



General Assembly

Distr.: Limited
4 October 2000

English
Original: Russian

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

Eleventh session

Vienna, 2-27 October 2000

Agenda item 5

**Finalization and approval 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

Azerbaijan: amendments to the preamble and articles 0, 1-12 and 14-18 bis of the revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime

Preamble

1. Azerbaijan supports the proposal of the Syrian Arab Republic (see A/AC.254/5/Add.30) and considers it essential to insert a new paragraph at the beginning of the preamble, to read as follows:

“Taking note of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as ‘the Convention’),”

2. Option 2 should be adopted for paragraph (a).
3. Option 2 should be adopted for paragraph (b), with the following amendments: the word “sizeable” should be replaced with the word “certain” and the words “and violence in many cities and communities” and “the culture of” should be deleted.
4. Option 2 should be adopted for paragraph (c) since option 1 is substantially repeated in option 2 of paragraph (b).
5. Option 2 should be adopted for paragraph (d) since option 1 substantially repeats what is said in option 2 of paragraph (c). In addition, it is proposed that, in option 2, the words “on strengthening pertinent laws and regulations, strictly enforcing laws and regulations” be replaced with the words “on strengthening and enforcing strict observance of laws and regulations”.

6. Paragraph (e) should be deleted because it essentially repeats the content of option 2 of paragraph (d) and paragraph (f) *bis*.
7. The square brackets in paragraph (e) *bis* should be removed.
8. Paragraph (f) should be deleted.
9. The square brackets in paragraph (f) *bis* should be removed.
10. In paragraph (g), the brackets around the words “, in addition to a system of procedures for applying them,” and other words should be removed.
11. It is proposed that paragraph (g) *bis* be deleted since its content is fully reflected in paragraph (e) *bis*.
12. The square brackets in paragraph (g) *ter* should be removed.
13. Option 2 should be retained for paragraphs (h) and (i).
14. The square brackets in paragraph (i) *bis* should be removed and that paragraph should be amended to read:

“(i) *bis* Reaffirming the principles of sovereign equality, territorial integrity and non-intervention in the internal affairs of other States,”

15. Azerbaijan supports the proposal of the Syrian Arab Republic (see A/AC.254/5/Add.30) and believes that a new preambular paragraph should be added as follows:

“Desiring to supplement the Convention by a protocol aimed at the detection, prevention and eradication of the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition,”

Article 0

16. It is proposed that this article be deleted since its content goes beyond the limits of the Ad Hoc Committee’s mandate and does not constitute a regulatory question that needs to be reflected in the Protocol under discussion.

Article 1: Relationship with the United Nations Convention against Transnational Organized Crime

17. It is proposed that this article be formulated in the manner suggested by the Secretariat (see A/AC.254/5/Add.28) and be inserted in the draft Protocol after article 18 *bis*.

Article 2: Definitions

Subparagraph (a)

18. The wording of this paragraph suggests that the term “ammunition” encompasses the component parts of such ammunition. In the opinion of Azerbaijan this formulation, firstly, stands in contradiction to the title of the Protocol where the words “parts and components” apply only to the firearms themselves; secondly, retention of this paragraph in its present form would lead to serious differences of opinion and difficulties in applying the provisions of the Protocol, since in no other provision of the document is there any reference to the component parts of ammunition. On the other hand, the relevant legislation of Azerbaijan does not include signal flares, illuminating flares, blank cartridges, builders’

explosive cartridges and other cartridges in the definition of ammunition as these are not intended to hit a target, although some of them can be used or adapted for use to produce shots from firearms. In view of all of this, Azerbaijan proposes the following formulation:

“(a) ‘Ammunition’: devices structurally designed to be fired from a particular type of weapon and to hit a target, including:

“(i) The complete round, containing a projectile, an explosive charge or an incendiary charge or a combination of these and designed to be fired from a barrelled weapon;

“(ii) Any other destructive device such as projectiles for grenade launchers or mortars, rockets or missile systems;”

Subparagraph (b)

19. This paragraph contains a definition of the term “firearm” as “Any [portable] [lethal] barrelled weapon”. Because of the lack of clarity and definition in the terms “portable” and “lethal”, it is impossible to determine exactly what kind of firearm (heavy weaponry, large calibre or small calibre guns) is under discussion. Azerbaijan accordingly proposes the following formulation for this paragraph:

“(b) ‘Firearm’:

“(i) A barrelled weapon with a calibre of up to [...] mm that is designed mechanically to damage or destroy any target from a specified distance by means of a directed projectile propelled by the combustion energy of an explosive or other initiating substance;

“(ii) Any other weapon or destructive device such as an explosive or incendiary bomb, a landmine, a hand grenade, a mortar or grenade launcher, rocket launcher or missile system;”

Paragraph (c)

20. Azerbaijan proposes that the text of subparagraph (ii) be supplemented by the addition of the words “, or involving some other violation of the laws or regulations of that State;”.

21. Azerbaijan supports the proposal of China mentioned in footnote 35 and accordingly considers it important to reformulate subparagraph (iii) as follows:

“(iii) Without marking the firearms or with the application of duplicate or false markings at the time of manufacture;”

22. Azerbaijan proposes that the words “Licensing or authorization of the manufacture of parts and components shall be in accordance with domestic law;” be deleted as they carry no legal weight: licensing operations are in any case carried out by a State in accordance with its domestic law.

Subparagraph (d)

23. In the opinion of Azerbaijan, the export and import of commodities belong in the legal sphere of state activity and it would therefore be incorrect to refer to them in connection with illicit trafficking. This being so—and also in order to bring this provision more into line with the provisions of the 1988 Convention—Azerbaijan proposes the following formulation:

“(d) ‘Illicit trafficking’: the procurement, sale, transfer, supply, transport, forwarding, possession, utilization, carrying, reforwarding in transit, carriage into a State or removal from that State of firearms, their parts and components and ammunition, without the requisite licence or authorization or in a manner involving some other violation of the legislation or regulations of the State in question;”

Subparagraph (e)

24. In the light of the broader definition of the term “firearm”, Azerbaijan proposes the following formulation of paragraph (e):

“(e) ‘Parts and components’: any structural elements of a firearm essential to its normal operation, including, for barrelled weapons, a barrel, frame or receiver, slide or cylinder, bolt or breech block, and any device designed or adapted to diminish the sound caused by firing a firearm;”

25. As one possible option, Azerbaijan proposes that the Ad Hoc Committee consider the possibility of adding to the provision under discussion two subparagraphs spelling out the parts and components of barrelled weapons and of other weapons or destructive devices separately.

Subparagraph (e) bis

26. It is proposed that the words “and, where appropriate, relevant intergovernmental organizations ...” be deleted.

Subparagraph (f)

27. The words “or transfer of a shipment” should be deleted and the wording set out in option 2 should be inserted at the end of the paragraph.

New subparagraph

28. Azerbaijan supports the proposal of the United States of America (see A/AC.254/5/Add.30) and believes that this article should include a new subparagraph with a definition of the term “broker”.

Article 3: Purpose

29. In order to make the wording of this article consistent with the provisions of the United Nations Convention against Transnational Organized Crime (“the Convention”) and of the revised draft Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (“the Trafficking in Persons Protocol”), Azerbaijan believes that this article should be amended to read:

“The purposes of this Protocol are:

“(a) To prevent, investigate and prosecute the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition; and

“(b) To promote cooperation among States Parties in attaining those objectives.”

30. Azerbaijan proposes that this article be placed at the beginning of the Protocol.

Article 4: Scope

31. Azerbaijan believes that a conceptual error has been made in the drafting of this article, because the matter at issue in any discussion of the scope of the Protocol is not

firearms or ammunition themselves but activities connected with the illicit manufacturing of and trafficking in firearms and ammunition, as defined in the Convention and in the two other protocols thereto. Furthermore, the provision states that the Protocol does not apply to international transactions “for purposes of national security” or “to firearms manufactured exclusively to equip a State Party’s own army or security forces”. There is no need for this proviso since the transactions in question are legal in nature and are therefore automatically excluded from the scope of the Protocol. This being so, the following wording is proposed:

“Unless stated otherwise, this Protocol applies to measures of prevention, investigation and criminal prosecution in relation to the crimes indicated in article 5 of this Protocol when the actions in question are transnational in character and carried out with the participation of an organized criminal group as defined in articles 2 and 3 of the Convention.”

Article 4 bis: Sovereignty

32. Azerbaijan proposes that this provision be deleted since it repeats the content of article 2 *ter* of the Convention, the provisions of which are applicable, *mutatis mutandis*, to the Protocol under discussion—a fact that could be reflected in the article “Relationship with the Convention”.

Article 5: Criminalization

Paragraphs 1 and 2

33. It is proposed that these paragraphs be amended to read:

“1. Each State Party shall adopt such legislative or other measures as may be necessary to establish as criminal offences under its domestic law the following actions, when committed intentionally:

“(a) Illicit trafficking in firearms, their parts and components and ammunition, as defined in article 2 of this Protocol, with the exception of illicit trafficking in antique firearms manufactured before 1870 and smooth-bore hunting weapons, their parts and components and ammunition;

“(b) Illicit manufacturing of firearms, their parts and components and ammunition, as defined in article 2 of this Protocol;

“(c) Obliteration or alteration, without legal authorization, of the serial number of a firearm, as defined in article 2 of this Protocol, with the exception of such acts performed in relation to antique firearms manufactured before 1870 and smooth-bore hunting weapons;

“(d) Forgery or illicit alteration of licences or authorizations and the procurement, provision or utilization of such documents for the purpose of creating conditions in which it is possible to engage in the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;

“(e) Actions undertaken as a broker, as defined in article 2 of this Protocol, without due registration and without procurement of a licence or authorization in accordance with article 18 *bis* of this Protocol.

“2. States Parties shall also adopt the necessary legal and other measures to establish as criminal offences the following actions:

“(a) Incitement to commit any of the crimes referred to in paragraph 1 of this article;

“(b) Organizing, directing, aiding, abetting, facilitating or counselling the commission of any of the crimes referred to in paragraph 1 of this article;

“(c) Agreeing to or participating in, as defined in article 5, paragraph 1 (a), of the Convention, any of the crimes referred to in paragraph 1 of this article.”

Paragraph 3

34. Azerbaijan agrees with the majority of delegations in believing that this paragraph should be deleted.

New paragraphs

35. Azerbaijan agrees with the relevant part of Colombia’s proposal (see A/AC.254/5/Add.30) and believes that the following new paragraphs should be added to article 5:

“(…) States Parties shall ensure that their courts and other competent bodies take into account the dangerous nature of the crimes referred to in this article in determining sanctions and in considering the possibility of early or conditional release from prison of persons who have been sentenced for such crimes.

“(…) States Parties that have not yet done so shall adopt the necessary legislative and other measures to ensure that, in imposing sanctions for the crimes set forth in this article, the following are taken into account as aggravating circumstances:

“(a) Involvement of the offender in other forms of illegal activity undertaken by transnational organized crime groups;

“(b) Commission of the offence by a person holding public office, whether or not the offence involves use of his official powers;

“(c) Enlistment of the assistance of a minor in committing the crime.

“(…) Nothing in this article shall affect the principle that the description and definition of criminal offences belong exclusively in the sphere of the domestic law of a State Party and that such offences are to be prosecuted and punished in conformity with the law of that State.”

36. The amendments proposed above will help to make this article consistent with the provisions of the Convention and of the Trafficking Protocol and the Migrants Protocol. They also take into account the proposals of Norway and the United States of America (see A/AC.254/5/Add.30).

Article 6: Jurisdiction

37. Option 1 should be adopted, with the bracketed words “within its own national legislation” deleted.

38. If a majority of delegations were to be in favour of option 2, Azerbaijan would not object, but in that event would propose replacing the words “to another country on the basis of the nationality of the alleged offender” in paragraph 3 with the words “simply on the grounds that the person is one of its own nationals”.

Article 7: Confiscation or forfeiture

Paragraph 1

39. Azerbaijan proposes to amend paragraph 1 to read:

“1. States Parties shall adopt under their own domestic legislation such measures as are required to permit possible confiscation of firearms, their parts and components and ammunition that have been illicitly manufactured or trafficked, as well as the profits resulting from such activities, and any property or other means used or intended to be used in committing the offences covered by this Protocol, in accordance with article 7 of the Convention.”

New paragraph

40. Azerbaijan proposes that a new paragraph be included in this article after paragraph 1, worded in accordance with article 12, paragraph 2, of the Convention.

Paragraph 2

41. It is proposed that this provision be formulated as follows on the basis of option 2:

“2. States Parties shall ensure that illicitly manufactured and trafficked firearms, their parts and components and ammunition do not fall into the illegal possession of private individuals or businesses by seizing and destroying such objects in the event that their alienation by other means has not been officially authorized and the firearms, their parts and components and ammunition have not been appropriately recorded or registered.”

Article 8: Record-keeping

42. Here it is proposed that the words “, their parts and components and [, as appropriate,] ammunition” be replaced with the words “and, to the extent possible, their parts and components”, that the words “within its jurisdiction” in square brackets should be deleted and that the final sentence of the *chapeau* should read “The information may include:”.

43. It is proposed to add the words “of the firearms” at the end of subparagraph (a).

Article 9: Marking of firearms

44. Azerbaijan proposes to amend this article to read:

“1. For the purposes of identifying and tracing illicitly manufactured or trafficked firearms, States Parties shall:

“(a) Require, at the time of manufacture of the firearm, the application of markings that include, as a minimum, an indication of the year and country of manufacture and a serial number;

“(b) Require appropriate markings on imported firearms if they do not bear such markings already;

“(c) Ensure the appropriate marking of firearms confiscated or forfeited pursuant to article 7 of this Protocol that are retained for official use and also the appropriate marking of firearms transferred from government stocks to permanent civilian use if they do not bear such markings already.

“2. States Parties shall encourage the firearm manufacturing industry to develop measures to guard against the alteration or removal of markings.”

Article 10: Deactivation of firearms

45. Azerbaijan proposes to amend this article to read:

“States Parties shall adopt the necessary measures in accordance with their domestic law to prevent the illicit reactivation of deactivated firearms, including the following:

“(a) All essential parts of a deactivated firearm are to be rendered such that further use of the firearm, its parts and components for their original purpose is impossible;

“(b) Systematic verification measures are to be carried out to ensure that the modifications made at the time of deactivation of the firearm have rendered it genuinely inoperable;

“(c)”

Article 11: General requirements for export, import and transit licensing or authorization systems

New paragraph

46. Azerbaijan agrees with the general proposal of Australia, Norway and Switzerland and regards it as necessary to introduce a new paragraph (see A/AC.254/5/Add.30) after paragraph 1 of this article.

Paragraph 2

47. Option 2 should be retained for this provision and all square brackets should be removed with the exception of those enclosing the words “where applicable” in subparagraph (b), which should be deleted. The word “commercial” should also be deleted from the text.

Paragraph 3

48. The bracketed words “and accompanying documentation together”, “where applicable” and “whenever there is the involvement of any person described in article 18 *bis* of this Protocol” should be deleted. In addition, the brackets should be removed from the words “whenever there is transit” and “the involvement of any person described in article 18 *bis* of this Protocol”.

Paragraph 6

49. The brackets should be removed from this paragraph and, in the light of the opinion of the Netherlands recorded in footnote 110, the wording of the paragraph should be amended to read:

“6. A State Party may authorize the re-export of a firearm, its parts and components and ammunition only after receipt of written permission to do so from the original exporting State, if that State so requires.”

Paragraph 7

50. This paragraph should be removed from article 11 and placed in article 12 of the draft Protocol. In the text of the paragraph, the word “forged,” should be inserted before the words “unlawfully altered”.

Paragraph 8

51. The square brackets should be removed from this provision.

Article 12: Security and preventive measures

52. In the light of the proposal made in paragraph 50 above, it is proposed that the provisions of article 12 be amended to read:

“1. States Parties, in an effort to detect and prevent the theft, loss, diversion, illicit manufacturing of and trafficking in firearms, their parts and components and ammunition shall adopt the necessary measures:

“(a) To ensure the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit;

“(b) To increase the effectiveness of controls during transit, import into the State and export from the State of firearms, their parts and components and ammunition, including, where necessary, border control measures.

“2. [Insert here the text of article 11, paragraph 7.]

Article 14: Exchange of information*Paragraph 1*

53. Azerbaijan proposes that the *chapeau* to this paragraph be amended to read:

“1. States Parties shall, without prejudice to articles 27 and 28 of the Convention, exchange among themselves, in conformity with their domestic law and applicable treaties, relevant information on matters such as:”

54. Following subparagraph (a), Azerbaijan proposes the inclusion of a new subparagraph as follows:

“(...) Criminal groups and organizations that are known to take part or suspected of taking part in the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;”

55. In subparagraph (c), the words “Methods and means, points of dispatch and destination and” should be added before the word “routes”.

56. Subparagraph (e) should be deleted because it repeats the corresponding provision of the Convention.

Paragraphs 2 and 3

57. The words “and with the relevant international organizations” enclosed in brackets in these two paragraphs should be deleted.

New paragraph

58. Azerbaijan supports Colombia’s proposal (see A/AC.254/5/Add.30) regarding the addition of a new paragraph to this article (the second paragraph proposed), but believes that the reference to “explosives and other related materials” should be deleted.

Article 15: Cooperation

Paragraph 2

59. The words “and between it and the relevant intergovernmental organizations” in square brackets should be deleted. However, the square brackets should be removed from the words “on matters relating to this Protocol”.

Paragraph 3

60. The square brackets should be removed.

Article 15 bis: Establishment of a focal point

61. This provision should be deleted because arrangements for the operation of such a focal point would require substantial financial input and provision of the necessary budgetary resources would create problems.

62. If, however, a majority of delegations agree to retain this article, Azerbaijan would propose the following amendments:

(a) [*The first amendment is relevant only to the Russian text.*];

(b) Paragraph (g) should be deleted because it relates largely to arms control questions.

Article 16: Exchange of experience and training

Paragraph 2

63. In subparagraph (b), the word “persons” should be replaced with the words “criminal groups and organizations” and the words “the methods of shipment used and the means of concealment used” should be replaced with the words “the methods of criminal activity engaged in by them and the means of concealment used”.

64. It is proposed that this article be supplemented by a new subparagraph as follows:

“(...)Methods of discovery and detection of falsified or altered documents used in the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.”

Article 17: Confidentiality

65. The words “, other law” in square brackets should be replaced with the words “, domestic legislation”. Furthermore Azerbaijan supports the proposal of China (see A/AC.254/5/Add.30) and proposes that the words “that provided the information shall be notified prior to its disclosure” be replaced with the words “that is to provide the information shall be notified prior to its provision”.

Article 18: Technical assistance

66. This article could be omitted from the Protocol because it repeats article 30 of the Convention, the provisions of which also apply, *mutatis mutandis*, to the present Protocol, a fact that could be reflected in the article entitled “Relationship with the United Nations Convention against Transnational Organized Crime”.

Article 18 bis: Registration and licensing of brokers [, traders and forwarders]

67. The words “, traders and forwarders” should be deleted from both the heading and the *chapeau* of this article and the article itself should be formulated in the manner proposed by the United States of America (see A/AC.254/5/Add.30).
