving firearms.

3.3.3 Institutional framework and examination procedures

The cases studied brought to light a great variety of structures and procedures established at domestic level for the forensic and ballistic examination of recovered firearms and ammunition. In some countries, forensic laboratories or departments of the police forces oversee the examination, while in other countries private laboratories are also contracted.

Sometimes, for instance in Curacao and Jamaica, the forensic laboratories also trace firearms, both through domestic registries as well as through international tracing mechanisms such as iArms and iTrace. Finally, some jurisdictions have also established national firearms focal points or integrated firearms centres that combine the expertise of investigators, prosecutors and ballistic experts and oversee all parts of firearms related investigations, including the forensic and ballistic examinations. For instance, in Albania, a National Firearms Focal Point was set up in 2019, which also includes experts in the field of technical-ballistic examinations. This Focal Point collects and analyzes all firearms related information, has access to all databases at national and international level, and exchanges information on firearms and ammunition with both domestic and foreign counterparts. Furthermore, it trains practitioners who deal with firearms cases.

GOOD PRACTICE **Establishment of Integrated Firearms Centres**

The National Ballistics Intelligence Service (hereafter NABIS) is a similar body. Established in 2008 as a key component in the United Kingdom's strategy to reduce firearms criminality, it is incorporated in the National Firearms Focal Point and is the expert agency for forensic examination, intelligence and knowledge around the use, supply, distribution and manufacture of illegal firearms and ammunition. It is tasked with gathering and disseminating fast time intelligence on the criminal use of firearms to the police service and partner agencies. NABIS manages a compulsory registry of recovered firearms and ammunition used in crime, as well as firearms and ammunition recovered by the police. The NABIS database provides strategic and tactical intelligence. NABIS supports UK law enforcement at a local, regional, and national level and offers support internationally through engagement with EUROPOL, INTERPOL, UNODC and UNDP. Forensically examining firearms' ballistic material and identifying forensic and intelligence links enables NABIS to provide law enforcement with strategic and tactical reports that inform operational activity and dynamic intelligence bulletins when new trends are identified.

188 INTERPOL, Crimes, Firearms Trafficking, "INTERPOL Ballistic Information Network". Available at www.interpol.int; and United States, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), "National Integrated Ballistic Information Network factsheet" (June 2020).

Common criticalities encountered deal with the lack of resources and expertise, both financial and technical, to systematically conduct forensic and ballistic examinations of recovered firearms. Limited resources may negatively impact response-times and the quality of examinations and, in some instances, may even be taken into account for the decision as to whether a proper investigation is initiated.

3.4 Tracing of firearms and ammunition¹⁸⁹

Pursuant to Article 3(f) of the Firearms Protocol, tracing means the systematic tracking of firearms and, where possible, their parts and components and ammunition from manufacturer to purchaser for the purpose of assisting competent authorities in detecting, investigating, and analyzing illicit manufacturing and illicit trafficking. States parties to the Protocol shall cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt responses to requests within available means.

Tracing stands at the heart of measures to investigate firearms trafficking by identifying the last legitimate holder / records and the point in time in which a firearm was diverted from the legal to the illicit market. It is, thus, crucial to link a suspect to a recovered firearm in a criminal investigation and to identify potential traffickers, as well as trends, routes and *modi operandi* of firearms trafficking.

The Digest revealed a diverse picture regarding the institutional framework and the procedures for firearms tracing and responding to incoming tracing requests. In some countries, systematically, every recovered firearm is traced, while in others, tracing is only applied on an *ad hoc* basis. Similarly, in some countries, specialized units have been established to issue or respond to tracing requests, while in other countries the handler of the case can decide on an individual basis whether or not a recovered firearm should be traced and would be in charge of issuing the request. In particular, the establishment of specialized tracing centres, national firearms focal points or integrated firearms centres, typically based within

the national police or military services has proved to be effective¹⁹⁰. Experts from Brazil, Canada and the UK shared positive experiences of establishing a specialized national body to ensure a more systematic approach to tracing firearms as part of investigative efforts and to collect and analyze related tracing data with the aim of building a better intelligence picture over time.

The Canadian National Firearms Tracing Centre, for instance, tracks the movement of a firearm from its manufacture or introduction into commerce by the importer through the distribution chain (wholesalers and retailers) to identify the last known owner/business that may be involved in straw purchases. Furthermore, it regularly analyzes information about traced firearms to identify major routes and patterns of firearms trafficking as well as individuals and businesses. In 2021, the Canadian National Firearms Tracing Centre traced the origins of 3,398 firearms, a 58 % increase over 2020¹⁹¹. Similarly, Brazil and the United States have also set up national firearms tracing centres. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) National Tracing Center (NTC) is the United States' only crime gun tracing facility. The NTC's mission is to conduct firearms tracing to provide leads for federal, state, local and foreign law enforcement agencies to investigate and to solve firearms offences and to detect firearms trafficking. NTC activities aim at tracking the intrastate, interstate, and international movement of illegal firearms. The important role played by NTC in the tracing of firearms emerged in several cases examined, e.g. in the Caribbean region¹⁹². Also in Brazil, a Firearms Tracing Centre is embedded in the Federal police. Similarly, Colombia created a Center for Anti-Explosives Information and Weapons Tracing (CIARA). Under the auspices of the National Police Criminal Investigation Directorate, the CIARA counts on experts and resources from the Police with support from the Military Forces, combining the activities of identification and tracing of weapons, with prevention and management of incidents involving explosive devices.

¹⁸⁹ See also Section 3.30 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

¹⁹⁰ For more information on national firearms focal points see Section 8.3 of Chapter 8, *infra*.

¹⁹¹ RCMP, 2021 Commissioner of Firearms Report.

¹⁹² See next section of this chapter.

3.4.1 Domestic and international tracing

Depending on the history of a recovered firearm, an investigation to identify its point of diversion may require tracing a firearm at national, regional and/or international level. This depends on the question of where investigators expect to find information on the last legitimate owner of a firearm.

GOOD PRACTICE

With the purpose to facilitate and strengthen the traceability of firearms, Art. 4, para. 5 of EU Directive 2021/555 obliges EU Member States to introduce national computerized data-filing systems, which can be either centralized or decentralized and are meant to guarantee access to authorized authorities to the records for each firearm subject to this Directive. That data-filing system shall record all information relating to firearms which is needed in order to trace and identify them.

Access to these records and all related personal data should be restricted to competent authorities and should be permitted only up until 30 years after the destruction of the firearm or the essential components.

In line with the INTERPOL Firearms Recovery Protocol, the tracing usually starts with a search in national firearms registries (including lost/stolen databases) of the country in which the firearms are seized. If the national registry search reveals data regarding the seized firearm, further investigative enquiries should be carried out against the registered holder of the recovered firearm. If national registries do not provide a record of the seized firearm, it can be pre-

sumed that the firearm has been illicitly manufactured or trafficked into the country. The markings on the weapon can give an indication where to start international tracing efforts. If the firearm contains import markings of another country, it is likely that this country has a record of the firearm, and a tracing request should be sent there. Otherwise, a tracing request should be sent to the country of manufacture, which can be identified by the manufacture markings, to determine if and to which country the firearm was legally exported after having been manufactured. Such bilateral tracing requests can be sent through diplomatic and law enforcement channels, tracing platforms such as the United States' eTrace system or through the trace request module of the INTERPOL Illicit Arms Records and Tracing Management System (iARMS).

eTrace is a web-based application available to accredited domestic and international law enforcement agencies to send tracing requests to the United States ATF National Tracing Center. The system is used to trace firearms from their original manufacturer or importer in the United States, through the wholesale/retail distribution chain, to the first person who bought them. More than 9,300 law enforcement agencies, including agencies of 50 foreign countries, use eTrace to trace firearms that they suspect of having been legally manufactured or imported in the United States before being diverted.

INTERPOL iARMS, in contrast, permits sending tracing requests to any of the participating countries. In addition to a statistic and reports module, it consists of two main functionalities: (1) The Firearm Records Module, hosting a database of more than 1.5 million weapons reported as lost, stolen, trafficked or smuggled in another country, and (2) the Trace Request Module permitting to send trace requests to the 195 Member States.

CASE STUDY**Tracing collaboration between the US and the Bahamas – *BHS(i)* (2021)**

In this case, firearms, firearm parts, magazines and ammunition were trafficked into the Bahamas from the United States. An informal information exchange with ATF led to the identification of the traffickers and the seizure of a large quantity of firearms. Further inquiries revealed that the items were purchased in the United States by a suspect named A.P.T. Using eTrace, several firearms that have been recovered in the Bahamas since September 2020 could be traced back to purchases of A.P.T. in the United States.

The expert highlighted that all recovered firearms in the Bahamas that might have been trafficked from the United States are traced with eTrace. The systematic analysis of tracing results revealed that a significant proportion of firearms seized in the Bahamas have been purchased by straw purchasers in the United States in larger batches, were sent to associates in the Bahamas via parcel shipments and were recovered shortly after the purchase. According to the expert, co-operation between Bahamian authorities and United States law enforcement agencies in firearms trafficking investigations goes beyond tracing activities and resulted in the indictment of several firearm traffickers in the United States. This partnership between Bahamian firearm trafficking investigators and United States agencies, such as ATF, Homeland Security, DEA, Coast Guard, FBI, and other international law enforcement agencies allows for the exchange of information and evidence to permit prosecution in each country's jurisdiction.

Use of eTrace platform – *ATG(i)* (2018)

In this case, the eTrace platform was used to expeditiously trace a firearm that was registered to an Antiguan national, who had dual citizenship (Antiguan and US). On 20 January 2018, police in Antigua found a loaded 9 mm pistol in a car during a routine traffic check. The defendant C.D.M. was convicted for illicit firearms and ammunition possession to one year of imprisonment. The firearm was traced using the eTrace platform. It was registered in the United States to an Antiguan national, Mrs. L.A.S.S., who also had dual Antiguan and US citizenship as well,. Upon her return to Antigua, she was arrested and convicted on the count of importation of a firearm without a licence.

The examined cases show that international tracing mechanisms, such as iARMS and eTrace, are being successfully used, both in comparably minor cases as well as in investigations related to complex transnational firearms trafficking cases.

In some cases, for example *MNE/ALB(i)* (2017) and *PER(iv)* (2019), national authorities have used both iARMS and eTrace to maximize the likelihood of generating matches and investigative leads.

GOOD PRACTICE**Timely tracing to investigate trafficking**

- The timely tracing of firearms provides investigators with information on the origin of the firearm, thus allowing them to ask the suspect the right questions.
- An incoming tracing request from another State should be treated as a crime notice and may be an important opportunity to commence an investigation into firearms trafficking in the receiving State. The receipt of such a request is an indication that an illicit firearm recovered in another State may have been diverted from the State receiving the request. A proactive investigation into trafficking by the receiving State should be considered.

3.4.2 Traceability of parts, components and ammunition

Under the Firearms Protocol and the International Tracing Instrument, States commit to implement administrative measures aimed at ensuring the traceability of firearms, and where possible their parts and components. The Firearms Protocol obliges States parties to require marking of firearms at the time of manufacture and import (Art. 8). The import marking allows States to address a trace request directly to the last country of legal import, bypassing the country of manufacture and, thereby, expediting the tracing process.

While the Firearms Protocol does not oblige States parties to mark firearm parts and components and ammunition, some parties have gone beyond the Protocol's minimum requirements. In the EU, for instance, according to the (EU) 2017/853 Directive, all essential components of firearms must be marked with a clear, permanent and unique marking and registered in national archives. Brazil also requires for ammunition that is provided to security forces to be marked with batch numbers of no more than 10,000 rounds of ammunition in one batch. In **BRAX010** (2019), this permitted the tracing of marked ammunition back to a firefighter who was diverting ammunition from the Military Police to sell it to criminal groups. Similarly, in **BRAX011** (2011), two masked motorcyclists killed a judge in her car but investigators were able to trace the cartridge shells back to a battalion of the Military Police, thereby narrowing down the group of suspects and eventually identifying the attackers. Days before the murder, the judge had ordered the arrest of eight Military Police officers for alleged involvement with organized crime.

3.5 Expanded and parallel investigations

As described above, the seizure of an unregistered firearm usually provides sufficient evidence for a prosecutor to prove the offence of illicit possession and bring a case to a successful closure. Following this approach, however, misses the opportunity to investigate the supply and trafficking networks involved in sourcing illicit firearms and ammunition. Instead, irrespective of how apparently minor the case might appear at the beginning (for instance, the seizure of a firearm at a routine street control or stop-and-search), expanded and parallel investigations can help identify

the illicit source and supply chain of the firearm and bring criminals along the chain to justice.

Expanded investigations may focus on individuals or the entire structure and *modi operandi* of groups or networks involved, as illustrated in the cases **URYx002**, **URYx003** and **URYx004** (2021)¹⁹³. In these instances, the discovery of a Facebook post advertising cartridges for firearms for sale led to further investigations of the social environment of the suspect, triggering multiple investigations against additional suspects. The expansion of initial online investigations, which encompassed the monitoring of social networks of an individual (WhatsApp groups), allowed the gathering of information and the collecting of evidence necessary to adjudicate three individuals for firearms offences.

Scientific and ballistic analysis of recovered firearms and tracing may help identify their origin and other investigative leads or establish links among different offences and criminal actors, nationally and internationally. Once investigators identify transnational elements, the core investigative strategy needs to focus on cooperation with the source State or States to carry out a joint, coordinated or parallel investigation, with the ultimate goal to identify and dismantle the firearms trafficking network. In a joint criminal investigation, multiple agencies or entities collaborate and work together across borders to investigate a crime, pooling their resources and expertise, while in a parallel criminal investigation, the entities in the same or different States conduct independent investigations into the same or related matters, in particular to investigate and prosecute additional offenders. The evidence obtained in one State may be shared through informal or formal means of law enforcement or judicial cooperation. A typical scenario are investigations against a person in possession of an unlicensed firearm in one country and parallel investigations against the straw purchaser in another country.

A good practice may be drawn from the case *ITA/AUT(i)* (2019), an operation involving Eurojust as well as Italian and Austrian authorities, which dismantled an international criminal network, trafficking firearms to supply the Italian mafia organizations Camorra and 'Ndrangheta.

¹⁹³ For more details, see Section 2.10, *supra*.

CASE STUDY**Trafficking to organized crime groups in Italy – ITA/AUT(i) (2019), continued**

Investigative activities undertaken by the Naples Public Prosecutor's Office (DDA) began in February 2016, following the arrest of two people who held a Kalashnikov and a rifle. Initial investigations confirmed that the weapons were being kept on behalf of the head of a criminal clan (Camorra), which operates near Naples. Camorra usually appoints people with no ties to the criminal group and clean criminal records as custodians of firearms stocks. In return, the custodians receive a monthly payment. Further investigations allowed the identification of a trafficking network focussing, for at least ten years, on trafficking and supplying weapons, including weapons of war (such as Kalashnikovs and Skorpion machine guns), to Camorra groups in the province of Naples.

As of June 2018, investigative activities were developed in cooperation with the Austrian judicial authority and police forces, following a spontaneous transmission of information by the Naples Public Prosecutor's Office. In this case, the Austrian authorities immediately accepted the invitation and opened a parallel investigation in which the documents produced by the Naples DDA were acquired. Subsequent Austrian investigations identified the suppliers as two operators of a hunting and fishing store in Austria. Upon request, they agreed with the Italian organization on the type and quantity of weapons and ammunition to be procured and delivered to them for subsequent transport to Italy through couriers sent to Austria by the head of the Neapolitan organization. During the investigation, numerous seizures of weapons and ammunition were made, and following the arrest of one of the people involved, several handwritten sheets were seized containing names, dates, and initials relating to weapons, ammunition, and the purchase and sale prices charged. A total of 16 different buyers of weapons were identified, including representatives of various Neapolitan Camorra and Calabrian 'Ndrangheta groups.

In the continuation of coordinated investigative activities, Austrian police, under specific orders from the Klagenfurt Public Prosecutor's Office, carried out seven searches in Austria against Austrian nationals, finding, in an empty store, 88 pistols with erased serial numbers, six Kalashnikovs, one Skorpion machine gun and ammunition. As a result of this discovery, the two Austrian nationals confessed their involvement in the international arms trafficking network stating that from 2016 to 2018 they had illegally sold to the Neapolitan criminal organization 500 to 600 new guns with erased serial numbers, about 50 Kalashnikovs, five Skorpion machine guns and ammunition, some of them ordered by the head of the organization.

In February 2019, the DDA of Naples arrested 19 people involved in the network. The Austrian investigation eventually revealed links to Slovenia. Some of the weapons (particularly the Kalashnikovs) that the two Austrian suspects trafficked into Italy were supplied by a Slovenian citizen. Eventually, authorities in both countries arrested 22 suspects and seized 139 firearms and 1,600 rounds of ammunition. Later, Austrian authorities provided more detailed information about the weapons: a total of 791 guns (pistols and revolvers of the brands Walther, Smith & Wesson, Heckler & Koch, Taurus, Weihrauch, Steyr, Holec) were ordered for the purpose of illegal resale in Italy. 17 defendants were convicted by the Tribunal of Naples on 18 June 2020 through abbreviated proceedings on different charges including the offence of mafia type criminal association pursuant to Art. 416bis of the Italian criminal code, the aggravating circumstances of transnationality established by Arts. 3 and 4 of Italian law no. 146 of 2006 and several other firearms offences. This judgement was affirmed by the Court of Appeal of Naples on 3 May 2021. Four other defendants chose the ordinary procedure, and, as of late 2023, their trial was in progress before the Court of Naples.

These complex coordinated investigations, which encompassed the use of different special investigative techniques, such as controlled deliveries and combined surveillance, were supported by Eurojust, which held three coordination meetings to bring together the involved judicial and police authorities of both Italy and Austria.

3.5.1 Intelligence analysis and strategic investigative plans¹⁹⁴

Complex firearms investigations (joint or parallel) require an adequate preparation, involving detailed strategic planning, a correct timing, and careful analysis of resources and means available, including the use of special investigative techniques. Many of the cases in the Digest underscored the importance of strategic investigative plans framed on intelligence information and analysis, to support a focused decision-making process and operative actions.

Intelligence analysis on firearms may derive from a variety of domestic bodies such as specialized services, agencies, intelligence departments, or from firearms focal points. From numerous cases studied, it was possible to identify the prominent role of informants and collaborators of justice in providing intelligence information to detect and seize illicit firearms. Collaborators of justice are often members of an organized criminal group facing criminal charges, who agree to cooperate by giving testimony or otherwise providing evidence to law enforcement or judicial authorities as part of a plea bargain agreement. For instance, research¹⁹⁵ underlined the peculiar role of these subjects in investigating firearms trafficking involving mafia groups in Italy.

CASE STUDY

Firearms stolen from State depot – *PRY(ii)* (2021)

This investigation was initiated as a result of the search carried out for the arrest of a person implicated in the intentional murder of a police officer and the release of the prisoner Jorge Teófilo Samudio González alias ‘Samura’. The fingerprints of the detainee were found on one of the vehicles used for the release of ‘Samura’. On the occasion of the raid, a firearm was seized, which was sent to the Criminalistics Department - Forensic Ballistics Section of the National Police. As a result of the examination, the police determined that the weapon had already been examined by the section before in another case in 2019. Subsequently, and as a result of this event, the Public Prosecutor’s Office raided the Directorate of War Materiel (DIMABEL) in order to verify whether all confiscated firearms that were deposited with DIMABEL were in proper custody. During the first raid, six firearms were found to be missing. These missing firearms, plus two others, were presented the following day by DIMABEL; however, upon verification, the technical personnel corroborated that some of the “missing” firearms were airsoft guns and others had the serial number removed. Only one of the eight firearms presented corresponded to the original missing firearms. The Public Prosecutor’s Office concluded that officials of DIMABEL stole firearms from the deposit to sell or rent them to members of criminal organizations.

This investigation involved three suspects who were responsible of the Fiscal Deposit Section of the National Arms Register (RENAR) of DIMABEL, in charge of the custody and safekeeping of confiscated and deposited firearms. They were charged in the present investigation with the breach of deposit and tampering with technical recordings. These criminal offences are regulated in the Paraguayan Criminal Code. At the time the expert presented these facts, this investigation was still in the preparatory phase.

The expert argued that the strategic planning with the identification of clear and achievable targets, as well as the previous and coordinated intelligence work with the police, was crucial in the investigation. The preparatory stage included the cross examination of reports obtained from different institutions such as: the Commander in Chief of the Armed Forces, cooperatives, telephone companies, and the Superintendence of Banks, among others. Specific scrutiny was required, as officials of the public military institution in charge of the registration, control and custody of firearms in Paraguay were investigated. Of note, strategic reasons suggested renouncing collaboration with experts from this institution in the investigation.

194 See also Section 3.7 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

195 F. Strazzari and F. Zampagni, “Organized crime and terrorism: illicit firearms actors and market dynamics in Italy”, cit., p. 267.

GOOD PRACTICE

Nicaragua has established a national mechanism for gathering and exchanging information and intelligence on routes and methods used by the criminal organizations engaged in illicit drug and firearms trafficking and related crimes, which includes alerts on the changing conduct and *modi operandi* of the criminal organizations. The Nicaraguan expert pointed out that the application of this system as an investigative method for obtaining information and for producing intelligence, led to the arrest of suspects and seizure of firearms in various cases.

The likelihood of successful investigations can be significantly increased if investigators have access to solid intelligence. Such intelligence can be gathered by national authorities, in particular integrated firearms centres and national firearms focal points, and can be shared with relevant countries. To that end, international law enforcement authorities, including INTERPOL, AFRIPOL and EUROPOL, play an important role in coordinating transnational intelligence-led law enforcement operations against firearms trafficking networks, such as operation KAFO¹⁹⁶.

**CASE STUDY
OPERATION ARMSTRONG VII (2020)**

Operation Armstrong VII was an international operation targeting the trafficking of firearms to and within the EU through post and courier services. The operation involved police and customs authorities from 26 countries. Europol, the European Commission and the Customs Cooperation Working Party supported international coordination efforts.

The operation took place between 16–20 November 2020 in the framework of the European Multidisciplinary Platform Against Criminal Threats (EMPACT). During the action week, 42,124 parcels were checked, resulting in the seizure of six firearms, 13 firearms parts, 600 pieces of ammunition, and 297 other weapons (knives, ►

pepper spray, tasers, etc.). During this week, police and customs authorities in the participating countries carried out enhanced controls of suspicious parcels and postal shipments. Europol set up a virtual command center and provided a platform for real time information sharing and crosschecking of intelligence, creating a communication network involving both police and custom authorities.

This operational phase was preceded by an intelligence phase driven by Europol and DG TAXUD. Europol has been actively involved from the onset of this operation by collecting intelligence from all participating partners on firearms and ammunition seized from postal packages from November 2019 until October 2020. This intelligence was used as input to identify risk indicators that were shared with law enforcement to prioritize checks and identify packages possibly containing firearms or firearms related commodities.

Operation Armstrong has been carried out repeatedly by EMPACT, and was also replicated in other regions, more recently in Latin America (Armstrong X) in cooperation with UNODC.

Lessons learned:

This successful operation highlighted the importance of developing a solid intelligence picture before an operation. Such intelligence includes the development of risks indicators to increase the success rates of parcel controls.

3.5.2 Financial investigations¹⁹⁷

Financial investigations can range from the tracking of firearms related financial proceeds and transactions to intelligence-led financial investigations (that is the examination of suspicious transactions and risk indicators assessment). In the examined cases, financial investigations strengthened criminal justice responses in three ways: (a) financial intelligence can provide criminal justice authorities with investi-

¹⁹⁶ See Section 5.1, *infra*.

¹⁹⁷ See also Section 3.34 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

gative leads that firearms related crimes have been or are about to be committed; (b) the paper trail of financial transactions related to illicit firearms transfers can contain important evidence to build a case and prove the trafficking; and (c) financial investigations and a functioning asset recovery/forfeiture system can help deprive criminals of illicitly gained assets resulting from illicit arms flows.

A good example of financial investigations that led to the discovery of firearms trafficking activities is Operation Liquid Gold (*ITA(ii)198*). After an individual, who was later identified as a cash courier, submitted a suspicious currency declaration for the possession of EUR 297,000 at Milan Malpensa Airport, evidence was found in the seized mobile telephone that the individual could be involved in illegal transfers of cash linked to violent extremism. Follow-up investigations identified a network involved in laundering the proceeds of organized crime, including arms trafficking. Similarly, in the Spanish Operation Yakir (*ESP(iii)* – below), financial investigations dismantled an organized crime group that trafficked large quantities of weapons, ammunition and explosives precursors to conflict zones in North Africa and the Middle East, subject to international embargoes.

As explained in a background paper for the Working Group on Firearms, “financial transactions in the context of illicit arms flows leave a paper trail that can lead back to arms supply networks and can be followed to identify those involved at various stages of the arms flow, the location of evidence, the sources of illicit arms and the modalities used. In addition, such investigative measures may help to connect the dots between ostensibly independent actors, provide insight into the hierarchy of criminal organizations and establish the existence of previously unknown criminal conduct”¹⁹⁹.

GOOD PRACTICE

- In investigating and prosecuting firearms trafficking and related offences States shall not decline to render mutual legal assistance to provide relevant documents and records, including bank, financial or business records, on the ground of bank secrecy. This measure is mandatory under the UNTOC (Art. 18, para. 8).
- Law enforcement authorities may consider postponing or waiving the arrest of suspected persons and/or the seizure of money for the purpose of identifying further suspects or gathering further evidence²⁰⁰.

As illustrated by *KNA(i)* (2017)²⁰¹, the simultaneous tracing of seized firearms and tracking of financial transactions of the suspects can be crucial in identifying the point of diversion and the involved criminals. In this case of transnational firearms trafficking from the US to St. Kitts and Nevis, financial records showed that one of the suspects, K.M., sent money via Western Union to another individual R.W., who purchased firearms in the United States, reported them to be stolen and shipped them to St. Kitts, disassembled under the guise of vehicle parts. In this case, police authorities identified R.W. by tracing the firearms to the United States through eTrace, while the tracking of his financial transactions unveiled the involvement of K.M. and helped obtain a clear picture of links among the individuals.

Financial investigations were also at the core of **BRAX012** (2021). In this case, criminals shipped two firearms in a parcel concealed within other items. The police identified the traffickers by analyzing the proof of payment for sending the parcels and the tax document that was issued for the objects bought to hide the weapons. The following investigation led to the arrest of the suspects and to the seizure of additional firearms as well as numerous auto switches, which were imported from Paraguay. The auto switches were advertized online on a legal website to be used with air soft guns, but could instead be used with real Glock pistols, modifying them to shooting in automatic firing mode instead

198 See more information about the case in Section 2.7.3.

199 See [CTOC/COP/WG.6/2021/2](#).

200 Financial Action Task Force, “Operational issues financial investigations guidance”, Recommendation 30.

201 See detailed case study in Section 4.2, *infra*.

of semi-automatic. After requesting sales data from the website, investigators found that hundreds of auto switches had been sold, including to individuals convicted of violent crimes and members of organized

crime groups. The financial investigation conducted from the data provided by the website also showed that the offenders selling the kits also sold firearms, and that they laundered the profits using falsified pay checks.

CASE STUDY

Operação Gun Express – BRAx007 (2021)

Operation Gun Express was an investigation which dismantled a criminal group specialized in trafficking firearms and ammunition transnationally. This investigation began in the first half of 2018, when the Brazilian Federal Police identified a shipment of firearms through the Post Office. The firearms were hidden inside martial arts training equipment, such as gloves and shin guards.

Investigations brought to light that the criminal group acquired firearms in Paraguay and smuggled them illegally into Brazil, in the border city of Foz do Iguaçu/Paraná, from where they were delivered in parcels via the Brazilian postal service (Correios) or via overland transport to the final recipients. These included groups residing in the States of Rio Grande do Norte and Bahia who, since 2016, received and used the weapons or sold them to third parties located in several Brazilian States. The criminal syndicate is estimated to have trafficked more than 300 firearms, investing around BRL 2 million (around USD 600,000) in the purchase of weapons. Among the seized firearms were handguns, burst selectors, ammunition, magazines and rifles made in Brazil, magazines and rifles manufactured in the United States, Austria, the Czech Republic, Italy, Turkey, Brazil, South Korea and Mexico. As a result of this investigation the Federal Court sentenced 15 persons for crimes of criminal association and international trafficking in firearms.

The payment of the weapons was made through deposits and bank transfers, often using bank accounts of straw persons, and through front companies controlled by suspects in Bahia and Rio Grande do Sul, to give a legal appearance to the financial transfers made through the bank transfer system. Besides wiretapping, controlled delivery, search warrants and seizures of vehicles and weapons, investigative measures included different financial investigations such as the judicial seizure of bank accounts, financial tracking and the seizure and confiscation of assets of natural and legal persons.

In this case, the issue of judicial orders to obtain financial information (bank accounts records and documents, tracking of financial movements, etc.) from banks or other financial institutions has proved to be crucial to collect information about the existence of a group specialized in trafficking firearms, accessories and ammunition from Paraguay to Brazil. The paper trail brought evidence to link relevant facts (firearms offences) and subjects (perpetrators of the offences), also contributing to provide criminal justice authorities with a clear picture of the criminal scheme that the organized group had put in place and offering a solid basis on which to prosecute this case²⁰².

Lessons learned:

In Brazil, due to the mandatory cooperation established by law between financial intelligence units (FIU) and law enforcement authorities, financial investigations are a key component in firearms trafficking investigations and provide investigators of firearms crime with the necessary tools and expertise to access and analyze financial information.

202 For more information on this case, see UNODC, SHERLOC case law database, Case No. [BRAx007](#) (2021).

Financial investigations can be of particular importance where criminals use encryption technology to avoid identification. In **DEUx035** (2019), German authorities had already put significant efforts in attempting to identify the provider and operator of a dark web marketplace for drugs and firearms but were not able to breach his encryption technology. Eventually, the authorities were able to identify the defendant following his appeal for donations on the platform. The platform used Bitcoin as virtual currency and donations were transferred to a Bitcoin address. Via a Bitcoin exchange, these donations could be transferred back to fiat currency. Following the appeal for donations, the authorities were able to trace back a donation known from another criminal proceeding and, hence, identify the Bitcoin address of the defendant. The Bitcoins were transferred back to fiat currency via “Bitcoin.de”, where the defendant used his real name and could, therefore, be identified.

Interviews of witnesses and suspects may also provide financial information useful to shed light on individuals, networks and organizations dedicated to firearms trafficking, as it occurred in *BRB(i) 1* (2013). This case dealt with an organized crime group illegally importing a shipment of firearms and ammunition from the United States into Barbados, involving the ID of a deceased consignee and a customs broker to facilitate smooth trafficking. Personnel from the FIU interviewed the four suspects in relation to their financial backgrounds and the businesses they were affiliated with. Information was received that W.H. was employed at a business that his father owned and had access to large sums of money. C.B. was suspicion for several drug shipment seizures as a customs broker but he always eluded arrest, and F.A. was affiliated with several known narcotic traffickers around the island.

Finally, some cases illustrated the importance of financial investigations to deprive firearms trafficking networks of their proceeds of crime, to limit their power to reinvest these assets in further criminal activities or to launder them by infiltrating the legal market. Asset forfeiture is particularly important in cases of large-scale illicit arms transfers as illustrated in Operation Yakir below.

CASE STUDY

Operation Yakir: Criminal syndicate involved in arms trafficking and money laundering – ESP(iii) (2018-2022)

An investigation carried out by the Spanish National Police and Spanish Tax Agency, with the support of Europol, led, in 2020, to the dismantling of a large, organized crime group (made up of Latvian, Spanish and Ukrainian members) involved in arms trafficking and money laundering. Seven people have been arrested for their presumed participation in the crimes of money laundering, membership of a criminal organization and smuggling of defence material. Property worth EUR 10 million was seized. In 2022, a second phase of this operation led to the arrest of two suspected members of this criminal organization in Spain. This criminal network, mostly operating from Spain, illegally transported weapons and explosives precursors used by terrorists to manufacture improvised explosive devices in commercial ships from Ukraine to conflict zones in North Africa and the Middle East, subject to international embargoes. The investigation was coordinated by the Special Prosecutor's Office Against Corruption and Organised Crime, under the supervision of the Audiencia Nacional and required the creation of a multidisciplinary working group.

The criminal group was well-structured and carried out complex illicit arms transfers globally, various of them in violation of arms embargoes. In one case, in 2013, Greek authorities stopped the Sierra-Leone flagged cargo ship “Nour-M” on an irregular course, transporting 59 containers, containing around 32 million rounds of ammunition, to be unloaded in Tripoli and delivered to the Libyan Ministry of Defence. Prior to the transfer, no exemption was obtained and the transit through Greek territorial waters was not authorized.

This criminal syndicate was able to reinvest the large profits (more than EUR 10 million) generated through this and similar arms transfers and introduced them into the legal economy. In order to give them a legal appearance the criminal network had set up a well-organized money-laundering scheme. The illegal profits were sent to tax-havens before being sent to countries with lower financial accountability. In this way, ►

they ensured that they received the money originating from arms trafficking in countries with less rigorous banking controls. The assets were then transferred to bank accounts in European countries, mainly Switzerland and the United Kingdom. From there, the criminals, through companies that controlled the current accounts, transferred the money to Spain, where it was used, notably to buy real estate or in legal commercial activities. Investigations included house searches, seizure of important economic documents, computer equipment and cash. In the case under examination the judge has also ordered the seizure of numerous real estate properties and the blocking of bank accounts and other financial products. The total value of the assets subject to seizure exceeded EUR 10 million.

Lessons learned:

Financial investigations can help to (1) discover trafficking networks; (2) investigate their structures and activities; and (3) identify and deprive proceeds of such trafficking in order to prevent illegal profits from infiltrating the legal economy.

Given the fact that financial investigations and criminal investigations into firearms related crime can have interchangeable entry points, coordination, and collaboration, as well as spontaneous information exchange between law enforcement and financial units is key, as will be outlined in the next section.

3.6 Inter-institutional coordination and cooperation

Proactive and intelligence-led firearms investigations require a high level of inter-institutional coordination and cooperation.

The cases in the Digest show that such coordination may involve numerous institutions at different levels. One level comports the effective information exchange and cooperation among law enforcement officials and between law enforcement officials and prosecutors involved in firearms trafficking investigations. In *BIH(iii)* (2016), the expert stressed that cooperation between

the Bosnian Border Police and the Prosecutor's Office was critical in the elaboration of a successful investigative strategy to detect and halt the tentative trafficking of a large quantity of firearms from Bosnia and Herzegovina to the Netherlands undertaken by an organized crime group composed of three Bosnian nationals. Intelligence information and a common work plan shared by the police and Prosecutor's Office led to the search and seizure in a hidden compartment of a vehicle of ten firearms, including automatic weapons, and more than 400 rounds of ammunition. The weapons included legacy arms of the war in the 1990s as well as converted gas pistols. Similarly, in *SRB(i)* (2016), the Section for Combating Organized Crime of the Serbian Ministry of Interior and the Serbian Prosecutor's Office for Organized Crime closely coordinated the investigation of unauthorized domestic firearms transfers. Serbian authorities seized a large quantity of firearms, firearm parts, ammunition and explosives that were acquired by an organized crime group to be sold with profit. The active participation of all entities involved permitted the rapid exchange of information, while preserving the secrecy of the operation.

In some of the examined cases, *ad hoc* interagency task forces were established to enhance the collaboration among different national law enforcement authorities. For instance, in Granada, an interagency task force with officers from different police agencies such as the Rapid Response Unit, the Criminal Investigation Department and the Drug Squad was established to investigate illicit firearms and drugs trafficking offences. In *GRD(i)* (2021), the work of the task force led to the adjudication of three persons for the illicit possession of ammunition and the illicit possession of controlled substances with intent to supply.

To facilitate inter-institutional coordination and cooperation, many States have reported good experiences with the establishment of integrated firearms centres and national firearms focal points²⁰³. Their significance lies in bolstering the intelligence landscape, instigating proactive investigations guided by intelligence, fostering operational collaboration on both international and inter-agency fronts, and providing comprehensive insights to stakeholders. The ultimate aim is to effectively combat firearms trafficking across national, regional, and international domains. This objective is primarily accomplished through the systematic collection, analysis, and exchange of information pertaining to both legal and illegal firearms, spanning strategic and operational tiers.

²⁰³ See also Section 3.3.3.

4. Special investigative techniques²⁰⁴

²⁰⁴ See also Section 3.36 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

Article 20 para. 1 of the UNTOC encourages States parties to make appropriate use of special investigative techniques, including controlled delivery, electronic and other types of surveillance, and undercover operations. The UNTOC also recommends States parties to adopt bilateral or multilateral agreements with the purpose of using these techniques, in full compliance with the principle of sovereign equality of States²⁰⁵. Special investigative techniques allow the gathering of information and evidence in a discreet manner, thereby permitting the investigation of larger criminal organizations. These techniques go beyond conventional investigative methods and are employed when traditional approaches may not be sufficient.

Most of the cases examined in the Digest underscored that special investigative techniques were decisive in successful investigations of firearms trafficking and related offences, both within and across jurisdictions. They can be used to identify additional suspects and explore the relationship between offenders, thus being particularly suitable in investigating organized crime groups by gathering information on the structure and the criminal conducts of organizations and networks involved in firearms related crime. Often different special investigative techniques are used cumulatively in the same investigation.

The cases in the Digest confirmed that most States have introduced national legislations or regulations which allow for the use of special investigative techniques for serious crime, including firearms trafficking. However, in some jurisdictions special investigative techniques can only be applied to investigate an exclusive list of specific offences, which does not necessarily include firearms related offences. Even if they apply to firearms related offences, some experts explained that sometimes national authorities lack the resources, technical skills or operating procedures to deploy them, which is the case especially for controlled deliveries.

The use of special investigative techniques is subject to several practical, political and legal considerations at a national level. For instance, in some jurisdictions the

police may authorize and use certain special investigative techniques without obtaining prior judicial authorization, while in other jurisdictions such authorization by a judge or prosecutor is required in any case. The use of special investigative techniques requires proper planning in view of the required resources and risks of failure. Furthermore, they interfere with various fundamental rights, in particular the right to privacy and, therefore, must have a clear legal basis in domestic legislation.

For all these reasons the decision to use special investigative techniques should be made following a thorough evaluation, carefully considering all necessary safeguards and in conformity with the constitutional principles of subsidiarity, necessity, proportionality and reasonableness that are widely recognized internationally. The Canadian Supreme Court in a ruling dating back to 1988 highlighted that it is upon law enforcement authorities to assess: “the proportionality between the police involvement, as compared to the accused, including an assessment of the degree of harm caused or risked by the police, as compared to the accused, and the commission of any illegal acts by the police themselves”²⁰⁶.

4.1 Controlled deliveries²⁰⁷

Controlled deliveries enable law enforcement agencies to identify, arrest and prosecute not only the carriers of illicit firearms but also the principals, organizers, and financiers of illicit activities, for instance, of trafficking networks. Originally introduced in Art. 11 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988), whereby States parties shall use controlled deliveries to identify persons involved in drug trafficking, this technique was later extended to other types of organized crimes such as trafficking in firearms. Pursuant to Art. 2(i) of the UNTOC, controlled delivery means the technique for allowing suspicious shipments or cargo to leave, pass through or enter one or more jurisdictions with the knowledge and supervision of their competent authorities with a view to the investigation of an offence and the identification of persons involved in the commission of the offence. This definition is limited to cross-border controlled deliveries. Accordingly, one expert pointed out that Brazilian legislation does not allow for domes-

205 Art. 20, para. 2 of the UNTOC. See, for instance, the Agreement between the Republic of Italy and the Republic of Albania, supplementing the European Convention on Extradition of 13 December 1957 and the European Convention on Mutual Assistance in Criminal Matters of 20 April 1959, (OJ General Series No. 155 of 06-07-2011), entered into force on 30 May 2018.

206 See Supreme Court of Canada, *R. v. Mack*, 2 S.C.R. 903 (1988).

207 See also Section 3.37 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

tic controlled deliveries of firearms. However, States parties are free to go beyond the requirements of the UNTOC and also permit the use of controlled deliveries in cases of unauthorized domestic transfers.

Typically, international controlled deliveries are based on bilateral agreements (namely mutual legal assistance treaties) or law enforcement cooperation agreements between the States where the consignment takes place²⁰⁸.

This technique is particularly useful in cases of firearms trafficking, as it may help investigators to trace the flow of trafficked weapons and to identify the origin, route and destination of illicit consignments, individuals involved in an illegal supply chain, as well as structures and roles played by members of organized crime groups for the purpose of prosecution. To ensure that a delivery does not get lost on its way, controlled deliveries are usually applied together with other special investigative techniques, such as physical surveillance, the deployment of undercover officers, GPS tracking and interception of communications. This was the case in Operation Gun Express (**BRAX007** (2021)²⁰⁹), in which controlled deliveries were used together with other special investigative techniques. In this case an organized crime group trafficked firearms and ammunition from Paraguay into Brazil and sent them by road or by mail to the North and East regions, hidden inside sports equipment deliveries. The police used several types of special investigative techniques, among which controlled delivery of some of the shipments to identify the destination and recipients of the trafficked goods.

Controlled delivery, in combination with other special investigative techniques, is also used to deal with new trafficking modalities, in particular the purchase of firearms on the darknet or shipping via postal and courier services. In *KNA(i)* (2017), a controlled delivery, along with the use of other special measures, allowed investigators to identify the intended recipients of a consignment of firearms trafficked from the United States to St. Kitts and Nevis.

CASE STUDY

Controlled delivery of firearms – *KNA(i)* (2021)

After the recovery of a firearm in St. Kitts and Nevis, police authorities issued a tracing request through eTrace leading to the United States resident R.W. He had reported the recovered and several other firearms either lost or stolen. ATF initiated a parallel investigation against R.W., discovering that he disassembled firearms into their parts and components and shipped them to suspect L.I. in St. Kitts concealed in vehicle parts. US authorities authorized a controlled delivery of firearms from R.W. addressed to L.I.. DEA officers placed a tracker in the package and gave real-time updates on the location of the firearm. The package was followed to the drop off location in St. Kitts where it was seized by officers of the anti-narcotics and customs department.

The controlled delivery allowed St. Kitts police authorities to discover the complicity of two custom officers K.M. and R.T., who were involved in the trafficking in firearms between the two countries. The four individuals were arrested, prosecuted, and sentenced on various firearms offences counts (R.W. in the US). Other special investigative techniques used by the police in this case were: electronic surveillance to apprehend the customs officers responsible for smuggling the package out of the warehouse; undercover operations to monitor the premises of one of the offenders; forensic examination of cell phones, which showed all communication between the accused; and financial investigation that unveiled money transfers between K.M. and R.W. via Western Union.

Lessons learned:

When a cross-border controlled delivery of firearms is deployed, it is essential to maintain continuous communication between the competent authorities of the countries involved to prevent a loss of the delivery. This may include the deployment of additional investigative techniques, such as geo-tracking.

²⁰⁸ See, for instance, Agreement between the Government of Italy and the Government of the Republic of Austria concerning police cooperation (Art. 13), (OJ No. 272 of 21-11-2016).

²⁰⁹ This case is examined in detail in Section 3.5.2 of Chapter 3, *supra*.

Lack of communication and sufficient safeguards during a controlled delivery can be detrimental to the operation and may even lead to counterproductive results, such as loss of the delivered firearms. The potential risk of controlled deliveries was highlighted in **USAx272** (2012)²¹⁰, a trafficking case arising out of the federal investigation Operation Fast and Furious. On 31 October 2009, ATF agents received information from a local gun store about the recent purchases of multiple AK-47 style rifles by four individuals. Agents began investigating the purchases and soon came to believe that the men were so-called straw purchasers involved in a large-scale trafficking organization responsible for buying firearms for transport to violent Mexican drug trafficking organizations. To build a case against the leaders of the organization ATF agents were instructed to let suspected straw purchasers pass with weapons destined for Mexican crime groups, to obtain more information on the recipients of the firearms and the structure of the trafficking network. Throughout the investigation, agents identified more than 40 subjects believed to be connected to a trafficking conspiracy responsible for purchasing over 2,000 firearms for approximately USD 1.5 million in cash. However, only 105 of the nearly 2,000 firearms that were let pass to Mexico could be recovered by the ATF investigators who were tasked with tracking them. Another 462 were found by police on both sides of the border, including on crime scenes. More than 1,400 remained unaccounted.

This case illustrates one of the reasons why the legislation of some States (for instance, Argentina) does not allow for controlled deliveries of firearms. Other States require that during the controlled delivery the firearms are replaced with replicas. *PAN(i)* provides a good example of such a 'clean' controlled delivery. Authorities identified a US citizen who attempted to traffic two firearms to Panama, using a courier service. The Office of the Prosecutor specialized in organized crime offences opened a file under the offence of trafficking in firearms and requested international legal assistance for a controlled delivery. In cooperation with the courier company, the frame of the pistols was replaced by carbon material, which also included a GPS tracking device. The operation led to the arrest of both the senders and the receivers of the firearms and also entailed the tracking of money transfers via Western Union between the accomplices.

However, in addition to the risk that a controlled delivery may be lost, this investigative technique also faces some legal challenges. In **SWEx001** (2023), the police found automatic assault rifles during the search of a basement storage unit but could not identify for whom they were destined or to whom they belonged. The items were seized, and the police replaced them with fake copies at the location where the weapons had been found and surveilled the store. Four months later, the defendant came to retrieve the weapons and was arrested and charged with attempting to unlawfully possess the firearms. The Swedish Supreme Court reversed the defendant's conviction, stating that a defendant is not criminally liable if the offence can no longer be completed at the time the defendant forms their intention. In this case, after the firearms were replaced with non-lethal replicas, the offence could no longer be completed. Against the backdrop of the jurisprudence, it remains to be seen if, in Sweden, defendants can still be charged with attempted conduct for those offence that include the criminalization of attempt.

4.2 Undercover operations²¹¹

Undercover operations involve law enforcement officers or agents assuming false identities or roles to infiltrate criminal organizations or activities covertly. Undercover operations may have a short duration (e.g. a few hours) or last for a protracted time, including for years. The goal is to gather intelligence, collect evidence, and gain the trust of criminals to facilitate arrests and prosecutions. Undercover agents gather information and collect evidence about criminal gang structures, study their *modus operandi* and evaluate their plans and strategies. This information is used both for preventive and investigative purposes. Undercover operations typically allow investigators access to key evidence that cannot be obtained through other means. They are commonly employed in cases involving organized crime, drug and firearms trafficking, terrorism, and other serious offences. During these operations, officers may participate in criminal activities to maintain their cover, but their ultimate aim is to gather information that can lead to the dismantling of criminal enterprises and the arrest of key individuals. These operations require careful planning, risk management,

210 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx272** (2012).

211 See also Section 3.38 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

and adherence to legal and ethical guidelines to ensure the safety of undercover officers, the success of the operation and the admissibility of evidence in court.

In most jurisdictions, undercover officers are not permitted to encourage suspects to commit crimes they would not ordinarily commit (acting as a so-called *agent provocateur*). Their role is usually to become part of an existing criminal enterprise or to engage with individual criminals, for instance, dealers of illicit firearms. Jurisdictions vary in the nature of the restrictions they place on undercover operations, with most focusing solely on prohibiting undercover agents from providing opportunities to commit crime and committing crimes themselves.

The examined cases show different contexts in which States deployed undercover agents. Most prominent cases entail situations in which undercover agents are infiltrated into organized crime groups engaged in firearms trafficking. In such cases the deployment of undercover agents demonstrated to have critical impact to advance the investigations, by collecting evidence otherwise unobtainable with other means and offering possibilities to unveil activities and roles of members of a criminal network/organization. At the same time, it emerged that infiltrating an undercover agent into an organized crime group may present some counter-indications. For instance, this technique may entail substantial physical risks for undercover officers. Another concern is that it may take a lengthy timeframe for the officer to achieve the expected results. Finally, since undercover operations may require simulate purchases/deals, these investigative measures sometimes can be quite costly.

An emblematic case found is *SRB(i)* (2016), which involved a Serbian organized crime group specialized in domestic unauthorized firearms transfers. The organizer hired other members of the criminal group, found buyers for the illegal firearms, and organized the hidden storage of the firearms. The organized crime group's members were responsible for finding and hiding illegal firearms, and for delivering them to the organizer for sale. The organization trafficked pistols, automatic rifles, bombs, machine guns, rocket launchers, ammunition and explosives. In total, the group illegally bought and sold about 6,000 firearms and rounds of ammunition in a short period of time. Serbian police used undercover agents and electronic surveillance measures to unveil the illicit business of this organization. While the operation was generally successful and yielded fast investigative results, it also illustrates some

challenges related to the use of undercover agents and electronic surveillance. In particular, the Serbian police faced technical problems when transcribing conversations from wiretapping and encountered financial difficulties to provide undercover agents with sufficient resources to simulate the purchase of illegal firearms.

Similar problems arose in *BIH(i)* (2016), a case involving an organized crime group trafficking firearms from Bosnia to countries of Western Europe, mostly to the Netherlands. The lack of financial resources impeded undercover agents gaining the additional evidence that investigators would have expected, for instance, by buying weapons and drugs through controlled purchases.

An emerging scenario from cases involving undercover operations was found in cases such as *ARG(ii)* (2017) and **DEUx035** (2019) in which, within the context of online investigations and cyber-patrolling, States deployed undercover agents to negotiate fake purchases of firearms from a dark web vendor, with the purpose of arresting the seller during the handover. In the digital realm, the work of undercover agents can be particularly effective when they are able to take over accounts of users in criminal networks or online marketplaces for illicit goods. This was the case in **DEUx052** (2018), where undercover agents took over the account of a well-connected and active user on a dark web marketplace and got in contact with various vendors of firearms, including the vendor of a firearm used in an active shooter event in Munich in 2016. The undercover agents expressed interest concerning the purchase of a fully automatic rifle VZ 58 and a semi-automatic Glock 17 Gen. 3 for a total price of EUR 8,000 and agreed to meet personally on 16 August 2016 to conclude the purchase. During the transaction, the vendor was arrested and later sentenced to seven years of imprisonment and the confiscation of proceeds of crime amounting to EUR 25,400.

Undercover operations are often used in conjunction with other special investigative techniques, namely electronic surveillance. For instance, in the case **USAx085** (2013), the accused had long been regarded by the Government of the United States as a dangerous and powerful international arms trafficker. The US Drug Enforcement Administration initiated an international sting operation against the defendant with the assistance of three undercover agents. Two of them posed as representatives of the Fuerzas Armadas Revolucionarias de Colombia (FARC), Colombia's former and largest armed guerrilla group operating from

1964–2017. The defendant met with the three agents to discuss a weapons deal at a hotel in Bangkok, Thailand. During recorded conversations, he repeatedly supported the FARC's intention to use his weapons to kill American pilots stationed in Colombia. On 6 March 2008, Thai authorities arrested the defendant in Bangkok, who was then extradited to the US.

4.3 Surveillance²¹²

The term surveillance covers traditional physical surveillance as well as electronic surveillance, which implies the use of modern electronic technologies. The objective of surveillance is to capture communications, movements, or other conducts of the person under investigation.

The UNTOC refers to “electronic and other forms of surveillance” (Art. 20 para. 1). This includes the use of electronic devices such as wiretaps, listening devices, and tracking systems to intercept and record communications, as well as other undisclosed techniques aimed at observing and documenting criminal activities. The goal of electronic and other forms of surveillance under UNTOC is to enhance law enforcement's ability to investigate and combat transnational organized crime by obtaining evidence that can be used in legal proceedings.

Both types of surveillance can also be used concurrently, as was the case in **CANx052** (2014), where the defendant was part of a street gang that called itself the YBK, which was engaged in the production, supply, and sale of controlled drugs. The indictment was based on numerous intercepted phone conversations, police surveillance as well as pictures and videos found on cell phones seized from numerous individuals. The wiretapping continued over 3.5 months during which thousands of calls and many text messages were intercepted and monitored. During several phone calls the accused repeatedly mentioned a firearm in his possession. Furthermore, some intercepted calls proved the accused's direct involvement in arranging the transport of firearms and drugs from British Columbia to Toronto and that he gave other gang members instructions concerning onward transport of the firearms. The defendant was charged with 19 offences comprised of five firearm offences, two drug offences, one posses-

sion of proceeds of crime offence as well as 11 criminal organization offences.

Physical surveillance is one of the oldest investigative tools for law enforcement, and it generally does not rely on the authorization of a magistrate. When an individual is suspected of involvement in a crime, police can keep a close watch on all movements, actions and contacts using traditional methods such as shadowing or observation. This remains a widely used investigative tool, although most countries have placed limits on surveillance. A right to privacy in one's own home, for example, has near universal recognition, so countries place restrictions on such intrusion. The threshold on when government authorities can enter private spaces depends on the jurisdiction and may include probable cause, reasonable suspicion, reasonable and probable grounds, and it generally requires prior judicial authorization.

The other type of surveillance is electronic surveillance, which emerged in the Digest as the most widely used special investigative technique in firearms trafficking investigations. Electronic surveillance covers a wide range of possible actions, including audio (like phone tapping, room listening devices), physical or data surveillance (such as computer or text messages data), as well as tracking surveillance. This technique can help identify co-conspirators, provide insight into the operations of the criminal organization, provide real time information/evidence that can be acted upon using other investigative techniques and can lead to the discovery of assets, financial records, and other evidence. Given its intrusiveness, electronic surveillance is generally subject to strict judicial control and legal safeguards to prevent abuse and limit the invasion of privacy. It can only be considered when less intrusive means have been exhausted or are ineffective, or when no reasonable alternative to obtain evidence can be offered.

In numerous cases wiretapping and other forms of audio surveillance (including voice over internet protocol (VOIP)) have proven to be a critical tool in gathering evidence later used in trial against identified suspects involved in firearms trafficking. In cases such as *ITA(i)* (2014–2017)²¹³, wiretapping was deployed to unveil the composition and structures of organized crime groups. Judicial authorization for intercepting telephone conversations is generally strictly limited in time. However, as **ITAx039** (2018) shows, such limited judicial authorizations can be extended over a long period of time, if adequate grounds for continuing the surveillance per-

212 See also Section 3.39 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

213 This case is examined in detail in Section 2.9.2, *supra*.

sist. In the case, three Italian nationals were charged with trafficking arms and dual-use items, including 13,950 assault rifles with a value of EUR 41 million, to Libya and Iran between 2011 and 2015, in violation of arms embargoes imposed on both countries. The goods were purchased in several African, Asian, and European countries and delivered by air to Iran and Libya without passing through Italian territory. The Italian Antimafia District Directorate (DDA) ordered the suspects' detention after several years of implementing audio surveillance measures, using that evidence to consider the accused a flight risk. During ensuing investigations, the DDA discovered among other evidence, an email order for guns on one of the accused's computers.

Limitations in the use of electronic surveillance measures may derive from both legal and practical factors. In particular, significant human and financial resources are needed to monitor the intercepted communication and prepare transcripts, analytical reports, and reports requiring justification for continuing the electronic surveillance beyond an approved period. The cases **URYx002, URYx003, URYx004** (2021) illustrate some of the technical challenges when wiretapping mobile phones far away from the intercepting unit. The expert underlined that in the three cases (see case studies below), the suspects were 300 kilometres away, which meant either keeping special forces constantly on standby in proximity to the suspects or accepting a considerable delay in acting in the event of a call announcing a delivery of firearms. The expert explained that in these cases personnel from the National Navy, which had bases in the vicinity of the places in question, were notified.

In many cases in the Digest audio surveillance was combined with geo-tracking and localization.

One of the most interesting findings arising from the examined cases is the growing use of data surveillance in firearms trafficking investigations. This can include the extraction of meta data and call detail records, documenting the details of a telephone call or other telecommunications transactions (e.g., text message) and containing various attributes of the call, such as time, duration, completion status, source number, and destination number in firearms trafficking investigations.

From the cases **URYx002, URYx003, and URYx004** (2021) it is possible to gain interesting insights linked to the combined and multiple deployment of different electronic surveillance measures in the same investigation.

CASE STUDY

URYx002, URYx003, URYx004 (2021)²¹⁴

In Operation Investigación Vectra (**URYx002**), through an online investigation the General Directorate of Police Information and Intelligence identified the user of a Facebook account named "Chiquito Roman" that was used to sell ammunition and firearms. In a subsequent raid at the home of the suspect the police seized 5,428 rounds of ammunition, eight firearms (including one of the 308 firearms offered through the Facebook account), the sum of UYU 300,000 and several receipts of parcels from the company DAC, through which he sent the ammunition orders to buyers all over the country. Lines of investigation included the deployment of electronic surveillance measures, from which evidence of firearms trafficking was obtained and used in trial. The suspect (D.S.R.D) was convicted through abbreviated proceedings on the count of internal trafficking in firearms, ammunition, explosives, and other related materials, and sentenced to twenty months in prison.

By monitoring the social networks of D.S.R.D., police analysts were able to identify among his contacts another man, who shared in his profile a link to a WhatsApp group, in which he placed monthly offers for cartridges of various calibres. Police authorities opened Operation Investigación Ecosport (**URYx003**), conducted a search at the suspect's premises, and seized around 5,000 rounds of ammunition of various calibres, 500 bullets of .243 and .308 calibre ammunition as well as five containers containing smokeless powder and primers. The suspect was condemned on the count of continued crime of internal trafficking in ammunitions and sentenced to ten months in prison.

The home of the defendant is close to the Uruguay River, which is shared with neighbouring Republic of Argentina. In Argentina, both firearms and cartridges have a significantly lower value than in Uruguay, so arbitrage is a profitable business. The analysis of the defendant's ►

²¹⁴ For more information on these cases, see UNODC, SHERLOC case law database, Cases No. **URYx002, URYx003, and URYx004** (2021).s

mobile phone unveiled chats with a person who supplied him with the seized material. The communication included information on the resale prices and indicated that they were obtained in Argentina.

After identifying the person who was sending the messages as L.D.G.M., a new investigation was initiated, Investigación Escape (URYx004). Electronic surveillance measures (including wiretapping and the extraction of data from mobile phones) were deployed but did not provide additional evidence on any ongoing trafficking activities. However, a few months later, in communications with his associate J.C.R.Z., L.D.G.M. mentioned that after the police operation they had stopped trafficking in firearms and ammunition and stored their stocks at a relative's house. A search and an arrest warrant were requested and executed. The search led to the seizure of six rifles, 365 cartridges, 466 bullets, 242 cartridge cases and three containers of smokeless powder, as well as a reloading machine, precision scale, powder dispensers and bullet pullers. Once the judicial process was completed, the magistrate convicted L.D.G.M. on the count of continued crime of international trafficking of firearms, ammunition, explosives, and related materials to a penalty of 12 months in prison, and J.C.R.Z. for the offence of assistance to the illicit trafficking of firearms, explosives, ammunition or materials intended for their production, to a penalty of 12 months of house arrest.

GOOD PRACTICE

In these cases, the combined use of different technologies for electronic surveillance allowed the intercepting of mobile phone conversations and the extracting of information that was used both as investigative leads to understand the supply network and open parallel investigations against additional offenders and as evidence in trial.



5. International law enforcement and judicial cooperation

In broad terms, international cooperation in criminal matters encompasses both international law enforcement and judicial cooperation. The need for each State to obtain law enforcement and judicial cooperation in criminal matters from other States stems from the fact that in criminal investigations States can access information and exercise coercive power only within their own territory (the principle of sovereignty).

Where a case has a transnational dimension and part of the required evidence or potential suspects or witnesses are in another country States rely on cooperation and information exchange. Thus, international cooperation in criminal matters is grounded in the need of the State requesting assistance to obtain the collaboration of another State to carry out its own jurisdictional activities, without thereby violating the sovereignty of the solicited State. This is of particular significance in relation to crimes such as firearms trafficking that are, by their nature, transnational.

In addition to bilateral agreements, the UNTOC, with its almost universal application, establishes the basis for a broad range of police and judicial cooperation. Apart from the recognition of foreign criminal judgments, this includes provisions on extradition, mutual legal assistance, cooperation in the seizure and confiscation of property, transfer of convicted persons, and transfer of criminal proceedings. In the absence of regional, multilateral, or bilateral agreements, States parties to the UNTOC may use the Convention as a legal basis for all forms of cooperation included therein, with respect to several organized crime offences including, among others, the offences established in the Firearms Protocol. The latter also contains specific norms on cooperation in criminal matters, such as information exchange for the tracing of firearms.

5.1 International law enforcement cooperation²¹⁵

The UNTOC provides a solid legal basis for international law enforcement cooperation. Art. 27, para. 1

prescribes that States parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat transnational organized crime, including offences established under the Firearms Protocol. States obligations related to information exchange, as a specific form of international law enforcement cooperation, are further detailed in the Firearms Protocol.

The cases examined in the Digest underscore the importance of international law enforcement cooperation in combating firearms trafficking and related crimes. In this area, three main aspects emerged. First, information exchange at an international level; second, coordination between law enforcement authorities of different countries; third, posting of liaison officers. Many cases in the Digest also highlighted the role that international and regional organizations such as the UNODC, INTERPOL, Europol and AFRIPOL play in supporting international law enforcement cooperation and operations.

Joint cross-border operations can help dismantle trafficking networks that operate on both sides of a border and can be conducted on an ad hoc basis in response to concrete information or as recurring operations to police border areas and prevent firearms trafficking. Examples of such operations include the Joint Action Days carried out under the European Multidisciplinary Platform against Criminal Threats programme (EMPACT Firearms) in cooperation with Europol, the recurring UNODC KAFO operations in West Africa and the series of trigger operations of INTERPOL²¹⁶.

CASE STUDY UNODC KAFO OPERATIONS (2019-2021)

KAFO is the codename of a series of operations coordinated by the UNODC through its Global Firearms Programme aimed at disrupting the firearms trafficking networks used to supply terrorists across West Africa and the Sahel. The first KAFO operation was launched in November 2019, involving 110 officers from police, customs, border and prosecution services from three countries. ►

²¹⁵ See [MOSAIC 03.50:2021](#), Section 7. See also Section 5.2 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

²¹⁶ See [CTOC/COP/WG.6/2023/2](#).

In 2020, four countries participated in a second operation and, in December 2021, the two-week long operation KAFO III against firearms trafficking in the Sahel involved 850 officers from across the relevant law enforcement agencies of eight countries. A total of 594 firearms and several thousand rounds of ammunition were seized, including among suspected terrorists. In addition, authorities also seized 1,844 kilograms of explosives; 26,600 liters of contraband fuel; 1,000 litres of explosive precursor chemicals; 1,200 kilograms of drugs (predominantly cannabis), 120,800 cartons of contraband tobacco products, and more than 3,500,000 tablets of contraband medical drugs, including pharmaceutical opioid tramadol.

The intelligence-led operations were possible due to pre-operational training delivered jointly by INTERPOL and UNODC, which ensured that officers had the skills required to use INTERPOL's operational capabilities to their full potential and detect firearms trafficking in key strategic locations, particularly at border crossings. In particular, officers were trained on how to use INTERPOL's iARMS and Firearms Reference Table (IFRT) to detect, identify and trace illicit firearms. Several hundred firearms recovered in the target countries were identified and traced back to the countries of manufacture or last known legal import to track their history of ownership and movements. After the successful tracing, UNODC provided mentoring support to prosecutors and judges in bringing the traffickers to justice.

Lessons learned:

The KAFO operations demonstrate the advantage of coordinated pro-active and intelligence-led investigations to unveil the links between firearms trafficking and other kinds of trafficking and criminality, including terrorism. International and regional organizations can play an important role in supporting international and inter-agency coordination and cooperation in the context of such operations.

5.1.1 Information exchange and coordination²¹⁷

The Firearms Protocol provides for a comprehensive basis for the exchange of information among law enforcement agencies of different countries required to effectively prevent and combat the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. The tracing of firearms, as a specific form of information exchange, was already addressed in Section 3.4 of the Digest. In addition, pursuant to Art. 12 of the Firearms Protocol, States parties shall exchange relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition. Furthermore, States parties shall exchange information related to the illicit manufacturing of and trafficking in firearms their parts and components and ammunition on: (a) organized crime groups known to take part or suspected of taking part in such conduct; (b) the means of concealment used and ways of detecting trafficked items; (c) the methods and means, points of dispatch and destination and routes customarily used by organized crime groups. Finally, the Firearms Protocol requires States parties to provide to or share with each other relevant scientific and technological information useful to law enforcement authorities in order to enhance each other's abilities to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to prosecute the persons involved in those illicit activities.

The cases examined in the Digest provide insights that information exchange and coordination between the police forces of States affected by transnational firearms trafficking can contribute decisively to the successful investigation and subsequent prosecution of firearms trafficking and related forms of crime. In the following case, es instance, cooperation in gathering and exchanging information and effective coordination among law enforcement authorities of different countries was a key success factor.

²¹⁷ See also Section 5.5 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

CASE STUDY**Immediate information exchange led to the dismantling of a trafficking network – MNE/ALB(i) (2017)**

On 18 March 2017, at the Muriqan land border crossing point between Albania and Montenegro, the Montenegrin police searched a public bus on an international line between Tirana (Albania) and Dortmund (Germany) and found in a concealment in a piece of luggage seven pistols, 30 rounds of ammunition, 1.5 kg of narcotics, an Italian document in the name of A.B and a note with a phone number.

After seizing the items and interrogating the bus driver, the Montenegrin police placed the luggage back in the luggage compartment of the bus and let the bus pass on its way to Dortmund. They contacted German police authorities to follow the bus to its destination where the police arrested two persons from Albania and Kosovo who waited at the bus station to pick up the luggage. When interrogated they explained that an Albanian citizen, named “Miri” had asked them to take the luggage. The German police identified the suspect and, in cooperation with the Albanian Prosecution Office, investigated him. In parallel, the Montenegrin police contacted the Albanian police to find out who sent the luggage containing the firearms and drugs and, through Europol, sent information to the Albanian Prosecution Office to inform them about the seizure. Furthermore, the Montenegrin police, conducted forensic examination of the items and intercepted the Albanian phone number that was left on the luggage.

When the expert presented these facts, the case was still in investigation phase.

Lessons learned:

This case demonstrates the importance of spontaneous information and intelligence exchange among law enforcement and prosecutorial offices of different States involved in investigations regarding transnational firearms trafficking. The immediate coordination and cooperation were crucial to identify the suspects, collect the information necessary to establish links among individuals and identify firearms trafficking routes and patterns as well as the organized group involved in sourcing the firearms. Within five days, Europol arranged a meeting between prosecutors and judicial police officers from Albania, Montenegro and Germany to exchange all the relevant case information immediately and agree on an investigative strategy.

An expert from Brazil underscored as a good practice informal police cooperation between the Federal Police and US Homeland Security Investigations in exchanging documents and information on an *ad hoc* basis. If the information is needed as evidence in crime, the informal exchange of information can later be formalized through a mutual legal assistance request.

5.1.2 Liaison officers and informal cooperation mechanisms²¹⁸

Among the recommended measures to enhance law enforcement cooperation the UNTOC in Art. 27, para. 1(d) refers to the exchange of personnel and experts

and the posting of liaison officers. Liaison officers are usually posted at embassies, consulates and the headquarters of multilateral organizations or partner law enforcement agencies to strengthen cooperation with the authorities in the host country or the organization to which they are posted by acting as direct channels of information exchange²¹⁹.

As confirmed by some cases in the Digest, they can play an important role in the coordination of transnational operations and the investigation and prosecution of firearms trafficking and related forms of crime. For example, in *ESP(ii)* (2018) the assignment of a Spanish police liaison officer to Vienna was reported as a facilitating factor in the investigation of a case involving an organized crime group based in Spain with links in the

²¹⁸ See also Section 5.4 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

²¹⁹ [CTOC/COP/WG.6/2023/2](#).

US and Austria that trafficked firearms parts and components through the use of fast parcel and postal services for the purpose of reactivating and reassembling weapons. The liaison officer ensured effective coordination and supported direct communication between the law enforcement authorities of the concerned countries. Of further note is that effective international cooperation between Austrian and Spanish authorities was enhanced by direct cooperation facilitated through the EMPACT platform.

The establishment of regional platforms, such as EMPACT, reinforces the effective implementation of the measures stipulated in the Organized Crime Convention. In fact, Art. 27, para. 2 calls upon States parties to consider entering into bilateral or regional agreements or arrangements to enhance the cooperation between their law enforcement agencies with a view to giving effect to the Convention. Such regional agreements can also facilitate State cooperation on an informal level, by providing networks of contacts, both at investigative and judicial level, which strengthen channels of communication between States and provide valuable assistance to States regarding national practices and issues relating to cooperation. Examples include the Ibero-American Network of Judicial Assistance in Civil and Criminal Matters (IberRed), an informal network of judges, prosecutors, and liaison officers for central authorities to improve coordination in a number of areas of work including mutual legal assistance and extradition²²⁰; the Judicial Cooperation Network for Central Asia and Southern Caucasus (CASC), which brings together criminal justice practitioners appointed by central authorities of the member countries, who serve as national contact points, supporting informal consultations and efficient international cooperation²²¹; or the Platform for Judicial Cooperation in Criminal Matters in the Sahel Countries (PCJS), which as part of its functions facilitates the transmission and execution of mutual legal assistance and extradition requests between its member countries, with a particular focus on fighting terrorism and organized crime²²².

5.2 Judicial cooperation in criminal matters²²³

Law enforcement and judicial cooperation coexist and are often complementary. When judicial cooperation is required to obtain certain evidence, informal information exchange and cooperation mechanisms often prepare the ground for more formal processes. UNTOC Arts. 16–25 provide the legal basis for international judicial cooperation. It can enable authorities in one country to obtain evidence from another country in a way that the evidence is admissible domestically. For example, witnesses can be summoned, persons located, documents and other evidence produced, warrants issued and suspects extradited. Art. 18 of the Organized Crime Convention provides that States parties must afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings related to the offences covered by the Convention and the Protocols thereto²²⁴.

5.2.1 Extradition²²⁵

Extradition is the oldest instrument of criminal judicial cooperation in criminal matters. It consists of a procedure by which one State hands over an accused or convicted individual to another State for the purpose of his or her trial (procedural extradition) or for the execution of punishment (executive extradition). Despite legal differences, there are several principles on extradition that are common to most countries. UNTOC Art. 16 draws on these principles to build a comprehensive framework for extradition. In some regional organizations even closer forms of cooperation have been established, including the mutual recognition of judicial decisions. In the European Union and the Caribbean, for example, Member States agree, subject to specified grounds for refusal, to recognize and execute European or Caribbean arrest warrants respectively without any further formalities or the dual criminality requirement for a list of offences, including trafficking in weapons, ammunition and explosives.

220 IberRed, [IberRed – iberred](#), n.d.

221 UNODC, [Judicial Cooperation Network for Central Asia and Southern Caucasus](#), n.d.

222 PCJS, [What is the PCJS?](#), n.d.

223 See [MOSAIC 03.50:2021](#), Section 8.

224 See [CTOC/COP/WG.6/2023/2](#).

225 See also Section 5.12 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

CASE STUDY**Extradition of the head of a criminal syndicate – LCA(ii) (2014-2020)**

In this case an intelligence-led operation involving several St. Lucian authorities, members of the Central Intelligence Unit, Special Patrol Team, Drug Unit, and Special Services Unit, with technical support from French authorities, resulted in the arrest of a notorious criminal, national of Martinique. J.M.M. was the head of a well-organized criminal syndicate engaged in firearms and drugs trafficking operating in Martinique, Guadeloupe, France, Venezuela, Colombia, Dominica and St. Lucia.

Upon his arrest, J.M.M. was surrendered to French authorities and extradited to Martinique where he was convicted and sentenced to 18 years for murder and is still awaiting trial on a number of other charges, including firearms offences. In this case, the legal base for the extradition request submitted by French authorities to St. Lucia was an INTERPOL Red Notice, which is considered a valid request for provisional arrest in many States.

Not many of the cases on firearms reviewed for the Digest deal with the topic of extradition. Nevertheless, some of the cases presented by experts offer a number of interesting insights. The issues that emerged from the case studies do not touch on the substantive requirements of extradition (double criminality, principle of specialty, grounds for refusal) but rather illustrate the simplification and streamlining of extradition procedures, which can be slow and cumbersome.

In *BHS(ii)* (2018), a case of illegal possession of ammunition and a pistol with erased serial numbers triggered parallel investigations, which led to the discovery of a purchase of over 70 firearms, linked to a notorious criminal gang. Fourteen of these firearms were imported to the Bahamas. At the time when the expert presented this case, one person, L.B., a Bahamian, who was accused of conspiracy to introduce firearms into the Bahamas, was imprisoned in the US awaiting extradition to the Bahamas. The expert explained that in this case the extradition took a lot of time because the extradition treaty binding the two States provides that the solicited State may defer the surrender of the sought person until the full execution of any punishment in the solicited State. The provision can result in significant delays of extradition requests.

To ensure the presence of a fugitive for purposes of extradition, in accordance with Art. 16, para. 9 of the UNTOC, the solicited State party may take a fugitive into temporary arrest, detention or custody. If the legal framework of the solicited State permits it, an application for temporary arrest is usually sent through diplomatic channels, via embassies or consulates. It can also be communicated through the Interpol I-24/7 system or by issuing a Wanted Diffusion Notice or INTERPOL Red Notice. As mentioned above, the Framework Decision on the European Arrest Warrant (EAW)²²⁶ significantly simplifies the execution of arrest warrants among European Union Member States.

Some of the European cases examined in the Digest illustrate the use of the EAW procedure to detain firearms traffickers in the context of an ongoing investigation. Furthermore, the cases underscore the role of Eurojust in facilitating the timely execution of an EAW.

²²⁶ 2002/584/JHA, Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

CASE STUDY**CZE/NLD/SVK(i) (2021)²²⁷**

In this case, Eurojust has supported Slovak, Czech and Dutch authorities in dismantling a criminal network, which trafficked in illegally converted firearms. During several operations, six suspects were arrested in the three countries concerned and approximately 350 arms were seized. Europol supported these actions with an operational task force. Eurojust assisted the authorities in setting up a joint investigation team (JIT) between Slovakia and the Netherlands and provided judicial support during the operations. Eurojust also coordinated the organization of two action days in the three countries mentioned. Furthermore, Eurojust supported the Czech authorities with the execution of EAWs and European Investigation Orders for the transmission of evidence.

ITA/DEU(i) (2018)

During an international joint action day in Italy and Germany, 160 people were arrested. They were suspected of participating in a mafia-type organized crime group ('Ndrangheta), involved in attempted murder, extortion, money laundering, firearms related offences and other crimes. Eurojust ensured a comprehensive coordination at a European Union level and provided full operational legal assistance to all national authorities involved. Especially, Eurojust set up a coordination centre at its premises in The Hague with the participation of representatives of the Prosecution Offices in Italy and Germany. Via the coordination centre, Eurojust coordinated the simultaneous execution of 11 European Arrest Warrants and 13 European Investigation Orders in four Federal States in Germany and facilitated the real-time exchange of information among all judicial and law enforcement officials involved in the joint operations.

BEL/ESP(i) (2018)

The Spanish judicial authorities (Juzgado de Instrucción no. 1 in Torre Vieja), the Belgian Public Prosecutor's Office and judicial authorities, in coordination with the Spanish Guardia Civil and the Belgian Federal Police, and with the support of Eurojust and Europol, arrested a Belgian fugitive in Torre Vieja, Spain. The action day, which took place on 7 November 2018, was prepared by the Eurojust Belgian and Spanish desks, which liaised directly with their national authorities. The Belgian and Spanish magistrates drafted the EAW together and directed the arrest and the searches and seizures of bank accounts, three houses and a restaurant in Spain, resulting in the shutdown of the restaurant used in money laundering schemes.

The suspect had escaped from Belgium in January 2018 after committing more than 20 extremely violent robberies. He had then been sought by the Belgian authorities. The suspect belonged to an organized crime group and is the alleged perpetrator of other crimes, such as drug and firearms trafficking. The Belgian Federal Police suspected the fugitive could be hiding in Torre Vieja and requested the cooperation of the Spanish Guardia Civil, which launched an investigation and surveillance activities. The investigation revealed that the fugitive laundered the illicit proceeds derived from his criminal activities in Belgium through a restaurant in Spain – a cash-intensive business – and then reinvested the money in real estate. Europol provided analytical support during the investigation by cross-checking data and facilitating information exchange.

Lessons learned:

These cases demonstrate the effectiveness of EAWs in detaining firearms traffickers who are active across borders in Europe. Eurojust can play an important facilitating role in the execution of the warrants.

227 For more information about this case see Section 2.3.5, *supra*.

5.2.2 Mutual legal assistance²²⁸

Mutual Legal Assistance (MLA) is a process through which countries cooperate in obtaining assistance for investigations and legal proceedings in criminal matters. It involves one country requesting help from another in collecting evidence, locating witnesses, and executing legal actions across borders, while respecting the national sovereignty of the solicited State.

Article 18 of the UNTOC establishes that States parties shall provide each other with the widest measure of MLA in investigations, prosecution, and judicial proceedings in relation to the offences covered by the Convention and the Protocols thereto. Art. 18 para. 3 contains a non-exclusive list of the types of MLA States must provide. This list includes taking evidence or statements from persons; effecting service of judicial documents; executing searches and seizures; examining objects and sites; providing information and evidentiary documents; providing originals or certified copies or relevant documents and identifying or tracing the proceeds of crime; and facilitating voluntary appearances of persons.

In most of the cases examined, bilateral mutual legal assistance treaties (MLAT) provided the legal basis for requests for MLA. However, the case *HND(i)* (2008) is a good example that also some international Conventions, such as the UNTOC, can provide a legal basis for MLA. Authorities had detected a vessel with a Honduran flag in Colombian coastal waters and seized 14.4 kg of heroin and 61 40 mm grenades, which were being trafficked to Honduras. Investigators suspected that the heroin was intended to be onward trafficked to the United States, while the grenades would remain in Central America. The Honduran authorities, to get evidence of the involvement of some Honduran citizens in the commission of the alleged acts, requested judicial assistance from Colombia in accordance with Art. 7 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, ratified by Honduras in May 1993. In this case, the request for information and the submission of documentary and expert evidence were granted, as well as the witness statements of police officers and experts, who travelled from Colombia to Honduras to testify at the trial.

Numerous cases examined for the Digest revealed that States made use of almost all types of assistance indicated above, confirming the relevance of MLA in proceedings for firearms trafficking and related offences. Often, the requesting State submitted requests covering two or more forms of assistance²²⁹. In *LCA(i)* (2021), 21 unmarked firearms were trafficked in a parcel from the United States to St. Lucia without licence or authorization. The Attorney General's Chamber of St. Lucia transmitted to the US an MLA request, requesting US authorities to take evidence or statements from the suspected senders of the parcel; execute searches, and seizures, providing information and evidentiary documents; and provide originals of certified copies. The expert of St. Lucia pointed out that, at the time when he presented this case, the request was still pending. In other cases, MLA requests were also used to submit an International tracing request.

Compared to informal channels of cooperation and information exchange, MLA requests can be slow and bureaucratic. In *BHS(ii)* (2018)²³⁰, the expert highlighted administrative difficulties faced by Bahamian authorities in requesting access to evidentiary documents from the US. The legal basis of the request was a bilateral MLAT concluded by the two countries. This case also pointed to the lengthy and cumbersome procedure in the execution of a rogatory letter through central authorities. According to the expert the lesson learned from this case is that an MLA has to be initiated at an early stage of an investigation in order to have the required evidence in time for the criminal proceedings in court. More generally, the fact that requests for cooperation based on MLA are subject to the scrutiny by governmental controls of central authorities (generally by ministries of justice), with the aim of ensuring the protection of the national interests of the States involved is one the classic procedural problems of judicial cooperation in criminal matters.

Cases examined from the European Union indicate that the use of the European Investigation Order (EIO), can streamline procedures for obtaining evidence based on the principle of mutual recognition of

²²⁸ See also Sections 5.8 and 5.9 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

²²⁹ *GBR(i)* (2017); *LCA(i)* (2021).

²³⁰ For more information on the case, see Section 5.2.1.

decisions of other EU Member States²³¹. An EIO can be issued by a judicial authority (a designated prosecutor or judge) of one Member State and executed directly by the judicial authority of another Member State. Indeed, some cases already commented *CZE/NLD/SVK(i)* (2021) and *ITA/DEU(i)* (2018)²³², confirmed the effectiveness of the EIO to speed up the execution of requests for evidence. Eurojust facilitates the execution of EIOs.

5.3 Joint investigation teams and similar bodies²³³

Joint investigation teams (JITs) are international cooperation instruments based on an agreement between competent authorities – both judicial (judges, prosecutors, investigative judges) and law enforcement – of two or more States established for a limited duration and a specific purpose to carry out criminal investigations into serious cross border crime in one or more of the involved States. They enhance the efficiency of investigations by promoting direct collaboration and facilitating the pooling of resources, expertise and evidence across borders. JITs have a hybrid character, combining operational coordination with the procedural use of the evidence collected at judicial level. Namely, the coordinated work of prosecutors and law enforcement authorities from different countries allows seamless informal information sharing and, in parallel, the coordination of the required legal procedures to formalize the cooperation and ensure that the obtained evidence can be used in courts.

Article 19 of the UNTOC obliges States parties to consider the conclusion of bilateral or multilateral agreements, whereby the competent authorities can establish joint investigative bodies in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States. In the absence of such agreements, States parties may undertake joint investigations on a case-by-case basis. This requirement is con-

firmed also by regional contexts such as the European Union, whose derived legislation provides for a framework decision offering guidance on the establishment of JITs²³⁴, which expressly requires a preliminary agreement among the authorities of the involved Member States.

The function of JITs goes beyond the coordination of investigative actions, to encompass the co-sharing of investigative powers. The establishment of a JIT can either transform bilateral or multilateral parallel and coordinated investigations into a single, common investigation or coordinate the investigations and prosecutions conducted in parallel by several countries. JITs allow for information to be shared directly between their members, without requesting MLA. However, national legal frameworks might differ with regards to the information and evidence that can be shared directly through a JIT so that it can be used as evidence at court. There may also be variations as to the extent to which information may have to be disclosed to interested parties and the stage in the proceedings at which such disclosure must take place. The expert for Canada shared as a good practice that issues regarding disclosure and the extent to which information can be shared should be formally agreed when the terms of the JIT are being negotiated²³⁵.

Notwithstanding its benefits, the practice of establishing JITs to effectively investigate firearms trafficking and related forms of crime remains still limited. In only two of the examined cases (*CZE/NLD/SVK(i)* (2021)²³⁶ and *CZE/SVK(i)* (2022))²³⁷, both in the European Union, were JITs established. In both cases Eurojust assisted national authorities by setting up and funding the teams.

Participants of the expert group meeting for the development of the Digest pointed out that the lengthy administrative process and the sometimes high costs of establishing a JIT can be reasons why the instrument is not applied in more investigations into firearms related criminality. A Brazilian further explained that, despite an existing agreement among Member States of Mercosur on JITs, investigators

231 Requests for Special Investigative Techniques between EU Member States can be made using an EIO (providing that the States in question have incorporated the EU EIO Directive into domestic legislation).

232 For more information on the cases, see Section 5.2.1.

233 See also Section 5.11 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

234 2002/465/JHA Council Framework Decision of 13 June 2002 on joint investigation teams.

235 Evidentiary issues linked to JITs are examined in detail in Section 6.2.1 of Chapter 6, *infra*.

236 For more information on the case, see Section 5.2.1.

237 For more information on the case, see Section 2.3.3.

tend to prefer parallel investigations that are coordinated through an informal contact group to avoid the process of setting up a JIT.

An interesting alternative to JITs was illustrated by a Jamaican expert who referred to the existence of permanent Transnational Criminal Investigative Units (TCIUs) formed by Jamaican and US law enforcement agents embedded within the US Embassy in Jamaica who work closely to investigate and prosecute individuals involved in transnational criminal activity, including firearms trafficking. These units facilitate quick information exchange and rapid joint bilateral investigation.

GOOD PRACTICE

The establishment of *ad hoc* JITs, permanent TCIUs or informal contact groups can facilitate the coordination and seamless exchange of information and coordination in transnational investigations against firearms trafficking and related forms of crime.

5.4 Jurisdictional issues²³⁸

Firearms trafficking and related forms of crime do not take place in a legal vacuum. They often touch upon the jurisdiction of various States: the country of manufacture, the country of import, the country of destination of trafficked firearms, transit countries, the country of nationality and residency of the perpetrators and possibly flag countries of vessels or aircrafts, just to name a few. **ITAx039** (2018) is a good example of trafficking schemes that connect multiple jurisdictions. In the case, three Italian nationals were charged with trafficking arms and dual-use items, including

13,950 assault rifles with a value of EUR 41 million, to Libya and Iran between 2011 and 2015, in violation of arms embargoes imposed on both countries. The goods were purchased in several African, Asian and European countries and delivered by air to Iran and Libya. Even though the arms did not pass through Italian territory, the Italian Public Prosecutors Office opened proceedings because the perpetrators were Italian nationals.

This complex nature of firearms trafficking creates potential conflicts of jurisdiction, i.e., the determination which State should assert jurisdiction over a criminal conduct. In the absence of norms of customary or codified international law to solve such conflicts of jurisdiction coordination among the relevant countries is key to ensure that the crime is investigated, prosecuted and adjudicated in an efficient manner. At the same time, the fundamental legal doctrine that no legal action can be instituted twice for the same cause of action (*'ne bis in idem'*) precludes prosecution and adjudication if the perpetrator has already been adjudicated in another jurisdiction.

Possible solutions to resolve problems of concurrent exercise of national jurisdictions include consultation, coordination mechanisms, and transfer of criminal proceedings. The UNTOC at Art. 15, para. 5 contains a mechanism of partial coordination, providing for a generic duty of consultation between the competent authorities of States parties entailed by situations of concurrent jurisdictions with a view to coordinate their actions. In addition, in cases where several jurisdictions are involved, the Convention recommends States parties to consider the possibility of transferring to one another proceedings for the prosecution of offences covered by the Convention and the Protocols thereto, with a view to concentrating the prosecution (Art. 21).

²³⁸ See also Section 5.6 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

CASE STUDY**Potential conflict of jurisdictions – USAx280 (2020)²³⁹**

On 20 July 2017, Jamaican law enforcement officers received intelligence on a suspicious import of two 55-gallon barrels at the wharf in Kingston. Hidden within food was a cache of seven rifles, eight pistols, 3,000 rounds of ammunition, and firearm parts. The Counter Terrorism and Organized Crime Branch (C-TOC) commenced investigations into this seizure.

The names of the sender as well as the consignee were revealed to be fake. The aliases involved in sending and receiving the shipment were all linked to J.R., a Jamaican citizen, who up to 2017 also held a Permanent Resident Card allowing him to reside in the US. Prior, he resided in the United Kingdom but was eventually deported to Jamaica in 2008 due to a conviction for drug offences. Upon being deported to Jamaica, J.R. applied to the Firearm Licensing Authority for a firearm licence. His application was, however, denied. In 2016, J.R. migrated to the United States where he was granted permanent residence.

On 28 February 2018, police officers stopped J.R. on a highway in Florida, searched his vehicle and found one pound of marijuana. Between 28 February and 22 March 2018, police forces searched J.R.'s apartment and surrounding areas and found additional seven partially completed assault-style rifles, two shotguns, and around 6,000 rounds of ammunition as well as two barrels similar to the ones seized in Jamaica. In October 2018, US law enforcement authorities requested from Jamaica additional information and the subsequent transfer of evidence to the US through a mutual legal assistance request. In parallel, they sent the fingerprints secured on the firearms in J.R.'s apartment to Jamaica for comparison with those in the Jamaican databases. Jamaican intelligence database records of J.R.'s deportation from the UK were shared, thereby causing a parallel immigration investigation in the US.

Both Jamaica and the US could have initiated prosecution against J.R., who at that time was domiciled and in custody in the US for a number of offences. However, the Office of Public Prosecutions in Jamaica took the decision to not request extradition of their citizen due to closer links of the case to the US and the significant backlog in the Jamaican judicial system, which would have caused delays in the prosecution. Instead, evidence was transferred to the US. As a result of the prosecution in the US, J.R. pleaded guilty in the Middle District of Florida to firearms trafficking. He was sentenced to four years and nine months of imprisonment. The imposed sentence was at the upper end of the sentencing guidelines. The Director of Public Prosecutions of Jamaica was invited and did attend the sentencing and gave a victim impact statement on the impact of firearms trafficking on Jamaica.

Lessons learned:

This case highlighted the importance of international cooperation from investigation to prosecution. It demonstrates that consultations between law enforcement and prosecutors of different countries can help prevent and solve potential conflicts of jurisdiction and determine an effective prosecutorial strategy with the view to concentrating the prosecution.

Another good practice to solve problems linked to potential conflicts of jurisdiction was shared by a Brazilian expert, with respect to firearms trafficking cases involving Brazil and the United States. In such cases prosecutions are held in the country where most evidence of the commission of the crime is located.

Alternatively, parallel investigations and prosecutions are initiated, at the outcome of which the accused is prosecuted and tried in the country of residence. If US prosecutors cannot collect sufficient evidence, the Brazilian authorities request extradition to prosecute the suspect in Brazil.

²³⁹ For more information on this case, see UNODC, SHERLOC case law database, Case No. [USAx280](#) (2020).



6. Prosecutorial issues

The present section addresses challenges and good practices in prosecuting firearms cases. As for any crime type, prosecutors have to keep an eye on the statute of limitation for the firearms offences they intend to bring to court. Due to the complexity of investigations into firearms trafficking networks, the role of informants and cooperating witnesses is of particular importance. Similarly, the dangerousness of organized crime groups involved in firearms trafficking oftentimes requires paying special attention to witness protection. Finally, a special feature in the prosecution of firearms offences is the firearm as piece of evidence, which is examined by several illustrative cases.

6.1 Statute of limitation

One possible obstacle to the prosecution of firearms offences is the statute of limitation. There is considerable variation among States about the length and application of the statute of limitations for the commencement of criminal proceedings regarding firearm offences. Art. 29 of the UNTOC provides that State parties shall establish a long statute of limitations period in which to commence proceedings for any offence covered by the Convention and the Protocols thereto and a longer period where the alleged offender has evaded the administration of justice.

That was, for instance, the issue brought forth by a defendant before the French Cour de Cassation in **FRAX034** (2018), in a case regarding the illicit possession of a firearm by the defendant. After the court of appeal found the defendant guilty despite the latter's objection on the grounds that the incriminating facts fell under the scope of the relevant statute of limitation, the Supreme Court ruled that the appeal decision had failed to justify its reasoning regarding why that objection had been rejected and ordered the case to go back to the court of appeal.

Similarly, in **LTUx001** (2023), two Irish citizens were accused by Lithuanian law enforcement of having made arrangements to acquire firearms and explosives in Lithuania between November 2006 and January 2007 and attempted to smuggle them back to Ireland to support a terrorist group. Irish courts had previously, in 2013, refused to extradite the defendants on the grounds that they were likely to be held in inhuman and degrading conditions if extradited to Lithuania. After a second EAW was issued by the Baltic State, they were arrested and extradited in 2022 following lengthy legal proceedings. However, the charges were dropped by

the Vilnius Regional Court on the grounds that the statute of limitations precluded criminal proceedings in this case. The prosecution appealed against the decision, stating that the statute of limitation to be applied in this case was 15 years, which was the law in effect when the offence was committed, and not 10 years, which was a change to the criminal law brought in after the perpetration of the offence. The lower court's decision was, nevertheless, upheld by the Lithuanian Court of Appeal, who provided that the 10 years statute of limitation applied in this case, as it was the most favourable for the accused.

GOOD PRACTICE

Firearms offences, particularly the more complex offences involving transnational offending in several States, may take a substantial length of time to be investigated. In order for a prosecution not to be prevented or halted by the expiry of a limitation period, it is important that the progress of the investigation be monitored regularly in view of any applicable time limitation.

6.2 Witnesses, cooperating witnesses and witness protection²⁴⁰

When prosecuting firearm offences, prosecutors can call witnesses to testify and give their account of the facts, in order to establish incriminating evidence. The cooperation of witnesses is crucial for the successful prosecution of criminal offenders and dismantling firearms trafficking networks. Yet one of the challenges faced by many criminal justice systems in the investigation and prosecution of crime is obtaining such cooperation. Witnesses may be reluctant to give information and evidence because of perceived or actual intimidation or threats against themselves or members of their family.

Article 24 of the UNTOC requires States parties to take measures to protect witnesses from potential retaliation or intimidation. Such protection may need

²⁴⁰ See also Section 7.6 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

to be extended for their relatives and other persons close to them as retaliation or intimidation through the loved ones is a *modus operandi* many organized crime groups have adopted. This type of intimidation was evidenced in cases such as **USAx265** (2021)²⁴¹, in which the defendant was indicted for being a felon in possession of a firearm and was detained pre-trial. While incarcerated, the defendant made multiple jail calls, coordinating with and directing individuals to draft an affidavit containing false statements and to pressure the witness who reported his whereabouts to police to sign it. The defendant was sentenced to serve 56 months in prison, after pleading guilty to tampering with a witness.

Protection measures may include permitting witness testimony to be given in a manner that ensures the safety of the witness, such as using close circuit television or video conferencing to give testimony to the court, using the pre-trial recorded statement of a witness as their evidence in court, or making use of screens to shield the witness from the defendant, as was the case in **CANx160** (2008)²⁴², in which the witness requested to testify behind a screen against a defendant accused of discharging a firearm for a purpose dangerous to the public peace and endangering life.

CASE STUDY

Witness testimony via 'live link' - **JAMx005** (2018)

In **JAMx005** (2018), the prosecution filed a motion seeking judicial authorization for the use of special measures for two of its witnesses, namely the possibility for them to testify via 'live link', in the context of the trial against the leader of a gang charged and later convicted for numerous offences, including illegal possession of a firearm and shooting with intent. The prosecution submitted that the witnesses were "especially vulnerable", being former members of the criminal organization and that to bring them to the Supreme Court would expose them to danger. The authorization was granted by the judge.

The court recalled and clarified the conditions set out by the legislation in which a witness can testify via 'live link': the special measure must be appropriate in the interests of the administration of justice, and the witness has to be considered vulnerable. To determine if a special measure is appropriate in the interests of the administration of justice, the Supreme Court hold that a court must consider "any views expressed by or submissions made on behalf of the witness; the nature and importance of the evidence to be given by the witness; whether the special measure would be likely to facilitate the availability or improve the quality of that evidence; and whether the special measure may inhibit the evidence given by the witness from being effectively tested by a party to the proceedings."

The vulnerability of the witness can stem either from their age or possible medical condition, or from external circumstances such as the nature of the offence (sexual misconduct cases). Outside of those possibilities, the supreme court hold that a court has to assess the vulnerability of the witness by considering "the nature and circumstances of the offence; the existence of any threat of harm made to the witness, a family member of the witness or any other person closely associated with the witness, or to any property of the witness; and any views expressed by, or submissions made on behalf of the witness."

The decision also dismisses the idea that testifying via video link might in any way diminish the credibility of the witness or prejudice the rights of the accused, as there is no indication the witnesses might be more likely to tell lies when testifying remotely. Similarly, the Supreme Court found that there is no reason why the witnesses' appearance by video link "would in any way hamper a defendant's ability to test a witness' ►

241 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx265** (2021).

242 For more information on this case, see UNODC, SHERLOC case law database, Case No. **CANx160** (2008).

credibility and evidence of identification by the usual means of cross examination”: cross examination by live link is not in itself prejudicial to the cross-examining party.²⁴³

Lessons learned:

This decision exemplifies the use of technology to facilitate the testimony of threatened witnesses and clarifies the circumstances in which it can be used in Jamaica, providing an alternative to in person testimonies. This might result in clearer and more objective testimonies, as it would spare witnesses a direct physical confrontation with the defendant that might cause anxiety or fear about giving evidence, which can affect the quality of the evidence provided by witnesses. It can also facilitate the testimony of witnesses who couldn't otherwise easily be present for the proceedings, such as incarcerated witnesses or persons residing in another State. At the same time, the judgement outlines the boundaries of witness testimonies via live view, clarifying that in light of the right to a fair trial of the defendant such kind of testimonies must remain the exception from the rule.

Protection measures may also include non-disclosure or limitations on a witness' identity or whereabouts. That was, for example, the case in **ZAFx025** (2020) where in a matter involving a member of an organized crime group being accused of illicit possession of a firearm and murder, the High Court of South Africa authorized the names of certain witnesses and victims to be anonymized, and their addresses to be kept secret. Similarly, in **CANx161** (2020), publication bans have been imposed under s. 486.5(1) of the Canadian Criminal Code, restricting the publication, broadcasting or transmission in any way of evidence that could identify four witnesses. This publication ban applies indefinitely unless otherwise ordered. This was decided in the face of the exceptionally brutal nature of the crimes committed by the defendant, who was convicted of murder for conspiring and supplying the firearm used to kill the victims.

Most of the protective measures mentioned are possible only on a case-to-case basis, after seeking judicial authorization. The courts will assess the necessity of the protection by balancing the possible threats faced by the witnesses with the rights of the accused. The need for the measures in a particular case has to be balanced against the defendant's right to a fair trial. That issue was brought up by the defendant in **FRAx033** (2020) before the French Cour de Cassation, in a case regarding his conviction by the court of appeal for several offences, including murder and attempted murder, aggravated theft and illicit possession and transport of firearms. In this case, the court of

appeal based its conviction in part on the statement of an anonymous witness given by video conference. The defendant argued that this encroached on the rights of the defence and on the principle of equality of arms between the parties, and that the law permitting this was, thus, unconstitutional. The court rejected that argument and the conviction was upheld.

Similarly, the Danish Supreme Court held that a witness could be heard anonymously under particularly aggravating circumstances in *DNK(i)* (2018). The case dealt with the issue of whether the witness' name, occupation and address could not be disclosed to the defendants in a criminal case on illegal possession of firearms under particularly aggravating circumstances. The Danish Supreme Court stated that a defendant has the right to know the identity of the witnesses heard in a criminal case. However, the court may order that the witness' name, occupation and address not be disclosed to the defendant, if it is assumed to have no influence on the defendant's defence, and if required to protect the witness.

The possibility of having a witness testify anonymously has however been limited by the European Court of Human Rights (ECtHR) in **IRBx037** (2020). In this case, the applicant had been found guilty of numerous offenses, including murder, aggravated robbery and illegal possession of a firearm, and sentenced to life imprisonment. While convicting him for that offence, the trial court relied on the testimony of an anonymous witness. It held that in view of the serious nature of the incident, the scope of the accusations and the allegation that the shooting had been carried out within the context of a criminal association, it had not been found

²⁴³ For more information on this case, see UNODC, SHERLOC case law database, Case No. **JAMx005** (2018).

necessary to examine the witness at trial or to have his full name written when his statements had been taken on commission by another court. The ECtHR held that this had violated the applicant's right to a fair trial, as "the underlying principle is that the defendant in a criminal trial should have an effective opportunity to challenge the evidence against him. This principle requires not merely that a defendant should know the identity of his accusers so that he is in a position to challenge their probity and credibility but that he should be able to test the truthfulness and reliability of their evidence, by having them orally examined in his presence, either at the time the witness was making the statement or at some later stage of the proceedings". The Court does leave open the possibility of hearing witnesses anonymously, but sets limitations: there must be good reasons to keep secret the identity of the witness, and, if the evidence of the anonymous witness was the sole or decisive basis of the conviction, there must be sufficient counterbalancing factors, including the existence of strong procedural safeguards, to permit a fair and proper assessment of the reliability of the evidence to take place.

All these measures can be used on their own or jointly with other types of protective measures. Witnesses might, for example, be granted the possibility to testify remotely, and be concurrently integrated into a witness protection programme, as was the case in **JAMx005** (2018). Witness protection programmes are specially designed covert programmes that provide for the change of identity and relocation of a witness whose life is in danger because of their cooperation with law enforcement authorities. Witnesses, in exceptional circumstances and if the threat to them justifies it, may even be relocated. The programme has to provide enough protection for the witness and effectively prevent the risk of retaliation, to avoid situations like the one in *BFA(j)* (2017), where a witness who had been relocated after testifying against a member of a terrorist group was killed along with his family by group members who found his new location.

However, the programme has to balance this need for effective protection and still allow witnesses to live a somewhat normal life in order to prevent them from abandoning the programme after finding it too restrictive, as was mentioned by the expert for the case of Brazil, where several witnesses in firearms cases ended up leaving the programme.

GOOD PRACTICE

Good practices on the protection of witnesses can be found in the UN Manual of Good Practices for the Protection of Witnesses in Criminal Proceedings involving Organized Crime²⁴⁴. These include anonymous witness testimonies in order to protect the integrity of the witness in cases involving dangerous organized criminal groups.

Finally, the UNTOC foresees the possibility of using cooperative witnesses. In some States, if the voluntary cooperation of a member of an organized crime group during the investigation or criminal procedure is of essential importance for the criminal procedure, this person might not be prosecuted on the decision of the judge or the prosecutor in charge, and instead becomes a witness.

Pursuant to Art. 26 of the UNTOC, States may consider taking appropriate measures to encourage persons who participate or who have participated in organized crime groups to supply information and provide factual help to the authorities, going as far as considering the possibility of mitigating punishment or even granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by the Convention and the Protocols thereto. A legislation in point is the Italian Criminal Code (Art. 416bis(1)), which foresees a reduction of penalty for the turncoats of mafia organized crime groups (the so-called *pentiti*)²⁴⁵.

This possibility was, for example, used in **USAx152** (2019)²⁴⁶. In this case against the leader of one of the most powerful drug trafficking organizations in Mexico, the difficulties in bringing the defendant to justice stand out: he was first arrested and convicted in 1993, but escaped numerous times, only being definitively convicted and imprisoned in 2019. To avoid apprehension, the cartel used corrupt officials in Mexico to facilitate the safe transport of drugs

244 Good Practices for the Protection of Witnesses in Criminal Proceedings Involving Organized Crime (unodc.org)

245 On the use of informants in firearms trafficking investigations see also Section 3.5.1, *supra*.

246 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx152** (2019).

and protect its members from arrest and prosecution. Additionally, potential witnesses were systematically intimidated. After his extradition to the US, the defendant was convicted of being a principal leader of a continuing criminal enterprise, a count that includes 26 drug-related violations and one murder conspiracy. He was convicted of all 10 counts of a superseding indictment, including charges of narcotics trafficking, using a firearm in furtherance of his drug crimes and participating in a money laundering conspiracy. The evidence at trial included the testimony of 14 cooperating witnesses.

6.3 Evidentiary issues and collection of firearms evidence

During the prosecution of firearms offences, several evidentiary issues can arise. These may be linked to the firearms as piece of evidence as well as to the investigative measures that have been applied in order to collect evidence.

6.3.1 Evidence collected by JITs through special investigative techniques²⁴⁷

In the investigation and prosecution of firearms trafficking and related forms of crime, evidentiary issues emerge particularly related to the admissibility of evidence collected by joint investigative teams as well as through special investigative techniques.

Evidence collected by joint investigative teams

The use of evidence collected by JITs can face legal challenges due to the international nature of their collection. JITs allow the collection and exchange of information and evidence without having to resort to traditional international channels of MLA or EIOs. The use of information and evidence exchanged within a JIT is limited by a 'specialty rule'; such information may in principle be used (only) for the purposes for which the team was set up²⁴⁸. In other words, if a JIT was established to investigate a drug trafficking case, the

collected evidence might not be admissible to prosecute firearms trafficking, if it turns out that the network was involved in both conducts. To ensure that the evidence is admissible, the JIT agreement should be sufficiently broad at the outset of the investigations to also cover conducts of a criminal group that were not known at the start of the investigations. Otherwise, the JIT agreement might need to be amended during the investigations.

Furthermore, JITs collect evidence in conformity to the national criminal and criminal procedural law of the State in which the team operates. If the investigative powers of this State go beyond those of the other States involved, evidence might not be admissible in the criminal proceedings of those countries. It is, thus, an essential requirement that States anticipate those issues and provide clear instructions relating to the way evidence is to be gathered when the JIT agreement is being concluded.

However, the admissibility of evidence gathered by a JIT is very rarely challenged in practice: for instance, in the European Union, the second JIT Evaluation Report (2018) provides that "in 28 cases, the evidence collected by the JIT was not challenged in court, as compared to nine cases in which the JIT was challenged. [...] For 36 of the analyzed JITs, the evidence gathered was admitted in national courts, including the nine cases mentioned above in which the evidence had been challenged"²⁴⁹.

Evidence collected through special investigative techniques

The admissibility of evidence has proved to be more challenging when it was collected by means of special investigative techniques. For instance, the use of undercover agents to get evidence of firearm offences being committed has been contested numerous times by defendants on the basis that the law enforcement agents were acting as *agents provocateurs* and inciting the perpetration of an offence which would not have taken place otherwise. This can result in entrapment, which would render the evidence collected by the undercover agent inadmissible as it would violate the defendant's right to a fair trial.

²⁴⁷ See also Section 7.5 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

²⁴⁸ Eurojust, *Joint Investigative Teams, Practical Guide* (2021), p. 20.

²⁴⁹ Eurojust, *Second JIT Evaluation Report, Evaluation received between: April 2014 and October 2017* (2018).

This misuse of undercover agents has been predominantly present in drugs cases. In *IRB(i)* (2014), for instance, the ECtHR held that there had been a violation of the applicant's right to a fair trial in a case in which the applicant was convicted of drug trafficking after having been incited by undercover police officers to commit those offences, because the undercover measure went beyond a passive investigation of criminal activity.

However, this deviation of the undercover agent from their original investigative purpose has also been observed in firearms cases. In **CANx154** (2016)²⁵⁰, for example, a first instance court stayed the proceedings against the defendant after he filed a motion on the grounds that he had been entrapped. In that case, the defendant, a gunsmith who owned a hunting and fishing supply store, sold a rifle to an undercover officer posing as an unlicensed hunter, and was convicted of weapons trafficking. However, the court held that it was not established that the police had a reasonable suspicion the defendant was already engaged in criminal activity when they targeted him. In doing so, they engaged in random virtue testing, a form of entrapment. This decision was upheld by the Court of Appeal of Manitoba.

Issues regarding the admissibility of the evidence collected by using special investigative techniques can also revolve around surveillance. Being a highly intrusive form of investigation, surveillance, both physical and electronic, has been subject to strict legal safeguards to prevent breaches on the fundamental right to privacy. This right to privacy was, for instance, recognized in **CANx150** (2017)²⁵¹, in which the defendant, after having been convicted of numerous firearms and drugs trafficking offences, was seeking to exclude at trial text message records obtained from a telecommunications service provider. The court held that the accused had a reasonable expectation of privacy in text messages stored by a service provider, but that this right was not breached as the records had been lawfully seized by means of a production order.

This also illustrates the general requirement for prior judicial authorization when breaching one's reasonable expectation of privacy. In the UK, for instance, the use of special investigative techniques, such as surveillance, is conditional on obtaining approval of a supervising officer via a 'RIPA form'²⁵², which will then be submitted to a Magistrate's Court for authorization. Similarly, the French Cour de Cassation held in **FRAx036** (2022) that taking photographs of a person in a private space without their consent, even on a single occasion, was necessarily dependent on legal authorization by a judge, even if the private space was an outside one and was partly visible from a public location. This decision was made in a case in which the evidence leading to the defendant's conviction for firearms and drugs offences within an organized crime group was collected with a camera installed in the parking lot of a retirement home, which despite being a private space was accessible to the public and partly visible from a public road.

It is interesting to note that the scope of a defendant's right to privacy varies in different national legislations. The threshold on when government authorities can enter private spaces depends on the jurisdiction and may include probable cause, reasonable suspicion, or reasonable and probable grounds. In a similar case (**USAx266** (2016)), an American federal appeals court upheld a firearms conviction based on video evidence collected without a warrant from a camera perched on top of a utility pole. Unlike the judgement of the French Cour de Cassation, the court stated that the warrantless surveillance didn't violate the defendant's reasonable expectation of privacy because it recorded the same view of the farm that could be seen by passers-by on public roads.

This variation of a person's right to privacy has often been questioned in the face of new and emerging communication and surveillance technologies, and their impact on the potential breach of privacy and admissibility in court. In **SWEx005** (2021), the prosecution relied on EncroChat material to support an allegation that the defendant had committed a firearm related offence by possessing multiple weapons. The previous year, French authorities managed to gain access to communications made using EncroChat, a communication network allowing its users to send highly encrypted message services. The network had quickly

250 For more information on this case, see UNODC, SHERLOC case law database, Case No. **CANx154** (2016).

251 For more information on this case, see UNODC, SHERLOC case law database, Case No. **CANx150** (2017).

252 RIPA stands for the Regulation of Investigative Powers Act. For a RIPA form, along with related materials, see <https://www.gov.uk/government/collections/ripa-forms--2>.

been adopted by organized crime groups to communicate. Material accessed in this way and relating to Swedish users has been made available to the Swedish police and prosecutors. This material has constituted the main evidence in the case, and a first instance court convicted the defendant for serious weapons offences and sentenced him to imprisonment for three years and nine months.

The Court of Appeal noted that the court had no information on how the French authorities obtained the material and if their doing so was fully licit. However, it stated that nothing has emerged to indicate that it was done in violation of French law and found that the evidence was not added to the case in flagrant violation of French or Swedish law or European or international agreements, as it was not, for instance, obtained with torture. The court, therefore, allowed the EncroChat material to be relied on in the case. Nevertheless, it ruled that the prosecution had failed to prove the guilt of the accused beyond the necessary standard and acquitted the defendant.

Similar judgments have been passed on in various European countries after French authorities shared incriminating evidence of the EncroChat network with their law enforcement partners. In Germany, for instance, some courts of first and second instance had ruled that the evidence would be inadmissible, due to breaches of privacy and integrity rights. However, these rulings were eventually overturned by the Federal Supreme Court, ruling in favour of using EncroChat evidence for serious criminal investigations. By the time of publishing of this Digest, some cases relating to the admissibility of evidence from the EncroChat network were still pending judgement of the Court of Justice of the European Union.

6.3.2 The use of firearms as evidence

Section 3 of the Digest has already analyzed measures to investigate firearms trafficking and related forms of crime, including the tracing of firearms, ballistic examinations, as well as DNA and fingerprint analysis. The present section illustrates how these measures can provide relevant evidence for criminal proceedings and looks into evidentiary issues that may arise in prosecuting cases on the basis of such evidence.

*Tracing*²⁵³

Firearms tracing is a critical tool in the investigation of firearms related offences, particularly those involving trafficking and distribution. The tracing process may indeed lead to evidence that is decisive in solving or prosecuting a case. Tracing can be especially useful in identifying patterns of firearms trafficking. That was for instance the case in **USAx267** (2018)²⁵⁴, in which a firearms trafficking network was dismantled after the police traced seized firearms back to purchasers in Ohio, who would then import the guns into New Jersey where they were used to further criminal activities such as drug dealing.

Another notable case was **USAx268** (2020)²⁵⁵, during which two gunmen opened fire at a holiday office party in San Bernardino, California, killing 14 people. After a shoot-out during which the two assailants died, the police recovered several firearms, including several handguns and assault rifles. The handguns had been purchased legally by the shooters, but not the other firearms. These were traced back by the police to identify their accomplice, who was then sentenced to 20 years of imprisonment for conspiring to provide material support and resources to terrorists.

*Ballistic examination*²⁵⁶

However, spent bullets and cartridge cases are much more likely to be found at the scene of a violent crime than the gun itself. An essential line of inquiry from this evidence is to identify the firearm, or the type of firearm, that fired them. As already underlined in the Digest the examination of individual and class characteristics of a spent bullet, spent cartridge or firing residues recovered from a crime scene can help classify the ammunition (make, calibre or gauge), trace the ammunition, establish the bullet trajectory, identify the shooting firearm, and establish links between the firearm and other crimes. It can also identify the shooter or establish the location of a firearm. This can then be used as evidence during a trial, as it was, for instance, in **FRAx035** (2017), in which the French Cour de Cassation stated that electronic surveillance

253 On the tracing of firearms see also Section 3.4, *supra*.

254 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx267** (2018).

255 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx268** (2020).

256 On ballistic examinations see also Section 3.3.2, *supra*.

derived evidence and ballistic analysis were enough to constitute the basis for a murder conviction.

Matching ballistic information is one of the key measures in the fight against the misuse of firearms, and it has uncovered numerous connections between firearm-related crime scenes in different countries. It allows the police to develop new investigative leads based on ballistics cross-comparison, and to find connections between separate crime scenes that could have otherwise remained undetected. That was, for instance, the case in **USAx259** (2022), in which, on 27 February 2020, the police was called to a violent assault on a parking lot and collected cartridge cases as evidence. In an initially disconnected drug investigation, a police officer executed a search warrant and found a handgun in the trunk of the suspect's car. Ballistic analysis showed that the handgun in the trunk of the car was the same as the one used during the assault in the parking lot. As a result, the accused was sentenced to 86 months in prison for possessing a firearm as a felon.

However, ballistic analysis has been repeatedly challenged in court for its potential unreliability. This issue was highlighted in **USAx260** (2022), in which the defendant had been convicted of the fatal shooting of a 22-year-old man in a robbery in 1993, on the basis of an erroneous ballistic analysis. When the evidence was retested with IBIS, a newer technology that uses much higher-resolution and multi-dimensional images for ballistic analysis and ultimately matches shell casings to guns, it showed that the scratches and dents on bullets and shell casings from the crime scene didn't match the gun that the prosecutors presented at trial as the murder weapon. In March 2017, the defendant was retried on a first-degree murder charge and his conviction was overturned.

The scientific value of ballistics has since been questioned by experts, especially in the wake of a US report by the President's Council of Advisors on Science and Technology (PCAST) in the US²⁵⁷. The reliability of findings made with the help of ballistic analysis was challenged, which led to the examination of the relevance and the admissibility of evidence derived from ballistic analysis, as it was, for instance, in **USAx269** (2020)²⁵⁸. In that case, the defendants filed motions to preclude a ballistics expert from testifying that shell casings found at a crime scene matched a firearm found in a car the defendants occupied. The defendants argued that a forensic comparison of the shell casings to test-fired cartridges from the gun would lack "scientific validity and general acceptance in the relevant scientific community". The court held that an expert might only testify as to whether there is evidence of class characteristics that would include or exclude the firearm at issue. Class characteristics are properties of physical evidence that can be associated only with a group and never with a single source: if evidence is determined to possess class characteristics it may serve as a mechanism to reduce the number of suspects, but it cannot be directly connected to one person or source. The expert may only, for instance, indicate that the firearm cannot be ruled out as the source of the shell casings. However, that ruling was relatively isolated, as testimonies by ballistics experts are still held admissible in the majority of cases, according to the US National Center on Forensics. In another case, to deny a motion to exclude a testimony on forensic analysis, the court held that "the lack of adoption of the principles advanced in the PCAST Report and the remaining adherence to existing principles and standards concerning firearms exams" was compelling.

257 Executive Office of the President, President's Council of Advisors on Science & Technology, *Report to the President, Forensic Science in Criminal Courts: Ensuring Scientific Validity of Feature-Comparison Methods* (2016).

258 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx269** (2020).

CASE STUDY**Conflicting testimonies from ballistics experts – CANx157 (2022)²⁵⁹**

A difficulty that arose in **CANx157** (2022) were conflicting testimonies from different ballistics experts. In this case, the wife of the defendant was found shot dead on the defendant's couch and the defendant was charged with murder. There was no direct evidence, and the prosecution and defense both called firearms experts, who came to different conclusions.

The prosecution tried to show that the victim could not have committed suicide because, due to her physical condition, she could not handle the gun with her left hand, while she was paralyzed on her right side. The Crown's experts also tried to show that a black spot on the victim's left hand was the result of gunpowder released when the shot was fired, and that the only plausible explanation for the appearance of this spot was that she had done something to prevent her assailant from killing her. The prosecution concluded that the accused had committed the murder.

The defence also called a ballistics expert to the stand. He claimed that the victim could have committed suicide because, according to him, she was capable of wielding the weapon with her left hand despite her physical incapacity. Other witnesses testified that the woman had suicidal thoughts following her stroke and hip fracture, which rendered her practically impotent. The defendant was convicted in 2012 of first-degree murder and was sentenced to life in prison with no chance of parole for 25 years. However, some evidence uncovered in 2015 suggested there were bullet fragments in the victim's skull that were never recorded in the autopsy, when a joint Fifth Estate-Radio-Canada investigation led to more experts examining the case and its evidence. Furthermore, irregularities were found in the original autopsy report used to incriminate the defendant. The expert from the Laboratoire de sciences judiciaires et de médecine légale had failed to collect, preserve, document and photograph the brain sections, and had also neglected to take samples of the brain that bore the marks of the projectile, as he was required to do. This "highly relevant evidence" would have been of "great importance" to the defence in a second trial, as it could have clarified the angle of the shot and the trajectory of the bullet. The unavailability of this evidence was considered so damaging that the plaintiff's right to make full answer and defence was affected, and the Quebec Superior Court granted a stay in the legal proceedings against him.

Lessons learned:

Some mechanisms can be put into place to ensure the credibility of ballistic analysis results presented by experts, such as standardization of qualifications and training of forensic laboratories, and peer review. In the UK, for instance, peer review by an independent ballistic expert is required for all significant ballistic findings. Any inconsistent result – a different conclusion or different levels of agreement – is disclosed to the court via the evidential statement provided by the expert examiner. Error rates in microscopy at the National Ballistics Intelligence Service (NABIS) and NABIS-affiliated laboratories for false positives (links identified that are not links) are 0.7 %. With the independent peer review system, the error rate for false positives falls to approximately 0.005 %²⁶⁰.

259 For more information on this case, see UNODC, SHERLOC case law database, Case No. **CANx157** (2022).

260 **Understanding ballistics: a primer for courts**, Royal Society of Edinburgh, May 2021.

Forensic examinations²⁶¹

Firearms can also be the support of other types of evidence which could potentially provide a link to a perpetrator, such as DNA or fingerprints. For instance, in **FRAx037** (2021), the French Cour de Cassation ruled that DNA found on an automatic weapon in a stolen vehicle was sufficient evidence to convict the defendant for illicit possession of a firearm and participation in an organized crime group.

In **SWEx003** (2022), the defendant was convicted for an aggravated weapons offence after DNA found on a firearm was considered sufficient proof that he was in possession of the gun. In this case, the analysis was carried out with the DNAXs system, which can be described as an expert system for evaluating and estimating DNA results, developed by the Netherlands Forensic Institute (NFI). Since May 2023, it has been routinely used at Sweden's National Forensic Center's biology section when evaluating results that show a mixture of DNA from different people, so-called 'mixed DNA' or 'mixed image', or in the case of a weak presence of DNA. With DNAXs, forensic scientists can now evaluate traces with DNA from up to four people in a new way, something that was not possible before. In several cases, the system has been decisive in convicting perpetrators of crimes.

But DNA evidence has also been deemed to be potentially unreliable, as it can be accidentally transferred. The conviction of the defendant was, for instance, quashed in **AUSx213** (2021), in which the defendant was convicted for illicit possession of a firearm and sentenced to five years and six months of imprisonment, due to his DNA having been found on a firearm's trigger. However, the conviction was overturned on appeal, after the court of appeal held that there was a reasonable possibility of a secondary transfer of his DNA onto the firearm.

Another type of evidence that can be found on a firearm are fingerprints. Similar to DNA, they can be used by investigators to link a gun to a potential suspect, and then as evidence in court. That was, for instance, the case in **USAx270** (2021), in which the defendant was sentenced to more than six years of imprisonment for being a felon in possession of a firearm after his fingerprints were found on a round of ammunition in a gun recovered at the scene of a shooting. Similarly, in **CANx155** (2015), the defendant was arrested after drugs and a firearm and ammunition were found in his vehicle. His fingerprints were recovered on the ammunition and he was convicted for illicit possession of a firearm after the court held that guilt was "the only rational inference" given the existence of this fingerprint.

However, finding fingerprints on guns can be difficult, as evidenced in the case **ZAFx026** (2017), for instance, in which the defendant was arrested and convicted for a robbery. A firearm was found in the defendant's vehicle, but it was too old and rusty for fingerprints to be taken. Experts from Caribbean countries also highlighted that firearms that are trafficked by sea in fishing boats corrode swiftly due to the salty seawater, making fingerprint and DNA examination very difficult.

The probative value of fingerprints has also been challenged, with courts holding in several cases that it was not a sufficient basis for a conviction. For instance, in **USAx271** (2015)²⁶², a federal court of appeal held that fingerprints found on a weapon should not have automatically led to the conviction of a felon for illegally being in possession of a firearm and overturned the conviction of the defendant. The court of appeal sent the case back to a first instance court to determine if other evidence showed the defendant was in actual possession of a firearm.

261 On forensic examinations see also Section 3.3.1, *supra*.

262 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx271** (2015).



7. Trial and sentencing policies

Non-compliance with national firearms legislation can result in a broad range of criminal and administrative sanctions. The present chapter addresses these sanctions as well as the criminal proceedings through which firearms related crimes are adjudicated. It sheds light on the use of plea bargaining in firearms cases, examines the application of mandatory minimum penalties, the use of sentencing guidelines and administrative sanctions and analyzes national practices related to the confiscation and disposal of illicit firearms.

7.1 Plea bargaining²⁶³

Permitted in many jurisdictions, plea-bargaining allows the defendant to enter into a guilty plea in exchange for some concession from the prosecutor, usually a shorter sentence or being sentenced for a less serious offence. Art. 26 para. 2 of the UNTOC provides for that possibility, stating that “[e]ach State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention”. Over 30 countries operate plea-bargaining systems, although the models vary²⁶⁴, and the reliance on this system is growing steadily²⁶⁵. In some States, most convictions are the result of guilty pleas, such as Australia (61%), Georgia (87%), and the United States (97% for federal convictions)²⁶⁶.

Plea bargaining has some advantages, such as avoiding a potentially long and costly trial, which in turn helps reduce the congestion of national courts. It might benefit the prosecutors, who will be ensured that the person they believe is responsible for an offence will be held accountable and convicted, instead of facing an uncertain trial. Furthermore, it can be an incentive for the accused to cooperate with the investigators and prosecutors to unveil the identities of other persons involved in the crime. This is particularly relevant in the context of investigations against international firearms trafficking networks and complex organized crime groups. In turn, the accused will avoid the risk of harsher punishment.

²⁶³ See also Section 7.8 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

²⁶⁴ Akila Taleb-Karlsson, [Pleading guilty: an overview of the French procedure](#), Penal Reform International, 9 January 2017.

²⁶⁵ Freshfields Bruckhaus Deringer, [The Disappearing Trial: Towards a rights-based approach to trial waiver systems](#), Fair Trials, 27 April 2017, p. 5.

²⁶⁶ *Ibidem*, p. 4.

That was the case, for example, in [USAx252](#) (2016), in which the defendant was accused of illegal dealings with overseas customers, conducted through the darknet. He had used electronic currencies, such as Bitcoin, to get paid for his services in an effort to hide the nature of his activities. After his arrest, the defendant cooperated with law enforcement officers, providing investigators with a list of his international customers. Federal agents were able to make undercover sales of gun parts to several overseas customers. That investigation led to 15 arrests and the seizure of 27 illegal firearms, along with grenades and homemade bombs. The defendant pled guilty to federal charges of international arms trafficking and money laundering and was sentenced to four years in prison, two years on probation and a USD 3,000 fine. A third charge, machine gun possession, was dismissed at sentencing as the result of the plea agreement and his cooperation.

Plea bargaining has, however, also been heavily criticized, with many critics believing, for instance, that the absence of equality of arms during the investigative stage makes plea bargaining inherently unfair. Others argue that lack of procedural and substantive protections to the accused during the plea-bargaining process and the overall lack of judicial supervision increases the possibility that the innocent will increasingly be coerced into pleading guilty to avoid potentially draconian punishment if they go to trial, all the while potentially not being made aware of the repercussions of their plea.

The issue of the misinformation of the accused entering into a plea agreement was brought up, for instance, before the Court of Appeal of Bosnia and Herzegovina, which, in *BIH(iii)* (2016), upheld a decision sentencing the defendants to three years of imprisonment for illicit trafficking in arms and military equipment, after the conclusion of a plea agreement. The defendants challenged the trial court's decisions on the confiscation of property, confiscation of proceeds of crime and the costs of criminal proceedings. The appellate panel rejected the appeal, however, stating that the trial court informed the defendants of all the consequences of concluding the plea agreement during which the defendants said, *inter alia*, that they were aware of the consequences arising from the agreement, that they understood that the injured party may be referred to litigate their claim and that they may be ordered to pay the costs of the proceedings.

The lack of procedural and substantive protections to the accused during the plea-bargaining process allows potential infringements on a defendant's rights to a fair

trial: in **USAx251** (2022), the defendant was indicted for possessing firearms and controlled substances. Based on the charges and a sentencing enhancement sought by prosecutors, if convicted on all charges, he would have faced up to 20 years to life in prison. The prosecution made a plea offer: they offered to drop some charges – reducing his possible sentence to 10 to 25 years – in exchange for a guilty plea. However, they also demanded that the defendant waive his right to appeal his conviction, any sentence under 300 months, and almost every other possible path to judicial review of his conviction and sentence, regardless of the circumstances or any change in law. The judge rejected the motion to accept the plea agreement, stating the appeal waiver removed too many of the checks built into the criminal system. However, the Court of Appeals reversed the trial judge's ruling and issued an opinion that expanded the prosecutors' discretion in the conclusion of a plea-bargaining agreement.

It is critical for States to implement guidelines or other measures such as heightened judicial oversight to ensure consistency in prosecution decisions, so that there be due regard for the public interest and the defendant's right to fair trial.

7.2 Sentencing principles and mandatory minimum sentences²⁶⁷

Sanctions foreseen for firearms offences in national legal frameworks range from a fine to prison sentences, depending on the general severity of the offence. When fixing the penalties, judges also consider the concrete severity of the conduct and the personal circumstances of the offender. They must take into account the intrinsic gravity of the particular offence, the offender's culpability in committing the offence and any harm which the offence has caused, was intended to cause, or might foreseeably have caused. In doing so, they are generally bound by mandatory minimum and maximum sentences and have to take into account statutory and non-statutory mitigating and aggravating factors. If not prescribed by law, mitigating or aggravating factors, in some jurisdictions, can be found in sentencing guidelines,

established in an effort to increase the transparency and consistency of these judicial decisions.

Mitigating factors might include the age of the offender and their previous good character, the offender's capacity for reform and their role in the commission of the offence, where more than one offender was involved, as well as cooperation with the police, and a plea of guilty. For instance, in **JAMx004** (2020), after police officers observed the defendant placing a bag containing a firearm and ammunition under the wheel of a station wagon vehicle, the defendant was convicted by the Gun Court division of the Jamaica Supreme Court. In Jamaica, the Sentencing Guidelines suggest a normal range of seven to 15 years for illegal possession of firearms and ammunition and recommend a starting point of 10 years. The defendant was sentenced to seven years and eight months of imprisonment for illegal possession of a firearm and to three years and eight months of imprisonment for illegal possession of ammunition. While these punishments are still comparably harsh compared with other jurisdictions, they are significantly lower than the punishments foreseen in the Sentencing Guidelines. In assessing the appropriate sentence, the court considered mitigating factors such as the age of the defendant and his clean criminal records. The court also reduced the sentence for the time the defendant was in custody before the conviction.

On the other hand, aggravating factors in cases involving firearm offences can include, for instance, a high volume of trafficked firearms, the possession of firearms with the intent of trafficking them or reckless use of firearms. Previous convictions for the same or similar offences, particularly where a pattern of repeat offending is disclosed, can also be taken into account.

Moreover, the use of firearms can be considered an aggravating factor for the adjudication of various offences, such as robbery – either as a separate codified criminal offence or in fixing the penalty. In Jamaica, for instance, the use of a firearm (imitation or otherwise) is considered an aggravating circumstance in the sentencing guidelines²⁶⁸, whereas in the Criminal Code of Thailand it is considered an aggravating circumstance in various criminal offences. This aggravating factor can be explained by the potential of firearms and imitation firearms to escalate situations, as exemplified in **CANx159** (2023)²⁶⁹, where the Canadian Supreme Court empha-

²⁶⁷ See also Section 7.9.1 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

²⁶⁸ *Sentencing Guidelines, Jamaica*, p. 20.

²⁶⁹ For more information on this case, see UNODC, SHERLOC case law database, Case No. **CANx159** (2023).

sized the psychological impact of the use of firearms during the commission of an offence on the victims:

“The harmful consequences of using a restricted or prohibited firearm in a robbery are readily identified. There is the risk of death or life-altering physical injury for victims and bystanders if the weapon is discharged. Even if the weapon is not fired, exposure to this threat carries the risk of profound psychological harm. [...] Victims [of firearms related offences] reported feelings of hypervigilance, trauma and fear for their personal safety. Beyond the immediate threats to victims, there are wider risks to the community. Wielding a firearm in a store can reasonably provoke force in response, either by police responding to the robbery in progress or bystanders who attempt to intervene. The risk of escalating violence is, as a result, acute.”

The Court further emphasized that this impact was imparted regardless of whether or not the firearms were loaded:

“The use of an unloaded prohibited firearm does not substantially reduce the offence’s gravity. The presence of a firearm, even an unloaded one, ‘in and of itself creates a highly volatile and dangerous situation’ [...]. A loaded firearm can easily be mistaken for an unloaded firearm, not least by the offenders themselves. A sentencing discount for wielding unloaded firearms also overlooks the very real risk of an offender accidentally discharging a firearm the offender believed was unloaded. [...] Moreover, an unloaded firearm is used for the same reason as a loaded firearm: to instill ‘the ultimate threat of death to those in its presence’ [...]. Victims of robbery offences do not know whether the firearm is loaded or unloaded. The same is true for bystanders or police responding to robberies [...]. Regardless of whether the firearm is capable of deadly force at the time of the offence, ‘[t]he use of a firearm in the commission of a crime exacerbates its terrorizing effects, whether the firearm is real or a mere imitation. Indeed, they share that very purpose’. The psychological trauma involved in a robbery with an unloaded firearm is therefore comparable to a robbery with a loaded one”.

Similarly, the use of unlicensed firearms as opposed to licensed firearms can be considered an aggravating circumstance. In **PHLx015** (2017) the defendants were found guilty of murder with the use of an unlicensed firearm by the first instance court and sentenced to *reclusion perpetua* without parole, which places a convict in prison from 20 to 40 years. The Supreme Court of the Philippines confirmed that if a homicide or murder is committed with the use of an unlicensed firearm, this shall be considered an aggravating circumstance. However, in this case, the police were unable to retrieve the firearm used to shoot the victim and so to prove that this firearm was unlicensed. The aggravating circumstances of the use of an unlicensed firearm were, thus, pushed aside by the Supreme Court, which changed the appellants’ conviction to murder, and convicted them to *reclusion perpetua*.

When prosecuting firearms offences, the aggravating circumstance can also be linked to certain characteristics of the firearm itself. That was, for instance, the case in **SWEx004** (2023), in which the defendant was sentenced to three years of imprisonment for the illicit possession of a military-grade firearm that had its serial number altered. The court stated that the removal of such markings makes it difficult or impossible to trace the weapon’s origin or supply route and can indicate that the weapon is intended for criminal use. The court cited in its reasoning a document produced by Sweden’s National Forensic Center, called Technical qualification grounds for serious weapons crimes, which further elaborates on firearm regulations and gives investigators as well as courts an expert-level perspective on the conduct of investigations and trials.

When fixing the penalties for a firearms offence, judges are generally bound by minimum and maximum sentences prescribed by law. For instance, in **KENx020** (2019), the appellant was convicted on two counts of possession of a firearm and ammunition without a license and sentenced to 2.5 years of imprisonment on each count. He appealed against the sentence, putting forth mitigating factors such as his lack of a previous criminal record. The High Court, however, stated that the court’s discretion can only be exercised within the minimum and maximum sentences provided under the law, the minimum being seven years of imprisonment and the maximum sentence being 15 years for the offence of possession of a firearm without a licence. As such the appellant’s sentence was illegal, as it was inferior to the minimum sentence prescribed by the laws of Kenya. The appellant’s sentence was changed to seven years of imprisonment, the minimum sentence.

However, the statutory minimum sentences are not always strictly applied. While being considered as a binding rule in the former case, this differs in each jurisdiction. For instance, in [GBRx115](#) (2021)²⁷⁰, the judiciary of Bermuda asserted its discretionary sentencing power by allowing itself to deviate from statutory sentences. In this case, the defendant imported into Bermuda component parts of a firearm from the US. He was convicted on three counts of unlawful importation of a firearm and sentenced to 14 years of imprisonment. To reach this conclusion, the court relied on several factors, such as the fact that he used intricate and sophisticated means to commit the offences; and that

he must have known or should have known that the component parts were intended for a criminal purpose.

The Supreme Court asserted that mandatory minimum sentences are subject to the principle of proportionality, and that Bermudian legislation, in exceptional cases, implicitly allows for mandatory minimum sentences not to be applied. It is, therefore, permissible for the sentencing judge to eventually land on a sentence which may be less than the mandatory minimum sentence. The following Canadian case studies also address the issue that the application of statutory minimum penalties can be disproportionate in some cases.

CASE STUDY

Issues concerning mandatory minimum sentences – [CANx151](#), [CANx158](#), [CANx159](#)²⁷¹

The issue of statutory minimum sentences for firearms offences was adjudicated in a series of cases by the Canadian Supreme Court. It was first addressed in [CANx151](#) (2015), in which the defendants were convicted of possessing loaded prohibited firearms (for which a five year mandatory minimum imprisonment term is provided) and sentenced to 40 months and seven years of imprisonment respectively. The defendants appealed against this ruling, on the grounds that those mandatory minimum sentences were unconstitutional as they were grossly disproportionate and, thus, constituted cruel or unusual punishment.

The Court of Appeal held that the mandatory minimum terms of imprisonment resulted in grossly disproportionate sentences in reasonable hypothetical cases, and, therefore, held that they were unconstitutional. However, it also held that the sentences imposed on the defendants were appropriate and should be upheld.

The Supreme Court upheld this decision, stating that the minimum term of imprisonment for this offence would result in grossly disproportionate sentences in reasonably foreseeable cases, for example for licensing offences that involve little or no moral fault and little or no danger to the public. It added that although the government had not established that mandatory minimum terms of imprisonment act as a deterrent, a rational connection existed between mandatory minimum penalties and the goals of denunciation and retribution; however, less harmful means of achieving its legislative goal existed. It stated that the five year term goes far beyond that necessary to protect the public, to express moral condemnation of the offenders, and to discourage further offending.

The issue of the proportionality of mandatory minimum sentences for firearms offences was further adjudicated and clarified by the Canadian Supreme Court in [CANx158](#) and [CANx159](#) in 2023.

In [CANx158](#) (2023), the Supreme Court clearly set out the test to be applied when assessing the constitutionality of a sentence, providing a detailed clarification of the framework for challenging a mandatory minimum sentence. In this case, the accused pled guilty to four offences related to causing property damage, pointing and discharging a firearm, and possession of a firearm without a licence. At sentencing, the defendant challenged the constitutionality of the provision imposing a four year mandatory minimum sentence for intentionally discharging a non-restricted firearm into or at a house. ►

²⁷⁰ For more information on this case, see UNODC, SHERLOC case law database, Case No. [GBRx115](#) (2021).

²⁷¹ For more information on these cases, see UNODC, SHERLOC case law database, Cases No. [CANx151](#) (2015), [CANx158](#) (2023), and [CANx159](#) (2023).

The Court laid out the framework for assessing the constitutionality of a mandatory minimum sentence, which consists in a two stage inquiry. The first stage of the analysis requires to determine what the fit sentence for either the actual offender or a reasonably foreseeable offender in a reasonable hypothetical case would be.

Once the fit sentence is determined in the first stage, the second stage of the analysis is determining whether the difference between the fit sentence and the mandatory minimum is so grossly disproportionate that it amounts to cruel and unusual punishment. This is a three part questioning that analyzes the scope and reach of the offence; the effects of the penalty on the offender; and the penalty itself, including the balance struck by its sentencing objectives such as denunciation, deterrence, and rehabilitation.

In the circumstances of the case at hand, the court found that the mandatory minimum sentence was grossly disproportionate, as it applied to a wide spectrum of conduct, including acts that present little danger to the public, while disregarding sentencing norms and the harmful impact on a youthful offender. The court reinstated the sentencing judge's lesser sentence for the defendant and struck down the provision providing the mandatory minimum.

In **CANx159** (2023), the Supreme Court reinforced and emphasized the high threshold to be met for striking down mandatory minimum sentences. In this case, the defendant robbed a store with an unloaded sawed-off rifle. He pleaded guilty to and was convicted of robbery using a prohibited firearm. At his sentencing, the defendant argued that the mandatory minimum punishment of five years prescribed was grossly disproportionate given his identity as an indigenous man and the circumstances of his offence.

The Supreme Court emphasized that the threshold for establishing a grossly disproportionate sentence is high. The majority explained that the mandatory minimum sentence must be "so excessive as to outrage standards of decency" and noted that both the sentencing judge and the court of appeal erred in concluding there was no valid objective behind the penalty in this case. In this instance, the mandatory minimum sentences emphasized deterrence, denunciation, and retribution over rehabilitation and other sentencing purposes. The majority gave deference to these objectives set by Parliament and concluded that the mandatory minimum sentence prescribed by the relevant provisions was not unconstitutional.

Furthermore, the deterring effect of mandatory minimum sentences is disputed. The Department of Justice of Canada, for instance, published a research report analyzing several studies conducted on the effect of mandatory minimum sentences on firearms offences and concluded that the deterring effects of those provisions were unclear. The report also cited findings of an Australian study in which gun robbers indicated that they would continue to use firearms in their offences despite their knowledge of mandatory terms for criminal gun use and despite their consideration of the consequences of their crimes²⁷².

7.3 Confiscation and disposal of firearms²⁷³

Article 6, para. 1 of the Firearms Protocol requires States parties to ensure that their domestic legislation allows for the confiscation of illicitly manufactured or trafficked firearms, their parts and components and ammunition. Art. 6 of the Protocol must be read and interpreted together with Arts. 12–14 of the UNTOC, which apply to the seizure, confiscation and disposal of property that is either proceeds of crime or used or destined for use in crime. Those articles require States parties to ensure that laws enabling confiscation are in place and to actually seek confiscation by the appropriate authority when this is requested by another State party. Pursuant to Art. 2, subpara. (g) of the UNTOC

²⁷² Department of Justice Canada, *Mandatory Minimum Penalties: Their Effects on Crime, Sentencing Disparities, and Justice System Expenditures* (2002).

²⁷³ See also Section 7.11 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

‘confiscation’ shall mean “the permanent deprivation of property by order of a court or other competent authority”.

However, Art. 6, para. 1 does not dictate to States the scope of the measures that must be included in their legislation, but rather allows States the freedom to interpret and implement the article as they see fit. States parties are encouraged to find the most effective way of confiscating illicit firearms. The United States, for instance, tends to include a forfeiture clause within the indictment of an alleged offender when firearms are involved. That was, for example, the case in **USAx261** (2021)²⁷⁴, in which four defendants were indicted and charged with conspiracy to violate export control laws by smuggling firearms and ammunition from the United States to Haiti. The indictment stated that upon conviction, the defendants must forfeit any arm or ammunition involved in the commission of the offence.

In many countries, confiscation orders are provided in judicial sentences. In **CANx152** (2013)²⁷⁵, for instance, after arresting the defendant on charges related to possession of marijuana, the Canadian police executed a search warrant at the defendant’s residence, which led to the discovery of numerous firearms and ammunition. The defendant pleaded guilty to nine charges of possession of weapons and was sentenced to one year of imprisonment. As an ancillary order, the court ordered the forfeiture of the firearms, firearms parts and all the ammunition seized pursuant to the search warrant.

The possibility of the confiscation of a firearm in a case in which the defendant is not convicted varies from State to State. This issue was addressed in Canada in the case **CANx153** (2021)²⁷⁶. In this instance, the firearms related charges against the defendant had been dropped after he entered the General Alternative Measures Program, allowing the resolution of the matter outside of courts. However, the prosecution still required the confiscation of the firearms related to the offence. The court held that the forfeiture of the firearms could be considered a sentence itself, which could not be applied in this case as the charges had

been dropped and rejected the order of the prosecutors to confiscate the firearms.

Temporary seizures of firearms must be evaluated by a judicial authority, which must decide whether the items are to be returned to their legitimate owners, or the measure confirmed and transformed into a permanent confiscation. Prosecutors must request in court the confiscation of the seized firearms and other items, and their final disposal. It is the task of the judicial authority to determine whether all the legal conditions are present to accept such a request and order the confiscation.

This issue was brought up in 2021 before the US Supreme Court, in **USAx262** (2021)²⁷⁷. In this case, during an argument with his wife, the petitioner placed a handgun on the dining room table and asked his wife to “shoot [him] and get it over with”, which prompted her to leave. After she was unable to reach her husband by phone later on, she called the police to request a welfare check. The responding officers called an ambulance based on the belief that the petitioner posed a risk to himself or others, and the latter accepted to be hospitalized. However, once the petitioner left, the officers located and seized his weapons in his residence. The petitioner sued, claiming that the officers had entered his home and seized him and his firearms without a warrant in violation of the Fourth Amendment. The District Court granted summary judgment to the officers. The Court of Appeal affirmed that decision, stating that the officers’ removal of the petitioner and his firearms from his home was justified by a “community caretaking exception” to the warrant requirement. The Supreme Court held that the Court of Appeals erred in finding that the decision to remove the petitioner’s firearms from his home without a warrant fell within a community caretaking exception and stated that a judicial decision was necessary to do so.

The forfeiture or confiscation of a firearm must be followed by the final disposal of the item, which, depending on national laws and concrete circumstances, can consist in assigning the weapons to the State, or to specific institutions for their use or destruction. The destruction and deactivation of firearms are methods for disposal, with which the life-cycle of a firearm reaches its end. However, destruction is the preferred method of disposal to ensure that illicit firearms do not re-enter the black market.

274 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx261** (2021).

275 For more information on this case, see UNODC, SHERLOC case law database, Case No. **CANx152** (2013).

276 For more information on this case, see UNODC, SHERLOC case law database, Case No. **CANx153** (2021).

277 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx262** (2021).

The State Members are faced with a wide array of possibilities when choosing how to dispose of firearms, leading to a great disparity in the local and national legislations. This disparity was illustrated in **USAx263** (2017)²⁷⁸, in which the Arizona Supreme Court ruled that the city of Tucson does not have the right to ignore State law when disposing of confiscated weapons. Tucson had issued an ordinance allowing for the destruction of confiscated guns, while the laws of the State of Arizona required them to be sold. The city argued that the disposal of confiscated weapons is a local concern, and as such could be regulated at local level. But the Court sided with the State of Arizona, holding that firearms related statutes implicate several matters of state-wide, not merely local, concern and, therefore, govern over the conflicting municipal ordinance.

The choice of the destruction of a firearm, given its finality, has often been contested before courts. In **FRAx038** (2022), the French Cour de Cassation was faced with a case regarding the seizure of firearms at the appellant's residence during the execution of a search warrant. After charging him with illicit possession of a firearm, the prosecutor ordered the destruction of the weapons, which was upheld by the first instance court and the court of appeal. The Supreme Court held that as the firearm was no longer necessary to establish the facts of the case and the offence, its destruction was allowed, and the order was justified.

7.4 Administrative sanctions

As already addressed in Section 2 of the Digest, the Firearms Protocol requires States parties to criminalize the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition as well as the tampering with markings on firearms. However, the way national legislations sanction other types of breaches of firearms regulatory regimes such as possession or infraction to record keeping rules falls within the discretion of State parties and sanctions can be of administrative or criminal nature. Furthermore, States parties to the Firearms Protocol are free to accompany the criminal offences with administrative sanctions, such as the withdrawal of firearms related licences.

The administrative process regulates the interaction between private persons and legal entities with the state institutions, in this case, the authorities responsible for issuing various types of firearms licences. When an individual or a legal entity is found in violation of the established procedures, in some jurisdictions this can be defined as an administrative offence, which can be fined. Section 76c of the Act on Firearms and Ammunition of the Czech Republic provides that a legal entity or a natural person commits an administrative offence if they acquire or possess a firearm and ammunition without a licence, and such a violation can be sanctioned by a fine of up to CZK 50,000. Similarly, in **BRAx009** (2016), the Brazilian Federal Court of Justice ruled that the possession of a firearm with an expired licence was not a criminal offence but an administrative one and dismissed the charges against the defendant.

Criminal convictions related to firearms can also lead to administrative sanctions, such as the cancellation of gunsmiths or firearms licences. That was the case in **FRAx039** (2022), in which the prefect of French Guyana took away the gunsmith licence of the plaintiff after he was convicted in Brazil for an offence against the local gun legislation. Both the administrative tribunal of French Guyana and the administrative court of appeals upheld the order of the prefect, stating that the conviction in Brazil would be sufficient to constitute a disturbance to public order warranting the withdrawal of his gunsmith licence.

Similarly, in **AUSx214** (2015), the firearms licence of the plaintiff was cancelled after he was convicted for multiple firearms offences, including failure to ensure safekeeping of firearms and ammunition, being in possession of unlicensed firearms and ammunition, and making a firearm available to a person without a licence. The court stated that having a licence to acquire a firearm "is not a right, but a privilege; hence the regulatory regime whereby the obligation is on the applicant to demonstrate why he should be licensed and why the applicant, in order to be licensed, must continue to be a fit and proper person to hold a license". The court further stated that a licence may be revoked if the respondent is satisfied that the applicant could not be granted a firearm licence if he were at this stage applying for one. The onus would be on the applicant to prove that he is still a fit and proper person to be licensed to possess a firearm. In this case, the court ruled that the nature and circumstances of the offences the applicant was convicted for show his lack of understanding of the responsibility

278 For more information on this case, see UNODC, SHERLOC case law database, Case No. **USAx263** (2017).

ties of a licensee. As such, the public interest and the responsible regulation of firearms demand that the applicant's licence be revoked.

CASE STUDY

Revocation of licences does not violate the *ne bis in idem* principle – SWEx002 (2015)

In **SWEx002** (2015), the matter of the validity of revoking a firearms licence after a criminal conviction was adjudicated by the Supreme Administrative Court of Sweden. In this case, the applicant was given a conditional sentence for assault and battery in 2013. When the sentence became legally binding, the Värmland Police Authority decided to revoke the applicant's licence to possess firearms and ammunition. After the Administrative Court overruled the decision, both the Administrative Court of Appeal and the Supreme Administrative Court upheld the original decision of the Police Authority. The plaintiff had argued that the Swedish legislation for revocation of weapon licences was contrary to the prohibition of dual trials and dual punishments for the same crime as stipulated in the European Convention on Human Rights and the European Union Charter of Fundamental Rights, when the revocation is based on an already existing criminal sentence (*non bis in idem*). However, the Supreme Administrative Court ruled that the Swedish procedure for revocation of a licence to possess firearms cannot be considered a part of criminal law, but of administrative law, and as such the revoking of a licence cannot be seen as a violation of the *non bis in idem* principle.²⁷⁹

It is noteworthy that administrative sanctions do not necessarily have to be firearms related as illustrated by the case **FRAx040** (2022). In this case, the Ministry of Home Affairs expelled the plaintiff, a Spanish citizen, from France due to public safety concerns based on his numerous convictions, including for illicit possession of a firearm.

GOOD PRACTICE

Firearms related offences can also result in administrative sanctions, such as the revocation of licences based on the consideration that non-compliance with firearms regulations is an indication that the licensee is not fit and proper to be licensed.

²⁷⁹ For more information on this case, see UNODC, SHERLOC case law database, Case No. **SWEx002** (2015).



8. Specialized agencies and other institutional settings

The cases examined in the previous chapters of the Digest have made it clear that specialization is a crucial factor in the effectiveness and success of detecting, investigating, prosecuting and adjudicating firearms trafficking and related offences. The added value of specialized firearms units in the context of enhancing investigative capacity and strategies to prevent, combat and eradicate illicit trafficking in firearms was acknowledged by the Conference of the Parties to the UNTOC in various of its resolutions, including Resolution 9/2. In addition to considering the establishment or strengthening of such units, the Conference also called upon the States parties to consider enhancing scientific services related to the gathering and processing of related evidence.

The establishment of national firearms focal points or integrated firearms centres entails policy considerations at domestic level since it requires an appropriate legal framework and the allocation of adequate financial and human resources.

The cases examined in the Digest brought to light a great variety of specialized agencies and structures established nationally around the world to coordinate efforts in countering firearms trafficking and related offences at domestic level, and to cooperate internationally. These bodies perform different tasks (research and analysis, operational and investigative, prosecutorial and adjudicative), and they present different levels of inter-institutional coordination. Some of these entities have already been analyzed in the previous sections of the Digest, when dealing with forensic and ballistic examination of firearms, tracing, and inter-institutional coordination mechanisms. This chapter offers a brief non-exclusive comparative examination of organizational models of specialized bodies that were presented by national experts during the development of the Digest.

8.1 Specialized bodies embedded in police services and military units

The most common specialized bodies encountered in the cases examined in this Digest are operational entities set up by police services and law enforce-

ment agencies, especially to facilitate police to police cooperation in the context of international firearms trafficking.

For instance, the expert of The Bahamas explained that during the 1980s the drug trade flourished throughout the Caribbean islands, which brought about a growing gun culture. The Bahamas was no exception and its geographical location along with its proximity to the United States made it an attractive gateway for illicit firearms. With the drug trafficking, violent crimes and the use of firearms became more prevalent. This direct correlation brought about the need for a more focused approach to countering illicit firearms and firearms trafficking. Thus, in 1994, the Royal Bahamas Police Force Firearms Tracing and Investigation Unit was established in The Bahamas²⁸⁰. Over the years this unit, thanks to its broad mandate, has been responsible for the investigation of thousands of illicit firearms which have made their way into the islands of The Bahamas. The Firearm Unit's tasks encompass: the identification of all persons in possession of illegal firearms; the investigation of all incidents where criminal use is made of a firearm, to determine the possessor and its illicit origin; the interdiction of all illegal firearms and assistance in analyzing the use of firearms in crimes; the determination if detected and seized firearms are related to gang activities or criminal groups. Another good practice arising from the Bahamian experience is the inter-institutional coordination existing at national level among the Firearms Unit and other law enforcement and security forces, i.e. the Royal Bahamas Defense Force, the Customs and Immigration Departments, and the Forensic Science Laboratory; as well as the collaboration that this Unit has established with foreign partners. According to the expert, co-operation between Bahamian authorities and United States law enforcement agencies in firearms trafficking investigations resulted in the indictment of several firearm traffickers within the United States. This partnership allows for cooperation in the tracing of firearms, exchange of information (evidence) to assist with prosecution in each country's jurisdiction and engages Bahamian firearm trafficking investigators to develop a closer working relationship with United States agencies, such as ATF, Homeland Security, DEA, Coast Guard, FBI, and international law enforcement agencies.

²⁸⁰ <https://www.royalbahamaspolice.org/>

Other examples of specialized units embedded in law enforcement authorities were found in the Federal Police of Brazil²⁸¹ and Argentina²⁸² and in the Royal Canadian Mounted Police (RCMP) of Canada²⁸³.

Another organizational model with a broader mandate is that of specialized entities that are established to deal with organized crime. The Chilean expert explained that in 1999 the Investigative Police of Chile (PDI) established a special unit called *Brigada Investigadora del Crimen Organizado*²⁸⁴ to respond to the challenge posed by organized crime. This police unit is in charge of the detection and investigation of both national and international criminal organizations, coordinating with other police forces around the world. The *Brigada Investigadora del Crimen Organizado* comprises internal working groups and a Criminal Analysis Office and has a broad mandate covering the investigation of criminal organizations involved in firearms and drug trafficking and other crimes. Moreover, this unit has the duty to advise the command of police on decision-making with regard to action plans to tackle crime associated with firearms offences, and to keep a register of firearms seized in the country at central level.

Similarly, Niger established a specialized investigative unit on arms-related criminality within its national police force in 2018²⁸⁵, which focuses on links to terrorism and organized crime and which works closely with the judicial pool of anti-terrorism and anti-organized crime prosecutors, with a view to supporting investigations into illicitly trafficked firearms.

Other examples found in Jamaica include the Counter Terrorism and Organized Crime Branch, which is an arm of the national police which incorporates a specialized firearms section, and the Major Organized Crime and Anti-Corruption Agency (MOCA)²⁸⁶, which is a stand-alone executive agency dedicated to the most serious organized crimes, including the

investigation and prosecution of firearms trafficking offences.

Less common are special units embedded in military forces. A notable example is the National Inter-agency Security Force (*Fuerza de Seguridad Interinstitucional Nacional, FUSINA*)²⁸⁷ established in 2014 in Honduras. This is an elite corps made up of the Armed Forces, National Police, Intelligence Directorate, Public Prosecutor's Office, and the Supreme Court of Justice, among other bodies. Led by a member of the Armed Forces, the objective of FUSINA is to combat organized crime, firearms offences, drug trafficking as well as other serious crime. FUSINA has a strong presence in territories with high levels of gang-related crime, carrying out patrols to identify and arrest gang members. It also carries out operations on the Honduras-Guatemala border, which is one of the crossings most frequently used for drug and firearms trafficking.

8.2 National firearms focal points²⁸⁸

As already addressed in Section 3.3.3 of the Digest, a promising example of institutional settings to tackle firearms trafficking and related offences emerging from the cases studied is the establishment of national firearms focal points (NFFPs).

The Firearms Protocol provides for a broad definition of NFFPs. According to Art. 13, para. 2 each State party is to identify a national body or a single point of contact as liaison between it and other States on matters relating to the Protocol. The Model Law²⁸⁹ explains that single points of contact do not have a specific set of tasks to carry out, except for being the liaison between different State parties. State parties can, therefore, determine its scope and activities as they best see fit.

From the examined cases, it emerged that national firearms focal points (NFFPs) and integrated firearms

281 <https://www.gov.br/pf/pt-br>.

282 <https://www.interpol.int/en/Who-we-are/Member-countries/Americas/ARGENTINA>.

283 <https://www.rcmp-grc.gc.ca/en>.

284 <https://www.pdichile.cl/instituci%C3%B3n/unidades/antinarc%C3%B3ticos-crimen-organizados>

285 UN (2020) Conference of the Parties to the Working Group against Transnational Organised Crime, Working Group on Firearms, *CTOC/COP/WG.6/2020/3*, p.7.

286 <https://www.moca.gov.jm/>.

287 <https://sedena.gob.hn/tag/fuerza-de-seguridad-interinstitucional-nacional-fusina/>.

288 See also Section 3.3.3 of the Digest, *supra.*; and Section 1.7.2 of the *UNODC Guidelines on the Investigation and Prosecution of Firearms Offences*.

289 See Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, UNODC, 2011, pp. 67-68.

centres provide for a particularly promising institutional framework to prevent and combat firearms trafficking and related forms of crime. These entities combine coordination and analytical and operational functions to support law enforcement agencies in better understanding and effectively tackling firearms offences, including through intelligence analysis and reporting, ballistic and forensic examination, tracing activities, and investigation and prosecution of firearms offences. In addition to their operational capacities, NFFPs and integrated firearms centres provide a framework within which law enforcement agencies can develop expertise and improve analytic and strategic reporting capabilities regarding the misuse and illicit trafficking of firearms. For instance, the capabilities (on ballistic and forensic examination) and intelligence provided by NABIS290 (the first NFFP established in Europe in 2008) have effectively empowered UK law enforcement to better address firearms trafficking and related offences.

8.3 Specialized departments of prosecutorial offices

Within prosecutorial offices, specialized entities dealing specifically with firearms trafficking are not common. A prominent example of them, however, emerged from the Italian cases. The Italian National Anti-Mafia and Counter-Terrorism Directorate (DNA)²⁹¹ and its decentralized 26 district directorates (DDA) are the most relevant judicial body in Italy in the fight against transnational organized crime and firearms trafficking. This structure pursues the objectives of concentrating and centralizing organized crime investigations in the hands of specialized prosecutors within highly qualified structures and of promoting the centralized collection of data and information related to organized crime. However, the prosecutorial activity of DNA is only partially centralized. The prosecutions are carried out by regional prosecutors' offices (DDA). The DNA directly supports the prosecutorial activities of the regional offices and gathers and analyzes information and documents linked with all the proceedings, thus serving as a centralized intelligence and operational focal point.

Canada uses specialized prosecutors as well to prosecute all firearms related crime. These prosecutors work closely with the RCMP during the investigation of cases but also to develop tools that can be used in the investigation, prosecution and adjudication of firearms related crime. These tools include guidelines for first line responders, such as guidelines on relevant evidence that should be collected in the context of investigations into firearms trafficking and related forms of crimes, as well as affidavits to courts, for instance on 3D printing of firearms.

8.4 Specialized courts

As illustrated by JAMx004 (2020), in Jamaica firearms related offences are adjudicated by the Gun Court, which is a specialized court established to address the pressing issue of gun violence within the country. It was established in 1974 under the Gun Court Act and has jurisdiction over cases related to illegal firearms, gang-related activities, and other gun-related offences. The Gun Court operates under a separate set of procedures, rules and sentencing regime designed to expedite the judicial process and ensure the cases are adjudicated by experts with a specialized set of skills who understand the specific challenges related to firearms offences. Most trials are conducted *in camera*, without a jury and closed to the public and the press, in order to avoid problems of intimidation of witnesses and jurors. Although the Gun Court was intended to expedite cases, bringing defendants to trial within seven days, defendants now often wait months, sometimes years for their trials.

290 <https://www.nabis.police.uk/>. For more information on NABIS see Section 3.3.1 of Chapter 3, *supra*.

291 https://www.giustizia.it/giustizia/it/mg_2_10_1.page.

9. Appendix

Annex 1 – List of countries with acronyms

ALB	Albania
ATG	Antigua and Barbuda
ARG	Argentina
ABW	Aruba
AUT	Austria
AUS	Australia
BHS	The Bahamas
BRB	Barbados
BLZ	Belize
BMU	Bermuda
BFA	Burkina Faso
BIH	Bosnia and Herzegovina
BEL	Belgium
BRA	Brazil
CAN	Canada
CHL	Chile
CRI	Costa Rica
CUW	Curacao
CZE	Czech Republic
DNK	Denmark
DOM	Dominican Republic
SLV	El Salvador
GBR	The United Kingdom of Great Britain and Northern Ireland
FRA	France
DEU	Germany
GRD	Grenada
GTM	Guatemala
GUY	Guyana
HND	Honduras

IND	India
ITA	Italy
JAM	Jamaica
JPN	Japan
KEN	Kenya
LTU	Lithuania
LUX	Luxembourg
MWI	Malawi
MTQ	Martinique
MEX	Mexico
MNE	Montenegro
NAM	Namibia
NLD	The Netherlands
NIC	Nicaragua
NGA	Nigeria
PAN	Panama
PRY	Paraguay
PER	Peru
PHL	The Philippines
POL	Poland
PRT	Portugal
ROU	Romania
ZAF	South Africa
KNA	St. Kitts and Nevis
SVK	Slovakia
ESP	Spain
SRB	Serbia
LCA	St. Lucia
SUR	Suriname
VCT	St. Vincent and the Grenadines
SWE	Sweden
URY	Uruguay
USA	United States of America

Annex 2 – List of cases

<i>ALB(i)</i>	Operation “Porosia”	2017-2018
<i>ABW(i)</i>	Bolonfa Case	2021
<i>ARG(i)</i>	Baracetti Gonzalo Fabio and others v. State	2019
<i>ARG(ii)</i>	Maffullo Nahuel v. State	2017
<i>ARG(iii)</i>	Miranda Parra Diego Emerson v. State	2021
<i>ATG(i)</i>	Curt Dean Michael of Cedar Valley and Yenisei Martinez Batista v. State	2018
AUSx212	Farhat v. Tasmania	2017
AUSx213	Seifeddine v R	2021
AUSx214	Katich v Commissioner of Police	2015
<i>BEL(i)</i>	Conseil D’État, Section Du Contentieux Administratif N° 242.029 of 29 June 2018	2018
<i>BEL/ESP(i)</i>	Belgian National Case	2018
<i>BFA(i)</i>	Witness protection failure case	2017
<i>BHS(i)</i>	Importation Case	2021
<i>BHS(ii)</i>	Conspiracy to introduce firearms into the Commonwealth of The Bahamas	2018
<i>BIH(i)</i>	Transnational Case	2016
<i>BIH(ii)</i>	Converted Weapons Case	2016
<i>BIH(iii)</i>	BIH Court of Appeals, no. S1 3 019787 15 Kž	2016
<i>BLZ(i)</i>	Giovanni Castro	2020
<i>BLZ(ii)</i>	The Queen v. Omar Ibanez	2020
BRAx007	Operação Gun Express	2021
BRAx009	Acórdão n. 952289, TSJ	2016
<i>BRA(i)</i>	Operação Yankee	2023
BRAx010	Operation Fogo Amigo	2019

BRAx011	Processo: 1036362-90.2011.8.19.0002	2011
BRAx012	Operação Mercado das Armas	2021
<i>BRA(ii)</i>	Processo nº. 0504546-76.2017.4.02.5101	2018
<i>BRB(i)</i>	Importation of firearms	2013
CANx052	R v Gardner	2014
CANx149	R v. Farah	2016
CANx150	R v Jones	2017
CANx151	R v Nur	2015
CANx152	R v Horsley	2013
CANx153	Sa Majesté La Reine c. Jean-Michel Laberge	2021
CANx154	R v Seymour	2016
CANx155	R v Johnson	2015
CANx156	R v A.E.	2018
CANx157	Delisle c R	2022
CANx158	R v Hills	2023
CANx159	R v Hilbach	2023
CANx160	R v M.A.C.L.	2008
CANx161	R v Bacon	2020
<i>CHL(i)</i>	Operation Wolf	2021
<i>CHL(ii)</i>	Operation Acero	2021
CRlx008	Juan Carlos Martín Víquez and others v. State	2019
<i>CRI(i)</i>	Fabricación de armas hechizas	2018
<i>CUW(i)</i>	Marquez Prentt	2021
<i>CUW(ii)</i>	Mulata and Edison Cases	2020-2021
<i>CZE/NLD/SVK(i)</i>	Illegal trade of converted firearms	2021

<i>CZE/SVK(i)</i>	3D Printing Case	2022
DEUx035	BGH, Beschluss vom 06.08.2019, 1 StR 188/19	2019
DEUx048	1 St 1/20 OLG Naumburg	2020
DEUx049	BGH, Urteil vom 30.03.2021, 3 StR 474/19 (Heckler and Koch)	2021
DEUx050	LG Kiel, Urteil vom 03.04.2019 - 3 KLs 3/18	2019
DEUx051	BGH, Urteil vom 24.07.2014, 3 StR 314/13	2014
DEUx052	LG München, judgement of January 19, 2018 – 12 KLs 111 Js 239798/16	2018
<i>DEU(i)</i>	Federal Public Prosecutor General, Indictment of Ulli S. on 13 November 2023	2023
<i>DNK(i)</i>	Case 09/2018	2018
<i>DOM(i)</i>	Luis Rivera Portorreal and others	2017-2018
<i>ESP(i)</i>	Operation Portu	2017
<i>ESP(ii)</i>	Operation Alpes	2018
<i>ESP(iii)</i>	Transnational Network	2018-2022
FRAx033	Pourvoi 19-84.253, Cour de Cassation	2020
FRAx034	Pourvoi 16-84.699, Cour de Cassation	2018
FRAx035	Pourvoi 17-80.551, Cour de Cassation	2017
FRAx036	Pourvoi 22-81.383, Cour de Cassation	2022
FRAx037	Pourvoi 20-82.592, Cour de Cassation	2021
FRAx038	Pourvoi 22-80.950, Cour de cassation	2022
FRAx039	CAA Bordeaux, 20BX01911	2022
FRAx040	CAA Paris, 22PA01088	2022
FRAx041	Pourvoi 19-84.290, Cour de Cassation	2020
<i>FRA/GBR(i)</i>	Eurojust operation involving migrants in the English Channel	2020
<i>GBR(i)</i>	Paul Edmonds Case	2017
<i>GBR (ii)</i>	Trafficking of pistols via parcel delivery service from US to UK	2011

GBRx115	The Queen v James Robert Rumley	2021
GBRx116	R v Haroon Iqbal	2022
GBRx117	R v Hassane, Majeed, Hamlett and Cuffy	2016
GBRx118	R v Michael Adebolajo and Michael Adebowale	2014
<i>GRD(i)</i>	Drug Squad, CID and Police investigation	2021
<i>GTM(i)</i>	Caso Transnacional	2021
<i>GUY(i)</i>	Tevin Erskine	2020
<i>HND(i)</i>	Honduran Vessel Case	2008
INDx033	Birju v. State of MP	2014
IRBx028	Chowdury v. Greece	2016
IRBx037	Süleyman v. Turkey (no. 59453/10)	2020
<i>IRB(i)</i>	Furcht v. Germany	2014
IRBx040	Trabalhadores da Fazenda Brasil Verde vs Brasil	2016
<i>ITA(i)</i>	Patruno, Diomede and Others	2014-2017
ITAx039	Sent. 57163/2018	2018
<i>ITA(ii)</i>	Operation Liquid Gold	2017
<i>ITA/AUT(i)</i>	Camorra Case	2019
<i>ITA/DEU(i)</i>	'Ndrangheta Case	2018
<i>JAM(i)</i>	Jermaine Kerr	2019
JAMx004	R v Cherrington	2020
JAMx005	DPP v Uchence Wilson and others	2018
JAMx006	Russel Robinson v R	2016
<i>JPN(i)</i>	Former Prime Minister Case	2022
KENx020	Peter Kipkurui Rotich v Republic	2019
KENx021	John Kinyua Githinji v Republic	2016

<i>KNA(i)</i>	Karim Maynard and others	2017
<i>LCA(i)</i>	Firearms Shipment	2021
<i>LCA(ii)</i>	Operation Tranquilo	2014-2020
LTUx001	Decision 1A-133-658/2023 of the Court of Appeal of Lithuania	2023
<i>MEX(i)</i>	Cártel de Juárez case	2017
<i>MLW(i)</i>	Rep v. Esau Billy, Aaron Billy Masaka & Lloyd Shaibu	2017
<i>MNE(i)</i>	Torpedo	2015
<i>MNE/ALB(i)</i>	Transnational Case	2017
<i>MTQ(i)</i>	Manikou	2021
NAMx014	Murumbua v S	2021
NGAx006	Federal Republic of Nigeria and Hassan Trade Nigeria Ltd et al.	2021
NLDx009	Guus Kouwenhoven case	2018
<i>NLD/POL(i)</i>	Transnational Case	2022
PANx001	Eusebio Rangel Morelos	2020
PANx002	Gilberto Frederico Johnson Quinonez	2020
<i>PAN(i)</i>	Operación Trasnacional Miami	2019
<i>PAN(ii)</i>	Operación Transportador	2021
<i>PER(i)</i>	Turno	2021
<i>PER(ii)</i>	Case n. 990	2020
<i>PER(iii)</i>	Police Operation n. 0277	2021
<i>PER(iv)</i>	Operation Depitiame	2019
PHLx012	People of the Philippines vs. Unding Kenneth Isa	2018
PHLx015	Manny Ramos et al. v. People of the Philippines	2017
<i>PRY(i)</i>	Operation Blue	2020
<i>PRY(ii)</i>	Causa N° 2638/2021 "Octavio Arrua y otros s/ Quebrantamiento de depósito y otros"	2021

<i>PRY(iii)</i>	Victor Hugo Sebastian Ferreira y otros s/ Violacion de la ley de armas e otros	2020
<i>ROU(i)</i>	Conversus	2021
<i>SLV(i)</i>	Swap Case	2019
<i>SRB(i)</i>	Domestic Case	2016
SWEx001	Case No B 5813-22	2023
SWEx002	Case No 1116-14	2015
SWEx003	Case B 2753-22	2022
SWEx004	Case B 903-23	2023
SWEx005	Case B 3203-21	2021
URYx002	Operation Vectra	2021
URYx003	Operation Ecosport	2021
URYx004	Investigación Escape	2021
USAx085	United States of America v. Viktor Bout	2013
USAx152	United States of America v. Joaquin Archivaldo Guzman Loera	2019
USAx251	United States of America v. Ashley Townsend	2022
USAx252	United States of America v. Benjamin James Cance	2016
USAx253	United States of America v. Jose Abraham Benavides Cira et al.	2017
USAx254	United States of America v. Alhaji Boye	2017
USAx255	United States of America v. Pheerayuth Burden	2019
<i>USA(i)</i>	United States of America v. Pfettscher	2022
USAx256	United States of America v. Hunter Bow O'Mealy et al.	2022
USAx257	United States of America v. Morad Marco Garmo et al.	2021
USAx258	Mexico v. Gun Manufacturers	2022
USAx259	United States of America v. Kendale Tyrone Strange	2022
USAx260	People v Pursley	2022

USAx261	United States of America v. Joly Germine et al.	2021
USAx262	Caniglia v. Strom et al.	2021
USAx263	State of Arizona v. City of Tucson	2017
USAx265	United States of America v. Aubrey Crittenden	2021
USAx266	United States of America v. Rocky Joe Houston	2016
USAx267	State of New Jersey v. Chucky Scott et al.	2018
USAx268	United States of America v. Enrique Marquez	2020
USAx269	People v. Ross	2020
USAx270	United States of America v. Wonyae Malik Black	2021
USAx271	United States of America v. Brett Combs	2015
USAx272	United States of America v. Jaime Avila	2012
USAx273	District of Columbia v. Polymer80	2022
USAx274	The People Of The State Of New York v. Arm or Ally et al.	2023
USAx275	United States of America v. Michael Paul Dahlager	2022
USAx276	United States of America v. Jacob Gragg	2020
USAx277	State of New Jersey v. William R. Pillus	2021
USAx278	United States of America v. Jacques Mathieu	2022
USAx279	United States of America v. Douglas Haig	2020
<i>USA(ii)</i>	United States of America v. Frederik Barbieri	2018
USAx280	Jermaine Rhoomes	2020
USAx288	United States of America v. Michael Robert Solomon and Benjamin Ryan Teeter	2021
USAx289	United States v. Peralta-Vega	2022
ZAF007	S v Palan	2015
ZAF012	S v Mabuza	2014
ZAFx016	S v Ndlovu	2019

ZAFx024	S v Dawjee and others	2018
ZAFx025	S v Solomon and Others (CC23/2018)	2020
ZAFx026	Trust Phakathi v State	2017
ZAFx027	S v Chitiyo	2022
ZAF(i)	Corruption case	2015



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