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

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### **Revised 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<sup>1, 2</sup>**

*The States Parties to the present Protocol,*

#### Option 1

(a) *Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,

#### Option 2<sup>3</sup>

(a) *Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, [their parts and components and]<sup>4</sup>

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<sup>1</sup> The present revised text is the result of the first reading of the draft Protocol undertaken by the Ad Hoc Committee at its first and third sessions, held in Vienna from 19 to 29 January and 28 April to 3 May 1999, respectively. Proposals and suggestions made by States at the first session have been incorporated into the text.

<sup>2</sup> The delegation of Japan proposed that the Protocol should be entitled "Protocol to Combat the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, Supplementary to the United Nations Convention against Transnational Organized Crime", using the same wording as in Economic and Social Council resolution 1998/18 and General Assembly resolution 53/111 (A/AC.254/L.22).

<sup>3</sup> Alternative proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>4</sup> Addition proposed by the delegation of Japan (A/AC.254/L.22). The delegation of Japan proposed that, throughout the Protocol, the words "ammunition [, explosives] and other related materials" be replaced with the words "their parts and components and ammunition", so that the wording would be the same as in Economic and Social Council resolution 1998/18 and General Assembly resolution 53/111.

ammunition, [ explosives and other related materials,]<sup>5</sup> owing to the harmful effects of those activities on the security of each State and the region as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,

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(b) *Concerned* by the [increase],<sup>6</sup> at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>7</sup> and other related materials and by the serious problems resulting therefrom,

Option 2<sup>8</sup>

(b) *Concerned* that a sizeable portion of all transfers of firearms and ammunition is illicit, having destabilizing effects closely linked to other transnational criminal activities, the high levels of crime and violence in many cities and communities and the incidence of interstate conflict, and that the illicit manufacturing of and trafficking in firearms, ammunition and other related materials constitute serious obstacles to the culture of peace and to meaningful development cooperation,

Option 1

(c) *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>9</sup> and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

Option 2<sup>10</sup>

(c) *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and that there is an urgent need for all States, especially those States that produce, export and import arms, to take measures to achieve those goals and to continue to develop common approaches to solving those problems,

[(c) *bis* *Concerned* about the illicit manufacture of explosives from substances and articles that in and of themselves are not explosives and that are not dealt with in this Protocol, owing to their other lawful uses, but are used for activities related to drug

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<sup>5</sup> Deletion proposed by the delegation of Japan (A/AC.254/L.22). See footnote 4.

<sup>6</sup> The delegation of the United Kingdom of Great Britain and Northern Ireland proposed replacing “increase” with “occurrence” or “indications of an increase” (A/AC.254/5/Add.1 and Corr.1). The delegation of Sweden proposed that the evidence of the “increase” should be quoted or at least mentioned (A/AC.254/5/Add.5).

<sup>7</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>8</sup> Alternative proposed by the delegation of Colombia.

<sup>9</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>10</sup> Alternative proposed by the delegation of Colombia.

trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,]<sup>11</sup>

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(d) *Considering* the urgent need for all States, especially States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>12</sup> and other related materials,

Option 2<sup>13</sup>

(d) *Considering* that immediate action should focus on preventing the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, by exercising tighter control over their legal transfer, on strengthening pertinent laws and regulations, strictly enforcing laws and regulations concerning their use and civilian possession, and on increasing the capacity to combat their illicit possession and transfer, by improving mechanisms for the control of firearms, ammunition and other related materials at their manufacture, distribution, transfer and transit points, as well as by enhancing accountability, transparency and the exchange of information at the national, regional and global levels,

(e) *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>14</sup> and other related materials requires international cooperation, the exchange of information, and other appropriate measures at the national, regional and global levels,

Option 1

[(e) *bis* *Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition and other related materials in order to prevent them from entering the illicit market,]<sup>15</sup>

(f) *Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, [and the database established by the Customs Cooperation Council (known as the World Customs Organization), the Central Information System,]<sup>16</sup> to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>17</sup> and other related materials,

<sup>11</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>12</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>13</sup> Alternative proposed by the delegation of Colombia.

<sup>14</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>15</sup> Addition proposed by the delegation of South Africa (A/AC.254/5/Add.5).

<sup>16</sup> Addition proposed by the Customs Cooperation Council, known as the World Customs Organization (A/AC.254/CRP.4).

<sup>17</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

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[(f) *bis* *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation and the strengthening of existing international law enforcement support mechanisms such as the database established by the International Criminal Police Organization, the Interpol Weapons and Explosives Tracking System, in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,]

(g) *Stressing* that the promotion of [harmonized import and export]<sup>19</sup> [and in-transit]<sup>20</sup> controls over the licit international movement of firearms, ammunition [, explosives]<sup>21</sup> and other related materials, [in addition to a system of procedures for applying them,]<sup>22</sup> is essential to the prevention of illicit [international]<sup>23</sup> trafficking in firearms, their parts and components and ammunition,

[(g) *bis* *Stressing* the need, during a peace process and in a post-conflict situation, to maintain effective control of firearms, ammunition, explosives and other related materials in order to prevent them from entering the illicit market,

(g) *ter* *Mindful* of the pertinent resolutions of the General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all States to guarantee their security,]<sup>24</sup>

Option 1

(h) *Recognizing* that States have developed different cultural and historical uses for firearms and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by States Parties,

Option 2<sup>25</sup>

(h) *Recognizing* that some States have developed different cultural and historical uses for firearms, including leisure or recreational activities such as travel or

<sup>18</sup> Alternative to preambular paragraphs (e) and (f) proposed by the delegation of Colombia.

<sup>19</sup> The delegation of Pakistan proposed to replace this phrase with “to promote cooperation in matters relating to import and export”. The delegations of Sweden and the United States of America expressed their opposition to that view and proposed to keep the original phrase.

<sup>20</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>21</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>22</sup> The delegation of Mexico proposed deletion of this phrase (A/AC.254/5/Add.1 and Corr.1). The delegation of Colombia proposed to keep this phrase but to replace the word “applying” with the word “enforcing”.

<sup>23</sup> Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>24</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>25</sup> Alternative proposed by the delegation of Colombia.

tourism for sport shooting, hunting and other forms of lawful ownership and use that are recognized by such States,

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(i) *Recalling* that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit States Parties to enacting legislation or regulations pertaining to firearms ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

Option 2<sup>26</sup>

(i) *Recognizing also* that States Parties have their respective domestic laws and regulations pertaining to firearms ownership, possession or trade of a wholly domestic character and that States Parties will apply their respective laws and regulations in a manner consistent with this Protocol,

[(i) *bis Reaffirming* the principles of sovereignty, non-intervention and the juridical equality of States,]<sup>27</sup>

*Have agreed as follows:*

[Article O

The provisions of this Protocol shall not be construed or applied either directly or indirectly to undermine the inalienable right to self-determination of peoples struggling against colonial or other forms of alien domination and foreign occupation, a right that is enshrined in the Charter of the United Nations and in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.]<sup>28</sup>

<sup>26</sup> Alternative proposed by the delegation of Colombia.

<sup>27</sup> Addition proposed by the delegations of Mexico (A/AC.254/5/Add.1 and Corr.1) and Colombia.

<sup>28</sup> Addition proposed by the delegation of Pakistan.

### *Article I*

#### *Relationship with the United Nations Convention against Transnational Organized Crime*<sup>29</sup>

1. This Protocol supplements<sup>30</sup> the United Nations Convention against Transnational Organized Crime, done at ... (hereinafter referred to as “the Convention”), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

2. With a view to combating the illegal activities carried out by criminal organizations in the areas of the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, as well as their use for the purpose of facilitating their unlawful enterprises, the purpose of this Protocol is:

(a) To promote and facilitate cooperation among States Parties to the Protocol with respect to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

(b) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.<sup>31</sup>

### *Article II*

#### *Definitions*<sup>32</sup>

For the purpose of this Protocol, the following definitions shall apply:

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<sup>29</sup> There was an extensive discussion on the relationship between the Convention and the Protocols. The majority of the delegations, including the delegations of Canada, China, Ecuador, Pakistan and the Sudan, supported the view that the Protocol should be not mandatory but optional for the States Parties to the Convention. The delegation of Sweden noted that the status of the relation of the Protocols with the Convention might be either subordinate or complementary. Some delegations, including the delegations of Australia, France and Poland, expressed the view that a State Party to the Protocol must be a State Party to the Convention (A/AC.254/L.9). The delegation of Poland proposed to include in article 26 of the Convention a provision similar to that contained in article 4 of the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (United Nations, *Treaty Series*, vol. 1342, No. 22495). Some delegations, however, including the delegations of Belgium, Croatia and Mexico, expressed the view that States should have a more flexible choice in deciding to become Parties to the Convention and/or the Protocols.

The majority of the delegations, including the delegations of Austria, Ecuador, France, Poland and the Sudan, also supported the view that the Protocols should be considered additions to and extensions of the Convention, not independent treaties, and that the consistency in the basic principles between the Convention and the Protocols should be maintained.

<sup>30</sup> The delegation of South Africa expressed its concern that referring to the Protocol as a “supplement” to the Convention would diminish the importance of the Protocol; it suggested that the article could simply read “This Protocol to the Convention ...” (A/AC.254/5/Add.5).

<sup>31</sup> Addition proposed by the delegation of France (A/AC.254/L.21).

<sup>32</sup> Some delegations, including the delegations of Australia, Belgium, Croatia and the Republic of Korea, proposed that the definitions in this article should be in a logical order rather than in alphabetical order.

(a) “Ammunition”: the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm [provided those components are themselves subject to authorization in the respective State Party];<sup>33</sup>

[(b) “Controlled delivery”: the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials [or substance substituted for them]<sup>34</sup> to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of the competent authorities, with a view to identifying persons involved in the commission of offences referred to in article V of this Protocol;]<sup>35</sup>

#### Option 1

(c) “Firearm”:

(i) Any barrelled weapon that will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, [including any frame or receiver of such a barrelled weapon but]<sup>36</sup> not including any antique firearm manufactured before the twentieth century or its replicas [in accordance with domestic law];<sup>37</sup>

[(ii) Any other weapon or destructive device such as an explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];<sup>38</sup>

<sup>33</sup> Addition proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of New Zealand.

<sup>34</sup> Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1).

<sup>35</sup> Some delegations, including the delegation of Mexico, proposed the deletion of this subparagraph (A/AC.254/5/Add.1 and Corr.1). One delegation expressed its reservation on this definition until the related articles in the Convention were discussed. One delegation was of the view that the definition should be included in the Convention if not in the Protocol. One delegation stated that this paragraph would encounter problems of a constitutional nature in its country.

<sup>36</sup> Deletion proposed by the delegation of the United States.

<sup>37</sup> Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1).

<sup>38</sup> Addition proposed by the delegations of Mexico (A/AC.254/5/Add.1 and Corr.1) and the United States, supported by some delegations, including the delegations of Belgium, Egypt, Italy, New Zealand, South Africa, Turkey and Zambia. Those delegations were of the view that those weapons were in fact illicitly trafficked and used by organized criminals and that limiting the application of the Protocol would lower the practicality and effectiveness of the Protocol as an instrument to combat transnational organized crime. The delegation of Belgium also suggested that a safeguard clause with regard to the international humanitarian rules should be included in the Protocol or in the Convention.

Some delegations, including the delegations of Australia, Germany, Japan, Norway, Paraguay, the Russian Federation and Spain, were against the expansion of the definition of firearms to include the items outlined in the proposal of Mexico and the United States.

The delegation of the United Kingdom suggested two aspects for testing the validity of the definition of firearms in the Protocol: whether it focused on “international” problems; and whether it matched the purpose of the Protocol, namely to combat transnational organized crime.

The delegation of New Zealand suggested the inclusion of certain weapons that perform like those using modern technologies. That delegation also expressed the view that antique firearms needed further definitional refinement.

Option 2<sup>39</sup>

(c) “Firearm”: any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, excluding air weapons and antique firearms that are not subject to authorization in the respective State Party;

Option 3<sup>40</sup>

(c) “Firearm”: any portable weapon that will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, but not including any weapons that are designated antique firearms or replicas of such firearms as defined in accordance with the laws and regulations of each State Party;

(d) “Illicit manufacturing”: the manufacturing or assembly of firearms, ammunition [, explosives]<sup>41</sup> and other related materials:

(i) From components or parts illicitly trafficked; or

Option 1

(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

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(ii) Without an appropriate authority from the State Party where the manufacture or assembly takes place; or<sup>42</sup>

(iii) Without marking the firearms at the time of manufacturing;

(e) “Illicit trafficking”:<sup>43</sup>

(i) The import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition [, explosives]<sup>44</sup> and other related materials from or across the territory of one State Party to that of another State Party [if any one of the States Parties concerned does not authorize it];<sup>45</sup>

[(ii) The import of firearms without marking at the time of importation;

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<sup>39</sup> Alternative proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

<sup>40</sup> Alternative proposed by the delegation of Japan (A/AC.254/L.22).

<sup>41</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>42</sup> Suggested by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

<sup>43</sup> Some delegations, including the delegations of Pakistan, Qatar, the Sudan and the Syrian Arab Republic, expressed concern that the definition of “illicit trafficking” might violate the principle of the Charter of the United Nations regarding respect for equal rights and the self-determination of peoples and the inherent right of individual or collective self-defence if an armed attack occurs.

<sup>44</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>45</sup> The delegation of Sweden noted the need to clarify the meaning of these words in brackets (A/AC.254/5/Add.5).



- (iii) The obliteration, removal or alteration of the serial number on a firearm.]<sup>46</sup>

Option 1

- (f) “Other related materials”: any components, parts or replacement parts of a firearm [that are essential to its operation]<sup>47</sup> [or accessories]<sup>48</sup> [that can be attached to a firearm]<sup>49</sup> [and that enhance its lethality].<sup>50</sup>

Option 2<sup>51</sup>

- (f) “Parts and components”: any elements of a firearm that are essential to its operation, such as a barrel, frame, cylinder or slide.

[(f) *bis* “Tracing”: the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status and proving ownership.]<sup>52</sup>

[(f) *ter* “Explosives”: any substances or articles that are made, manufactured or used to produce an explosion, detonation or propulsive or pyrotechnic effect, except:

- (i) Substances and articles that are not in and of themselves explosives; or
- (ii) Substances and articles listed in the annex to this Protocol.]<sup>53</sup>

<sup>46</sup> Addition proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1), and supported by the delegations of Portugal and South Africa (A/AC.254/CRP.6 and A/AC.254/5/Add.5). The delegation of the Republic of Korea suggested that criminalization of those acts should be dealt with in article V.

<sup>47</sup> Deletion proposed by the delegations of Mexico, South Africa (A/AC.254/CRP.6), the United Kingdom and the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of New Zealand.

<sup>48</sup> Deletion proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of New Zealand.

<sup>49</sup> Deletion proposed by the delegations of Mexico and the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of New Zealand.

<sup>50</sup> Deletion proposed by the delegations of Mexico, South Africa (A/AC.254/CRP.6) and the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of New Zealand.

<sup>51</sup> The delegation of Japan proposed that, throughout the Protocol, the words “ammunition [, explosives] and other related materials” be replaced with the words “their parts and components and ammunition”, so that the wording would be the same as in Economic and Social Council resolution 1998/18 and General Assembly resolution 53/111. In line with that proposal, the delegation of Japan proposed that the definition of “other related materials” be replaced with that of “parts and components” (A/AC.254/L.22). See footnote 4.

<sup>52</sup> Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1).

<sup>53</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). There was a discussion on the inclusion of explosives. Some delegations, including the delegations of Austria, France, Germany, Norway, Pakistan, Spain, the Russian Federation, the Sudan, Sweden and the United States, expressed their opposition to that inclusion. Other delegations, including the delegations of Algeria, Colombia, Ecuador and Italy, supported the inclusion of explosives in the Protocol.

*Article III*  
*Purpose*<sup>54</sup>

The purpose of this Protocol is:

(a) To promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, [their parts and components and]<sup>55</sup> ammunition [, explosives]<sup>56</sup> [and other related materials];<sup>57</sup>

Option 1<sup>58</sup>

(b) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

Option 2<sup>59</sup>

(b) To promote and facilitate cooperation and exchange of information and experience among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials.<sup>60</sup>

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<sup>54</sup> The delegation of the Syrian Arab Republic expressed the view that the purpose should be mentioned in the preamble, not in the article. However, a majority of delegations, including those of Algeria, Colombia, Croatia, France, Italy, Malta, Morocco, Pakistan, the Republic of Korea, Senegal, Tunisia, Turkey and Zambia, proposed to merge article III with article I, since both articles dealt with the relationship between the Protocol and the Convention, and the purpose of the Protocol should be placed in the beginning of the operative paragraphs.

The delegation of South Africa suggested that the outcome of the Protocol, to combat and prevent the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, should be added in this article (A/AC.254/CRP.6).

<sup>55</sup> Addition proposed by the delegation of Japan (A/AC.254/L.22). See footnote 4.

<sup>56</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>57</sup> Deletion proposed by the delegation of Japan (A/AC.254/L.33). See footnote 4.

<sup>58</sup> Addition proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegations of Ecuador, Italy, New Zealand, the Republic of Korea, Switzerland and Turkey. The delegation of South Africa suggested adding the words “combating and preventing illicit manufacturing of and trafficking in firearms, ammunition and other related materials” (A/AC.254/5/Add.5).

<sup>59</sup> Alternative proposed by the delegations of Japan and Mexico (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of Senegal.

<sup>60</sup> Inclusion of the cooperation among States in the purpose was supported by the delegation of France, which noted that the purpose of such cooperation should not go beyond combating transnational organized crime into the area of disarmament and arms control. See also footnote 4.

*Article IV*  
*Scope*<sup>61</sup>

Option 1

This Protocol applies to all classes of [commercially]<sup>62</sup> traded [and manufactured]<sup>63</sup> firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security.<sup>64</sup>

Option 2<sup>65</sup>

This Protocol applies to all classes of firearm, including those which are commercially traded, and all classes of ammunition and related materials, but not to State-to-State transactions or transfers for the purpose of national security.

Option 3<sup>66</sup>

This Protocol applies to all classes of firearms, ammunition and other related materials, except that it does not apply to State-to-State transactions or to transactions for purposes of national security.

<sup>61</sup> The delegation of Mexico proposed the deletion of this article (A/AC.254/5/Add.1 and Corr.1).

<sup>62</sup> Deletion proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of Croatia. The delegation of Croatia also suggested using the same definition of the term “illicit trafficking” in both article II and article IV. The delegation of the Syrian Arab Republic proposed to focus only on illicit firearms used by criminal organizations. The delegation of South Africa proposed to delete the words “commercially traded”, noting that they unnecessarily limited the scope of the Protocol and might create loopholes that could be exploited (A/AC.254/5/Add.5).

<sup>63</sup> Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of the Syrian Arab Republic.

<sup>64</sup> The delegations of Mexico, the Republic of Korea and Turkey expressed their concern about the technical difficulties that might be caused by the scope of the Protocol being strictly limited only to organized crime. Some delegations, including those of Algeria, France, Germany and the Netherlands, suggested that the scope of the Protocol should not go beyond the mandate set forth by the General Assembly. The delegation of Sweden suggested that, even though the Protocol should be subordinate to the Convention, whose scope was limited to transnational organized crime, application of the Protocol should not necessarily be limited to transnational organized crime. The delegation of the United States expressed the view that some provisions of the Protocol should go beyond the scope of transnational organized crime and was supported by the delegation of the United Kingdom.

The delegation of Belgium noted that this article might run the risk of violating the Geneva convention on the rules of conflict. The delegation of Belgium also noted that, in view of the subject matter dealt with in this Protocol, the Ad Hoc Committee should give consideration to the insertion of a safeguard clause in respect of international humanitarian law for situations involving armed conflict, in particular domestic armed conflict, within the meaning ascribed to those terms by international humanitarian law (A/AC.254/5/Add.5).

The delegation of Canada noted that the issue of individuals travelling with firearms legitimately would need to be considered since individuals could be traffickers.

<sup>65</sup> Alternative proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

<sup>66</sup> Alternative proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegations of Croatia and Ecuador.

Option 4<sup>67</sup>

This Protocol applies to all classes of illegally manufactured and traded firearms, ammunition and other related materials, as defined in article II of this Protocol.

*[Article IV bis  
Sovereignty*

1. States Parties shall fulfil their obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. A State Party shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions that are exclusively reserved to the authorities of that other State Party by its domestic law.]<sup>68</sup>

*Article V  
Criminalization<sup>69</sup>*

1. Each State Party shall adopt such legislative [and,]<sup>70</sup> or other measures as may be necessary to establish as [criminal]<sup>71</sup> offences under its domestic law [, when committed intentionally]<sup>72</sup> [and in connection with a criminal organization]:<sup>73</sup>

(a) Illicit trafficking in firearms, ammunition [, explosives]<sup>74</sup> and other related materials; and

<sup>67</sup> Alternative proposed by the delegation of Colombia.

<sup>68</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>69</sup> There was also an intensive discussion on the issue of the scope of criminalization in this Protocol in relation to the scope of the Convention. The issue was whether this provision criminalized illicit trafficking in and manufacturing of firearms in general or only those acts which related to organized crime.

Some delegations, including those of China and Senegal, expressed the view that a new list of offences should not be created in the Protocol. The delegation of Paraguay noted that article V did not add new offences to the Convention but highlighted specific types of conduct already covered by the Convention. Some delegations, including those of Canada, Germany, the United Kingdom and the United States, expressed the view that the Protocol should establish as offences conduct not covered by the Convention.

It was suggested by the delegation of Australia that consideration should be given to providing further explanations on the relationship of article V of the Protocol to article 3 of the Convention. The attention of the Ad Hoc Committee was drawn to Economic and Social Council resolution 1998/18, in which the Council decided that the Ad Hoc Committee should hold discussions on, *inter alia*, effective methods of identifying and tracing firearms, as well as on the establishment or maintenance of an import and export and in-transit licensing or similar authorization regime.

<sup>70</sup> Addition proposed by the delegation of Croatia.

<sup>71</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>72</sup> Deletion proposed by the delegations of Mexico, South Africa (A/AC.254/CRP.6 and A/AC.254/5/Add.5) and the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegations of Colombia and Paraguay. The delegation of Japan proposed to modify the same phrase as “, when committed [unlawfully] and intentionally” (A/AC.254/5/Add.1 and Corr.1). The delegation of the Syrian Arab Republic proposed to keep the word “intentionally”, noting, however, that “organized” crime implied an intentional offence.

<sup>73</sup> Addition proposed by the delegation of France (A/AC.254/L.21).

<sup>74</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

(b) Illicit manufacturing of firearms, ammunition [, explosives]<sup>75</sup> and other related materials.<sup>76</sup>

[(c) [Illicit] detention and use of [illicitly trafficked or manufactured] firearms, ammunition and other related materials.]<sup>77</sup>

[2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties,<sup>78</sup> the criminal offences established pursuant to the paragraph 1 of this article shall include participation in, association or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating [and counselling]<sup>79</sup> the commission of said offences.]<sup>80</sup>

[3. States Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the Security Council.]<sup>81</sup>

## *Article VI* *Jurisdiction*<sup>82</sup>

### Option 1

Each State Party shall adopt such measures as may be necessary [within its own national legislation]<sup>83</sup> to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences that it has established pursuant to this Protocol.

<sup>75</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>76</sup> The delegation of the United Kingdom suggested giving consideration to establishing a new offence to cover the “brokering” of illicit firearm deals abroad by citizens operating from within their own countries (A/AC.254/5/Add.1 and Corr.1). The delegation of Japan suggested the criminalization of offences involving the offering of funds and transportation for illicit manufacturing and trafficking, in the absence of a conspiracy provision (A/AC.254/5/Add.1 and Corr.1). The delegation of Japan proposed that there should be a provision in this article that would encourage States Parties to reduce or exempt from penalty in the case of voluntary surrender to the authorities for the collection of illicit firearms (A/AC.254/5/Add.1 and Corr.1). See also footnote 4.

<sup>77</sup> Addition proposed by the delegation of France, with reservations on the language in the inner brackets. See also footnote 4.

<sup>78</sup> The delegation of Croatia proposed that the wording “subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties” could be substituted by similar wording to that of article 1 (option 1) of the Convention (A/AC.254/4).

<sup>79</sup> Deletion proposed by the delegation of Pakistan.

<sup>80</sup> The delegation of Croatia proposed the deletion of this paragraph since the contents of the paragraph were already included in the Convention. This proposal was supported by Paraguay. The delegation of the Netherlands suggested that the same wording as that of article 3 of the Convention would be preferable.

<sup>81</sup> Addition proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegations of the Netherlands and South Africa (A/AC.254/CRP.6 and A/AC.254/5/Add.5).

<sup>82</sup> Depending on the final draft of the Convention, this provision may not be necessary or may require modification.

<sup>83</sup> Addition proposed by the delegation of Ecuador.

Option 2<sup>84</sup>

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Protocol when the offence in question is committed in its territory.
2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Convention when the offence is committed by one of its nationals or by a person who habitually resides in its territory.
3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the basis of the nationality of the alleged offender.
4. This Protocol does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

*Article VII*  
*Confiscation or forfeiture*<sup>85</sup>

1. States Parties shall undertake to confiscate or [forfeit]<sup>86</sup> firearms, ammunition [, explosives]<sup>87</sup> and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

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<sup>84</sup> Alternative proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). The delegation of the United Kingdom also suggested that this provision could be extended to include a provision allowing States Parties to maintain jurisdiction over their nationals who commit no offence in their home country but engage in illicit arms trafficking abroad (A/AC.254/5/Add.1 and Corr.1).

<sup>85</sup> The final form of this article will be influenced by the general provision on confiscation and forfeiture in the Convention. If that provision proves inapplicable or insufficient in respect of the particular needs of the subject matter of this Protocol, the article will require further elaboration.

<sup>86</sup> Replacement of the word “forfeit” with the words “require forfeit of” was suggested by the delegation of the United Kingdom.

<sup>87</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

## Option 1

[2. States Parties shall adopt the necessary measures to ensure that no firearms, ammunition [, explosives]<sup>88</sup> and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking fall into the hands of private individuals or businesses through auction [, sale]<sup>89</sup> or other disposal.<sup>90</sup><sup>91</sup>

Option 2<sup>92</sup>

2. States Parties shall prevent illicitly manufactured and trafficked firearms and ammunition from falling into the hands of criminals by seizing and destroying such firearms and ammunition unless other disposal [that includes destroying them or rendering them unusable]<sup>93</sup> has been officially authorized and the firearms and ammunition have been marked or recorded and their disposal also recorded.

*Article VIII*  
*Record-keeping*

1. Each State Party shall maintain for not less than [ten]<sup>94</sup> years the information<sup>95</sup> necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations [under this Protocol].<sup>96</sup> [In cases involving the export, import, brokerage and transit of firearms, the record shall include in particular:

(a) The appropriate markings applied at the time of manufacture;

(b) The country and date of issuance, the date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the articles.]<sup>97</sup>

<sup>88</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>89</sup> It was noted by the delegation of the Syrian Arab Republic that domestic legislation should determine how the sales of confiscated firearms were regulated.

<sup>90</sup> It was suggested by the delegation of South Africa that the destruction of unauthorized weapons should be also included in this provision (A/AC.254/5/Add.1 and Corr.1). The delegations of the Russian Federation and Senegal suggested that those confiscated firearms disposed in a controlled fashion should not necessarily be destroyed.

<sup>91</sup> The Chairman suggested placing this paragraph in brackets because of the conflicts with the domestic laws of some States.

<sup>92</sup> Alternative proposed by the delegations of Germany and the Republic of Korea, taken from the action plan recommended by the Senior Experts Group on Transnational Organized Crime.

<sup>93</sup> Proposal made by the delegation of South Africa (A/AC.254/5/Add.5).

<sup>94</sup> The delegation of Mexico proposed to change “ten years” to “five years” (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of the Syrian Arab Republic. The delegation of New Zealand expressed its preference for “ten years”.

<sup>95</sup> Some delegations, including those of Japan, the Netherlands, the Russian Federation, the Sudan, Switzerland, the Syrian Arab Republic and the United Kingdom, noted that there was a need to clarify the contents of “information” required.

<sup>96</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>97</sup> Addition proposed by the delegation of Switzerland.

2. [Records shall be kept for a period of not less than [ten]<sup>98</sup> years after the last transaction effected under a [particular certificate].<sup>99</sup>]<sup>100</sup> [States Parties shall identify to one another the agencies responsible for record-keeping.]<sup>101</sup>

Option 1

[3. States Parties shall use their best efforts to computerize their records for the purpose of enhancing one another's effective access to such information.]<sup>102</sup>

Option 2<sup>103</sup>

3. States Parties shall use their best efforts to computerize their records. Upon request, those records should be open for confidential access by all States Parties.

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<sup>98</sup> The delegation of the United States proposed to change the words "ten years" to "five years" (A/AC.254/5/Add.1 and Corr.1). The proposal was supported by the delegation of the Syrian Arab Republic. The delegation of New Zealand expressed its preference for "ten" years.

<sup>99</sup> The delegations of Mexico and the United States proposed to replace the words "particular certificate" with the words "licence or authorization" (A/AC.254/5/Add.1 and Corr.1).

<sup>100</sup> Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>101</sup> The delegation of the Russian Federation proposed the deletion of this sentence, noting that the authorities responsible for such record-keeping were not necessarily the same as the authorities responsible for exchanging such information. The delegation of Switzerland noted that the issue here was related to the area of arms control and that the issue of information exchange should be handled carefully.

<sup>102</sup> The delegations of Mexico and the United States proposed to delete this paragraph. The delegation of the Sudan noted that it was rather difficult for developing countries to computerize such information. The delegations of Norway and South Africa (A/AC.254/CRP.6 and A/AC.254/5/Add.5) supported the original paragraph. The Chairman proposed to replace the words "to computerize" with the words "to use modern technology". The delegation of South Africa noted that there should be attempts to ensure the compatibility of computer systems at least within regions (A/AC.254/5/Add.5).

<sup>103</sup> Alternative proposed by the delegation of Switzerland. The delegation of the United States suggested that the issue of confidentiality should be dealt with in the provision of information exchange, which was supported by the delegation of Canada.



*Article IX*  
*Marking of firearms*<sup>104, 105</sup>

1. For the purposes of identifying and tracing firearms, [referred to in article II, subparagraph (c) (i), of this Protocol,]<sup>106</sup> States Parties shall:

(a) Require,<sup>107</sup> at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its [serial number];<sup>108</sup>

(b) Require<sup>109</sup> appropriate markings on each imported firearm<sup>110</sup> [following its importation for the purpose of commercial sale within the importing country, or permanent private importation],<sup>111</sup> permitting the identification of the importer's name and address [and an individual serial number if the firearm does not bear one at the time of import]<sup>112</sup> [so that the source of the firearm can be traced],<sup>113</sup> and

<sup>104</sup> The delegation of Germany entered a reservation on this article to allow for more specific comments to be made as negotiations proceed pending further study. However, the importance of this article was stressed by many other delegations, and there was general agreement on both the need for marking and the inclusion of the article in the Protocol.

<sup>105</sup> The delegation of the United States suggested that inputs should be sought from experts on the technical issues, including those on marking, which was supported by the delegations of Australia, Ecuador, Norway, the Philippines, Saudi Arabia, Switzerland, Tunisia and Turkey. The delegation of the United States stressed that discussion by experts would not be a drafting exercise. The delegation of Cuba suggested that the expertise developed in the Panel of Governmental Experts on Small Arms established in pursuance of General Assembly resolution 50/70 and in the Department of Disarmament Affairs of the Secretariat might be also utilized. The delegation of the United States suggested that inputs should also be sought from relevant non-governmental organizations and the firearm manufacturing industry.

<sup>106</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1), which was supported by the delegation of the Holy See.

<sup>107</sup> The requirement for marking at the time of manufacture was generally agreed upon.

<sup>108</sup> On the type of information contained in the marking at the time of manufacture, the delegation of the United Kingdom proposed to include "the year of manufacture", and suggested to clarify the meaning of the words "place of manufacture" (A/AC.254/5/Add.1 and Corr.1). The delegation of Argentina proposed to include "model number", in addition to serial number. The delegation of New Zealand proposed to replace the words "serial number" with "unique identifier". The delegation of China proposed to delete the words "name of manufacturers". The delegation of Switzerland suggested that the marking requirement should not be overloaded.

<sup>109</sup> Many delegations, including those of Kuwait, the Libyan Arab Jamahiriya, New Zealand, Portugal, the Republic of Korea, Saudi Arabia, the United Kingdom and the United States, as well as the representatives of the World Customs Organization and the International Criminal Police Organization (Interpol), supported the requirement of marking at the time of import. The delegations of China and France were of the opinion that further consideration was needed.

<sup>110</sup> The delegation of Japan suggested that there was a need to define the period for marking imported firearms (e.g. the period during which they pass through customs or during which they are legally obtained by the final recipient) (A/AC.254/5/Add.1 and Corr.1).

<sup>111</sup> Addition proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1), which was supported by the delegations of Croatia, the Philippines, Portugal, Saudi Arabia and Tunisia. The delegations of the Holy See, New Zealand, Nigeria, Qatar and the Republic of Korea addressed their preference to not including this phrase so that marking would be required regardless of the purpose of import.

<sup>112</sup> Addition proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1). The Holy See proposed the deletion of this phrase.

<sup>113</sup> Addition proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1). The delegation of New Zealand requested clarification of the word "source".

(c) [Require]<sup>114</sup> the appropriate marking of any firearm confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

[1 *bis* The firearms referred to in article II, subparagraph (c) (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.]<sup>115</sup>

2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings.<sup>116, 117</sup>

[Article X  
*Preventing the reactivating of deactivated firearms*

States Parties that have not already done so shall consider taking the necessary measures to prevent the reactivating of deactivated firearms, including through criminalization, if appropriate.<sup>118]</sup><sup>119</sup>

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<sup>114</sup> The delegations of the Libyan Arab Jamahiriya, the Netherlands and Saudi Arabia supported the requirement for marking confiscated firearms. The delegation of France was of the opinion that further consideration was needed. The delegation of the Netherlands proposed changing “require” to “ensure”.

<sup>115</sup> Additional paragraph proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>116</sup> The delegation of South Africa suggested including the words “developing effective and inexpensive measures to mark firearms” in this paragraph (A/AC.254/5/Add.5). The importance of there being an inexpensive way of marking was mentioned by the delegation of Pakistan. The delegation of Saudi Arabia made a suggestion to include a reference to “forged or counterfeited marking”; that suggestion was supported by the delegation of Colombia.

<sup>117</sup> Other issues discussed in relation to this article included: (a) a need for an international database on firearm manufacturers (suggested by the delegation of Argentina and supported by the delegations of Colombia, Ecuador, Nigeria, Portugal and Ukraine); (b) a need for a universally compatible marking system (suggested by the delegation of the Netherlands and supported by the delegations of Portugal, Switzerland and Ukraine); and (c) a need for marking ammunition (suggested by the delegations of Turkey and Ukraine). While expressing its support for marking, the delegation of China expressed the view that the difference of marking methods in each region needed to be taken into account in developing this article.

<sup>118</sup> The delegation of the United Kingdom suggested identifying and agreeing to a certain standard in the text of the Protocol instead of simply committing to “considering taking the necessary measures to prevent the reactivating of deactivated weapons” (A/AC.254/5/Add.1 and Corr.1).

<sup>119</sup> The delegation of Mexico proposed the deletion of this article (A/AC.254/5/Add.1 and Corr.1).

*Article XI*

*General requirements for export, import and transit licensing or authorization systems*<sup>120, 121</sup>

1. States Parties shall establish or maintain an effective system of export, import and international transit licensing or authorization<sup>122</sup> for the transfer of firearms, ammunition [, explosives]<sup>123</sup> and other related materials.<sup>124</sup>

Option 1<sup>125</sup>

2. States Parties, before issuing export licences or authorizations for the shipment of firearms, ammunition and other related materials for export, shall verify that the importing and transit<sup>126</sup> States have issued licences or authorizations. Each export, import and in-transit licence or authorization shall contain the same information, which at a minimum shall identify the country and date of issuance, the date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the article.

Option 2<sup>127</sup>

2. States Parties, before releasing shipments of firearms, ammunition [, explosives]<sup>128</sup> and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

<sup>120</sup> The importance of this article was stressed by many delegations, and the need for export and import control was generally agreed upon. However, the delegation of the Netherlands expressed its hesitations about including a provision on trade control in the draft Protocol, whose purpose would be to promote law enforcement cooperation. The delegation of the Netherlands expressed reservations regarding this article, in particular because of the concern regarding the compatibility of this article with the trade rules of the European Union.

<sup>121</sup> Many delegations, including the delegations of Italy, Japan and the United Kingdom, suggested that inputs should be sought from experts on the technical issues of import, export and transit control.

<sup>122</sup> The delegation of the Netherlands sought clarification on the difference between the terms “licences” and “authorizations”. It was suggested by the delegation of the United States that the term “licence and authorization” should stand for authorizations, which would include both authorization over a period and one-time deal authorization.

<sup>123</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>124</sup> The requirement for an export and import licensing or authorization system was generally agreed upon.

<sup>125</sup> Alternative (formerly paragraph 2, option 2) proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Croatia, the Holy See, Kuwait, the Netherlands, Norway, the Philippines, South Africa (A/AC.254/CRP.6) and Tunisia.

<sup>126</sup> The delegation of the Netherlands was of the opinion that the inclusion of transit control would make the scope of the regulation too broad.

<sup>127</sup> Original text (formerly paragraph 3, option 1), which was supported by the delegations of Italy (with reservation), Pakistan and Turkey.

<sup>128</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

Option 1<sup>129</sup>

3. States Parties shall not permit the transit<sup>130</sup> of firearms, ammunition [, explosives]<sup>131</sup> and other related materials until the receiving States Parties issue the corresponding licences or authorizations.

Option 2<sup>132</sup>

3. States Parties, before issuing in-transit licences or authorizations and permitting the transit of firearms, ammunition and other related materials, shall verify that the receiving States Parties have issued the corresponding import licences or authorizations.

4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition [, explosives]<sup>133</sup> and other related materials.<sup>134</sup>

[5. Written approval from the exporting country must be obtained before a State Party may authorize the re-export, retransfer, trans-shipment or other disposition of firearms to any end-user, end use or destination other than as stated on the export licence or authorization.]<sup>135</sup>,

<sup>136</sup>

<sup>129</sup> Original text (formerly paragraph 2, option 1), which was supported by the delegations of Italy, Pakistan and Turkey.

<sup>130</sup> The delegation of Japan noted that the term “transit” should be clearly defined, since it would not be appropriate to impose obligations on a State Party in the following cases: aircraft merely flying over the territory of the State Party; a ship making innocent passage through territorial waters; aircraft in transit through an airport of the State Party; or a ship in transit through the seaport of the State Party. The same delegation also suggested that, in setting up structures based on this paragraph, full consideration should be given to the protection of privacy and a civil servant’s obligation to preserve secrets, as provided for in related domestic law (A/AC.254/5/Add.1 and Corr.1). The delegation of the Republic of Korea shared the concerns noted by the delegation of Japan. The delegations of Australia and the Netherlands also noted the need to clarify the meaning of the term “transit”.

<sup>131</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>132</sup> Alternative (formerly paragraph 3, option 2) proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1), which was supported by the delegation of South Africa (A/AC.254/CRP.6). The delegations of Croatia, Kuwait and the Philippines also supported this option.

<sup>133</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>134</sup> The delegation of Japan suggested that the meaning of the words “upon request”, “receipt” and “inform” should be clearly stated (A/AC.254/5/Add.1 and Corr.1).

<sup>135</sup> Addition proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1), and was supported by the delegations of the Holy See, Italy, the Philippines and Turkey. The delegations of China, Pakistan and the Republic of Korea proposed the deletion of this paragraph. The delegation of the Netherlands suggested that such approval on re-export should not be obligatory unless the exporting country requested it. The delegation of Nigeria proposed that re-exporting countries submit written explanation indicating why and to whom the firearms would be re-exported.

<sup>136</sup> The delegation of Japan suggested that recognition should also be imposed in the case of import from, export to and transit through non-States Parties, with a view to reducing detour exports (A/AC.254/5/Add.1 and Corr.1). That suggestion was supported by the delegation of the Republic of Korea.

*Article XII*  
*Security measures*

States Parties, in an effort to eliminate the [theft,]<sup>137</sup> loss or diversion of firearms, ammunition [, explosives]<sup>138</sup> and other related materials, shall undertake to adopt the necessary measures<sup>139</sup> to ensure the security of firearms, ammunition [, explosives]<sup>140</sup> and other related materials [imported into, exported from or in transit in their respective territories].<sup>141</sup>

*Article XIII*  
*Strengthening of controls at export points*<sup>142</sup>

Each State Party shall adopt such measures as may be necessary to detect and prevent illicit trafficking in firearms, ammunition [, explosives]<sup>143</sup> and other related materials between its territory and the territories of other States Parties, by strengthening controls at export points.

*Article XIV*  
*Exchange of information*<sup>144</sup>

1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves [and with the relevant intergovernmental organizations],<sup>145</sup> in conformity with their respective domestic laws and treaties applicable to them, relevant information on matters such as:

<sup>137</sup> Addition proposed by the delegation of Colombia.

<sup>138</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>139</sup> The delegation of Japan suggested that such measures should be clarified (A/AC.254/5/Add.1 and Corr.1).

<sup>140</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>141</sup> The delegation of Colombia proposed that this language in the bracket be replaced with the words “at the points of manufacture, transport, distribution, sale, export, import and transit through their respective territories”. That proposal was supported by the delegation of the Islamic Republic of Iran. The delegation of France proposed to delete the words in brackets, explaining that they would narrow the scope of the article and exclude domestic control. That proposal was supported by the delegation of Tunisia. The delegation of Turkey proposed to retain the language in the bracket. That proposal was supported by the delegation of Azerbaijan. The delegation of the United States noted that the article should only deal with the security of transnational commerce, not the security of privately owned guns. The delegation of the Islamic Republic of Iran suggested that this provision would apply to both storage by governments and commerce. The delegation of Canada expressed the view that the original intention of this article was to address the security of commercial goods while they were in States’ hands.

<sup>142</sup> The delegation of the Islamic Republic of Iran was of the opinion that this article was superfluous, overlapping with article XXII.

<sup>143</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>144</sup> Although the Convention is likely to include a general provision on the exchange of information, a provision dealing with that issue in this Protocol is recommended. The final form of this provision will need to take into account the corresponding article(s) in the Convention.

<sup>145</sup> Addition proposed by the delegation of Colombia. The delegation of the United States was of the opinion that there was no need to name all relevant intergovernmental organizations in this article. The delegation of the Republic of Korea noted that the exchange of information with a certain intergovernmental organization should be based on the agreements between each State and the intergovernmental organization concerned and that such an issue should not be dealt with in the Protocol.

(a) Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, ammunition [, explosives]<sup>146</sup> and other related materials;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition [, explosives]<sup>147</sup> and other related materials, and ways of detecting them;

(c) Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition [, explosives]<sup>148</sup> and other related materials;

(d) Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>149</sup> and other related materials; and

(e) Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>150</sup> and other related materials.

2. States Parties shall provide to or share with each other, [and with the relevant intergovernmental organizations,]<sup>151</sup> as appropriate, relevant scientific and technological information useful to law enforcement authorities, in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>152</sup> and other related materials and prosecute the persons involved in those illicit activities.

3. States Parties shall cooperate [among themselves and with the relevant inter-governmental organizations]<sup>153</sup> in the tracing of firearms, ammunition [, explosives]<sup>154</sup> and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition [, explosives]<sup>155</sup> and other related materials.<sup>156</sup>

<sup>146</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>147</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>148</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>149</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>150</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>151</sup> Addition proposed by the delegation of Colombia.

<sup>152</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>153</sup> Addition proposed by the delegation of Colombia.

<sup>154</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>155</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>156</sup> The delegation of South Africa suggested including in this paragraph a reference to the Interpol Weapons and Explosives Tracking System as one means of cooperating in the tracing (A/AC.254/5/Add.5).

*Article XV*  
*Cooperation*

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>157</sup> and other related materials.

2. Each State Party shall identify a national body or a single point of contact<sup>158</sup> to act as liaison between it and other States Parties [and between it and the relevant inter-governmental organizations]<sup>159</sup> [on matters relating to this Protocol].<sup>160</sup>

[3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms, ammunition, explosives and other related materials to prevent and detect the illicit activities referred to in paragraph 1 of this article.]<sup>161</sup>

*[Article XV bis*  
*Establishment of a focal point*<sup>162</sup>

1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within [the Secretariat of the United Nations]<sup>163</sup> responsible for:

- (a) Promoting the exchange of information provided for under this Protocol;
- (b) Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;
- (c) Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition, explosives and other related materials;
- (d) Promoting training and the exchange of knowledge and experiences among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

<sup>157</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>158</sup> The delegation of Japan noted that designation of “a single point of contact” should allow the exchange of information already established among the existing authorities (A/AC.254/5/Add.1 and Corr.1).

<sup>159</sup> Addition proposed by the delegation of Colombia.

<sup>160</sup> The delegation of Mexico proposed to replace this language with “for the purposes of cooperation and information exchange” (A/AC.254/5/Add.1 and Corr.1).

<sup>161</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>162</sup> This new article was proposed by the delegations of Mexico and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of South Africa (A/AC.254/5/Add.5). The delegations of Japan and the Netherlands noted a need to clarify the role and responsibility of the proposed focal point to avoid duplication. The delegation of France supported this article and proposed to consider utilizing, in order to avoid duplication of work, existing relevant United Nations mechanisms, such as Coordinating Action on Small Arms of the Secretariat, or relevant intergovernmental organizations. The delegation of Pakistan, the Republic of Korea and Saudi Arabia were of the opinion that this article was superfluous, the delegation of Pakistan noting that it overlapped with article XV, paragraph 2. The delegation of the United Arab Emirates was of the opinion that further consideration was needed on the necessity of such a focal point.

<sup>163</sup> Proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). The delegations of France, Saudi Arabia and the United States noted that budgetary implications should be kept in mind in designating this focal point in the Secretariat.

- (e) Requesting from States not Parties to this Protocol, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;<sup>164</sup>
- (f) Promoting measures to facilitate the application of this Protocol;
- (g) Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;<sup>165</sup>
- (h) Establishing a database for consultation among States Parties on the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials, including those seized, confiscated or forfeited;
- (i) Disseminating information to the general public on matters related to this Protocol;
- (j) Coordinating international efforts, in particular among relevant international organizations, to combat the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials.]

*Article XVI*  
*Exchange of experiences and training*<sup>166</sup>

1. States Parties shall cooperate in formulating programmes for the exchange of experiences and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proved to be effective in efforts to implement this Protocol.

2. States Parties shall cooperate with each other and with [the International Criminal Police Organization, as well as other]<sup>167</sup> competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>168</sup> and other related materials. The subjects covered in such training shall include, *inter alia*:

- (a) Identification and tracing of firearms, ammunition [, explosives]<sup>169</sup> and other related materials;
- (b) Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition

<sup>164</sup> The delegations of Saudi Arabia and the United Arab Emirates were of the opinion that it was not appropriate to extend the role of such a focal point to include cooperation with States that were not Parties to the Protocol. See also footnote 4.

<sup>165</sup> The delegations of Pakistan, the Republic of Korea, Saudi Arabia and the United Arab Emirates were of the opinion that it was not appropriate to address in the Protocol the issue of Security Council embargoes on arms transfers.

<sup>166</sup> Although the Convention is likely to include a general provision on exchanges of experience and training, it would be useful to include a provision dealing with those issues in this Protocol. The final form of this provision will need to take into account the corresponding article(s) in the Convention.

<sup>167</sup> Addition proposed by the delegation of Colombia.

<sup>168</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>169</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).



[, explosives]<sup>170</sup> and other related materials, the methods of shipment used and the means of concealment used; and

(c) Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition [, explosives]<sup>171</sup> and other related materials.

### *Article XVII* *Confidentiality*<sup>172</sup>

#### Option 1

Subject to the obligations imposed by its constitution [, other law]<sup>173</sup> or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives from another State Party [, including proprietary information pertaining to commercial transactions,]<sup>174</sup> if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.<sup>175</sup>

#### Option 2<sup>176</sup>

States Parties shall guarantee the confidentiality of any information that they receive, if requested to do so by the State Party providing the information, when its disclosure could jeopardize an ongoing investigation pertaining to matters related to this Protocol. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

### *Article XVIII* *Technical assistance*<sup>177</sup>

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit

<sup>170</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>171</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>172</sup> The delegation of Japan suggested that full consideration should be given to the protection of privacy and a civil servant's obligation to preserve secrets, as provided for in related domestic law (A/AC.254/5/Add.1 and Corr.1).

<sup>173</sup> Addition proposed by the delegation of the United States.

<sup>174</sup> Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>175</sup> The delegation of China suggested that State Parties to provide information should be notified prior to providing the information. That suggestion was supported by the delegation of the United Arab Emirates.

<sup>176</sup> Addition proposed by the delegation of Colombia.

<sup>177</sup> The final form of this provision will need to take into account the corresponding article(s) in the Convention. The delegation of Japan suggested that this article should appear as article XVI, paragraph 3, of the Protocol (A/AC.254/5/Add.1 and Corr.1). That suggestion was supported by the delegation of the Netherlands.

manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>178</sup> and other related materials, including technical assistance in those matters identified in article 19 of the Convention.

*[Article XVIII bis  
Registration and licensing of brokers<sup>179</sup>*

Any person<sup>180</sup> [, wherever located,<sup>181</sup> who engages in the business of brokering activities with respect to the manufacture, export, import or transfer of any firearms [and ammunition]<sup>182</sup> is required to register with and receive approval<sup>183</sup> from his or her country of nationality.<sup>184</sup>]

*[Article XVIII ter  
Reservations*

States Parties may, at the time of adoption, signature or ratification, make reservations to this Protocol, provided that said reservations are not incompatible with the object and purposes of the Protocol or the Convention and that they concern one or more specific provisions thereof.

*Article XVIII quater  
Denunciation*

1. This Protocol shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the Secretary-General of the United Nations. Six months after the date of deposit of the instrument of denunciation, the Protocol shall no longer be in force for the denouncing State, but shall remain in force for the other States Parties.

2. The denunciation shall not affect any requests for information or assistance made during the time that the Protocol is in force for the denouncing State.]<sup>185</sup>

<sup>178</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>179</sup> New article proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of South Africa (A/AC.254/CRP.6 and A/AC.254/5/Add.5) and Turkey. The delegations of France and Saudi Arabia were of the opinion that regulating licit brokers would not help control such illicit trafficking.

<sup>180</sup> The delegation of South Africa noted that, generally, obligation should be addressed to States Parties, not to individual citizens.

<sup>181</sup> Deletion proposed by the delegation of Nigeria and supported by the delegation of the United Kingdom.

<sup>182</sup> Addition proposed by the delegation of Turkey.

<sup>183</sup> The delegation of Switzerland suggested that the meaning of the term “approval” should be clarified.

<sup>184</sup> The delegation of Nigeria noted that brokers should instead register with the country in which they are doing business. The delegations of Japan, the United Arab Emirates and the United Kingdom questioned the enforceability of requiring such registration in the country of nationality. The delegation of the United States noted that it would propose a redrafted text of the article.

<sup>185</sup> New articles proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

*Article XIX*  
*Final clauses*<sup>186</sup>

1. This Protocol shall be open for signature by all States from ... at United Nations Headquarters in New York.

2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

*Article XIX bis*  
*Deposit*<sup>187</sup>

The original instrument of this Protocol shall be deposited with the Secretary-General of the United Nations for registration and publication. The Secretary-General shall notify the Member States of the United Nations of signatures, of the receipt of instruments of ratification or denunciation and of any reservations made.

[*Annex*

The term “explosives” does not include the following: compressed gases; flammable liquids; explosive-activated devices, such as air bags and fire extinguishers; propellant-activated devices, such as nail-gun cartridges; consumer fireworks that are suitable for use by the public and designed primarily to produce visible or audible effects by combustion, that contain pyrotechnic compositions and that do not project or disperse dangerous fragments such as metal, glass or brittle plastic; toy plastic or paper caps for toy pistols; toy propellant devices consisting of small paper or composition tubes or containers containing a small charge or slow-burning propellant powder designed so that they will neither burst nor produce external flame except through the nozzle on functioning; and smoke candles, smoke pots, smoke grenades, smoke signals, signal flares, hand signal devices and Very signal cartridges designed to produce visible effects for signal purposes and containing smoke components and no bursting charges.]<sup>188</sup>

*Note:* Additional provisions on the following subjects may be required, pending the development of corresponding provisions in the Convention, if it is determined that the tools needed to combat the illicit trafficking in firearms require greater specificity or flexibility than those provided by the Convention:

(a) *Mutual legal assistance.* It will be necessary to ensure, for States that require specificity in their agreements on mutual legal assistance, that the subject matter covered by the Protocol is included by reference in the provisions of the Convention;

(b) *Controlled delivery.* In the specific context of cross-border trafficking, a provision on controlled delivery would be useful. If no provision on controlled delivery is included in the Convention, an article based on article 11 of the United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 should be included, together with an appropriate definition in article II of the Protocol;

<sup>186</sup> The delegation of the United Kingdom noted that there should be provision for entering into force, for denunciation or accession, and for reservations (A/AC.254/5/Add.1 and Corr.1).

<sup>187</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>188</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

(c) *Extradition.* It will be necessary to ensure, for States that require specificity in their agreements on extradition, that the subject matter covered by the Protocol is included by reference in the provisions of the Convention.

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