



UNODC

United Nations Office on Drugs and Crime

Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition

UNITED NATIONS OFFICE ON DRUGS AND CRIME

**Model Law against the
Illicit Manufacturing of and Trafficking
in Firearms, Their Parts and
Components and Ammunition**



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Preface*

The Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was developed by the United Nations Office on Drugs and Crime (UNODC) in response to the request of the General Assembly to the Secretary-General to promote and assist the efforts of Member States to become party to and implement the United Nations Convention against Transnational Organized Crime¹ and the Protocols thereto.² It was developed in particular to assist States in implementing a legislative regime consistent with the provisions contained in 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.³ Consequently, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in its decision 4/6, adopted at its fourth session, urged States parties to the Firearms Protocol to strengthen their national legislation in a manner consistent with the Protocol, and requested the Secretariat to facilitate, whenever possible, technical assistance to States parties facing difficulties in its implementation; and also requested the Secretariat to develop technical assistance tools to assist States parties in the implementation of the Firearms Protocol.

The Model Law is also a response to the specific technical assistance needs identified by Member States in the questionnaires/checklist used to gather information and assess the implementation of the Organized Crime Convention and the Protocols thereto,⁴ in which many States indicated the need for model legislation or guidelines in order to harmonize domestic legislation with the requirements of the Convention and its Protocols. The Model Law will both facilitate and help systematize provision of legislative assistance by the Convention as well as facilitate review and amendment of

*The present preface is intended as an explanatory note on the genesis, nature and scope of the Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition; it is not part of the text of the Model Law.

¹United Nations, *Treaty Series*, vol. 2225, No. 39574.

²*Ibid.*, vols. 2237, 2241 and 2326, No. 39574.

³*Ibid.*, vol. 2326, No. 39574.

⁴See the note by the Secretariat on an overview of technical assistance needs identified by States in their responses to the questionnaires/checklist on the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (CTOC/COP/WG.2/2009/2) and the related report on an overview of technical assistance requests made by States through the questionnaires/checklist on the implementation of the Convention (CTOC/COP/WG.2/2009/3).

existing legislation and adoption of new legislation by States themselves. It is designed to be adaptable to the needs of each State, whatever its legal tradition and social, economic, cultural and geographical conditions.

The Model Law is divided into three parts:

- Part One (Introductory provisions) contains Model Law text on the introductory provisions and definitions States may choose to include in their domestic legislation. Terms used in the Firearms Protocol are included in the definitions. Additionally, draft definitions are suggested for other terms used in the present Model Law.
- Part Two (Mandatory provisions) contains Model Law text on all the mandatory provisions of the Firearms Protocol that States are required to ensure are included in their domestic legislation. This includes chapters on preventive measures aimed at regulating the manufacturing, marking, record-keeping and international transfers of firearms, their parts and components and ammunition. The mandatory penal provisions that derive from the preventive measures and the mandatory international cooperation measures are also included in chapters in this part.
- Part Three (Non-mandatory provisions) elaborates on provisions in the Firearms Protocol on brokers and brokering activities that States are required to consider for inclusion in their national legislation. It also discusses the provision in the Protocol whereby States may adopt simplified procedures for the temporary import, export and transit of firearms, their parts and components and ammunition.

Annex I (Additional considerations) contains other provisions that States can also consider for inclusion in their national legislation. These provisions are included to assist States in developing comprehensive legislation on various aspects of firearms regulation. These suggestions stem from other international instruments and national practice.⁵

Each chapter and Model Law provision includes a commentary that explains the requirements of the Firearms Protocol and indicates the source of the provision within the Protocol. Due regard is also given to the inter-

⁵The international legal regime on firearms started to develop in the 1990s, when increasing concern for the proliferation of (illicit) firearms brought the issue of illicit manufacturing of and trafficking in firearms onto the international agenda. Since then, several global and regional instruments have been adopted, both legally and non-legally binding in nature. Most of these instruments have either preceded or influenced the adoption of the Firearms Protocol (e.g. the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials of 1997) or have been adopted after, building on and further developing the *acquis* of the Firearms Protocol (see annex II for a detailed list of instruments).

pretative notes for the *travaux préparatoires* of the Protocol,⁶ the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*,⁷ as well as the forthcoming UNODC technical guide to the implementation of the Firearms Protocol.⁸ The commentaries to the chapters and individual provisions are an integral part of the Model Law and should be read in conjunction with its provisions.

The Model Law is designed primarily to assist States in their implementation of the Firearms Protocol. It is not an exhaustive instrument for firearms control. The Model Law also does not provide suggested language for other legislative (criminal, administrative or regulatory) provisions that may need to be reviewed and adapted as a consequence of the adoption of a firearms law beyond those directly referred to in the present Model Law.

It should be emphasized that matters related to international cooperation in criminal matters, as well as crimes of participation in an organized criminal group, corruption, obstruction of justice and money-laundering, which often accompany trafficking in firearms, are contained in the Organized Crime Convention. It is therefore essential that the provisions of the Firearms Protocol be read and applied together with the provisions of the Convention and that domestic legislation is developed to implement not only the Protocol but also the Convention. In addition, any legislation on illicit manufacturing of and trafficking in firearms, their parts and components and ammunition should be in line with a State's constitutional principles, the basic concepts of its legal system and its existing legal structure and enforcement arrangements. Further, definitions used in such legislation on illicit manufacturing of and trafficking in firearms, their parts and components and ammunition should be consistent with similar definitions used in other laws. The Model Law is not meant to be incorporated as a whole and a careful review of the whole legislative context of a given State should be undertaken. In that respect, the Model Law cannot stand alone and domestic legislation also implementing the provisions of the Convention is essential for it to be effective.

States may choose to legislate with respect to a broader range of weapons and adopt additional measures to those provided for by the Convention and the Protocol to prevent and combat illicit manufacturing of and trafficking in

⁶Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of 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 (A/55/383/Add.3).

⁷United Nations publication, Sales No. E.05.V.2.

⁸The UNODC technical guide was developed by UNODC between 2007 and 2010 and will provide practical examples and advice to Member States on how to implement particular aspects of the Firearms Protocol.

firearms, their parts and components and ammunition and related transnational organized crime, bearing in mind that any investigation, prosecution or other procedures outside the scope of the Convention or the Protocol would not be covered by the various requirements to provide international cooperation.

The work on the UNODC Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition has been carried out by the Organized Crime and Illicit Trafficking Branch, Division for Treaty Affairs, of UNODC. Two consultant drafters, Clare da Silva and Sarah Parker, assisted the Office. A group of experts⁹ in the field of firearms manufacturing, licensing and trafficking prevention from a variety of legal and geographical backgrounds were consulted to review the draft of the Model Law.

⁹Experts from the following countries were invited to participate: Argentina, Australia, Belgium, Brazil, Chile, China, Croatia, Ethiopia, Guatemala, India, Italy, Kenya, Mexico, Nigeria, Peru, Saint Vincent and the Grenadines, Senegal, Spain, the former Yugoslav Republic of Macedonia, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America. The following organizations were also represented: the Counter-Terrorism Committee Executive Directorate, the United Nations Coordinating Action on Small Arms, the East African Community, the European Commission, the International Criminal Police Organization (INTERPOL), the Organization for Security and Cooperation in Europe, the Southern African Regional Police Chiefs Cooperation Organization and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. Civil society and private sector participants included the Group for Research and Information on Peace and Security, FN Herstal, the International Action Network on Small Arms, the Italian National Association of Arms and Munitions Manufacturers (ANPAM), Saferworld, the Small Arms Survey and the World Forum on the Future of Sport Shooting Activities.

	<i>Page</i>
B. Records of manufacture and disposal	25
Article 14. Information on items manufactured	25
Article 15. Information on firearms disposed of other than by destruction	27
Article 16. Information on ammunition disposed of other than by destruction.	28
Article 17. Information on seized and confiscated firearms, their parts and components and ammunition.	29
[Article 18. Information on deactivated firearms]	30
C. Administrative requirements	31
Article 19. Duration of record-keeping.	31
[Chapter VI. Deactivation of firearms].	33
[Article 20. Prohibition to deactivate a firearm without authorization].	33
[Article 21. Prior authorization to deactivate a firearm].	34
[Article 22. Method of deactivation]	35
[Article 23. Verification of deactivation]	36
[Article 24. Surrender of licence].	37
Chapter VII. Import, export and transit of firearms, their parts and components and ammunition	38
Licensing [authorization] of import, export and transit of firearms, their parts and components and ammunition	38
Article 25. Prohibition of import, export and transit of firearms, their parts and components and ammunition without a licence [authorization].	38
Article 26. Verified or validated documents	39
Article 27. Application for an export licence [authorization] ..	40
Article 28. Application for an import licence [authorization] ..	41
Article 29. Particulars of an export or import licence [authorization]	42
Article 30. Delivery verification	43
Section B. Penal and provisional provisions	44
Chapter VIII. Criminal offences: illicit manufacturing	48
Article 31. Illicit manufacturing of firearms.	48
Article 32. Illicit manufacturing of parts and components	49
Article 33. Illicit manufacturing of ammunition.	50
Chapter IX. Criminal offences: illicit trafficking.	51

	<i>Page</i>
Article 34. Transnational transfers without legal authorization. .	51
Article 35. Transnational transfers of unmarked/improperly marked firearms	51
Chapter X. Criminal offences: marking	53
Article 36. False markings	53
Article 37. Removal and alteration of firearm markings	54
[Chapter XI. Criminal offences: offences specific to deactivated firearms]	56
[Article 38. Illicit deactivation]	56
Chapter XII. Criminal provisions: ancillary offences	58
Article 39. Attempts	58
Article 40. Participating as an accomplice	59
Article 41. Organizing, directing, aiding, abetting, facilitating or counselling.	59
Chapter XIII. Seizure, confiscation and disposal.	60
A. Enabling confiscation: search and seizure.	61
B. Confiscation and forfeiture	61
C. Destruction or other authorized form of disposal.	62
Chapter XIV. Jurisdiction	64
Article 42. Application of this Law	64
Article 43. Extradition	66
Section C. International cooperation.	67
Chapter XV. Information exchange and international cooperation	67
A. National point of contact	67
Article 44. Establishment of a national point of contact.	67
B. International cooperation	69
C. International cooperation for the purposes of tracing.	71
Article 45. International tracing requests	71
Part Three. Non-mandatory provisions	73
Section A. Must-consider provisions	73
Chapter XVI. Brokers and brokering activities	73
A. Registration of brokers	74

	<i>Page</i>
Article 46. Registration requirement	74
Article 47. Registration application	75
Article 48. Registration [authorization] criteria	75
Article 49. Review of a decision not to register [authorize] an applicant	76
Article 50. Validity of broker registration and renewal	76
Article 51. Notification of changes in information furnished by a registered broker	77
Article 52. Cancellation of registration as a broker	77
Article 53. Record-keeping	77
B. Licence for [authorization of] brokering activities	78
Article 54. Requirement for a brokering licence	78
Article 55. Application for a brokering activity licence	79
Article 56. Criteria for assessing a brokering activity licence application	80
Article 57. General licences	80
Article 58. Revocation or amendment of a brokering activity licence [authorization].	81
Article 59. Licence conditions for a brokering activity licence . .	81
Article 60. Validity of a brokering activity licence [authorization]	82
Section B. Optional provisions	83
Chapter XVII. Simplified procedures for temporary import, export and transit	83
Article 61. Simplified procedures for a temporary import, export or transit permit	84
Article 62. Temporary export permit	84
Article 63. Temporary import permit	86
Article 64. Temporary transit permit	88
Article 65. Record-keeping	88
Article 66. Associated offences	89
Article 67. Temporary import, export or transit without permit or authorization	89
Article 68. Exporting to a State other than the State from which the firearms were temporarily imported	89
Article 69. Breaching the validity of a temporary export, import or transit permit	90
Article 70. Giving false or misleading information on temporary export, import or transit permit forms . .	90

	<i>Page</i>
Annexes	
I. Additional considerations	91
II. List of relevant instruments and documents	141
III. National deactivation standards	149
IV. Destruction methods	155

Part One. Introductory provisions

Commentary

Part one contains Model Law text on the introductory provisions and definitions States may choose to include in their domestic legislation.

Chapter I. General provisions

Commentary

Depending on the national legal system and legislative drafting practice, States may choose to introduce a preamble and provisions setting out the general scope of the law and its adoption process. The following draft articles are designed to assist States in drafting such preliminary and introductory provisions of their domestic legislation and are not mandatory under 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.

Article 1. Title

The present Law may be cited as the [*title of the law, e.g. Law on Firearms, Their Parts and Components and Ammunition*] of [*name of State*] [*year of adoption*].

Commentary

The formulation of this provision depends on the national legal system and should be adapted accordingly. This article is redundant when there is a separate law promulgating the present law on illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. In such a case the title of the law will be mentioned in the promulgation law. Examples of titles are:

- Arms and Ammunition Act
- Firearms Act
- Weapons Law

Article 2. Commencement

The present Law shall come into force on [date].

Commentary

States should follow their legislative procedures governing commencement and this article of the Model Law should be adapted accordingly.

Article 3. General purposes and application

1. The purposes of this Law are:

(a) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;

(b) To ensure investigation and prosecution of the offences established under the present Law; and

(c) To promote, facilitate and strengthen national and international cooperation in order to meet those objectives.

Commentary

Source: Protocol, articles 2 and 4, paragraph 1.

In addition to general provisions regarding the title and commencement of the law, in some jurisdictions it may be appropriate to include provisions addressing the general purposes and application of the law. A national law on firearms should be sufficiently comprehensive to prevent and combat illicit manufacturing of and trafficking in firearms. This is in line with decision 4/6 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in which it urges States parties to strengthen their national legislation in a manner consistent with the Protocol.

Article 4 limits the applicability of the Firearms Protocol to the prevention, investigation and prosecution of offences that are transnational in nature and involve an organized criminal group. However, those requirements are not part of the definition of the specific offences set out in article 5 of the Protocol and national laws should establish those offences independently of the transnational nature or the involvement of an organized criminal group (see the Convention, article 34, paragraph 2).

2. Except as otherwise stated in the present Law, the provisions of this Law shall apply to all commercially traded firearms, their parts and components and ammunition, and to the investigation and prosecution of the offences established under this Law.

Commentary

Article 4, paragraph 2, of the Protocol stipulates that the Protocol shall not apply to state-to-state transactions or state transfers where the application of the Protocol would prejudice the right of a State party to take action in the interest of national security consistent with the Charter of the United Nations. The *Legislative Guide for the Implementation of 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 clarifies that the words “state-to-state transactions” refer only to transactions undertaken by the State in its sovereign capacity and excludes those transactions where a State is acting in its commercial capacity (see the *Legislative Guide*, paragraph 64).

¹United Nations publication, Sales No. E.05.V.2, part four.

Chapter II. Definitions

Commentary

There is no mandatory requirement that terms used in the Protocol be defined in domestic law, although national legislatures may find it necessary to adopt or amend legislative definitions to ensure that other legislative requirements apply to the full range of subject matter specified by the Protocol.

This chapter only contains definitions of terms that are specific to illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. General terms (for example, “accomplice”, “aiding and abetting” and so on) are not included, as they should already be incorporated into the national law (with all the national variations possible).

Where possible, definitions are derived from the Protocol, the Convention or other existing international instruments. Where States have already developed definitions for terms included in this Model Law, these should be reviewed to ensure that the existing definitions are suitable for it. If the national legislation does not contain the necessary definitions, then it should be modified accordingly. States may choose to adopt stricter measures than the ones provided for by the Protocol or to legislate with respect to a broader range of weapons. However, in general it is advisable for States to adopt definitions that are consistent with the Convention and the Protocol in order to facilitate cooperation with other countries in the investigation, prosecution or other procedures relating to activities under the scope of the Convention and its Protocol and to ensure compliance with the various international cooperation requirements.

Some jurisdictions prefer to include a chapter on definitions in the law, either at the beginning or at the end of the law. In other jurisdictions the criminal code or law contains a general chapter with definitions, in which case some or all of the definitions mentioned below can be included. In some cases, States may find it advisable to leave the interpretation to the courts.

Article 4. Definitions

For the purposes of this Law, the following definitions shall apply:

(a) “Ammunition” shall mean the complete round and shall include [*insert those components which are subject to authorization or legal regulation under existing national legislation, e.g. cartridge cases, primers, propellant powder, bullets or projectiles*] that are used in a firearm;

Commentary

Source: Protocol, article 3, subparagraph (c).

The Protocol definition of “ammunition” includes all finished and assembled types of ammunition, including its components, when those components are themselves subject to authorization/regulation by the State “provided that those components are themselves subject to authorization in the respective State Party” (see article 3, subparagraph (c)).

The Protocol requires a certain degree of regulation of the components of ammunition, since these can easily be transferred for assembly at destination. However, some States find this regulatory burden too heavy and avoid regulation of all components, thus only regulating assembled cartridges. Some countries may also already have a definition of “explosives” in their national legislation, as a consequence of their participation in one of the regional instruments on firearms (for example, the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials) and may therefore already have regulated or restricted the primer and the propellant as explosive materials (see the *Legislative Guide*, paragraphs 52-54).

(b) “Antique firearm” shall mean a firearm manufactured during or before the year 1899;

Commentary

Source: Article 3, subparagraph (a), of the Protocol stipulates that antique firearms and their replicas shall be defined according to domestic law, but that “in no case ... shall antique firearms include firearms manufactured after 1899”.

(c) “Broker” shall mean a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction involving firearms in return for some form of benefit, whether financial or otherwise;

Commentary

The Protocol does not define the terms “broker” and “brokering activities”. The report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (A/62/163 and Corr.1) provides some useful guidance. In the absence of an internationally agreed definition of “broker”, the present definition has been adapted from the report on brokering.

(d) “Brokering activities” shall mean:

- (i) Serving as a finder of business opportunities to one or more parties to a transaction involving firearms, their parts and components and ammunition;
- (ii) Putting relevant parties to a transaction involving firearms, their parts and components and ammunition in contact;
- (iii) Assisting parties in proposing, arranging or facilitating agreements or possible contracts involving firearms, their parts and components and ammunition between them;
- (iv) Assisting parties to a transaction involving firearms, their parts and components and ammunition in obtaining the necessary documentation; or
- (v) Assisting parties to a transaction involving firearms, their parts and components and ammunition in arranging the necessary payments;

Commentary

Source: This definition is adapted from the report on brokering (A/62/163 and Corr.1, paragraph 9).

This proposed definition focuses on the direct activities of the broker and does not include closely associated activities that may be facilitated by brokers as part of the process of arranging or facilitating a potential transaction but are not directly undertaken by them. This could include, for example, transport, freight forwarding, storage, finance and insurance (the report on brokering elaborates on “closely associated activities” in paragraph 10). Controls on the actions of these indirect actors (such as banks or insurance or transport companies) are generally done through separate regulatory mechanisms and legislative regimes. States, however, can choose to draft a broader definition of brokering activities and include the aforementioned closely associated activities.

(e) “Confiscation”, which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

Commentary

Source: Convention, article 2, subparagraph (g).

Option 1

(f) “Deactivated firearm” shall mean a firearm that has been deactivated;

Commentary

Source: The principles of deactivation are outlined in article 9, subparagraph (a), of the Protocol.

A definition of “deactivated firearm” is only relevant and necessary where a distinction is made between deactivated firearms and operative firearms, that is, where a State does not recognize a deactivated firearm as a firearm for the purposes of its law(s) governing firearms.

In some jurisdictions the phrase “rendered permanently inoperable” is used rather than “deactivated”.

Option 2

(f) “Deactivated firearms” shall mean objects corresponding to the definition of a firearm that have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or a modification that would permit the firearm to be reactivated in any way;

Commentary

Source: Article 13, subparagraph (b)(i)(a), of directive 2008/51/EC of the European Parliament and Council of the European Union amending Council directive 91/477/EEC on control of the acquisition and possession of weapons. The same definition is contained in article 2, paragraph 4, of the proposal for a regulation of the European Parliament and of the Council of the European Union implementing article 10 of the United Nations Firearms Protocol and establishing export authorization, import and transit measures for firearms, their parts and components and ammunition.

(g) “Exporter” shall mean any person engaged in the business of exporting or sending firearms, their parts and components and ammunition from [name of State];

Commentary

The draft EC proposal implementing article 10 of the Firearms Protocol defines “exporter” as a person who “holds the contract with the consignee in the third country and has the power for determining the sending of the item out of the customs territory” (article 2, paragraph 6).

(h) “Firearm” shall mean 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, excluding antique firearms or their replicas;

Commentary

Source: Protocol, article 3, subparagraph (a).

The definition of “firearm” will be a critical element of domestic implementing legislation. States will in many cases already have one or more domestic legal definitions. States that do not already have a definition in domestic law should include one that at a minimum complies with the definition in the Protocol in order to ensure the application of the various forms of cooperation under the Protocol and the Convention (see the *Legislative Guide*, paragraphs 34 and 35).

Some global and regional instruments and also some national legislations have adopted a broader scope as they apply to small arms and light weapons. These include, for example, the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (paragraph 4), the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (article 1) and 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 (article 1). Other instruments refer to firearms, parts and components, explosives and ammunition, such as the Firearms Protocol, the Inter-American Convention and the Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) region. States that have already adopted national laws based on a small arms and light weapons definition should be aware of the differences and adapt accordingly when drafting their own national legislation using this Model Law.

(i) “Freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

Commentary

Source: Convention, article 2, subparagraph (f).

(j) “Importer” shall mean any person engaged in the business of importing or bringing firearms, their parts and components and ammunition into [*name of State*];

(k) “Illicit manufacturing” shall mean the manufacturing or assembly of firearms, their parts and components or ammunition:

- (i) From parts and components illicitly trafficked;
- (ii) Without a licence or authorization from [*name of licensing authority*]; or

(iii) Without marking the firearms at the time of manufacture, in accordance with this Law;

Commentary

Source: Protocol, article 3, subparagraph (d).

(l) “Illicit trafficking” shall mean the import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition from or across the territory of one State to that of another State if any one of the States concerned does not authorize the said import, export, acquisition, sale, delivery, movement or transfer of the firearms, their parts and components and ammunition or if the firearms are not marked in accordance with this Law;

Commentary

Source: Protocol, article 3, subparagraph (e).

(m) “Manufacture” consists of the development, production, [reverse engineering,] assembly and licensed production of firearms, their parts and components and ammunition, as well as the conversion or transformation of something [that is not a firearm] into a firearm [and the reactivation of a deactivated firearm];

Commentary

Source: The Protocol defines “illicit manufacturing”, but not the term “manufacturing”. The definition in this Model Law is adapted from the definition of “manufacturing” included in annex I to the report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V (A/CONF.192/2). The text in square brackets does not form part of the original definition.

Under the Protocol, it is mandatory for States parties that do not recognize deactivated firearms as “firearms” to take the necessary measures to prevent reactivation. Therefore, the inclusion of the phrase “and the reactivation of a deactivated firearm” is only necessary where a State has deactivation standards in place that do not require deactivated firearms to be rendered permanently inoperable and that contemplate the reactivation of a deactivated firearm.

(n) “Parts and components” shall mean any element or replacement element designed specifically 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;

Commentary

Source: Protocol, article 3, subparagraph (b).

(o) “Person” shall mean a natural or a legal person;

(p) “Reactivation” shall mean the process of restoring the ability of a deactivated firearm to function as an operative firearm;

Commentary

The Protocol clearly stipulates that one of the principles of deactivation is that “all essential parts of a deactivated firearm are to be rendered permanently inoperable” such that the firearm cannot be reactivated and it is mandatory for any States parties that do not recognize a deactivated firearm as a “firearm” to take the necessary measures to prevent reactivation (Protocol, article 9, subparagraph (a)). However, in countries where deactivation standards permit the reactivation of a deactivated firearm into a functioning weapon, provision should be made to ensure that deactivated firearms are not reactivated without prior authorization and that the unauthorized reactivation of a firearm constitutes “illicit manufacturing”, that is, “reactivation” constitutes “manufacture” and thus is captured by the provisions regulating manufacturing.

(q) “Responsible person” shall mean the representative of a legal person;

(r) “Tracing” shall mean 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 analysing illicit manufacturing and trafficking;

Commentary

Source: Protocol, article 3, subparagraph (f).

(s) “Transit” shall mean the conveyance through [*name of State*] to another country of firearms or ammunition that have been imported.

Terms not defined in this article shall be interpreted consistently with [*title of the relevant legislation regarding the interpretation of regulatory language, e.g. the Interpretation Act*].

Part Two. Mandatory provisions

Commentary

Part Two contains Model Law text on all the mandatory provisions of the Firearms Protocol that States need to ensure are included in their domestic legislation. This includes chapters on preventive measures aimed at regulating the manufacturing, marking, record-keeping and international transfer of firearms, their parts and components and ammunition and chapters on the mandatory penal provisions that derive from the preventive measures and the mandatory international cooperation measures.

Section A. Preventive measures

Chapter III. Manufacturing

Commentary

This chapter addresses the requirements under the Protocol to prevent the illicit manufacturing of firearms, their parts and components and ammunition. The Protocol implicitly requires that manufacturers hold a licence or other authorization to manufacture firearms and ammunition, but leaves it to States' discretion to require a licence or authorization for the manufacture of parts and components. The Protocol also implicitly requires States to establish a competent authority responsible for issuing a licence or authorization to manufacture firearms.

The Protocol does not specify in detail the form the system of licensing of manufacturers established by a State must take. This is left largely to the discretion of States. Annex I (Additional considerations) below provides additional text drafters can consider for inclusion in their national legislation. Further optional guidance is also available in the International Small Arms Control Standards, module 03.10, "National controls over the manufacture of small arms and light weapons".

Article 5. Prohibition to manufacture without a licence

1. No person shall manufacture firearms or ammunition unless that person does so:

- (a) Under and in accordance with a licence issued by [*name of licensing authority*] in accordance with this Law; or
- (b) As otherwise authorized by law.

Commentary

Mandatory provision

Source: Protocol, articles 5, paragraph 1 (a), and 3, subparagraph (d)(ii).

The Protocol presupposes the existence of a licensing authority or other competent authority by virtue of the definition of “illicit manufacturing”, which includes manufacturing “without a license or authorization from a competent authority”. The establishment or existence of a competent authority responsible for authorizing or licensing manufacturers is mandatory. In some jurisdictions the power/authority to grant a licence to manufacture firearms is given to a designated officer within the police force (e.g. the commissioner of police). In other jurisdictions, the relevant ministry will be responsible. Suggestions for the non-mandatory content of legislation or accompanying regulations detailing the application procedure are included in annex I (article 3).

2. No person shall manufacture parts and components unless that person does so:

- (a) Under and in accordance with a licence issued by [*name of licensing authority*] in accordance with this Law; or
- (b) As otherwise authorized by law.

Commentary

Mandatory provision

Source: Protocol, articles 5, paragraph 1 (a), and 3, subparagraph (d).

The Protocol does not expressly require States to establish a system of manufacturing licensing or authorization (as it does for export and import (Protocol, article 10, paragraph 1)). However, article 3, subparagraph (d), of the Protocol effectively creates such a requirement by making the failure to have a “licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place” an element of the offence of “illicit manufacturing”. This requirement is limited to firearms and ammunition, and States have the discretion to licence the manufacture of parts and components by virtue of the final sentence: “Licensing and authorization of the manufacture of parts and components shall be in accordance with domestic law.” As noted in the *Legislative Guide* (paragraph 189), the effect is that countries may impose manufacturing licences or authorizations for the making of parts and components, but are not required to do so.

If a State chooses to require a person to obtain a licence to manufacture firearms and ammunition as well as parts and components, then paragraphs 1 and 2 could be amalgamated and the following alternative wording could be adopted:

1. No person shall not manufacture firearms, their parts and components or ammunition unless that person does so:

(a) Under and in accordance with a licence issued by [*name of licensing authority*] in accordance with this Law, or

(b) As otherwise authorized by law.

Article 6. Licence conditions for a manufacturer's licence

1. A manufacturer's licence is subject to any conditions imposed on the licence by [*name of licensing authority*].

2. The holder of a manufacturer's licence shall comply with any condition to which the licence is subject.

3. Without prejudice to paragraph 1 of this article, each licence is subject to the following conditions:

(a) The licensee shall comply with the relevant marking requirements in article 7 of this Law;

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 1 (a), obliges States to require marking at the time of manufacture. Detailed requirements are provided in chapter IV of this Model Law.

(b) The licensee shall comply with the relevant record-keeping requirements in chapter V of this Law;

Commentary

Mandatory provision

Source: Protocol, article 7.

This provision obliges States to ensure the maintenance of certain information necessary to trace illicitly manufactured or trafficked firearms. Detailed requirements are provided in chapter V of this Model Law.

(c) The licensee must comply with the storage requirements set out in [accompanying schedule or regulations to this Law containing storage requirements for manufacturers or insert the name of the law or other regulations governing safe storage at the time of manufacture].

Commentary

Mandatory provision

Source: Protocol, article 11, subparagraph (a).

This provision requires States to take appropriate measures “to require the security of firearms, their parts and components and ammunition at the time of manufacture”. The Protocol does not provide details of the measures to be taken and it is up to States to determine what measures are appropriate. It is suggested that the security measures determined by the State should be included in an accompanying schedule or regulations to the Law or in separate guidelines, so they can be easily updated.

Additional, non-mandatory licence conditions are suggested in annex I (article 7).

Chapter IV. Marking

Commentary

Article 8 of the Protocol obliges States to require marking of firearms at the time of manufacture, import and transfer from government to civilian stocks. Such markings assist in the identification and tracing of firearms. The Protocol also requires States to encourage manufacturers to develop measures against the removal or alteration of markings. Annex I (Additional considerations) provides further suggested text that drafters can consider for inclusion in their national legislation, including non-mandatory provisions on the marking of parts and components and ammunition and regulatory provisions on the method of marking.

A. *Initial markings*

Article 7. Marking of firearms at the time of manufacture

1. Every manufacturer of firearms shall apply an identification mark to each firearm, at the time of manufacture, in accordance with paragraph 2 of this article.

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 1 (a).

Drafters may need to consider providing greater detail regarding what is intended or required by the phrase “at the time of manufacture” (see the *Legislative Guide*, paragraph 86).

The Firearms Protocol does not specify who should apply the marking at the time of manufacture. This draft article of the Model Law imposes the obligation to mark firearms at the time of manufacture on the manufacturer. In some countries, the State itself also applies a mark at the time of manufacture.

States choosing to implement the International Tracing Instrument or the Programme of Action on Small Arms and Light Weapons are also required to mark firearms at manufacture.

Annex I (articles 23 and 26) provides optional suggested text regarding the marking of parts and components and ammunition at the time of manufacture that drafters can consider for inclusion in their national legislation.

2. The unique identification mark applied to every firearm manufactured in [*name of State*] in accordance with paragraph 1 of this article shall indicate:

- (a) That [*name or initials of State*] is the country of manufacture;
- (b) The name of the manufacturer; and
- (c) The unique serial number.

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 1 (a).

The Protocol requires States to either require a unique marking on manufactured firearms that provides the name of the manufacturer, the country or place of manufacture and the serial number or else to maintain any alternative unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code, permitting ready identification of the country of manufacture. Only where the marking system predates the Protocol are States permitted to use geometric symbols in combination with numeric and/or alphanumeric code to mark firearms.

The International Tracing Instrument contains the same requirement (paragraph 8 (a)) that States either require a unique marking providing the name of the manufacturer, country of manufacture and serial number or else maintain any alternative unique user-friendly marking with simple geometric symbols in combination with numeric and/or alphanumeric code, permitting ready identification of the country of manufacture.

The Programme of Action on Small Arms and Light Weapons also requires (chapter II, paragraph 7) that the country of manufacture, the manufacturer and the serial number be marked on each firearm at the time of manufacture.

In addition to the above considerations, the International Tracing Instrument provides (paragraph 8 (a)) that States will “encourage” the marking of additional information at the time of manufacture, such as the year of manufacture, weapon type/model and calibre.

Since the Protocol requires that records of manufactured firearms are kept for at least 10 years (see draft article 16 of this Model Law), a mark indicating the year of manufacture is important for ensuring compliance with the record-keeping obligation. European Community directive 2008/51/EC (amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons) provides that the marking made at the time of manufacture should include the year of manufacture if this is not part of the serial number (article 4,

paragraph 2 (a)). The ECOWAS Convention (article 18, paragraph 2 (a)), the Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons (paragraph II. 2) and the Organization for Security and Cooperation in Europe (OSCE) Document on Small Arms and Light Weapons (section II. 2 (a)) also require the year of manufacture to be indicated in the markings made at the time of manufacture.

The *Legislative Guide* (paragraph 71) notes that States can take into account additional identifying characteristics such as make, model, type and calibre to enhance the uniqueness of the marking. Reference is also made to the characteristics used by the International Criminal Police Organization (INTERPOL) in its Firearms Tracing System (formerly known as IWeTS), which include make, model, calibre, barrel length and number of shots (though this is not appropriate or useful for all types of firearm).

Accordingly, States may consider requiring the following additional markings to be made at the time of manufacture in addition to the above mandatory markings listed in article 7, paragraph 2 (a)-(c), of the Model Law: the year of manufacture, the make, the type or model and the calibre of the firearm. If the country of import and the name of the importer are known at the time of manufacture, this can also be marked on the firearm. Under the ECOWAS Convention, the markings to be applied at the time of manufacture should include “information concerning the purchaser’s identity and the country of destination ... if known at the time of manufacture” (article 18, paragraph 2 (a)).

The Firearms Protocol does not indicate where or how firearms should be marked. Nor does it specify whether the complete name of the manufacturer should be marked or if the manufacturer’s trademark is sufficient. While this level of technical detail may not appear in a country’s principal legislation or firearms law, it should be specified in subsidiary regulations or guidelines. Some regional instruments, including the Nairobi Protocol and the SADC Protocol, do specify how and where markings should be applied and States are encouraged to refer to those instruments as well as to the forthcoming UNODC technical guidelines and the International Small Arms Control Standards, module 05.30, “Marking and record-keeping”, for further guidance on the technical aspects of firearms marking.

B. Additional markings

Article 8. Marking of firearms at the time of import

1. Every person or public service agency that imports a firearm shall ensure that the firearm is marked in accordance with paragraph 2 of this article within [... days] of being imported into [name of State].

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 1 (b).

The Protocol requires that simple markings be applied to imported firearms, but does not specify when such markings should be made. Accordingly, it is up to States to determine when or at what stage of the import process the markings should be made. Further optional guidance on this is available in the International Small Arms Control Standards, module 05.30, “Marking and record-keeping”.

Article 8, paragraph 1 (b), of the Protocol stipulates that import markings “need not” be applied to temporary imports of firearms for verifiable lawful purposes. This provision applies in cases where States avail themselves of the option established in article 10, paragraph 6, to adopt simplified procedures for the temporary import and export and the transit of firearms, their parts and components and ammunition for verifiable lawful purposes (see chapter XVII (Simplified procedures for temporary import, export and transit) of this Model Law). Accordingly, States have the option to introduce a simplified regime for certain temporary transfers and not to apply import markings to a firearm that is imported temporarily for verifiable lawful purposes. Examples of “verifiable lawful purposes” are provided in article 10, paragraph 6, and include hunting, sport shooting, evaluation, exhibitions or repairs.

2. The identification mark applied to every firearm imported into [*name of State*] in accordance with paragraph 1 of this article shall indicate:

(a) The country of import [*name of State*];

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 1 (b).

Paragraph 8 (b) of the International Tracing Instrument also requires a marking on imported firearms permitting identification of the country of import.

(b) The year of import;

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 1 (b).

The Protocol requires that the year of import be indicated in the marking applied at import only “where possible”. Paragraph 8 (b) of the International Tracing Instrument also requires a marking on imported firearms permitting identification of the year of import “where possible”.

(c) Where:

- (i) The existing identification mark on the imported firearm does not provide all of the information listed in article 7 of this Law; or
- (ii) The imported firearm does not bear an identification mark at all; the information listed in article 7 of this Law.

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 1 (b).

Article 8, paragraph 1 (b), states that, if an imported firearm does not bear a unique marking, such a marking must be made at the time of manufacture. The Legislative Guide (paragraph 74) indicates that where an imported firearm does not already have a manufacturing mark that complies with the basic requirements of article 8, paragraph 1 (a), such a mark must be placed on the firearm. In other words, the unique marking to be affixed to an imported firearm that does not already have a marking, must, as a minimum, include all the information required at the time of manufacture.

Further optional guidance is available in the International Small Arms Control Standards, module 05.30, “Marking and record-keeping”.

The Inter-American Convention (article VI, paragraph 1 (b)) requires appropriate markings on imported firearms that permit the identification of the importer’s name and address. In addition to the markings specified in subparagraphs (a)-(c), as required under the Protocol, States may consider requiring the name or identity of the importer and the year of import be marked on a firearm at import (see article 3, paragraph 2, of the Model Legislation on the Marking and Tracing of Firearms of the Organization of American States).

*Article 9. Marking at the time of transfer from
government stocks to civilian use*

1. Every public service agency that transfers a firearm from government stocks to permanent civilian use shall ensure that the firearm is marked in accordance with paragraph 2 of this article before the transfer takes place.

2. The identification mark applied to every firearm transferred from government stocks to permanent civilian use in accordance with paragraph 1 of this article shall identify [name of State] as the country where the transfer is taking place.

3. Where a firearm to be transferred from government stocks to permanent civilian use does not bear an identification mark at all or the existing

identification mark does not include all of the following information, the firearm shall be marked with the following information:

- (a) The country of manufacture;
- (b) The name of the manufacturer; and
- (c) The unique serial number.

Commentary

Mandatory provision

Source: Protocol, article 8, paragraph 1 (c).

The International Tracing Instrument also requires that small arms and light weapons transferred from government stocks to permanent civilian use that are not marked in a manner that allows tracing be marked in such a way as to permit identification of the country from whose stocks the transfer is made. European Council directive 2008/51/EC amending Council directive 91/477/EEC on control of the acquisition and possession of weapons (revised article 4, paragraph 2) also requires that Member States “ensure, at the time of transfer of a firearm from government stocks to permanent civilian use, the appropriate unique marking permitting identification by States of the transferring country”.

With respect to paragraph 3, there is no express requirement under the Protocol that States must ensure that firearms transferred from government stocks to permanent civilian use bear identification markings other than the country of transfer. However, this may be because there is an assumption that all firearms will have been marked at the time of manufacture or import (in accordance with article 8, paragraph 1 (a) and (b), of the Protocol). States should ensure that firearms to be transferred from government stocks to permanent civilian use are marked with the appropriate manufacture and import markings prior to transfer (see the *Legislative Guide*, paragraph 88, and the International Small Arms Control Standards, module 05.30, “Marking and record-keeping”).

Article 10. Marking at the time of disposal other than by destruction

1. [Name of competent authority] shall ensure that every [seized or confiscated] firearm disposed of other than by destruction in accordance with chapter XIII of this Law is marked in accordance with paragraph 2 of this article before the disposal takes place.

2. The identification mark applied to a firearm disposed of other than by destruction in accordance with paragraph 1 of this article shall:

(a) Where the form of disposal is deactivation, be in accordance with article 11 of this Law;

(b) Include the information listed in article 7 of this Law, where a form of disposal is used other than deactivation and:

- (i) The existing identification mark on the firearm to be disposed of does not provide all of the information listed in article 7 of this Law; or
- (ii) The firearm to be disposed of does not bear any identification mark at all.

Commentary

Mandatory provision

Source: Protocol, article 6, paragraph 2.

The Inter-American Convention requires States to apply markings to any firearms confiscated or forfeited that are retained for official use (and are therefore not destroyed or disposed of) (article VI, paragraph 1 (c)).

The Protocol does not specify the nature of the marking required for disposed firearms. It simply states that disposal other than by destruction of confiscated firearms may be officially authorized “provided that the firearms have been marked” and the methods of disposal have been recorded (article 6, paragraph 2). Presumably, the requirement is that they have a unique identification mark containing, as a minimum, the requirements reflected in article 8, paragraph 1 (a)—name of manufacturer, country or place of manufacture and serial number—thus it is a reference to an existing manufacturer’s marking, not a requirement that a new marking be affixed, unless there is no pre-existing identification mark.

Where the method of disposal is deactivation and a State does not recognize a deactivated firearm as a “firearm” under its domestic law, States may consider requiring that a deactivation marking be applied upon disposal as required under article 9, subparagraph (c), of the Protocol.

[Article 11. Marking at the time of deactivation

1. Where a firearm has been deactivated in accordance with article 22 of this Law and a certificate verifying the deactivation has been issued by [name of competent authority] in accordance with article 23 of this Law, the person [manufacturer, dealer or gunsmith or other authorized person] who deactivated the firearm shall [option 1: stamp a visible mark on the deactivated firearm in accordance with paragraph 2 of this article] and/or [option 2: ensure that the deactivated firearm is marked by [designated proof house]] in accordance with [title of existing technical specifications or regulations governing proof house marking].

Commentary

Mandatory provision

Article 9, subparagraph (c), of the Protocol stipulates that verification by the competent authority that a firearm has been deactivated is to include a certificate attesting to the deactivation of the firearm or else “a clearly visible mark to that effect stamped on the firearm”. Good practice suggests that both a certificate and an appropriate marking should be required. Those States which are members of the Permanent International Commission for Firearms Testing (CIP) may require that an appropriate mark be made by an accredited proof house before a firearm can be classified as a “deactivated firearm”. In such cases, option 2 may be utilized. In other States it may be sufficient for the person carrying out the deactivation to mark the deactivated firearm appropriately. In that case, option 1 may be utilized.

2. The identification mark applied to every firearm deactivated in accordance with paragraph 1 of this article shall indicate that the firearm has been deactivated [in accordance with article 22 of this Law].]

Commentary

Mandatory provision

Source: Protocol, article 9, subparagraph (c).

This provision states that, as part of the verification process, the competent authority must produce a certificate or record attesting to the deactivation of the firearm or else a clearly visible mark to that effect must be stamped on the firearm.

Although it is not required under the Protocol, States may also consider including the year of deactivation and the country of deactivation in the deactivation marking.

Chapter V. Record-keeping

Commentary

This chapter addresses the record-keeping requirements under article 7 of the Protocol. The Protocol requires States to “ensure the maintenance” of certain information pertaining to firearms and, where feasible, their parts and components and ammunition. However, the Protocol does not specify whether such records should be kept by the State itself or by persons and entities engaged in manufacturing, importing, exporting and so on. It is up to each State to determine whether records should be kept by the State and/or by persons and entities engaged in firearms-related activities. Annex I (Additional considerations) provides further suggested text that drafters can consider for inclusion in their national legislation.

The following draft provisions provide two alternatives. Option 1 should be used when the State itself has primary responsibility for maintaining records. In this instance, the State’s obligation to keep records extends to recording details of all firearms manufactured and all transactions involving firearms. Option 2 should be used where persons and entities engaged in firearms-related activities have the primary responsibility for maintaining records. In this instance, the State’s obligation to keep records is limited to information obtained through licensing applications and inspections.

This chapter does not contain provisions regarding keeping records relating to state-held firearms. Although not mentioned specifically in the Protocol, a comprehensive record-keeping system that facilitates tracing will need to include records of state-held stocks and their movement. While such provisions would not normally appear in national legislation on firearms, States should consider including provisions regarding the record-keeping of state-held weapons in defence acts or administrative guidelines and army/police manuals governing the management of inventory. Further optional guidance on this issue may be found in the International Small Arms Control Standards, module 05.30, “Marking and record-keeping”.

A. *Records of transactions*

Article 12. Information on international transactions in firearms

[Option 1: [Name of licensing authority]] [Option 2: Every licensed importer or exporter, as appropriate,] shall keep records of all firearms transferred under a licence granted under this Law, including:

- (a) Where the firearms are exported from [*name of State*]:
 - (i) Date of issue of the export licence or authorization;
 - (ii) Date of expiration of the export licence or authorization;
 - (iii) The country of import;

- (b) Where the firearms are imported into [*name of State*]:
 - (i) Date of issue of the import licence or authorization;
 - (ii) Date of expiration of the import licence or authorization;
 - (iii) The country of export;
 - (iv) The import markings applied in accordance with article 8 of this Law;

- (c) [Full details of the route to be taken to the final destination, including] any transit countries and ports of entry and exit;

- (d) Name of the final recipient (if different from the importer) [*insert the following as appropriate: address, country of residence, citizenship if individual, name of responsible person or representative if commercial or government*];

- (e) Quantity of firearms for export listed by classification-description;

- (f) Additional descriptive information, as applicable such as [*insert the following as desired or appropriate: serial numbers, barrel length, overall length, action, number of shots, calibre, velocity and force, type of bullet*].

Commentary

Mandatory provision

Source: Protocol, article 7, subparagraph (b).

Article 13. Information on international transactions in parts and components and ammunition

[Option 1: [Name of licensing authority]] [Option 2: Every licensed importer or exporter, as appropriate,] shall keep records of all parts and components and/or ammunition transferred under a licence granted under this Law, including:

- (a) Where the parts and components and/or ammunition are exported from [*name of State*]:
 - (i) Date of issue of the export licence or authorization;
 - (ii) Date of expiration of the export licence or authorization;

- (iii) The country of import;
- (b) Where the parts and components and/or ammunition are imported into [*name of State*]:
 - (i) Date of issue of the import licence or authorization;
 - (ii) Date of expiration of the import licence or authorization;
 - (iii) The country of export;
 - (c) [Full details of the route to be taken to the final destination, including] any transit countries and ports of entry and exit;
 - (d) Name of the final recipient (if different from the importer) [*insert the following as appropriate: address, country of residence, citizenship if individual, name of responsible person or representative if commercial or government*];
 - (e) Quantity of parts and components and/or ammunition for export listed by classification/description;
 - (f) Additional descriptive information, as applicable, such as [*insert the following as appropriate: calibre, velocity and force, type of bullet*].

Commentary

Mandatory provision

Source: Protocol, article 7, subparagraph (b).

Where the items being exported are parts and components or ammunition, States must retain this information “where appropriate and feasible” (Protocol, article 7).

B. Records of manufacture and disposal

Article 14. Information on items manufactured

[*Option 1: [Name of licensing authority]*] [*Option 2: Every manufacturer*] shall keep records of all items manufactured under this Law, including:

- (a) A description of every firearm manufactured, including:
 - (i) The markings made at the time of manufacture in accordance with article 7 of this Law;

Commentary

Mandatory provision

Source: Protocol, article 7, subparagraph (a).

This provision requires that a record of the appropriate markings required in article 8 of the Protocol (including markings made at the time of manufacture) be maintained.

- (ii) The name/identity of the manufacturer;
- (iii) The make of firearm manufactured;
- (iv) The model of firearm manufactured;
- (v) The quantity/number of firearms manufactured;
- (vi) The serial number of each firearm manufactured; and
- (vii) The calibre of each firearm manufactured;

Commentary

Mandatory provision

Source: Protocol, article 7.

This provision requires that information in relation to firearms be kept that is “necessary to trace and identify” firearms that are illicitly manufactured or trafficked. It does not specify what information—other than markings—is or would be considered “necessary” to trace and identify illicit weapons. The above details identified in subparagraphs (ii)-(v) are the minimum information necessary to identify illicit weapons, but it is up to States to decide.

The INTERPOL Firearms Tracing System uses the barrel length and number of discharges as additional identifying characteristics and States may also wish to consider requiring manufacturers to keep records of this information. However, for certain types of firearm these are not always relevant or useful. For example, the number of shots is a good identifier for firearms such as revolvers where this is fixed at manufacture, but not for many other types that can use detachable cartridge magazines of different capacities (see the *Legislative Guide*, paragraph 125).

- (b) A description of all ammunition manufactured, including:
 - [(i) The markings applied at the time of manufacture;]
 - (ii) The name/identity of the manufacturer;
 - (iii) The type of ammunition manufactured;
 - (iv) The quantity of ammunition manufactured; and
 - (v) The date of manufacture, if possible;

Commentary

Mandatory provision

Source: Protocol, article 7.

Article 7 requires that information that is “necessary to trace and identify” ammunition need only be kept where this is “appropriate and feasible”. It does not specify what information (other than markings) would be considered “necessary” to trace and identify illicitly manufactured or trafficked ammunition, but the above details identified in subparagraphs (ii)-(iv) are the minimum information necessary to identify such illicit ammunition, but it is up to States to decide.

Subparagraph (b)(i) is only relevant where States require ammunition to be marked (see annex I (article 26) for suggested text on “Marking of ammunition at the time of manufacture”).

(c) A description of all parts and components manufactured, including:

- (i) The markings applied at the time of manufacture;]
- (ii) The name/identity of the manufacturer;
- (iii) The type of parts and components manufactured;
- (iv) The quantity of parts and components manufactured; and
- (v) The date of manufacture, if possible.

Commentary

Mandatory provision

Source: Protocol, article 7.

This provision requires that information that is “necessary to trace and identify” parts and components need only be kept where this is “appropriate and feasible”. It does not specify what information—other than markings—is or would be considered “necessary” to trace and identify illicitly manufactured or trafficked parts and components, but arguably the above details identified in subparagraphs (ii)-(iv) are necessary to identify such parts and components.

Subparagraph (c)(i) is only relevant where States require parts and components to be marked (see annex I (article 23) for suggested text on “Marking of parts and components at the time of manufacture”).

Article 15. Information on firearms disposed of other than by destruction

[Name of competent authority] shall keep records of every firearm disposed of in accordance with [chapter XIII of this Law], including the method of disposal.

Commentary

Mandatory provision

Source: Protocol, article 6, paragraph 2.

There is no requirement under the Protocol that information other than the method of disposal be recorded with respect to firearms disposed of other than by destruction (article 6, paragraph 2). However, article 6, paragraph 2, also requires that firearms disposed of must be duly marked. This is reflected in draft article 9 of this Model Law. It is logical that States would record the details of those markings as well as other identification information pertaining to the firearm upon disposal. Accordingly, States may consider keeping records of the following information regarding firearms disposed of other than by destruction:

- (a) A description of every firearm that is the subject of disposal, including make, model, calibre, name of the manufacturer, serial number and all markings;
- (b) The date of disposal;
- (c) The reason for the disposal.

Depending on the jurisdiction, the obligation to record information on firearms disposed of other than by destruction may appear in criminal provisions and may be retained by the police, rather than the competent authority.

*Article 16. Information on ammunition disposed of
other than by destruction*

[*Name of competent authority*] shall keep records of all ammunition disposed of in accordance with [chapter XIII of this Law], including the method of disposal.

Commentary

Mandatory provision

Source: Protocol, article 6, paragraph 2.

There is no requirement under the Protocol that information other than the method of disposal be recorded with respect to ammunition disposed of other than by destruction (article 6, paragraph 2). However, States may wish to record the details of any markings as well as other identification information pertaining to the ammunition upon disposal, including:

- (a) A description of the ammunition that is the subject of disposal, including type of ammunition, lot number, name of the manufacturer and any markings;
- (b) The date of disposal;
- (c) The reason for the disposal;
- (d) The quantity of disposed ammunition.

Article 17. Information on seized and confiscated firearms, their parts and components and ammunition

[*Name of competent authority*] shall keep records of every firearm, part or component or ammunition seized or confiscated in accordance with [chapter XIII of this Law], including the following information:

- (a) The date of seizure or confiscation;
- (b) The reason for seizure or confiscation;
- (c) The name and address of the person from whom the firearm, part or component or ammunition was seized or confiscated;
- (d) Where the item seized is a firearm, a description of every firearm seized or confiscated, including:
 - (i) Make;
 - (ii) Model;
 - (iii) Calibre;
 - (iv) Name of the manufacturer;
 - (v) Serial number; and
 - (vi) All markings;
- (e) Where the item seized is a part or component, a description of every part or component seized or confiscated, including:
 - (i) The type of part or component;
 - (ii) Name of the manufacturer; and
 - (iii) Any markings;
- (f) Where the item seized is ammunition, a description of all ammunition seized or confiscated, including:
 - (i) The type of ammunition;
 - (ii) The lot number;
 - (iii) Name of the manufacturer; and
 - (iv) Any markings;
- [(g) *Other.*]

Commentary

Source: Protocol, article 6.

Article 6 of the Protocol makes explicit reference to article 12 of the Convention, thus clearly indicating that this provision complements the ordinary regime on confiscation and seizure, where judicial authorities or prosecutors give the order to seize or confiscate and hence the recording of these procedures can only be mandatory. There is no indication under the Protocol or the Convention of the exact nature and type of information that must be recorded, but the above suggested drafting provides a comprehensive list of details that would facilitate identification and tracing as required under article 12, paragraph 2, of the Convention. In some jurisdictions regulations regarding police administrative records and asset forfeiture may not be included in the national firearms legislation and States may include such provisions elsewhere.

[Article 18. Information on deactivated firearms

1. *[Name of competent authority]* shall keep records of all requests for authorization to deactivate firearms made in accordance with article 21 of this Law, including the following information:

(a) Proof that the person requesting the deactivation is the [legal/licensed] owner of the firearm;

(b) Name of the [legal/licensed] owner of the firearm;

(c) Residential address of the [legal/licensed] owner of the firearm;

(d) Details of the firearm that is the subject of the deactivation, including:

(i) Make;

(ii) Model;

(iii) Calibre;

(iv) Name of the manufacturer;

(v) Serial number; and

(vi) All markings.

2. Where *[name of competent authority]* authorizes the deactivation of a firearm in accordance with article 21 of this Law, *[name of competent authority]* shall keep records of:

(a) The certificate issued by *[name of competent authority]* in accordance with article 23 of this Law; or

(b) The markings applied to the deactivated firearm in accordance with article 11 of this Law.]

Commentary

Source: Protocol, article 9.

Article 9, subparagraph (c), requires a “certificate or record attesting to the deactivation” to be kept as part of the verification process. If a State chooses to mark deactivated firearms rather than keeping certificates or records of deactivation, a record of the mark should be kept, although not explicitly required by the Protocol. Such records could be kept as an additional safeguard against illicit reactivation. This would assist in the tracing of firearms that have been reactivated (see the *Legislative Guide*, paragraph 130).

C. Administrative requirements

Article 19. Duration of record-keeping

All records retained in accordance with this Law/section shall be maintained for at least [...] years from the date such information was recorded.

Commentary

Mandatory provision

Source: Protocol, article 7.

This provision requires States to ensure that records necessary to trace and identify illicit weapons are kept “for not less than ten years”.

Drafting note

There are two points to consider here:

(a) The only information the Protocol specifically requires States to ensure maintenance of is markings (article 7, subparagraph (a)), so there should be a mandatory requirement to keep records of markings for at least 10 years. However, article 7 also requires the maintenance of information “necessary to trace and identify” firearms for 10 years. Accordingly, whatever information States parties determine, under their national legislation, is “necessary” must be recorded for at least 10 years;

(b) The International Tracing Instrument provides (paragraph 12 (a)) that records pertaining to marked small arms and light weapons “be kept indefinitely”,

but in any case manufacturing records must be kept for at least 30 years and all other records for at least 20 years. The Programme of Action on Small Arms and Light Weapons (chapter II, paragraph 9) provides that records on the manufacture of small arms and light weapons should be kept “for as long as possible”. The OSCE Document on Small Arms and Light Weapons (section II (c)) and the Wassenaar Best Practice Guidelines (paragraph 2 (c)) provide that records of manufacturers’ holdings of small arms should be maintained and held “for as long as possible”. Given the durable nature of small arms and light weapons, including firearms, and the importance of record-keeping to facilitate their traceability, best practice would suggest that manufacturing records should be kept, ideally, indefinitely.

States may consider including provisions requiring records to be kept for longer than is required under the Protocol, as per the suggested drafting below:

Option 1

All records retained in accordance with this Law/section shall be kept indefinitely from the date such information was recorded.

Commentary

Source: International Tracing Instrument, paragraph 12 (a).

Option 2

All manufacturing records in accordance with this Law/section shall be kept as long as possible, and for at least thirty years, and all other records required under this Law/section for at least twenty years from the date such information was recorded.

Commentary

Source: The International Tracing Instrument, paragraph 12 (a); the Programme of Action on Small Arms and Light Weapons (chapter II, paragraph 9); the OSCE Document on Small Arms and Light Weapons (section II (c)); and the Wassenaar Best Practice Guidelines (paragraph 2 (c)).

[Chapter VI. Deactivation of firearms

Commentary

These draft provisions regarding deactivation are only necessary and relevant if a State does not recognize a deactivated firearm as a “firearm”.

Many States allow the possession (and display) of deactivated firearms by collectors, museums, rifle clubs and so on. Such deactivated firearms are generally subject to fewer controls. To ensure that deactivated firearms are not transferred to illicit destinations and reactivated, the Protocol requires that any deactivation that takes place be essentially irreversible (article 9, subparagraph (a)). When drafting legislation on this issue, States must consider the circumstances in which they will permit deactivated firearms to be possessed. Once a State has determined the circumstance where it is lawful to possess deactivated firearms, it must regulate the manner of deactivation. (Annex III provides several examples of national deactivation standards.)

The Protocol requires States that do not recognize deactivated firearms as “firearms” in their domestic law to adopt measures to prevent illicit reactivation of deactivated firearms. While the principle of preventing reactivation is mandatory under the Protocol, the Protocol does not prescribe what measures should be taken or adopted by States, but rather provides some general principles that should be applied to such measures. These principles are mandatory. Where States do not recognize deactivated firearms as “firearms” under their national law (and therefore deactivated firearms fall outside the national control measures), they should adopt the draft provisions set out in this chapter in order to ensure consistency with the principles and objectives of the Protocol. States should also review and adopt the provisions in draft article 11 (Marking at the time of deactivation) (chapter IV), draft article 18 (Information on deactivated firearms) (chapter V), and draft article 38 (Illicit deactivation) (chapter XI) in this Model Law.

[Article 20. Prohibition to deactivate a firearm without authorization

A person shall not deactivate a firearm unless:

- (a) That person is:
 - (i) Licensed to manufacture firearms in accordance with chapter III of this Law; or

(ii) Otherwise authorized to deactivate firearms by [*name of competent authority*]; and

(b) [*Name of competent authority*] has given specific [authorization/approval] to deactivate the firearm in accordance with article 21 of this Law.]

Commentary

There is no requirement under the Protocol that deactivation of firearms be carried out by persons who are specially skilled and authorized to do so. However, a certain amount of technical skill and familiarity with firearms is required to permanently deactivate a firearm. Accordingly, good practice suggests that only qualified persons, such as manufacturers and gunsmiths, should be permitted to undertake the work.

[Article 21. Prior authorization to deactivate a firearm

1. Any person who wishes to deactivate a firearm shall apply to [*name of competent authority*] for authorization to deactivate the firearm.

2. An application to deactivate a firearm shall include the following information:

(a) Name of the licensed owner of the firearm;

(b) Residential address of the licensed owner of the firearm;

(c) Name of the person who will deactivate the firearm;

(d) Proof that the person who will deactivate the firearm is licensed to manufacture firearms in accordance with chapter III of this Law or is otherwise authorized to deactivate firearms;

(e) Details of the firearm that is the subject of the deactivation, including:

(i) Make;

(ii) Model;

(iii) Calibre;

(iv) Name of the manufacturer;

(v) Serial number; and

(vi) All markings.

3. The firearm that is the subject of the deactivation application shall be deactivated within [...] days of the issuance of the authorization to deactivate the firearm.]

Commentary

There is no requirement under the Protocol that prior approval from the competent authority must be sought before a firearm is deactivated. However, as part of the process for deactivating firearms, a requirement that prior authorization be obtained from the competent authority will help the competent authority keep track of deactivated firearms.

[Article 22. Method of deactivation

Any deactivation of a firearm shall:

- (a) Render all essential parts of a deactivated firearm:
 - (i) Permanently inoperable; and
 - (ii) Incapable of removal, replacement or modification in a manner that would permit reactivation of the deactivated firearm;

Commentary

Source: Protocol, article 9, subparagraph (a).

One of the general principles established by the Protocol is that “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”. States must ensure that their deactivation standards meet this principle. Similarly, European Community directive 2008/51/EC amending European Council directive 91/477/EEC on control of the acquisition and possession of weapons stipulates that “firearms” do not include objects that “have been rendered permanently unfit for use by deactivation, ensuring that all essential parts of the firearm have been rendered permanently inoperable and incapable of removal, replacement or a modification that would permit the firearm to be reactivated in any way”.

(b) Be in accordance with the technical standards established [by/under] [title of the secondary legislation, regulation or guidelines that contain the relevant technical standards].]

Commentary

The Protocol does not establish technical standards for the deactivation of firearms. Accordingly, it is up to States to determine which techniques must be used to lawfully deactivate a firearm. Given that such technical specifications may be subject to change and adjustments to keep pace with technological advancements, it may be more appropriate to list or detail them in subsidiary legislation or separate technical guidelines.

[Article 23. Verification of deactivation]

A firearm shall not be classified as a deactivated firearm for the purposes of this Law [*and therefore shall not cease to be a firearm*] unless and until:

(a) A physical inspection of the firearm has been conducted by [*name of competent authority or another person authorized by the competent authority*]; and

(b) A [*deactivation*] certificate has been issued to the licensed owner of the firearm by [*name of competent authority*] containing the following information:

(i) Confirmation that the firearm has been rendered permanently inoperable in accordance with article 22 of this Law;

(ii) Name of the [*legal/licensed*] owner of the firearm;

(iii) Residential address of the [*legal/licensed*] owner of the firearm;

(iv) Details of the firearm that is the subject of the deactivation, including:

a. Make;

b. Model;

c. Calibre;

d. Name of the manufacturer;

e. Serial number; and

f. All markings;

(v) Name of the person carrying out the deactivation;

(vi) Address of the person carrying out the deactivation;

(vii) Date of deactivation;

(viii) Details of the method of deactivation; or

(c) The firearm has been stamped with a clearly visible mark in accordance with article 11 of this Law.]

Commentary

Source: Protocol, article 9, subparagraphs (b) and (c).

One of the general principles established by the Protocol is that arrangements should be made for deactivation to be verified by a competent authority to ensure that the firearm has been rendered permanently inoperable.

[Article 24. Surrender of licence

Within [seven days] of receipt of the [deactivation] certificate from [name of competent authority] in accordance with article 23, paragraph 1 (b), of this Law, the licensed owner of the firearm shall surrender the licence to [name of licensing authority], which shall cause the licence to be cancelled and destroyed.]

Commentary

If a firearm is deactivated, the licence to own that firearm should be cancelled and a record of that cancellation should be retained.

Chapter VII. Import, export and transit of firearms, their parts and components and ammunition

Commentary

Article 10, paragraph 1, of the Protocol requires States to establish or maintain an effective system of licensing or authorization to control the import and export of firearms, their parts and components and ammunition. The Protocol also requires that States take measures on international transit of firearms, their parts and components and ammunition. Such a system must ensure that such items are not exported to or through countries that have not authorized the transfer (article 10, paragraphs 2 and 4) and that the content of the documents used for legal import and export is sufficient to support the offence of trafficking (article 10, paragraph 3). States must also take measures to enhance accountability and security associated with their import and export system (article 10, paragraph 5).

The Protocol does not specify in detail the form the system of licensing of import and export or the measures on international transit a State must take. This is left largely to the discretion of States (further optional guidance on this is available in the International Small Arms Control Standards, module 03.20, “National controls over the international transfer of small arms and light weapons”). In addition to ensuring that legislation incorporates all the mandatory provisions of the Protocol, States may have existing obligations under other multilateral, regional and subregional agreements that have application to the international import, export or transit of firearms, their parts and components and ammunition (drafters may wish to refer to the related instruments listed in annex II). States should choose the provisions of the Model Law that complement their existing legislation and obligations and reflect the appropriate level of control required by their State. Annex I (Additional considerations) provides further suggested text that drafters can also consider for inclusion in their national legislation.

Licensing [authorization] of import, export and transit of firearms, their parts and components and ammunition

Article 25. Prohibition of import, export and transit of firearms, their parts and components and ammunition without a licence [authorization]

1. No person may import into or export from [name of State] any firearms and/or their parts and components and/or ammunition without [the prior receipt in writing of an import or export licence] [the prior written authorization] issued in accordance with this Law by [name of licensing authority].

2. No person may carry in transit through [name of State] any firearms, their parts and components or ammunition without an in-transit [licence] [authorization] issued in accordance with this Law by [name of licensing authority].

Commentary

Mandatory provision

Source: Protocol, article 10, paragraph 1.

Article 10, paragraph 1, contains the basic requirement to establish measures that control transactions or transfers that involve import, export or transit. It requires States to establish or maintain an effective system of export and import licensing or authorization.

Where import and export control regimes already exist, legislation may need to be revised to include the need for a licence to importers and exporters of firearms, their parts and components and ammunition and to any specific requirements of the Protocol that are not already covered. The Protocol does not specifically require that transit activity be licensed. However, “measures” must be taken on international transit of firearms, their parts and components and ammunition and that, in accordance with article 10, paragraph 2 (b), transit States have given notice in writing that they have no objection to the transit. It is at the discretion of States to choose the appropriate system of licensing for import and export and measures for international transit. Model Law article 25, paragraph 2, is appropriate where a State chooses to license transit activities.

What constitutes “import” and “export” should generally be consistent with existing national law and international standards.

The Protocol presupposes the existence of a licensing authority by virtue of article 10, paragraphs 1 and 2. Though not an explicit requirement in the Protocol, in order for States to fulfil the requirement to establish or maintain an effective system of export and import licensing or authorization (article 10, paragraph 1) and the other mandatory requirements under article 10, legislative measures (where they do not already exist) will be necessary to ensure that officials have the necessary authority to consider and issue or refuse import, export and transit licences. This may be done by creating new offices or by amending legislation to expand the role of existing officials (see the *Legislative Guide*, paragraph 100).

Article 26. Verified or validated documents

Before it issues an import, export or transit licence [authorization], [name of licensing authority] may require the applicant to provide original or certified copies of the documentation submitted in support of their application.

Commentary

Mandatory provision

Source: Protocol, article 10, paragraph 5.

The Protocol requires States to take measures, within available means, to ensure that licensing or authorization procedures are secure and that the authenticity of licensing or authorization documents can be verified. The measures are not specified. This provision is suggested as one option for States to meet this mandatory obligation.

Article 27. Application for an export licence [authorization]

1. The applicant shall apply for a licence [authorization] for an export of firearms and/or their parts and components and/or ammunition in the prescribed form and manner to [*name of licensing authority*].

2. No export licence shall be granted without:

(a) A copy of the import licence [authorization]. The licence [authorization] must state the country of issuance, date of issuance and expiration, identification of the authorizing agency, the final recipient and a description and the quantity of the firearms and/or their parts and components and/or ammunition, or a copy of documentation demonstrating that an application for an import licence [authorization] has or will be made; and

(b) Copies of in-transit licences [authorizations] (as applicable).

Commentary

Mandatory provision

Source: Protocol, article 10, paragraphs 2 (a) and (b) and 3.

The Protocol requires that licences or authorizations be issued for exports of firearms, their parts and components and ammunition. Before an export licence or authorization is issued, the importing State must have issued import licences or authorizations and any transit States must have given notice in writing, prior to the shipment, that they have no objection to the transit.

These provisions create a reciprocal system requiring States to provide authorizations to one another before permitting shipments of firearms to leave, arrive in or transit across their territory, enhancing the ability of law enforcement to track the legal movement of shipments to prevent theft and diversion. It is left to implementing States to determine whether it will be the State or the exporter who will be responsible for acquiring the required authorizations from the importer and transit States or if it will be a combination of the two, that is, the exporter

obtains the authorization from the importer (via the importer) and the exporting State contacts the transit country to confirm that it has no objection to the transaction (see the *Legislative Guide*, paragraph 102). In this Model Law provision, the exporter is responsible for acquiring the required authorizations.

In practice, it may be that, at the time of applying for an export licence, the exporter is unable to provide the transit authorization. The exporter may also not be able to supply a copy of the import licence or authorization because: (a) it is not available at the time of application; or (b) the transaction is with a Government that would not itself issue an import licence or authorization if the goods in question were for its own use. In order still to maintain compliance with this mandatory provision of the Protocol, drafters may consider the suggested text for a “conditional export licence” provision in annex I (article 53).

An application process serves as the basic obligation to provide necessary information about the transaction. The form and manner of issuance and the information required on an export licence or authorization application form is discretionary. It is for the State to decide on the content and the degree of detail necessary for its legislative or regulatory framework. Other than the in-transit authorization (where applicable) and a copy of the import licence or authorization document, the content of these application procedures are optional. Suggestions for the content of legislation or accompanying regulations detailing the application procedure are included in annex I (article 51).

Article 28. Application for an import licence [authorization]

The applicant shall apply for a licence [authorization] for an import of firearms and/or their parts and components and/or ammunition in the prescribed form and manner to [*name of licensing authority*].

Commentary

Mandatory provision

Source: Protocol, article 10, paragraphs 1-3.

The Protocol requires that licences or authorizations be issued for imports of firearms, their parts and components and ammunition before the issuing of the relevant export authorization. With regard to import, article 10 of the Protocol—beside the generic reference to the establishment of an effective system for import, export and transit (paragraph 1)—provides that those States which are in the process of issuing the export licence or authorization must verify that an import authorization has been issued (paragraph 2). However, the form and manner of issuance and the information required on an import licence or authorization application form are not specified. It is at the discretion of the State to decide on the content and the degree of detail necessary for its legislative or regulatory framework. Suggestions for the content of legislation or accompanying regulations detailing the application procedure are provided in annex I (article 52).

Article 29. Particulars of an export or import licence [authorization]

1. Any import or export licence issued by [name of licensing authority] and accompanying documentation shall, at a minimum, include:

- (a) Place and date of issuance of the licence [authorization];
- (b) Expiry date of the licence [authorization];
- (c) Country of import and country of export;
- (d) Name and physical address of the final consignee or end-user;
- (e) Description and quantity of the firearms, their parts and components and ammunition to be transferred under licence, including [*insert the following as desired or appropriate: serial numbers, barrel length, overall length, action, number of shots, calibre, velocity and force, type of bullet, value of the items*];
- (f) Where applicable, the countries of transit.

2. [*Name of licensing authority*] shall provide the information contained in an import licence to any transit States in advance of the shipment.

*Commentary**Mandatory provision*

Source: Protocol, article 10, paragraph 3.

This is the minimum mandatory information required by the Protocol that must appear together on a licence and the accompanying documentation. In addition, where a State chooses to establish a system for regulating the activities of those who engage in brokering, pursuant to article 15, paragraph 1 (c), of the Protocol, that State could require disclosure on import and export licences or authorizations or accompanying documents of the names and locations of brokers involved in the transaction.

In addition to this minimum information as required by the Protocol, States may also choose to require additional information on the licence. These are suggested provisions where it is left to the discretion of the State party to decide the degree of detail to be contained in the import/export licence or authorization and are not required by the Protocol. Some examples of additional information a State might require are:

- Name and physical address of the applicant and all other parties involved in the transaction and details of their registration or authorization
- Any conditions imposed on the licence
- Details of the transport route, including countries of transit, trans-shipment and ports of entry or exit (where applicable and if available)

Article 30. Delivery verification

[*Name of licensing authority*] may request the [*exporter*] [*importing State*] to provide confirmation from the country of import of the receipt of the dispatched shipment of firearms, their parts and components and/or ammunition.

*Commentary**Mandatory provision*

Source: Protocol, article 10, paragraph 4.

The Protocol creates a prerogative on the part of the exporting State to request delivery verification of a dispatched shipment of firearms, their parts and components or ammunition from the importing State. A State could choose to require a delivery verification certificate as standard practice or reserve the right to verify deliveries on specific exports, in which case this could be specified as a licence condition on the particular export licence. Such an obligation would generally be undertaken by the exporter as the entity required to provide proof of delivery of the dispatched items, though the importing State could also be requested to produce proof of delivery. States may require production of original documentation or certified copies of original documentation. Drafters can consult annex I (article 62) for further text supplementing this provision.

Section B. Penal and provisional provisions

Commentary

Mandatory offences

Article 5 of the Firearms Protocol establishes a series of mandatory offences relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and tampering with markings on firearms. The Protocol requires the criminalization of three groups of central offences:

- (a) Illicit manufacturing:
 - (i) Any manufacturing or assembly of firearms without marking;
 - (ii) Any manufacturing or assembly from illicit (trafficked) parts and components; and
 - (iii) Any manufacturing or assembly without legal permit or authorization;
- (b) Illicit trafficking:
 - (i) Any transnational transfer without legal authorization; and
 - (ii) Any transnational transfer if firearms are not marked;
- (c) Removing or altering serial numbers of other markings.

A further group of offences is established in article 5, paragraph 1 (c), of the Protocol, which criminalizes a list of activities that render the markings on a firearm unintelligible or inaccurate, making it impossible to uniquely identify the firearm or trace it against past records created using the original marking. Drafters should draft these provisions in accordance with their domestic criminal law tradition, ensuring that the content of each offence is complete and that the language used will be interpreted by domestic courts and other competent authorities in a manner consistent with the Protocol.

Suggestions for optional firearms-related offences a State can also consider for inclusion in their national legislation are included in annex I (articles 64-72).

Non-inclusion of “transnationality” and “organized criminal group” in domestic offences

Article 1 of the Firearms Protocol states that the Protocol should be interpreted together with the United Nations Convention against Transnational Organized Crime. Article 4 of the Protocol limits its applicability to the prevention, investigation and prosecution of offences that are transnational in nature and involve an organized criminal group, except as otherwise stated.

However, as the *Legislative Guide* explains, national legislators should not incorporate the transnational element and the involvement of an organized criminal group in the definition of the specific mandatory offences included in article 5 of the Protocol. Although the Convention and the Protocol require national legislators to establish some degree of transnationality, this does not mean that national laws on firearms should be limited to that requirement, and national prosecutors must not be obliged to obtain evidence of transnationality or of the involvement of an organized criminal group in order to obtain conviction for any of the offences contained in the law (for further details, see the *Legislative Guide*, paragraph 21). Offences established in accordance with the Protocol should apply regardless of whether the offence was committed by an individual or was committed by individuals associated with an organized criminal group, and regardless of whether this can be established.

Mens rea

All of the criminalization requirements of the Convention and the Protocol require that the conduct of each offence must be criminalized if committed intentionally. However, article 34, paragraph 3, of the Convention expressly allows States to adopt “more strict or severe” measures than those provided for by the Convention. Given the varying degrees and definitions of mens rea in national jurisdictions, this Model Law has left it open for drafters to decide whether to include and specify the level of intent required for each article in accordance with their legal system and national practice. Drafters should also note that the element of intention refers only to the conduct or action that constitutes each criminal offence and should not be taken as a requirement to excuse cases in particular where persons may have been ignorant or unaware of the law that constituted the offence (see the *Legislative Guide*, paragraph 174 (d)).

Sanctions

As noted in the *Legislative Guide* (paragraph 173), each of the offence provisions in the Protocol must be established as offences in criminal law. This principle applies unless the accused is a legal person, in which case the offence may be a criminal, civil or administrative offence. It is up to States to determine the appropriate sanction depending on their existing national sanctions regime. However, sanctions adopted in domestic law for the offences must take into account and should be proportionate to the gravity of the offences (Convention, article 11, paragraph 1).

Penalties for offences, including “serious” crimes under domestic law, are left to the discretion of national drafters, though, to have the Convention applied to such offences, the sanction must be for a maximum penalty of at least four years’ deprivation of liberty. This requirement is general and applies to both natural persons and legal entities. Further, the general system of aggravating or mitigating circumstances existing within a State’s national legislation would be applicable to the offences provided for under the Model Law. Given the range of sanctioning practices within national jurisdictions, the Model Law leaves it to the discretion of the State to decide the appropriate form and level of sanction, in line with existing national practice.

Liability of legal persons

Article 10, paragraph 4, of the Convention sets out additional provisions regarding legal entities, requiring that legal persons held liable for “serious” crimes be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions (civil or administrative), including monetary sanctions. Such sanctions could include, for example, dissolution, disqualification from participation in public procurement, publicizing the decision or freezing of assets.

Convention criminal offences and penal provisions

The Protocol must be read in conjunction with its parent Convention. The provisions of the Convention apply, *mutatis mutandis*, to the Protocol (Protocol, article 1, paragraphs 2 and 3) and offences established pursuant to the Protocol are to be considered offences established under the Convention. This means that States must also criminalize the Convention offences of participation in an organized criminal group (Convention, article 5), laundering of proceeds of crime (Convention, article 6), corruption (Convention, article 8) and obstruction of justice (Convention, article 23) and apply them to firearms-related offences. This also requires States to take a number of measures into consideration with respect to the offences established by the Protocol. These are set out in article 11 of the Convention and include, for example, conditions for release for people accused of Protocol offences, general conditions for parole or early release, and statute of limitations (see the *Legislative Guide*, paragraph 173). These obligations form part of the requirements of the Convention and as such are not specifically mentioned for inclusion in a firearms law.

Article 5 of the Convention requires a State to criminalize participation in an organized criminal group (paragraph 1 (a)) and to criminalize organizing, directing, aiding, abetting, facilitating or counselling the commission of a serious crime involving an organized criminal group (paragraph 1 (b)). Article 6, paragraph 2 (b), of the Convention also requires a State to include as predicate offences all serious crimes as defined in article 2 of the Convention (an offence punishable by a maximum deprivation of liberty of at least four years) and the offences relating to criminalization of participation in an organized criminal group (article 5), corruption (article 8) and obstruction of justice (article 23). These provisions can be of relevance to the investigation and prosecution of offences established under the Protocol where the offence involves an organized criminal group. The present Model Law does not propose model provisions for these.

Mutual legal assistance

Article 18 of the Convention requires States to afford each other the greatest possible assistance in investigations, prosecutions and judicial proceedings for Convention and Protocol offences. Article 18 provides a detailed set of provisions on mutual legal assistance that States should incorporate in their domestic legislation and practice (see the *Legislative Guide* for the Implementation

of the United Nations Convention against Transnational Organized Crime,¹ paragraphs 450-499).

Investigation and prosecution

Matters related to investigation and prosecution are contained in the Convention and relevant provisions include, for example, those related to joint investigations (article 19), special investigative techniques (article 20), the cooperation of an accused person who provides substantial cooperation in the investigation and prosecution of an offence covered by the Convention (article 26, paragraphs 2 and 3), and law enforcement cooperation (article 27). Article 24 of the Convention requires a State to take “appropriate” measures within its means to provide effective protection from potential retaliation or intimidation for witnesses (and where appropriate relatives and other persons close to them) in criminal proceedings who give testimony concerning offences covered by the Convention.

States may already have a broad range of provisions aimed at facilitating the investigation and prosecution of criminal offences. In such cases, States may want to review them in the light of the present Model Law, so as to ensure that they also cover the offences of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. However, given the intrusive nature of some of those provisions, some States have constitutional constraints in introducing these measures. In some other jurisdictions, these measures are only permitted with regard to clearly specified crimes considered to be of particularly serious nature and justifying an exception to the ordinary investigations, procedures and techniques (for example, international drug trafficking offences, financing of terrorism and transnational organized crime). Drafters should take into account the particular constitutional and legal framework when considering the use and application of such measures.

¹United Nations publication, Sales No. E.05.V.2, part one.

Chapter VIII. Criminal offences: illicit manufacturing

Commentary

This chapter contains the three mandatory criminal offences related to illicit manufacturing of firearms, their parts and components and ammunition as required by article 5 of the Protocol. Those offences are:

- (a) Any manufacturing or assembly of firearms without marking;
- (b) Any manufacturing or assembly from illicit (trafficked) parts and components; and
- (c) Any manufacturing or assembly without legal permit or authorization.

The purposes of the offences are to ensure that the basic import, export and tracing requirements of the Protocol are not circumvented by manufacturing all of the parts and components of a firearm and carrying out exports before assembly into the finished product; that manufacturing of firearms will not take place covertly, without the authorization of a competent authority; and that the manufacturing process includes markings sufficient for tracing.

Article 31. Illicit manufacturing of firearms

1. Every person who [specify level of intent, as appropriate] manufactures or assembles firearms:

- (a) Using parts and components that have been illicitly trafficked; or
- (b) Without a licence [authorization] obtained in accordance with chapter III of this Law; or
- (c) Without marking the firearms at the time of manufacture, in accordance with article 7 of this Law;

commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of up to ...] [a fine of the ... category].

*Commentary**Mandatory provision*

Source: Protocol, article 5, paragraph 1 (a).

Article 3, subparagraph (d), of the Protocol defines “illicit manufacturing” as the manufacturing or assembly of firearms, their parts and components or ammunition:

- “(i) From parts and components illicitly trafficked;
- “(ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place; or
- “(iii) Without marking the firearms at the time of manufacture.”

This draft article contains three different offences. The first is to ensure that the basic import, export and tracing requirements of the Protocol are not circumvented by manufacturing all of the parts and components of a firearm and carrying out exports before assembly into the finished product; the second offence ensures that manufacturing of firearms will not take place covertly, without the authorization of a competent authority; and the third offence aims to ensure that the manufacturing process includes markings sufficient for tracing (see the *Legislative Guide* for the Implementation of the Protocol, paragraph 181).

Article 32. Illicit manufacturing of parts and components

1. Every person who [specify level of intent, as appropriate] manufactures or assembles parts and components:

- (a) That have been illicitly trafficked; or
- (b) Without a licence [authorization] obtained in accordance with chapter III of this Law;

commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/ up to ...] [a fine of the ... category].

*Commentary**Mandatory provision*

Source: Protocol, article 5, paragraph 1 (a).

The definition of “illicit manufacturing” in article 3, subparagraph (d), of the Protocol only makes reference to the absence of marking of firearms as an element of illicit manufacturing and, as noted in chapter IV (Marking) of this Model Law, the Protocol does not require the marking of parts and components. However, if a State chooses to require manufacturers to mark parts and components at the time of manufacture, the following should be included as a component (subparagraph (c)) of the crime of illicit manufacturing of parts and components:

(c) Without marking the parts and components at the time of manufacture, in accordance with [*annex I, article 23 (Marking of parts and components at the time of manufacture)*] of this Law.

Article 33. Illicit manufacturing of ammunition

1. Every person who [specify level of intent, as appropriate] manufactures or assembles ammunition:

(a) Using parts and components that have been illicitly trafficked; or

(b) Without a licence [authorization] obtained in accordance with chapter III of this Law;

commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/ up to ...] [a fine of the ... category].

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 1 (a).

Article 5, paragraph 1 (a), requires States to establish illicit manufacturing of ammunition as a criminal offence. The definition of “illicit manufacturing” in article 3, subparagraph (d), of the Protocol only makes reference to the absence of marking of firearms as an element of illicit manufacturing and, as noted in chapter IV (Marking) of this Model Law, the Protocol does not require the marking of ammunition. However, if a State chooses to require manufacturers to mark ammunition at the time of manufacture, the following should be included as a component (subparagraph (c)) of the crime of illicit manufacturing of ammunition:

(c) Without marking the ammunition at the time of manufacture, in accordance with [*annex I, article 26 (Marking of ammunition at the time of manufacture)*] of this Law.

Chapter IX. Criminal offences: illicit trafficking

Commentary

Illicit trafficking is one of the “central” offences established by the Protocol. Article 3, subparagraph (e), of the Protocol establishes two specific mandatory criminal offences in relation to illicit trafficking: (a) any transnational transfer of firearms, their parts and components and ammunition without legal authorization; and (b) any transnational transfer if the firearms are not marked in accordance with article 8 of the Protocol.

Article 34. Transnational transfers without legal authorization

1. Every person who [*specify level of intent, as appropriate*] imports, exports or otherwise acquires, sells, delivers, moves or transfers any firearm or its parts and components or ammunition from or across the territory of [*name of State*] to another State without legal authorization [a licence] issued in accordance with [*name of this Law*] commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/ up to ...] [a fine of the ... category].

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 1 (b).

This provision incorporates the definition of “illicit trafficking” in the Protocol, article 3, subparagraph (e).

Article 35. Transnational transfers of unmarked/improperly marked firearms

1. Every person who [*specify level of intent, as appropriate*] imports, exports or otherwise acquires, sells, delivers, moves or transfers any firearm from or across the territory of [*name of State*] to another State that have

not been marked at the time of manufacture, at the time of import or at the time of transfer from government stocks to civilian use in accordance with chapter IV of this Law commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/ up to ...] [a fine of the ... category].

Commentary

Mandatory provision

Source: Protocol, article 3, subparagraph (e).

Article 3, subparagraph (e), of the Protocol states that illicit trafficking also includes the import, export, acquisition, sale, delivery, movement or transfer of firearms not marked in accordance with article 8 of the Protocol. Article 8 requires marking in three instances: at the time of manufacture, at the time of import and at the time of transfer from government stocks to civilian use. Article 8 only mandates the marking of firearms and this is reflected in the wording of this provision. Those States which legislate beyond the mandatory requirements of the Protocol and require some form of marking for parts, components or ammunition should ensure a corresponding expansion of this provision.

Chapter X. Criminal offences: marking

Commentary

This chapter contains two mandatory criminal offences related to marking of firearms as required by article 5 of the Protocol. The offences are:

- (a) Falsifying firearm markings at the time of manufacture, import or transfer from government stocks to permanent civilian use; and
- (b) Obliterating, removing or altering firearm markings.

The purpose of these offences is to ensure that the markings applied to all firearms are and remain true and correct in order to facilitate accurate tracing.

Article 36. False markings

1. Every person who [*specify level of intent, as appropriate*]:

- (a) Marks a complete firearm, or a firearm that is complete yet unassembled, with false markings at the time of manufacture;
- (b) Marks imported firearms with false markings; or
- (c) Marks a firearm with false markings at the time of transfer from government stocks to permanent civilian use under chapter IV of this Law; commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/ up to ...] [a fine of the ... category].

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 1 (c).

The Protocol requires States to criminalize the falsification of marking(s) on firearms required by article 8 of the Protocol (markings at the time of manufacture, import and transfer from government stocks to permanent civilian use). The Protocol only requires States to establish the falsification of markings as

a criminal offence when such falsification is intentional (i.e. there is an intention on the part of the person marking the firearm to provide deceptive or misleading information as to the origins or life cycle of the weapon). Drafters may choose to include different (i.e. less stringent or purely administrative) penalties where a person applies false markings negligently as opposed to intentionally or where accidental errors occur during the marking process that are of a non-material nature.

With respect to the falsification of markings applied at the time of transfer from government stocks to permanent civilian use, drafters should be aware that “civilian use” is a broad category that covers all groups and actors that are not State controlled or owned, including private security companies and sports clubs.

The Protocol does not require States to establish as criminal offences the falsification of markings applied to firearms other than in the circumstances described above (at the time of manufacture, import and transfer from government stocks to permanent civilian use). However, States could consider establishing as criminal offences the falsification of other markings required under chapter IV of this Model Law.

Drafters should note that the offence of failing to mark firearms at the time of manufacture in accordance with article 7 of this Model Law (as required under articles 3, subparagraph (d), and 5, paragraph 1 (a), of the Protocol), is already established under article 31, paragraph 1 (c), of this Model Law (as part of illicit manufacturing) and so it is not necessary to establish the failure to mark firearms at the time of manufacture as a separate offence.

The Protocol does not require States to establish as criminal offences failure to mark firearms under other circumstances (such as on import or upon transfer from government stocks to permanent civilian use). However, States are required to ensure firearms that are marked at the time of disposal other than by destruction (under Protocol article 6, paragraph 2) and, in some instances, upon deactivation (under Protocol article 9). In order to ensure adherence to and the enforceability of these requirements, States should consider establishing appropriate offences and penalties associated with a failure to mark weapons properly or at all at the time of disposal other than by destruction, or deactivation. Where States also require proof marks and the marking of weapons acquired by state agencies under chapter IV of this Model Law, offences and sanctions for non-compliance with these obligations should also be established. There is no requirement that criminal offences and penalties be established in these circumstances and States may impose administrative penalties and sanctions as appropriate.

Article 37. Removal and alteration of firearm markings

Every person who [*specify level of intent, as appropriate*] obliterates, removes or alters a marking on a firearm as required under articles 7, 8, 9 [and 10 or 11] of this Law commits an offence.

*Commentary**Mandatory provision*

Source: Protocol, article 5, paragraph 1 (c).

Strictly speaking, the Protocol only requires States parties to criminalize the obliteration, removal or alteration of those markings required by article 8 of the Protocol (marking at the time of manufacture, import and transfer from government stocks to permanent civilian use). The text in square brackets reflects this limitation. Should drafters wish to expand the scope of this provision and criminalize the removal of any marking, the square bracketed text should be removed.

Additionally, drafters may wish to allow for the removal or alteration of markings in certain circumstances (as opposed to having an absolute prohibition on the removal or alteration of markings as reflected in the above drafting). The Protocol implicitly contemplates there may be circumstances where the obliteration, removal or alteration of the marking on a firearm may be permitted by virtue of the requirement to establish as a criminal offence “illicitly” obliterating, removing or altering the marking on a firearm (article 5, paragraph 1 (c)). However, the Protocol does not specify the circumstances when such obliteration, removal or alteration would be permitted and it is up to States to make provision for the legal alteration of markings if they wish, while bearing in mind the need to ensure that the firearm can still be traced (see the *Legislative Guide*, paragraphs 223-226).

Situations where the removal or alteration of markings may be permitted could include: (a) a public agent acting in the course of his or her duties; or (b) a person, such as a gunsmith or manufacturer, who has obtained authorization from the competent authority to obliterate, remove or alter a marking on a firearm. In such cases, drafters should include a process for obtaining authorization to remove or alter the marking on a firearm and should ensure that the method of re-marking still permits the firearm to be traced.

[Chapter XI. Criminal offences: offences specific to deactivated firearms

Commentary

The application of the following provisions will depend on whether a State has deactivation standards in place that require a firearm to be rendered permanently inoperable (as is consistent with the general principles of deactivation stipulated by the Protocol, article 9, subparagraph (a)) and thus incapable of reactivation or conversion into a firearm (and effectively destroyed); or whether it has deactivation standards in place that do not require the firearm to be rendered permanently inoperable, but which contemplate reactivation of the deactivated firearm or conversion into a functioning firearm. Although the latter form of deactivation is not consistent with the general principles of deactivation stipulated by the Protocol, it is acknowledged that, in practice, some States do have deactivation standards that contemplate reactivation of the firearm. As noted in the commentary following the definition of “Manufacture” (draft article 4, subparagraph (m), of this Model Law), where a State has deactivation standards in place that do not require deactivated firearms to be rendered permanently inoperable, but which contemplate the reactivation of a deactivated firearm, the term “manufacture” should be defined to include “reactivation” so that the provisions of chapter III would apply to any reactivation of a firearm and any unauthorized reactivation would constitute “illicit manufacturing” in accordance with draft article 31 of this Model Law.

[Article 38. Illicit deactivation

1. Every person who deactivates a firearm:

[(a) In contravention of article 20 of this Law;]

[(b) Without obtaining the prior authorization of the [name of competent authority] in accordance with article 21 of this Law;]

(c) Without obtaining a deactivation certificate in accordance with article 23 of this Law;

commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be liable to [imprisonment for ...] and/or [a fine of/up to ...] [a regulatory sanction].]

Commentary

The aim of this provision is to ensure that deactivation is effective according to a State's deactivation standards. The Protocol does not require States to criminalize deactivation; however, it does require arrangements to be made for deactivation measures to be verified by a competent authority to confirm that the firearm has been rendered permanently inoperable (Protocol, article 9, subparagraph (c)). In order to encourage the verification of deactivation in all cases so as to enable the State to keep track of deactivated firearms, penalties should be imposed for failure to ensure that the competent authority verifies the deactivation. States could also consider establishing offences that penalize manufacturers and other persons authorized to deactivate firearms who fail to deactivate firearms in such a way that they are rendered permanently inoperable.

Chapter XII. Criminal provisions: ancillary offences

Commentary

Article 5, paragraph 2, requires States to adopt such legislative and other measures to establish as criminal offences attempting to commit, participating as an accomplice and organizing, directing, aiding, abetting, facilitating or counselling the commission of the offences established in the Protocol.

These provisions are not specific to illicit manufacturing or trafficking and only need to be included if not already covered by general provisions in the national criminal code or law that are applicable to all crimes.

Article 39. Attempts

1. Every person who attempts to commit an offence under chapters VIII, IX, X [or XI] of this Law commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/ up to ...] [a fine of the ... category].

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 2 (a).

The obligation to criminalize attempts in article 5, paragraph 2 (a), of the Protocol is “subject to the basic concepts” of the legal system. As noted in the interpretative notes to the Protocol (A/55/383/Add.3, paragraph 6):

“References to attempting to commit the offences established under domestic law in accordance with [article 5, paragraph 2,] of the Protocol are understood in some countries to include both acts perpetrated in preparation for a criminal offence and those carried out in an unsuccessful attempt to commit the offence, where those acts are also punishable under domestic law.”

In some legal systems, attempts are punished with the same penalty as the completed offence. In other systems, attempts are subject to a lower penalty. This provision need only be included if it is not already included in the national criminal code or law.

Article 40. Participating as an accomplice

1. Every person who participates as an accomplice to an offence under chapters VIII, IX, X [or XI] of this Law commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/ up to ...] [a fine of the ... category].

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 2 (a).

Article 5, paragraph 2 (a), requires criminalization of participating as an accomplice in illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and falsifying or illicitly obtaining, removing or altering the marking(s) on firearms as required by article 8 of the Protocol. This provision is “subject to the basic concepts” of the legal system. This provision need only be included if it is not already included in the national criminal code or law.

Article 41. Organizing, directing, aiding, abetting, facilitating or counselling

1. Every person who organizes, directs, aids, abets, facilitates or counsels another person or persons to commit an offence under chapters VIII, IX, X [or XI] of this Law commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/ up to ...] [a fine of the ... category].

Commentary

Mandatory provision

Source: Protocol, article 5, paragraph 2 (b).

This provision need only be included if it is not already included in the national criminal code or law.

Chapter XIII. Seizure, confiscation and disposal

Commentary

This chapter addresses the requirements of article 6 of the Protocol relating to the confiscation, seizure and disposal of firearms, their parts and components and ammunition that are or are believed to be illicitly manufactured or trafficked.

Article 6 of the Protocol must be read and interpreted together with articles 12-14 of the Convention, which apply to the seizure, confiscation and disposal of property that is either proceeds of crime or used or destined for use in crime. This will generally include illicitly manufactured and/or trafficked firearms, their parts and components and ammunition.

To the extent that illicitly manufactured or trafficked firearms, their parts and components and ammunition are considered to have been either property “derived” from these offences or “used or destined for use” in such offences, they become subject to articles 12 and 13 of the Convention, which 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 (see the *Legislative Guide*, paragraphs 136 and 137).

To be in conformity with the mandatory requirements of article 6 of the Protocol, States are required:

(a) To ensure that the domestic legal system “enables confiscation” of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked. The dangerous nature of the items covered by the Protocol may require additional expedited security precautions to ensure that they do not fall into the wrong hands before, during or after the seizure and confiscation process;

(b) To seize and destroy firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked. The dangerousness of the items favours a policy of destruction, with other forms of disposal being permitted only where officially authorized;

(c) To ensure that confiscated firearms are marked and that the method of disposal of the firearms and ammunition is recorded.

This obligation is to be fulfilled in a manner consistent with a State’s existing domestic and administrative systems, leaving the manner and form of implementing this obligation to the discretion of States. Many States already have detailed search, seizure and confiscation/forfeiture provisions (for example, provisions could be within a police act, in criminal procedure legislation or in separate legislation addressing confiscation). These legislative regimes are generally very detailed and subject to the basic principles of a State’s legal system

given the possibility of depriving an individual of property. “Confiscation” is defined in the Convention as including “forfeiture where applicable” in recognition that different legal systems have varying approaches to confiscation and forfeiture. Where such legislation exists, drafters should ensure they apply to firearms, their parts and components and ammunition and are available for the illicit manufacturing and trafficking offences. The specific requirements for marking and disposal of the firearms, their parts and components and ammunition must also be met.

Annex IV describes a number of methods of destruction that States can consider for inclusion in their legislation and associated regulations and policies.

A. *Enabling confiscation: search and seizure*

Commentary

Mandatory provision

Source: Protocol, article 6, paragraph 1.

In requiring the establishment of powers to “enable” confiscation, article 6, paragraph 1, of the Protocol does not specifically mention search and seizure. Article 6, paragraph 1, requires measures that enable confiscation if items “have been illicitly manufactured or trafficked”. However, drafters should consider drafting or ensuring that existing legislation creates a lower standard for the initial seizure of the items (for example, allowing seizure without a search warrant on reasonable grounds), since in many cases this will be done as an investigative measure before illicit manufacturing or trafficking can be fully proved. Seizure may also be necessary as an urgent measure to prevent weapons from being exported illegally or falling into illicit domestic circulation or use.

To conform with the Protocol, those powers should be linked to suspicion or other grounds for believing that an offence established in accordance with the Protocol has been or is about to be committed and that the items are either evidence of this or that they are themselves the subject matter of the offence involved. Such powers would generally be consistent with national legislation that implements the seizure and forfeiture provisions of the Convention, although some States apply more expedited procedures to allow firearms to be seized quickly on account of the safety or security risks that may arise if there are procedural delays (see the *Legislative Guide*, paragraph 139).

B. *Confiscation and forfeiture*

Commentary

Mandatory provision

Source: Protocol, article 6, paragraph 1.

Confiscation and forfeiture of property to the State exist widely in the domestic law of most jurisdictions. However, the applicable regimes vary considerably

between different States and different legal systems. To conform with the Protocol, drafters should ensure that their existing legal regimes for confiscation and forfeiture enable confiscation of firearms, their parts and components and ammunition.

Though it is not required by the Protocol, national legislation could also consider the establishment of specific standards to ensure the secure storage of confiscated and forfeited firearms, their parts and components and ammunition. Such standards would help to ensure that the items are not stored in a dangerous manner.

C. Destruction or other authorized form of disposal

Commentary

Mandatory provision

Source: Protocol, article 6, paragraph 2.

As noted in the *Legislative Guide* (paragraph 134), while the basic policy of the Convention is that confiscated property should be sold to the benefit of the confiscating State party, for purposes such as sharing with other States parties or for the payment of compensation or restitution to victims of crime (article 14), the dangerousness of the items covered by the Protocol favours a policy of destruction, with other forms of disposal permissible only where additional precautions are taken.

Therefore, where firearms, their parts and components and ammunition are seized and subsequently are forfeited to the State, article 6, paragraph 2, of the Protocol requires that the forfeited items be destroyed “unless other disposal has been officially authorized, provided that the firearms have been marked and the methods of disposal of those firearms and ammunition have been recorded”. Article 6, paragraph 2, creates a presumption in favour of destroying firearms, their parts and components and ammunition that have been seized by the State. However, it is up to States to determine what method of destruction they use to destroy firearms, their parts and components and ammunition. Annex IV describes a number of methods of destruction that States can consider for inclusion in their legislation and associated regulations and policies.

A State could also take a number of other legal measures to implement the general rule of destruction of firearms. As noted in the *Legislative Guide* (paragraph 143), this could include:

“(a) The establishment of powers to authorize disposal other than by destruction and setting appropriate limits on cases where a decision maker could give such an authorization. In this context, legislation could include examples of authorized means of disposal such as for scientific, historical or forensic purposes;

“(b) Legislative or administrative criteria for the issuance or refusal of an authorization to dispose by means other than destruction. This must include

the two requirements set out in article 6, paragraph 2, that the firearms must have been marked and that a record be kept of how they were disposed of. Other criteria could also be established in accordance with domestic policy assessments.”

In developing their legislation and associated regulations and policies, drafters must include the following provisions:

All firearms and ammunition forfeited to or confiscated by [*name of competent authority*] under this Law [or other relevant legislation] shall be:

- (a) Destroyed in accordance with [*method of destruction chosen*]; or
- (b) Otherwise disposed of in accordance with the specific authorization of [*name of competent authority*].

Where firearms are disposed of in another authorized manner, standards for marking the seized firearms that are retained and not destroyed must be established (see article 10 of this Law). A written record of information on firearms disposed of other than by destruction must also be maintained (see article 15 of this Law).

Where ammunition is disposed of in a way other than by destruction, a written record of information on the ammunition disposed of other than by destruction must be maintained (see article 16 of this Law).

Chapter XIV. Jurisdiction

Commentary

The Convention requires States to establish jurisdiction to investigate, prosecute and punish all offences established under the Convention and the Protocols. Article 15 of the Convention requires jurisdiction to be established in three circumstances: (a) over all offences committed within the State's territorial jurisdiction; (b) over all offences committed on board a vessel or aircraft registered to the State; and (c) if the national legislation prohibits the extradition of its own nationals, jurisdiction must be established over the offences committed by them anywhere in the world. This third circumstance is to permit the State to meet its obligation under the Convention to prosecute offenders who cannot be extradited on request owing to nationality. The Convention requires each State party to adopt "such measures as may be necessary", in recognition of the fact that different legal systems would approach the establishment of jurisdiction in a range of ways. Article 15 of the Convention also contains optional provisions to further extend jurisdiction.

Article 42. Application of this Law

This Law shall apply to any offence established under this Law when:

- (a) The offence is committed [wholly or partly] within the territory of [*name of State*];
- (b) The offence is committed [wholly or partly] on board a vessel or aircraft that is registered under the laws of [*name of State*] at the time the offence was committed;
- (c) The offence is committed [wholly or partly] by a [*name of State*] national whose extradition is refused on the grounds of nationality.

Commentary

Mandatory provision

Source: Convention, article 15, paragraphs 1 (a) and (b), and 3.

Territorial jurisdiction and jurisdiction on board a vessel or aircraft that is registered to the State already exists in all States. In common law countries this may even be the only basis for jurisdiction. The criterion is the place where

the criminal act has been committed (i.e. the *locus delicti* is in the territory of the State).

Subparagraph (c) gives effect to article 15, paragraph 3, which requires States to establish jurisdiction when the alleged offender is present in their territory and the State does not extradite him or her solely on the ground that he or she is their national. In such cases States are also obliged under article 16, paragraph 10, of the Convention to submit the case without undue delay to its competent authorities for the purpose of prosecution.

States wishing to consider the extended optional forms of jurisdiction may wish to add the following subparagraph to article 42:

“(d) The offence is committed by a [name of State] national whose extradition is refused on any ground.”

This subparagraph is optional, as it gives effect to article 15, paragraph 4, of the Convention, which provides that a State may establish jurisdiction over offences when the alleged offender is present in its territory and it does not extradite him or her for any reason. Note that if subparagraph (d) is used, then there is no need to include subparagraph (c), as (d) covers situations where extradition is refused for any reason (including nationality).

Beyond the mandatory provisions on jurisdiction, the Convention (article 15) encourages the establishment of jurisdiction in other circumstances, such as in all cases where the nationals of a State are victimized, where the offence is committed by a national or stateless person residing in its territory or where the offence is linked to serious crimes and money-laundering planned to be committed in its territory (article 15, paragraph 2). The Convention makes clear that the bases of jurisdiction are not exhaustive. Article 15, paragraph 6, states that, without prejudice to norms of general international law, the Convention does not exclude the exercise of any criminal jurisdiction established by a State party in accordance with its domestic law.

Extension of jurisdiction over acts committed by a citizen of a State in the territory of another State (active personality principle) is mostly done with regard to specific crimes of particular gravity. In some jurisdictions the active personality principle is restricted to those acts which are not only a crime according to the law of the State whose national commits the act, but also according to the law of the State in whose territory the act is committed.

Should States wish to adopt these provisions, they may want to introduce an additional article in the Model Law on the application of the law outside the territory, which could read as follows:

This Law shall also apply to any offence established under this Law when:

(a) The person is a national [or permanent resident] [or habitual resident] of [name of State];

(b) The offence is committed by a [name of State] national [or habitual resident] [or permanent resident];

(c) The offence is committed by a stateless person who has his or her habitual residence in [*name of State*] at the time of the commission of the offence;

(d) The offence is committed in the territory of [*name of State*] with a view to the commission of a serious crime within the territory of [*name of State*]; or

(e) The offence is committed outside the territory of [*name of State*] but the consequences of the offence are directed towards or intended to commit a serious crime within the territory of [*name of State*].

Article 43. Extradition

The offences established under this Law shall be extraditable offences.

Commentary

The provisions of the Convention oblige States parties to treat offences established in accordance with the Protocol as extraditable offences under their treaties and laws and to submit to competent authorities such offences for domestic prosecution where extradition has been refused on grounds of nationality (article 16 of the Convention) (see also the *Legislative Guide* for the Implementation of the Convention, paragraphs 394-449).

The Convention sets a basic minimum standard for extradition for the offences it covers and also encourages the adoption of a variety of mechanisms designed to streamline the extradition process. States should review their national legislation on extradition in the light of the provisions in the Convention and ensure that all the mandatory Protocol offences are included as extraditable offences. In the absence of any extradition treaty or legislative provisions, extradition should be in accordance with the procedures set out in the Convention.

Section C. International cooperation

Commentary

This chapter discusses articles 12 and 13 of the Protocol. As many international cooperation activities would not be specifically set out in legislation, it is up to States to determine the most appropriate manner to meet these mandatory requirements, depending upon their particular legal system and whether through legislation, policy guidelines or regulations or other methods.

Chapter XV. Information exchange and international cooperation

A. National point of contact

Article 44. Establishment of a national point of contact

By this Law a national point of contact is established to act as liaison with other States on matters relating to the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition.

Commentary

Mandatory provision

Source: Protocol, article 13, paragraph 2.

The Protocol requires States to identify a national body or a single point of contact to act as liaison with other countries on matters related to the Protocol. A State could also choose to identify a number of bodies as national points of contact. (It should be noted that a majority of States parties have notified UNODC that their national points of contact are authorities responsible to the ministers of the interior and justice.) Regardless of what a State decides, it should be made clear who the national point(s) of contact is (are) so other States know who to contact and how to contact them. This information would not be included in national legislation though it should be provided in a format and manner that is easily accessible by other States parties.

The focus of this Protocol provision is on international cooperation with other States parties. This is a distinct entity from the “central authority” designated under article 18, paragraph 13, of the Convention to deal with mutual legal assistance. Where a new body is established as the national point of contact, legislation may be needed to do so. In cases where a new unit is created within an existing national agency, such as law enforcement, the need for legislation will depend on whether this is authorized by existing legislation or not.

Beyond the broad mandatory obligation set out in article 13, paragraph 2, that the national point of contact liaise with other countries on matters relating to combating illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, the Protocol does not set out any specific responsibilities of the national point of contact. It is at the discretion of the State to determine the specific scope of its functions and activities.

Several regional instruments require the designation of a point of contact (for example, the ECOWAS Convention and the Nairobi Protocol). Under the Programme of Action on Small Arms and Light Weapons (chapter II, paragraph 4), States are to designate a national focal point responsible for various aspects of the illicit trade in small arms and light weapons, including “illicit manufacture, control, trafficking, circulation, brokering and trade”. Equally, the International Tracing Instrument (paragraph 25) requires States to designate one or more national points of contact “to exchange information and act as a liaison with States on all matters relating to the implementation of the instrument”. States can consider if it may be appropriate for an already designated authority to act as the national point of contact under this Law.

In addition to establishing a national point of contact, States may consider establishing a national commission on firearms. This is not required under the Protocol. However, several global and regional instruments call for the establishment of such a commission. Under the Programme of Action on Small Arms and Light Weapons (chapter II, paragraph 4), States are encouraged to “establish, or designate as appropriate, national coordination agencies or bodies and institutional infrastructure responsible for policy guidance, research and monitoring of efforts to prevent, combat and eradicate the illicit trade in small arms and light weapons in all its aspects”. Similar commitments are contained in a number of regional instruments, such as the ECOWAS Convention and the Nairobi Protocol. States can consider developing an appropriate legislative and institutional framework based on their own situation, including constitutional and other legal systems and cultural traditions. A national commission is responsible for coordinating the activities of various actors at the local, national and regional levels in order to increase the effectiveness of firearms and small arms controls. The United Nations Development Programme has published the *How to Guide: the Establishment and Functioning of National Small Arms and Light Weapons Commissions*,² which could be of assistance to States.

² Available from www.undp.org/crp/documents/sa_control/SALWGuide_English.pdf.

B. International cooperation

Commentary

Mandatory provision

Source: Protocol, article 13, paragraphs 1 and 3.

The two broad areas of obligation are:

(a) Facilitating cooperation at the bilateral, regional and international levels with other States' national authorities engaged in the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;

(b) Facilitating cooperation and support of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms, their parts and components and ammunition to prevent and detect illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

It is at the discretion of States how they choose to fulfil these obligations.

1. Information exchange

Commentary

Mandatory provision

Source: Protocol, article 12, paragraphs 1, 2 (a)-(d) and 3.

Article 12 of the Protocol addresses the information exchange obligations of States parties. States are to exchange relevant case-specific information on a range of possible matters. This obligation is to be fulfilled in a manner consistent with a State's existing domestic and administrative systems, leaving the manner and form of implementing this obligation to the discretion of States.

While the exchange of information is a mandatory provision, the types of information to be exchanged are not specified. Rather, the Protocol provides a number of suggestions. Where a State has included controls on brokers and brokering activities, this list of information to be exchanged could be expanded to include information on illicit brokering activities.

Though it is at the discretion of the State, areas of information exchange in article 12, paragraphs 1-3, of the Protocol could include:

(a) Case-specific information on matters including, though not limited to, authorized producers, dealers, importers, exporters and carriers of firearms, their parts and components and ammunition;

(b) Organized criminal groups known to be or suspected of taking part in illicit manufacturing of or trafficking in firearms, their parts and components and ammunition;

(c) The means of concealment used in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition and ways of detecting them;

(d) Methods and means, points of dispatch and destination and routes used by organized criminal groups engaged in or suspected of being engaged in trafficking in firearms, their parts and components and ammunition;

(e) Legislative experiences, practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition; and

(f) Scientific and technological information relevant to law enforcement authorities that will assist in the prevention, detection and investigation of the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

The Convention also contains provisions on information exchange and law enforcement cooperation (for example, articles 26-28). Drafters should consider these provisions when developing measures to implement the international cooperation provisions of the Protocol, both to ensure consistency and coherence in the delivery of information exchange and cooperation and to determine whether it is feasible to implement the various requirements using the same legislative provisions and/or administrative structures. Drafters can consider the documents in annex II for further guidance on these issues.

2. *Confidential information*

Commentary

Mandatory provision

Source: Protocol, article 12, paragraph 5.

“Subject to the basic concepts of its legal system or any international agreements”, each State is required to guarantee the confidentiality of and comply with any restrictions on the use of information that it receives from another State, including proprietary information pertaining to commercial transactions, if requested to do so by the authorities of the State providing the information. Article 12, paragraph 5, also recognizes that in some cases confidentiality cannot be guaranteed or maintained, usually because the requesting State has procedural protections (many of which are entrenched and enforceable constitutional rights) that require that prosecutors disclose potentially exculpatory information, or in some systems all relevant information, to accused persons prior to trial (see the *Legislative Guide for the Implementation of the Protocol*, paragraph 244). If such confidentiality cannot be maintained, the authorities of the State that provided the information shall be notified prior to its disclosure.

C. International cooperation for the purposes of tracing

Article 45. International tracing requests

[*Name of competent authorities*] shall be responsible for requesting tracing information from other States and responding to international tracing requests from competent authorities in any case where the firearms, their parts and components and ammunition involved may have been illicitly manufactured or trafficked.

Commentary

Mandatory provision

Source: Protocol, article 12, paragraph 4.

Article 12, paragraph 4, requires States to “cooperate in the tracing of firearms, their parts and components and ammunition that may have been illicitly manufactured or trafficked”. The modalities of tracing are not spelled out in the Protocol. However, States should bear in mind that tracing is a law enforcement tool and is distinct from the obligations pertaining to mutual legal assistance described in article 18 of the Convention and the national point of contact established pursuant to article 13, paragraph 2, of the Protocol.

The Protocol requires States to respond to tracing requests “within available means”. This provides the State with some discretion as to what is a realistic time frame considering its “available means”, though the Protocol requires that responses be “prompt”. It remains up to States to determine the modalities for requesting and responding to tracing requests. States should also ensure that the appropriate national authorities are designated to request and respond to tracing requests. This varies from State to State. Some States may have a designated national tracing centre or designate a national police entity or a unit within a police entity. In other States it could be the agency responsible for dealing with serious crimes.

States choosing to implement the International Tracing Instrument should ensure that their firearms legislation encompasses their commitments under that Instrument. The International Tracing Instrument also provides useful guidance on making and responding to tracing requests. States may also consult the European Union model international tracing request (Council of the European Union recommendation on a standard procedure in member States for cross-border enquiries by police authorities in investigating supply channels for seized or recovered crime-related firearms, and the annexed manual).

In accordance with their national systems, States can consider the most appropriate means to ensure effective implementation of this mandatory provision of the Protocol (for example, through regulations, administrative procedures or executive order). Such procedures could contain the following information:

(a) Designation of the competent authorities to receive tracing requests;

(b) Minimum information to be included in requests for the international tracing of firearms, their parts and components and ammunition, including:

(i) Information describing the illicit nature of the firearms, their parts and components and ammunition, the circumstances under which the firearms, their parts and components and ammunition were found and the legal justification for the request;

(ii) The make, model, serial number, calibre, country of origin and other available information on the firearms, their parts and components and ammunition that are the subject of the request; and

(iii) The intended use of the tracing request;

(c) An appropriate time frame [... *days*] in which [*name of competent authorities*] should acknowledge receipt of a tracing request;

(d) In accordance with national laws, the requirement that within a specific prompt period of time from the date of the receipt of the tracing request, [*name of competent authorities*] provide all available information sought by the requesting State that is relevant for the purpose of tracing the illicit firearms, their parts and components and ammunition;

(e) [*Name of competent authorities*] may seek additional information from the requesting State when the request does not contain all the necessary information needed to respond to the request;

(f) [*Name of competent authorities*] may delay or restrict the content of a response to a tracing request, or refuse to provide the information sought, where releasing the information would compromise ongoing criminal investigations or violate [*title of act dealing with protection of confidential information*], where the requesting State cannot guarantee the confidentiality of the information or for reasons of national security consistent with the Charter of the United Nations as stated in [*title of relevant legislation*].

Part Three. Non-mandatory provisions

Commentary

Section A below elaborates on provisions in the Firearms Protocol on brokers and brokering activities that States parties are required to consider for inclusion in their national legislation. Section B examines the provision in the Protocol whereby States may adopt simplified procedures for the temporary import, export and transit of firearms, their parts and components and ammunition.

Section A. Must-consider provisions

Chapter XVI. Brokers and brokering activities

Commentary

Article 15 of the Protocol requires States that have not yet done so to consider establishing a system for regulating the activities of brokers. This is the only provision in the Protocol that States are required to consider implementing, though it is not mandatory that a State establish such a system. Thus, it is ultimately left to States to decide whether or not to adopt legislation.

States that decide to regulate brokers and brokering activities should endeavour to adopt the measures referred to in the Protocol for inclusion in such a system for regulating brokers and brokering activities. Firstly, States could require the brokers themselves to be registered, ensuring that basic scrutiny could be applied to their business operations. Secondly, States could require that each transaction or transfer undertaken by each broker be licensed separately. Thirdly, States could require disclosure of the involvement and identities of brokers on the licences or authorizations that must be issued in accordance with article 10 of the Protocol. These suggested measures are neither mandatory nor exhaustive. However, where a State chooses to adopt legislation to control brokers and brokering activities, it should ensure that the provisions are consistent with its overall system of export, import and transit controls and record-keeping.

The report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (A/62/163 and Corr.1) has further developed the issue and submitted a number of additional recommendations that could be transformed into legislative provisions. Although the recommendations

contained in the report are of an advisory nature, the General Assembly encouraged States to adopt them in its resolution 63/72.

Should a State adopt a regime for brokering, it may also wish to create an associated offence for illicit brokering. Alternatively, if a State requires disclosure of a broker as part of the import/export licensing/authorization process, offences related to providing false or misleading information on licence application forms could include an offence for failing to provide required information about brokerage activities (see the *Legislative Guide*, paragraph 237). The establishment of these offences is not required by the Protocol (see annex I, articles 70-72, for optional suggested text on brokering-associated offences). Drafters can also consult annex II for other relevant instruments and documents that might assist in the drafting process.

A. *Registration of brokers*

Article 46. Registration requirement

Any person who is a citizen of or resident in [*name of State*] and any person located in [*name of State*] who engages in brokering activities with respect to the import or export of firearms, their parts and components and ammunition shall be registered with [*name of designated authority*].

Commentary

Article 15, paragraph 1 (a), of the Protocol suggests registration of brokers operating within a State's territory as a possible part of a national system to regulate the activities of brokers. Registration of brokers can be a pre-screening device and the registration records can assist in enforcement of controls nationally and in the exchange of information internationally.

Drafting note

As an alternative to a formal registration process of brokers, a State could use the record of information that a broker has provided when applying for an individual brokering activity licence as a de facto registration:

Option 1

Article ... Registration

Any broker who applies for and receives a licence [written authorization] to engage in a brokering activity pursuant to article 54 of this Law shall be automatically registered as a broker.

Article 47. Registration application

The applicant shall register in the form and manner prescribed by [*name of designated authority*].

*Drafting note**Option 1*

Application for registration as a broker must be filed on form [*name/number*] and (if applicable) must be accompanied by the required fee of [*amount*]. An application shall be signed by an applicant who is a natural person personally or by the legal representative of an applicant who is a legal person.

Option 2

Every person who engages in brokering activities of firearms, their parts and components and ammunition shall be registered by [*name of designated authority*] and shall (if applicable) pay the required fee of [*amount*].

Article 48. Registration [authorization] criteria

[*Name of licensing authority*] shall register a person as a broker if it is satisfied that:

(a) The applicant is of or above the age of [*State's age of majority or above*];

(b) The applicant does not have a criminal record;

(c) The applicant has not been adjudicated as mentally ill or been committed to any mental institution;

(d) The applicant is not an unlawful user of or addicted to any controlled substance [as defined in [*relevant section and title of national legislation on controlled substances*]];

(e) The applicant has not knowingly made any false statement or representation with respect to the information required on the application form;

(f) The applicant has met such registration application requirements and other registration requirements as deemed relevant.

Drafting note

With reference to subparagraph (b), in some jurisdictions the existence of any criminal record, or a criminal record within a particular time frame, prohibits a person to register as a broker. In others, conviction or indictment of offences under specified acts will prohibit a person from being registered.

Option 1

(b) The applicant has not been indicted for or convicted of an offence in accordance with [e.g. *the national security legislation, national legislation on corruption and bribery, national substance abuse legislation, national domestic violence legislation, legislation relating to the brokering, import, export and transit of firearms*];

Option 2

(b) The applicant has not been convicted in any court or is not under indictment of a crime punishable by imprisonment for a term exceeding [one] year;

Option 3

(b) Within the [five] years prior to the application to register the person as a broker, the applicant has not committed an offence under legislation relating to the brokering, import, export and transit of firearms, their parts and components and ammunition.

Article 49. Review of a decision not to register [authorize] an applicant

A person who has submitted an application to register as a broker may apply to the [*name of body authorized to review registration decisions*] for a review of a decision of the licensing authority denying an application for registration.

Article 50. Validity of broker registration and renewal

1. Registration of a person as a broker of firearms, their parts and components and ammunition shall be valid for a period of [... years].

2. Registration shall be renewable upon application [... days] prior to its expiration.

3. If a registration has expired, the applicant shall file a new application in accordance with article 47 of this Law.

Article 51. Notification of changes in information furnished by a registered broker

A registered broker shall, within [... days] of the event, notify [*name of licensing authority*] if:

(a) There is a material change in the information set forth in their registration;

(b) Any of the persons pertaining to the registration are indicted for or convicted of an offence [of a crime punishable by imprisonment for a term exceeding ... years].

Article 52. Cancellation of registration as a broker

A registration as a broker shall be cancelled:

(a) At the request of the registered person;

(b) If new facts become evident that, had they been known or existed at the time of the review of the initial application for registration, would have resulted in a refusal to register the person;

(c) If the registered person fails to comply with the relevant legislation relating to the import, export and transit of firearms, their parts and components and ammunition;

(d) If the registered person violates or is reasonably believed to have violated a binding United Nations Security Council arms embargo, a regional embargo either binding on [*name of State*] or to which [*name of State*] has voluntarily consented to adhere, or a national arms embargo;

(e) If a legal registered person is dissolved or a registered natural person dies.

Article 53. Record-keeping

A broker registered under this chapter shall maintain records in accordance with chapter V of this Law.

Commentary

Where a State chooses to regulate the activities of brokers, it should ensure that brokers are also required to maintain records. A State could also consider

keeping records of brokers whose registrations have been cancelled or whose application to engage in brokering activities has been refused.

B. Licence for [authorization of] brokering activities

Article 54. Requirement for a brokering licence

1. No brokering activity or proposal to engage in a brokering activity from or within the territory of [*name of State*] may be carried out or pursued by any person who is a citizen of or resident in [*name of State*] and any person otherwise subject to the jurisdiction of [*name of State*] without the prior receipt of a licence [authorization] issued in writing by [*name of licensing authority*] for the negotiation or arrangement of transactions involving the transfer of firearms, their parts and components or ammunition between [*name of State*] and another country, or between a third country and any other third country.

2. No brokering activity or proposal to engage in a brokering activity from or within the territory of another country may be carried out or pursued by any person who is a citizen of or resident in [*name of State*] without complying with the requirements of paragraph 1 of this article.

3. Before it issues the licence [authorization], [*name of licensing authority*] may require verification of the information submitted by the provision of original or certified copies of the documentation required in support of the application.

Commentary

Article 15, paragraph 1 (b), of the Protocol suggests licensing or authorization of brokering as a measure to regulate the activities of brokers. Brokering activities can be conducted in the broker's country of nationality, residence or registration; they can also be conducted in another country. The firearms do not necessarily pass through the territory of the country where the brokering activity is conducted, nor does the broker necessarily take ownership of the firearms. This provision allows a State to exercise jurisdiction over individuals and entities brokering firearms, their parts and components and ammunition from its own territory and expands jurisdiction to cover its nationals, permanent residents and companies when they conduct arms brokering activity abroad. This provision also covers brokering activities regardless of whether the items pass through the territory of the State where the brokering activity is conducted. States can decide whether they want to require a licence for each brokering transaction or to issue a general licence (see article 57 below).

Drafting note

Where a State has chosen to include A. Registration of brokers in its legislation, the following provision should be added to this article:

4. Each person applying for a licence [written authorization] to engage in any brokering activities [or associated brokering activities] relating to firearms, their parts and components and ammunition shall, in making their licence [authorization] application, first be registered to operate as a broker of firearms, their parts and components and ammunition.

Article 55. Application for a brokering activity licence

An application for a licence [authorization] for a brokering activity relating to firearms and/or their parts and components and/or ammunition shall be made in the prescribed form and manner to [*name of licensing authority*].

*Drafting note**Option 1 (Regulation provision)*

An application for a licence for brokering activities relating to firearms and/or their parts and components and/or ammunition shall be submitted on form [*name/number*] and (if applicable) accompanied by the required fee of [*amount*]. The application shall be signed and dated and must contain the information requested on the form, including:

(a) The identity of the applicant, including address and domicile of the company, person responsible within the company and contact person;

(b) A copy of the signed contract or draft contract, giving the specific details of the buyer of the goods, type, quantity and value of firearms, their parts and components or ammunition covered by the intended brokering activity;

(c) A certified end-use certificate stipulating the end-use and final destination of the items in the manner set out in [*see annex I, article 61 (End-user certificate)*];

(d) The name of the State from which the equipment is to be sourced and to which it is to be exported, even if it is not transported via [*name of State*];

(e) At the request of [*name of licensing authority*], [any] other documents enabling a proper assessment of the case;

(f) Full details of all parties involved, including the financial arrangements for the transaction.

Depending on the circumstances of the case it may not be possible to obtain copies of all such information when an application is being considered. States might consider issuing a licence on the condition of receiving further documentation before the licence is valid for use.

Information on subcontractors and financial/insurance arrangements

Taking into account the widespread use of subcontracting, a State might also require the names of all subcontractors to be involved in the transaction as a means of screening of individuals and companies.

In its report on brokering (A/62/163 and Corr.1), the Group of Governmental Experts recommended that States ensure that such closely associated brokering activities are adequately regulated by law, including transport and financing activities, in cases of illicit brokering in small arms and light weapons involving in particular violations of United Nations Security Council arms embargoes. A State could choose to regulate those activities by broadening its definition of what constitutes “brokering” or regulate those other activities (such as transport and financing activities) through other legislation (for example, through the banks act or transport of dangerous goods act).

Article 56. Criteria for assessing a brokering activity licence application

[*Name of licensing authority*] shall consider brokering activity licence applications on a case-by-case basis and in accordance with the criteria set out in [*see annex I, article 55 (Criteria for assessing an export licence application)*] of this Law.

Commentary

The granting of a licence to engage in brokering activity should be assessed prior to its approval or disapproval against a list of criteria similar to that which an export licence is assessed against. A suggested list of possible criteria is set out in annex I, article 55.

Article 57. General licences

Where deemed appropriate, [*name of licensing authority*] may issue a general licence for specified brokering activities in relation to a specified list of low-risk destinations and/or end-users.

Commentary

States may opt for issuing of a general licence that would constitute a broad grant of authority to persons engaged in these specified activities. If a general

licence has been granted, the licensee does not need to apply for a licence for each individual brokering activity transaction. The names of low-risk destinations and/or end-users should be specifically set out in the accompanying regulations or the legislation itself and would function as a limited exception to the licensing system. This could include trade within a trading zone or very close commercial partners. In some States, general licences remain in force until they are revoked by the relevant authority. Alternatively, a State could choose to issue a general licence for a specified time frame.

Article 58. Revocation or amendment of a brokering activity licence [authorization]

A licence [authorization] for brokering activities relating to firearms, their parts and components and ammunition may be revoked or amended prior to its expiration by [*name of licensing authority*] if:

- (a) False information has been supplied in order to obtain the licence;
 - (b) The details contained in the licence have changed;
 - (c) The conditions on the licence are not fully complied with;
 - (d) An arms embargo has been imposed on the country of destination since the licence was issued;
 - (e) The situation in the recipient country has changed significantly;
 - (f) There is an increased risk of diversion from the stated end-user;
- or
- (g) The stated end-use(r) changes.

Article 59. Licence conditions for a brokering activity licence

1. A brokering activity licence is subject to any conditions imposed on the licence by the licensing authority.
2. The holder of a brokering activity licence shall comply with any condition to which the licence is subject.
3. The licensee shall comply with the record-keeping requirements specific to brokers as set out in chapter V of this Law.
4. The licence shall not be transferred to another person.

Article 60. Validity of a brokering activity licence [authorization]

1. A specific period of validity shall be assigned to a brokering activity licence [authorization] by [*name of licensing authority*].
2. A brokering activity licence [authorization] expires:
 - (a) On the date specified in the licence;
 - (b) If surrendered by the holder of the licence to [*name of licensing authority*] prior to the date specified in the licence.
3. The period of validity of a brokering activity licence [authorization] may be extended on application to and approval from [*name of licensing authority*].
4. Applications for extensions of the period of validity shall be submitted in writing to [*name of licensing authority*] before the expiry date lapses, otherwise a new licence [authorization] application will be required.

Commentary

The period of validity for a licence [authorization] should be of sufficient duration to ensure that a brokering transaction can realistically be completed.

Section B. Optional provisions

Chapter XVII. Simplified procedures for temporary import, export and transit

Commentary

As stated in article 10, paragraph 6, of the Protocol, States may choose to adopt simplified procedures to allow private individuals to temporarily import or export firearms, their parts and components and ammunition for verifiable lawful purposes such as hunting, sport shooting, evaluation, exhibitions or repair. This list of activities in the Protocol is not exhaustive. It should also be noted that under article 8, paragraph 1 (b), of the Protocol additional import markings need not be affixed where firearms are imported temporarily for “verifiable lawful purposes”. This provision applies only in cases where States have opted to introduce simplified procedures in accordance with article 10, paragraph 6, of the Protocol.

As noted in the Legislative Guide (paragraph 113), legislation establishing simplified procedures for temporary import or export for verifiable lawful purposes could involve creating a parallel set of forms (e.g. application and permit forms) and issuance criteria and procedures, or an expansion or adjustment to the application forms used for import and export licences to permit them to be used for this purpose. It could also involve expedited procedures, such as allowing the issuance of licences by control officers at border points when items actually cross borders or at the point of shipment or receipt once in a country. It is at the discretion of a State whether to adopt such procedures or to develop other further safeguards where appropriate. However, the underlying concepts—that the owner of the firearms, their parts and components and ammunition does not change in a temporary import, export or transit and that a temporary transfer cannot be converted into a permanent transfer—must be maintained. If a State decides to adopt simplified procedures, it should ensure that they comply with the scope and purpose of the Protocol.

Drafters creating simplified procedures could consider the inclusion of a number of provisions, such as:

(a) Ensuring that basic information identifying the firearms and the temporary importer or exporter is collected in order to facilitate the tracing of firearms, their parts and components and ammunition under the Protocol;

(b) Setting a time frame for which temporarily imported firearms, their parts and components and ammunition may remain in their country and draft safeguards to ensure that temporarily imported items are re-exported back to the State of origin. If such transactions take place within this limited time frame, it would be unnecessary to keep records for the full 10 years required by article 7

of the Protocol. However, to ensure that the option for simplified procedures for temporary imports does not create an obstacle to tracing, domestic law should require that records be kept until the re-export of the firearm is confirmed;

(c) Legislators could also require evidence that the transaction is for a verifiable lawful purpose;

(d) Associated offences can be established for exporting to a State other than the State from which the firearms, their parts and components and ammunition were temporarily imported; where a simplified permit or authorization system is required by the national legislation, an associated offence for cases where the simplified permit or authorization was not obtained; not re-exporting within the time limit; and offences relating to the giving of false or misleading information on permit or authorization forms.

Article 61. Simplified procedures for a temporary import, export or transit permit

1. [Name of licensing authority] may apply simplified procedures to the terms of chapter VII of this Law for the temporary import, export and transit of firearms, their parts and components and ammunition for verifiable lawful purposes.

2. For the purpose of this Law, verifiable lawful purposes shall include hunting, sport shooting, evaluation, exhibitions, repairs and other activities to which this article is deemed applicable by [name of licensing authority] on a case-by-case basis.

Commentary

As the *Legislative Guide* notes, the simplified procedures apply to private individuals. These Model Law provisions therefore do not apply to temporary imports, exports or transit by groups or persons such as foreign military personnel of an international mission (e.g. peacekeeping forces), official representatives of foreign Governments or law enforcement officers of foreign Governments.

Article 62. Temporary export permit

1. Firearms, their parts and components and ammunition may be temporarily exported from the territory of [name of State] by a resident of [name of State] to engage in a verifiable lawful purpose as authorized by [name of licensing authority] on a case-by-case basis.

2. Prior to the temporary removal from [name of State], the resident shall apply for a temporary export permit on form [name of specific form] [or other temporary removal application document].

3. In addition to the provision of the information required on form [*name of specific form*] [*or other temporary export application document*] the resident shall provide:

(a) Proof of legal ownership of the firearm(s), their parts and components and ammunition;

(b) Proof that a temporary import authorization [permit] from the foreign Government of the country of temporary import has been obtained or written verification has been presented that no such authorization is required;

(c) Proof of the intended activity in the country of destination;

(d) A declaration/undertaking that no firearm, firearm part, component or ammunition temporarily removed from [*name of State*] will be sold, or otherwise permanently transferred, to another person during the period of the temporary transfer that is specified on the temporary export permit.

4. Not more than [...] firearms and/or not more than [...] rounds of ammunition shall be temporarily removed from [*name of State*].

Commentary

With regard to paragraph 3 (c), applicants could, for example, be required to produce an invitation to a trade show, exhibition or a hunting or sport shooting activity in the country of destination.

Drafters should also consider limiting the number of firearms, firearm parts and components and rounds of ammunition that can be temporarily removed from their State. In considering such limitations drafters should bear in mind what is reasonable given the specific lawful activities being undertaken (for example, exhibitions).

Where a State chooses to introduce expedited procedures as a part of its simplified procedures system, it could allow the issuance of temporary export permits by control officers at border points when the items actually cross borders. Forms that must be completed for a temporary export permit could be made available for completion at a customs office at the point of departure or at the point of shipment.

5. The temporary export permit shall contain the name and address of the temporary export permit holder and the specific lawful purpose of the transfer, and shall specify the duration of its validity, which in any case shall not exceed [... *days*].

Commentary

The limitation of the exception established by article 10, paragraph 6, of the Protocol extends only to “temporary” exports, imports and transit, which therefore requires that time limits be established.

6. No firearm, firearm part, component or ammunition temporarily removed from [name of State] shall be sold, or otherwise permanently transferred, to another person during the period of the temporary transfer that is specified on the temporary export permit.

7. Prior to departure from [name of State], the temporary export permit holder shall register the permit with [name of customs authority].

8. All firearms, their parts and components and ammunition (not otherwise expended for the lawful activity authorized) that are temporarily removed from [name of State] shall be returned to [name of State] before the expiration of the temporary export permit. Any person who has been issued a temporary export permit shall, upon return to [name of State], present their permit and the firearm(s), parts and components and unspent ammunition that are the subject of the permit to [name of customs authority] at the port of entry, as proof that such firearms, their parts and components and ammunition were previously taken out of [name of State], have been returned to [name of State] and are lawfully possessed under the laws of [name of State] by such person.

Article 63. Temporary import permit

1. Firearms, their parts and components and ammunition may be temporarily imported into [name of State] for a verifiable lawful purpose on a case-by-case basis by a non-resident of [name of State], provided that at the point of entry into [name of State] the non-resident shall provide:

(a) Proof of legal ownership of the firearm(s), their parts and components and ammunition;

(b) A temporary removal permit issued by the competent authority of his or her country of origin, indicating the duration of the temporary removal, or proof that no such permit was required under the laws of the State of origin;

(c) Proof of the intended activity in [name of State];

(d) A declaration/undertaking that no firearm, firearm part, component or ammunition temporarily imported into [name of State] will be sold, or otherwise permanently transferred, to another person during the period of the temporary transfer that is specified on the temporary import permit.

2. Not more than [...] firearms and/or not more than [...] rounds of ammunition shall be temporarily imported into [name of State].

Commentary

With regard to paragraph 1 (c), applicants could, for example, be required to produce an invitation to a trade show, exhibition or a hunting or sport shooting activity in the country of destination.

Drafters should also consider limiting the number of firearms, firearm parts and components and rounds of ammunition that can be temporarily imported into their State.

3. A declaration by the non-resident shall be made at the point of entry into [*name of State*], an inspection by a customs officer is made and [*name of customs authority*] issues a temporary import permit that shall to be presented to the customs officer upon departure.

4. The temporary import permit shall contain the name and address of the permit holder and the specific lawful purpose of the transfer, and shall specify the duration of its validity, which in any case shall not exceed [... *days*].

5. The firearm(s), part(s) and component(s) and ammunition must be with the non-resident's baggage or effects, whether accompanied or unaccompanied (but not mailed).

6. Any person in possession of a temporary import permit shall comply with the safety and security requirements established by [*name of law*] with respect to the carrying, storage, safe custody, transport and display of such firearms, their parts and components and ammunition.

7. Any firearm, its parts and components and ammunition that are the subject of a temporary import permit shall be for that person's exclusive use and shall not be sold or otherwise permanently transferred to another person in [*name of State*].

8. When the holder of the temporary import permit leaves [*name of State*], the firearm(s), firearm parts and components and unspent ammunition with respect to which the temporary import permit is issued shall accompany the holder of the permit.

9. Any items temporarily imported with a licence issued under this article are exempt from the provisions of [article 8 (Marking of firearms at import)].

Article 64. Temporary transit permit

1. All persons in transit through the territory of [name of State] shall make a declaration at the point of entry into [name of State] of any firearm(s), firearm parts and components and ammunition in their possession for a verifiable lawful purpose. An inspection by an officer of [name of customs authority] shall be made, and [name of customs authority] shall issue a temporary transit permit. The temporary transit permit shall be valid for the period of transit through [name of State] and shall be surrendered to [name of customs authority] on departure from [name of State].

Commentary

States may consider exceptions for temporary transit permits where the firearm, firearm parts and components and ammunition are not physically moved through the territory of the State but are in transit through an airport or other point of entry into the State but are not physically moved through the territory (or territorial waters) of the State.

2. No declaration shall be required if the person and his or her baggage containing the firearms will be transiting through a public transportation facility without leaving the customs jurisdiction of [name of State] to continue his or her onward journey, if the firearms possessor can demonstrate upon demand from any customs officer that such possession is for a verifiable lawful purpose in accordance with the laws of the State of origin and the State of destination.

Commentary

Drafters can consider the suitability of this provision for travellers in transit through their State who do not need to declare and redeposit their luggage by leaving the customs territory of the State of transit.

Article 65. Record-keeping

[Name of licensing authority or other competent authority] shall be responsible for keeping the records related to the issuance of temporary removal and temporary import permits of firearms, their parts and components and ammunition, including record-keeping of the entry and date of return of the firearm(s), firearm part, component or ammunition. Such records shall be kept for [... years].

Commentary

If temporary removal or import of a firearm, firearm part, component or ammunition takes place within a limited time frame, it will be unnecessary to keep records for the full 10 years as required by article 7 of the Protocol. However, to ensure that the option for simplified procedures for temporary removal or import permits does not create an obstacle to tracing, domestic law should require that records be kept until the return of the firearm, firearm parts or components or ammunition to the country of origin is confirmed.

*Article 66. Associated offences**Commentary*

States can consider establishing associated offences for failure to comply with the simplified procedure provisions. Where necessary, drafters should also consider the appropriate level of mens rea for those offences in accordance with their national legal framework.

*Article 67. Temporary import, export or transit
without permit or authorization*

1. Every person who [*specify level of intent, as appropriate*] imports, exports or transits any firearms, their parts and components and ammunition from or across the territory of [*name of country*] to another State without legal authorization or a permit issued in accordance with articles 62 to 64 of this Law commits an offence.
2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

*Article 68. Exporting to a State other than the State
from which the firearms were temporarily imported*

1. Every person who [*specify level of intent, as appropriate*] temporarily imports firearms, their parts and components and ammunition into [*name of State*] and re-exports or re-transfers those items to another person or to another State commits an offence.
2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Article 69. Breaching the validity of a temporary export, import or transit permit

1. Every person who [*specify level of intent, as appropriate*] removes firearms, or their parts and components or ammunition from [*name of State*] pursuant to a temporary export permit and does not return those firearms, or their parts and components or ammunition to [*name of State*] within the duration of the temporary export permit commits an offence.
2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Article 70. Giving false or misleading information on temporary export, import or transit permit forms

1. Where for the purpose of obtaining a permit under articles 62 to 64 of this Law, a person who [*specify level of intent, as appropriate*]:
 - (a) Makes a statement that is false or misleading, or omits a material fact; or
 - (b) Furnishes a document or information containing a false statement or misrepresenting or omitting a material fact;commits an offence.
2. A person guilty of an offence under paragraph 1 of this article shall be liable to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Annex I

Additional considerations

Commentary

Annex I to the Model Law contains additional draft text designed to supplement the draft mandatory provisions contained in the Model Law. States are not required to incorporate these provisions into their national legislation in order to comply with the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition itself. The draft text in this annex reflects best practices and principles derived from national practice and existing global and regional instruments on firearms other than the Protocol. This annex is designed to assist States to adopt and implement, at their discretion, a more extensive legislative regime on firearms, their parts and components and ammunition, supplementing the mandatory provisions of the Protocol.

A. Manufacturing

Commentary

These draft provisions are suggested provisions to help States ensure that they have a comprehensive system of licensing or authorizing manufacturers in place.

1. Licensing of manufacturers

Article 1. Licensing criteria

1. [*Name of licensing authority*] shall not issue a licence to manufacture firearms [, their parts and components] or ammunition unless [*name of licensing authority*] is satisfied that the applicant fulfils the licensing criteria established under [*title of subsidiary regulations where the licensing criteria will be listed*].

Drafting note

The Protocol does not stipulate that licensing criteria should be applied to licensing decisions or what those criteria should be. However, in jurisdictions where manufacturing is licensed, invariably certain criteria are applied to applicants. Given the level of detail involved, such criteria may be better suited to subsidiary legislation or regulations rather than primary legislation. According to best practices, licensing criteria should include three categories, related to personal character (moral attitude, criminal record, the absence of any link to criminal or mafia-like organizations, etc.), competence and ability

(technical requirements to manufacture) and general national values (public safety, national interest, etc.).

The list below constitutes good practice derived from national legislation and the OSCE “Best practice guide on national controls over manufacture of small arms and light weapons”¹ (chapter IV, section 2, page 5):

1. [Name of licensing authority] shall not issue a licence to manufacture firearms or ammunition unless:

(a) The applicant or any responsible person in relation to the application is of or above the age of [country’s age of majority or above as the minimum age]; and

Commentary

Apprenticeships. Drafters will need to consider whether provisional or restricted licences may be issued to persons who are below the age of majority in countries where supervised apprenticeships to learn the trade of firearms manufacture may be taken up at an age that is below the age of majority.

(b) [Name of licensing authority] is satisfied that:

(i) The applicant and all responsible persons in relation to the application:

- a. Are fit and proper persons;
- b. Can carry on the business without being a danger to public safety;
- c. Have sufficient financial resources to sustain the business;
- d. Can comply with the storage requirements set out in [title of the subsidiary or other regulations governing safe storage at the time of manufacture]; and
- e. Have completed a competency test [prescribed by the regulations];

(ii) The persons whom the applicant is proposing to employ in the business are fit and proper persons;

(iii) All close associates of the applicant are fit and proper persons;

(iv) The premises specified in the application are suitable to carry on the business of manufacturing firearms or ammunition;

(v) The issue of the licence is not against the public interest or the activity to be conducted under the licence is not contrary to the interests of national security; and

(vi) All the information provided by the applicant as part of the application process is true and accurate.

2. For the purposes of paragraph 1 (b)(iv) of this article, premises are deemed suitable premises for manufacturing firearms or ammunition if:

¹Organization for Security and Cooperation in Europe, *Handbook of Best Practices on Small Arms and Light Weapons* (Vienna, 2003), part I; available from www.osce.org/files/documents/e/a/13616.pdf.

(a) [Insert references to the relevant regulations or other provisions, for example, legislation pertaining to occupational health and safety within factories or other business premises; legislation pertaining to specific licensing requirements for carrying on certain dangerous activities; and so on];

(b) The storage facilities located at the premises comply with the requirements set out in [insert an annex to this Law containing storage requirements for manufacturers or insert the title of the subsidiary or other regulations governing safe storage at the time of manufacture].

Commentary

Article 11 of the Protocol requires States to take “appropriate measures” to require the security of firearms, their parts and components and ammunition at the time of manufacture, in order to detect, prevent and eliminate their theft, loss or diversion. The Protocol does not specify what those measures should be and so it is up to States to determine the nature of the required security measures (further optional guidance on this is available in the International Small Arms Control Standards, module 05.20, “Stockpile management: weapons”, and module 05.21, “Stockpile management: ammunition”). In some jurisdictions, this involves a requirement that firearms, their parts and components and ammunition be stored in a safe and secure way by the manufacturer in order to prevent theft, loss and diversion. The scope of the requirements vary from simply ensuring that the stock cannot be accessed by the public to detailed provisions regarding the dimensions of the vault that stores the stock, the number of people who must guard the stock and the surveillance equipment that must be employed. The specifications of the storage requirements are often contained in separate, subsidiary regulations that can be easily updated as security technology develops.

3. For the purposes of paragraph 1 (b)(iii) of this article, an applicant is a fit and proper person to carry on the business of being a manufacturer if:

(a) The applicant has not, within a period of [ten years] before the application was made, been convicted in [name of State] or elsewhere of [insert relevant offences] [an offence contained in this Law], whether or not the offence is an offence under [name of State] law; and

(b) The applicant is not [nor has he or she ever been] a member or associate of an organized criminal group; and

(c) The applicant does not suffer from a mental [or physical] condition that makes him or her unsuitable to operate as a manufacturer; and

(d) The applicant does not have a record of substance abuse involving drugs or alcohol; and

(e) The applicant can demonstrate that he or she is of good character through the provision of references to that effect.

Commentary

There is no requirement under the Protocol that States only allow “fit and proper persons” to obtain manufacturing licences. Established legal practice in national systems differs and accordingly it is difficult to reach a single, generic definition of what “fit and proper”

entails. It is up to States to determine what the character requirements are, if any, for a person to obtain a manufacturer's licence.

Article 2. Review of a decision not to issue a licence

A person who has applied for a licence under this chapter may apply to [*name of body authorized to review licensing decisions*] for a review of a decision of [*name of licensing authority*]:

- (a) Not to issue a licence; or
- (b) To impose conditions on the licence.

2. *General provisions applying to manufacturer's licences*

Commentary

The following provisions constitute suggested provisions pertaining to the procedural and administrative elements of a system for licensing manufacturers.

Article 3. Application for a manufacturer's licence

- 1. A person who is making an application for a licence to manufacture firearms or ammunition under this chapter shall make that application to [*name of licensing authority*].
- 2. An application shall be in the form and manner approved by [*name of licensing authority*].
- 3. An applicant shall pay the fee prescribed for the licence application.

Article 4. Information required for an application for a manufacturer's licence

- 1. An application by a natural person for a licence under this chapter shall be accompanied by:
 - (a) Proof of the identity of the applicant, including:
 - (i) Name;
 - (ii) Physical address;
 - (iii) Recent photograph;
 - (b) Proof of the identity of any person the applicant proposes to employ in the business, together with:
 - (i) Name;
 - (ii) Physical address;

- (iii) Recent photograph;
- (c) A full set of the applicant's fingerprints;
- (d) A full set of the fingerprints of any person the applicant proposes to employ in the business;
- (e) A competency certificate demonstrating satisfactory completion of the competency test described in [*annex I, article 1 (Licensing criteria), paragraph 1 (b) (i)(e)*];
- (f) References demonstrating good character as described in [*annex I, article 1 (Licensing criteria), paragraph 3 (e)*];
- (g) Any medical certificate required in accordance with [*annex I, article 1 (Licensing criteria), paragraph 3 (c) and (d)*];
- (h) Information on the weapons to be manufactured;
- (i) The address of the premises where the business will be conducted; and
- (j) Such other information as [*name of licensing authority*] requests.

Commentary

Drafters may wish to consider including the details of the information required for an application for manufacturer's licence in secondary legislation or regulations rather than in the primary legislation.

2. An application by a body corporate for a licence under this chapter shall be accompanied by:

- (a) The company's founding documents, articles of incorporation or other proof of licensed business;
- (b) Information on the weapons to be manufactured;
- (c) Proof that the company meets [*title of State's standards for protection of proprietary and state classified information*]; and
- (d) Information on foreign control and/or ownership in the applicant company;

Commentary

The OSCE "Best practice guide on national controls over manufacture of small arms and light weapons" states (chapter IV, section 3, page 6) that, inter alia, original documents or certified copies of the information identified in paragraph 2 (a)-(d) of article 4 above should be provided to the designated licensing authority.

- (e) The identity of each of the officers of the body corporate, including:
 - (i) Name; and
 - (ii) Physical address;

(f) With respect to the premises for which the licence is to be issued, nominate the person who will be responsible for the day-to-day management of the business on those premises;

(g) Proof of the identity of the responsible person and any person the applicant proposes to employ in the business, including:

(i) Name;

(ii) Physical address;

(iii) Recent photograph;

(iv) A full set of the responsible person's fingerprints and of the fingerprints of any person the applicant proposes to employ in the business;

(h) A competency certificate demonstrating satisfactory completion of the competency test described in [*annex I, article 1 (Licensing criteria), paragraph 1 (b) (i)(e)*] with respect to the responsible person and any person the applicant proposes to employ in the business;

(i) References demonstrating the good character of the responsible person as described in [*annex I, article 1 (Licensing criteria), paragraph 3 (e)*];

(j) Any medical certificate pertaining to the responsible person required in accordance with [*annex I, article 1 (Licensing criteria), paragraph 3 (c) and (d)*];

(k) The address of the premises where the business will be conducted; and

(l) Such other information as [*name of licensing authority*] requests.

Article 5. Particulars of a manufacturer's licence

A licence issued under this chapter shall specify:

(a) If the licence holder is a natural person, the name and residential address of the licence holder;

(b) If the licence holder is a body corporate, the name, corporate status and place of registration of the manufacturer;

(c) Date of issue of the licence;

(d) Date of expiry of the licence;

(e) Licensed activity;

(f) Name of the licensing authority;

(g) A recent photograph of:

(i) In the case of a licence issued to a natural person, that person; or

(ii) In the case of a body corporate, the responsible person;

(h) The signature of:

(i) In the case of a licence issued to a natural person, that person; or

(ii) In the case of a body corporate, the responsible person;

(i) Physical address of the business premises to which the licence applies;

(j) A summary of the storage requirements set out in [*name of accompanying regulations to the Law or guidelines containing safe storage requirements for manufacturers*];

(k) Any restrictions that may apply to the licence in accordance with [*annex I, article 6 (Restrictions on a manufacturer's licence)*];

(l) Any conditions that may apply to the licence in accordance with [*article 6 of the Model Law and annex I, article 7 (Licence conditions for a manufacturer's licence)*].

Commentary

The OSCE “Best practice guide on national controls over manufacture of small arms and light weapons” states that a licence to manufacture SALW should, at a minimum, contain the information specified in subparagraphs (b)-(f) of article 5 above (chapter IV, section 3, page 6).

Article 6. Restrictions on a manufacturer's licence

1. A manufacturer's licence is subject to any restrictions imposed on the licence by [*name of licensing authority*].

2. The holder of a manufacturer's licence shall comply with any restrictions to which the licence is subject.

3. Without prejudice to paragraph 1 of this article, each licence is subject to the following restrictions:

- (a) The licence may not be transferred to another person; and
- (b) [*Other restrictions*].

Drafting note

Licensing authorities may impose restrictions on the operations of manufacturers that should be reflected in the national legislation and on the licence itself. For example, restrictions may be imposed on:

- The quantity of firearms or ammunition that can be manufactured.
- The types of firearm or ammunition that can be manufactured (e.g. in some jurisdictions, certain types of weapon such as automatic weapons are prohibited and manufacturers may only be authorized to manufacture firearms that can be legally possessed).
- The sale or transfer of firearms (e.g. manufacturers may only be authorized to sell firearms to licensed individuals or dealers, or for export).
- The activities manufacturers can engage in (e.g. manufacturers may be prohibited from reactivating, converting or reactivating firearms). And/or
- The transferability of the licence (i.e. it should not be lawful to transfer the licence into the name of another person. Exceptions may be made, for example, for the transfer of the licence to an executor or administrator in the event of the death of

the manufacturer or to the trustee in bankruptcy if the manufacturer becomes bankrupt or insolvent, for the purposes of winding up the business).

Article 7. Licence conditions for a manufacturer's licence

Commentary

In addition to the mandatory licence conditions in draft article 6 of the Model Law, drafters can consider the following other conditions:

Each manufacturing licence is subject to the following additional conditions:

(a) The licensee shall, at any reasonable time, permit inspection by a police officer (or such other person as may be prescribed by the regulations) of the information and records held by the licensee in accordance with [chapter V of the Law];

(b) The licensee shall comply with the requirement to submit reports under [annex I, article 38 (*Reports to be submitted*)];

Drafting note

It may not be necessary to include both subparagraphs (a) and (b). The preference of one over the other will depend on which system of record-keeping the State chooses. For example, if the State chooses the system whereby the responsibility to maintain records rests with the manufacturer, then an ability to inspect those records is appropriate. If, however, the State chooses a system whereby all records of licensed activities are retained by the State, then it will need regular submission of reports detailing licensed activities that have been conducted.

(c) The licensee shall, at any reasonable time, permit inspection by a police officer (or such other person as may be prescribed by the regulations) of the licensee's facilities with respect to the storage of the firearms in the licensee's possession; and

(d) The licensee shall notify [*name of licensing authority*] of:

(i) Any theft or loss of any item from the licensee's premises identified on the licence, within twenty-four hours of [the licensee becoming aware of] such theft or loss;

(ii) Any change in address of the premises where the licensee carries on the business of manufacturing, within [seven days];

(iii) Any change in the storage facilities used by the licensee, within [seven days];

(iv) Any change in the identity of any person employed by the business, within [seven days]; and

(v) Where the licensee is a body corporate, any change in the identity of the officers of the company within [seven days].

Commentary

Since the granting of a manufacturer's licence is dependent on the provision of certain information and documentation, it is important that the licensing authority be aware of any change in that information or documentation, especially where it relates to other conditions of the licence (such as the storage facilities).

Article 8. Variation of licence conditions

1. [Name of licensing authority] may, at any time, vary any condition imposed on a manufacturer's licence.
2. The variation of a condition under this chapter takes effect upon the giving of notice of that variation to the holder of the licence.

Article 9. Review of a decision to vary licence conditions

The holder of a manufacturer's licence/licensee may apply to [name of licensing authority] for a review of a decision of [name of licensing authority] to vary any of the conditions on the licence.

Article 10. Duration of licences

A manufacturer's licence continues in force for a period of [...] years from the date of issue or the date of subsequent renewal of the licence, which is specified in the licence, unless it is sooner surrendered or cancelled or otherwise ceases to be in force in accordance with [annex I, article 6 (Restrictions on a manufacturer's licence)].

Article 11. Renewal of a manufacturer's licence

1. Before the expiration of a licence granted under this chapter, the holder may apply to [name of licensing authority] for renewal of the licence.
2. An application shall be in the form and manner approved by [name of licensing authority].
3. In the case of an application by a body corporate, if any of the responsible persons in relation to the licence have changed during the course of the licence, the application shall be accompanied by:
 - (a) Proof of the identity of the new persons; and
 - (b) A full set of each person's fingerprints.

4. In addition to the requirements of paragraph 3 of this article, if there is a close associate of the applicant for renewal who has not been disclosed to [name of licensing authority], the application shall be accompanied by:

(a) A statement setting out the name and address of any such close associate; and

(b) A full set of the fingerprints of any such close associate or, if it is not possible to obtain a full set of such fingerprints, if [name of licensing authority] so requires, any known information about the close associate.]

5. The applicant shall pay the appropriate fee prescribed for the renewal of licences.

6. [Name of licensing authority] may renew or refuse to renew a licence and, if a licence is to be renewed, [name of licensing authority] may alter or vary the conditions on the licence or impose further conditions on the licence.

Commentary

There is no requirement in the Protocol that States must implement a system whereby licences can be renewed. However, as a practical matter, a licensing system should include provisions whereby a licence expires after a certain term and the licensee may renew or continue that licence. An alternative is to treat each licence application as a fresh application for a new licence.

Article 12. Continuation of a licence during consideration of an application for renewal

If a licence holder has applied for renewal of a licence under [annex I, article 11 (*Renewal of a manufacturer's licence*)] and that application has not been determined before the date of expiry of the licence, the licence is deemed to continue in force, on and from that date, until the determination of the application.

Article 13. Conditions of renewal of a manufacturer's licence

[Name of licensing authority] shall not renew a manufacturer's licence unless [name of licensing authority] is satisfied that:

(a) The applicant, all close associates of the applicant, all the responsible persons in relation to the application and any persons employed in the business are fit and proper persons;

(b) The premises specified in the application are suitable to carry on the business of being a manufacturer;

(c) The applicant can comply with the storage requirements set out in [title of accompanying regulations to the Law or guidelines containing safe storage requirements for manufacturers]; and

- (d) The renewal of the licence is not against the public interest.

Article 14. Review of a decision not to renew a licence

A person who has applied for renewal of a licence under this chapter may apply to [name of body authorized to review licensing decisions] for review of a decision of [name of licensing authority] not to renew the licence.

3. Suspension, cancellation and transfer of manufacturer's licences

Article 15. Suspension of a manufacturer's licence

1. [Name of licensing authority] may suspend a manufacturer's licence if it is satisfied [on reasonable grounds] that there may be grounds for cancelling the licence under [annex I, article 16 (Cancellation of a manufacturer's licence)].

2. If [name of licensing authority] decides to suspend a licence, it shall serve notice of the suspension of the licence on the holder of the licence.

3. A notice under paragraph 2 of this article shall:

- (a) State that the licence is suspended; and
- (b) State that [name of licensing authority] is satisfied that there are grounds for the cancellation of the licence; and
- (c) Set out those grounds; and
- (d) State that the holder of the licence may make written submissions on the proposal and that any written submissions made must be made within 28 days of the giving of the notice.

4. Within 28 days of receiving a notice of the suspension of a licence under paragraph 2 of this article, the holder of the licence may make written submissions to [name of licensing authority] responding to the proposed grounds for the cancellation of the licence.

5. Within [14 days] of receiving any written submissions from the licensee in accordance with paragraph 4 of this article, [name of licensing authority] shall serve a notice on the licensee confirming that:

- (a) [Name of licensing authority] has received and reviewed the written submissions; and
- (b) The suspension of the licence is:
 - (i) Continued; or
 - (ii) Revoked.

6. The suspension ends when:

(a) [Name of licensing authority] gives the licensee a written notice revoking the suspension; or

(b) The licence is cancelled under this Law.

7. The licensee is not authorized to manufacture firearms or ammunition during the suspension.

Article 16. Cancellation of a manufacturer's licence

1. A licence to manufacture firearms [, their parts and components] or ammunition may be cancelled by [name of licensing authority] if:

(a) The licensee has ceased to carry on business as a manufacturer [and the licence has not been transferred to another person or entity in accordance with this Law];

(b) [Name of licensing authority] is satisfied on reasonable grounds that the licensee knowingly gave information that was false or misleading in relation to the application for the licence;

(c) The licensee no longer fulfils all of the requirements in [annex I, article 1 (Licensing criteria)];

(d) The licensee has committed a material violation of one of the restrictions imposed on the licence in accordance with [annex I, article 6 (Restrictions on a manufacturer's licence)];

(e) The licensee has committed a material violation of one of the conditions imposed on the licence in accordance with [article 6 of the Model Law and annex I, article 7 (Licence conditions for a manufacturer's licence)];

(f) The licensee has contravened a provision of this Law [whether or not the licensee has been convicted of an offence associated with the contravention]; or

(g) [Name of licensing authority] has determined that the licensee is otherwise unfit to hold a licence to manufacture.

2. If [name of licensing authority] decides to cancel a licence, it shall serve notice of the cancellation of the licence on the holder of the licence.

3. A notice under paragraph 2 of this article shall:

(a) State that the licence is cancelled; and

(b) State that [name of licensing authority] is satisfied that there are grounds for the cancellation of the licence; and

(c) Set out those grounds; and

(d) State that the holder of the licence may make written submissions on the proposal and that any written submissions made must be made within 28 days of the giving of the notice.

Commentary

The Protocol does not stipulate that a system of licensing manufacturers must include provisions allowing for the licence to be cancelled. However, an ability on the part of the licensing authority to cancel a licence before it expires is a necessary element of an effective licensing regime so as to ensure that if a person violates the conditions of the licence or, for example, is convicted of illicit manufacturing by virtue of failing to mark manufactured weapons, permission to carry on manufacturing activities can be withdrawn.

Article 17. Right of appeal against a suspension or cancellation

An application to appeal against a suspension or cancellation may be made in accordance with the applicable procedural rules of [name of State].

4. Surrender and disposal of property

Article 18. Surrender of firearms and documentation

When a manufacturing licence expires [and is not renewed under *annex I, article 11 (Renewal of a manufacturer's licence)*], is suspended under [*annex I, article 15 (Suspension of a manufacturer's licence)*] or is cancelled under [*annex I, article 16 (Cancellation of a manufacturer's licence)*], the licensee shall surrender to [name of licensing authority]:

- (a) All firearms and ammunition held by the licensee [at the premises identified on the licence];
- (b) The manufacturing licence; and
- (c) All records held by the licensee;

within [seven] days of notification of the suspension or cancellation.

Commentary

If a person is required to surrender firearms and their manufacturing licence upon the expiration, suspension or cancellation of that manufacturing licence, it may be necessary to factor in distinct requirements with respect to the timing of the surrender of weapons and documentation that take account of the means by which notification of the suspension or cancellation was received.

Article 19. Destruction and disposal of property surrendered

1. All firearms and ammunition surrendered by a licensee in accordance with [*annex I, article 18 (Surrender of firearms and documentation)*] shall be:

- (a) Destroyed in accordance with [*specify the destruction method chosen by the State detailed in an annex or accompanying regulations*]; or

(b) Otherwise disposed of in accordance with any directions of [name of competent authority].

2. Where surrendered firearms are disposed of in accordance with paragraph 1 (b) of this article:

(a) The surrendered firearms shall be marked with an identification mark in accordance with [article 10 of the Model Law];

(b) A written record of the methods of disposal used to dispose of those surrendered firearms shall be maintained by [name of competent authority] in accordance with [article 15 of the Model Law].

3. Where surrendered ammunition is disposed of in accordance with paragraph 1 (b) of this article, a written record of the methods of disposal used to dispose of that surrendered ammunition shall be maintained by the [name of competent authority] in accordance with [article 16 of the Model Law].

B. Marking

Commentary

This section is divided into three sections:

(a) Section 1 relates to the marking of firearms and contains text designed to supplement the Model Law text addressing the mandatory requirements (although this is not required under the Protocol);

(b) Section 2 relates to the marking of parts and components, to assist States that wish to establish a system for marking parts and components before they become part of assembled firearms (although this is not required under the Protocol);

(c) Section 3 relates to the marking of ammunition, to assist States that mark ammunition to establish a system for marking ammunition packaging (although this is not required under the Protocol).

1. Marking of firearms

(a) Initial markings

Article 20. Marking at the time of testing (proof marking)

1. Every person that manufactures a firearm shall ensure that every firearm manufactured in [name of State] is:

(a) Proofed by [name of the accredited proof house]; and

(b) Marked with a proof mark in accordance with [title of relevant law, regulations or specifications on proof marks];

[before it is sold or delivered to the purchaser] [within ... days after the manufacture of the firearm is complete].

2. Every person that imports a firearm shall ensure that every firearm imported into [name of State] is:

(a) Proofed by [name of the accredited proof house]; and

(b) Marked with a proof mark in accordance with [title of relevant law, regulations or specifications on proof marks];

[before it is sold or delivered to the purchaser] [within ... days after the firearm is imported].

Commentary

There is no requirement under the Protocol that firearms be marked at the time of testing. However, States parties that are members of the Permanent International Commission for Firearms Testing or (CIP)² are required to proof mark every successfully tested civilian firearm prior to putting it on the market. Member countries should already have legislation in place that makes it compulsory to perform the tests according to the methods, limits and procedures established by the United Nations Convention against Transnational Organized Crime. These tests are carried out by accredited proof houses.

(b) Additional markings

Article 21. Marking at the time of acquisition by the State (assignment marking)

Every public agency shall ensure that, in addition to the markings required under articles 7, 8, 9, [10 and 11] of this Law, every firearm acquired by it [for use in the execution of its public functions] is marked in such a way as to identify the agency.

Commentary

Source: The International Tracing Instrument (paragraph 8 (d)) requires States “to ensure that small arms and light weapons in the possession of the government armed and security forces for their own use ... are duly marked”. The OSCE “Best practice guide on marking, record-keeping and traceability of small arms and light weapons”³ (chapter III, section 2 (b), page 6) also suggests that States wishing to improve the traceability of their weapons may consider adopting appropriate markings to further distinguish these weapons according to their use. Drafters may choose to include this in administrative guidelines or provisions rather than in national legislation.

²There are currently 14 members: Austria, Belgium, Chile, Czech Republic, Finland, France, Germany, Hungary, Italy, Russian Federation, Slovakia, Spain, United Arab Emirates and United Kingdom of Great Britain and Northern Ireland.

³Organization for Security and Cooperation in Europe, *Handbook of Best Practices ...*, part II.

(c) **Method of marking**

Article 22. Method of marking firearms

All firearms marked under this chapter shall be marked [by permanently stamping or engraving the marking on the firearm's frame or receiver] in accordance with the technical specifications provided in [*name of accompanying regulations to the Law or guidelines containing marking specifications*].

Commentary

The Protocol does not specify the method of marking that must be used (other than indicating that deactivation markings should be “stamped” on deactivated firearms (article 9, subparagraph (c), of the Protocol)). States should establish regulations or guidelines that specify the technical requirements for marking firearms and, where applicable, their parts and components and ammunition. Further optional guidance on possible methods of marking is provided in the forthcoming UNODC technical guide to the implementation of the Firearms Protocol, as well as the International Small Arms Control Standards, module 05.30, “Marking and record-keeping”, and in the Nairobi and SADC Protocols.

2. Marking of parts and components

(a) **Initial markings**

Article 23. Marking of parts and components at the time of manufacture

1. Every manufacturer of parts and components shall mark each essential or main part and component, at the time of manufacture, in accordance with paragraph 2 of this article.

Commentary

There is no requirement under the Protocol that parts and components be marked at the time of manufacture. However, the marking of parts and components can help prevent trafficking in disassembled firearms and can help in the control of craft or homemade production.

2. The unique identification mark applied to every essential or main part or component manufactured in [*name of State*] in accordance with paragraph 1 of this article shall indicate:

- (a) That [*name of State*] is the country of manufacture;
- (b) The name of the manufacturer; and
- (c) The serial number.

Commentary

As there is no requirement under the Protocol to mark parts and components, it is up to States to determine whether they will require manufacturers to mark parts and components and the nature of those markings.

(b) Additional markings*Article 24. Marking of parts and components at the time of import*

1. Every person or [public service agency] that imports parts and components shall ensure that each essential part and component is marked in accordance with paragraph 3 of this article [within ... days] of being imported into [name of State].

2. Paragraph 1 of this article does not apply to:

(a) A part or component that is imported temporarily [for verifiable lawful purposes];

(b) A part or component that was initially exported from [name of State] by a person if the person retained ownership of the part or component while it was outside [name of State]; or

(c) A part or component that was initially exported from [name of State] by a public service agency and that remained in the possession of that agency while the part or component was outside [name of State];

(d) [Any other exceptions].

3. The unique identification mark applied to each essential part and component imported into [name of State] in accordance with paragraph 1 of this article shall indicate:

(a) That [name of State] is the country of import;

(b) The year of import;

(c) [Other].

Commentary

As there is no requirement under the Protocol to mark parts and components, it is up to States to determine whether they will require the marking of parts and components at the time of import and the nature of those markings.

(c) Method of marking*Article 25. Method of marking parts and components*

All [unassembled] parts and components marked under this chapter shall be marked [by permanently stamping or engraving the marking on the firearm's frame or receiver]

in accordance with the technical specifications provided in [*title of accompanying regulations to the Law or guidelines containing marking specifications*].

Commentary

The Protocol does not specify the method of marking that must be used (other than indicating that deactivation markings should be “stamped” on deactivated firearms (article 9, subparagraph (c), of the Protocol)). States parties should establish regulations or guidelines that specify the technical requirements for marking parts and components where they require unassembled parts and components to be marked as distinct from assembled firearms.

3. *Marking of ammunition*

(a) *Initial markings*

Article 26. Marking of ammunition at the time of manufacture

1. Every person that manufactures ammunition shall mark all ammunition, at the time of manufacture, in accordance with paragraphs 2 and 3 of this article.

Commentary

There is no requirement under the Protocol that ammunition be marked at the time of manufacture. Nevertheless, a few States do require that ammunition or certain types of ammunition be marked at the time of manufacture and technological developments in this area may increase manufacturers’ ability to mark ammunition in the future.

The marking of ammunition is required under the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (article 18, paragraph 3), which provides:

“(a) The markings shall include a unique lot number, the manufacturer’s identity, as well as the country and year of manufacture. Information concerning the purchaser’s identity and the country of destination should also be included if known at the time of manufacture. These details must feature at least once on the jacket (i.e. cartridge) containing the powder or liquid used in the ammunition or explosive. The markings shall be expressed alphanumerically;

“(b) The smallest ammunition packaging shall include information outlined under 3 (a).”

2. The identification mark applied to ammunition manufactured in [*name of State*] in accordance with paragraph 1 of this article shall indicate:

- (a) A unique lot number;
- (b) The name of the manufacturer;
- (c) That [*name of State*] is the country of manufacture;
- (d) The year of manufacture.

3. Every person that manufactures ammunition shall affix a label to each package in which ammunition is contained, indicating:

- (a) The calibre [or gauge] of the ammunition;
- (b) A unique lot number;
- (c) The name of the manufacturer;
- (d) That [*name of State*] is the country of manufacture;
- (e) The year of manufacture.

Commentary

European Community directive 2008/51/EC provides (revised article 4, paragraph 2) that:

“Member States shall ensure that each elementary package of complete ammunition is marked so as to provide the name of the manufacturer, the identification batch (lot) number, the calibre and the type of ammunition.”

(b) Additional markings

Article 27. Marking of ammunition at the time of import

1. Every person [or public service agency] that imports ammunition shall ensure that all ammunition is marked in accordance with paragraph 3 of this article within [... *days*] of being imported into [*name of State*].

2. Paragraph 1 of this article does not apply to:

- (a) Ammunition that is imported temporarily [for verifiable lawful purposes];
- (b) Ammunition that was initially exported from [*name of State*] by a person if the person retained ownership of the ammunition while it was outside [*name of State*]; or
- (c) Ammunition that was initially exported from [*name of State*] by a public service agency and that remained in the possession of that agency while the ammunition was outside [*name of State*];
- (d) [*Other exceptions*].

3. The identification mark applied to ammunition [packaging] imported into [*name of State*] in accordance with paragraph 1 of this article shall indicate [*if your State requires ammunition or ammunition packaging to be marked at the time of import, insert the details of the marking requirements here*].

Commentary

The Protocol does not require the marking of imported ammunition.

(c) Method of marking

Article 28. Method of marking ammunition

All ammunition marked under this chapter shall be marked [by permanently microstamping the head of each cartridge] in accordance with the technical specifications provided in [*title of accompanying regulations to the Law or guidelines containing marking specifications*].

Commentary

States parties should establish regulations or guidelines that specify the technical requirements for marking ammunition where they require ammunition to be marked.

C. Record-keeping

Commentary

These suggested provisions supplement the mandatory provisions on record-keeping in the Protocol. Many of these provisions might be contained in regulations or secondary legislation accompanying the Law.

1. Records of transactions

Article 29. Information on domestic transactions

[*Name of licensing authority*] [every licensed manufacturer] shall keep a record of every transaction in a register of transactions that includes the following information:

- (a) Name of the transferee;
- (b) Address of the transferee;
- (c) Date of the transaction;
- (d) Quantity of firearms, their parts and components or ammunition transferred;
- (e) The markings applied to any firearm [, its parts and components or ammunition] transferred;
- (f) The make, model, serial number and calibre of every firearm transferred;
- (g) Details of the licence number or other evidence of the transferee's authority to receive the firearm(s), their parts and components or ammunition;
- (h) The intended use of the transferred firearms, their parts and components or ammunition (e.g. whether they are intended for export or domestic use); and
- [(i) *Other, e.g. fingerprints of the transferee, weapon's ballistic sample copy.*]

Commentary

Although not required under the Protocol, keeping a register or record of all transactions involving the sale and acquisition of firearms and, where feasible, their parts and components and ammunition, will facilitate tracing.

European Council directive 91/477/EEC on control of the acquisition and possession of weapons stipulates (article 4) that dealers (defined to include manufacturers) operating in the territory of a member State must be required to keep a register of firearms received and disposed of, including "such particulars as enable the weapon to be identified, in particular the type, make, model, calibre and serial number thereof and the names and addresses of the supplier and the person acquiring the weapon".

Article 30. Information on exports

In addition to the information recorded in accordance with [annex I, articles 11 (Renewal of a manufacturer's licence) and 12 (Continuation of a licence during consideration of an application for renewal)], [name of licensing authority] [every licensed importer or exporter, as appropriate,] shall keep records of all items exported under a licence granted under this Law, including:

- (a) Dates of all transactions;
- (b) A copy of the import licence or authorization or any other official document that serves as authorization of the import, including details of the country of issuance, date of issuance and expiration, identification of authorizing agency, the final recipient and the quantity of firearms and/or their parts and components and/or ammunition;
- (c) Copies of in-transit authorizations (as applicable);
- (d) Name of exporter, address, telephone number and fax, responsible person's or representative's name if a commercial body and signature, licence and registration number, if any (including expiration date);
- (e) Source of the firearms and/or their parts and components and/or ammunition, including name, address and telephone number;
- (f) Manufacturer's name, address and country of manufacture of the items under consideration;
- (g) Name and address of the importer;
- (h) A description of the firearms and/or their parts and components and/or ammunition for export, including (as applicable) the calibre, gauge or size, the model, the quantity, the value of the items and the serial numbers;
- (i) The name and address of the final end-user;
- (j) The name and address of any other party to be involved in the transaction [including, as applicable, the name of any broker involved in the transaction, address, telephone number and broker registration number, and a certified copy of the broker licence authorizing the transaction];

(k) End-user certificate in the manner stipulated in [*annex I, article 61 (End-user certificates)*] [including the end-use and destination of the firearms and/or their parts and components and/or ammunition];

[(l) Details of the route to be taken by the items, including destination, end-use(r), transit countries, trans-shipment, ports of entry and exit and any other relevant routing information;]

[(m) Details of the safety and security arrangements, including safe storage and transportation, preventing the firearms, their parts and components and ammunition from coming into the possession of unauthorized individuals or entities;]

[(n) Banking and insurance details for the transaction;]

(o) Any other information as required by the application form.

Article 31. Information on imports

In addition to the information recorded in accordance with [*annex I, articles 11 (Renewal of a manufacturer's licence) and 12 (Continuation of a licence during consideration of an application for renewal)*], [*name of licensing authority*] [every licensed importer] shall keep records of all items imported under a licence granted under this Law, including:

(a) Name of importer, address, telephone number and [registration number, if any (including expiration date)];

(b) The country from which the item(s) is (are) to be imported [, including the source of the firearms and/or their parts and components and/or ammunition, including name, address and telephone number];

(c) Dates of all transactions;

(d) The name, address and telephone number of the foreign seller and exporter of the firearms and/or their parts and components and/or ammunition, including name, address and telephone number;

(e) A description of the firearms and/or their parts and components and/or ammunition for import, including (as applicable) the calibre, gauge or size, the model, the quantity, the value of the items and the serial numbers;

(f) The specific purpose of importation and the name and address of the final recipient (if different from the importer);

[(g) Details of the route to be taken by the items, including destination, end-use(r), transit countries, trans-shipment, ports of entry and exit and any other relevant routing information;]

(h) The name and address of any other party to be involved in the transaction [including, as applicable, the name of any broker involved in the transaction, address, telephone number and broker registration number, and a certified copy of the broker licence authorizing the transaction];

(i) Any other information as required by the application form.

Article 32. Information on brokering activities

In addition to the information recorded in accordance with [*annex I, articles 11 (Renewal of a manufacturer's licence) and 12 (Continuation of a licence during consideration of an application for renewal)*], [*name of licensing authority*] [every licensed broker] shall keep records of all transactions carried out under a brokering licence granted under this Law, including:

(a) The identity of the broker, including address and domicile of the company, person responsible within the company and contact person;

(b) A copy of the signed contract or draft contract, giving the specific details of the buyer of the goods, model, quantity and value of firearms, their parts and components or ammunition covered by the intended brokerage licence;

(c) Dates of the transactions;

[(d) Source of the firearms and/or their parts and components and/or ammunition, including name, address, telephone and fax, country code of residence, citizenship if individual, name of responsible person or representative if commercial or government, and signature;]

[(e) Manufacturer's name and country of manufacture of the items under consideration;]

[(f) Precise technical details of the items;]

(g) A certified end-use certificate stipulating the end-use and final destination of the items in the manner set out in [*annex I, article 61 (End-use certificates)*];

[(h) A copy of the import certificate or licence, including country of issuance, date of issuance, identification of authorizing agency, authorized import quantity of the firearms and/or their parts and components and/or ammunition;]

[(i) Full details of the safety and security arrangements, including safe storage and transportation, preventing the firearms, their parts and components and ammunition from coming into the possession of unauthorized individuals or entities;]

(j) Full details of all the parties involved, including the financial/insurance arrangements;

(k) The name of the State from which the equipment is to be sourced and to which it is to be exported, even if it is not transported via [*name of State*];

[(l) *Other.*]

2. Records of manufacture and disposal

*Article 33. Information on destroyed firearms,
their parts and components and ammunition*

[*Name of competent authority*] shall keep records of every firearm, frame or receiver or ammunition destroyed in accordance with chapter XIII of the Law, including the following information:

- (a) The method of destruction;
- (b) The date of destruction;
- (c) The reason for the destruction;
- [(d) *Other*.]
- (e) Where the item destroyed is a firearm, a description of every firearm destroyed, including:
 - (i) Make;
 - (ii) Model;
 - (iii) Calibre;
 - (iv) Name of the manufacturer;
 - (v) Serial number; and
 - (vi) All markings;
- (f) Where the item destroyed is a part or component, a description of every part or component destroyed, including:
 - (i) The type of part or component;
 - (ii) Name of the manufacturer;
 - (iii) All markings;
- (g) Where the item destroyed is ammunition, a description of all the ammunition destroyed, including:
 - (i) The type of ammunition;
 - (ii) The lot number;
 - (iii) Name of the manufacturer;
 - (iv) All markings;
- [(h) *Other*.]

Commentary

There is no requirement under the Protocol that records be kept regarding firearms, their parts and components and ammunition that are confiscated and destroyed. However, recording destruction activities helps ensure that illicitly manufactured and trafficked firearms, their parts and components and ammunition are taken out of circulation (as required under the Protocol, article 6).

3. *Administrative requirements*

Article 34. Information on licensees

1. [Name of licensing authority] shall keep records of information regarding every person who holds a licence [to manufacture, import, export or broker] firearms, their parts and components or ammunition, issued under this Law, including:

- (a) Name of licensee;
- (b) Date of birth;
- (c) Residential address of licensee;
- (d) A recent photograph of:
 - (i) In the case of a licence issued to a natural person, that person; or
 - (ii) In the case of a body corporate, the responsible person;
- (e) Fingerprints of:
 - (i) In the case of a licence issued to a natural person, that person; or
 - (ii) In the case of a body corporate, the responsible person; and
- [(f) *Other.*]

2. [Name of licensing authority] shall keep records of the information regarding the particulars of every licence issued under this Law, including:

- (a) Place and date of issue of the licence;
- (b) Date of expiry of the licence;
- (c) Date of renewal(s) (where relevant);
- (d) Date of suspension (where relevant);
- (e) Date of cancellation (where relevant);
- (f) The licensed activity;
- (g) Physical address of the business premises to which the licence applies;
- (h) A summary of the storage requirements applicable to the licence set out in [insert annex detailing storage requirements or the name of the subsidiary or other regulations governing safe storage at the time of manufacture];
 - (i) Any restrictions that may apply to the licence; and
 - (j) Any conditions that may apply to the licence.

Article 35. Information collected through inspections

[Name of licensing authority] shall keep records of information collected through inspections conducted under this Law.

Commentary

Where actors other than the State have primary responsibility for record-keeping, the State should retain records of information collected through licence applications and inspections (see annex I, article 34 (Information on licensees) and 35 (Information collected through inspections)).

Article 36. Format of records

Option 1

All records retained in accordance with this Law/section shall be maintained in electronic form.

Option 2

All records retained in accordance with this Law/section shall be maintained in electronic form or in such a way that allows the provision of prompt responses to requests for assistance in tracing firearms, their parts and components and ammunition.

Commentary

As noted in paragraph 124 of the Legislative Guide:

“There is no requirement that the records be computerized, but the use of automated record-keeping, where feasible, will assist countries in meeting their obligations to respond promptly to tracing requests ...”

Option 2 is included in recognition of the fact that it may be difficult for some States to keep the records in automated form, although this should be the preferred method (see the *Legislative Guide*, paragraph 124).

Article 37. Access to records

Every person who is required to ensure that a record is kept or to keep a record under this chapter, shall, on demand made by an enforcement officer:

- (a) Produce the record to that officer and permit that officer to inspect and make copies of any entries in it;
- (b) Permit that officer to inspect all firearms, their parts and components and ammunition in the possession of that person; and
- (c) Furnish to that officer any information in that person’s possession with respect to any firearm, its parts and components or ammunition that has been manufactured, purchased or received under the authority of the person’s licence or that the person has in his or her possession or has sold or otherwise transferred or repaired under the authority of a licence.

Commentary

There is no requirement under the Protocol that States must ensure they have access to records maintained by licence holders. However, in order to respond to tracing requests and to ensure compliance with record-keeping obligations, it is necessary for the relevant authority to have the power to access records. This is especially important where the State itself does not maintain records in a centralized location, but instead requires authorized entities and individuals to retain records in accordance with the requirements of the Protocol.

The OSCE “Best practice guide on marking, record-keeping and traceability of small arms and light weapons” notes (section IV, page 8) that all information kept by manufacturers, importers and so on under the record-keeping scheme established by a State “shall be made available to competent national authorities if requested by national law”.

The OAS Model Legislation and Commentaries for Strengthening Controls at Export Points for Firearms, Ammunition, Explosives and Other Related Materials notes that, where manufacturers are required to keep records of all products manufactured and those placed in commerce, “these records would be required to be made available to government inspectors and be updated periodically, at least every three months” (commentary to article 5).

In its report on problems arising from the accumulation of conventional ammunition stockpiles in surplus (A/63/182, paragraph 31) the Group of Governmental Experts also notes that, as part of the inspection regimes necessary for ensuring the safety, reliability and operational effectiveness of ammunition within national stockpiles, it is necessary to have “access to master sample records held by the manufacturer of the ammunition in question”. This would suggest that manufacturers of ammunition should be required to retain such records and grant access to inspectors.

Consideration should be also given to the examples of existing provisions within the European Union framework (e.g. Council regulation (EC) No. 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items, as well as the proposal for a regulation of the European Parliament and of the Council of the European Union implementing article 10 of the United Nations Firearms Protocol and establishing export authorization, import and transit measures for firearms, their parts and components and ammunition. This legislation would bring the Union’s legislation into line with article 10 of the Firearms Protocol and refers to the need to take necessary and proportionate measures to enable the competent national authorities: (a) to gather information on any order or transaction involving firearms, their parts and essential components and ammunition; and (b) to establish that the export control measures are being properly applied, which may include in particular the power to enter the premises of persons with an interest in an export transaction).

Article 38. Reports to be submitted

Every person that is required to keep a record under this chapter shall submit details of every record maintained to [*name of competent authority*] within [*time frame, e.g. quarterly returns*].

Commentary

The Protocol does not contain an explicit requirement that licensed individuals and entities submit reports of their activities. However, article 7 of the Protocol requires States to ensure the maintenance of information that is necessary to trace and identify illicitly manufactured or trafficked firearms. In order to be able to trace firearms effectively, States need up-to-date information on transactions involving the firearms in question.

Article 39. Storage of records

All records required by this Law to be kept shall be kept in a place of safe-keeping [on the premises specified in the licence].

Commentary

There is no requirement under the Protocol for States to keep or require authorized individuals and entities to keep records in a safe or secure place. If States do include this provision, they may also want to specify the nature of the safe storage requirements (e.g. in a locked receptacle).

Article 40. Submission of records upon cessation of business

Where the holder of a licence to manufacture, import or export firearms, their parts and components or ammunition ceases to carry on business as a manufacturer, importer or exporter of firearms, their parts and components or ammunition, that person shall submit all records maintained in accordance with this chapter to the [*name of competent authority*] within [14 days] after cessation of the business.

Commentary

Source: Article 13 of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons stipulates that States will require that records pertaining to small arms and light weapons held by companies that go out of business be forwarded to the State. No time frame is stipulated in the International Tracing Instrument.

*Article 41. National database**Commentary*

There is no requirement under the Protocol for States to establish and maintain a national or centralized database for storing all the records to be kept by the State. However, keeping records in a central location, in electronic form, will help ensure that information is easily accessible by state agencies that are investigating illicit activities and ensures that information can be easily updated. The quality and utility of a national database will depend on a State's financial and technical capacity to maintain such a database and the amount of data inputted into the database. It may also depend on the scale of operations. For instance, if a State is comprised of many regions and/or there are many agencies that would require access to such a database, it may be more appropriate to maintain several, smaller regional databases.

D. Import, export and transit of firearms, their parts and components and ammunition

Commentary

Beyond the mandatory requirements in article 10, the Protocol does not specify the form that the system of licensing or authorization of import and export must take (guidance on this is available in the International Small Arms Control Standards, module 03.20, "National controls over the international transfer of small arms and light weapons"). The Protocol also requires that States establish measures on international transit. This section

provides suggestions that drafters can consider to supplement the mandatory provisions of the Protocol. These provisions might go into the legislation itself or into regulations or secondary legislation.

1. *Registration of importers and exporters*

Article 42. Registration requirement

Any person who is an importer or exporter of firearms, their parts and components and ammunition shall register with/by [*name of licensing/competent authority*].

Commentary

One option for a State seeking measures to enhance the accountability and security of its import and export system (in accordance with article 10, paragraph 5, of the Protocol) is to require companies or individuals wishing to import or export firearms, their parts and components and ammunition to register with the relevant government authority. Registration is primarily a means to provide a State with the necessary information on who is involved in certain exporting and importing activities and would be a precondition to the issuance of any individual import or export licence.

The Protocol presupposes the existence of a licensing/competent authority by virtue of article 10, paragraphs 1 and 2. Whether the licensing authority or some other State authority is to process and register or decline registration of importers and exporters is at the discretion of the State. Where registration of importers and exporters of other conventional weapons is already required, the legislation could be extended to ensure that it includes exporters and importers of firearms, their parts and components and ammunition.

Article 43. Registration application

The applicant shall register in the form and manner prescribed by [*name of licensing/competent authority*].

Commentary

Using a legally prescribed form should ensure that the competent authority has all the necessary information to enable it to determine eligibility for registration. The form could include a requirement for the applicant to provide a photograph of him- or herself and a full set of fingerprints.

Drafting note

These provisions might be included in regulations or secondary legislation detailing the registration application process.

Option 1

An application for registration shall be filed on form [*name/number*] and shall be accompanied by the required fee of [*amount*]. An application shall be signed by

an applicant who is a natural person personally or by the legal representative of an applicant who is a legal person.

Option 2

Every person who engages in the business of exporting or importing firearms and/or their parts and components and/or ammunition shall register with [*name of designated authority*] and shall pay the required fee of [*amount*].

Article 44. Registration criteria

[*Name of licensing/competent authority*] shall register a person as an importer or exporter of firearms and/or their parts and components and/or ammunition if it is satisfied that:

- (a) The applicant is of or above the age of [*State's age of majority or above*];
- (b) The applicant does not have a criminal record;
- (c) The applicant has not been adjudicated as mentally ill or been committed to any mental institution;
- (d) The applicant is not an unlawful user of or addicted to any controlled substance [as defined in [*relevant section and title of national legislation on controlled substances*]];
- (e) The applicant has not knowingly made any false statement or representation with respect to the information required on the application form;
- (f) The applicant has met such registration application requirements and other registration requirements as deemed relevant.

Drafting note

With reference to subparagraph (b), in some jurisdictions the existence of any criminal record or a criminal record within a particular time frame prohibits a person to register as an importer or exporter. In others, conviction or indictment of offences under specified acts will prohibit a person from being registered.

Option 1

(b) The applicant has not been convicted of or indicted for an offence in accordance with [*e.g. the national security legislation, national substance abuse legislation, national domestic violence legislation or legislation relating to the import, export and transit of firearms*];

Option 2

(b) The applicant has not been convicted in any court of or is not under indictment for a crime punishable by imprisonment for a term exceeding one year;

Option 3

(b) Within [five] years before the decision to enter the person in the register, the applicant has not violated legislation relating to the import, export and transit of firearms, their parts and components and ammunition;

Option 4

(b) If the applicant has any previous criminal record concerning trafficking in firearms, their parts and components or ammunition, or other serious crimes.

Article 45. Review of a decision not to register an applicant

A person who has submitted an application to register as an importer or exporter may apply to [*name of body authorized to review licensing decisions*] for a review of a decision of [*name of licensing/competent authority*] denying an application for registration.

Article 46. Validity of registration and renewal

1. Registration of a person as an importer or exporter of firearms, their parts and components and ammunition shall be valid for [... years].
2. Registration shall be renewable upon application [... days/... months] prior to its expiration.
3. If a registration has expired, the applicant shall file a new application in accordance with [*annex I, article 43 (Registration application)*].

Commentary

State practice shows that generally the duration of an importer or exporter registration is between one and five years, though it is at the State's discretion how long a registration should be valid for. Some systems allow the applicant to choose the length of time and pay a corresponding differentiated fee. A State should consider its administrative capacity to implement a renewal system and choose a time frame accordingly.

The renewal of registration should be long enough to allow the licensing authority sufficient time to consider the application and make the necessary inquiries.

Article 47. Notification of changes in information furnished by a registered importer or exporter

A registered importer or exporter shall, within [... days] of the event, notify [*name of relevant authority*] if:

(a) There is a material change in the information set forth in their registration; or

(b) Any of the persons pertaining to the registration are indicted for or convicted of [an offence under *[reference to particular legislation]*] [a crime punishable by imprisonment].

Article 48. Cancellation of registration as an importer or exporter

A registration as an importer or exporter shall be cancelled:

(a) At the request of the registered person;

(b) If new facts become evident that, had they been known or existed at the time of the review of the initial application for registration, would have resulted in a refusal to register the person;

(c) If the registered person fails to comply with the relevant legislation relating to the import, export and transit of firearms, their parts and components and ammunition;

(d) If the registered person contravenes the provisions of a binding United Nations Security Council arms embargo, a regional arms embargo either binding on [*name of State*] or to which [*name of State*] has voluntarily consented to adhere or a national arms embargo;

(e) If the registered legal person is dissolved or the registered natural person dies.

Article 49. Record-keeping

A person registered under this chapter shall maintain records in accordance with the requirements in chapter V of this Law.

2. *Licensing [authorization] of import, export and transit of firearms, their parts and components and ammunition*

Article 50. Requirement for an import, export or transit licence [authorization]

1. A person shall apply for a licence [authorization] to [*name of licensing authority*] for the export or import of firearms, their parts and components and ammunition in the form and manner prescribed by [*name of licensing authority*].

2. No person may carry in transit through [*name of State*] any firearms, their parts and components or ammunition without an in-transit [licence] [authorization] issued in the form and manner prescribed by [*name of licensing authority*].

Commentary

This provision creates a requirement for an import, export or transit licence or authorization. However, the Protocol does not specifically require that transit activity be licensed, only that measures be taken on international transit of firearms, their parts and components and ammunition and that in accordance with Protocol article 10, paragraph 2 (b), transit States have given notice in writing that they have no objection to the transit. It is at the discretion of States to choose the appropriate system of licensing for import and export and measures for international transit.

In practice, States implement a range of systems to licence or authorize imports, exports or transit. For example, some States use a system of open licences valid for a set time period and applicable only for the import, export and transit of civilian weapons within a particular economic trading group. An open licence system is also used to allow import, export or transit of civilian weapons to a defined list of States with the requirement to receive authorization for the shipment prior to the export by submitting information as to the type, calibre, serial numbers, customers, licence reference and so on. Such procedures must be an exception to the general system of import, export and transit licensing or authorization, apply only where there is a pre-existing agreement between the States involved and still involve rigorous oversight by state authorities. It is at the discretion of States to choose the appropriate licensing system.

States can also consider allowing, in limited circumstances, multiple export authorizations. "Multiple authorization" means an authorization granted to one specific exporter for multiple shipments to the same end-user or consignee in a third State and covering one or more firearms, their parts and components and ammunition; once again this must be an exception and rigorous oversight by state authorities is a must.

Some States also incorporate different procedures into conventional weapons legislation, such as in a conventional arms act. Such procedures, which could also pertain to firearms, their parts and components and ammunition, are to address particular circumstances within a defined grouping of States, where one State is providing one component of a final piece of equipment produced in another country. The procedure allows States providing the components to use an international certificate of importation as opposed to an end-use certificate. In Europe, for example, this system is called C2I.

Drafting note

Where a State has chosen to include section 1 (Registration of importers and exporters) in its legislation, the following provision should be added to this article:

Each person applying for a licence to import or export firearms, their parts and components and ammunition internationally shall be registered [authorized] as an importer or exporter of firearms, their parts and components and ammunition.

Applications for an export or import licence [authorization]

Commentary

Setting out a form to process export and import transactions will be needed to gather the information required by article 10, paragraph 3, of the Protocol. As noted in the *Legislative Guide* (paragraph 103), the use of a legally prescribed form will assist in the decision-making process. For example, the omission of any of the information required on an application form means that the partially completed form would not constitute a formally valid application for the required registration application. Such an application could not lawfully be considered by decision makers and the refusal to do so would not

be a matter of discretion nor a decision that could be appealed to an administrative tribunal or the general courts. If providing false or misleading information is also criminalized, then the completion of the document would also form the basis of a prosecution. Using a form should also ensure that the competent authority has all the necessary information to enable it to determine eligibility for an export licence.

Depending on the style of drafting, the legislation itself or accompanying regulations should detail the exact application procedure, documentation and fee required by an applicant for an export licence or authorization. Other than the in-transit authorization (where applicable) and a copy of the import licence or authorization document, the content of these application procedures are optional and it is left to the discretion of the State to decide on the content and the degree of detail necessary for its legislative or regulatory framework. In accordance with article 10, paragraph 5, of the Protocol, the more comprehensive the framework, the more secure the licensing or authorization procedures will be.

Article 51. Application for an export licence [authorization]

The applicant shall apply for a licence for an export of firearms and/or their parts and components and/or ammunition in the prescribed form and manner to [*name of licensing authority*].

Option 1 (Regulation provision)

An application for a licence for an export of firearms and/or their parts and components and/or ammunition must be submitted on form [*name/number*] and accompanied by the required fee of [*amount*]. The application must be signed and dated and must contain the information requested on the form, including:

- (a) Name of exporter, address, telephone number [and registration (authorization) number, if any (including expiration date)];
- (b) If the exporter is not the manufacturer, the source of the firearms and/or their parts and components and/or ammunition, including name, address and telephone number;
- (c) If the exporter is not the manufacturer, the manufacturer's name and address and country of manufacture of the items under consideration;
- (d) Where the items have already been manufactured, a description of the firearms and/or parts and components and/or ammunition for export, including (as applicable) the calibre, gauge or size, the model, the quantity, the value of the items, [and the serial numbers if known];
- (e) Where the items are still to be manufactured, as much detail on the proposed items for export as available at the time of application;
- (f) Name and address of the importer;
- (g) Where known, the name and address of the final end-user if different from the consignee;
- (h) As known at the time of application, the name and address of any other party to be involved in the transaction;

- (i) An end-user certificate in the manner stipulated in [annex I, article 61 (End-user certificates)];
- (j) Any other information as required by the application form;
- (k) Where a State chooses to establish a system for regulating the activities of those who engage in brokering, pursuant to article 15, subparagraph (c), of the Protocol, a State could require disclosure on export licence [authorization] applications or accompanying documents of the names and locations of brokers involved in the transaction.

Option 2 (Legislation provision)

An application for a licence for an export of firearms and/or their parts and components and/or ammunition must be made in the prescribed form and manner to [name of licensing authority] and shall include the following information: [see option 1, subparagraphs (a)-(k)].

Article 52. Application for an import licence [authorization]

The applicant shall apply for a licence for an import of firearms and/or their parts and components and/or ammunition in the prescribed form and manner to [name of licensing authority].

Option 1 (Regulation provision)

An application for a licence for an import of firearms and/or their parts and components and/or ammunition must be submitted on form [name/number] and accompanied by the required fee of [amount]. The application must be signed and dated and must contain the information requested on the form, including:

- (a) Name of importer, address, telephone number [and registration number, if any (including expiration date)];
- (b) The country from which the article(s) is (are) to be imported;
- (c) The name, address and telephone number of the foreign seller and exporter of the firearms and/or parts and components and/or ammunition, including name, address and telephone number;
- (d) Description of the firearms and/or parts and components and/or ammunition for import, including (as applicable) the calibre, gauge or size, the model, the quantity, the value of the items [and the serial numbers if known];
- (e) The specific purpose of importation and, if known, name and address of the final recipient (if different from the importer);
- (f) As known at the time of application, the name and address of any other party to be involved in the transaction;
- (g) Any other information as required by the application form;
- (h) Where a State chooses to establish a system for regulating the activities of those who engage in brokering, pursuant to article 15, paragraph 1 (c), of the

Protocol, a State could require disclosure on import licence [authorization] applications or accompanying documents of the names and locations of brokers involved in the transaction.

Option 2 (Legislation provision)

An application for a licence for an import of firearms and/or their parts and components and/or ammunition must be made in the prescribed form and manner to [name of licensing authority] and shall include the following information: [see option 1, subparagraphs (a)-(h)].

Article 53. Conditional export licence [authorization]

1. Where the in-transit authorization and/or the copy of the import licence or authorization documentation are not available at the time of application for an export licence, [name of licensing authority] may issue a conditional export licence or authorization requiring the exporter to provide a copy of the in-transit authorization to [name of licensing authority] at any point prior to the shipment of the export.

2. On confirmation by [name of licensing authority] of receipt of the in-transit authorization and import licence or authorization documentation for the export in question, the export licence should be valid for use.

Commentary

Article 10, paragraph 2 (a) and (b), of the Protocol states that no export licence or authorization shall be issued before verification that “the importing States have issued import licences or authorization” and “that the transit States have, at a minimum, given notice in writing, prior to shipment, that they have no objection to the transit”. However, it may happen that at the time of applying for an export licence, the exporter is unable to provide the transit authorization. The exporter may also not be able to supply a copy of the import licence or authorization because either: (a) it is not available at the time of application; or (b) the transaction is with a Government that would not itself issue an import licence or authorization if the goods in question were for its own use.

In order to maintain compliance with article 10, paragraph 2 (a) and (b), of the Protocol, this draft article permits an import authorization to include an official document that serves as authorization of the import (for example, an end-user certificate or an international import certificate) to accommodate those circumstances where no import licence would be issued. This draft article allows for a conditional export licence to address the commercial reality that certain documentation will not be available at the time of application, but ensures that the mandatory provisions of the Protocol are fulfilled by adding a condition to the licence that does not permit it to be used to export until the exporter has submitted all the necessary documentation. Such conditional authorization does not replace the export licence and should be valid for a limited time period and an export licence would not be valid until receipt of the in-transit authorization or import licence or authorization has been confirmed.

Drafters can also consider those situations where the reply from a transit State is not provided in a timely manner or is never provided. In those cases—in particular with regard to shipment of firearms of a lower level of danger with regard to their use (for example, hunting or sport shooting firearms)—feasible provisions should be considered. In all cases

the spirit of the Protocol provision on transit, namely, to make it possible for the transit State to be aware of the transit via its territory and the possibility for this latter of taking action to ensure any possible control aimed at avoiding diversion, should be maintained. A maximum period for permitting the transit State to react could also be considered.

Article 54. Transit licences

The applicant shall apply for a licence for the transit of firearms and/or their parts and components and/or ammunition in the prescribed form and manner to [name of licensing authority].

Commentary

Suggested provision

Source: Protocol, article 10, paragraphs 1, 2 and 5.

While the Protocol requires only that transit countries not object to the movement of firearms, their parts and components and ammunition across their territory, States may wish to consider developing a licence or authorization permitting transit movements in order to promote consistency and to deter the production of false documentation. The creation of such forms promotes security. For some States individual transit licences would not be issued in every instance of transit activity, particularly if the items were coming from certain countries or going to certain others, though other “measures” might be required, such as some other form of written authorization. It is at the discretion of the State as to the method chosen to obtain confirmation in writing that the transit State has no objection to the transit. This provision is suitable where a State chooses to implement a transit licence system.

The form and manner of issuance and the information required on a transit licence application form is at the discretion of the State.

Option 1 (Regulation provision)

An application for a licence for the transit of firearms and/or their parts and components and/or ammunition through [name of State] shall be submitted on form [name/number] and (if applicable) accompanied by the required fee of [amount]. The application shall be signed and dated and shall contain the information requested on the form, including:

- (a) Name of applicant, address and telephone number;
- (b) Particulars of the intended transport route and mode of transport, the proposed entry and exit and likely date of the entry and exit, to the extent known at the time of application;
- (c) Expected duration and location of shipment while in bond (if applicable);
- (d) Description of the firearms and/or parts and components and/or ammunition to be transited, including (as applicable): the calibre, gauge or size, the model, the quantity, the value of the items [and the serial numbers if known];

(e) Final destination of the firearms. This should be clearly demonstrated through an export licence, end-use certificate or other official documentation showing the final destination and the legal authority for the items to be imported into the country of final destination. An end-user certificate as contemplated in [annex I, article 61 (End-user certificates)] when the items are intended for resale in the country of final destination;

(f) A consignment note of the items to be carried in transit through [name of State];

(g) Any other information as required by the application form;

(h) Where a State chooses to establish a system for regulating the activities of those who engage in brokering, pursuant to article 15, paragraph 1 (c), of the Protocol, a State could require disclosure on transit licence [authorization] applications or accompanying documents of the names and locations of brokers involved in the transaction.

Option 2 (Legislation provision)

An application for a licence for the transit of firearms and/or their parts and components and/or ammunition must be made in the prescribed form and manner to [name of licensing authority] and shall include the following information: [see option 1, subparagraphs (a)-(h)].

Article 55. Criteria for assessing an export licence application

[Name of competent authority] shall consider an export licence application on a case-by-case basis and shall not issue such a licence [authorization]:

(a) To persons or groups known to be engaged in domestic or transnational criminal activities, including illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, or who have previous records of such criminal involvement;

(b) Where the export would breach an arms embargo imposed by the United Nations Security Council;

(c) Where the intended destination or other factors suggests that the item(s) will be used in or contribute to an ongoing insurgency or armed conflict;

(d) Where the export would contravene international commitments of [name of State], in particular in relation to arms embargoes adopted by multilateral, regional and subregional organizations to which [name of State] is a party, or agreements of non-proliferation, small arms or other arms control and disarmament agreements to which [name of State] is a party.

Commentary

The Protocol does not require restrictions on firearms for the purposes of domestic controls nor does it contain import and export criteria for security or arms control purposes

(see the *Legislative Guide*, paragraph 108). However, many States already have provisions in their national legislation on the export of military conventional weapons that set out the criteria under which licence applications will be assessed for approval or refusal. Such provisions would not normally appear in legislation dealing solely with firearms, but States may have obligations under one of the numerous multilateral, regional and sub-regional documents that provide detailed criteria to consider a licence application. For example, the OSCE Document on Small Arms and Light Weapons states (section III (b), paragraph 2 (b)) that “participating States will avoid issuing an export licence where it deems there is a clear risk that the small arms in question might”, for example:

- Be used for the violation or suppression of human rights and fundamental freedoms.
- Prolong or aggravate an existing armed conflict, taking into account the legitimate requirement for self-defence, or threaten compliance with international law governing the conduct of armed conflict.
- Endanger peace, create an excessive and destabilizing accumulation of small arms or otherwise contribute to regional instability.
- Be either re-sold (or otherwise diverted) within the recipient country or re-exported for purposes contrary to the aims of the Document.
- Be used for the purpose of repression.
- Support or encourage terrorism.
- Facilitate organized crime.

Other multilateral, regional and subregional documents include the Wassenaar Best Practice Guidelines for Exports of Small Arms and Light Weapons; the European Union Common Position defining common rules governing control of exports of military technology and equipment; and the ECOWAS Convention. Drafters can consider applying these obligations to their legislation for implementing the Firearms Protocol. The *Legislative Guide* (paragraph 108) also suggests other criteria States can consider. Drafters should ensure that legislation implementing the Protocol is not inconsistent with these policies and legislation and that administrative measures are consistent.

States should also consider which is the appropriate competent authority (or authorities) to assess and decide on export licence applications as this often involves broader policy decisions and therefore it might not be appropriate that the licensing authority be given this responsibility.

*Article 56. Conditions imposed on an import,
export or transit licence [authorization]*

1. An import, export or transit licence [authorization] is subject to conditions imposed by [*name of licensing authority*].
2. The licence shall not be transferred to another person.

Commentary

Conditions imposed on a licence or authorization can increase the security and authenticity of the licensing or authorization documents in line with article 10, paragraph 5, of the Protocol. States must also take appropriate measures to require the security of firearms, their parts and components and ammunition at the time of import, export and transit (Protocol, article 11, subparagraph (a)). A State can impose a range of conditions

on a licence, depending on the nature of the weapons, the quantity, final destination and so on. This could include, for example, imposing conditions on storage or requiring delivery verification. Through customs/border control legislation, States would also be able to physically inspect items once they arrive in their jurisdiction.

Conditions on an export licence relating to transport

As an additional condition on an export licence, a State may also require that information on the transport of the firearms, their parts and components and ammunition be provided to [name of licensing authority] just before the goods are actually exported (as this information will not be available at the time of applying for or issuing of an export licence). Such information on transport could include:

- The air carrier and freight forwarding agent involved in the transportation
- The civil or military aircraft registration
- The flight route to be used and planned stopovers
- Records of previous similar transfers by air
- Proof of compliance with existing national legislation or international agreements relating to the transport of dangerous goods

Article 57. Duties of the holder of a licence

1. The licensee shall comply with the relevant record-keeping requirements in [chapter V of the Law].

2. The licensee shall notify [name of licensing authority] of:

(a) Any change in address [of the premises where the licensee carries on the business], within [... days];

(b) Any theft or loss of any item from the licensee's premises identified on the licence, within [24 hours/... days] of the licensee becoming aware of such theft or loss;

(c) Any significant change in the storage facilities used by the licensee, within [... days].

Article 58. Inspection

1. The licensee shall at the request of [any police official and other relevant authorities] [any police officer or other person as may be prescribed by the regulations] produce for inspection, at any reasonable time:

(a) His or her licence;

(b) Any firearms, their parts and components and ammunition in his or her possession or under his or her control;

(c) Any information and records held by the licensee in accordance with [chapter V of the Law].

2. [Any police official and other relevant authorities] [Any police officer or other person as may be prescribed by the regulations] may inspect, at any reasonable time, the licensee's facilities for the storage of the firearms, their parts and components and ammunition in the licensee's possession.

Article 59. Validity of an import, export or transit licence [authorization]

1. A specific period of validity shall be assigned to an import, export or transit licence [authorization] by [name of licensing authority].

2. An import, export or transit licence [authorization] expires:

- (a) On the date specified in the licence;
- (b) If surrendered by the holder of the licence to [name of licensing authority] prior to the date specified in the licence.

3. The period of validity of an import, export or transit licence [authorization] may be extended on application to and approval from [name of licensing authority].

4. Applications for extensions of the period of validity shall be submitted in writing to [name of licensing authority] before the expiry date lapses, otherwise a new licence [authorization] application will be required.

Commentary

The period of validity for a licence [authorization] should be of sufficient duration to ensure that the transfer can be completed. Some jurisdictions suggest that licences should be valid for a minimum of one year.

Article 60. Revocation of a licence

[Name of licensing authority] may, by written notice, revoke an import, export or transit licence if the licence holder:

- (a) No longer qualifies to hold the licence;
- (b) Has contravened or failed to comply with any provision of this Law or any condition specified in the licence;
- (c) If new facts become evident that, had they been known or existed at the time of the review of the initial application for licensing [authorization], would have resulted in a refusal to licence [authorize] the import, export or transit licence [authorization];

(d) If the licensed [authorized] person contravenes the provisions of a binding United Nations Security Council arms embargo, a regional arms embargo either binding on [name of State] or to which [name of State] has voluntarily consented to adhere to a national arms embargo;

- (e) If the licensed [authorized] person is convicted of the offence of trafficking in firearms, their parts and components or ammunition or other serious offences;
- (f) There has been a material change in circumstances since the licence was issued.

Article 61. End-user certificates

Whenever firearms, their parts and components and ammunition are exported, the exporter shall ask the importer to obtain from a person authorized by the Government of the importing State a certificate setting out:

- (a) The exporter's details, including name, address and business name;
- (b) End-user information, including name, position, full address and original signature;
- (c) Country of final destination;
- (d) A detailed description (type, quantity, characteristics) of the exported firearms and/or their parts and components and/or ammunition, their quantity and value;
- (e) The signature, name and function of the end-user;
- (f) The date of the end-user certificate;
- (g) The authorization to issue the certificate in question.

Drafting note

A State may have separate conventional arms legislation that broadly addresses the trade in conventional weapons. This legislation may make reference to an end-user certificate as a required document. If such legislation exists, reference could be made directly to that provision.

Option 1

Whenever firearms, their parts and components and ammunition are exported, an end-user certificate as contemplated in section [...] of the [*conventional arms control act*] shall accompany the export licence application.

End-user

Where an importer will resell the goods on the local market, the importer generally shall be regarded as the end-user.

Other requirements

At its discretion, a State can choose to require further information on an end-user certificate. This could include:

- (a) A description of the end-use of the firearms and/or their parts and components and/or ammunition;

- (b) Assurances that re-export of imported firearms and/or their parts and components and/or ammunition can take place only after receiving a written authorization from [original exporting State];
- (c) Certification by the relevant government authorities, according to national practice, as to the authenticity of the end-user. The certification must include the date, name, title and original signature of the authorizing official;
- (d) An undertaking that proof of importation will be supplied, by means of a delivery verification certificate.

Article 62. Delivery verification

States can consider these options for text in addition to article 30 of the Model Law:

Option 1

After each shipment of firearms, parts and components or ammunition covered by an export licence, within a period of [...] months, the exporter shall provide to [*name of licensing authority*] proof of their arrival in the authorized country of destination and proof of place and date of arrival at the consignee's premises.

Option 2

An exporter shall retain the original export licence, the relevant bill of lading or airway bill, packing list(s) and exporter invoice pertaining to the firearms, their parts and components or ammunition stated on the export licence for a period of [...] months and shall produce the documents for inspection whenever required to do so by [*name of relevant authority*].

Article 63. Database on exporters, importers [and brokers]

1. A national database to be administered by [*name of designated authority*] shall contain information on persons that operate as exporters and importers [and brokers]. At a minimum, the database shall contain:

- (a) Names of all registered exporters and importers [and brokers] and pertinent information contained in the registration application;
- (b) Details of import and export [and brokering activity] licence applications, both approved and declined, and details on the recipient of the firearms and the final end-users.

2. Such records shall be kept for a minimum of [10] years.

Commentary

Suggested provision

Source: Protocol, article 7.

If a State chooses to establish a national database it should be aligned to the record-keeping requirements established or adopted under chapter V of the Law. Where a State chooses to implement controls on brokers and brokering activities, it could also include those records within the database. In its report on brokering (A/62/163 and Corr.1, paragraph 40), the Group of Governmental Experts notes that most States keep data regarding persons or entities having obtained a licence to perform brokering activities and transactions for the duration that they deem necessary. If a State chooses to establish a database, it should include information pertaining to those persons registered as brokers, importers and exporters (where registration is required) and details of all received licence applications for brokering activities, imports and exports of firearms, their parts and components and ammunition, whether approved or not. Such a database can also assist States in meeting their international cooperation requirements under the Protocol.

E. Penal and provisional provisions

Commentary

Depending their existing laws and the methods chosen to implement the record-keeping, marking, licensing and other requirements of the Protocol, States may wish to consider establishing further offences in several areas, although this is not a mandatory requirement. Should a State adopt a regime for brokering, it may also wish to establish an associated offence for illicit brokering. Alternatively, if a State requires disclosure of a broker as part of the import/export licensing/authorization process, offences relating to providing false or misleading information on licence application forms could include an offence for failing to provide required information about brokerage activities (see the *Legislative Guide*, paragraph 237). The establishment of any of these offences is not required by the Protocol.

1. Offences specific to record-keeping

Commentary

There is no requirement under the Protocol that States must criminalize the failure to maintain records in accordance with article 7. However, criminalization of such conduct will help deter persons with an obligation to maintain records from acting without the required diligence, omitting to keep, falsifying or altering such records, and will help ensure the accuracy of records for tracing purposes. While States are required to ensure that certain records are kept (as discussed in chapter V (Record-keeping) of the Model Law), they have discretion to impose criminal or administrative penalties and sanctions for a failure to maintain records. The *Legislative Guide* (paragraph 231) does recommend that the punishments applied to record-keeping offences should be the same as those applied for the basic offences of illicit manufacture and trafficking in order 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. When establishing

the intentional element of the offence, States may want to consider a lower degree of intention and include also gross negligence, so as to ensure that persons with an obligation to keep and maintain records cannot evade their responsibility by invoking an absence of intention.

The nature of the penalties imposed for offences relating to record-keeping will depend on each jurisdiction. The following provisions are designed to assist States in establishing criminal offences with respect to record-keeping offences. States that wish to maintain the penal nature of the provision but impose a lower degree of liability and of sanctions, or to consider some other conducts as administrative offences rather than criminal ones, are encouraged to adapt these suggested provisions as required.

Article 64. Falsification and alteration of records

1. Every person who intentionally or negligently makes a false or misleading entry in or alters a record required to be kept under [chapter V of the Law] commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a regulatory sanction].

Commentary

There is no requirement under the Protocol that States criminalize the falsification or alteration of records required to be kept under article 7 (and article 6, paragraph 2). However, criminalization of those activities will help deter persons with an obligation to maintain records from falsifying or altering such records and will help ensure the accuracy of records for tracing purposes. As noted in the *Legislative Guide* (paragraph 231), an offence relating to the falsification of records is of particular relevance where persons and entities engaged in transferring firearms have the primary responsibility for maintaining records needed for subsequent tracing.

The OSCE “Best practice guide on marking, record-keeping and traceability of small arms and light weapons” suggests (section V, page 10) that, in addition to activities such as falsifying and altering markings on firearms and other activities already covered by the Protocol, States should consider establishing any form of falsification of small arms and light weapons record-keeping as a penal offence.

Article 65. Failure to keep records

1. Every person who intentionally or negligently fails or omits to keep a record in the manner it is required to be kept under [chapter V of the Law] commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a regulatory sanction].

Commentary

There is no requirement under the Protocol that States criminalize the failure to keep records required under article 7 (and article 6, paragraph 2). However, penalizing persons

for failing to keep records or failing to keep accurate records will help ensure that those persons with an obligation to keep records fulfil their statutory obligations. Such a provision is necessary to ensure satisfactory fulfilment of the obligation to keep records, where a State imposes a record-keeping obligation on authorized entities and persons, and to ensure that offenders cannot avoid harsher sanctions associated with illicit manufacturing and trafficking simply by failing to keep the records needed to establish that criminal conduct has taken place (see the *Legislative Guide*, paragraph 231).

Article 66. Destruction of records

1. Every person who intentionally or negligently destroys any record that is required to be kept under and in accordance with [chapter V of the Law] commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a regulatory sanction].

Commentary

There is no requirement under the Protocol that States criminalize the destruction of records required under article 7 (and article 6, paragraph 2). However, penalizing persons who destroy records before the minimum time period specified in article 49 of this annex, will help ensure that those persons with an obligation to keep records fulfil their statutory obligations. Such a provision is necessary to ensure satisfactory fulfilment of the obligation to keep records, where a State imposes a record-keeping obligation on authorized entities and persons, and to ensure that offenders cannot avoid harsher sanctions associated with illicit manufacturing and trafficking simply by destroying the records needed to establish that criminal conduct has taken place (see the *Legislative Guide*, paragraph 231).

Article 67. Failure to submit a report

1. Every person who intentionally or negligently:

(a) Fails or omits to submit a report to [*name of competent authority*] that contains details of all transactions recorded in accordance with [*annex I, article 38 (Reports to be submitted)*] of this Law; or

(b) Submits a report to [*name of competent authority*] in accordance with [*annex I, article 38 (Reports to be submitted)*] of this Law that contains false, inaccurate or incomplete information;

commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a regulatory sanction].

Commentary

There is no requirement under the Protocol to require authorized entities and persons who are required to keep records to submit regular reports. If, however, a State chooses

to demand regular reporting by authorized entities and persons in accordance with [annex I, article 38 (Reports to be submitted)] then an appropriate penalty should be imposed for a failure to submit such a report. As noted in the *Legislative Guide* (paragraph 23), an offence relating to the failure to report transactions or giving false, inaccurate or incomplete information is of particular relevance where records are retained by a state agency that will be relying on the provision of accurate reports to conduct tracing.

F. Offences specific to licensing

Commentary

Legislators and drafters may consider additional offences in relation to the mandatory offences in relation to trafficking. Should a State adopt a system of registration of exporters and importers, it may wish to create an associated offence for carrying out import or export activity without being registered. Additionally, if a State requires an application process for licences or authorization of import and export activities, offences relating to providing false or misleading information on licence application forms could be created. The adoption of these offences is not required by the Protocol.

Article 68. Operation without registration [authorization]

1. Every person who [*specify level of intent, as appropriate*] carries out any import or export activity without [being registered with [*name of licensing authority*]] [*written authorization from [name of licensing authority]*] as required by this Law commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be liable to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Commentary

Suggested provision

Source: Protocol, article 10, paragraphs 1 and 5.

This provision could be considered where a State has chosen to implement a system of registration or authorization of those who engage in activities as an importer or exporter.

Article 69. Providing misleading or false applications for licences for an import, export or transit activity

1. Where for the purpose of obtaining any form of licence as required under [chapter VII of the Law], every person who [*specify level of intent, as appropriate*]:

(a) Makes a statement that is false or misleading or omits a material fact in a licensing document; or

(b) Furnishes a document or information containing a false statement or misrepresenting or omitting a material fact in a licensing document; commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be liable to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Commentary

States may consider establishing offences for the giving of false or misleading information, material non-disclosure (to cover cases in which accurate but incomplete information was given) or the falsification or misuse of documents necessary in the licensing or authorization process. These provisions should be consistent with existing domestic criminal law provisions on providing false information or documentation.

G. Offences specific to brokering

Commentary

The Protocol requires States parties to consider establishing a system for regulating the activities of brokers. Should a State adopt a regime for brokering, it may also wish to establish an associated offence for illicit brokering. Alternatively, if a State requires disclosure of a broker as part of the import/export licensing/authorization process, offences relating to providing false or misleading information on licence application forms could include an offence for failing to provide required information about brokerage activities (see the *Legislative Guide*, paragraph 237). The establishment of these offences is not required by the Protocol.

Article 70. Illicit brokering

1. Every person who [*specify level of intent, as appropriate*] engages in any brokering activity without legal authorization or a licence issued in accordance with [*title of this Law*] commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall upon conviction be subject to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Article 71. Operating as a broker without registration [authorization]

1. Every person who [*specify level of intent, as appropriate*] carries out any brokering activity [without being registered with [*name of licensing authority*]] [without written authorization from [*name of licensing authority*]] as required by this Law commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be liable to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Commentary

This provision could be considered where a State has chosen to implement a system of registration or authorization of those who engage in activities as a broker.

Article 72. Providing misleading or false applications for licences for a brokering activity

1. Where for the purpose of obtaining any form of licence for a brokering activity as required under [chapter XVI of the Law], a person who [*specify level of intent, as appropriate*]:

(a) Makes a statement that is false or misleading or omits a material fact in a licensing document; or

(b) Furnishes a document or information containing a false statement or misrepresenting or omitting a material fact in a licensing document;
commits an offence.

2. A person guilty of an offence under paragraph 1 of this article shall be liable to [imprisonment for ...] and/or [a fine of/up to ...] [a fine of the ... category].

Commentary

States may consider establishing offences for the giving of false or misleading information, material non-disclosure (to cover cases in which accurate but incomplete information was given) or the falsification or misuse of documents necessary in the licensing or authorization process. These provisions should be consistent with existing domestic criminal law provisions on providing false information or documentation.

Annex II

List of relevant instruments and documents

A. Multilateral and regional instruments and documents

1. United Nations

Instruments

- United Nations Convention against Transnational Organized Crime¹
- Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime²
- Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects³
- International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons⁴

Documents

- Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons⁵
- Report of the Group of Governmental Experts established pursuant to General Assembly resolution 61/72 to consider further steps to enhance cooperation with regard to the issue of conventional ammunition stockpiles in surplus⁶

¹United Nations, *Treaty Series*, vol. 2225, No. 39574.

²*Ibid.*, vol. 2326, No. 39574.

³*Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, New York, 9-20 July 2001 (A/CONF.192/15), chap. IV, para. 24.

⁴A/60/88 and Corr.2, annex; see also General Assembly decision 60/519.

⁵A/62/163 and Corr.1.

⁶A/63/182.

- Report of the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V, entitled “Small arms”⁷
- Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its twelfth session: interpretative notes for the official records (*travaux préparatoires*) of the negotiation of 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 Crime⁸
- *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*⁹
- *How to Guide: Small Arms and Light Weapons Legislation*¹⁰
- United Nations Coordinating Action on Small Arms, Project on International Small Arms Control Standards
- UNODC Technical Guide to the Implementation of the Firearms Protocol (forthcoming)

2. *Organization for Security and Cooperation in Europe*

- OSCE Plan of Action on Small Arms and Light Weapons¹¹
- *OSCE Handbook of Best Practices on Conventional Ammunition*¹²
- OSCE Principles on the Control of Brokering in Small Arms and Light Weapons¹³
- Standard Elements of End-User Certificates and Verification Procedures for SALW Exports¹⁴
- *Handbook of Best Practices on Small Arms and Light Weapons*¹⁵
- OSCE Document on Small Arms and Light Weapons¹⁶
- Principles Governing Conventional Arms Transfers¹⁷
- “Best practice guide on marking, record-keeping and traceability of small arms and light weapons”¹⁸

⁷ A/CONF.192/2.

⁸ A/55/383/Add.3.

⁹ United Nations publication, Sales No. E.05.V.2.

¹⁰ United Nations Development Programme, Bureau for Crisis Prevention and Recovery, *How to Guide: Small Arms and Light Weapons Legislation* (Geneva, 2008).

¹¹ Organization for Security and Cooperation in Europe, document FSC.DEC/2/10.

¹² _____, *Handbook of Best Practices on Conventional Ammunition* (Vienna, 2008).

¹³ _____, Forum for Security Cooperation, decision No. 8/04, 24 November 2004.

¹⁴ _____, Forum for Security Cooperation, decision No. 5/04, 17 November 2004.

¹⁵ _____, *Handbook of Best Practices on Small Arms and Light Weapons* (Vienna, 2003).

¹⁶ A/CONF.192/PC/20, annex, appendix.

¹⁷ Programme for Immediate Action Series No. 3 (DOC.FSC/3/96), 1993.

¹⁸ Organization for Security and Cooperation in Europe, “Best practice guide on marking, record-keeping and traceability of small arms and light weapons”, in *Handbook of Best Practices ...*, part II.

3. *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*

- Best Practice Guidelines for Exports of Small Arms and Light Weapons
- Elements for Effective Legislation on Arms Brokering

B. Regional instruments and documents

1. *Africa*

Instruments

- 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 Assembly¹⁹
- Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials
- Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa
- Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region

Documents

- Regional Centre on Small Arms and Light Weapons, Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons
- Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons²⁰
- Decision on the illicit proliferation, circulation and trafficking of small arms and light weapons²¹

2. *Americas*

Instruments

- Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials²²

¹⁹ A/65/517-S/2010/534, annex.

²⁰ A/CONF.192/PC/23, annex.

²¹ Organization of African Unity, document AHG/Dec.137 (XXXV), July 1999.

²² United Nations, *Treaty Series*, vol. 2029, No. 35005.

Documents

- Draft Model Legislation and Commentaries on Legislative Measures to Establish Criminal Offences in Relation to the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials²³
- Model Legislation and Commentaries in Relation to Confiscation and Forfeiture of Firearms, Ammunition, Explosives, and Other Related Materials²⁴
- Proposed Model Legislation and Commentaries for Strengthening Controls at Export Points for Firearms, Ammunition, Explosives and Other Related Materials²⁵
- Model Legislation on the Marking and Tracing of Firearms²⁶
- Code of Conduct of Central American States on the Transfer of Arms, Ammunition, Explosives and Other Related Material
- Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition²⁷
- Amendments to the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition: Broker Regulations²⁸
- Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in All Its Aspects²⁹

3. Arab States

Documents

- Resolution on Arab coordination for combating the illicit trade in small arms and light weapons³⁰
- Report of the first meeting of Arab national focal points on small arms and light weapons³¹
- Resolution on Arab coordination for combating the illicit trade in small arms and light weapons³²
- Arab Model Law on Weapons, Ammunitions, Explosives and Hazardous Material³³

²³ Organization of American States, document OEA/Ser.L/XXII.6.3-GE/CIFTA/doc.2/07 rev.3.

²⁴ _____, document OEA/Ser.L/XXII.2.11- CIFTA/CC-XI/doc.12/10.

²⁵ _____, document OEA/Ser.L/XXII.6.2-GE/CIFTA-CICAD/doc.2/06 rev.4.

²⁶ _____, document OEA/Ser.L/XXII.6.1-GE/CIFTA-CICAD/doc.3/06 rev.3.

²⁷ _____, document OEA/Ser.L/XIV.2.34-CICAD/doc1281/03.

²⁸ _____, document OEA/Ser.L/XIV.2.34-CICAD/doc1271/03.

²⁹ Andean Community, Andean Council of Foreign Ministers, Quirama, Colombia, on 25 June 2003, decision 552.

³⁰ League of Arab States, Ministerial Council resolution 6625, 4 March 2006.

³¹ _____, 2005.

³² _____, Ministerial Council resolution 6447, 14 September 2004.

³³ _____, Council of Arab Ministers of the Interior, Tunisia, 2002.

4. Asia and the Pacific

Documents

- Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime³⁴
- “Towards a common approach to weapons control” (the Nadi Framework)³⁵

5. Europe

Instruments

- Proposal for a regulation of the European Parliament and of the Council of the European Union implementing article 10 of the United Nations Firearms Protocol and establishing export authorization, import and transit measures for firearms, their parts and components and ammunition
- Council of the European Union regulation 428/2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items³⁶
- Council of the European Union common position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment³⁷
- European Parliament and Council of the European Union directive 2008/51/EC amending Council directive 91/477/EEC on control of the acquisition and possession of weapons³⁸
- European Union strategy to combat illicit accumulation and trafficking of SALW and their ammunition³⁹
- Council of the European Union common position 2003/468/CFSP on the control of arms brokering⁴⁰
- Council of European Union joint action on the European Union’s contribution to combating the destabilizing accumulation and spread of small arms and light weapons and repealing joint action 1999/34/CFSP⁴¹

³⁴ See the Joint Communiqué of the Special Association of Southeast Asian Nations (ASEAN) Ministerial Meeting on Terrorism, Kuala Lumpur, 20 and 21 May 2002.

³⁵ South Pacific Chiefs of Police Conference and Oceania Customs Organization, 2000.

³⁶ *Official Journal of the European Union*, L 134, 29 May 2009.

³⁷ *Ibid.*, L 335, 13 December 2008.

³⁸ *Ibid.*, L 179, 8 July 2008.

³⁹ Council of the European Union, document 5319/06.

⁴⁰ *Official Journal of the European Union*, L 156, 25 June 2003.

⁴¹ *Official Journal of the European Communities*, L 191, 19 July 2002.

C. Thematic instruments and documents

1. Brokering

- Amendments to the Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition: Broker Regulations (see above)
- Council of the European Union common position 2003/468/CFSP on the control of arms brokering (see above)
- “Best practice guide on national control of brokering activities”⁴²
- OSCE Principles on the Control of Brokering in Small Arms and Light Weapons (see above)
- Elements for Effective Legislation on Arms Brokering of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (see above)
- Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (see above)

2. Tracing

- International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (see above)
- Council of the European Union recommendation on a standard procedure in member States for cross-border enquiries by police authorities in investigating supply channels for seized or recovered crime-related firearms and the annexed manual⁴³
- “Best practice guide on marking, record-keeping and traceability of small arms and light weapons” (see above)
- Model Legislation on the Marking and Tracing of Firearms (see above)
- International Criminal Police Organization (INTERPOL) Firearms Tracing System

3. End-user certificates

- Standard Elements of End-User Certificates and Verification Procedures for SALW Exports (see above)

⁴²Organization for Security and Cooperation in Europe, “Best practice guide on national control of brokering activities”, in *Handbook of Best Practices on Small Arms and Light Weapons* (Vienna, 2003), part IV.

⁴³Council of the European Union, document 10000/07 ENFOPOL 104 CRIMORG 99 + COR 1.

- Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, End-User Assurances Commonly Used: Consolidated Indicative List⁴⁴

4. *Mutual legal assistance and extradition*

- UNODC Model Law on Extradition
- UNODC Model Law on Mutual Assistance in Criminal Matters (for both civil and common law systems)⁴⁵
- Council of the European Union Act 2000/C 197/01 establishing, in accordance with article 34 of the Treaty on European Union, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union⁴⁶
- Convention, drawn up on the basis of article K.3 of the Treaty on European Union, on Mutual Assistance and Cooperation between Customs Administrations⁴⁷
- Council of the European Union framework decision 2002/584/JHA on the European arrest warrant and the surrender procedures between member States⁴⁸

⁴⁴Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, agreed at the 1999 plenary meeting, amended at the 2005 plenary meeting.

⁴⁵General Assembly resolution 45/117, annex, as amended by resolution 53/112.

⁴⁶*Official Journal of the European Communities*, C 197, 12 July 2000.

⁴⁷*Ibid.*, C 24, 23 January 1998.

⁴⁸*Ibid.*, L 190, 18 July 2002.

Annex III

National deactivation standards

Commentary

Article 9 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition sets out general principles pertaining to deactivation, but does not provide specific, technical guidelines pertaining to deactivating firearms. It is up to States to determine their own deactivation standards. Examples of national specifications are provided below.

Australia: New South Wales, Firearms Regulation 2006

Clause 34 Firearms collections

...

- (3) In accordance with section 20 (a) of the [Firearms Act 1996], a firearms collector licence is subject to the condition that any prohibited firearm (being a rifle to which a category D licence applies) that is part of the collection must be rendered permanently incapable of being fired in the following manner:
- (a) a bore diameter mild steel rod must be inserted into the barrel of the firearm extending for the full length of the barrel,
 - (b) the steel rod must be fully welded to:
 - (i) the muzzle and finished flush, and
 - (ii) the chamber of the firearm (if applicable),
 - (c) the barrel must be welded to the receiver to prevent the barrel from being removed,
 - (d) the firing pin must be removed and the firing pin hole welded closed,
 - (e) any internal springs or components that can be removed without detracting from the external appearance of the firearm must be removed,
 - (f) any trigger of the firearm must be welded in a fixed position to prevent the trigger from working,
 - (g) the internal components of the firearm must (if possible) be welded to prevent the firearm from working,
 - (h) any bolts and external hammers must be welded in a fixed position,

- (i) any other mechanism or action in respect of the firearm must be welded in a closed position to prevent the firearm from working.
- (4) In accordance with section 20 (a) of the Act, a firearms collector licence is subject to the condition that any prohibited firearm (being a shotgun to which a category D licence applies) that is part of the collection must be rendered permanently incapable of being fired in the following manner:
- (a) a bore diameter mild steel rod must be inserted into the barrel of the firearm for a distance of 5 cm,
 - (b) the steel rod must be welded flush to the muzzle,
 - (c) a 5 cm long steel plug must be inserted into the chamber and fully welded flush,
 - (d) the barrel must be welded to the receiver to prevent the barrel from being removed.
- (5) Despite subclauses (3) and (4), any such prohibited firearm may be rendered permanently incapable of being fired by being sectionalised (that is, by milling away the external parts of the firearm to expose its internal mechanisms) in an approved manner.
- (6) For the purposes of subclauses (3) and (4), and in addition to the requirements of those subclauses:
- (a) any welding required to be done must:
 - (i) be substantial and, wherever practicable, not be done by way of spot welding, and
 - (ii) be done by way of gas metal arc, gas tungsten arc, manual arc electrode or gas fusion with steel wire, and
 - (b) if a firearm has a component of a non-ferrous composition that cannot be satisfactorily welded but is required to be welded, that component may be glued and pinned to prevent it from working, and
 - (c) the barrel of a firearm that is constructed of material unsuitable for welding may be plugged with a mild steel rod and welded by gas brazing or a similar method, and
 - (d) any nipple of a firearm must be welded so that it is blocked.

Canada: Canadian Firearms Registry Deactivation Guide

Deactivation involves the removal of parts or portions of parts from a firearm, and the addition of pins and welds so that the firearm can no longer chamber or fire ammunition.

1. Deactivation of Small Arms of Calibre 20mm or Less

a. Semi-automatic, Full Automatic, Selective Fire, and Converted Firearms

1. A hardened steel blind pin of bore diameter or larger must be force fitted through the barrel at the chamber, and where practical, simultaneously through the frame or receiver, to prevent chambering of ammunition. Furthermore, the blind pin must be welded in place so that the exposed end of the pin is completely covered by weld. This strength and hardness of the weld must be similar to that of the metal used in the construction of the firearm. In the case of firearms having calibres greater than 12.7mm (.5 inch), the pin need not be larger in diameter than 12.7mm. In the case of multi-barrelled firearms, all barrels must be pinned, using as many pins as necessary to block all chambers.

2. The barrel must be welded to the frame or receiver to prevent replacement.

3. The breech face or portion of the breech bolt which supports the cartridge must be removed or drilled out to a diameter at least as large as the base of the cartridge, so that the bolt can no longer support the cartridge.

4. The receiver must be welded closed to prevent replacement of the breech bolt.

5. In the case of firearms designed to support full-automatic fire, the trigger mechanism must be rendered unusable. Any trigger mechanism part or component which is necessary for full-automatic fire must be destroyed by cutting or grinding and welded in place to prevent replacement.

b. Rifles, Shotguns and Handguns Other Than Revolvers

1. The barrel, bolt and frame or receiver must be modified as in 1.a.

2. The bolt, if present as a separate piece, must be welded to the frame or receiver to prevent replacement.

c. Revolvers, Revolving Rifles and Shotguns, and Cap and Ball Revolvers

1. The barrel and cylinder must be blocked by a hardened steel pin of bore diameter which traverses the entire length of the barrel and cylinder. The pin must be welded in place at the muzzle, barrel/cylinder gap and except for muzzle-loading firearms, at the breech end of the frame. The strength and hardness of the welds must be similar to that of the firearm.

d. Black Powder Rifles and Shotguns

1. The barrel must be blocked immediately forward of the flash hole using a blind pin in the manner described in paragraph 1.c.1.

2. The flash hole must be welded closed. In the case of percussion guns, the nipple may be welded closed and then welded to the barrel to prevent replacement.

e. Magazines

1. The magazine follower must be welded to the interior of the magazine to prevent loading of ammunition.

2. The body of the magazine must be welded to the frame or receiver to prevent removal or replacement.

2. *Firearms of Unusual Design or Construction*

a. Allowances may be made for variations of the procedures outlined in 1.a. to e. if the firearm is made of unusual substances or is of an unusual design. However, any variation in the procedure must accomplish the same goals as the original procedures.

South Africa: Firearms Control Amendment Regulations, 2007

Clause 107 Deactivation of firearms

...

(9) A gunsmith must deactivate a firearm in the following manner:

(a) Barrel and Chamber:

A tight fitting metal plug to be inserted from the rear end and welded in place to prevent chambering of a cartridge or loading of a powder charge.

(b) Revolver cylinder:

A tight fitting metal plug to be inserted from the rear end and welded in place to prevent chambering of a cartridge or loading of a powder charge.

(c) Firing Pin:

To be shortened and the firing pin hole in the breech face to be closed by welding.

(d) Breech face:

75% or more to be removed at an angle of 45 (degrees). In the case of a revolver 'breech face' refers to the area supporting the base of the cartridge in line with the barrel.

(e) Slide, Bolt or Breech-block:

75% or more of the locking surfaces to be removed at an angle of 45 (degrees).

(f) Frame or Receiver:

75% or more of the feed-ramp, locking shoulders and supports to be removed and a metal obstruction welded in place to prevent a standard slide, bolt or breech-block from being fitted.

United Kingdom of Great Britain and Northern Ireland

Standards for firearms deactivation in the United Kingdom of Great Britain and Northern Ireland are contained in the 47-page “Specifications for the adaptation of shotgun magazines and the deactivation of firearms” (revised 2010). Schedule 4 contains the “Specifications for the deactivation of firearms” (available from www.homeoffice.gov.uk/publications/police/firearms/deactivation-of-firearms-2010?view=Binary).

Annex IV

Destruction methods

Commentary

Article 6, paragraph 2, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition includes a presumption in favour of destroying firearms, their parts and components and ammunition that have been seized by the State, but the Protocol contains no guidelines or specific requirements with respect to the method of destruction. Accordingly, it is up to States to determine what methods of destruction they use to destroy seized and confiscated firearms, their parts and components and ammunition. In determining the destruction methods to be employed, States could consider the methods described and recommended in the report of the Secretary-General on methods of destruction of small arms, light weapons, ammunition and explosives (S/2000/1092). An extract of the section of the report pertaining specifically to methods of destruction is provided below. States are also encouraged to consult the International Small Arms Control Standards module 5.50, "Destruction: weapons", which updates and expands upon the report of the Secretary-General in the form of an international standard.

...

B. Methods of destruction

20. The following is a description of some of the most common methods that have been used for the destruction of small arms and light weapons. The purpose is not to rank or recommend any particular method, but simply to present the technical necessities and constraints of each method, as well as more general advantages and disadvantages. The list is not exhaustive, as there are a multitude of ways that a weapon can be made inoperable or destroyed.

Burning

21. The two burning methods discussed here are at opposite ends of the spectrum ranging from the cheap and simple to the complex and possibly costly:

(a) **Open-pit burning:**

- (i) Open-pit burning has been effectively used in a number of situations. It is a simple and cheap way to destroy weapons successfully. The only materials necessary for this method would be some type of fuel (wood or coal) and a flammable substance to intensify the heat (gasoline for

example). The only skills needed would be in rendering the weapons safe, stacking the weapons to maximize their destruction and verifying the destruction complete. An additional safety measure would be to have all muzzles of the weapons pointing in one direction and forbidding the presence or movement of unauthorized personnel during the burning;

- (ii) Burning has the added advantage of making a highly visible, political and psychological statement to the conflict-affected population;
 - (iii) However, one of the main disadvantages of burning is its ineffectiveness if there is not sufficient heat produced. This could be overcome by re-burning, recycling the weapons, burying them beyond economical recovery, or by disabling them further through other means such as using a sledgehammer;
 - (iv) An additional consideration should be the fact that unless the country has a well-established steel industry, the scrap value of the burned arms would probably not offset the transportation costs. It would then be best either to bury the scrap or, possibly, to construct a peace monument.
 - (v) Advantages:
 - a. Simple and cost-effective;
 - b. Can be done in or near the collection point;
 - c. Has minimum training and equipment requirements;
 - d. High visible impact with psychological and political value;
 - (vi) Disadvantages:
 - a. Not always 100 per cent effective in destroying the weapons;
 - b. Minimal value for resulting scrap;
 - c. Environmental concerns with temporary air pollution, especially if there are high percentages of plastics and polymers in the weapons;
- (b) **Melting in foundries/blast furnaces:**
- (i) Where it is possible to utilize electrical, blast or foundry furnaces, this is probably the optimum method of destruction. It inevitably means transporting the weapons over some distance and, as the infrastructure is rarely co-located where the weapons are collected or stored, there will likely be cost concerns. This method also requires a comprehensive destruction plan including stripping the weapons of all non-steel components, making safety checks, providing secure transportation and maintaining oversight of what will essentially be a commercial operation;
 - (ii) The melting process is technically safe and has minimal environmental impact. It dispenses with the need for any supplementary process, except for stripping the non-metallic parts and ancillary equipment. Depending on the quantity of weapons and the percentage of high-grade steel, there is a good possibility of recycling the molten metal residue. Foundry furnaces might provide their services free of charge in exchange for the residue. This could assist in offsetting transportation and other related costs;

- (iii) While it is possible to construct small backyard furnaces to deal with smaller amounts of weapons, other methods of dealing with low volume are likely to be more efficient;
- (iv) Advantages:
 - a. Complete and absolute destruction;
 - b. Possible cost recovery;
- (v) Disadvantages:
 - a. Requires a fixed facility;
 - b. Could involve significant transportation costs.

Open-pit detonation

22. Open-pit detonation is a relatively simple exercise, assuming the availability of qualified technicians. Destruction can be effected by laying weapons out in a shallow pit and placing explosive charges so that, in the case of the destruction of assault rifles, the receiver, bolt, barrel and trigger housing would be destroyed. This could be an expensive process unless there are donor charges such as plastic explosives that have been collected as part of a disarmament process. Safety procedures have to be rigid, not just in the handling and use of explosives, but ensuring that adequate safety distances are in place between the demolition site, the personnel involved, the general population and property. There is always the possibility that some weapons or parts might be thrown or kicked out of the pit by the explosion and, in that case, the surrounding area must be thoroughly checked after the blast. In addition, a detailed check will have to be done to ensure complete destruction. These concerns could be minimized by tamping the site with earth, sandbags or water bags. A well-executed procedure would mutilate the weapons beyond reuse.

23. This method is particularly well-suited for the destruction of mortars, anti-tank guns and portable launchers of anti-aircraft missile systems. In addition, small quantities of large calibre weapons can be destroyed by detonating a high explosive charge in the chamber:

- (a) Advantages:
 - (i) Destruction rate is very good, especially for larger weapons;
 - (ii) Highly visible and has symbolic value;
- (b) Disadvantages:
 - (i) Requires skilled technicians;
 - (ii) Could involve bringing explosives into an insecure operational area;
 - (iii) Requires detailed safety procedures;
 - (iv) Residue must be removed or buried;
 - (v) There are minimum recycling possibilities;
 - (vi) The environment could be impacted by noise, air and ground pollution;

- (vii) Not cost-effective for destruction of small arms unless there is an abundance of donor charges.

Cutting

24. Cutting has been widely used and can be done in a variety of ways. However, the various methods also produce different outcomes regarding effectiveness. More specifically, the slightly higher-tech methods of using either oxyacetylene torches or plasma cutters over conventional saw blades leave far fewer possibilities that the disabled weapons can be used for spare parts. In general, when cutting small arms from handguns to assault rifles, the weapons are cut completely through the barrel, receiver, bolt and trigger mechanism. The higher the temperature generated by the cutting device, the higher the damage to the metal and the less chance the weapon or parts can be rebuilt. There are several ways to destroy small arms and light weapons through cutting:

(a) **Oxyacetylene cutting:**

- (i) Oxyacetylene cutting is a proven method of destroying all types of weapons. The equipment is relatively simple to use, and personnel can be trained to use it in one day. The equipment needed is available for lease or sale worldwide, and can be transported by helicopter, light aircraft or light truck. Additionally, the torch is almost maintenance free and spare parts are easy to come by in almost every country;
- (ii) The cost of an oxyacetylene cutter appropriate for this type of task would be from \$200 to \$500. There is no electric power requirement;
- (iii) The only real disadvantage of this method is the number of weapons that can be destroyed in a given time. The time it takes varies from weapon to weapon based on size. Operator skill and experience also have a bearing on the speed of destruction. The average number of assault rifles that could realistically be destroyed in an eight-hour day would be 300 to 400. Another disadvantage that could arise depending on the situation in which the destruction is being carried out (i.e., whether destruction is done by a mobile unit or at a well-secured stationary site) would be the attractiveness of the equipment to theft. This is a disadvantage for all methods, using any sort of machinery;
- (iv) Advantages:
 - a. Simple, safe and requires little training;
 - b. Close to 100 per cent effective in rendering weapons useless, especially if two cuts are made;
 - c. Easily maintained and transported;
 - d. Environmentally sound despite the generation of some toxic fumes;
 - e. Some material is available for recycling;

- (v) Disadvantages:
 - a. Time-consuming if a large quantity of weapons is to be destroyed;
 - b. Labour-intensive;

- (b) **Oxygasoline cutting:**
 - (i) The oxygasoline torch cuts steel using gasoline for fuel, and can be used as a direct replacement for the acetylene torch. The design keeps the fuel as a liquid all the way to the cutting tip, which prevents back-flash down the fuel line since gasoline can not ignite without oxygen. Like oxyacetylene, where certain polymers and plastics are burned, environmental and user health precautions should be taken such as ensuring adequate ventilation and/or the wearing of an appropriate mask filter. The oxygasoline system has certain advantages over the acetylene torch, including: cutting faster, cutting cleaner (not an advantage for weapons destruction), reduced fuel costs, increased safety and easier fuel storage.

 - (ii) Advantages:
 - a. Simple, safe and requires little training;
 - b. Environmentally sound, despite the generation of some toxic fumes;
 - c. Cost-effective to operate;
 - d. Easily maintained and transported;

 - (iii) Disadvantages:
 - a. More costly for initial purchase;
 - b. Time-consuming if a large quantity of weapons is to be destroyed;
 - c. Labour-intensive;

- (c) **Plasma cutting:**
 - (i) In equipment cost, a plasma cutter is more expensive than an oxyacetylene torch. However, it can do the same job as the torch in about half the time and is easier to use, thus labour costs could be saved. This difference in labour and equipment cost would have to be calculated for the most cost-efficient method. The plasma cutter also makes a much cleaner cut than an oxyacetylene torch. Plasma cuts rather than burns, thus it is best for weapons with high levels of polymers and plastics. It also releases fewer toxic fumes. Because this cleaner cut does not produce the same amount of slag, it may make the pieces more susceptible to repair or re-use. However, this should be of only slight concern, especially when double cuts can be made more efficiently with the plasma cutter;

 - (ii) The average cost of a plasma cutter is \$2,000. It would require 220 volts of electrical current and could be used with a portable generator. A 5-kilowatt generator costs approximately \$800. Additionally, the cutter would require an air compressor;

- (iii) Advantages:
 - a. Safe, requires little training;
 - b. Environmentally sound despite generation of some toxic fumes;
 - c. Close to 100 per cent effective in rendering weapons useless, especially if two cuts are made;
 - d. Can do twice the work in the same amount of time as the oxyacetelyne torch;
- (iv) Disadvantages:
 - a. Could be too expensive if used to destroy small quantities of weaponry;
 - b. A cleaner cut could increase the risk of parts being re-used (only a slight concern);
 - c. Somewhat labour-intensive;
- (d) **Hydraulic shears cutting:**
 - (i) Numerous police forces around the world have used this method of destruction for collected or seized weapons. Cutting shears provide a simple, environmentally friendly and effective way to destroy weapons of all sizes and types. Additionally, hydraulic shears could destroy thousands of weapons in one day. While this method is simple and efficient, it may also be cost-prohibitive. Shears can cost from \$10,000 to \$15,000, depending on the power source, the thickness of steel they can bend or cut and how fast they can do the job. The machinery needed can be bought new or used, and can also be custom-designed to fit individual needs (mobile vs. stationary destruction). Although these machines are quite expensive, they are rugged, can cut wood, plastics and polymers, have a long life, are easily serviced, and can take advantage of low-cost labour owing to their ease of use. Thus, hydraulic shears may be a worthwhile investment if a well-planned and sustained weapons collection and destruction programme is to be implemented;
 - (ii) Hydraulic shears already installed in an existing industrial facility are an attractive option because the capital acquisition cost can be absorbed by an operation other than the destruction operation;
 - (iii) Advantages:
 - a. Simple to use and requires little training;
 - b. 100 per cent effective in rendering weapons useless if two cuts are employed;
 - c. Fast, reliable and long-lived;
 - d. Environmentally benign if the scrap is not buried;
 - e. Large numbers of weapons can be destroyed;
 - (iv) Disadvantages:
 - a. Could be too expensive for small quantities of weapons;

- b. High maintenance level;
 - c. Limitations with some of the heavier small arms and light weapons;
- (e) **Other cutting methods:**
- (i) There are numerous other “lower-tech” methods that could be used to destroy weapons, such as hack saws, bench saws and band saws. These methods would obviously not be practical for destroying more than a handful of weapons. Advantages to these cutting methods are mobility and low cost. If a collection programme were to move around a country or region, and it were expected to collect only a few weapons at each site, this method might be considered;
 - (ii) Advantages:
 - a. Simple to use;
 - b. Inexpensive;
 - c. Mobile;
 - (iii) Disadvantages:
 - a. Labour-intensive, since only a handful of weapons can be destroyed at a time;
 - b. Not 100 per cent effective in destroying weapons unless there are numerous cuts.

Bending/crushing

25. The destruction or rendering unserviceable of weapons through bending or crushing ranges from very sophisticated factory-type systems to practical systems in the field:

- (a) **Crushing by hydraulic press:**
- (i) Hydraulic presses may be employed in bending and partly crushing weapons. These presses are typically large, very heavy, fixed-installation machines that require mounting on a solid foundation and an adequate power supply. They also require the degree of maintenance associated with large industrial equipment;
 - (ii) Weapons would be severely mutilated, however, strict verification would be required to ensure that a pool of spare parts for weapons is not created. Supplementary destruction methods might be required depending on the weapon type or types involved. It is very suitable for anti-tank guns, recoilless rifles, missile launchers and like systems;
 - (iii) Advantages:
 - a. High volume;
 - b. Reliable for most weapons;

- (iv) Disadvantages:
 - a. Requires a supplementary method in certain circumstances;
 - b. Fuels and lubricants required may be an environmental consideration;
 - c. Recycling may be restricted owing to the presence of varnish, carbon, plastic, etc.;
- (b) **Crushing by vehicles:**
 - (i) A fairly simple method to at least disable weapons is through the use of heavy vehicles. The most effective vehicles are those with caterpillar tracks and weighing between 30 and 40 tons, e.g., tanks or heavy construction vehicles. One would simply need to have the track pads removed, lay the weapons on a flat hard surface such as asphalt or concrete and run over the weapons with the vehicle several times. Care must be taken to ensure that the weapons are separated far enough to ensure a good heavy run over each one. Likewise, if the weapons are laid against a curb, log or steel rail, they could be bent or broken using any sort of heavy vehicle. In all cases where supports are used it is necessary to guard against items being thrown up or aside when subjected to pressure. Finally, front-end loader vehicles can use their bucket/blade combination to bend or break weapons in a manner similar to the use of shears;
 - (ii) A disadvantage to this method is the lack of completeness. This can be overcome by having visual inspections conducted by competent supervisors to determine the number of runs required to destroy the weapons. Additionally, this could simply be an intermediate method to disable the weapons before complete destruction by some other method such as burning;
 - (iii) Advantages:
 - a. Simple to execute, minimum training required;
 - b. Requisite equipment widely available;
 - c. Inexpensive;
 - d. High volume of weapons can be destroyed in one day;
 - e. Environmentally benign if the scrap is not buried;
 - f. Provides an opportunity for high visual impact with psychological and political value;
 - (iv) Disadvantages:
 - a. Not 100 per cent effective in destroying all weapons;
 - b. Strict verification required;
 - c. Difficult to do in remote, rural areas;
 - d. Not practical for a wide-ranging mobile destruction plan.

Shredding

26. Of all the methods mentioned, shredding is one of the fastest and most effective for destroying weapons. A large, mobile shredder can literally destroy thousands of weapons per day, and there is absolutely no possibility that any parts could be re-used. Additionally, shredded scrap metal can be recycled to recapture some of the costs of this method, although this would be minimal owing to the lower quality of scrap produced if non-metallic parts are not removed in advance.

27. The primary disadvantages to this method are the expense and availability of the requisite equipment. Even in countries that have established recycling facilities, there are only a few of these machines. The larger ones cost several million dollars. Smaller models in the \$350,000 range are also available. This method would only be cost-effective if many thousands of weapons were to be destroyed or if the country had an already well-established shredding and recycling capability:

(a) Advantages:

- (i) Simple to use;
- (ii) 100 per cent assurance of complete destruction;
- (iii) Some costs can be recovered through recycling;
- (iv) Can destroy thousands of weapons at a time;

(b) Disadvantages:

- (i) Extremely expensive equipment to buy if not already available in-country;
- (ii) Mobile systems are limited by rough terrain;
- (iii) Not cost-effective for quantities of weapons less than several thousand or that have to be transported over long distances to a fixed facility.

Dumping at sea

28. This method of destruction is often rejected for environmental reasons. While protection of the environment must always be of high importance, there could be circumstances where the method is acceptable. Historically, this has been one of the most frequently used methods and it is, in fact, more environmentally sound than many other methods as it involves only inert metal with small amounts of contaminants. In any case, global, national and regional norms and instruments must be consulted in accordance with the provisions of the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (the London Convention).¹

29. This method can be expensive, as it requires moving the weapons to a port, packaging them in barrels or sea containers (drilled with holes to ensure that they

¹Opened for signature at London, Mexico City and Washington, D.C., on 29 December 1972 (<http://untreaty.un.org>).

sink and free air space being filled with concrete ballast), arranging for a ship with onboard crane facilities and passage to an area with a deep ocean trench, i.e., beyond the continental shelf. There are scientific formulas available to calculate the buoyancy and density of the package to be dumped to ensure that it does not float. This is essentially a commercial operation so no training is required. Security prior to dumping and verification that a dump has actually been made, requires a certain amount of planning and resources:

- (a) Advantages:
 - (i) High-volume capacity;
 - (ii) Recovery virtually impossible;
- (b) Disadvantages:
 - (i) Expensive, depending on volume;
 - (ii) Logistically difficult;
 - (iii) No recycling possibilities;
 - (iv) Negative psychological impact owing to low visibility to the conflict-affected population.

Burial on land

30. This method would normally be supplementary to one of the other methods discussed. In certain circumstances it could be a “stand alone” method if there was sufficient guarantee that the weapons would not be recoverable. This could involve the use of mines or abandoned quarries/excavations, especially if an explosive blast was used to cover the weapons. Although this method does not actually destroy weapons, it could be combined with embedding the weapons in cement, which would make the possibility of recovery even more unlikely.

31. Burial on land can also be done by placing weapons in a pit, covering them with common salt, replacing the soil over the weapons and then wetting the area to hasten decomposition. Weapons become unusable within several weeks. Physical security must be maintained until it is certain the weapons have become unserviceable:

- (a) Advantages:
 - (i) Low cost, simple, rapid;
 - (ii) Could be a supplementary method for scrap residue from other methods;
- (b) Disadvantages:
 - (i) Possible adverse impact on the environment;
 - (ii) No possibility for recycling;
 - (iii) Some danger of subsequent recovery.

New technologies

32. New technologies, techniques and equipment are being developed or coming on the market continuously. Planners, managers and trainers would need to monitor these developments and adjust accordingly. One new technology that has been adopted in some countries is described below.

33. Hydroabrasive cutting, sometimes referred to as water-jet cutting, is becoming popular with explosive ordnance disposal teams and demilitarization enterprises. It is very effective in destroying small arms and light weapons, especially those weapons and munitions on the higher end of the spectrum. Its advantages over other torch systems are that it is environmentally sound (there are no toxic fumes) and favours recycling in that the scrap is unaffected by the cutting process. Currently it is more expensive than comparative systems, but this is minimized the larger the number of weapons to be destroyed.



UNODC

United Nations Office on Drugs and Crime

Vienna International Centre, PO Box 500, 1400 Vienna, Austria
Tel.: (+43-1) 26060-0, Fax: (+43-1) 26060-5866, www.unodc.org

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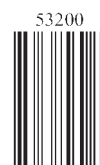


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