



General Assembly

Distr.: Limited
6 October 1999

English
Original: Chinese and English

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

Fifth session

Vienna, 4-15 October 1999

Agenda item 4

**Consideration of the additional international legal instrument against
illicit manufacturing of and trafficking in firearms, their parts
and components and ammunition**

Proposals and contributions received from Governments on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime

China: comments and proposals on the draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition and Other Related Materials, Supplementary to the United Nations Convention against Transnational Organized Crime

Article I: Relationship with the United Nations Convention against Transnational Organized Crime

Paragraph 1

1. China agrees with paragraph 1 of article I as it appears now.

Paragraph 2

2. China has no difficulty with the language in paragraph 2 of article I, but it is of the view that the paragraph should be moved to article III.

Article II: Definitions

Subparagraph (c)

3. China understands that, generally speaking, "firearms" means any lethal barrelled weapons that can expel a bullet or projectile by the action of an explosive, not including large

military armaments such as portable anti-tank missile or rocket systems, anti-aircraft missile systems or mortars. In line with this understanding, China hesitates to support a broad interpretation of the definition of firearms.

4. With regard to explosives, it should be emphasized that explosives and firearms have distinctly different uses: explosives are widely used in industrial and commercial fields while firearms are almost exclusively used as weapons. Thus, it might be inappropriate to incorporate provisions on explosives into the draft Protocol and apply to both firearms and explosives the same restrictions to their manufacture and import and export. However, China fully agrees that explosives are highly dangerous if they fall into the hands of criminals and that international cooperation is needed to combat crime involving explosives. In this regard, China supports the proposal by Japan on exploring the formulation of a separate protocol or dealing with the issue in other forums.

Subparagraph (e)

5. China proposes the deletion of subparagraph (e) (ii). The reasons are given below in the comments on article IX.

Article III: Purpose

Subparagraphs (a) and (b)

6. Subparagraphs (a) and (b) can be incorporated into one succinct sentence as follows:

“(a) To promote and facilitate cooperation among States Parties to this Protocol and to the Convention in their efforts to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials;”

Article IV: Scope

7. China is of the view that the scope of the Protocol should be limited to criminal activities related to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and that an effort should be made to refrain from going beyond the mandate in the relevant United Nations resolutions and going into areas related to disarmament and arms control measures, such as the control and transparency of legal State-to-State transfers of small arms and the collection and disposition of weapons following a conflict.

8. Thus, China proposes that article IV, on scope, should read as follows:

“This Protocol applies to all classes of commercially traded and manufactured firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security or to firearms manufactured exclusively to equip a State Party’s own army or security force.”

Article IV *bis*: Sovereignty

9. China fully supports the provisions in article IV *bis*, proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

Article V: Criminalization

Paragraph 3

10. Although it has domestic regulations prohibiting the violation of arms embargoes mandated by the Security Council, China proposes the deletion of paragraph 3, which has little connection with transnational organized crime and might constitute an encroachment upon the judicial independence of States Parties.

Article IX: Marking of firearms

Subparagraph 1 (a)

11. Manufacturers in China are obliged by law to put the appropriate marking on every firearm at the time of its production, regardless of what the firearm is destined to be used for (i.e. whether it is for military use or civilian use). However, markings may differ depending on what the firearms are to be used for. China is of the view that the criteria for determining what is an appropriate marking should be whatever enables the competent agency of a State Party to trace the source of the firearm. Therefore, it would be sufficient to require the marking to include the country of manufacture while leaving it to each State Party to decide what other information should be included in the marking. To make it more convenient to identify the country of manufacture, a universal system of country codes could be considered.

Subparagraph 1 (b)

12. China does not require the marking of imported firearms. More consideration and discussion should be given to the provision in subparagraph 1 (b) as it appears now. Bearing in mind the various practices in different countries concerning imported firearms, it might be sufficient for firearms to bear unique and identifiable markings that are recorded in full during the process of exporting and importing the firearms. Thus, subparagraph 1 (a) of article IX, in combination with subparagraph 1 (a) of article VIII, could solve the problem of tracing imported firearms, thus relieving States Parties of the task of having to make changes in their current legislation and practices. In any case, the importing countries could decide whether to mark the imported firearms or not following their importation.

Article X: Preventing the reactivating of deactivated firearms

13. China supports the idea of preventing the reactivating of deactivated firearms but the provision in article X needs further clarification.

Article XI: General requirements for export, import and transit licensing or authorization systems

14. As for article XI, China has no particular difficulty with the requirements regarding export and import, but it has reservations with regard to transit licensing and retransfer authorization as the relevant provisions need to be clarified further. First and foremost, the definition of “transit” itself needs further clarification. In the view of China, the requirement of transit licensing inevitably imposes a heavier burden on the transit country. Besides, whether it is the importer or the exporter who should apply for the transit licence is not clear in the current provision. The relationship between transit and trans-shipping also needs clarification.

15. With regard to the requirement for written approval from the exporting country prior to re-export or retransfer, China is of the view that how to dispose of the imported firearms is the sovereign right of the importing country because, in general, once goods are delivered

to the importer, the right of ownership is passed on to the importer, who in turn is responsible for the disposition of the goods. End-user certification could help to prevent the re-export or retransfer of firearms without the approval of the exporting country.

Article XIV: Exchange of information

Paragraph 1

16. In paragraph 1, China proposes to add the words “and taking into account their legitimate security or commercial concerns”, after the words “applicable to them”.

Article XVII: Confidentiality

17. China proposes to modify the last sentence in article XVII to read as follows:

“If for legal reasons such confidentiality cannot be maintained, the State Party that is to provide the information shall be notified prior to its provision of the information.”
