



Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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**Review of the implementation of the United Nations
Convention against Transnational Organized Crime
and the Protocols thereto: expert consultation on the
marking of firearms, the keeping of records on firearms,
trafficking in firearms, their parts and components and
ammunition and the identification of competent
authorities**

Marking of firearms, the keeping of records on firearms, trafficking in firearms, their parts and components and ammunition and the identification of competent authorities

Note by the Secretariat

I. Introduction

1. 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,¹ was adopted by the General Assembly in its resolution 55/255 of 31 May 2001 and entered into force on 3 July 2005. At its second session, held in Vienna in October 2005, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in its decision 2/5, adopted a programme of work for the review of the implementation of the Firearms Protocol, in particular of the following initial areas: (a) consideration of the basic adaptation of national legislation; (b) examination of criminalization legislation and difficulties encountered in the implementation of article 5 of the Protocol; (c) enhancing international cooperation and developing technical assistance to overcome difficulties identified in the implementation of the Protocol; and (d) exchange of views and experience gained in the implementation of articles 7 (Record-keeping), 8 (Marking of firearms) and 10 (General requirements

* CTOC/COP/2008/1.

¹ United Nations, *Treaty Series*, vol. 2326, No. 39574.



for export, import and transit licencing or authorization systems) of the Protocol. In its decision 2/5, the Conference also requested its secretariat to collect information from States parties and signatories to the Firearms Protocol in the context of that programme of work. The consolidated analytical report on the implementation of the Firearms Protocol (CTOC/COP/2006/8/Rev.1) accordingly reflects information provided by States on national implementation of the relevant provisions of the Firearms Protocol.

2. At its third session, held in Vienna from 10 to 21 October 2006, the Conference, in its decision 3/4, endorsed the recommendations formulated by the open-ended interim working group of government experts on technical assistance, which identified priority areas for technical assistance. The priority areas with respect to the Firearms Protocol are: (a) record-keeping; (b) marking; (c) deactivation of firearms; and (d) identification of competent national authorities. At its current session, the Conference has before it a working paper prepared by the Secretariat concerning proposals for technical assistance activities designed to meet the needs identified in those priority areas (CTOC/COP/2008/16). A meeting of experts on the Firearms Protocol was held in Vienna from 25 to 29 August 2008 to discuss draft technical guidelines for the implementation of the protocol, as well as elements for the development of a model law on firearms.

3. The present note provides an overview of relevant provisions of the Firearms Protocol and proposes questions for possible discussion by the Conference.

II. Relevant provisions of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition and questions for possible discussion

4. The Firearms Protocol is the first global legally binding instrument on firearms. It offers States a broad cooperation framework to prevent, combat and eradicate illicit manufacturing of and illicit trafficking in firearms, their parts and components and ammunition. It does not apply to State-to-State transactions or to State transfers related to national security interests consistent with Article 4 of the Charter of the United Nations.²

5. The term “firearms”, as defined in article 3 of the Firearms Protocol, refers to any portable barrelled weapon that can expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. That definition is narrower than that of “small arms and light weapons”, adopted in other international and regional instruments, as it does not include long, non-portable weapons, explosives and weapons using other forms of propulsion, such as

² The term “State-to-State-transactions” refers only to transactions by States acting in a sovereign capacity, thereby excluding States acting in their commercial capacity. Therefore, the Protocol applies to activities undertaken by States parties on a commercial basis, such as the dealings of State-owned or operated firearms manufacturers. See the *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (United Nations publication, Sales No. E.06.V.5), p. 627.

mechanical or other assistance, or weapons designed specifically for military use.³ However, the scope of the Protocol includes parts and components of firearms and ammunition, which are excluded in the other instruments.

6. The Protocol sets out comprehensive control measures with a view to regulating legal transfers and to reducing the risks of diversion of firearms into the illegal market. Its provisions encompass marking, record-keeping, licencing and authorization systems, confiscation, deactivation, tracing and brokering. Article 5 of the Protocol requires the criminalization of three groups of offences: (a) the illicit manufacturing of firearms, such as the manufacturing of firearms without marking, the assembly or manufacturing of illicit parts and components or manufacturing or assembly without legal permit or authorizations; (b) illicit trafficking in firearms, such as the transnational transfer of firearms without authorization or unmarked; and (c) other offences aimed at obstructing the identification or tracing of a firearm. Parties are also required to criminalize the attempt to commit the above-mentioned offences, the participation as an accomplice in such offences and organizing, directing, abiding, abetting, facilitating or counselling the commission of those offences.

A. Marking of firearms

7. The requirement to mark firearms for the purpose of identification and tracing is a core provision of the Firearms Protocol. Marking of firearms allows States to search their own records and respond to tracing requests.

1. Provisions on the marking of firearms

8. Under article 8 of the Firearms Protocol, States parties shall, at the time of manufacture of each firearm, either require unique marking providing the name of the manufacturer, the country or place of manufacture and the serial number, or maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification by all States of the country of manufacture.

9. Also under article 8 of the Protocol, at the time of import, except for firearms imported temporarily for verifiable lawful purposes, States parties shall require appropriate simple marking on each imported firearm, permitting the identification

³ The Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, adopted by the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects on 20 July 2001 does not contain a definition of small arms and light weapons. The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (A/60/88 and Corr.2, annex), adopted by the General Assembly in its decision 60/519, defines “small arms” as “broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns.”; and defines “light weapons” as “broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres.”

of the country of import and, where possible, the year of import. The requirement of such additional marking at the time of import is useful to track old arms that have been circulating for many years and are not adequately marked, as it can expedite the tracing process by identifying the last country into which the firearm was imported.

10. In addition, at the time of transfer of a firearm from Government stocks to permanent civilian use, States parties are required to ensure the appropriate unique marking permitting identification of the transferring country. States parties shall also encourage the firearms manufacturing industry to develop measures against the removal or the alteration of markings.

11. The Firearms Protocol requires the unique, simple and user-friendly marking of firearms. States parties may go beyond the minimum requirements of the Protocol and avail themselves of technological developments in marking and identifying firearms, such as marking via stamping, casting, mechanical engraving, laser engraving and electrochemical methods. In addition to prescribing classic marking, States may adopt additional measures to prevent tampering, such as prescribing a certain depth of the stamp, specifying the location and form of marking and requiring the marking of parts and components. Additional security markings, placed in hidden places difficult to reach after manufacture without destroying the arm itself, can also be useful means to recover the marking if the original has been erased at the surface.

12. The Protocol does not require the marking of parts and components of firearms nor the marking and record-keeping of ammunition. Packaging of ammunition for transportation is subject to international standards governing the transportation of hazardous materials, with established procedures for classification, packing, marking, labelling and documentation. However, such information can easily be destroyed by repacking the ammunition. Ammunition can be marked in different ways such as marking the cartridges, the powder, the bullet or the percussion cap. Because ammunition is consumed upon use, its tracing is difficult. However, controlling the flow of ammunition can be as revealing and as important as controlling the flow of firearms itself.

2. Questions for possible discussion on the marking of firearms

13. The following questions and proposals are proposed for discussion on the marking of firearms:

(a) What are current trends and good practices in marking? The Conference may wish to request the secretariat to assist in identifying and disseminating good practices through regional training activities, taking into account information available at the national, subregional and global levels;

(b) What measures can be taken to ensure unique user-friendly markings that do not require special equipment or specialized training to be understood and that ensure the accuracy of the international tracing process? How can States best cooperate to ensure mutual understanding, decoding or access to difficult markings, including security markings?

(c) What experiences exist in ammunition control, including marking and record-keeping?

- (d) How can States address the problem of unmarked or insufficiently marked firearms that are already in circulation?
- (e) What are the cost-benefit considerations that States may take into account when deciding whether to adopt classic marking alone or a combined system that includes secure marking?
- (f) How can developing countries gain access to relevant knowledge on modern marking techniques? What could be the contribution of the manufacturing industry in the development of measures against the removal or the alteration of markings?
- (g) What arrangements can be made by manufacturing and importing States beforehand to ensure clear rules on the marking of imported firearms? What considerations should States take into account when establishing marking facilities at their ports of entry? What measures have proven successful for States to better control firearms at their ports of entry?
- (h) Exchange of knowledge and expertise in marking, record-keeping and tracing is important to even the level of technological know-how among all States. States parties may consider requesting the secretariat to convene an expert group meeting involving representatives of States, major manufacturers and other relevant actors to explore options for collaboration in secure marking, taking into account economic and scientific implications.

B. Keeping of records on firearms

1. Provisions of the Firearms Protocol on record-keeping

14. In addition to marking, record-keeping is an essential precondition for the effective tracing of firearms from the manufacturer to the purchaser. Article 7 of the Firearms Protocol defines a comprehensive system of record-keeping for firearms and, where possible, their parts and components and ammunition. Under article 7, States parties shall maintain for a minimum of 10 years information on markings and, in cases involving international transactions in firearms, issuance and expiration dates of licences, the country of export, the country of import and transit countries, the final recipient and the description and quantity of the articles. The potential lifetime of a firearm can greatly exceed that period of time, with the consequence that for some arms still in use there is no obligation to keep records. Parties can decide to impose longer periods of record-keeping if they wish.⁴

15. Under article 12 of the Protocol, States parties are required to cooperate, including in the tracing of firearms, their parts and components and ammunition, through prompt responses to tracing requests, within available means. That provision is based on the presupposition that States parties keep relevant records and are in a position to transmit recorded information to requesting States.

⁴ See the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, which, in its paragraph 12, requires records on arms to be kept, to the extent possible, indefinitely, but, in any case, for at least 30 years, and all other records, including records of imports and exports for at least 20 years.

16. The implementation of a comprehensive record-keeping system for firearms, and where appropriate and feasible, their parts and components and ammunition, requires infrastructure enabling States to maintain and regularly update records. Records can be kept in a central location by the State or be maintained by others, for example, those engaged in the manufacture or transfer of firearms. States that opt for State-maintained records may consider introducing additional offences and requirements to ensure the fidelity of the information provided to them, while States requiring other entities to keep such records may wish to ensure, through appropriate regulations and sanctions, that the necessary records are accurate and readily available when required for tracing or investigative purposes.⁵

17. As is the case with marking, the method of record-keeping to be used remains at the discretion of the States parties. The Protocol does not state a preference for computerized methods over paper records. However, the use of automated record-keeping systems and standardized formats for the keeping of records may be of help to States to meet their obligations and respond promptly to tracing requests required under article 12.

18. The Protocol does not require specific records on destroyed firearms, but under article 6, methods of disposal of seized firearms must be recorded.

19. Although the Protocol requires record-keeping of parts and components and ammunition only “where appropriate and feasible”, States may wish to consider requiring the maintenance of records for at least the major parts and components of firearms, in order to ensure that record-keeping requirements cannot be avoided by transferring entire firearms in a disassembled condition.⁶

2. Questions for possible discussion on record-keeping

20. The following questions are proposed for discussion on record-keeping:

(a) What criteria should States take into account for the establishment of comprehensive and efficient record-keeping systems? What experiences and good practices exist in record-keeping?

(b) What measures can be taken by States using paper records to prevent the risk of manipulation or falsification of data?

(c) What particular considerations should be taken into account for the establishment of a record-keeping system in least developed countries or countries in post-conflict situations?

(d) What cost-effective methods and information technology solutions exist to facilitate long-term record-keeping and prompt and easy access to stored information?

(e) Would automated registration formats and stockpile management systems help States parties to efficiently comply with their record-keeping obligations? What are the technical assistance and training needs in this field?

⁵ *Legislative Guide for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (United Nations publication, Sales No. E.05.V.2), p. 450.

⁶ *Ibid.*, p. 451.

(f) What control and enforcement mechanisms can States put in place to ensure compliance with record-keeping obligations?

C. Trafficking in firearms, their parts and components and ammunition

21. In order to prevent illicit trafficking in firearms, the Firearms Protocol provides for a set of measures, based on a licencing or authorization system, to control the movement of firearms, their parts and components and ammunition, as well as security and preventive measures and obligations for States to cooperate and exchange information.

1. Provisions on trafficking in firearms

22. The underlying principle of article 10 of the Protocol (General requirements for export, import and transit licencing or authorization systems) is that the export of firearms should be prohibited unless the importing State has authorized or issued a permit with respect to the import. That provision is intended to prevent the diversion of shipments into illicit markets. States parties shall therefore not issue export licences or authorization before verifying that importing States have issued import licences or authorizations and that transit States have given prior notification that they have no objection to the transit.

23. The information contained in import and export licences or authorizations is critical to the ability to trace legally transferred firearms. Article 10 of the Protocol establishes basic requirements for the content of such documents, including the place and date of issuance and the expiration date of the licence or authorization, the country of export, the country of import, the final recipient, the description and the quantity of the firearms, their parts and components and ammunition and the country of transit when there is one. The information contained in the import licence must be provided in advance to the transit State. Parties are required to take measures to ensure the security of licencing and authorization documents and ensure that the authenticity of those documents can be verified or validated. Simplified procedures may be used for temporary import and export and the transit of firearms, their parts and components and ammunition, for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repairs.

24. The licencing or authorization system to be established pursuant to article 10 of the Protocol requires States to go beyond the mere mutual notification of the intent to export or import, and to take active steps to ensure the smooth flow of the licit movements. The Protocol does not contain explicit criteria for the issuance of import and export licences or authorizations, but States parties will need to define the conditions under which firearms, their parts and components and ammunition can be imported or exported or can transit through their territory. Parties will also need to establish competent authorities for the issuance of licences or authorizations, with the necessary powers. Predefined criteria for use by such authorities will set limits to their discretionary powers and thus reduce, for example, opportunities for corruption. Grounds for denial of requested authorizations may include the participation of the involved persons or groups in criminal activities, unmet legal requirements, concerns that the intended recipient of the goods may

contribute to ongoing or potential insurgency or armed conflict, the risk that international legal obligations such as a treaty or a Security Council embargo would be breached or national security concerns of the State party itself.⁷

25. A good channel of communication between importing and exporting parties facilitates the controlled movements of firearms. Other additional tools include standardized forms to process import and export transactions (application forms to request the issuance of licences or authorizations, formal licences or authorizations to import or export firearms, parts and components and ammunition and forms for seeking and granting transit approval) and the use of software applications and automated online forms, as well as the use of telecommunications systems to transmit those forms.

26. With respect to criminalization, States may consider establishing, in addition to the offences established under article 5 of the Protocol, additional offences to enforce the obligations pursuant to article 7, such as failure to keep records for the required duration (where such records are not kept by the State) and failure to report transactions to the State (where records are kept by the State), and obligations pursuant to article 10, such as the filing of false or misleading applications for licences or authorizations.

27. Under article 11 of the Protocol, States parties are also required to take appropriate security and preventive measures to detect and eliminate the theft, loss or diversion of, as well as the illicit manufacturing of and trafficking in, firearms, their parts and components and ammunition, at the time of manufacture, import, export and transit through their territory, and to increase the effectiveness of import, export and transit controls, including through reinforced border controls and police and customs transborder cooperation.

28. Pursuant to article 12 of the Protocol, States parties shall exchange relevant case-specific information on producers, dealers, exporters and carriers of firearms and on organized criminal groups known to take part or suspected of taking part in illicit manufacturing of or trafficking in firearms; the means of concealment used and ways of detecting them; trafficking methods and routes; relevant legislation and practices; and any relevant scientific and technological information that could be useful to prevent, detect and investigate the offences under the Protocol and prosecute the persons involved in those illegal activities.

2. Questions for possible discussion on trafficking in firearms, their parts and components and ammunition

29. The following questions are proposed for discussion on trafficking in firearms, their parts and components and ammunition:

(a) What experiences have been had in the implementation of the system of import and export licences and authorizations and transit permits established under article 10 of the Protocol?

(b) How can differences between domestic regulations for the issuance of export, import and transit licences or authorizations be overcome and the resulting

⁷ Ibid., p. 442.

delays be avoided? What steps can be taken towards more harmonization of import, export and transit requirements?

(c) What criteria should States take into account when defining their licencing and authorization regime? What grounds for denial of import or export licences or authorizations or transit permits should be provided for?

(d) What experiences have been had in assessing the risks related to the end-use of firearms, their parts and components? What kind of controls should the competent authority undertake before issuing relevant authorizations?

(e) What safeguards should be taken to ensure that temporarily imported firearms are re-exported back to the State of origin? What can be considered a reasonable time frame for such temporary imports?

(f) What are the experiences and good practices in related areas (such as mine-action control, drug control systems) that States could draw upon to establish a functioning and effective firearms import and export control system?

D. Identification of competent authorities

1. Provisions on a national body or single point of contact

30. Implementation of the control regime set out by the Firearms Protocol requires Parties to closely cooperate at the bilateral, regional and international levels. To that end, under article 13 of the Protocol, States parties are required to identify – without prejudice to article 18, paragraph 13, of the Organized Crime Convention which requires the designation of a central authority for mutual legal assistance – a national body or a single point of contact to liaise with other States parties on matters relating to the Protocol. States parties are also required to seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition, to prevent and detect illicit manufacturing and trafficking.

2. Questions for possible discussion on identification of competent authorities

31. The following questions are proposed for discussion on identification of competent authorities:

(a) What are the functions of the national body or single point of contact to be established under article 13 of the Protocol and what technical expertise and know-how should be required for such bodies?

(b) What kind of inter-institutional coordination arrangements should be considered by States in which various institutions are charged with different aspects of the firearms problem?

(c) What experiences and best practices exist relating to the establishment and functioning of national points of contact?

(d) What are the financial, human and technical resources needed by those authorities in order to effectively perform their functions?

III. Conclusions

32. Since the entry into force of the Firearms Protocol, a number of complementary developments have taken place at the international level in the field of firearms control, in particular with the adoption in 2001 of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and the 2005 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons. A series of regional legal instruments⁸ have also been adopted during the same period.

33. UNODC has established lines of coordination and collaboration with relevant organizations and entities with the aim of strengthening partnerships and providing integrated support to States in the area of firearms control. At the global level, UNODC is a member of the Coordinating Action on Small Arms, together with 16 other entities of the United Nations family; members exchange information and discuss collaboration on ongoing initiatives through regular meetings and videoconferences.

34. At the regional level, UNODC is collaborating with the United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean of the Office for Disarmament Affairs of the Secretariat, in the field of training on firearms control and envisages joint activities in Latin America and the Caribbean to support both the ratification and implementation of the Firearms Protocol and the implementation of the Programme of Action on Small Arms and the International Instrument on Illicit Small Arms and Light Weapons. With respect to the region of Africa, UNODC is considering joining forces with the Secretariat of the Economic Community of West African States (ECOWAS) to support implementation of both the Firearms Protocol and the regional ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials. The Conference may wish to discuss ways for its secretariat to foster and strengthen durable partnerships with relevant United Nations and other entities with a firearms mandate and thus better assist States in the implementation of a firearms control regime in line with the Firearms Protocol.

35. Full implementation of an effective firearms control regime requires an appropriate legislative framework, the coordinated action of various specialized entities with appropriate staffing, as well as technical and financial resources. In that context, the Conference may wish to consider the usefulness of promoting exchanges of knowledge and expertise among regions and of developing tools, such as standardized forms, user-friendly software applications and databases to facilitate implementation by States of the Protocol's provisions, in addition to the technical guidelines and model legislation for the implementation of the Firearms Protocol that have already been initialized.

⁸ Such regional instruments include the Southern African Development Community Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region, of 2001; the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, of 2004; and the Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, of 2006.

36. The Conference may also wish to consider ways of ensuring sustained financial and technical assistance to countries in post-conflict situations and least developed countries, where porous borders facilitate the flow of illegal firearms, their parts, components and ammunitions, thus nourishing violence and conflicts. The effective functioning of a firearms control regime in those countries is crucial to addressing the issue of firearms worldwide.
