UNODC
United Nations Office on Drugs and Crime

Technical Guide to 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

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

Technical Guide to 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

UNITED NATIONS
New York, 2011

Publishing production: English, Publishing and Library Section, United Nations Office at Vienna.

Contents

I Introduction

A. Objectives

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] came into force on 3 July 2005. It aims to promote, facilitate and strengthen cooperation among States parties to reduce trafficking in firearms and ammunition by establishing a comprehensive monitoring system. The Firearms Protocol is the only legally binding global instrument on firearms control and complements other global small arms instruments, such as the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,[2] as well as regional instruments. In order to assist Member States, the United Nations Office on Drugs and Crime (UNODC) is publishing the present Guide to provide practical and simple advice on steps that States can take to implement the provisions of the Firearms Protocol.

B. How to use the Guide

This Guide is intended to be of assistance to policymakers, law enforcement officials and practitioners involved in arms transfers and investigations and to persons engaged in developing control measures in implementing the Firearms Protocol and criminalizing the illicit manufacture of and trade in firearms. It contains chapters on the control measures that States parties need to implement to prevent the diversion of firearms into the illicit market. The aim of the guidelines is also to help States develop the capacity to respond proactively when diversion of firearms and ammunition occurs, to intervene in a timely and reliable manner and to detect possible points of diversion to illicit channels.

The Guide goes beyond the strict requirements of the Protocol and recommends that measures and policies be implemented that take into account other regional and international small arms control instruments. While the Guide is of global application, it is intended to assist States parties of varying levels of capacity in their efforts to prevent, combat and eradicate illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

C. Scope of application

According to article 4, paragraph 1, the scope of application of the Firearms Protocol is limited in that it applies to the prevention of illicit manufacturing of and trafficking in firearms, their parts

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

[2] See *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.

and components and ammunition and to the investigation and prosecution of offences outlined in article 5 where those offences are transnational in nature and involve an organized criminal group. These qualifiers apply to the investigation and prosecution of offences, however, not to their prevention, so the application of the control measures outlined in the Protocol is not limited. The Protocol recognizes that in order to prevent illicit trafficking and manufacturing, a country must establish a control regime with broad application. In particular, to identify illicit transactions, all transactions must be subject to scrutiny to determine which are legitimate and which are not.[3] Control measures should therefore cover all transactions except those excluded by article 4, paragraph 2.

Article 4, paragraph 2, provides that the Protocol does not apply to state-to-state transactions or to state transfers in cases where application of the Protocol would prejudice the right of a State party to take action in the interest of national security in accordance with the Charter of the United Nations. Therefore, the Protocol should apply to activities undertaken by States parties in their commercial capacity, such as the dealings of state-owned or operated manufacturers, and excludes only those transactions undertaken by States in their sovereign capacity.[4] However, given that the risk of diversion still exists with state-to-state transfers, States are encouraged to implement the control measures outlined in the Protocol to them even though this is not specifically required.

The Protocol sets the minimum standards that must be implemented in domestic law. States are encouraged pursuant to article 34, paragraph 3, of the United Nations Convention against Transnational Organized Crime[5] to adopt stricter measures in domestic law wherever they would be deemed useful for preventing and combating transnational organized crime.

In this Guide, where the term "firearms" is used, it will also mean firearms, their parts and components and ammunition, where appropriate.

[3] *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.05.V.2), part four, paras. 63 and 176, which states that elements of transnationality and the involvement of organized criminal groups must not be made elements of the domestic offence (art. 34, para. 2, of the Convention).

[4] See interpretative note on article 4 of the Protocol (A/55/383/Add.3, para. 4), *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.06.V.5), p. 630. See also A/55/PV.101, containing the verbatim records of the 101st plenary meeting of the General Assembly at its fifty-fifth session, held on 31 May 2001.

[5] United Nations, *Treaty Series*, vol. 2225, No. 39574.

II Article 6. Confiscation, seizure and disposal

To comply with article 6 of the Firearms Protocol, States parties must:

(a) Adopt measures to confiscate firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked;

(b) Seize and destroy those firearms, their parts and components and ammunition unless another form of disposal is state-sanctioned; and

(c) Record any form of state-sanctioned disposal other than destruction and mark the firearms accordingly.

A. Article 6, paragraph 1

Article 6, paragraph 1, of the Firearms Protocol requires States parties to ensure that their domestic legislation allows for the confiscation of illicitly manufactured or trafficked firearms, their parts and components and ammunition. Article 6 of the Protocol must be read and interpreted together with articles 12-14 of the Organized Crime 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.[1]

To the extent that illicitly manufactured or trafficked firearms are considered to have been either property "derived" from these offences or "used or intended 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.[2]

Article 6, paragraph 1, does not dictate to States the scope of the measures that must be included in their legislation, but rather allows States the freedom to interpret and implement the article as they see fit. States parties are encouraged to find the most effective way of confiscating illicit firearms. This means going further than merely including a provision in domestic law allowing for confiscation: for confiscation to become a practical reality, law enforcement agencies require additional tools such as the authority to stop and search an individual, vehicle or container for example and to seize firearms and ammunition where there are grounds to suspect that they have been illicitly trafficked or manufactured.

The use of the word "confiscation" implies more than mere seizure. The term is defined in article 2, subparagraph *(g)*, of the Organized Crime Convention as follows:

> "'Confiscation', which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority."

[1] *Legislative Guides* (see chap. I, footnote 3, above), part four, para. 136.

[2] Ibid., para. 137.

This means that ownership of the firearms passes over to the State party. States parties must therefore grant the authority in their legislation for a court to issue an order declaring a firearm to be confiscated.

It is advisable that States parties require forfeiture of illicit arms even if a person is not convicted of a criminal offence. For example, if an individual is suspected of trafficking in illicit firearms but for some reason is not convicted, any illicit arms in his or her possession or on his or her property should still be forfeited. Some countries have broad forfeiture provisions in their legislation and require forfeiture of even licit arms from those convicted of certain offences even if the arms were not related to the offence itself (see the boxes below). Forfeiture provisions along with prohibition orders may be advisable when an individual is convicted of a violent offence, for example.

Certain specific powers of forfeiture, such as that contained in the Firearms Act, 1968, of the United Kingdom of Great Britain and Northern Ireland, do not require the property to be linked to the offence at all, so that after the conviction of a person for the offence, the court may order the forfeiture of any guns and ammunition found in his or her possession.

Source: N. Liverpool, "The seizure and forfeiture of property associated with criminal activity", Bulletin on Narcotics, vol. 35, No. 2 (1983) (United Nations publication), pp. 21-39. Available from www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1983-01-01_2_page003.html.

The Criminal Code of Canada provides for "prohibition orders" of varying terms and conditions prohibiting persons from possessing firearms or certain other weapons for specified terms, and may require the surrender and forfeiture of firearms. Prohibition orders are mandatory upon conviction for certain serious offences, such as violent offences with maximum sentences of 10 years or more, stalking or drug trafficking; and discretionary, upon conviction for less serious violent offences or offences involving firearms use.

Source: www.thecanadianencyclopedia.com/index.cfm?PgNm=TCE&Params=A1SEC821617.

Since the Firearms Protocol must be read and interpreted together with the Organized Crime Convention, pursuant to articles 12-14 of the Convention, States will already have in their legislation powers of search and seizure and confiscation. While under article 2, subparagraph *(f)*, of the Convention "seizure" means, in part, "temporarily assuming custody or control of property on the basis of an order issued by a court of the competent authority", States may consider allowing for firearms and ammunition to be seized and confiscated on an expedited basis in their laws so as to minimize safety or security risks that may arise if there are procedural delays.[3]

As a first step towards implementing article 6, paragraph 1, of the Protocol, it is important that, following the seizure of a firearm, States parties have established in their own domestic law the authority to confiscate firearms if:

[3] Ibid., para. 139.

(a) They have been illicitly trafficked, meaning:

(i) No export licence or authorization for shipments of firearms, their parts and components and ammunition has been issued by the exporting State party or the licence fails to contain the minimum information required under the Protocol;

(ii) No import licence or authorization has been issued by the importing State party or the import licence or authorization does not contain the minimum information required under the Protocol;

(iii) The State through which the shipment is in transit has not given its authorization to the transit;

(iv) The documentation accompanying the shipment is determined not to be valid because it was not validly issued, has expired, the prerequisite conditions in the licence have not been met or the licence does not cover the types or quantities of firearms, parts and components or ammunition involved;

(v) The firearms, parts or components are not marked in accordance with article 8 of the Protocol or the markings have been falsified, illicitly obliterated, removed or altered in any way;

(b) The firearms have been illicitly manufactured, that is, no licence or authorization for manufacture from a competent authority can be provided from the State party where the manufacture or assembly took place;

(c) They are suspected to be proceeds of crime or have been used in or will be used in the commission of offences covered by the Organized Crime Convention, in which case the firearms or ammunition also become subject to articles 12 and 13 of that Convention.

The Firearms Protocol sets forth the minimum standards by which States parties are bound. States are free, however, to expand the powers of confiscation as they deem fit.

As previously mentioned, it is important that States parties support and promote the investigative capacity of law enforcement officials and enhance their powers of inspection, their ability to request information relevant to their investigations and their powers of search and seizure, bearing in mind that the limit of such powers will be determined by each State party's legal system. For example:

- *Inspections.* In accordance with national legislative systems, law enforcement officials should have the authority to conduct inspections of any entity engaging in a business related to the manufacture or import, export or shipment of firearms, their parts and components. The law enforcement officials should have the authority to conduct such inspections without warning. This allows, for example, the law enforcement official to inspect manufacturers at any time to ensure that they are not manufacturing firearms from illicitly trafficked parts.
- *Requests for information.* Where a law enforcement official comes across firearms, their parts or components, in the course of his or her work that he or she suspects have been illicitly manufactured or trafficked, that official will need to be able to obtain information on the firearms. There should therefore be an onus on the person in possession of the firearms to provide the information needed. For example, the person being questioned should be required to provide copies of authorizations regarding the firearms. In States parties where civilians are allowed to possess firearms, if an individual cannot provide to law enforcement authorities the required permit needed to possess a firearm, law enforcement should have the power to seize that firearm.

- *Search.* Law enforcement officials should have extensive powers to conduct searches when looking for firearms, their parts and components or ammunition. In certain and limited circumstances where official action is required and there is no time to obtain a warrant on account of safety or security risks that may arise, officials should be allowed to conduct warrantless searches.
- *Seizure.* As mentioned above, law enforcement officials should be given the authority to seize any firearms, their parts or components or ammunition that are believed to have been illicitly manufactured or trafficked, are the proceeds of crime derived from offences covered by the Organized Crime Convention or have been or will be used in the commission of offences covered by the Convention.

In addition to the above-mentioned suggestions, States parties may wish to require law enforcement authorities and other state bodies to periodically review firearms and ammunition that are in their possession to determine whether they are surplus and, if they are, to take steps towards their disposal, preferably through destruction. Law enforcement authorities, for example, may have firearms in their possession that were initially held for evidence purposes but that may no longer be required. These surplus arms should ideally be destroyed.

> In paragraph 18 of chapter II of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, States undertake to regularly review their stockpiles of firearms, specifically, to regularly review, as appropriate, subject to the respective constitutional and legal systems of States, the stocks of small arms and light weapons held by armed forces, police and other authorized bodies and to ensure that such stocks declared by competent national authorities to be surplus to requirements are clearly identified, that programmes for the responsible disposal, preferably through destruction, of such stocks are established and implemented and that such stocks are adequately safeguarded until disposal.

For more guidance on the content of domestic legislation governing seizure and confiscation, please see the *Legislative Guides* (see chap. I, footnote 3, above).

Safe storage of firearms following seizure and confiscation

States parties should consider requiring law enforcement authorities and other state bodies to create and implement standards for safe storage of firearms and ammunition that are in their possession. Stockpile management, although not specifically mentioned in the Protocol, should be of critical concern to States as alarming numbers of small arms are stolen every year from poorly managed stockpiles and diverted into the hands of criminals and others who perpetrate violence. Some good practices for stockpile management and safe storage are outlined in chapter VII, on article 11, of this Guide. In addition, a number of non-governmental and intergovernmental organizations have published papers and manuals on stockpile management that should be referred to.[4]

[4] See, for example, Michael Ashkenazi, "Stockpile management: security", in *Conventional Ammunition in Surplus: A Reference Guide*, James Bevan, ed. (Geneva, Small Arms Survey, Graduate Institute of International Studies, 2008), available from www.smallarmssurvey.org/files/sas/publications/b_series_pdf/CAiS/CAiS%20CH7%20Security.pdf; Organization for Security and Cooperation in Europe, "Best practice guide on national controls over manufacture of small arms and light weapons", in *Handbook of Best Practices on Small Arms and Light Weapons* (Vienna, OSCE, 2003), available from www.smallarmssurvey.org/files/portal/issueareas/measures/Measur_pdf/OSCE%20Handbook.pdf; and other publications from the International Action Network on Small Arms, the United Nations and so on.

The Programme of Action refers specifically to security and management of weapons held by state bodies. In paragraph 17 of chapter II, States undertake to ensure, subject to the respective constitutional and legal systems of States, that the armed forces, police or any other body authorized to hold small arms and light weapons establish adequate and detailed standards and procedures relating to the management and security of their stocks of these weapons. These standards and procedures should, inter alia, relate to: appropriate locations for stockpiles; physical security measures; control of access to stocks; inventory management and accounting control; staff training; security, accounting and control of small arms and light weapons held or transported by operational units or authorized personnel; and procedures and sanctions in the event of thefts or loss.

B. Article 6, paragraph 2

Article 6, paragraph 2, of the Firearms Protocol deals with preventing illicitly manufactured or trafficked firearms, their parts or components and ammunition from falling into the hands of unauthorized persons, by seizing and destroying these, unless some other form of disposal has been authorized. In order to effectively implement this article, the following issues need to be considered:

- Seizure
- Methods of destruction
- Other forms of disposal
- Marking
- Recording the method of disposal, which includes keeping records of those firearms, their parts or components which have been destroyed

1. Seizure

Once firearms or ammunition have been seized under the conditions mentioned above other necessary actions must follow to ensure that the illicitly manufactured or trafficked firearms or ammunition do not fall into the wrong hands. The first action following the seizure of a weapon is to record the details in a formal document. Should the firearm or ammunition then be lost or stolen, law enforcement officials will have a detailed record of them. The second issue that flows directly from the seizure is the question of safe storage pending disposal of the firearms. There are many instances where seized firearms have ended up in the wrong hands as a result of inadequate stockpile management. It is therefore imperative that seized firearms be kept in safe storage, which will take different forms depending on the type and quantity of firearms or ammunition to be stored. At a minimum, firearms that have been seized should be stored in an appropriate safe.

2. Methods of destruction of firearms[5]

There are many methods of destruction. Choosing which is the most suitable will depend on a number of factors, such as the quantity of firearms or ammunition to be destroyed, their type and location, and the cost of the destruction process. The main consideration when choosing which

[5] Adapted from 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* (2005), available from www.recsasec.org/pdf/Best%20Practice%20Guidlines%20Book.pdf; and South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "SALW destruction activities", 4th ed., Regional Micro-Disarmament Standards/Guidelines, RMDS/G 05.20 (Belgrade, United Nations Development Programme, 20 July 2006), available from www.seesac.org/uploads/rmdsg/RMDS-G_05.20RMDS_05.20_SALW_Destruction_(Edition_4).pdf.

destruction method to use is that it must ensure that the firearms, once destroyed, are damaged beyond the point where they can ever be used again. This also applies to the parts and components of a firearm. It is important to ensure that destruction takes place only once all legal processes have been completed, as the firearms may be required as evidence in legal proceedings. Finally, where the firearms have been confiscated by States parties, it is a requirement that authorization be obtained to destroy them, as they would now be considered state property. The different methods of destruction are presented and discussed below:[6]

- *Smelting and recycling.* This method involves the firearms, their parts and components being smelted in an industrial furnace. Normally this process requires that all plastic or wood parts of the firearms be first removed. The process has many advantages, such as requiring limited training, being easy to perform, being cost-effective and not labour-intensive and, most importantly, the destruction is highly effective. In some cases, the process can also provide scrap metal that can be resold. The main problem, especially in developing countries, is the availability of such facilities.
- *Bandsaw.* This entails the cutting of the firearms by an industrial bandsaw. This method has some limited advantages: little training is required and it is an easy process. The disadvantages tend to outweigh the advantages in that the method is labour-intensive and slow and requires the firearms to be cut in at least three places.
- *Burning.* This process entails the burning of the firearms by using kerosene or some other highly flammable substance. Very often, this process is done by adding wood. The advantages are that it is a cheap and simple process requiring little or no training. Its real value lies in its use as an awareness-raising exercise. The burning of the kerosene and wood creates a large bonfire. The downside is that it is a labour-intensive process and, more importantly, seldom destroys the metal part of the firearms completely. It is also not environmentally friendly.
- *Cement.* This calls for the casting of the firearms into cement. The process is relatively cheap and easy, requiring limited training. The disadvantage is that it is possible in some instances to recover the firearms, although this is very difficult. The cement blocks must be buried and this is a labour-intensive exercise.
- *Crushing by armoured fighting vehicle.* In this process, armoured fighting vehicles are used to crush the firearms by driving back and forth over them. This is a very easy method but not very effective as it is difficult to destroy the firearms completely. This means that after this exercise careful visual inspection must be carried out to ensure that the firearms are destroyed. This process can also be used for raising awareness, as it is highly visual.
- *Crushing by hydraulic press.*[7] 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. Weapons may be severely mutilated, but strict verification is required to ensure that a pool of spare parts for weapons is not created. The advantages of this method are that destruction of large quantities of weapons is possible. The disadvantage is that in some cases a supplementary method of destruction is needed.

[6] For additional guidance on destruction of small arms and light weapons see, for example, OSCE, "Best practice guide on national controls" (see footnote 4 above); United Nations, Department for Disarmament Affairs, *A Destruction Handbook: Small Arms, Light Weapons, Ammunition and Explosives* (New York, 2001) and see Bonn International Centre for Conversion and Program on Security and Development, Monterey Institute of International Studies, "Tackling small arms and light weapons: a practical guide for collection and destruction" (2000), available from http://sand.miis.edu/projects/fieldguide/field_guide_final_en.pdf.

[7] *A Destruction Handbook* (see footnote 6 above), p. 18.

- *Cutting by oxyacetylene or plasma.* This involves the use of high-temperature cutting technology. It is cheap, requires limited training, the equipment required is readily available and is an effective method of destroying firearms. The disadvantage is that it is labour-intensive and rather slow. In addition, there is some risk that the small moving parts may not be destroyed.
- *Cutting by hydraulic shears.* The firearms are cut into pieces using hydraulic shears. This process requires limited training, the technology is readily available, a high rate of production is possible and it is environmentally friendly. Initial input costs are also reasonable.
- *Detonation.* This process uses high explosives to destroy firearms and is very effective if done correctly. It is also a highly visual process and can be used for raising public awareness. In addition, it allows the firearms to be destroyed in situ. On the downside, it is a labour-intensive method and requires highly trained personnel to handle the explosives. In addition, the explosives are expensive and the process requires large open spaces to be carried out in. It is also not very environmentally friendly.
- *Shredding.* This process uses machinery that shreds the firearms. It is very effective, requires limited training and the technology is readily available. It has a high production rate and is environmentally benign. However, the initial purchase costs are high.

3. Methods of destruction of ammunition

The reference manual *A Destruction Handbook: Small Arms, Light Weapons, Ammunition and Explosives*, published by the Department for Disarmament Affairs of the Secretariat, now the Office for Disarmament Affairs (see footnote 6 above), contains detailed explanations of how to destroy small arms and light weapons as well as ammunition. It stresses that the quantity of ammunition to be destroyed will be one of the major factors in deciding what method of destruction to use. Chapter 3 of the handbook includes a detailed explanation of the various methods that can be employed to destroy ammunition, as well as the personnel and equipment required, the methods used, the environmental impact and the advantages and disadvantages. The key methods outlined in chapter 3 include firing; burning using an improvised incinerator; large-scale burning using improvised means; burning using a mobile incinerator; burning using a fixed incinerator; burning using a rotary kiln incinerator; and destroying by high explosive.

4. Other forms of disposal

The primary method of disposing of confiscated firearms, their parts and components or ammunition should be destruction. States should only dispose of firearms or ammunition in other ways in exceptional circumstances. States should consider, depending on their legal systems, creating and implementing a legislative framework that sets out under what strict conditions firearms, their parts and components and ammunition can be disposed of by means other than destruction.

Other than destruction, there are basically two other forms of disposal, namely, deactivation[8] and any other form whereby ownership is transferred. Article 6, paragraph 2, of the Firearms Protocol specifically requires that the other forms of disposal be officially authorized. This means that there has to be a clear decision by someone in authority that the firearms will not be destroyed but will

[8]Deactivation will not be discussed here in any detail, as it will be dealt with comprehensively below in the discussion of article 9 in chapter V of this Guide.

be disposed of in another manner. In most cases, the process and procedure for the other forms of disposal should be set out in law.

The second form of disposal takes the form of an action that transfers the ownership or control to another entity. The transfer in this case could be the sale or donation to a private individual, dealer or another State. In addition, the firearms could be taken into the inventory of that State party.

In the case of sale or donation to a private individual or dealer, a list of prerequisites must first be met before the transfer can take place. These will vary according to the domestic laws of each State party. A dealer must be a licensed dealer who has met all the requirements outlined under domestic law in order to obtain the authority to deal in firearms. These may include among others that the dealer has proper safekeeping facilities, employs reputable staff and has a good system of record-keeping.

In many countries, some or all of the firearms seized are absorbed into the official inventory and are used for law enforcement agencies. In this case, it is important that the transfer of arms from confiscated stocks to national inventory is properly documented, ensuring that all the firearms transferred actually reach the state inventory and that there is no diversion. This means that the records concerning the seized firearms must reflect the transfer to the state inventory and the state inventory records must also show the receipt of the firearms. In both cases, any original markings and additional markings applied pursuant to article 6, paragraph 2, must be recorded. The records should also include information regarding the exact department, unit, location and facility where the firearms are to be stored.

The last option is the transfer to a private entity in another country. Frequently, dealers or collectors will purchase firearms that have been seized for purposes of resale. Such transfers should only be allowed to residents of States parties that subscribe to the firearms transfer criteria as set out in the various instruments. In addition, the exporting State party should obtain from the relevant authorities of the recipient country confirmation that it has authorized the import of the firearms. In some cases, it will also be possible to obtain confirmation from the relevant authorities that the firearms have reached their end destination.

5. Marking

If other forms of disposal are selected over destruction, then the firearms must be marked and the method of disposal recorded. The methods of marking firearms that are disposed of are further explored in chapter IV, on marking. Although not specifically required by article 6, paragraph 2, it is recommended that States also mark ammunition that is being disposed of whether the ammunition is absorbed into the State's own inventory or given to another body.

6. Recording the method of disposal

If other methods of disposal of firearms and ammunition apart from destruction have been authorized, those methods must be recorded. While the Protocol does not outline what information should be recorded apart from the method of disposal, States parties are encouraged to record the maximum amount of information possible concerning the firearms or ammunition that have been disposed of. Information that should be recorded will include:

- The type and quantity of the firearms and ammunition
- The marking required at the time of disposal under article 6, paragraph 2
- Other markings on the firearm, including unique markings made at the time of manufacture, and any import markings
- Which person or body is in possession of the firearms and ammunition and how the firearms and ammunition are going to be disposed of, that is, who is the recipient and the individual's or organization's name, address and contact details
- The date of the disposal

If the firearms and ammunition are destroyed, records should be kept of all the above information and should include the method of destruction, who carried out the destruction and where and when it was carried out.

III Article 7. Record-keeping

A. General comments

Throughout this chapter, where reference is made only to firearms, this should be understood to include their parts and components and ammunition, where applicable.

1. Introduction

Article 7 of the Firearms Protocol outlines the obligation on States parties to maintain records on firearms. Article 7 has two requirements, the first is that records must be maintained on all firearms that are present in the State party concerned (subparagraph *(a)*) and that records be maintained on firearms that are the subject of international transactions (subparagraph *(b)*).[1] Where appropriate and feasible, records shall also be maintained on firearms' parts and components and ammunition. Article 7 is arguably the second most important provision, after marking, in the quest to address the problem of the illicit manufacturing of and trafficking in firearms through institutional control mechanisms. Marking of firearms in accordance with the provisions of article 8 is of little value if the information is not completely and accurately recorded.

2. Database

It is important that States parties create a database containing all the information that they are required to maintain pursuant to the Protocol and any other additional information that may assist them in tracing and identifying firearms that have been illicitly manufactured or trafficked.

Such databases may be in either electronic or manual format. The Protocol does not indicate which method of record-keeping should be chosen; it is for each individual State to determine which format best suits its needs and capabilities.

Ideally, countries should try to develop an electronic database: there is considerable utility in recording information electronically as it is easy to access and provides swift results in response to enquiries. It is imperative that all data entered into the database be accurate and easily authenticated against source documents. The information must be recorded in a manner that is straightforward and quick both to enter and to retrieve. An electronic database offers versatility as well as multiple user access. However, not all States parties have the necessary infrastructure to support an electronic database. The cost of developing and maintaining one may also be too high. In many countries, the communication infrastructure is unable to support an extensive database that reaches remote areas of the country.

[1] See *Legislative Guides* (see chap. I, footnote 3, above), part four, para. 121.

The alternative to an electronic database is a well-developed manual system, which would essentially provide the same information, the only disadvantage being that it may take longer to retrieve the information from a manual system. In some cases it is necessary to have paper records (such as a copy of a person's signature in legal proceedings), while in other cases electronic records may prove more effective (for instance, when a search is being carried out by an investigating officer who is trying to trace the source of a firearm).

3. Security

It is imperative for records to be securely stored and for personnel to be briefed about their responsibilities in that regard. Most of the information stored should be treated as confidential and procedures should be put in place to ensure that confidentiality. Access to information must be limited and records should be kept of who has access to it so as to avoid tampering with the records or leaking of information.

B. Comments on specific provisions of article 7

1. Responsibility for maintaining records

The Firearms Protocol requires States parties to ensure that records are maintained. However, for the purposes of being able to accurately identify and trace firearms, their parts and components and ammunition, it is recommended that non-state institutions involved in firearms transactions maintain records that relate to their activities with firearms. These institutions may include, among others, manufacturers, dealers, gunsmiths, brokers, importers or exporters of firearms and transporters. It is clear that the Protocol recognizes, by the use of the phrase "shall ensure the maintenance", that institutions other than the State may be required to keep records relating to firearms and may even be in a better position to record that information than the State. It is generally accepted practice that non-state entities also keep records related to firearms. In most countries, that requirement is dealt with in the particular domestic legislation, which sets out what information must be kept, in what format and for how long a period.

The *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* indicate that there are two types of record-keeping system.[2] In some cases, the State collects all the information and stores it at a central location. In others, entities engaged in manufacturing or transferring activities are required to create or retain records, which are then made available to the State for purposes of tracing and routine inspection.[3] Individual States parties must determine which format best suits them from a practical as well as constitutional or legal perspective. Ideally, States parties should keep comprehensive records of those institutions involved in firearms activities, such as manufacturers, dealers, gunsmiths, brokers, importers or exporters of firearms and transporters. It would then be the responsibility of those groups to keep detailed records of individual transactions. It would also be incumbent on them to regularly provide to the State party the information they have collected regarding individual transactions.

[2] Ibid., para. 123.

[3] Ibid.

2. Duration of record-keeping

States parties are obliged, under article 7 of the Protocol, to maintain the information that is necessary to trace and identify firearms that are illicitly manufactured or trafficked for a period of not less than 10 years. This provision recognizes the durability of firearms, which if carefully maintained can remain in service for a long period. Firearms may in fact have a service life of 40 years or more.

However, the requirement of maintaining records for 10 years is a minimum standard and States parties are encouraged to maintain records for as long as possible. It is expressly stated in article 34, paragraph 3, of the Organized Crime Convention that States parties may adopt more strict or severe measures than those provided for in the Convention for preventing and combating transnational crime.

Given the durability of firearms, their parts and components and ammunition, States parties should maintain the records required in article 7 for as long as possible. The ideal principle remains keeping information on the firearm from the time of manufacture until its final disposal, as suggested in the Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials of the Economic Community of West African States (ECOWAS).

The Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials of the Economic Community of West African States contains the provision that records shall be kept in the register permanently. The term "register" as used in the Convention refers to the requirement that each country establish a national computerized register and database on small arms and light weapons. The intention is that any information recorded in a register must be kept in perpetuity.

In chapter II, paragraph 9, of the Programme of Action of the United Nations, States undertake to ensure that comprehensive and accurate records are kept for as long as possible on the manufacture, holding and transfer of small arms and light weapons and that such records are organized and maintained in such a way as to ensure that accurate information can promptly be retrieved and collated by competent national authorities.

This once again emphasizes the importance attached to the records of manufacturers and the longevity of firearms.

The *Handbook of Best Practices on Small Arms and Light Weapons* of the Organization for Security and Cooperation in Europe requires States to assure the maintenance for as long as possible, and not less than 10 years, of the information necessary to trace and identify small arms and light weapons, to enable them to carry out successful tracing. If entities other than governmental bodies are authorized to maintain records, they should be required to do so for as long as they perform the activity. If the entity stops operating, it must hand over the registers in its possession to the competent government authority.

Source: Handbook of Best Practices on Small Arms and Light Weapons (Vienna, OSCE, 2003), chap. II, p. 8. Available from www.smallarmssurvey.org/files/portal/issueareas/measures/Measur_pdf/OSCE%20Handbook.pdf.

The International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons states that from the time of the adoption of the instrument, records pertaining to marked small arms and light weapons will, to the extent possible, be kept indefinitely, but in any case a State will ensure the maintenance of:

(a) Manufacturing records for at least 30 years; and

(b) All other records, including records of import and export, for at least 20 years.

Source: A/60/88 and Corr.2, annex, chap. IV, para. 12; see also General Assembly decision 60/519.

3. Commencement of the record-keeping period

The second issue concerning record-keeping concerning the specifics regarding the commencement date for the 10-year period. The 10-year period should start with each event that the record in question documents.[4] In cases where the record-keeping is in the format of a paper register or similar document, the 10-year period should start after making the date of the last entry in the register.

4. Record-keeping of parts and components

Article 7 of the Protocol requires the maintenance of information on all parts and components of firearms where it is appropriate and feasible. Specific and detailed information can obviously be maintained only on parts and components that are physically marked. Where the items are not individually marked, records can only be maintained of the type of component, the quantities and any other information that can simply be gleaned from the part or component itself.

Keeping records of parts and components is particularly important as criminal elements often use parts and components to assemble complete firearms. The term "parts and components" is defined in article 3 of the Protocol as:

> "Any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide of cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm."

In many countries when manufacturers produce such parts and components and they are not meant to be part of a complete firearm at the time of manufacture, the manufacturer is required to mark those parts and components at the time of manufacture. This information is recorded in the same manner as that for a complete firearm.

5. Ammunition records

Article 7 of the Protocol requires information on ammunition to be recorded where it is appropriate and feasible. (It should be noted that article 7 deals with record-keeping, not marking. There is

[4] Ibid., para. 119.

no requirement in the Protocol to mark ammunition.) The Protocol does not specify what information should be recorded, but where feasible it must be sufficient to trace and identify ammunition that has been illicitly manufactured or trafficked. Chapter V, on marking, sets out in detail what information can feasibly be marked on ammunition and on the packaging of ammunition that would aid in tracing and identifying ammunition that has been illicitly manufactured or trafficked.

It is clear from this that there can be a considerable amount of information obtained from both ammunition and the packaging of ammunition. Even though the Protocol does not require it, States parties are encouraged to mark all ammunition they manufacture in the manner mentioned in chapter V below. States parties importing marked ammunition should also keep accurate records of imports, recording all the information available from the ammunition and its packaging.

In chapter V it is suggested that ammunition can be marked with the following basic information on the cartridge case or primer cap of the ammunition:

- Name of the manufacturer or code
- The country of manufacture or code
- The unique lot (batch) number

Additional information could also be marked on the cartridge case, such as:

- Year of manufacture
- Calibre
- Type
- Name of the first purchaser
- Proof mark for quality control
- Other markings, such as presence of heavy metal

Packaging of ammunition can also be marked. This would include the information that it has been suggested be marked on the ammunition. In addition, the packaging could also be marked with the quantity of packed ammunition, end-user and even the class 1.4 (representing explosives in the transport of dangerous goods).

It is also suggested that the period for which the information is maintained should be longer than the period suggested in the Protocol, namely at least 20 years, but, if possible, an indefinite period.[5]

6. Multiple databases

Ideally, the records of all firearms, both those in the hands of the State and those in private possession, should be kept in a single database. However, this is seldom the case. Usually, each government department involved in firearms-related activities maintains its own records, which undermines the ability of the State to investigate offences relating to firearms. For investigating

[5] "Best practice guide on ammunition marking, registration and record-keeping", in *Handbook of Best Practices* (see chap. II, footnote 4, above), chap. III, sect. 2.2.

purposes, it is often necessary to retrieve information from different sources, such as payment invoices, cargo manifests, waybills, licences and end-user certificates. In recent years, the problem of multiple databases has been recognized and in some countries there now exists a single database for all firearms. In other countries, the problem has been addressed by allowing the primary custodians of the database (usually the police) partial access to the databases of the other departments through computerized links. This access is normally limited but sufficient to allow the investigation of any alleged illicit manufacturing and trafficking or any other crime committed relating to firearms. It is imperative that in cases where multiple databases exist they all store the same type of information in a similar manner, thus allowing the free flow of information between the different databases.

Another way of dealing with the problem of multiple databases and the potential reluctance to share information is the establishment of a national point of contact that can act as the centralized entity to supervise the record-keeping system. A system of access control can then be set up for other relevant agencies that require access to the records. This ensures confidentiality and rapid access to information.

C. Type of information to be maintained

The Protocol indicates what type of information must be maintained. In essence, this is the information necessary to trace and identify firearms that have been illicitly manufactured or trafficked and to prevent such activities. In reality, firearms that are illicitly manufactured or trafficked are identified by first identifying those which have been legally manufactured or transferred. In other words, by clearly identifying what is legal, what is illegal becomes apparent.

In most cases, illicitly manufactured or trafficked firearms are not accompanied by records of manufacture or transfer. If there are records they are false, such as falsified end-user certificates, and they only exist to mislead officials. To identify these records as false one needs to compare them with the official records. In many instances of illicit manufacture, the manufacturer places certain markings on the firearm and indicates who the manufacturer is in order to deceive the untrained official into believing these are legal firearms. However, on closer inspection and by looking at the records of the licit manufacturer, it becomes apparent that these were not part of the stock made by the licit manufacturer, leading to the inevitable conclusion that they were manufactured by an illicit or unauthorized manufacturer.

Information kept on illicit manufacture or trafficking is limited to information recovered from crime scenes or from firearms that were originally legally manufactured but found their way into the illicit market. Here one should have accurate information up to the point of diversion.

In essence, information must be kept of every stage that a firearm goes through from manufacture to the point where it is destroyed or rendered permanently inoperable and this includes information on the entities or persons involved at each of these stages. As mentioned previously, those involved generally include manufacturers, dealers, gunsmiths, importers, exporters, brokers, transporters, end-users and any other person or entity that comes into possession of the firearm during its life cycle. Ideally, each of these must keep full records of how they came to be in possession of the firearm and of how or to whom the firearm was disposed of. Investigators can then retrieve that information either from the State or from those involved (depending on who maintains records) and use the information to trace a firearm up until the point of its diversion.

1. Records to be maintained under article 7, subparagraph *(a)*

The Protocol indicates in article 7, subparagraph *(a)*, that the information to be maintained is that referred to in article 8, namely the appropriate markings that must be applied to each firearm. Chapter IV, on article 8, below describes the markings that are required under the Protocol as well as the additional markings, such as security markings, that are recommended to be placed on firearms. It is recommended that if additional markings are placed on manufactured firearms, imported firearms or firearms transferred from government stocks to permanent civilian use, these also should be recorded. Any additional markings placed on a firearm will facilitate tracing and consequently it is important that these markings also be recorded.

2. Records required to be maintained under article 7, subparagraph *(b)*

Article 7, subparagraph *(b)*, of the Protocol refers specifically to international transactions in firearms. As a general comment, in the case of international transfers, each State should keep all information available to it regarding the transfer of firearms and should, at a minimum, include all information found in the export/import documentation. This will generally include sufficient information to allow the countries involved in the transaction to identify other countries involved, the individual importer and exporter, the items for which they sought the import and/or export documentation, as well as the period of validity of the licence or authorization. The final recipient must also be identified and recorded, whether or not it is a party to the immediate transaction itself.[6]

In addition, States involved in international transactions should include in their records all other information that may help to identify and trace firearms, including information regarding the transit country or countries, the country of destination (whether it is the final recipient or not) and information on the involvement of all other role players such as brokers, transporters and so on. Other countries involved in international transactions, other than the exporter, should, mutatis mutandis, also keep all of the information that the exporting country keeps, where this is feasible, as well as any additional information available to it. This may appear excessive, but it is often the cross-referencing of the information that reveals evidence of illicit activity.

In the case of private persons or entities (such as transporters and brokers) involved in international transactions, they too should keep as much information as they can. This should also include importers and exporters. The recorded information would include copies of export permits, transit permits, licences and end-user certificates issued by the respective States. In addition, they should keep records of all of their transactions with other non-state role players.

(a) Issuance and expiration dates of the appropriate licences or authorizations

The first reference under article 7, subparagraph *(b)*, is to the issuance and expiration dates of the appropriate licence or authorizations. These dates must be clearly recorded, as any activity taking place outside of these dates would be unauthorized.

[6] See *Legislative Guides*, part four, para. 122.

(b) Country of export

The second element of international transfers relates to the country of export. Knowing the country of export is important, as it is generally the country that will or should have all the information relating to the firearms. Knowing the country of export greatly facilitates the process of obtaining additional information about the firearms should the need arise.

(c) Country of import

The third element of international transactions relates to the country of import. This is self-explanatory in that it is difficult to trace a firearm without having a record of the import country, especially if the end destination is not clearly recorded and if the firearm is diverted to a destination not foreseen in the export licence or authorization.

(d) Transit countries

Article 7, subparagraph *(b)*, also refers to transit countries. It is quite conceivable that a shipment of firearms may have to transit through a number of countries before reaching its final destination. Firearms, their parts and components and ammunition are vulnerable to diversion when they are in transit. It is therefore vitally important that information regarding the transit countries be recorded. While the Protocol only requires that the names of the transit countries be recorded, it is suggested that the following information be included in a State party's records:

- The transit countries' authorization that the firearms may transit its territories, such as a copy of the authorization.
- The route to be followed.
- What security measures will be implemented.
- Any inspections that will take place of the shipment and the site where those inspections will occur (such as border posts).
- Points of entry into and exit from each transit country.
- Information regarding the content of the shipments should be recorded at every entry and exit point by the relevant law enforcement officials. Otherwise, if the shipment transits a number of countries it could prove difficult to determine exactly where any diversion has taken place.

Ideally, the information mentioned above should be maintained by all the States involved in such transactions. This is done by providing copies of documentation containing the information.

In practice, however, the container carrying the firearms is sealed at the point of departure and the law enforcement officials at each crossing simply check the seal. If the seal has been tampered with, they will then physically inspect the cargo against the manifest. If the seal has not been tampered with, they often will simply allow the cargo to pass through.

(e) Final recipient

The next element is the final recipient. This refers to the entity that will ultimately take possession of the firearm and use it. It could be the importing State, a private individual or a legal entity such

as a private security company. The Protocol does not specify what information must be maintained on the final recipient, but obviously it should be all of the available information that will help trace, identify, prevent or detect illicit manufacturing or trafficking. It is suggested that background information relating to the individuals or entities involved should be recorded. This would include, in the case of private individuals, their full names, contact details and physical address and, in the case of a legal entity, the details of its directors or members, the business purpose of the entity and the purpose for which it requires firearms.

(f) Description and quantity

Lastly, article 7, subparagraph *(b)*, refers to keeping records of the description and quantity of the articles. The description of a firearm in this case refers to the same information listed in article 7, subparagraph *(a)*, meaning the appropriate markings required by article 8.[7] The description recorded must include the name of the manufacturer, the country or place of manufacturer and the serial number. However, it should be noted that this basic information may not be enough to sufficiently identify and trace a firearm, as firearms of different types may carry the same serial number. It may happen that a manufacturer produces a number of different types of firearm, such as handguns, rifles and shotguns, and marks three different types of weapon with the same serial number. This would result in more than one weapon having the same name of manufacturer, country or place of manufacture and serial number marked on it. However, the firearms are distinguishable by other features such as calibre, make, model type, barrel length and number of discharges (keeping in mind that some of this information may not be relevant for some types of firearm) and therefore it is recommended that these other details also be recorded.[8]

> The International Criminal Police Organization (INTERPOL) Firearms Tracing System (formerly known as IWeTS) also includes characteristics such as the barrel length of the firearm and the number of rounds that must be discharged before it has to be reloaded.

With respect to the quantity of firearms that are the subject of an international transaction, the need to record the quantity of firearms is crucial. Only if one knows how many firearms are in a particular shipment can one determine if any are missing.

D. Simplified procedures for temporary import or export of firearms

Article 10, paragraph 6, of the Protocol states that States parties may adopt a simplified procedure for the temporary import, export and transit of firearms relating to hunting, sport shooting, evaluation, exhibitions or repairs. Although a simplified procedure is permitted, it should not be implemented at the cost of maintaining accurate records. In other words, records of all imported or exported firearms should be maintained regardless of whether they are temporarily or permanently imported or exported. The threat of diversion also exists with temporary imports and exports.

[7] Ibid.

[8] Ibid., para. 125.

1. Characteristics of temporary exports or imports

Temporary exports and imports are generally characterized by the following:

- The export is for a limited period, in many cases for less than one month.
- Usually a small quantity of firearms is involved. The firearms are generally being used for hunting or sport shooting, evaluation or exhibitions, or are being temporarily exported or imported for repair.
- The firearms are to be returned to the original country from which they were exported.

2. Threat of diversion

The inherent danger with these exports is that they may turn out to be permanent and if there are no proper records of their export and import, then they cannot be later identified and traced.

Exporters should be responsible for ensuring that all firearms that are the subject of temporary export are returned to the country of export. Failure to do so should carry some sort of sanction. Immigration, customs and border officials in countries of import, export and transit should also be trained to ensure that when firearms are being returned to the country of original export, the description and quantity of the firearms matches the export and import documentation.

In terms of record-keeping, although these temporary imports and exports may still be of an international nature, the record-keeping requirements for them may be different from what is provided for in article 7. States should still maintain records on temporarily imported and exported firearms, however, pursuant to article 10, paragraph 6, they may modify the record-keeping requirements so that they are less onerous yet still in keeping with the basic principles and policies of the Protocol. If, for example, a firearm is exported for a temporary period and is re-exported to the country from which the export originated within the specified period, then it may not be necessary to maintain records on this transaction for the full 10 years as required in article 7. If, however, firearms are re-exported to a third country, then records should be maintained on the entire transaction for the minimum 10-year period.[9]

If it is practical and feasible, States may also consider imposing the full record-keeping requirements under article 7 on temporary imports and exports.

3. Records to be maintained

States parties should be encouraged to keep all records that are generated as a result of a simplified procedure adopted for temporary imports, exports and transit of firearms. This would include:

- Details of the firearm, including serial number, name of manufacturer, country or place of manufacture and any other details such as calibre, make and model that would be helpful in identifying and tracing the firearm

[9] Ibid., para. 127.

- Full details of the exporter, importer and any other party involved in the transaction, such as transporters
- Details of the export/import/transit authorization

Issues such as export criteria do not play a role here where the entire process is conducted by one person or entity and the firearm will be returned to the country of export.

E. Additional record-keeping in accordance with article 15, paragraph 2

1. Record-keeping on brokers and brokering

Article 15, paragraph 2, of the Protocol dealing with brokers and brokering encourages States parties that have established a system of authorization regarding brokering to include information on brokers and brokering in their exchanges of information under article 12. In addition, they are encouraged to maintain records regarding brokers and brokering in accordance with article 7 of the Protocol.

The information to be maintained on brokers should include the following:

- Details of the broker:

  Full name, address and contact details

  Criminal record or more precisely the lack thereof

  Nationality

  Country of normal residence

  Details of previous activities (to include authorizations previously issued to the broker and the degree of compliance with them)

  Details of contacts that the broker may have

- Details of the brokering activity:

  Details of the broker involved

  Details of the consignment: identification details of the firearms, their parts and components and ammunition where available, and quantity, routes to be used and ports of exit and entry

  Details of other role players (manufacturers, dealers, exporters, importers, transporters and final recipients)

  Dates of validity of the broker's authorization and where available the serial number of the authorization

  Any other documentation relevant to the brokering activity, such as import, export, transit and end-user documentation

2. Record-keeping on manufacturers and other non-state entities involved in the handling of a firearm during its lifespan

Other information States parties should consider keeping is on manufacturers and other non-state entities involved in the handling of firearms during their lifespan. Although this paragraph refers to manufacturers, the same points as discussed in relation to manufacturers applies to dealers, exporters and other non-state agents. These non-state entities should keep the same information, mutatis mutandis, as manufacturers are required to. In addition, the Protocol does not specifically indicate what information must be maintained by the State and what information must be maintained by non-state entities.

In the case of a manufacturer, it is important that where the State has officially authorized an entity to manufacture firearms, that authorization should be for specific firearms with regard to calibre and action (such as bolt action, self-loading or pump action). Details of the manufacturer should be held by the State.

The State should set out the requirements the manufacturer must meet in order to be granted the authorization to manufacture. This would include:

- What records must be maintained
- For how long
- In what format (electronic or hard copy)
- Marking of the firearms

Although not specified as a requirement in the Protocol, it is suggested that the records of manufactured firearms should be maintained by the manufacturer and made easily accessible to the State when required for identification and/or tracing purposes. This information would include:

- Details of the firearms that have been manufactured, including the calibre, action, model, type of firearm and quantity.
- The markings applied to each of the firearms in terms of article 8, subparagraph *(a)*.
- To whom this firearm has been sold or exported, that is, the full details of the recipient, including full name, address, photo, fingerprints, telephone or facsimile numbers, and in the case of a legal entity the full registered name, address, telephone or fax numbers, articles of association, details about the directors and export documentation.
- Date of sale.
- If the manufacturer exports the firearms, then export documentation and other export details will be required (see the third item above).

Failure to keep the information required by the State should carry a severe sanction. This could be in the form of a large fine or incarceration, but could also entail the withdrawal of the manufacturer's authorization to manufacture.

Records kept by the manufacturer are critically important, as these are the first records of a firearm's existence. Any error or intentionally incorrect recording at this stage are only compounded further down the life cycle of the firearm. For example, if two manufactured firearms are given the

same serial number, it is easy to remove one from stock and, as there is a second with the same number, the one removed is not missed so no investigation into its disappearance is conducted.

As mentioned above, other non-state entities involved in the life cycle of a firearm should also maintain their own records of all information that they can obtain that would assist in identifying and tracing a firearm. States should consider stipulating what information should be maintained by each non-state entity that it has authorized to be involved in firearms transactions. Some of the information that should be held by non-state entities includes markings, quantities, importers, exporters, carriers, transit routes, points of entry and exit, licences and so on. This information should also be readily available to and accessible by the State to assist in the identification and tracing of firearms.

3. Record-keeping on disposal of firearms

The Protocol provides, pursuant to article 6, paragraph 2, that firearms may be disposed of in a manner other than destruction on condition that they are marked and the methods of their disposal are recorded. Article 6, paragraph 2, is worded in such a way as to suggest that the recording of information relates only to the method of disposal and not to the markings that are to be applied when disposal, other than by destruction, has been authorized. However, it is suggested that, for the purpose of recording information relating to firearms that have been disposed of by means other than destruction, the markings made as well as the method of disposal should be recorded by the State party.

In chapter IV, on marking, of this Guide, it is recommended that if a firearm that is seized and disposed of by means other than destruction does not have a unique or classical marking on it, then a mark identifying the country in which the firearm was confiscated or seized and the year in which this took place could be placed on the firearm. Each State should consider creating its own standards for marking seized firearms that are retained and not destroyed.

It is suggested that the following details be recorded, where available:

- Serial number
- Make
- Model
- Calibre
- Country of confiscation
- Date of disposal
- Method of disposal
- Person responsible for disposal
- Person or entity to whom the firearm has been given (if applicable)

Ideally, the entity that disposes of the firearms should keep this information. In some jurisdictions, only the State is allowed to destroy firearms and in this case it should keep the information.

4. Record-keeping on deactivated firearms

Under article 9 of the Protocol, where a State party does not recognize a deactivated firearm as a firearm under its domestic law, it must take measures to prevent the illicit reactivation of a deactivated firearm. Article 9, subparagraph *(c)*, requires that verification of the deactivation include a certificate or a record attesting to the deactivation of a firearm. The Protocol does not indicate who must maintain that record, but it is suggested that the entity that performs the deactivation be responsible for maintaining the necessary records.

The record should include the following information:

- The original details of the firearm:
  - Make
  - Model
  - Calibre
  - Serial number
  - Action
- Details of the person who deactivated the firearm:
  - Full name
  - Physical address
  - Contact details, telephone and fax numbers and e-mail address
  - Details of the deactivation

IV Article 8. Marking

A. Introduction

This chapter provides guidelines to assist States parties in developing harmonized measures and systems for marking, registration and tracing of firearms, their parts and components and ammunition in order to prevent illicit manufacturing and/or trafficking and diversion to the illicit market. It is intended to help States adopt and implement measures to ensure that firearms are adequately marked and to encourage the firearms manufacturing industry to assist in developing means of protecting against the removal and alteration of markings. It includes an overview of different methods of marking that can be utilized by States and types of marking that should be applied according to the Firearms Protocol at the time of manufacture, import and transfer from government stocks to civilian use, and for securing traceability of firearms.

Traceability of firearms is a key element in preventing, combating and eradicating illicit manufacture and trade. Marking is the first stage of tracing, which should be complemented with adequate registration of firearms as indicated in article 7 of the Protocol. Chapter IV highlights the necessary link between marking, registration and tracing by proposing adequate registration of firearms and a tracing mechanism that can be used by States parties when developing national and regional measures to control firearms manufacturing and trade.

Marking is a tool for identifying a firearm in a register. A record of a firearm in a register should contain the necessary information to uniquely identify the firearm, thus allowing it to be tracked or traced in order to determine, if required, where and when illicit manufacturing and/or trafficking have occurred.

Three articles of the Firearms Protocol address the marking of firearms:[1]

- Article 8 is the main article on the marking of firearms and requires that firearms be marked at the time of manufacture, when they are imported and when they are transferred from government stocks to permanent civilian use.
- Article 6, paragraph 2, addresses the marking of confiscated or seized firearms that will be disposed of as opposed to destroyed.[2]
- Article 9, subparagraph *(c)*, foresees marking of deactivated firearms.

[1] The articles related to marking in the Firearms Protocol are in accordance with the marking provisions of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (A/60/88 and Corr.2, annex, chap. IV, para. 12; see also General Assembly decision 60/519).

[2] It should be noted that marking of confiscated or seized firearms is not dealt with under the marking provisions of article 8, but that specific marking requirements are set out in article 6, paragraph 2. However, States are encouraged to destroy confiscated firearms systematically and, if needed, to mark them with a unique marking as requested in article 8, paragraph 1 *(c)* (see *Legislative Guides* (chap. I, footnote 3, above), part four, para. 77).

1. Purpose of article 8

According to article 8, firearms must be marked to allow for the identification and tracing of each firearm. Effective marking systems allow States to establish strict controls over the manufacture and transfer of firearms, their parts and components and ammunition. Once a firearm or ammunition is marked and duly registered, States are able to track illicit firearms and ammunition so that they can detect where they were diverted from the legal into the illicit trade. It can also aid law enforcement authorities in finding the source of firearms used in criminal activities. Article 8 emphasizes the importance of being able to identify and trace firearms. Given the difficulties that States have in tracing firearms and ammunition, these guidelines are intended to help States establish or improve their marking systems so that they are better able to register, track and identify the source of illicit firearms.

Marking plays a central role in the criminalization of the offences set forth in article 5 of the Protocol. Therefore controlling firearms as well as their parts and components and ammunition through marking, registration and exchange of information is essential for establishing that the offences set forth in article 5 have been committed. The offence of illicit manufacturing includes the manufacturing of firearms without sufficient markings in accordance with article 8. Trafficking in firearms, their parts and components and ammunition is another important offence in the Protocol. The assembly of firearms from parts and components that have themselves been trafficked and transferred without authorization is at the origin of illicit trafficking. More specifically, the intention behind this offence is to circumvent the basic tracing requirements of the Protocol by exporting firearms before they are assembled into a finished product. For this reason firearms that are complete but not assembled must be marked as well on their major components.

It should be noted that offences related to tampering with markings,[3] such as those mentioned in article 5, paragraph 1 *(c)*, apply only to firearms. States wanting to include some form of marking for parts and components and ammunition may also wish to consider establishing corresponding offences regarding the removal or alteration of such markings.[4]

2. What is to be marked

According to article 8, only firearms must be marked.

- *Parts and components.* Marking and record-keeping of parts and components are not mandatory, but desirable where appropriate and feasible. The reason for marking and registering certain parts and components, mainly those essential to the firearm, is to defeat attempts to create untraceable firearms by marking parts or components that can easily be removed. Therefore, this Guide will only consider marking and registration of parts and components if applicable, according to article 34, paragraph 3, of the Convention, which stipulates that States parties may adopt more strict or severe measures to combat transnational organized crime.
- *Ammunition.* Any reference in the Protocol to ammunition includes all finished or assembled types of ammunition, generally consisting of a cartridge case into which a primer, a propellant and a projectile have been inserted. Ammunition is not required to be marked or registered unless a State party adopts stricter measures according to article 34, paragraph 3, of the Convention. This manual will consider marking and recording of ammunition only where appropriate and feasible.

[3] With the exception of altering or adding marks pursuant to legal authority decision. Records of eventual re-marking should be made.

[4] See *Legislative Guides*, part four, para. 171.

- *Tracing.* Concerning tracing of firearms, their parts and components and ammunition, article 12, paragraph 4, of the Protocol stipulates that States parties must cooperate in tracing firearms, their parts and components and ammunition. However that article is then limited by article 3, subparagraph *(f)*, which states that tracing shall mean the systematic tracking of firearms and, "where possible", their parts and components and ammunition.

B. Marking at the time of manufacture (article 8, paragraph 1 *(a)*)

1. Classical markings

Article 8, paragraph 1 *(a)*, provides for the marking of firearms at the time of manufacture. Each firearm must have a unique marking containing at a minimum the following information:

- The name of the manufacturer
- The country or place of manufacture
- The serial number

The marking containing this basic information is often referred to as a "classical marking" (see figures I and II). The marking must be expressed alphanumerically (i.e. consisting of both letters and numbers) or, alternatively, article 8, paragraph 1 *(a)*, provides for the use of a unique user-friendly marking with simple geometric symbols in combination with a numeric and/or alphanumeric code only for States already using such systems (see figure III). This alternative marking must allow for easy identification by all States of the country of manufacture. "User-friendly" means the use of geometric symbols that are easy to read and to transmit for tracing purposes. A basic record must be created for each firearm, pursuant to article 7 of the Protocol, documenting all of the required information applicable to the marking system that is chosen.[5]

Figure I. Example of a classical marking on the barrel of a firearm

[5] Ibid., para. 121.

Figure II. Example of a classical marking on the barrel of a firearm

Figure III. Example of a marking on a firearm combining geometric and numerical codes

	=	Chinese factory symbol
56-1	=	Type
26	=	Year of manufacture
019585	=	Serial number

Figure IV. Example of a marking on the side plate of a firearm

Figure V. Example of an alphanumeric marking on the barrel of a firearm

2. Where to place the classical marking

As mentioned, the classical marking consists of the serial number, the country or place of manufacture and the name of the manufacturer. It would be preferable for the classical marking to be applied on more than one part of the firearm, that is, for the serial number, the country of manufacture and the name of the manufacturer to be applied on different components of the firearm and for at least one of these to be marked on an important part such as the barrel and/or slide or cylinder of the weapon. This would help make it difficult to erase all existing markings and also permit the use of the different marking techniques mentioned. The serial number should be applied on a part of the weapon designated by the manufacturer as essential, for example, the frame and/or the receiver. This means that the destruction of this part, in an effort to erase the marking, would render the weapon permanently inoperable. Moreover, it would be preferable if it is only possible to replace the essential part with another essential component from the original manufacturer that also has a unique marking.

3. Methods of marking to use for a classical marking

Unless the material requires otherwise, any part of the classical marking that is placed on an essential component of the firearm should generally be applied using the stamping method and should be legible directly with the naked eye. This is the preferred method of marking elements of the classical marking, such as the serial number, since there is a greater possibility of retrieving erased numbers that have been stamped as opposed to recovering numbers that have been engraved on the firearm. The Protocol does not elaborate on the proposed depth of a marking on a firearm and different countries have implemented different standards. It is recommended that the marking that is placed on an essential part of a firearm be marked to a depth of at least 20mm, but again it is acknowledged that different States parties will mark to different depths.

For additional markings, if they are numerous and long, and if a firearm is already assembled, it would be more suitable to use mechanical or laser engraving. Again, although not required in the Protocol, it is recommended that markings effectuated on the weapon's surface with engraving should be at least 10 mm deep. It may be necessary to use laser markings if the markings are to be placed on sensitive components and on limited surfaces.

4. Other information that can be marked

Article 8, paragraph 1 *(a)*, sets out the minimum information that needs to be marked on a firearm at the time of manufacture. States are encouraged to mark additional information on firearms that would assist with more accurate identification and tracing, taking into account new developments in marking and identification of firearms.

Additional information that should ideally be marked on a firearm includes:

- *Year of manufacture.* Although manufacturers usually mark the year on a firearm for their own purposes, there are two reasons why firearms should be marked with the year of manufacture. Firstly, the Protocol states that parties shall maintain records, including records regarding markings, for a period of not less than 10 years. In the absence of a marking on a firearm indicating the year of manufacture, one could maintain that the weapon was manufactured more than 10 years previously and on that basis refuse to provide information. Secondly, this is the only way to distinguish newly manufactured firearms from weapons in existence prior to the entry into force of the Protocol.
- *Make, model, type and calibre.* This information can be marked separately on different components of the firearm.
- *Purchaser's identity and the country of destination.* This information should also be included in the classical marking if known at the time of manufacture. This will help avoid the need to mark the firearm at the time of import.

Other markings that can be added include:

- Insignias, as well as names or initials of state security forces to which firearms are transferred.

> In Brazil, the firearms of the security forces must be marked with the state blazon, as well as the name or initials of the particular force.

- Proof markings on firearms (calibres of less than 35mm) are obligatory for the civilian market in the 14 member countries of the Permanent International Commission for Firearms Testing (CIP)[6] and are mutually recognized. The proof mark is the approval of quality control for security purposes. It is not used for identification purposes. Firearms are marked with symbols after they have passed quality control tests. The advantage of CIP systems is that proof houses, such as the Banc d'Épreuve des Armes à Feu in Belgium, have their own records of firearms and ammunition that have been subjected to quality control tests. Proof houses then provide an additional source of information and records on firearms in circulation.

[6] The Convention regarding the Establishment of Uniform Regulations for the Reciprocal Recognition of Official Proof Marks on Fire-Arms, which set up CIP, was drawn up in 1914 to guarantee the safety of arms users. A new convention was signed on 1 July 1969. It is the basis for international standardization and involves the following countries: Austria, Belgium, Chile, Czech Republic, Finland, France, Germany, Hungary, Italy, Russian Federation, Slovakia, Spain, United Arab Emirates and United Kingdom. Membership in CIP is open to any Government.

5. Harmonizing classical markings

Ideally, classical markings should be harmonized at the international level to allow for ready identification and tracing of firearms. States are encouraged to use, wherever possible, alphanumerical characters to mark firearms. This would allow classical markings to be easily read and recorded by all States parties. Using geometrical symbols is not as practical, as only the producing countries know what the symbols mean and thus are the only ones who can decipher the marking. This more complex system of geometric symbols is used predominantly by China and countries of the former Soviet Union. One of the difficulties with using geometric symbols is that a number of factories can simultaneously produce identical weapons with duplicate serial numbers. It is only when the individual factory symbol is added to the serial number that the marking becomes unique. However, the name of the country of manufacture is rarely included, which means that correct identification, and then tracing, is reliant on experts correctly recognizing the significance of specific symbols.

Where countries use geometric symbols in their classical markings, it is essential that they share information on the significance of such marks, so that police and customs worldwide recognize their relevance and include them in their records and in their tracing requests.

Difficulties arise when a symbol is not compatible with an importing country's computerized record-keeping system so that the marking cannot be entered into a computerized database and when a symbol is not immediately recognizable as an integral part of the serial number (and without which the mark would not be unique). Not including a critical symbol in a tracing request could completely undermine the process.

Article 8, paragraph 1 *(a)*, requires that countries using geometric symbols include, as a minimum, a mark that permits ready identification of the country of manufacture.

An example of a user-friendly classical marking using alphanumeric characters would be UE 85 A000001, where:

U	=	Country of manufacture (United Kingdom)
E	=	British factory code (Enfield)
85	=	Year of manufacture (1985)
A000001	=	Serial number

Some countries, like the United States of America, take it one step further and include a combination of an alphanumeric code and serial number together with the name of the manufacturer, the model and the calibre, which collectively create a unique identifier, for example, COLT M16A2 CAL. 5.56MM 8195518 USA, where:

COLT	=	Manufacturer
M16A2	=	Model
CAL. 5.56MM	=	Calibre
8195518	=	Serial number
USA	=	Country

It is important to keep records of all the information that is marked on the firearm. Difficulties can arise when the marks are not adjacent to each other and the serial number alone is not unique. It is crucial that all the elements of the marking are included in the records maintained pursuant to article 7 of the Protocol.

In Brazil, serial numbers on firearms are regulated by law and letters have particular meanings in the serial number. For instance, the Taurus serial number TZI 96771, where:

T	=	Calibre (9mm)
Z	=	Year of manufacture (2006)
I	=	Month of manufacture (September)
96771	=	Serial number

6. Technical committee[7]

States parties may wish to establish a nationally accredited technical committee of independent experts to determine, for each type of weapon, the manner in which markings must be applied (i.e. ideal placement, depth and technique to be used). States should consider including experts from state institutions, independent experts and firearms industry experts on such a committee to ensure that all the relevant stakeholders are involved. Any change would only be possible with the approval by the technical committee. A certificate of conformity could be delivered to that effect by the national authorities for each type of weapon manufactured on the territory of the State party. The committee should work together with the manufacturing industry in order to take into account developments in marking technology. The marking of components and parts could also be left to the discretion of national technical committees. Since a technical committee would be flexible and open to technical evolution, it could then adapt its regulations regarding the location of markings and the techniques to be used as technological advances are made.

7. Security markings

This type of marking contains the same information as classical marking but is applied to component parts of the weapon that are difficult to manipulate after a firearm has been manufactured and that, if tampered with, would render the weapon unusable. A firearm should ideally have both a classical marking and a security marking. Security markings provide a back-up marking in case the classical marking is tampered with.

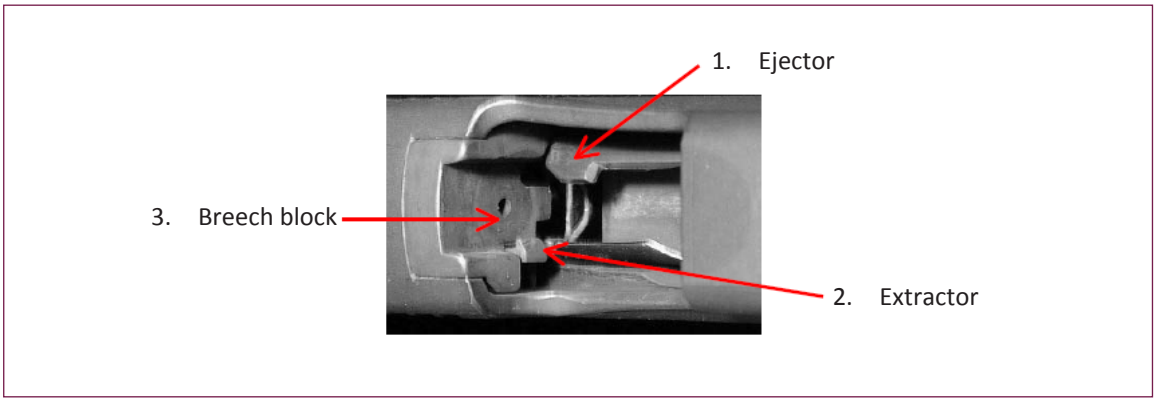
(a) Where to place security markings

Classical markings need to be placed on parts of a firearm that are easily accessible and they need to be visible to the naked eye. Security markings on the other hand should be on components that

[7] *Legislative Guides*, part four, para. 85, outlines some of the options available to legislatures of States parties seeking to include marking requirements in their legislation that go beyond the requirements of the Protocol. All of these issues could be determined by a technical committee at the national level, rendering the marking process more flexible.

are difficult to access after manufacture so that they are less likely to be erased or tampered with, for example, the ejector, breech block, extractor, the frame or the inside of the barrel.

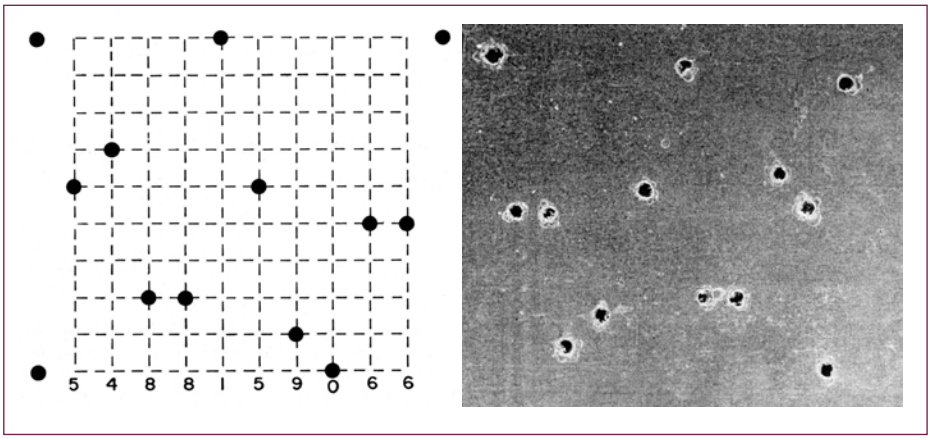
Figure VI. Example of markings on components of an SIG P220 semi-automatic handgun



(b) Methods of marking

Depending on the component being marked, the most suitable methods for applying security markings at the time of manufacture are mechanical and/or laser engraving or laser perforation directed by computer. Laser perforations are covered by a polymer and can be read as a data matrix under infrared lighting.[8] In addition, radio-frequency identification (RFID) tags, such as the barcodes used on candy,[9] and RFID transponders could be embedded into a weapon for identification and tracing, for example in a cavity inside the firearm. The information is then readable with a smartphone (a cellular phone equipped with the ability to read RFID tags). Perforations are made such that the perforations represent different numbers depending on their positions (see figure VII).

Figure VII. Example of a radio-frequency identification (RFID) data matrix and the corresponding perforations on the firearm



[8] The cost of RFIDs ranges from 1-2 cents to 1-2 euros (information supplied by Marco Sironi, Joint Research Centre, Seals and Identification Techniques Laboratory, Ispra (Italy)).

[9] *Legislative Guides*, part four, para. 85, states that marking requirements that exceed those listed in the Protocol are useful to make marking more reliable.

C. Marking at the time of import (article 8, paragraph 1 *(b)*)

1. Information to be marked

Article 8, paragraph 1 *(b)*, requires simple marking on imported firearms that allows identification of the country of import and, where possible, the year of import so as to enable the firearm to be traced when necessary. States are encouraged to also add a mark to identify the importer.[10] The import marking is particularly relevant for firearms that have been in circulation for several years; it makes it easier to initiate a tracing request since the body requesting a trace of a firearm will be able to identify the last country to import the weapon.

The import marking should be visibly distinguishable from the unique (or classical) marking that is applied under article 8, paragraph 1 *(a)*. The possibility of using specific characters and codes to denote a country should be considered, for example, BE for Belgium or GB for Great Britain. International norms such as the country codes of the International Organization for Standardization (ISO) and also those of the European Committee for Standardization (CEN) for basic markings could also be adopted.[11]

A simple mark similar to a proof mark would be sufficient to identify the country plus year of import.[12]

An exception to the requirement to mark a firearm at the time of import is made for temporary imports for verifiable lawful purposes.[13]

> In the United Kingdom of Great Britain and Northern Ireland an imported firearm that had an incompatible or ambiguous marking for registration purposes would then be marked in that country at the time of import with "GB 07 003456" for example, which signifies that this is the 3456th firearm imported into the country in 2007.

2. Who should apply the import marking?

Article 8, paragraph 1 *(b)*, mandates that the importing country apply a unique marking if the firearm does not already bear one that contains the information required by article 8, paragraph 1 *(a)*. This could be interpreted to mean that if the existing markings are not unique (or are ambiguous or incompatible with national record-keeping systems in the importing country), then the importing country can apply its own nationally unique import mark.[14]

[10] Article 3, paragraph 3, of the Model Legislation on the Marking and Tracing of Firearms related to the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials requires that, for imported firearms, a marking be placed on the firearm that identifies the importer and the year of import together with the country of origin.

[11] These are international standards that industries use on items (machine, markings, security, etc.). Once standards are adopted manufacturers and users are obliged to respect them. Classical markings could be adopted as ISO or CEN standards.

[12] *Legislative Guides*, part four, para. 82, states that any symbol should be familiar enough to permit identification of the country of import.

[13] Temporarily imported firearms are submitted to authorization and dates of entry and departure and other necessary information is recorded by the competent authority in a registry for possible tracing.

[14] *Legislative Guides*, part four, para. 87, refers to use of the same standards as those produced under domestic regulations.

If at the time of manufacture it is known which country will be importing the firearm, then the original marking should include a mark identifying the country of import and this should be applied by the manufacturer. It is acknowledged, however, that when most firearms are manufactured it is not known whom the importer will be. Therefore, marking should generally be done by the country of import unless the importer is known at the time of manufacture.

3. Where to place the import marking

The import marking should ideally be placed adjacent to the classical marking.

4. Method of marking at the time of import

If the import marking is to be applied at the time of manufacture, techniques that are used for making a classical marking can also be used for import markings. If the marking is to be done at the time of import, the most suitable marking technique is laser engraving. Stamping is difficult for most firearms because post-manufacture stamping can damage the weapon. States can buy their own marking machines or use external marking facilities.[15]

5. Recording the import marking

It is essential that the import marking be recorded in the national record-keeping systems of both the exporting and importing countries. A subsequently falsified country marking could lead to an inability to accurately trace the firearm.

D. Marking at the time of transfer to permanent civilian use (article 8, paragraph 1 *(c)*)

Since state-owned firearms may be marked differently than commercially available firearms, article 8, paragraph 1 *(c)*, requires that firearms be uniquely marked when they are transferred from government stocks to permanent civilian use. Although not specified in the Protocol, if, at the time of transfer to civilian use, a firearm lacks the unique marking provided for in article 8, paragraph 1 *(a)*, which includes the name of the manufacturer, the country of manufacture as well as the serial number, this marking should be applied to enable the tracing of the firearm. The marking should allow for identification of the transferring country. If there is insufficient information to enable the application of a unique marking, a nationally unique mark of the country of transfer should still be applied.[16]

[15] Import markings would be paid for by the importer and should be affixed under its responsibility. The cost per import marking would not be more than a few euros.

[16] *Legislative Guides*, part four, para. 88, reads:

"As regards firearms transferred from government stocks to permanent civilian use, the content of markings is not specified in detail and legislators, drafters and forensic experts should consider the likely use of the information in tracing and the nature of markings that are placed on types of firearm produced for state use and likely to be transferred later into private hands. If the firearms do not meet the requirements of article 8, paragraph 1 *(a)*, legislators should consider requiring the application of markings that would meet this standard."

Although it is not so stated in the Protocol, if States parties have surplus firearms it is preferable that they elect to dispose of them by destruction as opposed to transferring them to civilian use. Only in exceptional cases should Governments transfer surplus firearms to civilians. As mentioned in chapter III, on record-keeping, the government ministry transferring the firearms to permanent civilian use should also maintain a record of the transferred firearms, which should include information on the appropriate unique marking required under article 8, paragraph 1 *(c)*.

1. Who should apply the marking

States parties could request that the officials responsible for the disposal of firearms apply the necessary marking at the time of transfer from government stocks to civilian use. They could also request outside actors such as the recipients to mark the firearms accordingly.

2. Method of marking

The most appropriate technique for marking a firearm at the time of transfer from government stocks to civilian use is that used at the time of import of a firearm, namely, laser engraving.

3. Other considerations

Unless there is a legal obligation or other disposal has been officially authorized, States parties are encouraged to avoid transfers of firearms from governmental stocks to permanent civilian use and to consider in the first place destruction of surplus arms of their security forces.

E. Marking of seized and confiscated firearms (article 6, paragraph 2)

Unless other forms of disposal have been officially authorized, States parties shall destroy confiscated and seized firearms, their parts and components and ammunition. If there is a legal obligation to maintain those firearms and ammunition, they should be marked and the methods of disposal recorded as stipulated in article 6, paragraph 2.

Each State could create its own standards for marking seized firearms that are retained and not destroyed.[17] If the weapon does not have a unique or classical marking on it, then a mark identifying the country in which the firearm was confiscated or seized and the year in which this took place could be placed on the firearm by stamping or engraving.

Who should apply the marking

The competent authority that decides that any firearms or ammunition should be disposed of in a manner other than destruction should be responsible for ensuring that the appropriate marking of the firearms and ammunition has been carried out pursuant to article 6, paragraph 2, and should be responsible for ensuring that the methods of disposal have been accurately recorded.

[17] See *Legislative Guides*, part four, para. 148.

F. Marking of deactivated firearms (article 9, subparagraph *(c)*)

States parties that do not recognize a deactivated firearm as a firearm must take the necessary measures to prevent the illicit reactivation of deactivated firearms. Deactivation of firearms should be permanent and irreversible and deactivation measures must be verified by a competent authority. This verification under article 9, subparagraph *(c)*, should include either a certificate or record attesting to the deactivation or a clearly visible mark to that effect stamped on the firearm. Ideally, a State party would both mark a deactivated firearm and maintain a certificate or record regarding the deactivation. Although not stipulated in the Protocol, a mark to signify that a firearm has been deactivated should include the country and the year of deactivation. The most suitable marking techniques would be stamping or engraving.

G. Developing measures to prevent removal and alteration of markings (article 8, paragraph 2)

When markings are erased, this is a clear indication that firearms have been diverted directly from the legal market to the criminal trade. By erasing or obliterating a marking, criminals are trying to prevent the firearm from being traced back to its source. Improving the durability of markings and applying hidden security markings will make it easier to trace a firearm and consequently to detect how and by whom a firearm was diverted from the legal market to the illicit trade.

Article 8, paragraph 2, encourages firearms manufacturers to develop precautions against the removal of markings. An advisable policy would be to establish a technical committee, as suggested above, to periodically review domestic marking standards together with the industry so as to take into account new technical developments in marking and identifying firearms as they emerge. These developments would then be implemented by law enforcement agencies and industry to improve marking techniques and controls.

In some countries the serial numbers are marked in such a way that it is clear if additional numbers were added later in order to falsify the marking. In South Africa, for example, all serial numbers are of the same length and end with the same last two digits so that the marking cannot be falsified or altered by adding extra numbers. Thus, ZA06 12345677, where:

ZA	=	Country of import
06	=	Year of import
12345677	=	Serial number composed of eight digits. (The last two digits, “77” are always used in South Africa to indicate an imported firearm.)

Additional techniques to prevent the falsification of markings include imposing a system of written characters specific to the country and the producer. This system would be similar to that currently used by car manufacturers to mark vehicle identification numbers on cars. If each country and manufacturer within that country had to mark using a specific system of written characters, it would be nearly impossible to unlawfully reproduce those markings.

1. Marking techniques

A variety of marking techniques exist and should be examined with a view to adapting one or several to firearms. As far as the technical aspects are concerned, an adequate marking technique meets the following criteria:

(a) It does not damage the performance and technical quality of the weapon;

(b) It leads to a legible marking that is practically indelible, durable, difficult to falsify and preferably recoverable through a restoration process;

(c) It can be applied in a practical manner;

(d) It can be applied to several parts of the firearm;

(e) The cost per unit produced is acceptable.

No given marking technique will by itself satisfy all of the criteria listed above. One potentially effective solution would be to use different marking techniques on different components of the firearm. Generally different techniques are used by the same manufacturer depending on the type of material, dimensions of marking and the location and form of the part to be marked. A thorough analysis is needed, however, on a case-by-case basis, to determine the best combination of methods.

2. Description of marking technologies

The following section lists different processes currently in use for marking firearms and ammunition. It is not exhaustive, however, since technologies are evolving at a rapid pace.

(a) Stamping

This is the most commonly used technique for marking metal. It involves marking the metal part of the firearm by applying pressure on a mould or matrix bearing the marking to be engraved (indenting), inducing a permanent plastic deformation of the crystalline structure of the material. When the stamping technique is used, the crystalline structure of the material that is stamped can actually be altered to a depth six times greater than that of the stamp itself. If someone erases the stamped marking on the surface of the weapon, there can still be a legible trace of the marking in the metal itself at a level two to three times deeper than the stamped marking. These changes in the physical properties of the material can then be used to help restore the markings if they are erased on the surface.

According to information provided by the National Institute of Criminalistics and Criminology of Belgium, stamped markings can be obliterated by grinding or filing down, hammering, drilling, welding, perforating or over-stamping the metal. Erased stamped markings can be retrieved in about one third of cases thanks to the deep deformations of the metallic structure mentioned above. However, if the surface of a firearm component has been welded and recast in order to stamp a new marking, there will be no remaining trace of the original stamped marking.

Applying a marking using a stamping procedure requires a flat surface. If the surface is uneven or is made of very hard material, a more sophisticated micro-percussion process is used (sometimes

computer-guided). This process, also called "pin stamping", can be used for both plastic and metal surfaces. Characters can be applied at a rate of one to five characters of from 1 mm to 80 mm in size per second and at different depths. The potential fragility of some parts can limit the use of this process.

Stamping cannot be utilized on the plastic and composite materials that are increasingly being used in the manufacture of new-generation weapons. In addition, because of its primary applicability to unhardened metals, low-tech stamping machinery is also largely unsuitable for the application of post-production markings. In many cases, the unique or classical marking has not always been applied in its entirety after the first stage of the manufacturing process of a firearm has been completed. At that stage, not all of the information that needs to be included in the classical marking may be known, such as the year of manufacture, the importer or even the serial number, which is not always provided at the time of manufacture of an essential component. When the parts and components of a firearm have already been manufactured, marking is usually carried out with a technique other than stamping to avoid any damage to the manufactured part. For example, ammunition batch numbers are marked just before packaging. More and more markings are being added after the manufacture of the components of the firearm, for which techniques such as laser engraving are more suitable.

(b) Casting

In some cases it is necessary to repeat information that is part of the marking (calibre, model or other information) on more than one part or component of the firearm. When using the casting method to apply a marking, this information is added directly to the moulds of different weapon parts. Casting is also used for plastic and composite materials (injection moulds) for which stamping is impossible. This method remains limited, in particular because of the restricted surface areas available on the different parts of a weapon. It is also not suitable for marking serial numbers because these need to be unique for each weapon.

(c) Mechanical engraving

This technique for marking firearms is widely used. Marking is undertaken by removing metal through direct contact with the material. It can also be effectuated through electrical discharge machining, where the surface layer is heated and vaporized by a continuous electrical discharge. Hardened materials can be marked with this method where traditional techniques such as stamping would be ineffective. However, there can be physical limitations when engraving information on particular surfaces and on different kinds of material such as composite materials. This method is also difficult as far as accessibility and resistance of the parts to be marked are concerned, especially if markings are required once the weapon has already been assembled.

(d) Laser engraving

The use of laser engraving permits marking of all kinds of surfaces through burning by oxidization, which has the advantage of requiring no physical contact with the surface to be marked. It also enables marking of areas inaccessible to other marking procedures, as well as marking of fragile parts where attempts to remove the mark would make the weapon inoperable. It can be used for composite materials or plastics as well as hardened metals that cannot be marked by classical

methods. Lasers can mark tiny surfaces with precision, for example, surfaces smaller than one square millimetre, and can contain information either in matrix (data matrix)[18] or in barcode format. It is also the most practical method to mark logos or extracts from legislation on a confined space. The disadvantage of laser engraving is that, if the marking is erased, there is no possibility of recovering it.

In contrast to stamping and mechanical engraving, laser engraving is considerably more time- and resource-efficient. Further, laser marks can be applied to virtually all materials and at any stage of the production process, including at post-production stages. Computer-operated lasers can also be used to mark individual rounds of ammunition and the laser marking process can be integrated into the packaging machinery for ammunition. The ammunition can be marked in the cartridge's groove just prior to being packaged.

Laser marking can be reinforced by sensitizing the surface of the weapon component to be marked to a certain wavelength by using a special product. Information is then marked on the weapon with a laser. The marking is then covered with a layer of paint or a galvanizing product, which renders the marking invisible to the naked eye. However, the marking is visible when viewed under certain lighting (i.e. infrared or ultraviolet) according to the wavelength for which the surface has been sensitized.

(e) Electrochemical methods

With electrochemical methods, an applicator moistened with an electrolyte solution that is connected to an electrical source is placed on a stencil bearing the marking. The stencil is then placed on the surface to be marked. The depth of the marking is regulated with the strength of the electrical current.[19] This method is used on fragile parts of a firearm or certain types of ammunition that will not allow for deeper markings. The disadvantage of this type of marking is that if the marking is obliterated it is unlikely that it can be recovered. In addition, this type of marking is only possible on conductive materials.

(f) Other methods

Additional marking methods currently used in other sectors are being studied for potential use in marking firearms. These include RFID, which is an electronic chip that is placed in undisclosed locations on weapons and carries a certain amount of essential information regarding the firearm, such as its unique identifier (marking) and authorized end-user. These electronic memory chips, which can have both read and write transponders, can be read from a certain distance by means of an electromagnetic field, that is, with a commercial smartphone, which is a cellular phone equipped with the ability to read the information in the chip, and, if needed, the information on the chip can be modified. Because the transponder can be easily broken, this method is used mostly for hidden markings.

Chemical tracers, which are already used to mark strategic weapons, can be added to metal and plastics used for the production of firearms components and ammunition powder. Crystallographic and radioactive elements can also be used to mark weapons and ammunition powder. Colorimetric

[18] A data matrix is formed using a series of points to encode data.

[19] J. M. Collins, "Modern marking and serial numbering methods", *AFTE Journal*, vol. 31, No. 3 (1999), pp. 309-317.

methods permit the use of tracers that are composed of a set of colour layers to which a fluorescent layer is added for detection. The observed colour sequence represents a unique numeric code for each manufacturer.

The inclusion of chemical markers and electronic chips generally allows a manufacturer to retrieve information on a weapon even if attempts have been made to falsify or obliterate stamped or engraved markings. However, the use of such methods by firearms manufactures is limited and as their costs vary widely between the specific methods used a cost calculation is not easy. Nevertheless, such additional security marking methods can contribute greatly to the identification of the origin of a particular firearm or ammunition.

H. Costs of marking

The cost of marking per unit produced varies according to the technique used, the material to be marked, the weapon or ammunition type, the contents of the markings (determined mainly by the requirements of the buyer) and the number of units produced.

1. Costs according to the techniques used

Stamping is the most widely used technique for marking weapons and ammunition rounds. Contrary to common belief, stamping is not always the least expensive option. Firstly, it requires increasingly skilled labour depending on how complicated the marking is. Secondly, certain hard materials require more sophisticated marking techniques, such as computer-assisted micro-percussion. Stamping can therefore become quite expensive because special parts are required in order to mark these materials. Buyers require that more and more information be marked on arms, both with a view to improving the effectiveness of tracing and in response to the security requirements (therefore a maximum amount of information).

Mechanical engraving often replaces stamping when it comes to carrying out several different markings. However, as with stamping, this method becomes problematic for certain types of material. There are also costs related to the wear and tear of parts used for mechanical engraving.

Laser marking can provide a solution to these problems. The more complex the marking is, the more cost-effective laser marking becomes. Using software, it is possible to produce an automated marking system. This system can be adapted for different types of marking and production methods, for example, if another supply block is used. The automated laser marking system is independent of the manufacturing system of the weapon (or ammunition) and can be adapted to any production. Quality controls are also easily integrated into the system.

2. Costs according to marking requirements

Markings mainly include a unique serial number, but other information may also be marked, such as a quality seal, an excerpt from legislation or logos. Depending on the type of weapon or ammunition, marking can be carried out by stamping, casting or laser engraving. In certain cases, the solution may lie in a combination of several of these techniques depending on the type of marking required, notably for ammunition.

The extra cost of secondary (or security) and supplementary markings can only be determined according to the type of weapon on a case-by-case basis. It should be noted, however, that producers already mark several components of a single weapon and that security markings would in principle only cause a minimal extra cost per unit produced.

Mass-producers of civilian and military firearms and ammunition producers increasingly opt for laser technology because of its efficiency. With annual weapons production outputs in their thousands and tens of thousands, manufacturers reduce marking costs to one United States dollar and less per unit within short periods.

If new machines are to be acquired, one must not forget that in the balance sheet of a company the initial cost of the machine is always amortized.

Annex. Other initiatives related to marking, registration and tracing of small arms and light weapons

A. Important initiatives

1. At the global level

The international community's concern over the absence of an adequate mechanism for marking and tracing small arms began in the late 1990s as part of the broader small arms process under way in the United Nations system. A series of reports by the Group of Governmental Experts established pursuant to General Assembly resolution 54/54 V led to the adoption of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects,[20] which stresses the importance of marking, registration and tracing of firearms in the prevention of illicit trade in firearms (sects. II, paras. 7-10, 25 and 36, and III, paras. 6, 9-12 and 14). Section IV, paragraph 1 *(c)*, which foresaw a feasibility study on the traceability of firearms, led in June 2005 to the first international instrument on marking and tracing of small arms and light weapons, the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, also known as the International Tracing Instrument.[21] Although it is not legally binding and excludes ammunition, the Instrument is an important corollary to 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.[22]

[20] See *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.

[21] A/60/88 and Corr.2, annex; see also General Assembly decision 60/519.

[22] United Nations, *Treaty Series*, vol. 2326, No. 39574.

2. At the regional level

One of the first initiatives specific to marking was the resolution passed by the International Criminal Police Organization (INTERPOL) in New Delhi in 1997[23] recommending that firearms be identified using permanent markings indicating the manufacturer, model, calibre, number and country of origin. INTERPOL also recommended the establishment of a national registration system to control transactions on firearms with a tracing system to respond accurately and promptly to requests for tracing.

The Organization of American States (OAS) Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials[24] was the first legally binding regional instrument on firearms and ammunition, which requires marking (art. VI) and record-keeping (art. XI) for tracing purposes (art. XIII, para. 3). This has led to the development of Model Legislation on the Marking and Tracing of Firearms adopted by the General Assembly of OAS in its resolution AG/RES.2341 (XXXVII-O/07) of 5 June 2007.[25] This model legislation is important for many reasons, but also because it includes marking of ammunition.

A second instrument adopted earlier within the framework of the OAS Convention is the Model Regulations for the Control of the International Movement of Firearms, Their Parts, Components and Ammunition,[26] adopted by the General Assembly of OAS in its resolution AG/RES.1543 (XXVIII-O/98) of 2 June 1998, which requires individual computerized records on the details of movements (chap. IV, arts. 9.1 and 9.2). It also requires States to exchange and share information on transfers through central information offices (chap. IV, arts. 9.3 and 9.4) and control transactions via appropriate verification agencies (chap. IV, arts. 9.6 and 9.9).

The Organization for Security and Cooperation in Europe (OSCE) Document on Small Arms and Light Weapons[27] of 2000 is politically binding and includes military-style weapons. Sections II and III of the document include several provisions on marking, record-keeping and tracing. OSCE has also developed the "Best practice guide on marking, record-keeping and traceability of small arms and light weapons", which forms part of the *Handbook of Best Practices on Small Arms and Light Weapons*.[28] Although the OSCE Document does not include ammunition, some provisions do take ammunition into account, for example, when it is transported and stored together with firearms. Section VII of the "Best practice guide" regarding cooperation in tracing also refers to ammunition.

The Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials[29] is a legally binding instrument that includes detailed provisions on marking, registration and tracing (arts. 8, 9, 11, 14, para. 6, 18 and 19). The related plan of action now being developed will establish a detailed mechanism to implement the provisions on marking, registration and tracing, which are very strict. Several types of marking and register, such as national, regional and peace operations registers, and a tracing mechanism similar to the International Tracing Instrument, are mandatory and include ammunition and related materials. One of the important elements of the mechanism is that the ECOWAS Commission will act as coordinating body. The Convention concerns both state and

[23] International Criminal Police Organization (INTERPOL), General Assembly resolution AGN/66/RES/6, entitled "The manufacture, use and control of firearms", New Delhi, 21 October 1997.

[24] United Nations, *Treaty Series*, vol. 2029, No. 35005.

[25] For the text of the Model Legislation, see OEA/Ser.L/XXII.6.1. Available from www.oas.org/atip/documentos/armas_de_fuego/Documentos%20Claves/Legislacion%20Modelo/Marking%20and%20Tracing%20eng.doc.

[26] For the text of the Model Regulations, see OEA/Ser.L/XIV.2.34 (updated version (2003)). Available from www.oas.org/atip/documentos/armas_de_fuego/Documentos%20Claves/Legislacion%20Modelo/Intl%20Movement%20of%20Firearms%20eng.doc.

[27] A/CONF.192/PC/20, annex, appendix.

[28] 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 on Small Arms and Light Weapons* (Vienna, 2003), chap. II.

[29] Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials, done at Abuja on 14 June 2006.

non-state firearms and ammunition and in its article 1, paragraph 9, includes a wide definition of their transfers requiring controls at each stage.[30]

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,[31] which entered into force on 5 May 2006, is another legally binding regional instrument aimed at controlling marking and registration of firearms, ammunition and related materials (art. 3, subparas. *(c)* (iii) and (iv), art. 4, subpara. *(c)*, art. 6, art. 7, subpara. *(d)* (ii), and art. 11). *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons*[32] were developed in 2005 to implement the Protocol and include several guidelines on marking, registration (chap. 1) and tracing (chap. 3) of both state and non-state items. The Regional Centre on Small Arms and Light Weapons (RECSA) in Nairobi is responsible for assisting States in the implementation of the *Guidelines*.

The Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region, which is a legally binding instrument, entered into force in November 2004.[33] It has several provisions similar to the Nairobi Protocol, in particular on marking, registration and tracing of both state and non-state firearms, ammunition and related materials (arts. 5, paras. 3 *(d)* and *(g)*, 6, subpara. *(b)*, 7 and 9). The Protocol provides for the establishment of a committee to oversee its implementation and the Southern African Regional Police Chiefs Cooperation Organization has so far assisted States with this task.

The Council of the European Union has adopted a Joint Action,[34] a binding instrument. It provides for taking confidence-building measures by establishing regional registers on small arms and regular exchanges of information on transfers and holdings (art. 3, subpara. *(e)*). The European Union publishes an annual report on the implementation of the Joint Action. It has also developed a Strategy to Combat Illicit Accumulation and Trafficking of SALW and Their Ammunition[35] to support the Joint Action in order to ensure its implementation. The Strategy includes an action plan to promote the Firearms Protocol, the International Tracing Instrument and the OSCE *Handbook of Best Practices on Small Arms and Light Weapons* (para. 20 *(a)*) and the creation and maintenance of national inventories of arms held by national authorities (para. 20 *(b)*).

Other regional initiatives such as the Andean Plan to Prevent, Combat and Eradicate Illicit Trade in Small Arms and Light Weapons in all its Aspects,[36] the Pacific Islands Forum Legal Framework for a Common Approach to Weapons Control[37] and its Weapons Control Bill[38] include provisions on marking and registration of firearms and ammunition.

[30] "TRANSFER: Includes import, export, transit, transshipment and transport or any other movement whatsoever of small arms from or through the territory of a State."

[31] Available from www.recsasec.org/pdf/Nairobi%20Protocol.pdf.

[32] Available from www.recsasec.org/pdf/Best%20Practice%20Guidlines%20Book.pdf.

[33] Available from www.poa-iss.org/RegionalOrganizations/SADC/Instruments/SADC%20Protocol.pdf.

[34] Joint Action 12 July 2002 (2002/589/CFSP), adopted by the Council of the European Union, on the Union's contribution to combating the destabilizing accumulation and spread of small arms and light weapons and repealing Joint Action 1999/34/CFSP (*Official Journal of the European Communities*, L 191, 19 July 2002).

[35] Available from http://register.consilium.europa.eu/pdf/en/06/st05/st05319.en06.pdf.

[36] Decision 552, adopted by the Council of Foreign Ministers of the Andean Community in Quirama, Colombia, on 25 June 2003, annex III, articles 3.1.2 (marking and registration of firearms) and 5.1 (States' inventories on small arms and light weapons). Available from www.comunidadandina.org/ingles/normativa/D552e.htm. The Andean Community includes Bolivia (Plurinational State of), Colombia, Ecuador, Peru and associate countries (Argentina, Brazil, Chile, Paraguay and Uruguay).

[37] Available from www.smallarmssurvey.org/files/portal/issueareas/measures/Measur_pdf/r_%20measur_pdf/Asia%20Pacific/20000310_nadi%20framework.pdf. Signatories to the Nadi Framework are American Samoa, Australia, Fiji, New Zealand, Tonga and Vanuatu.

[38] The Pacific Islands Forum Weapons Control Bill covers the range of issues set forth in the Nadi Framework and was finalized in 2003 (articles 3, 4, 6 and 8 have several provisions on marking and record-keeping).

Finally, the South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons[39] has developed a series of Regional Micro-Disarmament Standards/Guidelines (RMDS/G) to implement small arms and light weapons programmes. The RMDS Guidelines[40] provide for the marking and registration of firearms and ammunition, and a tracing system (sect. 5). RMDS programmes include establishment of control organizations and a national small arms and light weapons authority. A marking and tracing system should include submission of marking data to the verification organization and centralization of information (para. 5.2).

3. Other

Ammunition is considered a dangerous good. As such, regulations on the transport and stockpiling of ammunition are based on the recommendations of the Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals, set up by the United Nations.[41] The packaging must undergo drop tests and stacking tests to ensure that it complies with set criteria for which a certificate of conformity is delivered by the authorities.[42] It is then marked with a United Nations number designating the category and type of ammunition it contains, the year of manufacture, the owner of the certificate, State of origin, weight and registration number. At the time of export, customs officials verify the conformity of the packaging and labelling. These regulations concern commercial transactions, but some countries, such as Serbia, have adopted them for their armed forces.[43] Since the system is standardized, the classification, packaging, marking, labelling, display and documentation procedures are identical in all member countries regardless of the mode of transport.[44] Accordingly, the goods and their origin are identifiable throughout the world during transport and stockpiling. At present the system applies only to packaging, but it is conceivable that it could be extended to the marking of firearms and ammunition and to centralization of information.

The Convention on the Marking of Plastic Explosives for the Purpose of Detection[45] applies to all plastic and sheet explosives described in its technical annex. Although explosives are beyond the scope of the Firearms Protocol and of most of the above-mentioned initiatives,[46] it is worth mentioning this particular instrument because it highlights the importance of marking and includes the military market. All newly manufactured

[39] The South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons was established in 2002 by the United Nations Development Programme within the framework of the European Union's Stability Pact for South-Eastern Europe.

[40] South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, "Marking and tracing of SALW", 4th ed., Regional Micro-Disarmament Standards/Guidelines, RMDS/G 03.40 (Belgrade, United Nations Development Programme, 20 July 2006). Available from www.seesac.org/uploads/rmdsg/RMDS-G_03.40RMDS_03.40_Marking_and_Tracing_(Edition_4).pdf.

[41] *Recommendations on the Transport of Dangerous Goods: Model Regulations* (United Nations publication, Sales No. E.09.VIII.2 (16th revised ed.)). Available from www.unece.org/trans/publications/dg_recommend.html.

[42] Several organizations exist in Europe, among them the Belgian Packaging Institute (BPI), the *Bureau des vérifications techniques* in France or the Bundesanstalt für Materialforschung und -prüfung in Germany (Federal Institute for Materials Research and Testing).

[43] Report of the Secretary-General on problems arising from the accumulation of conventional ammunition stockpiles in surplus (A/62/166), pp. 18-19.

[44] At present the membership of the Committee of Experts stands at 39: Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Czech Republic, Denmark, Finland, France, Germany, Greece, India, Iran (Islamic Republic of), Ireland, Italy, Japan, Kenya, Mexico, Morocco, Netherlands, New Zealand, Norway, Poland, Portugal, Qatar, Republic of Korea, Russian Federation, Senegal, Serbia, South Africa, Spain, Sweden, Switzerland, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Zambia. Meetings include observer States, intergovernmental organizations, specialized agencies and non-governmental organizations.

[45] S/22393, annex I; see *Official Records of the Security Council, Forty-sixth Year, Supplement for January, February and March 1991*. Done at Montreal on 1 March 1991; entered into force on 21 June 1998.

[46] The Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials includes explosives in its scope. The note by the Secretary-General on small arms transmitting the report of the Group of Experts on the problem of ammunition and explosives (A/54/155) includes explosives as an integral part of the small arms and light weapons issue.

explosives covered by the Convention must be marked by each State by means of detecting agents described in the technical annex (paras. I and II). The point of the marking is to allow detection of the presence of explosives, not tracing.

B. Marking of ammunition

Marking of ammunition is not required under the Firearms Protocol. However, under article 34, paragraph 3, of the United Nations Convention against Transnational Organized Crime,[47] States parties may adopt more strict or severe measures than those provided for by the Convention for preventing and combating transnational organized crime. In addition, article 7 of the Firearms Protocol states that, where appropriate and feasible, records shall be maintained on ammunition. If ammunition was marked, this would obviously enable States parties to keep much more detailed records on manufactured ammunition and ammunition that is the subject of international transactions. In addition, under article 12, paragraph 4, States parties are required to cooperate in the tracing of ammunition. It is extremely difficult to trace ammunition that has not been marked either on the ammunition itself or on the packaging.[48] States parties may therefore wish to impose marking on parts of ammunition and on its packaging so as to facilitate identification and tracing.[49]

Marking at the time of manufacture

Article 8, paragraph 1 *(a)*, provides for the marking of firearms at the time of manufacture. Similarly, ammunition can be marked at the time of manufacture, usually on the cartridge case and possibly on the primer cap, with the following information (see examples in figures I and II below):

- Name of the manufacturer (or code)
- Country of manufacture (or code)
- Unique lot (batch) number[50]

The unique lot number can include the year of manufacture, the country code, the manufacturer's code[51] and possibly the code of the first purchaser.

Some additional information can also be marked on the cartridge case (see examples in figures I-V below):

- Year of manufacture
- Calibre
- Type

[47] United Nations, *Treaty Series*, vol. 2225, No. 39574.

[48] *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto* (United Nations publication, Sales No. E.05.V.2), part four, para. 242.

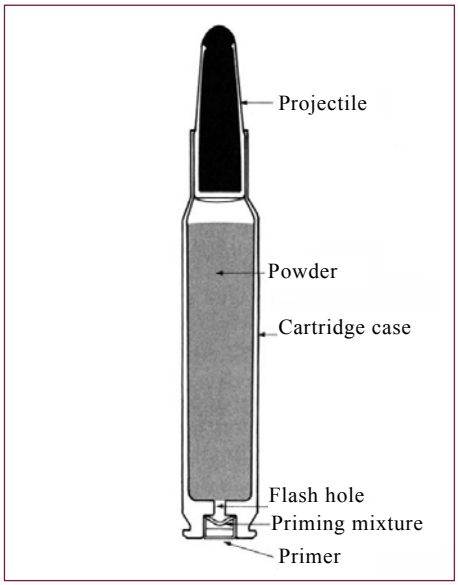
[49] Ibid., para. 89.

[50] Lot numbers identify a fixed quantity of ammunition of the same type manufactured under similar conditions and from uniform components. Ammunition for security forces is produced in lots of more than 200,000 rounds and is destined for specific users. Civilian market ammunition is generally produced in response to market demand rather than individual orders and lots might may be split between multiple users.

[51] For instance, for German armed forces a 10-digit code made up of 6 numbers and 4 letters is used, for example, XXX07A0001, where XXX is for the manufacturer, 07 for the year of production, A for the month (January) and 0001 for the lot number. See Holger Anders, "Scope for international minimum standards on tracing illicit SALW ammunition", *Note d'analyse* (Brussels, Groupe de recherche et d'information sur la paix et la sécurité (GRIP), 6 June 2005). Available from www.grip.org/en/siteweb/images/NOTES_ANALYSE/2005/NA_2005-06-06_EN_H-ANDERS.pdf.

- Name of the first purchaser
- Proof mark for quality control[52]
- Other markings, for example to indicate the presence of heavy metal (L = Lead; LF = Lead-free)

Figure I. Schematic representation of a cartridge and its elements



Source: F. Schütz, Groupe de recherche et d'information sur la paix et la sécurité.

Figure II. Example of marking on a cartridge case

Source: F. Schütz, Groupe de recherche et d'information sur la paix et la sécurité.

Note: The markings indicate calibre, manufacturer, type and the presence of lead.

[52] Proof marking is obligatory for the Permanent International Commission for Firearms Testing (CIP) (see the section on classical marking in chapter IV above).

(a) Importance of the unique lot number

It is estimated that countries that mark lot numbers on the cartridges of firearms ammunition benefit from improved stockpile management and increased tracing possibilities (see figure III below). Marking of lot numbers can also help prevent diversion from military stockpiles.

In Brazil, Law 10.836/03 of December 2003 requires the application of individual marks for the identification of the production lot and of the purchasing organization[a] in order to prevent theft from army stockpiles.[b]

Source: Small Arms Survey 2007: Guns and the City (Cambridge, Cambridge University Press, 2007), chap. 9.

[a] Article 23, paragraphs 1 and 2, of Law 10.836/03 of December 2003 and article 4 of Army Regulation No. 16 DLOG of December 2004.

[b] Ammunition manufactured by the Companhia Brasiliera de Cartuchos and destined only for military use has been seized by authorities and found to be in the hands of criminal organizations (see the records of the public hearing of the Brazilian Parliament (*Câmara dos Deputados*) No. 0345/05).

Figure III. Example of a lot number marked on a cartridge

Source: M. Dantas, Chief, Division for the Repression of Illicit Trafficking in Arms (DARM), Federal Police, Brazil; photo: Campanhia Brasiliera de Cartuchos.

At the regional level, the importance of lot marking has been emphasized in such documents as the Model Legislation of the Marking and Tracing of Firearms adopted by the countries of the Organization of American States[a] and in the Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials of the Economic Community of West African States.[b]

[a] Article 5, paragraph 1, of the Model Legislation stipulates that each cartridge should be marked with a unique batch or lot number.

[b] Article 18, paragraph 3 *(a)*, of the Convention, which is legally binding, requires the marking of a unique lot number on the cartridge.

(b) Marking techniques

Marking information with comprehensive data poses no significant technical challenges. Markings on small-calibre ammunition can be placed on the case during the production process. The cases are marked by stamping the case head, which will form the primer pocket. Lot numbers can also be marked at this stage,

but if a lot number needs to be changed this will require interruption of the marking process. It is therefore desirable for lots destined for the same user to be marked with the same lot number and preferably for lots of more than 200,000 rounds. (These are usually destined for military use; see figure IV.)

Figure IV. Markings used by the Colombian Army

Source: Viva Rio.

Note: IM = INDUMIL (Military Industry of Colombia); lot number 149 identifies a battalion.

Usually, the best way of marking the lot number on the cartridge is by using laser engraving. In response to Brazilian Law 10.836/03, the Companhia Brasiliera de Cartuchos (CBC) has developed a marking method where the lot number is marked on the groove of the cartridge case after the assembly process with a computer-operated laser head integrated into the packaging process (see figure IV below).[53] The groove is the part of the cartridge where the depth of the metal allows deeper markings. It also protects the marking during the shooting process. Thanks to the use of laser marking, CBC is able to mark batches of 10,000 rounds with unique codes without increasing its costs. However, if the stamping method is used during the production stage of cartridge cases, to mark such small quantities the production line would need to be interrupted to change the codes. Post-assembly laser marking offers an effective and practical option to manufacturers wishing to maintain flexibility in their cartridge production and assembly practices.

Figure V. Lot marks on ammunition

Source: M. Dantas, Chief, Division for the Repression of Illicit Trafficking in Arms (DARM), Federal Police, Brazil; photo: Campanhia Brasiliera de Cartuchos.

Note: A five-digit code identifies both the lot number and the recipient of the ammunition.

[53] The cost of an additional post-assembly marking system is around 50,000 euros and a packaging machine without laser costs 175,000 euros. Considering that the quantities of ammunition manufactured by CBC are very large, the supplementary cost is rapidly amortized. (Information provided by EDB Engineering, Belgium, which provides technology to CBC, June 2005.)

Other manufacturers have developed alternative techniques using lasers. Dynamite Nobel in France and Penna Ammunitions in Italy, for example, mark the insides of their cartridge cases.

C. Marking of packaging

Adequate marking of ammunition packaging would counter the easy availability of untraceable ammunition that circulates in illicit markets. Manufacturers of ammunition for firearms already mark packaging units with information regarding the manufacturer and other basic information. It is recommended that ammunition packaging also be marked with the same traceable information as listed above regarding cartridges. Typical marks on the packaging would include identification of the manufacturer, type, quantity of packed ammunition, year of production, lot number and the end-user (see figure VI below).[54] Additional information, such as class 1.4, representing explosives for the transport of dangerous goods, could also be marked (see the paragraph below and figure VI).

Figure VI. Ammunition package markings, Brazil

Source: M. Dantas, Chief, Division for the Repression of Illicit Trafficking in Arms (DARM), Federal Police, Brazil; photo: Campanhia Brasiliera de Cartuchos.

[54] All ammunition packaging units sold in Brazil must bear a barcode sign engraved on the box identifying the manufacturer, the purchaser, the type and the production lot number (art. 23, para. 1, of Law 10.836/03 of December 2003 and article 3 of Army Regulation No. 16 DLOG of December 2004).

It is recommended that, as a minimum standard, even the smallest packages of ammunition be marked with traceable information. With calibres such as 5.56 mm and 7.62 mm, ammunition is usually packaged in smaller cardboard boxes that can hold from 20 to 50 rounds. These smaller boxes should be marked. The boxes are then usually placed inside larger boxes of 1,000 to 2,500 rounds. The larger boxes also should be marked with the same information (see figure VII below).

Figure VII. Small cartridge packaging of 200 rounds

Source: Damien Callamand. (See Pierre Martinot, "Les munitions au cœur des conflits: état des lieux et perspectives", *Les rapports du GRIP*, No. 2008/3 (Brussels, Groupe de recherche et d'information sur la paix et la sécurité (GRIP), 2008), p. 35. Available from www.grip.org/pub/rapports/rg08-3_munitions.pdf.)

Note: The rounds are marked with lot number 113/2003.
They are then placed in larger boxes containing 1,000 rounds of 7.62x39 mm ammunition.

D. Ammunition as dangerous goods

Ammunition and explosives fall under the category of dangerous goods and their packaging should conform to the recommendations of the Committee of Experts on the Transport of Dangerous Goods and on the Globally Harmonized System of Classification and Labelling of Chemicals.[55] These international model regulations seek primarily to guarantee security during transport and stockpiling of materials in the four modes of transport (road, air, sea and rail). They also seek to heighten the degree of standardization between national and international practices.

Under the regulations, all packages containing ammunition should be legibly and durably marked with a unique serial number, the year of transport, the weight of the package and information permitting the identification of the country that authorized the transport as well as the company that requested the authorization. The regulations require that packages containing ammunition be marked with the United Nations acronym and the category and type of ammunition contained (see the box below).[56]

[55] *Recommendations on the Transport of Dangerous Goods: Model Regulations* (see footnote 22 above).

[56] I. Berkol and C. Gramizzi, "The transport of dangerous goods: a concrete example of traceability", *Note d'analyse* (Brussels, Groupe de recherche et d'information sur la paix et la sécurité (GRIP), June 2004). Available from www.grip.org/bdg/g4543.htm.

Example of marking of packaging for dangerous goods

U 4G/Y20/S/02

N B/EXAM-020116

where

4G	=	Packaging code
Y	=	Packaging group II
20	=	Maximum gross mass in kilograms
S	=	Solids or inner packaging
02	=	Year of manufacture
B	=	State delivering the certificate
EXAM	=	Owner of the certificate
020116	=	Registration number

Source: Belgian Packaging Institute (www.ibebvi.be).

At least one external control per year is implemented by an external control organization to verify the legibility and durability of the markings on the packaging.

It is interesting to note that if firearms are transported with related ammunition they are also considered "dangerous goods" and their packaging should also conform to the above-mentioned Model Regulations.[57]

1. Special ammunition marking

Ammunition can also assist in the tracing of illicit firearms as firearms obviously require ammunition and ammunition is, for the most part, manufactured legally. Being able to trace ammunition will thus help in the tracing of illicit firearms.

2. Micro-stamping or micro-marking

A new technology, which allows a handgun's make, model and serial number to be marked on the shell casing of the bullet every time the weapon is fired has recently been developed in the United States of America. The mark on the casing allows law enforcement to trace the firearms from the markings on the shell casing. California is the first state in the United States to pass a bill making the use of this technology on handguns obligatory.[58] The gun barrel has a firing pin that is activated by a trigger assembly. When this happens, a striking surface of the firing pin strikes the primer and discharges the round of ammunition to propel the bullet out of the opposite end of the gun barrel. The firing pin, the interior surface of the barrel or some other

[57] See Organization for Security and Cooperation in Europe, "Best practice guide on national procedures for stockpile management and security", in *Handbook of Best Practices on Small Arms and Light Weapons* (Vienna, 2003), chap. III, sect. II.6.b.

[58] California, Crime Gun Identification Action of 2007, Assembly Bill No. 1471, which since 2010 has applied to semi-automatic pistols sold in the state of California.

surface that contacts the shell casing carries a unique identifier. Upon discharge of the round of ammunition, the component of the firearm carrying the unique identifier transfers an impression of that unique identifier to an exterior surface of the shell casing to indicate that the shell casing was discharged by that firearm. The marking on the firing pin is applied with laser technology and is therefore cost-effective.[59]

[59] See freepatentsonline at www.freepatentsonline.com/6886284.html.

V Article 9. Deactivation of firearms

A. Chapeau to article 9

The chapeau to article 9 of the Firearms Protocol indicates that the article applies only to States parties that do not treat deactivated firearms as firearms under their domestic legislation. A deactivated firearm is one that has been converted so that it can no longer discharge any shot, bullet or other missile.

Many countries do not distinguish between deactivated firearms and operable firearms and therefore deactivated firearms would be subject to the same rules and regulations as regular firearms. For countries that do not treat them as regular firearms, States must:

- Render essential parts of a deactivated firearm permanently inoperable and incapable of removal, replacement or modification in a manner that would allow the firearm to be reactivated in any way

States are required to take the following steps only if it is determined to be appropriate by the State party:

- Establish specific offences to prevent illicit reactivation of deactivated firearms
- Verify that the modifications made to a firearm to deactivate it have in fact rendered it permanently inoperable

Many countries allow the possession of deactivated firearms as memorabilia that can be displayed in public. In such cases, it is important to ensure that the firearm is properly deactivated, otherwise it could be a means by which criminals could secure possession of a firearm by reactivating a poorly deactivated firearm. The deactivation must, in other words, be irreversible.

Who should perform the deactivation

Article 9 does not indicate who shall perform the deactivation of the firearm. It is important that the deactivation be performed by persons who are skilled and trustworthy. A deactivated firearm must no longer pose a danger. An incorrectly deactivated firearm may be hazardous if it is possible, for example, to insert a cartridge into the chamber because the chamber has not been closed off. The deactivation must also be permanent. Skill is required in particular where the person deactivating a firearm comes across a firearm that functions differently to the norm and requires some ingenuity in rendering all the essential parts permanently inoperable.

B. Article 9, subparagraph *(a)*

Article 9, subparagraph *(a)*, refers to "essential parts". Although the term is not defined in article 9, under article 3 of the Protocol, "parts and components" are defined as any element "specifically

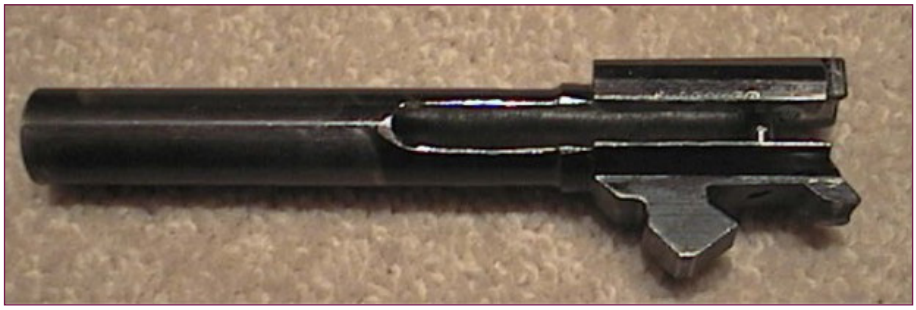
designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing the firearm".

The requirement under article 9, subparagraph *(a)*, is that all essential parts of a deactivated firearm must be rendered permanently inoperable and incapable of removal, replacement or modification. In the case of a barrel, for example, this would mean that the barrel could have holes drilled in it and be welded closed (rendered inoperable) and be welded to the frame (incapable of removal, replacement or modification).

Deactivation standards vary from country to country, some being very strict, such as South Africa and the United Kingdom. In the United Kingdom, the general rule is that all pressure-bearing parts of the firearm must be permanently altered in such a way that the firearm becomes permanently inoperable. This includes modifications to the barrel, bolt, cylinder, slide, firing pin and sometimes the receiver or frame of the firearm.[1]

There are a number of different techniques of deactivation, as demonstrated in figures I-III below. Not all deactivated pistols are deactivated in exactly the same way, although the methods depicted in the diagrams are generally the three main methods. Figure I clearly depicts the intervention required to deactivate a semi-automatic pistol. The barrel is drilled out to within an inch of the muzzle, a slit is cut down the side and a pin is welded across the chamber. Figure II depicts a deactivated firearm where two thirds of the frame rails have been removed and the feed ramp milled out. Newly deactivated pistols also have the "action surface" milled off. In the case of the pistol in figure II, it would be deactivated by cutting off the forward edge of the chamber, and the edge the chamber locks into, in the slide. Figure III depicts where the breech face is cut off at an angle and the tip of the firing pin is removed. Additionally, a slit is cut along the length of the slide from the breech face.

Figure I. A deactivated SIG Sauer P226 barrel demonstrating a slot cut into the feed ramp



Source: Deactivated Gun Collector's Association (www.cybershooters.org/dgca/FAQ.htm).

[1] According to the Deactivated Gun Collector's Association (www.cybershooters.org/dgca/FAQ.htm).

Figure II. A deactivated firearm with two thirds of the frame rails removed and the feed ramp milled out

Source: Deactivated Gun Collector's Association (www.cybershooters.org/dgca/FAQ.htm).

Figure III. Deactivated firearm with the breech face cut off at an angle and the tip of the firing pin removed

Source: Deactivated Gun Collector's Association (www.cybershooters.org/dgca/FAQ.htm).

Some countries have developed standards for the deactivation of firearms. These are useful for States parties to refer to when developing their own standards for deactivation. The standards developed by South Africa[2] are outlined in the box below.

[2] South Africa, regulations issued in terms of section 145 of the Firearms Control Act, 2000 (Act No. 60 of 2000).

Standards developed by South Africa:

- *Barrel and chamber.* A tight-fitting metal plug must be inserted from the rear end and welded in place to prevent the chambering of a cartridge or loading of a powder charge.
- *Revolver cylinder.* A tight-fitting metal plug must be inserted from the rear end and welded in place to prevent chambering of a cartridge or loading of a powder charge.
- *Firing pin.* The firing pin must be shortened and the firing pin hole in the breech face must be closed by welding.
- *Breech face.* Seventy-five per cent or more of the breech face must be removed at an angle of forty-five per cent. In the case of a revolver, "breech face" refers to the area supporting the base of the cartridge in line with the barrel.
- *Slide, bolt or breech block.* Seventy-five per cent or more of the locking surfaces must be removed at an angle of forty-five per cent.
- *Frame or receiver.* Seventy-five per cent or more of the feed ramp, locking shoulders and supports must be removed and a metal obstruction welded in place to prevent a standard slide, bolt or breech block from being fitted.

The South African standards refer to deactivation of all the essential parts mentioned in the Firearms Protocol.

Some countries that do not have deactivation standards, such as New Zealand, treat their deactivated firearms as normal operable firearms, which are consequently strictly regulated.

C. Article 9, subparagraph *(b)*

Article 9, subparagraph *(b)*, requires that States parties, where appropriate, verify their deactivation measures. In other words, before the firearm is accepted as having been deactivated it should be inspected by a person who has the requisite knowledge and is authorized to do so. Three issues arise under subparagraph *(b)*, namely, that the deactivation must be verified, that the verification must be carried out by a competent authority and that the deactivation must render the firearm permanently inoperable.

Verification can only be done by visual inspection by a competent individual. In this context, "competent" implies that the person carrying out the inspection is authorized to do so and has the necessary technical skill to carry out such an inspection. Verification should involve a physical inspection of the firearm. Very often, inspections can be conducted by proof houses, where they exist, and, where they do not exist, the inspection function may be entrusted to state armouries or gunsmiths. In some countries, this is done by authorized civilian gunsmiths, who have usually have gone through a training process to be certified as a gunsmith, have been checked to ensure that they are persons of integrity and have been authorized to practice as gunsmiths through the issuing of a licence or permit.

D. Article 9, subparagraph *(c)*

Article 9, subparagraph *(c)*, requires that proof of deactivation be provided in the form of a certificate or record verifying deactivation or a clearly visible mark stamped on the firearm indicating that it has been deactivated.

Although the Protocol does not provide details regarding what information a certificate or record attesting to the deactivation of a firearm should contain, it is suggested that a certificate or record contain the following information, at a minimum:

- Full name of the firearm's owner
- Full address, both physical and postal, of the firearm's owner
- Details of the firearm, such as make, model, calibre, name of manufacturer, serial number and any other information that is on the firearm, such as proof marks or marks indicating that the firearm had been transferred from government stocks to civilian use
- Full name of the person carrying out the deactivation and, where applicable, name of the institution
- Full address, both physical and postal, of the person carrying out the deactivation
- Date on which the deactivation was carried out
- Specification of the exact method, procedures and outcome of the deactivation
- Reason for the deactivation

The body responsible for carrying out the deactivation should maintain a copy of the record or certificate attesting to the deactivation and any central authority maintaining records on firearms should also possess a copy.

A mark verifying deactivation should be made on all firearms to indicate that the firearm has been deactivated. The information that should be contained in the marking and the most appropriate method to use to effect the marking are outlined above in chapter IV, on marking.

Additional points to be considered on the issue of deactivation:

- *Only firearms that are in legal possession may be deactivated.* This may sound obvious, but no person whose possession is in any way questionable should be allowed to deactivate the firearm. In addition, it must also be ascertained that the person requesting the deactivation has the authority to do so, that is, that he or she is indeed the owner of the firearm.
- *Authorization must be obtained prior to the firearm being deactivated.* The process of deactivation may destroy certain ballistic information that could be critical should the firearm have been used in criminal activity. A criminal may use the process of deactivation to permanently remove incriminating ballistic evidence.
- *Only persons authorized by a competent authority must be permitted to carry out the deactivation of a firearm, for example, a licensed gunsmith.* Again, this would appear obvious but it is important to exercise control over persons who carry out the deactivation to ensure that it is done properly. These persons fall into two categories, namely, those who by virtue of their

official positions are authorized to carry out the deactivation and those who are granted the authority by the issuing of a licence, permit or any other official authorization after having met certain criteria, such as manufacturers or gunsmiths.

- *All the minimum information specified previously must be recorded on an official database, whether electronic or manual.* It is vitally important that the information regarding the deactivation be recorded on the central database, where one exists. The same information that is on the certificate must be recorded on the database. This acts as a separate record of the information and may be useful if ever the authenticity of the certificate is questioned.

VI Article 10. General requirements for export, import and transit licensing or authorization systems

Effective control and regulation of legal transfers of firearms and ammunition are essential elements in preventing and reducing illicit trafficking. To maintain an effective control mechanism, a Government must first commit itself to adhering to international non-proliferation norms and to engaging solely in responsible transfers of firearms.

Article 10 of the Firearms Protocol contains the basic requirements of States parties to establish effective systems of control of the import, export and transit of firearms, their parts and components and ammunition, across national boundaries. Article 10 does not impose an obligation on States to regulate transfers carried out on a domestic basis only, although this is recommended.

The systems of control should be implemented whether the import, export or transit involves a commercial sale directly from a company, a brokered sale through a dealer, a sale from a state-owned firearms manufacturer or other type of transaction or transfer that is international in nature.

The guidelines below are intended to assist States to better control the movement of firearms and ammunition to minimize the risk of diversion. They are informed by a number of regional and international instruments and documents that also provide guidance on controlling the movement of arms, including the Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons;[1] the Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region;[2] the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials;[3] the Bamako Declaration on an African Common Position on the Illicit Proliferation, Circulation and Trafficking of Small Arms and Light Weapons, 2000;[4] the OAS Model Regulations for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition;[5] the European Union Code of Conduct on Arms Export;[6] the Best Practice Guidelines for Exports of Small Arms and Light Weapons (SALW) of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies;[7] the OSCE Document on Small Arms and Light Weapons[8] and the *Handbook of Best Practices on Small Arms and Light Weapons*.[9]

[1] Available from www.recsasec.org/pdf/Best%20Practice%20Guidlines%20Book.pdf.

[2] Available from www.poa-iss.org/RegionalOrganizations/SADC/Instruments/SADC%20Protocol.pdf.

[3] Available from www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.PDF.

[4] A/CONF.192/PC/23, annex.

[5] Available from www.cicad.oas.org/Desarrollo_Juridico/ENG/Resources/322MRFirearmsBrokersEng.pdf.

[6] Available from http://ec.europa.eu/external_relations/cfsp/sanctions/codeofconduct.pdf.

[7] Available from www.wassenaar.org/docs/best_practice_salw.htm.

[8] A/CONF.192/PC/20, annex, appendix.

[9] 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 on Small Arms and Light Weapons* (Vienna, 2003).

Article 10 of the Protocol has two main requirements for the transfer of firearms, their parts and components and ammunition:

(a) An effective system of export and import licensing or authorization;

(b) Measures on international transit.

A. What constitutes an effective system of export and import licensing

The Protocol does not define the term "effective" nor is there one specific model that will apply for all import and export licensing or authorization mechanisms. There are, however, common elements that ideally each mechanism should have to ensure that it is effective. States parties should bear in mind that the elements below are not mandatory under the Protocol but rather merely recommended. These elements include:

- A designated transparent and impartial authority and decision-making mechanism to control transfers of firearms
- Clear rules on import, export and transit application and licensing procedures and requirements
- Clear yet flexible policies on import and export
- Inter-agency coordination
- International cooperation
- A method of enforcement (see chapter VII, section C, below)
- Mechanisms for record-keeping (see chapter III above)

1. A designated authority

In many States there is more than one designated authority dealing with import and export licences and authorization. Other States that are just developing their licensing and authorization systems may choose to designate only one authority to deal with both import and export. States need to choose whichever system works best for them and will simplify procedures as much as possible.

Which governmental agency or body is vested with the authority to issue licences will vary depending on the country and the types of institution it has established. In many States law enforcement agencies are responsible for issuing licences to export and import. In other countries, administrative bodies receive the applications, make the decisions and issue the licences. In some cases, a coordinating body comprised of members of different institutions is vested with the licensing authority. Coordinating bodies will be discussed further below.

Whichever institution is vested with the authority to make licensing decisions, the decision-making process should be objective and transparent. All decisions made in response to an application for import, export or transit should be issued in writing. When an applicant is denied an import or export licence there should be an appeal mechanism in place allowing the applicant to dispute the decision within a certain period. The designated authority and any appeal body should be guided

by clear rules and governmental policies on import and export controls that are accessible by the parties involved in the transaction. The scope of review of the denial to issue a licence should be narrow.

2. Clear rules on import and export procedures and requirements

One of the most basic guidelines that should be implemented by States is that they should only allow the transfer of firearms that are marked according to the requirements of article 8, paragraph 1 *(a)*, of the Protocol.

In addition, States should have clear guidelines on when licences are required, what the procedures are, what information applications and licences should contain and what the criteria are for issuing licences. The process should not be ambiguous and the requirements and procedures for obtaining a licence should be consistent for each applicant. Having clear rules on import and export procedures and requirements will ensure that decision-making officials make reasonably consistent assessments for each application and that all of the factors considered important by the State in making the assessment are taken into account.

In addition, States can adopt simplified procedures, pursuant to article 10, paragraph 6, for the temporary import, export and transit of firearms and ammunition for verifiable lawful purposes. The kinds of simplified procedure that can be put in place are outlined later in this chapter.

(a) When should a license be required?

According to the Protocol, licences or authorizations are required when firearms, their parts and components or ammunition are being exported from or imported into a State. Although the Protocol does not apply to state-to-state transactions (see article 4), this should not prevent a country from imposing the same requirements on state-to-state transactions that it does on other international transfers.

(b) Applications

Contents and requirements of applications for import and export licences or authorizations

The Protocol does not indicate in what form applications for licences or authorizations should take. Ideally, all licence applications, whether for import or export, should be in writing or should be submitted electronically, where States have that capacity. The applications should be submitted to the designated authority described above. Parties making a licence application should have access to all written laws, regulations and procedures regarding import, export and transit of firearms and ammunition, as well as to a written government policy on imports and exports as described further below.

(c) Applications for import

Article 10 of the Protocol does not indicate what information and accompanying documentation should be included in applications for import licences or authorizations. However, in order

for a designated authority to make an informed decision with respect to an application, States could consider requiring that the following information be included in applications and their accompanying documentation:

- Name, address and contact details of the importer and any other party involved in the transaction, including the exporter, proposed brokers and transport companies, if possible
- Detailed description of the goods (i.e. type, model, make) including quantities, values and serial numbers, if available
- Modes of transportation and intended routes of shipment, including any ports of export and import
- Intended use of the firearms or ammunition
- Details of previous related imports, including copies of any applications and licences

(d) Applications for export

Applications for an export licence should at a minimum include the following information (or the information should be provided when it becomes known):

- Name, address and contact details of the exporter and any other party involved in the transaction, including the importer, brokers, intermediate consignees and end-users
- Detailed description of the goods, including type, model, make, quantities, values and serial numbers, if known
- A detailed description of what the product will be used for
- Any order or contract number
- Modes of transportation, details of the transit routes and travel plans, including any ports of export and import, should also be included in the export licence application itself as well as the end-user certificate; if these are not known at the time of application, this information should be provided within a specified time period
- Details of previous exports

According to article 10, paragraph 2, of the Protocol, before issuing export licences or authorizations, States must verify that:

- The importing State has issued an import licence or authorization
- At a minimum, written notices have been issued by States through which the firearms and/or ammunition have to transit indicating that they have no objection to the shipment passing through their territory

Although the Protocol does not specify who should provide proof of the above two requirements, the burden should be on the private parties involved in the transaction as opposed to the Government. States should insist that copies of import licences and authorizations from transit States accompany all applications for export licences.

In addition, applications for an export licence should ideally be accompanied by the following additional documents:

- A copy of the contract signed with the foreign importers.
- An original and authenticated end-user certificate issued by the destination country's agency responsible for small arms control or a similar official authorization such as an international import certificate. The certificate should contain the following information:

  Quantity, description, value of the firearms and/or ammunition

  Name, address and contact details of the importer and end-user

  Country of destination

No transfer should be authorized until the designated authority is satisfied that the firearms (and ideally, ammunition as well) are adequately marked according to the requirements in article 8 of the Protocol.

(i) Content of import and export licences or authorizations

Depending on national laws and record-keeping systems, separate forms for licences may be used depending on whether the import or export relates to complete firearms, their parts and components and for ammunition or alternatively one single form could be used. The forms used will be submitted to the authority responsible for record-keeping under article 7 and may be necessary to trace or identify firearms or ammunition at a later stage. The records may also form the basis for assistance to other States should a request for information about the firearms or ammunition be received.

According to article 10, paragraph 3, export and import licences and accompanying documentation, must contain the following minimum information in the licence itself:

- Place and date of issuance
- Date of expiration
- Country of import
- Country of export
- Final recipient
- Quantity and description of the firearms, their parts and components and ammunition (to include any markings applied to the firearms and also the make and model, barrel length, overall length, number of shots, manufacturer's name and country of manufacture)
- Countries of transit

In addition to the mandatory information mentioned above that must be included in export, import licences and accompanying documentation, it is recommended that the following additional information be included in import licences or authorizations or form part of an attachment to the import licence:

- Clear identification of the competent authority that issued the import licence, as well as its address and contact details, and the signing officer's name and signature
- Importer's name, address and contact details as well as the representative's name, contact details and signature (if the importer is a commercial or government body)

- Details of the point of entry into the State of the shipment (so that authorities can ensure that the shipment enters through the preferred port or border crossing)
- End-user identification (if different from the importer), including address and contact details and the representative's name, contact details and signature (if the importer is a commercial or government body)
- Expiry date of licence or date by which the firearms and/or ammunition must be imported
- Names, contact details and addresses of any brokers involved as per article 15, paragraph 1 *(c)*

It is recommended that the following additional information be included in export licences and authorizations or form part of an attachment to the export licence:

- Clear identification of the competent authority, its address and contact details responsible for issuing the export licence as well as the signing officer's name and signature
- Name of the exporter, its address, contact details and the representative's name (if the exporter is a commercial body); name of the importer, contact details of the importer, representative's name (if the importer is a commercial or government body), date of issuance of the importing licence, the competent authority responsible for issuance and expiry date of the importing licence
- Details of intermediate and final consignees (end-users) (if the final consignee is different from the importer), including name, address, contact details and name of representative (if a commercial body)
- Serial numbers of the firearms, parts and components and ammunition, if known at the time of issuance of the licence or authorization and, if not, that information should be provided by a specified date
- Intended date of the shipment, the exit port, modes of transportation, intended routes of shipment and the import port
- Names and contact details of the shippers and the representative's name and signature (if the shipper is a commercial or government body)
- Names, contact details and addresses of any brokers involved as per article 15, paragraph 1 *(c)*
- Identification of the end-user, including address and contact details
- A description of the end use
- A list of prohibited end uses
- Expiry date by which the firearms and/or ammunition must be shipped

Licences should generally be issued for a specified period, for example, up to one year. The designated authority should be able to extend the period of the licence if legitimate problems arise such as delays with the shipment. Separate licences should be required for each distinct transaction. Any request to re-export should be subject to the same stringent controls as the original export.

To assist States in diminishing the risk of diversion, export licences may also contain a requirement that the exporter inform its Government when it suspects that recipients may not be honouring their end use obligations.

(ii) Revocation of licences

Although not provided for in the Protocol, designated authorities should have criteria according to which a licence that is issued can subsequently be revoked or suspended.

Some of these criteria might include:

- It is determined that the information supplied in the application for a licence is false, incomplete or has changed without the applicant notifying the licensing authority.
- The situation in the importing country has changed significantly since the licence was issued such that it is deemed to be unsafe or potentially unsafe to continue with the export.
- A United Nations arms embargo has been issued against the importing country or any of the transit States.
- Circumstances change so that there is a real threat of diversion of the firearms shipment.
- Any of the parties in the transaction are discovered to have a criminal history or criminal associations that would affect their suitability to be involved in the import/export or are arrested/charged while the transaction is being carried out.
- Failure to respect an arms embargo.

3. Clear yet flexible policy on import and export

Along with a transparent and objective decision-making mechanism, Governments should have a clear written policy on import and export so that decisions made by officials are based on factors that the Government has deemed important to take into account. Such a policy will also serve to make the decision-making process more transparent as applicants will know what factors are taken into account before a licence is issued.

A policy on import and export licences could for example mandate that the following factors be taken into account by the designated authority before it makes a decision on whether to issue a licence:

- Criminal background of the applicant or of any directors/persons controlling a company involved or any other parties involved in the transaction
- Whether the proposed transaction or transfer raises domestic crime concerns of any kind
- In case of exports, record of compliance of the importer and the importing country on end use undertakings, including prior re-exports by the importing country without the authorization of the original exporting State
- Record of compliance of the recipient country with regard to international obligations and commitments and the record of respect for international law governing the conduct of armed conflict
- Potential diversion of the import/export into the illegal trade or risk of unauthorized re-export, to include consideration of the ability of the importer/exporter to guarantee the security of the firearms and/or ammunition, including an assessment of the security of storage facilities
- Risk that the proposed transfer might facilitate acts of terrorism, organized crime, violations of international humanitarian law, genocide or crimes against humanity

- Risk that the transfer will contribute to acts of internal repression, including the systematic violation or suppression of human rights and fundamental freedoms
- Risk that the transfer may affect regional security or stability, or that the firearms may be used to threaten the national security or territorial integrity of another State
- Risk of potential contravention of other international, regional or subregional commitments or instruments
- Nature and cost of firearms and ammunition to be transferred in relation to the circumstances of the recipient country, taking into account its legitimate security and defence needs
- Adequacy of the stockpile management and security procedures of the potential recipient country

4. Coordination mechanisms or inter-agency assessments

As mentioned earlier, a designated authority responsible for deciding upon and issuing export or import licences and authorizations could be either a government ministry or a coordinating body comprised of representatives from a number of ministries. States may choose to establish coordinating bodies to decide upon all imports and exports, but this may result in a cumbersome process. Some countries convene coordinating bodies only to render decisions on sensitive exports and imports. All other decisions in these States are left to a government ministry.

States that choose to leave all decision-making powers to a government ministry may still wish to consider establishing a coordinating body to act as a consultative body that renders an opinion on the proposed transfer before a decision on the application is made. The coordinating body could consist of representatives of different agencies and organizations that will be affected by or have information relevant to potential exports and imports.

The coordinating body can be an inter-agency working group consisting of representatives of agencies such as customs, law enforcement, intelligence services, the ministry of foreign affairs and the ministry of defence.

Some countries have established parliamentary committees to advise on the issuance of licences. Other countries use parliamentary committees to act as oversight bodies, which review decisions on licence applications for transfers that may be politically sensitive or involve serious policy considerations.

Whichever mechanism is used, there should be some level of inter-agency coordination involved in the decision-making process regarding the issuance of licences or authorizations. This is the only way to ensure that all of the relevant stakeholders are engaged in the process and that all of the potential issues regarding a proposed transfer are considered.

5. International cooperation

The requirement for States parties to cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms and ammunition will be further explored in chapter IX, on cooperation.

For the purposes of article 10, it is clear that channels of communication between States parties that are involved in firearms and ammunition transfers must be established to ensure that:

- The information in applications for export, import and transit licences or authorizations is authentic.
- Before a State party issues an export licence or authorization for shipment of firearms, the importing State has issued an import licence or authorization and that transit States have, at a minimum, given notice in writing, prior to shipment that they have no objection to the transit.
- The authenticity of licences or authorizations issued by other States involved in the transfer can be verified.
- The importer can verify that the stated end use in the transfer application was the real end use and that, following the transfer, the firearms and ammunition were not used for any other purpose.
- The firearms and ammunition reached their intended destination and were not illegally diverted.
- The firearms and ammunition were not re-exported without the permission of the original exporting State (if this is part of the end-user assurance).

Requests for the information outlined above should be forwarded by the national body or single point of contact in a State, as referred to in article 13, paragraph 2, of the Protocol, and should be sent to the corresponding national body or point of contact in the receiving State. This will ensure that requests for information and responses are filtered through one readily identifiable body in each State involved in the transfer. That body should be ultimately accountable for gathering and sending the required information to the requesting State. This will help streamline the information-gathering process and should help ensure that requests do not get lost and are responded to in a more efficient manner.

The national body or point of contact should then forward the request for information to a coordinating body, as referred to above. If the coordinating body is, as suggested, comprised of representatives from all of the agencies and ministries involved in transfers, then this will facilitate the timely gathering of the necessary information. If no coordinating body has been established, then the national body or point of contact will have to forward the request for information directly to the agency that can provide the relevant data, such as the border police, the competent authority that issued the licence or the ministry of foreign affairs.

6. Method of enforcement

Import, export and transit controls can be enforced through a variety of measures. Many of the suggestions made in this chapter will assist States parties in ensuring that their controls are enforced, such as establishing strict criteria for the revocation of licences.

Increasing the effectiveness of import, export and transit controls, including of border controls, police and customs transborder cooperation will be explored further in chapter VII, on security and preventive measures.

B. Measures to control international transit

Under the Protocol, authorities in transit States must, without prejudice to bilateral or multilateral agreements or arrangements favouring landlocked States, give notice in writing to an exporting State that they have no objection to the firearms and/or ammunition being transported through their territory. Standard forms seeking and granting approval of transit shipments should be utilized.

While not required under the Protocol, States parties should consider implementing additional control measures on international transit. For example, authorities in transit States should consider requiring receipt of export and import licences before allowing shipments of firearms and ammunition to proceed through their territory. It should be clear to the transit State how long the licence is valid for and what quantity of firearms and/or ammunition is in transit.

Shipments may also be accompanied by an official routing document provided by the exporter or importer. Routing documents may accompany copies of the export and import licences and be marked by the transit State upon receipt and dispatch of the shipment.

Again, although not required by the Protocol, transit States should ideally contact the exporting country when the expected shipment of firearms and/or ammunition has reached the transit State. The transit State should then notify the exporting country and importing country of the time and date of exit from the transit State so that shipments are continually monitored.

Transit States parties may require that their competent authority issue a transit authorization before any shipments are allowed through their territory. If a State party chooses to require this, then the authorization should be in writing. The transit authorization may be applied for by those who will be responsible for the shipment while it is in the transit State or the exporter seeking to use the State for transit. A transit authorization could include:

- The country and date of issuance, identification of the competent authority issuing the authorization, including the authority's name, address and contact details
- The applicant's name, address and contact details and the representative's name and signature (if the applicant is a commercial or government body)
- Shipment details such as authorized ports of entry and exit, expiry dates of the authorization, periods during which the shipment is in holding in the transit State and the place of holding, any restrictions on transit imposed by the competent authority and the authorizing officer's signature and name

Although not required by the Protocol, if transit States require that an authorization be issued before shipments are allowed through their territory, then the authorizations should also be sent to the competent authority in the exporting country as proof that the transit State has no objection to the transit as per article 10, paragraph 2 *(b)*. Standard transit authorization forms should be developed and utilized in each case to ensure consistency.

C. Post-delivery monitoring

According to article 10, paragraph 4, the importing State shall, upon request, inform the exporting State party of the receipt of the dispatched shipments of firearms and/or ammunition.

Countries should ideally make it a regular practice to request verification that the shipment has reached its intended destination. Countries should require some sort of proof of delivery as opposed to verbal assurances. Importing countries may choose to build the capacity of their customs officers to carry out post-delivery inspections. If possible, exporting countries should carry out on-site verification once the firearms and/or ammunition have reached their intended destination. It is recognized that this may be difficult, given the limited resources of some States parties. States parties who have exported firearms or ammunition could use their resources on the ground in the importing country to carry out post-delivery verification. These resources could include training personnel from diplomatic missions or defence attachés in the importing country to carry out the inspections. On-site verification is the only way to obtain an absolute guarantee that the shipment has reached its destination.

If possible, the monitoring of the end use of the firearms or ammunition should continue after their delivery. If it is discovered that the firearms or ammunition have been used for a purpose not specified in the end use certificate or were diverted into the hands of individuals other than those specified, it is recommended that the exporting Government disallow any further exports to that importer or that State party, if appropriate, until it is confident that measures have been taken by the importer or importing State to prevent such diversion from happening again.

D. Ensuring that licensing procedures are secure and verifying licensing documents

Under article 10, paragraph 5, States parties must take measures to ensure that licensing or authorization procedures are secure and that the authenticity of licensing can be verified. States may require production of original documentation or certified copies of original documentation to help ensure authenticity of documents. States should have appropriate measures in place to be able to verify the information contained in the import/export/transit licences or authorizations. States seeking to verify such information should send their requests for verification to the national body or single point of contact required under article 13, paragraph 2. The national body or single point of contact should, as previously mentioned, be ultimately responsible for ensuring that all requests for information from other States are answered. States should consider establishing a national body or single point of contact that can function on a 24-hour basis so that urgent requests to verify the authenticity of documents can be responded to when needed.

It is important that before a licence is issued documents such as end-user certificates and import licences are authenticated. This is where international cooperation becomes important and will enable a small arms control agency in one country to obtain accurate information from another one.

States should examine information concerning the exporter and proposed end-user carefully to ensure that they are legitimate companies or agencies. States should have in place a records system whereby they can check for previous applications for licences by the same exporter or importer to see if licences were granted, denied or revoked. If licences were denied or revoked, the State should be able to consult its records to find out why.

Forms relating to licences, authorizations and certificates should incorporate elements that make them difficult to forge or alter.

VII Article 11. Security and preventive measures

A. Chapeau to article 11

The chapeau to article 11 of the Firearms Protocol mentions possible ways in which firearms, their parts and components and ammunition can end up on the illicit market. It recognizes that a comprehensive approach is required to address this problem and requires States parties to implement measures to secure firearms and ammunition and to increase the effectiveness of control mechanisms to prevent their diversion. In order for such an approach to work, security measures must be implemented during the entire life cycle of firearms and ammunition from the time of manufacture to such time as they reach their final destination. Full control must be exercised at each new stage of that process.

B. Article 11, subparagraph *(a)*

Article 11, subparagraph *(a)*, deals with the four critical stages in the life cycle of firearms and ammunition—manufacture, import, export and transit. The requirements of article 10 of the Protocol regarding establishing effective licensing or authorization systems relating to export and import as well as measures concerning transit also relate directly to the security of firearms. Article 11 seeks to expand those security measures and places an onus on States parties to require security also at the time of manufacture. When reference is made to firearms, it includes, by implication, the parts and components and ammunition except where specifically excluded.

Security at the time of manufacture

Security of firearms at the point of manufacture starts even before the first firearm is manufactured. States parties should ensure that only authorized persons or entities are entitled to manufacture firearms. Any person or entity that wishes to manufacture firearms must apply to a competent authority for permission to do so. The discretion to issue such an authorization must lie with the State party and may only be exercised in favour of the applicant if the State party is satisfied that the applicant can ensure the safety of the manufactured firearms based on the criteria mentioned below.

The authorization to manufacture must specify the following conditions under which such manufacturing may take place:

- The licence to manufacture may not be transferred.
- During the manufacturing process, the working premises must be secured.
- The manufacturer may only hold ammunition of the calibre(s) that correspond to the firearms being manufactured and for use for testing purposes.
- All manufactured firearms and essential components must be stored in a safe or strongroom.

- All ammunition or other explosive components to be used for testing purposes must, when not being used, be stored in a safe or strongroom separate from that in which the firearms are stored.
- All firearms manufactured must be marked according to article 8 of the Protocol.
- Testing of the firearms may only be done at an approved shooting range.
- The authorization may indicate the types and calibres that may be manufactured. For example, an authorization may indicate that no fully automatic firearms and a calibre not exceeding .308 may be manufactured.
- The authorization may require the manufacturer to proof certain examples of the firearms manufactured before allowing the sale of such firearms.
- Although not strictly required by the Protocol, where the manufacturer manufactures ammunition, the ammunition should also be marked.
- Any component or part that has been manufactured but is later rejected by the manufacturer for any reason whatsoever must be destroyed by the manufacturer in such a way that it is rendered permanently inoperable.
- All employees working in the manufacturing process must have background checks and be vetted to ensure that they are suitable to handle firearms.

Failure to adhere to any of these conditions should constitute grounds for the refusal or the withdrawal of the authorization to manufacture, whichever is applicable.

(a) Background check

The first step in this process is the vetting of any prospective manufacturer. This will include a background check of the applicant's criminal record status. Any record that contains a conviction for a serious offence should result in an automatic exclusion of the applicant as a potential firearms manufacturer. Where the applicant is a legal entity, such as a company, this vetting should apply to the directors of the company and any personnel who are directly involved in the manufacturing or handling of the firearms. In addition, individuals or companies who have deliberately attempted to mislead the authorities responsible for issuing manufacturing licences should be automatically excluded.

(b) Security in the manufacturing process

Security in the manufacturing process must begin as soon as the very first essential part of a firearm has been manufactured. Once any essential part has been manufactured, it should be stored in a safe or strongroom when not required for the manufacturing process. Stringent security measures must be in place once the entire firearm has been manufactured and assembled, as the risk of diversion becomes very high at that point. It is common for manufacturers to have large stocks of firearms awaiting delivery to clients, since firearms are delivered in batches. Whether the firearms and ammunition are stored at the manufacturing site or off-site, the environment surrounding the storage facility should be planned and constructed with proper consideration for the potential security risk to both the storage site and the population living around it. Proper stockpile management will ensure the security of the firearms. The first part of effective stockpile management starts with proper record-keeping in a register.

Aspects of effective stockpile management include the following:

- *Register of firearms.* It is vitally important that the details of every firearm be entered into a register maintained by the manufacturer the moment the firearm manufacturing process is complete. This register must contain all the details of the firearm (make, model, calibre and serial number) and its location, which means the register must indicate that the firearm is still in storage or that it has been delivered to a client. If the firearm has already been delivered to a client, the full details of the client must be reflected in the register. These details should include contact details and date of delivery. The same applies to ammunition.

  The records should be continually updated by the manufacturer and should be easily accessible by outside inspectors when conducting spot checks of manufacturing and storage facilities. Whether the records are kept manually or on a computer database, duplicate copies of the data should be kept at another location. Inventory records should be held by the manufacturer for as long as physically possible. All of the information that is necessary to trace and identify the firearms should also be forwarded to the authority responsible for maintaining state firearms records pursuant to article 7 of the Protocol.

  Once an inventory system is in place, it should be regularly audited to ensure its continued effectiveness. The records should be physically checked and subject to security inspections at least once every six months. Checks of inventory records should then be detailed in their own logs.

  States should appoint an agency to carry out inspections of manufacturing sites. This authority should be an independent body with no links to the manufacturing industry. Authorized inspectors should then conduct spot checks of storage facilities to ensure the accuracy of records and the security of sites. When firearms and ammunition are kept in bulk storage, inspectors should check seals on boxes, including on boxes that are not easily visible. Firearms and ammunition should be individually counted to ensure that quantities agree with the records kept by the manufacturers.

  Ammunition can be especially vulnerable to diversion and great care should therefore be taken when carrying out inspections. Ill-managed ammunition stockpiles pose a risk of loss and danger to the community in the event of an explosion.

- *Storage of firearms.* Firearms must always be stored in a safe or strongroom that has been designed for the purpose. The requirements for safes and strongrooms differ from country to country. Nevertheless, at a minimum a safe should be made of mild steel not less than 3 mm thick and the door of the safe should be not less than 5 mm thick, with at least a three-bolt lock. A strongroom should have walls of approximately 300 mm of reinforced concrete.

  Firearms should be stored in specially developed racks that prevent their unauthorized removal, for instance, by securing them with spot-welded bolts. Firearms should never be stored together with ammunition. Not only are the safety requirements for the storage of ammunition different from those of firearms, but separating the two makes the theft of both more difficult. Some form of fire-fighting equipment should be kept close to the storage facility.

- *Access control.* It is critical to limit access to the firearm storage place to as few people as possible, such as approved staff who have a legitimate reason to be there. Only those granted authorization should be allowed into the manufacturer's storage facilities. Security staff should have lists of all staff who are allowed access, which should also be regulated by means of a register reflecting the full name of the visitor, the purpose or reason for the visit, as well as the time and date of the visit. Any staff who are granted access should have security clearance.

- *Keys to the storage safe or strongroom.* Keys should be tagged and issued only to those personnel who require access to a storage facility in order to perform their duties. The keys should be carefully controlled and where possible access should only be allowed where two separate keys held by two persons are used. The handling of the keys should also be noted in a register that indicates who has which key.
- *Alarm system.* In addition, alarms should be installed in all storage facilities as well as video cameras to assist in providing evidence of any unauthorized intrusion into the facility. There should be both an internal and external alarm system linked directly to the in-house security and the local police.
- *Exterior lighting.* The exterior lighting adjacent to the storage facility should be sufficient to detect any unauthorized activity.
- *Security.* Storage sites should have trained security staff who should submit regular reports to the manufacturer, which should in turn be accessible and reviewed by inspectors during spot checks. The reports should include the identity of the individual drafting the report, details of any items removed from the storage facility, including the date and time of checkout and the person or persons removing the items. The premises surrounding the storage facility should be regularly patrolled, especially outside of normal working hours, and patrols should be made at random intervals.
- *Fencing.* The entire firearm manufacturing facility should be properly fenced off, with clear zones established around the fence. It is advisable for the storage facility to be fenced off within the main compound and with limited access gates into it.
- *Audit of stock.* It is important for regular audits of the stockpile to be carried out in order to identify as quickly as possible any loss that may have occurred. These audits must be conducted against the register.
- *Contingency loss plan.* There must be a contingency plan in place to be activated when there is a theft or loss of firearms or ammunition. This must be an internal plan developed by the manufacturer and confirmed by local law enforcement officials. For example, it should call for the immediate notification of a loss to law enforcement officials and the cordoning off of the storage facility to prevent further losses and the destruction of any evidence at the scene.

(c) Ammunition

Poorly managed stockpiles of ammunition pose a number of threats, including significant physical risk to communities and the risk of diversion to the illicit market. The security and storage of ammunition therefore merits special attention by States. Effective management of stockpiles of ammunition is important throughout the whole life cycle of ammunition, from the time of manufacture to its storage when in use by state actors to when it becomes surplus.

Pursuant to General Assembly resolution 61/72, a group of governmental experts was established and was requested to consider how cooperation could be enhanced with respect to the issue of surplus stockpiles of conventional ammunition. In its report,[1] the Group of Governmental Experts established pursuant to General Assembly resolution 61/72 acknowledged that in order for a State to recognize what is surplus ammunition, effective ammunition stockpile management must be

[1] A/63/182.

in place. The Group examined what factors contributed to effective stockpile management and determined that the basic components of an effective stockpile management system are as follows:

- *National stockpile management planning.* This involves the development of a set of policies, procedures and activities designed to minimize all risks related to national stockpiles of ammunition. Any management plan should be designed to ensure: *(a)* that the condition and size of a national stockpile is accurately understood (e.g. effective classification, accounting and records of stock movement); *(b)* that the condition of stockpiles is regularly assessed; and *(c)* that stockpiles are secure.[2]
- *Ammunition classification systems.* In order for States to know what their ammunition needs are, they must have an understanding of what they already have in their stockpiles. It is also vital to know what types of ammunition are in stockpiles in order to properly assign handling and storage procedures to particular types of ammunition and their parts. According to the report, the most effective classification systems distinguish between operational ammunition, war reserve ammunition, training ammunition, ammunition awaiting disposal and smaller stockpiles such as experimental ammunition.[3]
- *Ammunition marking systems.* This has already been discussed in depth in chapter IV, on marking.
- *Ammunition accounting systems.* This refers to the procedures designed to record, numerically monitor, verify, issue and receive stocks of ammunition. This is essentially a form of record-keeping, as is discussed in chapter III above. An ammunition management system should be able to document the exact location, condition and role of any ammunition within the national stockpile, throughout its life, from production, to use or disposal.[4] An effective accounting system will allow a State to tailor the supply ammunition to meet its immediate and projected requirements.
- *Inspection, surveillance and proof.* An inspection regime consists of two activities: "in-service proof", that is, the physical testing of ammunition and its components; and surveillance, that is, regular chemical testing. Surveillance and proof go hand in hand with an accurate ammunition accounting system.[5]
- *Stockpile locations and explosion danger areas.* Stockpiles should be designed and located based on a full consequence analysis and technical assessment of the potential effect of an accidental explosion. An explosion danger area should be maintained around stockpiles. Stockpile locations should be regularly reassessed, in particular when the types and quantities of ammunition in them change.[6]
- *Physical storage conditions.* Ideal ammunition storage infrastructure consists of specially designed, strengthened storehouses with temperature and humidity controls, intruder detection systems and effective danger areas.[7]
- *Transport of ammunition.* The safe handling of conventional ammunition is outlined in detail in the United Nations *Recommendations on the Transport of Dangerous Goods: Model*

[2] Ibid., paras. 21-23.

[3] Ibid., paras. 24-25.

[4] Ibid., para. 28.

[5] Ibid., para. 31.

[6] Ibid., paras. 32-33.

[7] Ibid., para. 34.

Regulations.[8] Deciding whether ammunition is "safe to move" requires technical evaluation. It is recommended that States consider following the guidelines provided for in the Recommendations when transporting ammunition.

- *Stockpile security systems.* Poorly secured stockpiles are vulnerable to illegal entry or attack, sabotage, theft and diversion by personnel working within them. Access to stockpiles should therefore be strictly controlled. As was already mentioned regarding the security of firearms, States should consider security systems that include fences, lighting systems, well-designed storage bunkers, locks and visual and audio surveillance systems where feasible, as well as regular patrols and rapid response forces within close proximity to the secure area.[9]

Although security and preventive measures are required by the Protocol in order to detect, prevent and eliminate the theft, loss or diversion of ammunition, these are not spelled out in detail. This Guide therefore strongly encourages States to implement the recommendations contained in the report of the Group of Governmental Experts with respect to managing stockpiles of ammunition. Comprehensive and effective management of conventional ammunition stockpiles is the only long-term means for States to prevent the growth of surplus stockpiles and to minimize the safety and security risks that are inherent in all conventional ammunition stockpiles.

(d) Security at the time of import

The process involved in importing firearms may differ from one State party to another. In some countries, anyone from a private individual to the State itself may import a firearm. In others, this process is much more restricted and only the State may import firearms. The State will then sell these to private individuals. In the latter case, control is much easier. When non-state entities are allowed to import firearms, additional safeguards must be put in place. Primarily these involve ensuring that the importer is reliable and can ensure the safekeeping of the imported firearm(s).

To determine the suitability of an importer, a background check must be conducted, which should include a criminal record check. As mentioned in chapter VI, on article 10 of the Protocol, if the importer is discovered to have a criminal history that would affect his or her suitability to be involved in the import or are arrested/charged while the transaction is being carried out, then the import licence or authorization should not be granted or should be revoked if it has already been granted. The second issue is the assessment of the ability of the importer to ensure the safe storage of the imported firearms. If the importer cannot guarantee their security, then a licence or authorization to import should not be granted.

As mentioned in chapter VI above, it is also very important that the import licence or authorization indicate the point of entry of the shipment into the State. In many countries, there are specific ports that are designated points of entry; ports where the necessary law enforcement officials are stationed can check consignments of goods coming in. Many countries have ports of entry that are only operational during daylight hours or not at all. For obvious reasons it is not advisable that shipments of firearms go through these ports. Furthermore, the necessary law enforcement officials, such as customs and police, should be notified in advance of shipments and they should inspect such shipments to ensure that the firearms being imported match the consignment note and the description of the firearms mentioned in the import licence or authorization.

[8] ST/SG/AC.10/1/Rev.15.

[9] A/63/182, paras. 37-38.

When firearms are imported, they frequently go into bond pending their clearance by customs. Firearms in bond must be securely stored like other valuable or dangerous cargo.

All containers that have firearms as part of their contents should be sealed at the port of export and the seal should only be broken at the port of import by the appropriate law enforcement officials. Ideally, this process should take place in the presence of the importer.

(e) Security at the time of export

While the import and export of firearms are often dealt with in the same breath, in reality there is a far greater burden on the exporting State to ensure that the firearms it exports do not end up in the hands of anyone who is not authorized to possess or transport the firearms. The security measures already mentioned regarding background checks, the application process, ports of entry, safe storage and sealing of containers applies equally to export with the necessary changes to make it applicable to the export of firearms.

However, in the case of export there is one major difference, namely, the adherence to export criteria that should be in place within a State party. These criteria seek to ensure that firearms exported to a recipient State party or to reliable individuals are not abused and do not find their way into the hands of unauthorized individuals. These criteria are outlined in detail above in chapter VI, on article 10.

(f) Security at the time of transit

What has been stated above about security at the time of import applies equally to the transit of firearms.

Transit is the movement of a consignment of cargo across the territory of one country to another. Shipments of firearms and ammunition need extensive controls given the inherent dangers of the cargo.

Weapons and ammunition should be transported separately, preferably in different vehicles. Vehicles used for transport must be in good working and equipped with fire extinguishers. At least one set of documents accounting for the items being carried should be with the convoy commander. Qualified ammunition technicians should accompany the vehicles.

Vehicle security should always be a high priority. In the event of a breakdown or stop for any reason, vehicles must not be left unattended. Security personnel should contact the relevant authorities if an unscheduled stop occurs. Any loading and unloading should be carried out in secure areas with qualified technicians present. Convoy routes should avoid insecure, congested and built-up areas whenever possible.

Exporting States should verify that the company or companies being used to transport arms and ammunition are reliable and have a trustworthy record of ensuring that arms shipments reach their intended final destination.

A transit State should also consider requesting the following security measures:

- Only an authorized transportation company may be used and the staff of that company must all have been approved to transport firearms and ammunition.
- The transit State shall determine the port of entry, the port of exit and the exact route through its territory and that route shall be indicated on the export licence.
- The transit State shall be notified of the method of conveyance or transport.
- The firearms are to be packed separately from ammunition.
- The firearms and ammunition are to be transported in appropriate containers.
- There must be constant direct supervision of the firearms and ammunition and supervision and checks must be in place at any points of loading and unloading.
- The consignment list must indicate the quantity, type of action, manufacturer's serial number, model, make and calibre of firearms and the quantity, make and calibre of ammunition (although this may already appear on the import licence).
- The duration of transit and the number of stops involved shall be limited so as to minimize the vulnerability of shipments.
- The route must be provided to authorities at least 48 hours prior to shipment.
- At the time of application to export firearms and ammunition the exporter must be made aware of which points of entry and exit are allowed en route.

(g) Risks of diversion

As already mentioned, security is important at all stages during the life cycle of a firearm. With respect to the diversion of firearms and ammunition, the vast majority of illicit firearms and ammunition circulating worldwide were diverted in two ways: *(a)* from previously authorized transfers, as a result of inadequate arms transfer control mechanisms; or *(b)* from authorized holdings, as a result of inadequate management or security of those holdings.[10] It is for this reason that stockpile management and strong transfer control mechanisms are so important. With respect to transfers of firearms, diversion can take place at several points in the transfer chain: during export, during transit/shipment, on arrival in the importing State, during delivery to the authorized end-user and through acquisition post-delivery by an unauthorized person.[11]

Weak state controls and lack of communication or cooperation between authorities responsible for transfers can easily be exploited by unscrupulous brokers, importers, exporters and so on. Examples of weaknesses in state transfer controls include:

- Exporting States issuing export licences without adequate checks or risk assessment, on the basis of false or misleading documentation or with inadequate restrictions on transit and end uses or end-users
- A transfer being lost or diverted during trans-shipment as a result of insecure transportation, complex shipping routes and inadequate checks along the route
- Inadequate security at intermediate storage sites along the transfer route

[10] Owen Greene and Elizabeth Kirkham, *Preventing Diversion of Small Arms and Light Weapons: Issues and Priorities for Strengthened Controls*, Biting the Bullet Policy Report (London, Saferworld; Bradford, United Kingdom, University of Bradford), February 2009, p. 9

[11] Ibid., p. 10.

- Import licensing systems in importing countries that are corrupt or vulnerable to forgery
- Importing States issuing import licences without adequate checks or risk assessments of end-users, including whether end-users have in the past complied with licences and regulations, without assessing the end-users' legitimate firearms needs and failing to ensure that end-users have safe and secure storage sites
- Importing and exporting States having inadequate systems to ensure that firearms and ammunition reach their intended destinations and uses
- Authorized end-users being complicit in allowing an authorized shipment to be diverted to an unauthorized person[12]

These are but a few examples of how firearms and ammunition can be diverted during the transfer process. They highlight the need for States to develop and maintain transfer control mechanisms and to have in place information exchange mechanisms that allow them to coordinate transfers with other States involved in the process.

C. Article 11, subparagraph *(b)*

The aim of article 11, subparagraph *(b)*, is to improve the effectiveness of import, export and transit controls, border controls and police and customs transborder cooperation. Governments should strengthen the capacities of government inspectors, police and customs to physically verify transfers of firearms, parts and ammunition at all points of storage, loading, transfer and unloading. There must be regular cross-checking to verify that recorded information on firearms corresponds to the actual serial numbers, types and quantities in the shipment.

Police, customs, officers, border guards and any other authority responsible for overseeing transfers of weapons should have adequate training, communications systems and equipment to monitor and control transfers, and should be trained to critically examine end-user certificates (or international import certificates). They should also be given adequate training in the analysis and recognition of false documentation.

Appropriate mechanisms for cooperation and information exchange should be established between licensing authorities and customs authorities, as well as between different customs authorities. In order for there to be adequate cooperation and information exchange, States parties must identify the national body or single point of contact that will act as liaison between it and other States parties referred to in article 13, paragraph 2, of the Protocol. Although more informal information exchange mechanisms may additionally be set up, it is vital that States parties know whom to contact in another State party when they need information on matters relating to the Protocol.

1. At the national level

Within countries the establishment of a committee on firearms (in some countries this is referred to as a national focal point) can be an effective tool to improve interdepartmental cooperation and information exchange at the national level. A committee on firearms can be an intergovernmental

[12] Ibid.

structure consisting of senior representatives of all governmental departments that deal with the subject of firearms. The committee could be chaired by the leading agency in the fight against illicit firearms, for example, the police. Such a committee can serve to harness all the capacity of the State party in a united effort to deal with illicit firearms and can be a forum to exchange information on illicit firearms and to plan joint action on how to address the problem.

2. At the regional level

At the regional level, a regional committee can be established and in some regions this is known as a regional focal point (e.g. the Regional Centre on Small Arms based in Nairobi). Regional focal points can serve to coordinate all of the activities of the national committees referred to above and can help ensure that the various law enforcement agencies in the region work together. These regional centres can for example help coordinate joint training on illicit firearms for customs officials and officials of other law enforcement agencies. Training coordinated on a regional basis has a number of benefits, such as the provision of standardized training and the benefit of law enforcement officials being able to meet and work with their counterparts from neighbouring countries in the region. This aids in the sharing of experience and facilitates future cooperation.

> Cooperation at the regional level has been particularly effective in East Africa, where a number of joint training sessions have been held in relation to the implementation of the Tanzanian National Action Plan. As part of the Plan, cross-border cooperation committees have been established in Malawi, Mozambique, the United Republic of Tanzania and Zambia. The members of each committee undergo joint training and discuss and develop cooperation and mechanisms for information-sharing between law enforcement agencies in their respective countries.

Ideally, to further improve cross-border information exchange, all relevant documentation relating to import, export and transit of firearms should be standardized across regions. This facilitates the sharing of information, as all law enforcement officials would collect the same information in more or less the same format.

VIII Article 12. Information

A. Introduction

Article 12 of the Firearms Protocol recognizes the fact that States parties possess a considerable amount of information on the illicit manufacturing and trafficking of firearms and that increased sharing of that information would greatly enhance their capacity to deal with the problem.

Before looking at specific provisions of the article, it is necessary to make some general comments pertaining to the sharing of information (and these may in certain circumstances be just as relevant to article 13, on cooperation).

Articles 12 and 13 of the Protocol establish a framework for inter-state cooperation regarding the illicit manufacturing of and trafficking in firearms, including their parts, components and ammunition. It is generally recognized that the effective exchange of information is a key part of cooperation. Therefore, articles 12 and 13 are inextricably linked. Both articles refer to provisions in the Organized Crime Convention that concern rules on law enforcement cooperation, collection, exchange and analysis of information on the nature of organized crime, mutual legal assistance and international cooperation for the purposes of confiscation. As the Protocol supplements the Convention, the provisions of the Convention apply, mutatis mutandis, to the Protocol.

B. Methods of exchanging information

Two countries that wish to exchange information must both record the same type of data that they wish to share. This might sound obvious, yet in many cases a country will request certain information from another country and that country will respond that it does not keep records of that type of data. For example, country A may request that country B provide the details of the serial number of a firearm manufactured 10 years ago, but country B may only keep such records for a period of 5 years. This is also evidence of the importance of article 7 of the Protocol and the need for countries to maintain accurate records for a minimum period of 10 years.

It is clear that in order for States to be able to share information they must have parameters regarding the records they must maintain. These parameters are outlined in part in article 7, on record-keeping, which requires States parties to maintain records on markings and on international transactions. The information to be recorded pursuant to article 7 will be the basis of some information exchange. Article 12 requires the exchange of information on the actors involved in both legal and illegal firearms transactions. In order for this information to be exchanged, records must be maintained of this type of data.

If States maintain the types of record and information required and recommended in the Protocol and also maintain information systems that are compatible, they should be able to share sufficient information to assist other States with the tracing of firearms, their parts and components

and ammunition and with combating the criminal groups involved in illicit manufacturing of and trafficking in firearms and ammunition.

Article 12 explicitly outlines the type of information States parties are required to maintain and exchange. Article 12, paragraph 1, requires States parties to share case-specific information on authorized producers, dealers, importers, exporters and, wherever possible, carriers of firearms, their parts and components and ammunition. Article 12, paragraph 2, focuses on maintaining and sharing information on illegal entities involved in illicit manufacturing of or trafficking in firearms, as well as their methods of concealment, points of dispatch, routes used and so on. In addition, article 12, paragraph 2 *(d)*, requires States parties to share their legislative experiences and practices and measures to combat illicit manufacturing of and trafficking in firearms.

In some regional instruments, countries are required to enact domestic legislation that will ensure that they maintain the same information. For example, article 5, paragraph 3 *(f)*, of the Protocol on the Control of Firearms, Ammunition and Other Related Material in the Southern African Development Community Region calls for provisions promoting legal uniformity and minimum standards in respect of the manufacture, control, possession, import, export and transfer of firearms, ammunition and other related materials.

C. Making contact

It is important for those seeking information that there is a structure in place that ensures that the request for information reaches its destination quickly and efficiently. If there is no such predetermined process in place, the request will in all probability never reach the intended recipient who can provide the information.

While the use of informal contacts to gather information may often result in getting the information more quickly, there are inherent dangers in obtaining information without the safeguards, checks and balances that are typical elements of a formal procedure. Effective and properly functioning information exchange mechanisms, especially across borders, will give less cause for an investigator to call a friend and allow the officer to act with confidence when using the information received.[1]

In international law, there exist a number of procedural rules to follow when a country requests certain types of information from another. These rules are in place to ensure that the information gathered is credible and is ultimately admissible in a court of law. In most legal systems, there are rules in force as to how evidence is to be collected. Using the formal route will ensure that those rules are adhered to and that the evidence collected is admissible in court.

[1] United Nations Office on Drugs and Crime, "Policing: police information and intelligence systems", *Criminal Justice Assessment Toolkit*, Part 4 (New York, 2006), chap. 7.

Article 13, paragraph 2, in the chapter on cooperation provides for the identification of a national body or single point of contact that is the formal channel through which all requests for information under the Protocol are handled. This provision is subject to article 18, paragraph 13, of the Convention, which deals with mutual legal assistance. The provisions of the Convention call for the creation of a central authority to deal with requests for mutual legal assistance. The central authority created under article 18, paragraph 13, would obviously deal with all mutual legal assistance requests under the Convention relating to transnational organized crime and not just requests relating to firearms. As will be discussed below, it is recommended that not only should States parties create a national body or single point of contact to deal with the Firearms Protocol, but also that they designate a body or single point of contact to deal specifically with tracing requests.

The issue of establishing contact is recognized in a number of instruments on small arms control. For example, the United Nations Programme of Action (see chap. I, footnote 2, above) calls in section II, paragraph 5, for the establishment or designation of a national point of contact to act as liaison between States on matters relating to the implementation of the Programme. The focal point under the Protocol could be the same person or body as the focal point under the Programme of Action.

D. Organizing information-sharing

How to organize information-sharing is often a problem. In many police stations and offices of other law enforcement officials the basic needs such as electricity, telephone, fax and e-mail facilities simply do not exist, making the fast exchange of information very difficult. In most cases requests are made in writing, are then taken to the regional headquarters and from there continue on to the national office and the point of contact.

Computer databases represent a significant investment that is often underestimated. Hardware quickly becomes obsolete and software licences require regular and expensive subscriptions. However, there are important benefits to be had in terms of managing large volumes of data. The main risk factor in both paper and electronic files is poor information management. Records may not have been properly completed in the first place or adequately cross-referenced and inaccurate data entries or so-called "key-in" errors (typing mistakes) mean not only that searches are incomplete, but also that false matches may be made. As time goes by information may become dangerously out of date or incomplete, a significant risk factor where sophisticated criminals are involved. Poor security protocols can mean that the data may not be secure from unauthorized access or tampering. All these risks can be offset by proper protocols, but they must be effectively applied, enforced and supervised.[2]

Although, many countries still lack modern information technology equipment, information can still be effectively exchanged through careful and accurate filing of paper files or index cards. Although information technology allows for much faster processing, there is little that can be achieved by information technology that cannot also be done by manual activity.[3]

[2] Ibid., chap. 4.4.

[3] Ibid.

E. Article 12

1. Sharing case-specific information under article 12, paragraph 1

Paragraphs 1 and 2 of article 12 both begin with the proviso that they are to be applied without prejudice to articles 27 and 28 of the Convention. Article 27 of the Convention deals with law enforcement cooperation as well as with issues that are not mentioned in paragraphs 1 and 2 of article 12, such as providing items for analytical or investigative purposes, while article 28 deals with the collection, exchange and analysis of information on the nature of organized crime. States parties are encouraged to consult with scientific and academic communities in analysing trends in organized crime and to assess the effectiveness of policies and measures to combat it. In both cases, the reference to application without prejudice is included to ensure that the provisions of the Convention are not limited by those of the Protocol.

Article 12, paragraph 1, of the Protocol requires States parties to share information on authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition. This provision recognizes that States parties are only expected to share information in a manner that is consistent with their domestic legislation and administrative systems.

States parties' legal systems differ and it may not be possible for a country to share information with another State, for example, on an authorized dealer. In many countries, personal information that the State holds regarding its citizens is deemed at least to be confidential. In other jurisdictions, the State may not release this type of information for any reason or under any circumstances. Thus, where there is a legal restraint a country is not required to act contrary to its own laws. It may also be that a country's domestic legislation or administrative procedures already regulate such information exchange and again the country is not required to deviate from this.

Under article 12, paragraph 1, the request for information must also be case-specific, meaning that it cannot be a general request but must relate to a specific case. In most cases, it will be necessary to convince the State party that is being asked to provide information that there exist grounds for it to release the requested information. States should be prepared to justify their requests for case-specific information if required to do so by the State party holding the information.

2. Sharing information on illicit manufacturers and traffickers (article 12, paragraph 2 *(a)-(d)*)

Article 12, paragraph 2 *(a)-(d)*, requires States parties to exchange among themselves information on illicit manufacturers and traffickers, as well as on their methods to prevent, combat and eradicate illicit manufacturing and trafficking. The chapeau to this paragraph resembles that to article 12, paragraph 1, in that it is to be applied without prejudice to articles 27 and 28 of the Convention and it recognizes that a State party can only provide information in a manner consistent with its own legal and administrative systems. Article 12, paragraph 2, also refers to the fact that the information exchanged must be relevant. Unlike article 12, paragraph 1, however, it need not be case-specific.

Article 12, paragraph 2 *(a)*, requires the sharing of intelligence on organized criminal groups that are known to take part or suspected of taking part in the illicit manufacturing of or trafficking in

firearms, their parts and components and ammunition. It is important to note that States must share information even on groups that are merely suspected of engaging in illicit manufacturing and trafficking. The kind of information that law enforcement and other agencies could share on organized criminal groups includes but is not limited to:

- Names of suspected participants
- Links to any other organized criminal groups
- Links to any other forms of organized crime
- Current investigations against them and past investigations
- Modus operandi of the organized criminal groups
- Sources of funding of the organized criminal groups
- Operational structures of the organized criminal groups
- Methods of recruiting new members

This type of information-sharing is useful at the regional level and in particular for countries that share borders. When intelligence is effectively shared, it can for example form the basis for cross-border and regional operations to combat organized criminal groups involved in illicit manufacturing and trafficking.

In the Balkans, the Regional Centre for Combating Transborder Crime of the Southeast European Cooperative Initiative is the international organization that facilitates the exchange of information on transborder crime between the police and customs authorities of the region. When joint investigations are launched based on information exchanges, prosecutors are invited to participate in the operational meetings.

Article 12, paragraph 2 *(b)*, refers to information exchange regarding the means of concealment used in the illicit manufacturing of or trafficking in firearms and ways of detecting them. This is a particular problem faced by law enforcement officials across the world. It is difficult for law enforcement officials to combat the illicit cross-border trade in firearms as the sheer volume of traffic, both human and in goods, is simply too great for it all to be controlled through physical inspection. Most States parties do not have sufficient capacity to completely manage cross-border traffic. In addition, some States parties lack adequately trained customs officials to deal with the problem of the illicit manufacturing of and trafficking in firearms. Many countries have very long borders that traverse some very inhospitable terrain.

Information on when and where to look for illicit firearms is of great assistance. If it is known that firearms are being smuggled in containers, customs officials can attempt to search these or if they have a container scanner they can scan the containers. Alternatively, if they know firearms are coming through in the petrol tanks of trucks, officials can specifically focus their searches on such tanks. Information on new methods of concealment should be shared immediately and States parties should share information on whether one method of concealment is being used more often than others. Criminals try to stay one step ahead of law enforcement officials, so they are

constantly looking for new ways of concealing firearms. Information on where such firearms are being concealed, what routes are being used (in particular border posts that may be operational only during daylight) and when such consignments are being moved (maybe during the night when the border post is without personnel) is vital information that States parties should share as soon as it is received or as soon thereafter as possible.

Under article 12, paragraph 2 *(c)*, States parties are required to exchange among themselves information regarding the methods, means, points of dispatch and destination and routes customarily used by organized criminal groups in the illicit trafficking in firearms, their parts and components and ammunition. Such information is extremely valuable to law enforcement agencies as it allows them to concentrate their limited resources on areas that will most likely have the biggest impact on combating organized criminal groups involved in trafficking. Information on the route to be used allows law enforcement agencies to monitor that route as well as to plan what action to take. For example, if information is received that a particular border post will be used and the method of concealment will be to hide the firearms in containers, then additional personnel can be dispatched to that border post and searches of containers can be increased.

3. Exchanging information on legislative experiences and practices and measures

Article 12, paragraph 2 *(d)*, requires that States parties share information on legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

The sharing of legal experiences is often very effective when legal officials from States parties can get together and personally discuss their different practices and experiences. It is helpful if, within a framework of cooperation, officials from specific units meet on a regular basis to discuss issues of common concern.

> In Southern and East Africa there are regular meetings between the chiefs of police of neighbouring countries to discuss policing matters in general. In addition, heads of detective branches discuss operational issues relating to firearms and share information on how each country deals with the problem. Other key elements of the police such as legal officers also meet and discuss issues relevant to them. As part of that process, they share experiences and how individual countries have dealt with particular problems from a legislative perspective. In both cases, the heads of the respective detective branches of the police also meet.

4. Sharing of technological and scientific information

Article 12, paragraph 3, calls for States parties to share with each other relevant scientific and technological information useful to law enforcement in order to enhance each other's abilities to prevent, detect and investigate illicit manufacturing of and trafficking in firearms and to prosecute those involved. Over the last few years there have been significant scientific and technological advances that have been harnessed in an effort to help prevent the illicit manufacturing of and trafficking in firearms.

The provisions of article 12, paragraph 2 *(d)*, apply, mutatis mutandis, in this instance. It is important to create structures that will help States to come together and share this type of information. It is also important that the right people from each country come together. Therefore, what was stated above concerning sharing of legislative and operational experiences also applies in this instance.

There are a number of regional structures across the world that bring together the heads of the policing agencies of countries. It would be useful if those meetings could include sharing of information on scientific and technological advances in the area of combating illicit firearms manufacturing and trafficking.

F. Tracing of firearms

Article 12, paragraph 4, requires States parties to cooperate in the tracing of firearms that may have been illicitly manufactured or trafficked, and this cooperation must include providing prompt responses to requests for assistance in tracing such firearms.

The purpose of tracing firearms and ammunition is to identify the point at which legally held firearms and ammunition have been diverted into the illicit sphere. For such tracing to occur there needs to be clear information about the last person or body that was known to hold legal authority over the firearms and ammunition. This, in turn, can help in identifying who was responsible for the diversion. Identifying points of diversion can help in holding the responsible persons to account and in preventing future diversions by the same sources.[4]

There are three requirements for effective tracing. The first is that firearms must be properly marked, as required by article 8, so that they can be identified; secondly, the appropriate record-keeping system must be in place, as required by article 7; thirdly, a tracing system must be established to enable States parties to respond to tracing requests.

The difficulty States parties may encounter when trying to implement article 12, paragraph 4, of the Protocol is that article 7 only requires States parties to keep records of parts, components and ammunition where appropriate and feasible. States parties are nevertheless strongly encouraged to keep records on parts and components and ammunition in order to facilitate tracing. In addition, under the article on marking (article 8) no provision is made for the marking of ammunition, as has already been noted. States parties are also strongly encouraged to mark ammunition, however, and marking of ammunition is therefore discussed in this Guide in chapter IV, on marking.

In addition to the above, States parties are not required by the Protocol to keep records of internal transfers or the tracing of a firearm while in a country. However, in order for States parties to be able to provide a full record of a firearm's movement, all States parties are encouraged to record any domestic movement of a firearm.[5]

Article 12, paragraph 4, also requires prompt responses to requests for assistance. This requirement is further qualified by the words "within available resources". The speed with which a State party can respond to a request will depend largely on the contents of the request itself and the State

[4] United Nations Development Programme, "Marking and record-keeping", in *How To Guide: Small Arms and Light Weapons Legislation*, Advocacy Series (Geneva, Bureau for Crisis Prevention and Recovery, July 2008), sect. 6.2.1.

[5] *Legislative Guides* (see chap. I, footnote 3, above), part four, para. 251.

party's capacity to respond. If the information requested is available from an electronic database, then the State may have a greater ability to respond quickly. However, if the information sought is on a manual system, the response will most probably take longer. Use of the words "within available resources" clearly recognizes that the response time will be affected by a State party's capacity to respond to a request and thus a case-by-case approach should be adopted.[6] Where a State has an electronic database, a week could be considered sufficient time to respond to a request.[7]

States parties are therefore encouraged to put in place the appropriate mechanisms to ensure that they are able to provide any information requested in a prompt manner. There are a number of steps States parties can take to facilitate a timely response to tracing requests. Some of these are outlined in the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons. While that Instrument does not address the tracing of parts, components and ammunition, the Protocol does so and States parties must therefore cooperate in the tracing of parts and components and ammunition as well as of complete firearms.

It is recommended that States review and implement, if feasible, the steps outlined in the International Tracing Instrument. States parties requesting a trace must supply sufficient information to the responding State party, including information:

- Describing the illicit nature of the firearms and ammunition, other information such as photographs[8] and the legal justification for the request
- Circumstances under which the firearm was found, including identity of any person(s) detained with the confiscated firearm[9]
- Markings, type, calibre and any other relevant information to the extent possible
- Intended use of the information[10]

On the administrative side, States parties are encouraged:

- To put in place (where they do not exist) laws, regulations and administrative procedures needed to deal effectively with tracing requests
- To designate one or more national points of contact to exchange information and act as liaison on all requests received[11]

Responses to the request

On receiving a request to carry out a trace, States parties should consider implementing the following steps:

[6] Ibid., para. 243.

[7] "Best practice guide on marking, record-keeping and traceability of small arms and light weapons", in *Handbook of Best Practices* (see chap. II, footnote 4, above), chap VII, p. 12.

[8] Ibid.

[9] Ibid.

[10] International Tracing Instrument (see chap. IV, footnote 1, above), para. 17.

[11] Ibid., paras. 24-25.

- Acknowledge receipt of a tracing request within a reasonable time
- Provide all available information sought by the requesting State that is relevant for tracing the illicit firearms and ammunition. This could include information such as:[12]

  Date of manufacture

  Hidden or other identification markings

  Special characteristics

  Date on which technical testing was done

  Identification of the testing body

- If the firearms were transferred legally out of the country, request:[13]

  Date of export

  The importing State

  Transit States

  Final consignee

- Where the firearms have not been transferred out legally, request:[14]

  Confirmation of the illegal transfer

  Whether an investigation was conducted into the illegal transfer and what information emerged from that

- Request additional information from the requesting State where a tracing request does not contain the information mentioned above

Although the Protocol requires States parties to cooperate in the tracing of firearms and ammunition, there may be instances where States parties are unable to fully comply with the provisions of the Protocol. This may happen, for example, when a State has an ongoing criminal case involving the firearm in question and revealing information sought in a tracing request would jeopardize the investigation. In such cases, it is suggested that States parties follow the guidelines in the International Tracing Instrument and:

- Delay or restrict the content of their response to a tracing request or refuse to provide the information sought, where releasing the information would compromise ongoing criminal investigations or violate legislation providing for the 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.
- Delay or provide a restricted response to a tracing request, or refuse to provide the information sought, on the grounds identified above. In such a case, the requested State should inform the requesting State of the reasons for this. The requesting State may then subsequently seek clarification of the explanation.[15]

[12] *Handbook of Best Practices*, chap. VII, p. 12.

[13] Ibid.

[14] Ibid.

[15] International Tracing Instrument, paras. 22-23.

G. International cooperation and assistance

A potentially useful tool in the tracing process would be establishing points of contact and a corresponding database listing them so that States parties immediately know to whom they should send tracing requests. This would ensure that tracing requests go to the right person or entity from the very beginning, thus saving time and effort.[16] While some countries may choose to identify an individual person as the point of contact, this carries the risk that the point of contact will become obsolete if there is a high turnover in staff. This may ultimately end up frustrating the tracing process. It would require that information be constantly updated as to who the point of contact is, which could be very time-consuming.[17] It is therefore suggested that the point of contact be assigned to a particular job title with the result that anyone holding that job would then become the de facto point of contact for tracing requests.

In determining whether there should be a separate point of contact to handle such requests apart from the national body or single point of contact provided for in article 13 of the Protocol, one would need to determine the volume of such requests, the particular job or responsibilities held by the national body or single point of contact and a State party's capacity to provide a separate point of contact for tracing requests. Bearing in mind what was said in section C, "Making contact", above, in most cases the national body or single point of contact on firearms would be responsible for dealing with all requests emanating from the provisions of the Firearms Protocol and other instruments such as the Programme of Action. Before designating this same body or individual as the focal point for tracing requests, States parties should ensure that this is the most appropriate person or authority to deal with such requests. If, for example, the national body or single point of contact designated under article 13, paragraph 2, is an institution or individual that deals with the Protocol and firearms issues on a purely political level rather than on an operational level or the national body is one completely unrelated to the investigation of organized crime, then the State party might be wise to designate a different point of contact for tracing requests. This will help avoid delays in responding and maintain the integrity of the tracing request. The fewer people seeing confidential tracing requests the better. Bodies or points of contact for such requests could be established for example in police or justice institutions, or States could designate as the point of contact the office of the head of the body that is responsible for keeping records of firearms.

Lastly, States parties should consider cooperating with other organizations that have the capacity to provide information regarding the tracing of firearms, such as the International Criminal Police Organization (INTERPOL) and the World Customs Organization. INTERPOL (with its INTERPOL Firearms Tracing System) may be able to provide very specific information relating to a trace, while the World Customs Organization will probably provide information that is more general. Both organizations, however, may be able to contribute to a successful trace.[18]

As regards international assistance, given the importance of tracing in tackling the problem of illicit manufacturing of and trafficking in firearms and ammunition, States parties that do have the capacity are encouraged to lend technical and financial assistance to help build the capacities of those which currently cannot carry out an effective trace.

[16] International Tracing Instrument, paras. 25 and 31.

[17] United Nations Development Programme, "Marking and record-keeping", chap. VI, p. 115.

[18] International Tracing Instrument, paras. 33-35.

H. Confidentiality of information

Article 12, paragraph 5, deals with confidentiality regarding the information supplied. The article calls on States parties to whom information is given to guarantee that they will treat the information as confidential and comply with any restrictions on the use of the information, if requested to do so by the State party providing the information.

Information provided may be of such a nature that the State supplying it may request the recipient State party to treat the information as confidential. For example, in order to trace a firearm it may be necessary to obtain information from a manufacturer that will reveal who the client was and the amount paid for the firearm. That information, if made available to a rival manufacturer, would allow the rival manufacturer to identify the purchaser, approach the purchaser and offer a similar product at a better price. This might even occur with manufacturers from different countries, in which case the State party supplying the information would be even more reluctant to supply the data without a guarantee of confidentiality. Manufacturers may be loath to reveal information related to intellectual property.

The next area where confidentiality is vital is in the area of crime investigation. It is conceivable that two States parties may be investigating the same organized criminal group. One State may have an informant in place or an undercover agent whose identity it may not want to reveal and therefore may request that any information provided be treated with the highest level of confidentiality.

The best practice document, *Manual de Buenas Prácticas*, developed by the Latin American and Caribbean Police Intelligence Community (CLACIP), recommends that information be graded according to its level of sensitivity. This in turn determines the level of security to be applied to this information and the method of its transfer. It grades the information at five levels, as follows:

1. *Top secret.* Information, documentation or material, relating to internal or external national defence plans and associated intelligence operations, the unauthorized disclosure of which could lead to a diplomatic rift affecting the national interest and cause an armed attack on the country or destroy its internal stability.

2. *Secret.* Information, documents or material, relating to internal or external national defence plans and associated intelligence operations, the unauthorized disclosure of which could affect diplomatic relations, damage the prestige of the country or endanger its internal stability.

3. *Reserved.* Information, documents or material the unauthorized disclosure of which could prove harmful to the interests or prestige of the police, afford an advantage to a foreign police or military force or lead to casualties or losses in internal defence actions.

4. *Confidential.* Reports and communications, which, in view of their content, are of interest only to the persons to whom they are addressed, the unauthorized disclosure of which may prove detrimental to a specific body, group or person.

5. *Restricted.* Information, documentation and material addressed to members of the institution and which must be protected from access by non-members.

States may want to consider establishing a grading system to determine the level of confidentiality required especially if law enforcement officials tend to err on the conservative side and classify all

information as top secret. A top-secret classification is usually accompanied by onerous measures aimed at protecting the secrecy of that information, while in reality much of the information classified as such is not really of a sensitive nature and could be freely exchanged. This process identifies which information must be treated with sensitivity and which is perceived as low-risk and can be shared. The requirements for the transfer of the less sensitive information are lower, which allows a quicker and freer exchange of information to take place.

I. Restrictions

According to article 12, paragraph 5, a State party can require that the other State party requesting information comply with restrictions on the use of that information. Restrictions that might be imposed could take the form of not disclosing the information to any potential rival in the case of commercial transactions and the information being used only by a limited number of people, such as those investigating cases of illicit manufacturing or trafficking. There may also be a restriction that the information supplied by the State party is only to be used in camera courtroom sessions, that is, in sessions that are not open to the public. Another restriction may be that where an undercover agent is used he or she should not be called to give evidence in any court proceedings or, if called, his or her identity may not be disclosed.

J. Inability to maintain confidentiality

If confidential information received from another State party becomes part of a criminal case, a State's domestic legislation may not allow that information to remain confidential. In some States, all relevant information must be disclosed by the prosecution to the defence. In such a case, the State party that provided the information must be notified prior to the disclosure of the information. This would allow the State party that has been requested to provide the information to review its decision and decide whether it can still provide the information. It also gives that State party the opportunity to vet the information that it discloses so that it can limit any damage that the release of the information may cause to it and any other parties involved, such as an undercover agent.

Article 18 of the Organized Crime Convention, regarding the provision of mutual legal assistance, provides that States parties must comply with requests to treat information as confidential except where a receiving State party must disclose exculpatory information that it has received to an accused. Again, the State party that provided the information must be forewarned of such disclosure.

IX Article 13. Cooperation

A. Introduction

Article 13 of the Firearms Protocol recognizes the need for all those persons dealing with the problem of the illicit manufacturing of and trafficking in firearms to cooperate at all levels, bilaterally, regionally and internationally. Only this type of concerted holistic approach will ensure success. Through cooperation, neighbouring countries can conduct joint operations, engage in joint training of law enforcement officials, share information on various issues and develop and share technical expertise, experiences and best practices.

B. Background

Article 13, paragraph 1, calls for States parties to cooperate at the bilateral, regional and international levels to prevent, combat and eradicate illicit manufacturing of and trafficking in firearms. The first point to note is the progression from cooperation at the bilateral level to the regional and then to the international level. These three steps represent an incremental approach to the process. It is relatively easy to start at the bilateral level as it only involves two countries. Cooperation becomes more complicated at the regional and international levels, where States parties may have to deal with several different legal and administrative systems.

Effective cooperation begins at the national level. Such cooperation may take many forms, ranging from exchanging information with another State party to responding to a tracing request or providing mutual legal assistance. For effective cooperation, States parties must have an effective internal means of gathering information. At the state level, inter-agency coordination bodies comprising police, customs, border guards and other relevant law enforcement agencies as well as administrative agencies dealing with record-keeping and licensing should be developed. The concept of inter-agency bodies or national focal points is dealt with in more detail later in this chapter.

C. Bilateral cooperation

At the bilateral level, cooperation usually involves a bilateral agreement dealing with issues of crime, more specifically firearms. Cooperation here can take the form of sharing of information, skills, training, technology and financial support. There are numerous examples across the world.

> Operation Rachel is a bilateral cross-border operation between Mozambique and South Africa that has been running for 13 years and is aimed at the recovery of firearms stashed in caches created during the liberation of and subsequent civil war in Mozambique. The operation is a result of a bilateral anti-crime agreement entered into by the Governments of Mozambique and South Africa. It includes

a series of annual cross-border operations involving the police of both countries. These operations are information-driven and are aimed at identifying caches left over from the liberation of and civil war in Mozambique. The purpose is to find the caches and destroy their contents, thus preventing the firearms from finding their way into the hands of criminals. In these operations the South African police have provided training to the police of Mozambique in the identification of firearms, how to lift caches, the use of explosives (as used to destroy the firearms), information-gathering and analysis, and use of global positioning systems and metal detectors.

D. Regional cooperation

At the regional level, States parties should consider establishing coordination bodies. (In some regions, these are known as regional points of contact.) Under the auspices of these coordination bodies, States parties can consider implementing agreements to enhance coordination by:

(a) Establishing standard operating principles and procedures;

(b) Providing mutual legal assistance;

(c) Conducting joint law enforcement training at the regional level leading to joint criminal investigations;

(d) Joint border patrols and operations;

(e) Provision of technical, financial and material assistance to enhance capacity to combat illicit firearms trafficking and manufacturing;

(f) Tracing of firearms and ammunition;

(g) Sharing of information and intelligence on criminal groups in the area, their associates, sources of firearms, supply routes, destinations, methods of transportation and financial support of the groups;

(h) Exchange visits by law enforcement personnel and organized crime experts;

(i) Regular exchange of information, meetings of national and regional focal points, joint workshops and or public education programmes.

The countries of East Africa have created a regional body known as the Regional Centre on Small Arms dedicated to dealing with the problem of illicit firearms in all its aspects and overseeing the implementation of 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. This structure has coordinated activities related to small arms in the region over the past few years.

The Regional Centre structure consists of representatives of the countries of the region and has its headquarters in Nairobi. Within its framework the region has developed a plan to implement the Nairobi Protocol that includes the harmonization of the legislation of the member countries as called for in that Protocol, the development of a series of best practice guidelines, the development of training courses covering a number of aspects relevant to firearms and fund-raising.

E. International cooperation

On the international front, structures such as the INTERPOL Firearms Tracing System, to which over 180 countries, as members, have access, is a good example of international cooperation. INTERPOL has provided the System to all its members and they are required to use it both to input information onto the database and to retrieve information from it.

F. Points of contact

Article 13, paragraph 2, of the Protocol provides for countries to establish national bodies or points of contact that will act as liaison between them and other countries. As mentioned above, the need to establish points of contact is also recognized in a number of other instruments. It is important that the investigating official on the ground, when confronted with the need to obtain information on firearms from another State party, knows whom to contact within his or her own country. The national body or point of contact should in turn know whom to contact in the other State party.

The establishment of national bodies on firearms can be a good first step for countries that are beginning to set up the mechanisms needed to deal with the problem of illicit manufacturing of and trafficking in firearms. This body can be an interdepartmental group made up of representatives of all the government departments that play a role in firearms control; departmental representatives may include, among others, the police, military, customs, education, conservation or wildlife, foreign affairs and office of the president. In many countries, civil society is also included. The point of contact is normally chaired by a lead department, which will vary from country to country and could be the ministry of foreign affairs, the ministry of defence or safety and security (police), to name but a few.

The national body could be responsible for the following tasks:

- Responding to requests for assistance by providing training and technical assistance pursuant to article 14
- Verification that import licences have been issued pursuant to article 10, paragraph 2
- Verification that transit States have no objection to the transit of firearms and ammunition through their territory pursuant to article 10, paragraph 2
- Verification pursuant to article 10, paragraph 4, that a shipment of firearms and ammunition has been received
- Assisting with verifying or validating the authenticity of licensing or authorization documents pursuant to article 10, paragraph 5
- Coordination of border controls and of police and customs transborder cooperation pursuant to article 11, subparagraph *(b)*
- Exchange of information as provided for under article 12

G. Cooperation with the firearms industry

Article 13, paragraph 3, of the Protocol requires States parties to seek the support and cooperation of manufacturers, dealers, importers, exporters, brokers and commercial carriers of firearms to detect and prevent the illicit activities referred to in paragraph 1 of the article.

It is important that States parties find ways of fostering better relations with the firearms industry. This can be done by:

- Providing for regular information or briefing sessions conducted by the State to disseminate information relevant to the industry, to include a question-and-answer session. Such sessions could cover items such as the State party's vision for the industry in the country.
- Creation of technical committees with representatives of both the State party and industry where technical information can be exchanged or discussed. For example, issues such as the marking of firearms could be dealt with in a forum that allows both sides to indicate what would be acceptable to and feasible for them. Not only would this lead to better relations between the parties, but also industry is often a good source of technical information that is of value to the State.
- Allowing industry to create its own self-regulating authority, which would negotiate with the State party on issues relevant to it and then ensure compliance by its members.
- The inclusion of representatives of industry in formal delegations of States parties to international meetings on firearms.

X Article 14. Training and technical assistance

It is vital that law enforcement agencies have sufficient capacity and resources to combat the organized criminal groups engaged in illicit manufacturing of and trafficking in firearms and ammunition and also to enforce the control measures outlined in the Firearms Protocol.

Article 14 of the Protocol requires States parties to cooperate with each other and with international organizations so that they may receive the training and technical assistance needed to develop their capacities to combat and eradicate illicit manufacturing of and trafficking in firearms and ammunition.

A. Training assistance

States parties vary in their capacities to combat illicit manufacturing of and trafficking in firearms and ammunition. Organized criminals are adept at taking advantage of weak border controls, limited investigative and prosecutorial capacities, and the inability of some States to control the circulation of legal weapons within their own territory.

States parties with greater capacity to combat illicit manufacturing of and trafficking in firearms should share their expertise and resources with States seeking to strengthen their capacity. States parties should, whenever possible, promote the targeted training of law enforcement officials, conduct joint trainings between law enforcement agencies and engage in exchange visits of officers with other agencies. In particular, training should encompass:

- How to thoroughly check and evaluate documents and compliance with licences
- Recognizing different categories of firearm
- Using high-tech detection equipment
- Recording and retrieving information stored on computerized databases, including using INTERPOL's data-capturing systems, that can be analysed by customs and shared with other relevant state agencies
- Database management
- Intelligence-gathering for information pertinent to the Protocol
- Detection of fake firearms documents
- Ballistics training

States parties must also increase cooperation with relevant international organizations and take advantage of existing tracing and investigative tools offered by those organizations. Police organizations such as the European Police Office and INTERPOL should be regarded as a first step towards building a sufficient intelligence base to be used for operational policing actions to fight illicit firearms manufacturing and trafficking. States are encouraged to use the firearms tracing facilities

of INTERPOL (orange notices and the Firearms Tracing System) in order to increase their capacity to support weapons-trafficking investigations.[1]

National law enforcement agencies should cooperate in information-gathering with relevant United Nations bodies, reputable non-governmental organizations and individual researchers who are able to collect field data and evidence from local witnesses regarding illicit manufacturing and trafficking, and diversion of arms.

B. Technical assistance

States should provide customs and other law enforcement authorities with sufficient resources, including high-tech detection and analysis equipment, to be able to carry out their investigations. Equipment and training should be provided for example to enable customs officers at airports and ports to make routine checks of cargo manifests against actual cargo, as well as of flight plans against flight directions, times and registration numbers of carriers. This is particularly important at airports and ports where arms cargoes are known to originate or pass through.

Given the ever-growing volumes of goods that are traded and shipped across borders and the critical resource situation in many States, States parties may consider providing technical assistance to support the training and equipment of customs officers, air traffic inspectors and port police, for example with X-ray equipment for containers and advanced communication tools.

In addition, countries with developed tools of investigation such as software for tracing and identifying firearms and ammunition are encouraged to share them as cost-effectively as possible with less developed countries that are seeking to increase their investigative capacity.

The annex to this chapter presents a selected list of registers, databases and information exchange mechanisms with respect to firearms and ammunition currently in use by Member States and international organizations.

Annex. Selected list of registers, databases and information exchange mechanisms on firearms and ammunition in use by Member States and international organizations

A. Member States

Canada

- Canadian Firearms Reference Table. The Forensic Laboratory of the Royal Canadian Mounted Police (RCMP) manages the Firearms Reference Table, an encyclopaedic research tool developed by RCMP

[1] www.interpol.int/public/weapons/default.asp.

that provides narrative and graphic information relating to the description, technical identification and legal classification of firearms. The Firearms Reference Table is used to identify and classify firearms accurately. Each known gun is assigned an "FRT" number and a legal classification that enables the police, a firearms officer, a firearms registrar or a firearms verifier to determine instantly the legality of a gun. Firearms details include make, model and specifications such as calibre and barrel length. The FRT is used extensively by law enforcement officials in verifying firearms for accurate import-export controls, in facilitating detection of stolen firearms (tracing), ensuring accurate international communications involving transnational crime and determining the legal classification of a firearm.

Links:

Canada Firearms Program: www.rcmp-grc.gc.ca/cfp-pcaf/

United Kingdom of Great Britain and Northern Ireland

The National Ballistics Intelligence Service (NABIS) provides an intelligence resource that is available to police forces and other law enforcement agencies that focuses entirely on the criminal use of firearms. It comprises three separate but interlinked elements, namely:

- A complete registry of all recovered firearms and ammunition coming into police possession in England and Wales
- A ballistics comparison capability to link crimes and incidents within 24 to 48 hours in urgent cases
- An associated intelligence database to provide strategic and tactical intelligence capable of focusing law enforcement activity

Links:

www.nabis.police.uk/faqs.asp#1

United States of America

- *eTrace.* This system allows web-based access to the Bureau of Alcohol, Tobacco and Firearms and Explosives tracing system to give law enforcement both domestically and internationally the ability to trace data from firearms seized in connection with a criminal investigation. eTrace allows law enforcement to access their trace results directly and makes it possible to generate statistical reports to analyse their trace data so as to determine firearms trafficking trends or patterns.

Links:

www.atf.gov/publications/factsheets/factsheet-etrace.html

B. United Nations

United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean

The United Nations Regional Centre for Peace, Disarmament and Development in Latin America and the Caribbean (UN-LiREC) was created by the General Assembly by its resolution 41/60J and has its headquarters

in Lima. The Centre functions as a platform for outreach activities in Latin America and the Caribbean of the Office for Disarmament Affairs of the Secretariat.

The Small Arms and Light Weapons Administration (SALSA) System is a web-based platform that supports several databases that regroup information on the implementation of firearms instruments, national firearms legislation, weapons destruction and stockpile management, country points of contact and public information on activities undertaken by UN-LiREC and its partners, among others. (SALSA was created with assistance from the Royal Canadian Mounted Police through UN-LiREC and the Inter-American Drug Abuse Control Commission (CICAD).)

Links:

www.unlirec.org

C. Other international organizations

International Criminal Police Organization

The International Criminal Police Organization (INTERPOL) has two major initiatives relating to conventional weapons (firearms and explosives): the orange notice and the Firearms Tracing System (formerly known as IWeTS).

- The orange notice provides a warning about weapons when there is reason to believe that it will help law enforcement and security officials identify a threat they might not normally detect. This generally involves firearms, especially small arms, which are designed to disguise their threat potential. The orange notice also covers parcel bombs and information about radiological, chemical and biological threats. Orange notices are available to law enforcement and, in most cases, security officials at approved international organizations.
- The Firearms Tracing System provides member countries with a communication and information-sharing tool that helps to enhance criminal and terrorism investigations related to firearms. The System is currently the only international analytical database designed to collate information on illegal firearms trafficking. It is also the only international system for stolen and recovered weapons. The System provides current indexes of firearms manufactures and other information that facilitates the identification of firearms.

Links:

www.interpol.int/public/Notices/default.asp

www.interpol.int/public/weapons/default.asp

South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons

The South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons (SEESAC) has a mandate from the United Nations Development Programme and the Stability Pact for South Eastern Europe to further support all international and national stakeholders by strengthening national and regional capacity to control and reduce the proliferation and misuse of small arms and light weapons, and thus contribute to enhanced stability, security and development in South-Eastern and Eastern Europe.

- In order to provide all small arms and light weapons (SALW) stakeholders in South-Eastern and Eastern Europe with an overview of regional current events and as part of encouraging information exchange on small arms and light weapons issues, SEESAC has developed its own SEESAC Regional SALW Media Monitoring Service and Database, distributed daily to a number of small arms and light weapons regional and international stakeholders.
- Small arms and light weapons databases cover related projects; destruction statistics; collection statistics; and publications.
- For many of these items the software and manual may be downloaded from the SEESAC website.

Links:

www.seesac.org/about-seesac/1

XI Article 15. Brokers and brokering

A. Introduction

Over the last two decades, the dynamics of the arms trade have changed significantly. Many different actors—such as brokers—now engage in a wide range of activities and services that are often crucial for the transfer of firearms across state borders. When conducted in compliance with national and international law, these activities are legitimate. Indeed, many Governments rely on brokers to negotiate agreements on their behalf. However, a combination of weak norms, vague legal definitions, corruption and, for some countries, a lack of capacity to implement and enforce firearms transfer controls creates an environment where unscrupulous brokers can supply arms unlawfully to criminals, terrorists and human rights abusers, sometimes in violation of United Nations arms embargoes.

It is acknowledged that many States lack the capacity to control the activities of brokers and that the regulation of brokers and brokering are steps that can really only be undertaken once States have established other control mechanisms on the movement and exchange of firearms and ammunition, such as record-keeping systems and mechanisms to control the import, export and transit of firearms and ammunition. It should also be noted that establishing a system to regulate brokers and brokering cannot be used as a substitute for effective import and export controls. Effective mechanisms to control imports, exports and transit of firearms and ammunition are crucial to combating illicit firearms manufacturing and trafficking and must be instituted in addition to any controls on brokers and brokering.

Annex I to this chapter contains background information on national, regional and global initiatives in the area of regulating arms brokering.

B. Overview of article 15

Article 15 of the Firearms Protocol requires States parties to consider establishing a system for regulating the activities of those who engage in brokering. According to the article, such a system could include one or more of the following measures:

(a) Requiring registration of brokers operating within their territory;

(b) Requiring licensing or authorization of brokering; or

(c) Requiring disclosure on import and export licences or authorizations, or accompanying documents, of the names and locations of brokers involved in the transaction.

States that already have such a system in place are further encouraged to include information on brokers and brokering in their exchanges of information under article 12 of the Protocol and to retain records regarding brokers and brokering in accordance with article 7 of the Protocol.

The guidelines provided in section C below are intended to help States parties develop the necessary systems outlined in the Protocol for regulating brokers and for ultimately increasing their capacity to control the movement of firearms, their parts and components and ammunition. It is also hoped that these guidelines will encourage high common standards of practice in this area among the States that are party to the Protocol.

Pursuant to article 15, States parties should require the registration of all individuals and companies operating as brokers within their territory. The registration process should include conducting background checks on applicants prior to their being registered as brokers. Ideally, individuals and companies engaging in brokering-related activities such as arranging transportation and financing should also have to be registered. In addition to registration of brokers, article 15, paragraph 1 *(b)*, suggests that a system regulating brokers and brokering could require the licensing or authorization of brokering. Although the Protocol does not elaborate on the meaning of this provision, the guidelines suggest that, in addition to individuals and companies having to be registered as brokers, licences should also be required for each individual transaction involving the brokering of firearms, their parts and components and ammunition. Decisions whether to grant a licence for brokering should be made on a case-by-case basis. The guidelines suggest that those involved in brokering-related activities such as arranging transportation or financing should also have to apply for licences.

The guidelines below provide recommendations concerning the following areas:

- Registering brokers and maintaining records on brokers and brokering activities
- Licensing arms brokering, including defining the scope of national controls, possible competent authorities and the criteria according to which licences are granted or rejected
- Regulating brokering-related activities
- Dealing with the challenges of extraterritoriality

C. Guidelines

1. Definitions

The first step in any regulatory action is to define the scope of the controls outlined in the law to be implemented. A lack of legal clarity and specificity always carries a risk that controls could be applied in a discretionary manner, being too strict in some cases and too weak in others.

(a) Brokering and brokers

"Brokering" is not defined in the Firearms Protocol. According to the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, however, brokering generally refers to activities that involve the arranging of transactions or transfers or firearms and ammunition by persons or companies that are not direct parties to the transactions and do not usually come into direct contact with or possession of the actual items. Often they operate from countries that may not be directly involved.

States should also consider, when defining what a broker is, the definition of the activities central to arms brokering that have been agreed by 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.[1] These include:

- Serving as a finder of business opportunities for one or more parties
- Putting relevant parties in contact
- Assisting parties in proposing, arranging or facilitating agreements or possible contracts between them
- Assisting parties in obtaining the necessary documentation and in arranging the necessary payments

States should take into consideration that in some countries firearms manufacturers hire representatives to arrange their contracts for them and in such cases it may not be practical to require a representative to obtain a licence to carry out each firearms-related transaction. In those cases, countries could consider implementing a system whereby a representative only requires a general licence to carry out brokering for a stated period, thereby decreasing the administrative burden of having to obtain licences for individual transactions.

(b) Third-country and extraterritorial brokering

Countries should also clearly define key terms, such as "third-country brokering" and "extraterritorial brokering", which generally refer to the forms of international arms brokering where there is no physical relationship between the nationality and/or the location of the broker and the transferred weapons.[2] These overlapping but distinct forms of brokering give the greatest cause for concern as they exploit the complexities and ramifications of the international arms trade and are not regulated by conventional export controls.

Below are two examples of how different countries define what a broker is. Again, States should bear in mind that these definitions may not work for all countries, but are meant merely as examples of definitions.

[1] See A/62/163 and Corr.1.

[2] In the case of third-country brokering, the goods have no physical connection with the location of the broker, for example, a broker in country A organizes a shipment of firearms from country B to country C via a route that does not touch country A. In extraterritorial brokering, neither the location of the broker (in country A) nor the route of the firearms (from country A or B to country C) has any connection with the broker's country of nationality (country D).

The United States takes a comprehensive approach by defining an arms broker as "any person who acts as an agent for others in negotiating or arranging contracts, purchases, sales or transfers of defence articles or defence services in return for a fee, commission or other consideration".[a] Associated activities such as financing, transportation, freight forwarding or any other action that facilitates the manufacture, export or import of defence articles or services, are included in this definition. However, it has also been noted that the difficulty of enforcing controls on such a wide range of activities could present problems for smaller countries, which lack the intelligence and law enforcement outreach of the United States.[b]

[a] United States of America, Code of Federal Regulations, Title 22, Foreign Relations, chapter I: Department of State, subchapter M—International Traffic in Arms Regulations, Part 129.2. Available from www.pmddtc.state.gov/regulations_laws/itar_official.html.

[b] Elizabeth Clegg and Michael Crowley, "Controlling arms brokering and transport agents: time for international action", Briefing Paper No. 8 (British American Security Information Council/International Alert/Saferworld, 2001), p. 12.

Germany's legislation is more limited in that it refers to "anyone who intends to broker a contract on the acquisition or transfer of war weapons located outside federal territory or to show that an opportunity exists for concluding such a contract",[a] thus limiting the definition to certain core brokering activities such as buying and selling and direct mediation. This approach, however, may be too narrow, in that some activities of concerns, such as putting buyers and sellers of arms in touch with other middlemen (indirect mediation), may fall outside the regulatory system. The challenge, therefore, is for States to identify among the multitude of activities that are covered by brokering those which need to be and can be effectively controlled, and to ensure that such activities are the subject of full scrutiny and review.[b]

[a] Germany, Act Implementing Article 26 (2) of the Basic Law (War Weapons Control Act) (as amended by article 3 of the Law of 11 October 2002, Federal Law Gazette I, p. 3970), part one, sect. 4a (Foreign transactions), para. 1. Available in English from www.ausfuhrkontrolle.info/bafa/en/export_control/legislation/export_control_cwc_p_war_weapons_control_act.pdf.

[b] Germany, Act Implementing Article 26 (2) of the Basic Law (War Weapons Control Act) (as amended by article 3 of the Law of 11 October 2002, Federal Law Gazette I, p. 13), part one, sect. 4a (Foreign transactions), para. 1. Available in English from www.ausfuhrkontrolle.info/bafa/en/export_control/legislation/export_control_cwc_p_war_weapons_control_act.pdf.

2. Registering brokers (article 15, paragraph 1 *(a)*)

As foreseen in article 15, paragraph 1 *(a)*, of the Firearms Protocol, the registration of arms brokers with their competent national authorities is the first dimension of control of arms brokering. There is often a lack of knowledge about arms brokers, including their modus operandi, the activities they engage in, the types of weapon they deal with, the sources of supply, the methods of transportation and so on. A register of brokers could help to address this problem because it would be a repository for important information concerning the nature and activities of individuals and companies operating in this field. By requiring brokers to be registered, Governments can ensure that only individuals and companies that fulfil certain requirements of trustworthiness or credibility are permitted to register and are therefore eligible to apply for arms brokering licences.[3]

[3] "Best practice in the regulation of arms brokering: a paper by Saferworld addressed to the Group of Governmental Experts on Brokering", *Saferworld Briefing*, March 2007, p. 5.

Registration is also in the interest of legitimate brokers, as it would facilitate the dissemination of information on relevant changes to legislation, control lists, arms embargoes and so on to registered brokers, thereby helping them to reduce the risk of inadvertent breaches of national brokering regulations or other relevant laws.

The existence of arms brokering registers can also help States cooperate more closely and effectively in combating illicit arms brokering. For example, States that maintain such registers can more easily pass on information concerning brokering agents who have been convicted of serious crimes and struck off the register. This can help to prevent debarred or convicted agents from moving from the jurisdiction of a State where they are banned and resuming their activities undetected in another country. By sharing information on their register with other countries and/or relevant organizations, for example INTERPOL, Governments could find registers a useful tool not only in aiding enforcement of national controls, but also in combatting transnational crime.

(a) Factors to take into account when establishing a sound system for the registration of brokers

Depending on the legal system of the country implementing a registration system for brokers, some countries may incorporate into law the factors mentioned below while others may simply use them as guidance. Whichever legal system is in place, it should be noted that the factors for consideration listed here are not intended to be exhaustive and that any country implementing a registration system must take into account the fact that changing circumstances will affect which factors should be taken into consideration at any given time.

Some of the considerations to be taken into account when deciding which persons or legal entities are eligible to be registered as brokers include:

- A broker should be a citizen or national of (irrespective of where he or she is domiciled) or legal entity in the country in which he or she is applying; or
- A resident.

Some of the considerations to be taken into account when assessing whether a person or legal entity should be allowed to register as a broker include but are not limited to:

- Minimum age requirement
- Convictions for serious criminal offences that could affect the person's suitability to act as a broker, such as acts of violence and possession of prohibited arms
- Individuals or companies who have deliberately attempted to mislead the registering and licensing authorities dealing with arms control
- Individuals or companies who have not complied with previous licences

This is not an exhaustive list. Any list of factors that States may take into account when deciding whether to allow an individual or legal entity to register as a broker should be flexible so that States may consider changing circumstances when assessing the suitability of candidates.

Other suggested considerations:

- A broker should be allowed to register in more than one country, thus allowing greater controls over that broker.

- Registration should only be valid for a specified period. Requiring brokers to periodically renew their registration would provide Governments with the opportunity to assess, on an ongoing basis, the reputation of a company or the fitness of an individual to be involved in arms-brokering activities.

- Some States may consider imposing a competency test on prospective brokers whereby applicants would have to demonstrate detailed knowledge of the relevant legislation and regulations relating to the international transfer of small arms and light weapons as well as knowledge of health and safety regulations.

Possible information to be included in the register:

- Name and address of the arms broker

- Recent photograph

- Name and address of the company's owners and directors

- Information regarding any subsidiary offices or parties contracted to carry out work on the company's behalf

- Number of arms-brokering licences applied for since registration and details and copies of any licences granted, as well as information concerning licences not granted, including copies of any written decisions

- Level of compliance of the agent with national arms-brokering regulations and other laws. (This information is of particular importance because, when processing arms-brokering licence applications, it will be important for Governments to take into account not only the details of the particular transaction that they are processing, but also the record of the agent in question.)

- Certificate of competency, if required

- Names of individuals prohibited from becoming brokers

A model registration form is provided in annex II to this chapter.

(b) Record-keeping by the brokers

States should require registered brokers to keep detailed records of their activities, including audited accounts relating to their arms dealings showing the names of their beneficiaries to facilitate monitoring and enforcement of controls by national authorities and to exchange information with other States on the activities of known agents.

Brokers should also be obliged to hand over their records to national authorities as and when requested.

In the United States, a natural person or legal entity wishing to engage in the brokering of defence articles, including firearms, or services, must register with the Directorate of Defense Trade Controls within the Department of State and pay a registration fee.[a] The person or entity is required to disclose information regarding their eligibility to engage in brokering activities, demonstrating that they are not indicted nor have any convictions. The registration is valid for a maximum of two years and the Directorate of Defense Trade Controls conducts a detailed review of each registration application. Indictment or convictions of violating arms export control legislation disqualify individuals from engaging in brokering activities and the Department of State publishes information on individuals and companies that have been convicted of violating, or conspiracy to violate, the Arms Export Control Act.[b]

Source: www.fas.org/asmp/resources/govern/109th/Statefactsheet3jul06.htm.

[a] United States of America, Code of Federal Regulations, Title 22, Foreign Relations, chapter I: Department of State, subchapter M—International Traffic in Arms Regulations, part 129.2. Available from www.pmddtc.state.gov/regulations_laws/itar_official.html.

[b] www.pmddtc.state.gov/regulations_laws/aeca.html.

In Estonia, individuals and entities wishing to engage in brokering activities are required to register with the Strategic Goods Commission, a licensing body within the Ministry of Foreign Affairs.[a] An electronic register was established in March 2004. The registration, which applies to all those who are involved in brokering activities from a third country to any other third country irrespective of whether or not the goods enter Estonian territory, may be refused and an existing broker can be removed from the register if, among others things, the applicant knowingly submits false information or documents or has in the previous five years violated Estonian arms control regulations or an international sanction. In addition, registered brokers are required to regularly submit reports to national authorities that allow for monitoring of the broker's activities. Notably, the Estonian Ministry of Foreign Affairs publishes a list of all registered brokers.[b]

[a] Estonia, Strategic Goods Act, 17 December 2003 (2 Riigi Teataja I 2004, 2, 7), available from www.vm.ee/?q=en/node/5045; and Establishment of State Register of Brokers of Military Goods and Statutes for Maintenance of Register (Government of the Republic Regulation No. 60 of 9 March 2004) (Riigi Teataja 1 II 2004, 14, 96), available from www.vm.ee/?q=en/node/5047.

[b] www.vm.ee/eng/kat_153/4920.html.

3. Licensing and authorization of individual brokering transactions

Although not specifically required in article 15 of the Protocol, it is recommended that States establish licensing systems whereby individual brokering deals (or transactions) are assessed by the competent authorities before they can be carried out. At the same time, if States accept to be bound by specific procedures and standards for licensing direct arms exports, it is logical to assume that these should also apply to transactions involving brokering activities. Indeed, it could be argued that, in the case of brokering, licensing requirements should be applied with even greater rigour because some of the risks associated with brokered transactions can be higher than if the weapons were directly exported by a State, especially with regard to end-use controls. Some of the risks that should be taken into account before a licence is issued are outlined in the section below.

(a) Steps for licensing and authorization of individual transactions

(i) Apply a comprehensive set of objective criteria

Before authorizing a brokered transaction involving firearms, the competent national authority should determine whether the proposed transfer complies with criteria as set out in national laws, regulations and policies and whether it is in line with the country's regional and international commitments and legal obligations.[4] These criteria should not be narrower than those which apply to direct exports of arms. In addition, before issuing a licence for a brokering transaction, the issuing body should consider the following risks, among others, that the transaction may pose, including the risk that:

- The recipient may divert the firearms to other users or to uses other than those authorized, including onward shipment of the firearms to hostile neighbouring countries.[5]
- The recipient may misuse the firearms, for example through human rights abuses or crime, in violation of national and international legal obligations.[6]
- The recipient may lose control of the supplied weapons, for example as a result of poor stockpile management or security, corruption, theft.
- The recipient becomes a party to armed violence or tension in the future, or the supply of further firearms intensifies this risk.
- The regulations and controls of the recipient relating to firearms holding, ownership, use, sale or transfer are inadequate.

The above list is not exhaustive and as circumstances change within a country or region, new risks may become pertinent to the proposed transaction.

These risks apply in particular to the commercial transfers that fall within the scope of the Firearms Protocol and that involve brokering entities. Since state-to-state transactions and transactions for purposes of national security are exempted from the scope of the Protocol (see article 4), the risks and factors to be taken into account when considering whether to authorize any commercial firearms transfer, including brokered transactions, do not have to be counterbalanced against the rights of States "to take action in the interest of national security" (article 4) or to holding and transferring arms required for self-defence. There should therefore be an even greater presumption against authorizing brokered transfers within the framework of the Protocol when any of the above risk factors are judged substantial.

[4] Global principles that articulate these obligations have been developed by a diverse group of non-governmental organizations from different regions of the world in conjunction with international legal experts. They reflect the content of various instruments, including international and regional treaties, international customary law, declarations and resolutions of the United Nations and other multilateral and regional organizations, principles recognized by the United Nations, including international human rights law and international humanitarian law, and the articles on responsibility of States for internationally wrongful acts (General Assembly resolution 56/83, annex). Accordingly, these global principles outline the conditions under which arms transfers should or should not be permissible. See Arms Trade Treaty Steering Committee, *Compilation of Global Principles for Arms Transfers* (London, Amnesty International, 2007). Available from www.amnesty.org/en/library/info/POL34/003/2007.

[5] The risk of diversion, which is particularly relevant to commercial transactions, is a potential source of other factors to take into account, in particular, the existence and quality of mechanisms for end-use controls.

[6] The legal use of firearms must comply, inter alia, with international standards including those set by the Charter of the United Nations, the Geneva Conventions of 12 August 1949 (United Nations, *Treaty Series*, vol. 75, Nos. 970-973), and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 (*Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.2, annex). This means that States should not allow the brokering of firearms if they know that they are likely to be used in violation of these standards.

(ii) Licence each transaction on a case-by-case basis

States should require that all registered brokers apply for a written licence specific to each core brokering activity, wherever that may take place and prior to the activity being carried out. (The activities could include those outlined by the Group of Governmental Experts on Brokering mentioned in the annex to chapter XI above.) Re-exporting using the same licence should be prohibited.

(iii) Information to be included in a licence application

All applicants should be required to provide detailed information in their application (if known at the time of application) regarding:

- Name, address, business address, contact details of the applicant
- Nature and source of the goods to be transferred, including serial numbers (if known), descriptions of make, model and calibre, name of manufacturer, quantity of goods, value of goods and so on
- End-user
- Country of import and export
- Means and routes of transport, including countries of destination and transit, and ports of entry and exit
- Subcontractors involved, including names, addresses and the countries where their businesses are registered
- Financial and insurance arrangements

If some of the information mentioned above is not known at the time of application, a licence may be granted on condition that the information is provided before the transaction takes place.

(iv) Documents to be provided in support of a licence application

All applicants should also submit to their home government authorities copies of the relevant foreign export and import licences and transit licences and/or certificates as well as an end-user certificate for each transaction or delivery, so that these may be authenticated prior to any decision to issue a licence to the broker.

(v) License validity

The licence should be limited to a reasonable period (for example one year). If brokers themselves are granted general licences to carry on brokering activities, a country may want to extend the validity of the licence to a few years to ease the administrative burden.

(vi) Power to revoke

States should have the authority to revoke a licence, for example, should the circumstances surrounding the proposed transaction change such that the licensing authority no longer considers the transaction to be in the best interests of the State.

(vii) Non-transferability

Licences should be granted to specific individuals or companies and should not be transferable.

(viii) Competent licensing authority

In order to ensure consistency between brokering and export control systems, competence for issuing brokering licences should lie in each country with the authority responsible for authorizing direct arms exports. Moreover, if the same licensing authority is responsible for granting licences for brokering activities undertaken by persons or legal entities within the framework of previously issued export licences, the administrative burden will be reduced.

(ix) Post-delivery verification

States should verify the safe and proper arrival of an incoming or outgoing weapons shipment in order to guard against diversion. In that regard, an obligation should be imposed on the broker at the time a licence is issued to provide additional documents, such as customs entry receipts and delivery receipts, after the transaction has taken place. At the very minimum, a common standard should be developed whereby in cases where the diversion or misuse of firearms supplied by brokers is uncovered, States should withhold further licences until the factors behind the diversion or misuse are addressed.

A model licence form is provided in annex III to this chapter.

4. Record-keeping

In order to facilitate adequate cooperation between domestic authorities and suitable international information exchange, the competent licensing authority should keep records of all licences issued and the licence holders. Such records should be kept for a minimum of 10 years and should include:

- The broker's name, the name of his or her business and business address
- The type of activities covered by the licences that have been issued
- Information concerning the recipient of the firearms and the final end-users

In addition, as mentioned earlier, States should have unrestricted access to the detailed reports maintained by brokers. These records—along with a State's own records—could also be used by Governments as the basis for annual public reports on licensed arms-brokering activities, an important step in enhancing monitoring and transparency of national brokering controls.

5. Sanctions

(a) Revoking registration

States should ensure that they have the power to remove a broker from a register. States must be able to respond to changes in circumstances regarding national interests and should be able to

deregister brokers who for example are subsequently convicted of serious criminal offences that could affect their suitability to act as brokers, brokers who have violated arms transfer control legislation or brokers who have attempted to mislead the registering authorities.

(b) Other penalties

States will need to ensure the criminal prosecution of those who deliberately engage in brokering or trafficking of arms without obtaining a licence or for breaching the licence's provisions. In particular, countries should establish severe penalties for all nationals, residents and registered companies involved in the brokerage of arms to an embargoed destination or recipients, including where the supply is conducted through third countries. This would serve as a deterrent to those involved in illegal and irresponsible arms transfers and who may operate using entities in different countries.

6. Extraterritorial jurisdiction

Often arms brokers do not reside in the country from which the weapons originate, nor do they live in the countries through which the weapons pass or for which they are destined. A broker can operate from virtually anywhere to arrange an arms transfer. Tightening up national brokering legislation with regard to the activities of arms brokers in only one country and/or in one region simply encourages brokers to operate from countries where there is less or no risk of legal sanctions. Illicit brokers tend to be expert at exploiting differences in national approaches and taking advantage of existing national and transnational loopholes to the point where it becomes difficult even to identify whose laws have been broken, let alone to embark on a prosecution. Monitoring and regulating the transnational aspect of arms brokering are therefore key to the establishment of effective controls. Depending on the provisions of their constitution, States may therefore consider establishing extraterritorial jurisdiction over those residents or citizens who carry out arms brokering from a different country or over those who may not be residents or citizens but whose transaction involves the country in question, for example, because the arms will transit through that country or because the arms originate from that country.

Of the States that currently operate controls on arms brokering, a number have included an extraterritorial dimension within their controls. Nationals of Belgium, the Czech Republic, Estonia, Finland, Hungary, Lithuania, the Netherlands, Nicaragua, Norway, Poland, Romania, South Africa, Sweden, Ukraine, the United Kingdom and the United States are required to apply for a licence in advance in order to undertake arms-brokering activities even if the weapons involved will not enter the national territory.

The scope and application of extraterritorial controls vary from State to State. United States legislation mandates that the brokering of firearms and all other defence articles and services is subject to a licensing requirement regardless of whether or not the weapons transit United States territory and even when the activities are carried out abroad. Furthermore, the licence requirement also extends to "foreign persons" established and working from abroad in circumstances where they broker defence articles or services of United States origin or work with United States nationals.[a]

[a] United States of America, Code of Federal Regulations, Title 22, Foreign Relations, chapter I: Department of State, subchapter M—International Traffic in Arms Regulations, Part 129.2 *(b)*. Available from www.pmddtc.state.gov/official_itar_and_amendments.html.

Options include using the national residence or domicile of an arms-brokering agent[7] and the country of operation[8] as possible bases for control. However, both systems, especially the latter, can be circumvented by agents who want to evade national controls. They in fact make possible unlicensed brokering transactions the moment a broker changes residency or crosses a national border to an adjacent country. Therefore, States should be aware of the fact that if they fail to include full extraterritorial provisions (i.e. those based on nationality) in their legislation, some nationals and residents may well simply relocate outside their territory and conduct their brokering operations under less regulated jurisdictions. Under such circumstances, those countries where brokering controls do not exist or are lax will inevitably become a haven for illicit arms brokering.

States should consider introducing extraterritorial controls requiring their nationals, and those residents operating in their territory, to obtain a licence to broker arms, no matter where they carry out their activities. As a first step, States should examine whether there are constitutional or other legal impediments to subject brokering controls to extraterritorial jurisdiction.

7. Regulating brokering-related activities

Although the activities of transport and financing agents are not generally considered to constitute core brokering activities, they are nevertheless crucial to brokering transactions and therefore merit special attention. Arms suppliers and the brokers who act on their behalf are highly dependent on reliable transporters with secure carriers to move the cargoes, as well as the financial and insurance support for the transactions. Moreover, arms brokers can sometimes structure their operations in such a way as to appear to be transporting or financial agents, rather than arms brokers per se.

One argument that is often cited against the inclusion of brokering-related activities in the system of brokering controls is that such controls place an unmanageable burden on States. However, it is possible to devise control systems in such a way that, while providing much needed regulation and oversight of activities, such as financing and transportation of arms, the controls put in place are efficient and manageable. This could be achieved, for example, by subjecting such activities to general licensing and/or waiving licence requirements for low-risk destinations (see below).

> Yet again, national controls vary quite substantially. In the United States, the financing, transportation, freight forwarding or taking of any other action that facilitates the manufacture, export or import of a defence article or defence service falls under the definition of brokering activities that are subject to prior licensed approval of the Directorate of Defense Trade Controls.
>
> *Source:*United States of America, Code of Federal Regulations, Title 22, Foreign Relations, chapter I: Department of State, subchapter M—International Traffic in Arms Regulations, Part 129.2 (b). Available from www.pmddtc.state.gov/official_itar_and_amendments.html.

[7] This happens, for example, in Sweden, where controls on arms brokers apply to any person domiciled in Sweden, even if the brokering activities take place outside Swedish territory.

[8] Under German law, any brokering activity involving the use of German telecommunications resources (e.g. telephones, faxes, e-mails or the mailing of letters from Germany) requires a licence.

Other Governments have sought to address particular aspects of brokering-related activities. The Government of Germany imposes a licence requirement on the transportation of "war weapons" between third countries on ships sailing under the German flag or by aircraft registered in Germany.

Source: Germany, Act Implementing Article 26 (2) of the Basic Law (War Weapons Control Act) (as amended by article 3 of the Law of 11 October 2002), Federal Law Gazette I, p. 1778, part one, sect. 4 (Transport outside federal territory), para. 1. Available in English from www.ausfuhrkontrolle.info/bafa/en/export_control/legislation/export_control_cwc_p_war_weapons_control_act.pdf.

Legislation of the Netherlands provides that a Netherlands resident must seek licensed approval from the Ministry of Finance prior to financial involvement in the transfer of controlled goods outside the European Union.

Source: Netherlands, Ministry of Economic Affairs, "Export policy and legislation on strategic goods in the Netherlands", March 2004, sect. 3.2; unofficial translation of part of the introduction to the Handboek Strategische Goederen (Manual on strategic goods). Available from http://english.ez.nl/pv_obj_cache/pv_obj_id_CBDF4A79A5A8C76A24F8D7753C4E326D91A40000.pdf.

(c) Licensing of brokering-related activities

Ideally, the transportation, logistical, financial and insurance activities associated with arms brokering should also be subject to licensing. However, it is recognized that in many countries this would not be feasible and so it depends very much on each State to decide which control measures can be practically implemented.

(i) Exemptions and general licences

In order to reduce the bureaucratic burden, States may wish to consider issuing general licences that allow transportation, logistical, financial and insurance companies to engage in specified activities for a maximum period (e.g. three years).

(ii) Licence transportation companies

For countries that choose to implement a system whereby a licence has to be obtained by a transportation company for each individual transaction, States may wish to consider requiring the companies to submit the following information on the cargo in order to obtain a licence:

- Its ownership
- The end-users of the goods

- Details of the owners and operators of the vessel or aircraft
- The names and background details of all subcontracting parties[9]

However as mentioned above, it is recognized that requiring transportation companies to obtain licences for each transaction may be too onerous. Therefore, States could consider granting a general licence to operate for a stated period.

(iii) Utilize national controls on "dangerous goods"

States should utilize any appropriate legislation they have with regard to the transport of dangerous goods as a tool to enable interception by law enforcement authorities of "dangerous" firearms shipments. While it may be debatable whether firearms would directly constitute "dangerous goods", ammunition certainly would.

D. Conclusion

Unregulated or poorly regulated arms brokering continues to constitute a serious security and humanitarian threat. A number of initiatives at the regional and global levels point to the increased significance that regulating this activity has acquired within the international community and the need to put comprehensive measures in place to address it. If a large number of States establish comprehensive legislation prohibiting the unlicensed brokering and transport of arms by their residents or nationals, this would close the biggest gap that allows illicit brokering to take place as unscrupulous agents will find it much harder to conduct their business.[10] If all States then adopted and enforced such controls, it would be practically impossible for these agents to continue, as they would no longer be able to exploit different national standards.

At the national level, it is suggested that States should ensure that their controls include mandatory registration and licensing requirements for all core brokering activities and that they are fully extraterritorial in scope. A registration and licensing system would improve administrative efficiency, exclude dubious persons and companies from legal activities and improve enforcement by offering possibilities to penalize agents who contravene regulatory requirements. States should also extend regulation and oversight into the closely related fields of transportation, logistics, freight forwarding, insurance and financial services as they relate to arms brokering.

[9] Two main cases are conceivable with regard to which States would be competent to issue such a licence. A licensing obligation could be imposed in the country where the transportation firm is registered, in which case the company or individual who ultimately ships the arms could be responsible for applying for a licence, or States could place a licensing obligation on the owners of the transportation companies, based on nationality. The first approach could prove problematic to enforce, because transportation companies often shift registration and agents would be likely to relocate to countries with inadequate or poorly enforced controls. The second option is preferable but it would involve the development of extraterritorial controls (see Clegg and Crowley "Controlling arms brokering and transport agents", p. 16).

[10] Ibid., p. 22.

Annex I. National, regional and global initiatives aimed at regulating arms-brokering activities

1. National initiatives

The development of comprehensive national controls of arms-brokering activities is an essential part of efforts to tackle the proliferation and misuse of all weapons, including firearms. By April 2006, only 37 States had established arms brokering controls through laws, regulations and procedures.[11] The scope of these laws, however, varies, with some countries only controlling intermediation between relevant parties, while others regulate both "core" and "associated" brokering activities.[12] Only 25 countries require brokers to register with the national authorities, 30 have a system of licensing individual transactions and 15 have enacted extra-territorial controls that apply to brokering activities taking place offshore. One country—the United States—has broad extraterritorial controls, which apply not only to third-country activities conducted by nationals and established agents, but also to foreign agents who work from abroad if they broker weapons originating from the country in question or work with its nationals.[13]

2. Regional and multilateral initiatives

The need to adopt controls on arms-brokering agents has been acknowledged by States in a number of sub-regional, regional, and multilateral initiatives that in recent years have developed specific instruments dealing with arms brokering. These instruments are often far from comprehensive in scope and most of them are not legally binding. However, as they provide basic guidance on controlling arms brokering and show a certain degree of convergence, they are important from a norm-setting perspective.[14]

In Europe, Council of the European Union Common Position 2003/468/CFSP of 23 June 2003 on the control of arms brokering[15] constitutes the most progressive regional agreement thus far. Under this instrument, member States are obliged to revise legislation in several areas:

- Licences are required for brokering deals and applications for licences are considered with reference to the same criteria as export control decisions under the European Union Code of Conduct on Arms Exports.
- Records of licences must be kept for at least 10 years.

[11] International Alert, Saferworld and University of Bradford, *Reviewing Action on Small Arms: 2006–Assessing the First Five Years of the UN Programme of Action*, Biting the Bullet project (London, International Action Network on Small Arms, 2006), chap. 5, sect. 5.6.4. Available from www.iansa.org/un/review2006/redbook2006/Red-Book-2006.pdf.

[12] Holger Anders and Silvia Cattaneo, *Regulating Arms Brokering: Taking Stock and Moving Forward the United Nations Process*, Les rapports du GRIP (Brussels, Groupe de recherche et d'information sur la paix et la sécurité (GRIP), 2005), pp. 13-14.

[13] United States of America, Code of Federal Regulations, Title 22, Foreign Relations, chapter I: Department of State, subchapter M—International Traffic in Arms Regulations, part 129.2 (b). Available from www.pmddtc.state.gov/regulations_laws/itar_official.html.

[14] Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 (A/62/163 and Corr.1, para. 16).

[15] *Official Journal of the European Union*, L. 156, 25 June 2003. Available from www.eur-lex.europa.eu/pri/en/oj/dat/2003/l_156/l_15620030625en00790080.pdf.

- Information exchanges must be established between member States and third States in areas such as legislation, registered brokers and licence denials.

The Common Position also recommends though does not oblige member States to establish a register of arms brokers and to control brokering activities carried out outside their territory by brokers of their nationality who are resident or established in their territory.[16] A number of member States are now considering updating or introducing laws on arms brokering to ensure conformity with the Common Position.[17]

In Africa, legally binding agreements that include commitments to control the brokering of small arms and light weapons have been made by the Nairobi Group of the States of East Africa, the Great Lakes and the Horn of Africa,[18] as well as the Southern African Development Community[19] and the Economic Community of West African States.[20]

In the Americas, of particular note are the Model Regulations for the Control of Brokers of Firearms, Their Parts and Components and Ammunition,[21] which set important standards requiring States to apply a set of detailed criteria when authorizing arms-brokering activities. Article 5 states that the national authority will prohibit brokering activities and refuse to grant licences if it has reason to believe that the brokering activities will, or seriously threaten to:

- Result in acts of genocide or crimes against humanity
- Violate human rights
- Lead to the perpetration of war crimes
- Violate a Security Council embargo or other multilateral sanctions
- Support terrorist acts
- Result in a diversion of firearms to illegal activities, in particular, those carried out by organized crime, or
- Breach bilateral or multilateral arms control or non-proliferation agreements

Multilateral forums, such as the Organization for Security and Cooperation in Europe (OSCE) and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies have also reached important agreements that include standards for the control of arms brokering. The Wassenaar Arrangement's Elements for Effective Legislation on Arms Brokering, adopted in 2003,[22] commit States to include in national laws and regulations the following measures:

[16] Ibid., article 2.

[17] Holger Anders, "*Implementing the EU Common Position on the control of arms brokering: progress after two years*", *Note d'analyse*, Groupe de recherche et d'information sur la paix et la sécurité (GRIP), 7 July 2005. Available from www.grip.org/bdg/g4579.html#seizefin.

[18] Regional Centre on Small Arms, *Best Practice Guidelines for the Implementation of the Nairobi Declaration and the Nairobi Protocol on Small Arms and Light Weapons* (2005). Available from www.recsasec.org/pdf/Best%20Practice%20Guidlines%20Book.pdf.

[19] Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region (August 2001). Available from www.poa-iss.org/RegionalOrganizations/SADC/Instruments/SADC%20Protocol.pdf.

[20] Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (2006). Available from www.iansa.org/regions/wafrica/documents/CONVENTION-CEDEAO-ENGLISH.PDF.

[21] Organization of American States, Inter-American Drug Abuse Control Commission, Amendments to the Model Regulation for the Control of the International Movement of Firearms, Their Parts and Components and Ammunition: Broker Regulations (OEA/Ser.L/XIV.2.34 CICAD/doc1271/03). Available from www.cicad.oas.org/Desarrollo_Juridico/ENG/Resources/322MRFirearmsBrokersEng.pdf.

[22] Available from www.wassenaar.org/guidelines/docs/Elts_for_effective_legislation_on_arms_brokering.pdf.

- Licences or written approval for third-party arms brokering from one third country to another third country whether the broker is a citizen, resident or otherwise subject to the jurisdiction of the participating State
- Record-keeping of individuals and companies that have obtained brokering licences for third-party deals
- Adequate penalties and criminal sanctions to enforce arms-brokering controls effectively
- Options to limit the number of brokers in a participating State and to establish a register of brokers
- Information exchanges on arms-brokering activities among participating States

Building upon United Nations, OSCE, European Union and Wassenaar Arrangement documents, in 2004 OSCE adopted the OSCE Principles on the Control of Brokering in Small Arms and Light Weapons,[23] which also contain a number of provisions relating to licensing and record-keeping, registration and authorization, and information exchange. The Principles also encourage States to consider controlling the brokering activities outside of their territory carried out by brokers of their nationality resident or brokers who are established in their territory.[24]

Progress, albeit limited, has also been made in Asia. States members of the Asia-Pacific Economic Cooperation have agreed to ban brokering activities for the transfer of Man-Portable Air Defence Systems (MANPADS), which are not authorized by Governments,[25] while the Association of Southeast Asian Nations has made explicit reference to the need to prevent arms smuggling as part of its efforts to combat transnational crime.[26]

3. Global initiatives

In recent years, there have also been attempts to develop global action on how best to regulate arms brokering. In addition to 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,[27] of particular international significance is the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects of 2001.[28] In the Programme of Action, which is politically binding, States agreed to develop common understandings of the basic issues and the scope of the problems related to illicit brokering in small arms and light weapons with a view to preventing, combating and eradicating the activities of those engaged in such brokering (sect. II, para. 39). States recognized the need to "develop adequate national legislation or administrative procedures regulating the activities of those who engage in small arms and light weapons brokering. This legislation or procedures should include measures such as registration of brokers, licensing or authorization of brokering transactions as well as the appropriate penalties for all illicit brokering activities performed within

[23] See www.osce.si/docs/mc-dec_7-04.pdf.

[24] OSCE Principles on the Control of Brokering in Small Arms and Light Weapons, OSCE, Forum for Security Cooperation, decision No. 8/04, 24 November 2004. Available from www.osce.org/documents/fsc/2004/11/3833_en.pdf.

[25] Asia-Pacific Economic Cooperation Guidelines on Controls and Security of Man-Portable Air Defence Systems (MANPADS). Available from www.smallarmssurvey.org/fileadmin/docs/K-External-publications/2004/2004-APEC-Controls-Security-of-MANPADS.pdf.

[26] See www.aseansec.org/10374.htm.

[27] United Nations, *Treaty Series*, vol. 2326, No. 39574.

[28] See *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. The definition of small arms and light weapons in the Programme of Action is taken from the 1997 report of the Panel of Governmental Experts on Small Arms. According to that definition, small arms include revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns; light weapons include heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles (sometimes mounted), portable launchers of anti-aircraft missile systems (sometimes mounted) and mortars of calibres less than 100mm; ammunition and explosives include cartridges (rounds) from small arms, shells and missiles for light weapons, mobile containers with missiles or shells for single-action anti-aircraft and anti-tank systems, anti-personnel and anti-tank hand grenades, landmines and explosives (see A/52/298, annex).

the State's jurisdiction and control (sect. II, para. 14). Finally, States recommended to the General Assembly in the Programme of Action a number of follow-up activities, including: to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons (sect IV, para. 1 *(d)*).

The most advanced work on brokering within the United Nations has been conducted by the Group of Governmental Experts established pursuant to General Assembly resolution 60/81. The Group was mandated to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons. The final report of the Group of Governmental Experts, published in August 2007, describes arms brokers as intermediaries who bring together relevant parties and arrange or facilitate a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise.[29] The definition also identifies some closely related activities or supporting services that ensure the smooth transfer of weapons. The report also recommends a set of optional elements for national legislation and regulation systems to prevent, combat and eradicate illicit brokering of small arms and light weapons.

Annex II. Model arms-brokering registration form

Registration for arms-brokering activities

1. For individuals

Photo

Name _____

Date of birth _____

Citizenship (specify if dual or multiple)

Passport number _____

National tax number _____

Address _____

Telephone number _____

Fax number _____

E-mail address _____

Convictions or indictment for any criminal offences _____

Number of brokering licences applied for since previous registration _____

2. For companies

A. Company details

Company's name _____

Scope of activities _____

[29] A/62/163 and Corr.1, para. 8.

Address _____

Name of authorized representative _____

Telephone number of authorized representative _____

Fax number of authorized representative _____

E-mail address of authorized representative _____

Certificate of registration or incorporation: number, with date of incorporation _____

Other registrations (e.g. as producer, exporter or importer of defence goods) _____

Number of brokering licences applied for since previous registration _____

B. Company's owner(s)

Name(s) _____

Date(s) of birth _____

Citizenship (specify if dual or multiple) _____

Passport number(s) _____

National tax number (s) _____

Address(es) _____

Telephone number(s) _____

Fax number(s) _____

E-mail address(es) _____

Convictions or indictment for any criminal offences _____

C. Subsidiary offices

Number of subsidiary offices (national and foreign) _____

Name(s) _____

Address(es) _____

Telephone number(s) of authorized representative(s)

_____

Fax number(s) of authorized representative(s)

_____

E-mail address(es) of authorized representative(s)

_____

Registration number(s) (if registered under a separate broker registration) _____

Signature: Date:

_____ _____

Annex III. Model arms-brokering licensing form

Application for an arms-brokering licence

1. The applicant

Photo

Name _____

Date of birth _____

Citizenship (specify if dual or multiple) _____

Passport number _____

National tax number _____

Address _____

Telephone number _____

Fax number _____

E-mail address _____

If applying on behalf of a company, specify role within the company _____

Convictions or indictment for any criminal offences (please specify) _____

Company's name (when the transaction is to be undertaken by a registered company) _____

Broker registration number (for countries that have a broker registration system) _____

Certificate of registration or incorporation number, with date of incorporation _____

Other registrations (e.g. as producer, exporter or importer of defence goods) _____

Company's address _____

Telephone and fax numbers and e-mail address of the company's authorized representative (if different from the name of the applicant supplied above)

_____

2. The transaction (provide the following information, if known)

Identification of firearms by category/description

_____

Quantity of firearms _____

Nature of participation in the transaction (e.g. serving as a finder of business opportunities to one or more parties; putting relevant parties in contact; assisting parties in proposing, arranging or facilitating agreements or possible contracts between them; assisting parties in obtaining the necessary documentation; assisting parties in arranging the necessary payments; etc.)

_____

Identification of manufacturers of firearms, their parts or components or ammunition (including name of manufacturer, nationality, residence and place of business)

_____

Identification of ownership/source of the firearms, their parts or components or ammunition (name, address, telephone, fax, e-mail, etc.) _____

Identification of parties, commercial partners and/or sub-contractors in the transaction (including name, nationality, country of residence and location of place of business and nature of participation in the transaction)

_____

Travel routes and flight plans for shipments of arms

_____

Financial and insurance arrangements

_____

Have any previous licence applications for the same transaction been rejected? _____

Relevant foreign export, import and transit certificates and end-user certificate _____

Identification of means and route of transport _____

Identification of end-user (including name, address, telephone and fax numbers, e-mail address,

_____

Serial numbers/unique identifiers of firearms

_____

Signature: Date:

_____ _____

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

United Nations publication
Printed in Austria

V.10-56148—July 2011—500