



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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## Working Group on Firearms

Vienna, 21-22 May 2012

Items 2, 3, 5, 6 and 7 of the provisional agenda\*

**Exchange of experience on successful practices, weaknesses, gaps and challenges in the fight against the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition**

**Challenges and good practices in the criminalization, investigation and prosecution of, and exchange of information and international cooperation on, illicit firearms trafficking**

**Measures to facilitate the implementation of the Firearms Protocol, including the development of technical assistance tools**

**Recommendations to the Conference on how States parties can better implement the provisions of the Firearms Protocol and how the Working Group on Firearms can better coordinate with the various international bodies combating the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, in the area of supporting and promoting the implementation of the Protocol**

**Other matters**

**Good practices, gaps and challenges in countering the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and measures to facilitate the implementation of the Firearms Protocol**

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\* CTOC/COP/WG.6/2012/1.



## Note by the Secretariat\*\*

### I. Introduction

1. The international community has, on a number of occasions, highlighted the risks posed by excessive and uncontrolled accumulation and spread of firearms to peace and security. It has, in addition, expressed its grave concern that this multi-dimensional and complex threat continues to fuel crime and insecurity in various regions in the world, exacerbating existing conflicts and undermining peacebuilding.

2. In its resolution 5/4, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime expressed concern regarding the increased levels of harm and violence that transnational criminal organizations generate in some regions of the world as a result of the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. It also noted that the Organized Crime Convention and its supplementary Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition<sup>1</sup> were the principal global instruments to combat these phenomena.

3. The Conference urged States to consider becoming party to the Protocol and invited State parties to harmonize their national legislation and to develop programmes of action to implement the Protocol. States were also requested to consider the adoption or strengthening of comprehensive and efficient measures to counter the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to afford each other the broadest possible bilateral, regional and international cooperation so as to facilitate the tracing of firearms and the investigation and prosecution of firearms-related offences, in conformity with their national laws.

4. The Conference also decided to establish an open-ended intergovernmental working group on firearms, to facilitate the implementation of the Firearms Protocol through the exchange of experience and practices among experts and practitioners in this area, including by contributing to the identification of successful practices, weaknesses, gaps and challenges, as well as priority issues and topics of relevance, in the fight against trafficking in firearms; and to make recommendations to the Conference on how States parties can better implement the provisions of the Firearms Protocol.

5. The present report has been prepared pursuant to resolution 5/4, which requested the Secretariat to inform the working group, *inter alia*, about best practices to prevent and combat the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition.

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\*\* The report was submitted late owing to the late receipt of information from the substantive office.

<sup>1</sup> United Nations, *Treaty Series*, vol. 2326, No. 39574.

## **II. Gaps and challenges in countering the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition**

6. Over the past decade, the international community has taken decisive steps to address the problems of illicit manufacturing, trafficking and misuse of firearms and their impact on crime and security. Despite a growing level of response, such problems continue to persist, aggravated by increased links to transnational organized crime and terrorism.

7. The Firearms Protocol is the first global legally binding instrument that provides States with a framework to control and regulate licit arms and arms flows, prevent their diversion into the illegal circuit and facilitate the investigation and prosecution of related offences by the following means:

(a) Preventive and security measures establishing appropriate marking and record-keeping systems and a strict transfer control regime based on Government authorizations/licensing for import, export and transit, in order to facilitate traceability throughout the lifetime of firearms, their parts and components and ammunition;

(b) Criminal provisions establishing specific offences and measures to prevent the diversion of arms into the illegal circuit, providing for the seizure and confiscation, deactivation and destruction of firearms, and provisions aimed at facilitating criminal investigations and prosecutions;

(c) International cooperation in criminal matters, which enhances cooperation including in the areas of tracing of firearms and border control as well as law enforcement cooperation through the exchange of information and expertise and joint investigative teams.

8. Despite efforts undertaken by States at the regional, subregional and national levels to implement the Firearms Protocol, difficulties often continue to arise in countering illicit manufacturing of and trafficking in firearms and in giving effect to the Protocol provisions. The present report describes some of the most common challenges encountered by States, as well as good practices related to the implementation of some specific Protocol provisions. The report does not provide an exhaustive account of gaps, challenges and good practices. Rather it aims to provide a broad perspective for inputs to the discussions of the working group. The information on the challenges contained in this section has been compiled by UNODC in the course of providing assistance to States and during informal discussions with State parties.

## A. Multiple legal instruments

9. The international community has adopted multiple international and regional instruments to counter illicit manufacturing of and trafficking in firearms<sup>2</sup> including new initiatives aimed at introducing greater controls over the arms trade. While this plurality of instruments reflects the complexity and multi-dimensional nature of the firearms challenge and the importance attached to it by Member States, it can also lead to lack of clarity and contradictions, especially when the relationship and the different contexts in which these instruments operate are not clear, and when their complementary and mutually reinforcing nature is not sufficiently explained to national decision makers.

10. The Firearms Protocol addresses the issue of illicit manufacturing and trafficking from the criminal justice angle, and provides for measures to deal with the transnational nature of the phenomenon and its links to organized crime. Other global and regional instruments, although covering similar topics, address the issue from a disarmament or development perspective and focus more on measures to reduce the accumulation, proliferation and misuse of firearms, than on bringing offenders to justice. The differences, beyond linguistic nuances, reflect substantively different, albeit also complementary, approaches to the same challenge.

11. This lack of clarity has sometimes led to the perception that such instruments are interchangeable, mutually exclusive and thus compete with each other. In fact, most of the 90 State parties to the Protocol also have concurrent obligations under other regional or global instruments. While international instruments can be compartmentalized according to institutional structures and the mandates of their governing bodies, however, domestic laws cannot be treated in such a manner. As a result, states are faced with the challenge of adopting an integrated approach and establishing a single coherent and comprehensive national firearms control regime that takes into account both the relevant instruments to which each State is party, as well as the different levels and dimensions of the firearms challenge.

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<sup>2</sup> At the global level, the international community adopted in 2001, in parallel to the Firearms Protocol, the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, followed in 2005 the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons. These are complemented, at the regional level, by several instruments, such as the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials, the Southern African Development Community Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region, the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, the Economic Community of West African States Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials and the Central African Convention on the Control of Small Arms and Light Weapons, Their Ammunition, Parts and Components That Can Be Used for Their Manufacture, Repair or Assembly (Kinshasa Convention).

## **B. Challenges in the adoption of adequate legislative frameworks**

12. Most countries have firearms legislation in place, and have made remarkable progress, in particular in integrating many of the provisions and requirements of the Firearms Protocol into their domestic law. Nonetheless there are still instances where efforts undertaken to establish comprehensive firearms control regimes have remained incomplete or lacked coherence, or addressed only certain elements of the United Nations Convention against Transnational Organized Crime and the Firearms Protocol. Often, countries present a relatively well developed regulatory framework for firearms, but lack sufficient criminal justice responses to ensure its enforcement and facilitate criminal investigation and prosecution of those who engage in illicit activities. The main challenges encompass carrying out a comprehensive analysis to identify the gaps both in substantive and procedural legal provisions, and adoption of a holistic approach when harmonizing domestic legislation with the provisions of the Firearms Protocol.

13. The timely review of domestic legislation is frequently constrained by the complexity of coordination among numerous national stakeholders. This is sometimes due to a lack of capacity to undertake and successfully implement the review process. There have also been instances when, although the review process has resulted in a comprehensive set of recommendations, they have not been thoroughly implemented. Another challenge is the difficulty in harmonizing the main legal acts on firearms control with the multitude of regulations and directives at national level due to the complexity of the subject matter. This has led to delays in the implementation of the Firearms Protocol provisions, notwithstanding that political will has been present throughout the process.

14. The need for tailored legislative assistance thus becomes of primary importance in assisting States parties in making a comprehensive review of their legislation and ensuring compliance with both the Firearms Protocol and the Organized Crime Convention. In doing so, one way of overcoming some of the above-mentioned challenges could be to support ongoing harmonization processes among States parties within the same region or subregion, as this would ensure the development of effective international and cross-regional cooperation measures.

## **C. Challenges in the adoption and implementation of regional and national strategies**

15. Many States have adopted national strategies and action plans to respond to their commitments under the international instruments in the area of firearms control by establishing national bodies for their implementation and identifying points of contact. The challenges often associated with this process stem from the lack of holistic programmes for the implementation of the strategies and action plans and the inability for the national bodies to reach high level of efficacy due to a lack of empowerment and resources.

16. Regional and national strategies and action plans require regular revisions or updates in order to ensure that the identified response remains active and leads to practical results. Often the response does not cover the whole spectrum of measures required to ensure the holistic approach to tackling this issue, such as the

establishment of clear objectives; the definition of operational goals and functional areas; the specification of the tasks and composition of the regional or national body responsible for the implementation; and the empowerment of the focal points to effectively perform their functions.

#### **D. Lack of resources for implementation**

17. Regional and national bodies responsible for the implementation of the firearms control strategies encounter, in specific cases, continuous constraints related to human and financial resource in accomplishing their tasks. The sustainability of the progress achieved by these bodies is often endangered by shifting priorities within the regional or national context and the scarce resources made available to them. In many cases the capacity developed within these bodies is lost as a result of administrative restructuring and turnover of personnel. Another challenge is the difficulty of sustaining a level of funding over mid- and long-term periods, which would ensure complete implementation of their mandate.

18. Many States parties have expressed concern that they lack resources and capacity to implement some of the operational goals of their national strategies, such as the development of systems for ballistic testing and record-keeping, for electronic weapons registration; and to secure equipment such as marking machines, scanning devices, as well as environmentally friendly technologies for destruction of firearms, their parts and components and ammunition. In some instances, an impediment to implementing the Firearms Protocol provisions on record-keeping, marking and tracing has been the inaccurate maintenance of registration systems or registration systems which are incomplete and not interlinked with other databases.

19. The mandatory requirement under the Protocol to ensure marking at the time of import continues to represent a challenge for both developing and developed countries. This is often due to logistical difficulties associated with the organization of the process and issues related to firearm warranties, as well as a lack of technical equipment, and non-establishment of clear responsibilities among the national institutions included in the process. In relation to the impact on structural integrity and performance of firearms, States also identify damage to firearm aesthetics and technical difficulties in marking on certain materials with import marking problems. Costs and collateral impacts of implementing import marking procedures have been also considered as constraints to a decision to implement this provision.

20. The improvement of the tracing ability of many State parties requires sustainable investment in capacity development and technical assistance. Often State parties do not maintain central registries and the exchange of information among national, subregional and regional databases, when available, is a time-consuming process that does not allow for effective combating of illicit trafficking in firearms.

21. Some State parties still experience difficulties with identifying expertise and securing the resources for the implementation of an effective system of import, transit and export regulations under the Firearms Protocol. The main concerns are related to the adoption of legislative frameworks, the development of institutional capacities for implementation, and ensuring the necessary levels of coordination for effective decision-making by relevant national authorities.

## **E. Challenges in the implementation of security and preventive measures**

22. The Firearms Protocol establishes the obligation for State parties to ensure the security of firearms, their parts and components and ammunition at the time of manufacture, import, export and transit through their territories and to increase the effectiveness of import, export and transit controls, including, where appropriate, border controls, and of police and customs transborder cooperation. Some States have experienced challenges in preventing thefts, losses and/or diversion of firearms and ammunition from both military and police stockpiles as well as from private hands. Reasons for these security breaches include among others the lack of resources to maintain and upgrade the physical security of the depots; insufficient personnel training on stockpile management procedures; outdated or not available standard operating procedures; lack of centralized registration and monitoring systems and slow implementation of the existing normative provisions or modern technologies.

23. In many instances, porous borders and weak border control capacities, as well as limited abilities to enforce effective maritime and air control mechanisms, are considered among the major impediments to combat firearms trafficking and prevent the expansion of the risk of potential new trafficking trends. Many State parties have not upgraded their air trafficking control systems, and do not have sufficient capacities to undertake risk assessments and adequate profiling of sea containers, as well as air and land cargoes in order to identify high risk shipments that depart or transit their countries.

## **F. Challenges in the criminal justice response**

24. The criminalization of illicit manufacturing of and illicit trafficking in firearms, their parts and components and ammunition; as well as of falsifying or illicitly obliterating, removing or altering the marking(s) on firearms is one of the pillars of the Firearms Protocol.

25. In many States, the criminal justice response to trafficking in firearms is significantly hampered by a lack of specific knowledge on firearms trafficking among criminal justice practitioners; weak investigations capacities of these forms of trafficking; and weak capacity to undertake risk assessments and profiling of potential trafficking cargoes. Special investigative techniques and other provisions contained in the Organized Crime Convention are not always sufficiently used by State parties to deal with firearms specific cases.

26. Another impediment is the lack of a critical number of criminal justice practitioners with the required specialized skills to lead national efforts to prevent, detect, investigate, prosecute and adjudicate cases of firearms trafficking. The need for assistance and advice has been identified for the possible establishment and strengthening of specialized multi-disciplinary units on border control and specialized investigative teams on firearms and organized crime.

27. States also experience difficulties in establishing effective international cooperation in criminal matters when it comes to firearms trafficking cases, where, in addition to the problem of different legislation and practices, there are complex

issues of jurisdictions and multiple actors that hamper the efforts of countries to cooperate. The result being a very low case-work and even fewer cases of successful investigations and prosecutions of offenders.

### **G. Challenges in the investigation and prosecution of those involved in firearms trafficking and related offences**

28. The illicit firearms trade is characterized by the fact that it relies to a great extent on legal channels such as regular commercial channels or combination of licit shipping and clandestine movements. Unlike other illegal commodities, firearms are durable and long-lasting goods, not subject to a constant contraband flow, but rather to episodic movements, which makes their detection and control particularly difficult.

29. States parties to the Firearms Protocol are required to establish a licensing system for the manufacturing and transfer of firearms, and introduce strict transfer control measures and enforcement provisions. They are also required to establish the criminal offences of intentional illicit manufacturing and trafficking of firearms, their parts and components and ammunition, as well as of falsifying or illicitly obliterating, removing or altering the marking(s) on firearms. Nonetheless, it remains extremely difficult to prevent, investigate and prosecute these offences.

30. National legislation and licensing practices vary to significant degrees in relation to other aspects of the firearms control regime, such as record-keeping and marking. Most countries have established a licensing system for the manufacturing and transfer of firearms, but often these laws are outdated, inadequate or lack the necessary practical and administrative procedures to be effectively implemented. Investigation and prosecution are constrained by contradictory legislation, poorly regulated legal activities and discrepancies in the level of control and enforcement. In many instances there is a lack of subregional and regional legislative harmonization, which is also an impediment to effective criminal investigation and prosecution, often aggravated by the fact that not all countries have introduced appropriate criminal offences for illicit manufacturing of and trafficking in firearms and ammunition.

31. In addition, practical and operational challenges such as weak law enforcement structures and border control capacities, lack of specialized knowledge and training of enforcement officials, insufficient human and financial resources and technical equipments further compound effective investigations and prosecutions. A number of challenges make collective actions in this field particularly difficult, including those that stem from the insufficient levels of regional and international cooperation, both at law enforcement and judicial levels, combined with increased risks for law enforcement and prosecution services to be exposed to threats and attacks from criminal groups.

### **H. Challenges in information exchange**

32. Since its entry into force on 3 July 2005, many States parties to the Firearms Protocol have accumulated a body of knowledge and good practices for its

implementation that could be increasingly shared, in compliance with their respective domestic legal and administrative systems, with other States parties.

33. Such an exchange of information is specifically referred to in the Protocol, which encourages States to share relevant case-specific information on matters such as authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition, as well as general information on matters such as organized criminal groups known or suspected of taking part in these activities, means of concealment used in the illicit manufacturing of or trafficking in firearms, and the methods and means, points of dispatch and destination and routes customarily used by organized criminal groups, and to exchange also their legislative experience and practices in countering these crimes. This also includes the exchange of scientific and technological information among law enforcement and cooperation among States.

34. This information exchange could be improved by providing regular updates on the implementation practices including best practices of record-keeping, marking and deactivation of firearms; and guidelines on efficient measures for confiscation, seizure and disposal of firearms, their parts and components and ammunition. It could further include also topics that would help States parties better analyse and devise practical approaches in combating illicit trafficking including updates of current projects, extent of firearm theft in each country; levels of arms flows, internally and externally; patterns of both legal and illegal acquisition; impact of arms on society; and best types of public awareness campaigns.

35. Many States and subregions are increasingly engaging in various forms of information exchange, often facilitates by international, regional and subregional organizations through the establishment of platforms for regular meetings and exchanges. However, despite these improvements, the level of interaction and exchange still varies significantly among countries and regions, and is often still at an early stage. It is important, to develop durable and sustained confidence-building measures to generate the necessary trust among States and practitioners to facilitate the actual information flow.

### **III. Good practices in countering the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and measures to facilitate the implementation of the Firearms Protocol<sup>3</sup>**

36. The United Nations Office on Drugs and Crime (UNODC) has advocated for the adoption of an integrated and multidisciplinary approach to the implementation of the Firearms Protocol. This approach takes into account the multidimensional nature of firearms control and seeks to give added value to the ongoing efforts for improvement of the firearms control undertaken at national, subregional and regional levels. The *Legislative Guides for the Implementation of the United*

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<sup>3</sup> Many of the good practices mentioned in this section have been identified in the Technical Guide to the implementation of the Firearms Protocol and by the International Small Arms Control Standards developed by the United Nations Coordinating Action on Small Arms (CASA).

*Nations Convention against Transnational Organized Crime and the Protocols thereto* and the *Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*, developed by UNODC, already provide for good practices in the field of legislative implementation of the Firearms Protocol. Other practical measures and good practices have also been reflected in the technical guidelines, developed by UNODC, in order to assist State parties in implementing the more technical aspects of the Protocol and establishing effective firearms control measures.

## **A. Preventive measures**

### **Marking**

37. Traceability of firearms is a key element in preventing, combating and eradicating illicit manufacture of and trafficking in firearms. Marking and record-keeping are important stages of the tracing process. Three articles of the Firearms Protocol address the marking of firearms. Article 8 requires that firearms be marked at the time of manufacture, when they are imported and when they are transferred from government stocks to permanent civilian use. Article 6, paragraph 2, addresses the marking of confiscated or seized firearms that will be disposed of as opposed to destroyed and article 9, subparagraph (c), foresees marking of deactivated firearms.

38. Effective marking systems allow State parties to establish strict controls over the manufacture and transfer of firearms, their parts and components and ammunition. Once a firearm or ammunition is marked and duly registered, State parties are better able to track illicit firearms and ammunition so that they can detect where they are diverted from the legal into the illicit trade. Marking also aids law enforcement authorities in identifying the source of firearms used in criminal activities.

39. The Firearms Protocol sets the minimum standards which must be implemented in domestic law. It requires the unique, simple and user-friendly marking of firearms. The Protocol does not require the marking of parts and components of firearms, nor marking of and record-keeping for ammunition. State parties are encouraged pursuant to article 34, paragraph 3, of the Organized Crime Convention to adopt stricter measures in domestic law wherever they would be deemed useful in preventing and combating transnational organized crime.

40. Many States apply classical markings at the time of manufacture. The classical marking consists of the serial number, the country or place of manufacture and the name of the manufacturer. A set of good practices has been identified within the process of classical marking. Classical marking could be applied on more than one part, or component, of the firearm, including at least one critical part such as the barrel, and/or slide, or cylinder of the weapon. This practice would help make it more difficult to erase all existing markings and would also permit the use of a range of different marking techniques. It would also help reduce the risk of trafficking of single parts and components of firearms. Another good practice is to apply the serial number on a part of the weapon designated by the manufacturer as essential, for example, the frame and/or the receiver. This means that the destruction of this part, in an effort to erase the marking, would render the weapon permanently

inoperable. Moreover, it would be preferable if it is only possible to replace the essential part with another essential component from the original manufacturer that also has a unique marking.

41. Article 8, paragraph 1 (a) of the Protocol sets out the minimum information that needs to be marked on a firearm at the time of manufacture. A good practice is to mark additional information on firearms that would assist with more accurate identification and tracing, taking into account new developments in marking and identification of firearms such as year of manufacture; make, model, type and calibre; purchaser's identity and the country of destination. Examples of additional information include also marking of insignias as well as names or initials of State security forces to which firearms are transferred.

42. Some State parties apply both classic and security markings. Security markings contain the same information as classical marking but are applied to component parts of the weapon that are difficult to manipulate after a firearm has been manufactured and that, if tampered with, would render the weapon unusable. As a good practice, the firearm would ideally have both a classical marking and a security marking. Security markings provide a form of back-up marking in case the classical marking is tampered with. It has been established as a good practice to place security markings on components that are difficult to access after manufacture so that they are less likely to be erased or tampered with, including for example, the ejector, breech block, extractor, the frame or the inside of the barrel.

43. States have used a variety of marking techniques for firearms. A good practice for choosing an adequate technique is to select one that meets the following criteria: (i) it does not damage the performance and technical quality of the weapon; (ii) marking is legible, practically indelible, durable, difficult to falsify and preferably recoverable through a restoration process; (iii) it can be applied in a practical manner; (iv) it can be applied to several parts of the firearm; and (v) the cost per unit produced is affordable. The following are different processes currently in use by State parties for marking firearms — stamping, casting, mechanical engraving, laser engraving, electrochemical methods, and radio frequency identification. Additional marking methods currently used in other sectors are being studied for potential use in marking firearms.

44. A good practice for a marking technique used in classical marking is to apply the stamping method, unless the material requires otherwise. This technique has emerged as the preferred method of marking parts of a classical marking, such as the serial number, since there is a greater possibility of retrieving erased numbers that have been stamped as opposed to recovering numbers that have been engraved on the firearm. The marking that is placed on an essential part of a firearm is marked to a depth of at least 0,20 mm. A good practice for additional markings is to use mechanical or laser engraving, if such markings are numerous and long, and if a firearm is already assembled. On the weapon's surface, markings effectuated with engraving should be to a depth of at least 0,10mm. A good practice for security markings, depending on the component being marked, is to apply mechanical and/or laser engraving or laser perforation directed by computer. Laser perforations could, additionally, be covered by a polymer and read as a data matrix under infrared lighting.

45. Article 8, paragraph 1 (b), of the Protocol requires simple marking on imported firearms that allows identification of the country of import and, where possible, the year of import so as to enable the firearm to be traced when necessary. A good practice in this specific case is to have the marking applied by the country of import and to place the marking adjacent to the classical marking, using a technique that preserves the technical quality and performance of the firearm, and can be used to mark different parts depending on the material and form. In this respect, the most suitable may be laser engraving.

### **Record-keeping**

46. Article 7 of the Firearms Protocol outlines the obligation on State parties to maintain records on firearms. Article 7 has two requirements: (i) that records must be maintained on all firearms that are present in the State party concerned (subparagraph (a)); and (ii) that records be maintained on firearms that are the subject of international transactions (subparagraph (b)). Such databases may be in either electronic or manual format. The Protocol does not indicate which method of record-keeping should be chosen; it is for each individual State to determine which format best suits its needs and capabilities.

47. Many State parties have established the development and maintenance of centralized electronic databases as a good practice. Electronic databases permit fast and precise response to requests for information. They also offer versatility as well as multiple user access. However, not all State parties have the necessary infrastructure to support an electronic database. The cost of developing and maintaining such databases may also be too high. In many countries, the communication infrastructure is unable to support an extensive database that reaches remote areas of the country. The alternative to an electronic database is a well-developed manual system, which provides essentially the same information. The disadvantage to a manual system, however, is that it may take longer to retrieve the requested information and that manual records are more easily exposed to the risk of being destroyed, lost or stolen, than electronic records, which can more easily be kept also in the form of multiple backups.

48. In the framework of some regional instruments, the possibility of establishing regional registries of firearms is being considered. In other subregions, countries are discussing the possibility and feasibility of harmonizing their record-keeping systems, including the nomenclature and categorization schemes, with a view of facilitating the information exchange, as well as creating the conditions for the establishment of a common registry.

### **Import, export and transit controls**

49. Article 10 of the Firearms Protocol contains the basic requirements of States to establish effective systems of control of the import, export and transit of firearms, their parts and components and ammunition, across national boundaries. The systems of control need to be implemented whether the import, export or transit involves a commercial sale directly from a company, a brokered sale through a dealer, a sale from a State-owned firearms manufacturer or other type of transaction or transfer that is international in nature.

50. Many State parties and regional organizations have developed good practices that work towards the establishment of an effective system of export and import licensing or authorization. Such good practices typically consist of elements including: the establishment of a designated transparent and impartial authority or decision-making mechanism to control transfers of firearms; adoption of clear rules on import, export and transit application and licensing procedures and requirements; development of user guides for the implementation of these rules; well-functioning inter-agency coordination; use of international cooperation; ability to enforce decisions in timely manner; and reliable mechanisms for record-keeping.

51. Which governmental agency or body is vested with the authority to issue licences varies depending on the country and the types of institution in existence. Many designated national authorities have established as a good practice an objective and transparent decision-making process. All decisions made in response to an application for import, export or transit are issued in writing. When an applicant is denied an import or export licence, there is an appeal mechanism in place allowing the applicant to dispute the decision within a certain period. The designated authority and any appeal body are guided by clear rules and governmental policies on import and export controls that are accessible by the parties involved in the transaction.

52. According to article 10, paragraph 4, the importing State shall, upon request, inform the exporting State party of the receipt of the dispatched shipments of firearms and/or ammunition. Some State parties have established as a practice to perform post-export control measures. This procedure includes a request for verification that the shipment has reached its intended destination or/and carrying out of post-delivery verification. On-site verification has proven to be a very effective way to obtain a guarantee that the shipment has reached its destination.

#### **Confiscation, seizure and destruction of firearms, their parts and components and ammunition**

53. Article 6 of the Firearms Protocol introduces the confiscation, seizure and destruction of illicitly manufactured or trafficked firearms, their parts or components and ammunition, unless some other form of disposal has been authorized, as prevention measures.

54. A good practice for implementing the provision on confiscation is considered to be the adoption of laws enabling confiscation, as well as the establishment of powers to search for and to seize firearms, their parts and components and ammunition, with the possibility of seeking a court order for forfeiture or confiscation.

55. Implementation of the requirement for seizure includes the recording of all information related to the seized item(s) in a formal document and ensuring safe storage pending disposal. In this way, if the firearm or ammunition is subsequently lost or stolen, law enforcement officials should retain a detailed record of the weapon.

56. The destruction of confiscated and seized weapons, their parts and components and ammunition is considered as a best practice for disposal. Choosing which is the most suitable method for destruction depends upon a number of factors, such as the quantity of firearms or ammunition to be destroyed, their type and location, the

environmental impact and the cost of the destruction process including the personnel and equipment required. The main consideration when choosing which destruction method to use is that it must ensure that the firearms, once destroyed, are damaged beyond the point at which they can ever be used again. This also applies to the parts and components of a firearm. It is also important to ensure that destruction takes place only once all legal processes have been completed, as the firearms may be required as evidence in legal proceedings. The most effective methods used for destruction of firearms, their parts and components include smelting, shredding, cutting by oxyacetylene, plasma or hydraulic shears. The most commonly used methods for destruction of ammunition include open burning, open detonation and industrial demilitarization.

## **B. Criminal justice response**

### **Criminalization**

57. Article 5 of the Protocol establishes a series of offences relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, to ensure that States parties establish a legal framework within which legitimate manufacturing and transfer of firearms can be conducted and which will allow illicit transactions to be identified, to facilitate the prosecution and punishment of offenders.

58. The Protocol requires the criminalization of the following three categories of offences involving “illicit manufacturing”, “illicit trafficking” and tampering with firearm markings:

(a) Illicit manufacturing, which encompasses: (i) any manufacturing or assembly of firearms without marking; (ii) any manufacturing or assembly from illicit (trafficked) parts and components; and (iii) any manufacturing or assembly without legal permit or authorization;

(b) Illicit trafficking, which includes: (i) any transnational transfer without legal authorization; and (ii) any transnational transfer if firearms are not marked;

(c) Removing or altering serial numbers or other markings.

59. The basic requirements to establish criminal offences are found in article 5 of the Protocol, but the actual content of the various offences depends on other provisions. The content of the “central” offences of illicit manufacturing and illicit trafficking are themselves terms defined in article 3. States have made reference to the definitions of the terms “firearm”, “parts and components” and “ammunition” when drafting domestic legislation. Specific elements of the central offences are also linked to the other obligations under the Protocol concerning marking and the issuance of authorizations or licences to import or export.

60. In addition to the offences noted above, article 5, paragraph 1 (c), establishes a further group of offences criminalizing a list of activities that render the markings on a firearm unintelligible or inaccurate, making it impossible to uniquely identify the firearm or trace it against past records created using the original marking. These offences generally support the policy of ensuring that firearms can be identified and traced. These offences apply to all conduct that involves tampering with the

markings at any time after the manufacturing or assembly process is complete, with the exception of cases where markings are altered or added pursuant to some legal authority.

61. The implementation of a comprehensive national firearms control regime may go beyond the strictly mandatory Protocol provisions and include additional optional provisions, as encouraged by the Protocol itself. Where this is the case, States may consider also introducing additional non-mandatory criminal offences, to allow for stricter control and enforcement measures, such as in the area of record keeping, licensing as well as brokers and brokering control.

#### **Investigation and prosecution of firearms-related offences**

62. The Protocol applies to the prevention of illicit manufacturing of and trafficking in firearms and to the investigation and prosecution of offences established under the Protocol, where those offences are transnational in nature and involve an organized criminal group as provided in article 4. The preventive and regulatory requirements for States to mark and record their arms and the related transfers, and to establish functioning licensing authorities to regulate the legal process of manufacturing and transfer of arms and ammunition are geared also towards the creation of conditions that facilitate firearms related investigations.

63. Firearms play a crucial role in the genesis and investigation of criminal offences. The timely tracing of illicit firearms and ammunition allow to track back the history of all the legal transfers and movements of a firearm, and to detect the moment where the firearm was diverted into the illegal circuit. Broader collateral investigations on firearms and ammunition, including the tracking of firearms related financial transactions, can provide invaluable contributions and mark the turning point in complex organized crime and terrorism cases. Apparently simple cases involving a firearm can develop into broader international trafficking cases involving organized crime or terrorist groups, due to effective international cooperation and tracing of the gun, and appropriate use of other forensic and ballistic types of analysis on firearms and ammunition. Such information can contribute to reconstructing the dynamic of a crime, and help clarifying the crime dynamic. In several instances, the ballistic information of ammunition has helped investigators in establishing whether the firearm had been used in previous crimes, thus allowing the determination of possible links among crimes that would otherwise appear as having been committed in isolation. This is particularly important in relation to organized crime or terrorist investigations, where a major difficulty lies in the lack of knowledge of the structure and composition of the criminal groups, including their relationship to other criminal groups.

64. However, in a number of countries, the use of modern investigation techniques and analysis methods on firearms are still of limited use in criminal investigations processes related to organized crime, due, inter alia, to lack of capacities to undertake forensic and ballistic investigations and of human and financial resources, but also to some extent to the lack of awareness of possible investigative gains that can be made through the use of such techniques.

65. A good practice could be to establish as a common practice that all firearms, at the time of manufacturing, are subject to ballistic tests and that this information be recorded and gathered together with firearms specific information. Such a “ballistic

fingerprint” could greatly support criminal investigations, notwithstanding the fact that any firearm is potentially subject to post-manufacturing manipulation and that single parts and components could be replaced, thus limiting the value of this information.

66. Crime prevention and criminal justice strategies and measures against organized crime need to include firearms specific investigations as cross-cutting elements of any broader strategy aimed at the dismantling of criminal groups and networks and at bringing offenders to justice. Moreover, firearms control regimes could be further connected to wider criminal justice responses on organized and other serious crimes.

### **Sharing of information**

67. Illicit trafficking in firearms and ammunition is by definition a transnational activity that involves two or more countries. In order to prevent and combat these forms of crime, States have to be able to gain a full understanding of the phenomenon and its modus operandi and of the groups or individuals involved in these activities. This information is often only partially available in their own country, and States could benefit from working collaboratively with other countries in order to fill their knowledge gap and devise joint efforts and strategies to respond to these global threats. Sharing of information requires not only an adequate legal framework that allows practitioners to exchange and make use of the received information, but also mutual trust and recognition of the effectiveness of the criminal justice system of the other countries.

68. Article 12 of the Firearms Protocol recognizes the fact that States possess a considerable amount of information on the illicit manufacturing and trafficking of firearms and that increased sharing of that information would greatly enhance their capacity to deal with this problem. A good practice has been the establishment of a structure that ensures that the request for information reaches its destination quickly and efficiently, that the requests are handled through a formal procedure, thus ensuring the proper safeguards, checks and balances and that the information gathered is credible and is ultimately admissible in a court of law.

69. Article 12, paragraph 1, requires States to share information on authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, their parts and components and ammunition. A good practice is to formulate the request for information as case-specific, and to present a justification in order to convince the State that is being asked to provide information that there exist grounds for it to release the requested information.

70. Article 12, paragraph 2 (a)-(d) of the Protocol, requires States to exchange among themselves information on illicit manufacturers and traffickers, as well as on their methods to prevent, combat and eradicate illicit manufacturing and trafficking. Article 12, paragraph 2 (a), requires the sharing of intelligence on organized criminal groups that are known to take part or suspected of taking part in the illicit manufacturing of or trafficking in firearms, their parts and components and ammunition. The following types of information have proven useful to exchange: names of suspected participants; links to any other organized criminal groups; links to any other forms of organized crime; current investigations against them and past investigations; modus operandi of the organized criminal groups; sources of funding

of the organized criminal groups; operational structures of the organized criminal groups; and methods of recruiting new members.

71. Article 12, paragraph 2 (d), requires that States share information on legislative experiences and practices and measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. In this respect several good practices have been established: development of regional networks of legal practitioners who regularly meet and provide updates on their successes and challenges; inter-parliamentary workshops for harmonization of the national legislation with the relevant international instruments; development of digest of cases on the organized crime as a tool for sharing best practices.

**International cooperation to facilitate the tracing of firearms and the investigation and prosecution of firearms-related offences.**

72. Article 12, paragraph 4 of the Protocol, requires States to cooperate in the tracing of firearms that may have been illicitly manufactured or trafficked, and this cooperation must include providing prompt responses to requests for assistance in tracing such firearms. The purpose of tracing firearms and ammunition is to identify the point at which legally held firearms and ammunition have been diverted into the illicit sphere. For such tracing to occur there needs to be clear information about the last person or body that was known to hold legal authority over the firearms and ammunition. This, in turn, can help in identifying who was responsible for the diversion. Identifying points of diversion can help in holding the responsible persons to account and in preventing future diversions by the same sources.

73. In order to achieve an effective tracing, it has proven important to ensure proper marking, appropriate record-keeping and electronically based tracing systems. A good operational practice is to supply sufficient information to the responding State such as markings, type, calibre, photographs and any other relevant information to the extent possible; description of the illicit nature of the firearms and ammunition; circumstances under which the firearm was found, including identity of any person detained with the confiscated firearm; the legal justification for the request; and the intended use of the information.

74. A good administrative practice is to adopt laws, regulations and administrative procedures needed to deal effectively with tracing requests and to designate one or more national points of contact to exchange information and act as liaison on all requests received.

75. There are several good practices related to responses to a tracing request. They include, inter alia, the acknowledgement of receipt of a tracing request within a reasonable time and the provision of all available information sought by the requesting State that is relevant for tracing the illicit firearms and ammunition. This includes specific information such as the date of manufacture; hidden or other identification markings; special characteristics; date on which technical testing was done; identification of the testing body. Furthermore, in cases when the firearms were legally exported, such information could include the date of export, the importing State, transit States; and final consignee.

76. States have also cooperating with other organizations that have the capacity to provide information regarding the tracing of firearms, such as the International

Criminal Police Organization (INTERPOL) and the World Customs Organization (WCO). INTERPOL (with its INTERPOL Firearms Tracing System) has been able to provide very specific information relating to a trace, while the WCO provides information that is more general.

77. A good practice has been for States with capacity to provide, within the framework of international assistance, technical and financial support to help build the capacities of those States which currently cannot carry out an effective trace.

## **IV. Conclusions and recommendations**

78. Full implementation of an effective firearms control regime requires an appropriate legislative framework, the coordinated action of various specialized entities with appropriate staffing, as well as technical and financial resources. This is a process in which the State parties have encountered many challenges and, at the same time, achieved considerable progress.

79. The Working Group may wish to consider ways of ensuring sustained financial and technical assistance to implement the recommendations and proposed activities provided below, especially by providing assistance to countries in post-conflict situations and least developed countries.

80. The Working Group may wish to consider the recommendations and proposed activities provided below for possible inclusion in the report on the activities of the Working Group to be presented to the Conference for its consideration, in accordance with resolution 5/4.

### **A. Recommendations**

81. States parties may wish to (i) consider taking integrated approaches to firearms control, and (ii) ensure that preventive and regulatory measures match with their corresponding criminal justice responses to prevent and combat illicit manufacturing of and trafficking in firearms.

82. States parties may wish to (i) seek ways to deal with unmarked or insufficiently marked firearms that are already in circulation, (ii) consider ways to facilitate States the access to relevant equipment and knowledge on modern marking techniques, and (iii) identify successful measures and experiences with regard to import markings and better control of firearms at their entry ports.

83. States parties may wish to share experiences in the implementation of the system of import and export licenses and authorizations and transit permits established under article 10 of the Firearms Protocol.

### **B. Activities proposed by the United Nations Office on Drugs and Crime**

84. UNODC should assist States through legislative and technical assistance in the establishment and implementation of comprehensive firearms control regimes, in

compliance with the Firearms Protocol, taking into account the national priorities and needs.

85. UNODC should assist in the identification and dissemination of good practices with regard to (i) investigation and prosecution of firearms related offences and their links to organized crime; (ii) development and maintenance of comprehensive record keeping systems on firearms and their transfers; (iii) marking and tracing of firearms; and (iv) measures to strengthen the import, export and transit of firearms, their parts and components and ammunition.

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