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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*

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,

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(a) *Aware* of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials, 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,

* The present revised text is the result of the first reading of the draft Protocol undertaken by the Ad Hoc Committee at its first session, held in Vienna from 19 to 29 January 1999. Proposals and suggestions made by States at the first session have been incorporated into the text.

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

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(b) *Concerned* by the [increase]², at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]³ and other related materials and by the serious problems resulting therefrom,

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(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,

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(c) *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]⁵ and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

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(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,

[(...) *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 trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,]⁷

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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]⁸ and other related materials,

² 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).

³ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁴ Alternative proposed by the delegation of Colombia.

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

⁶ Alternative proposed by the delegation of Colombia.

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

⁸ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

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(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 on forcing 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]¹⁰ and other related materials requires international cooperation, the exchange of information, and other appropriate measures at the national, regional and global levels,

[(...) *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,]¹¹

(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,]¹² to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]¹³ and other related materials,

Option for replacing preambular paragraphs (e) and (f)¹⁴

[(...) *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,]

⁹ Alternative proposed by the delegation of Colombia.

¹⁰ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹¹ Addition proposed by the delegation of South Africa.

¹² Addition proposed by the Customs Cooperation Council, known as the World Customs Organization (A/AC.254/CRP.4).

¹³ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹⁴ Alternative proposed by the delegation of Colombia.

(g) *Stressing* that the promotion of [harmonized import and export]¹⁵ [and in-transit]¹⁶ controls over the licit international movement of firearms, ammunition [, explosives]¹⁷ and other related materials, [in addition to a system of procedures for applying them,]¹⁸ is essential to the prevention of illicit [international]¹⁹ trafficking in firearms, their parts and components and ammunition,

[...] *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,

(...) *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,]²⁰

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(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 2²¹

(h) *Recognizing* that some States have developed different cultural and historical uses for firearms, including leisure or recreational activities such as travel or 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 2²²

(i) *Recognizing also* that States Parties have their respective domestic laws and regulations pertaining to firearms ownership, possession or trade of a wholly domestic

¹⁵ 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.

¹⁶ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

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

¹⁸ 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”.

¹⁹ Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

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

²¹ Alternative proposed by the delegation of Colombia.

²² Alternative proposed by the delegation of Colombia.

character and that States Parties will apply their respective laws and regulations in a manner consistent with this Protocol,

[(...) *Reaffirming* the principles of sovereignty, non-intervention and the juridical equality of States,]²³

Have agreed as follows:

[Article ...

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.]²⁴

Article I

*Relationship with the United Nations Convention against Transnational Organized Crime*²⁵

This Protocol supplements²⁶ 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.

Article II

*Definitions*²⁷

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

²³ Addition proposed by the delegations of Mexico (A/AC.254/5/Add.1 and Corr.1) and Colombia.

²⁴ Addition proposed by the delegation of Pakistan.

²⁵ 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.

²⁶ 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/CRP.6).

²⁷ 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]²⁸;

[(b) “Controlled delivery”: the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials [or substance substituted for them]²⁹ 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;]³⁰

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]³¹ not including any antique firearm manufactured before the twentieth century or its replicas [in accordance with domestic law]³²;

[(ii) Any other weapon or destructive device such as an explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine]³³;

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(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;³⁴

²⁸ 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.

²⁹ Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1).

³⁰ 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.

³¹ Deletion proposed by the delegation of the United States.

³² Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1).

³³ 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.

³⁴ Alternative proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

(d) “Illicit manufacturing”: the manufacturing or assembly of firearms, ammunition [, explosives]³⁵ 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

Option 2

(ii) Without an appropriate authority from the State Party where the manufacture or assembly takes place; or³⁶

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

(e) “Illicit trafficking”:³⁷

(i) The import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition [, explosives]³⁸ 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;

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

(iii) The obliteration, removal or alteration of the serial number on a firearm.]³⁹

(f) “Other related materials”: any components, parts or replacement parts of a firearm [that are essential to its operation]⁴⁰ [or accessories]⁴¹ [that can be attached to a firearm]⁴² [and that enhance its lethality]⁴³.

[(...) “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.]⁴⁴

[(...) “Explosives”: any substances or article that is made, manufactured or used to produce an explosion, detonation or propulsive or pyrotechnic effect, except:

³⁵ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

³⁶ Suggested by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

³⁷ 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.

³⁸ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

³⁹ 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). The delegation of the Republic of Korea suggested that criminalization of those acts should be dealt with in article V.

⁴⁰ 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.

⁴¹ 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.

⁴² Deletion proposed by the delegation of Mexico and the United States (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of New Zealand.

⁴³ 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.

⁴⁴ Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1).

- (i) Substances and articles that are not in and of themselves explosives; or
- (ii) Substances and articles listed in the annex to this Protocol.]⁴⁵

Article III
*Purpose*⁴⁶

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, ammunition [, explosives]⁴⁷ and other related materials;

Option 1

- [(b) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.]⁴⁸

Option 2⁴⁹

- (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.⁵⁰

⁴⁵ 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.

⁴⁶ 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).

⁴⁷ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁴⁸ 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.

⁴⁹ Addition proposed by the delegations of Japan and Mexico (A/AC.254/5/Add.1 and Corr.1), supported by the delegation of Senegal.

⁵⁰ 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.

Article IV
*Scope*⁵¹

Option 1

This Protocol applies to all classes of [commercially]⁵² traded [and manufactured]⁵³ firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security.⁵⁴

Option 2⁵⁵

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 3⁵⁶

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.

Option 4⁵⁷

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.

⁵¹ The delegation of Mexico proposed the deletion of this article (A/AC.254/5/Add.1 and Corr.1).

⁵² 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/CRP.6).

⁵³ 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.

⁵⁴ 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 the 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 Canada noted that the issue of individuals travelling with firearms legitimately would need to be considered since individuals could be traffickers.

⁵⁵ Alternative proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

⁵⁶ 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.

⁵⁷ Alternative proposed by the delegation of Colombia.

[Article ...

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.⁵⁸

*Article V**Criminalization*⁵⁹

1. Each State Party shall adopt such legislative [and,]⁶⁰ or other measures as may be necessary to establish as [criminal]⁶¹ offences under its domestic law[, when committed intentionally]⁶²:

(a) Illicit trafficking in firearms, ammunition[, explosives]⁶³ and other related materials; and

(b) Illicit manufacturing of firearms, ammunition[, explosives]⁶⁴ and other related materials.⁶⁵

⁵⁸ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁵⁹ 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.

⁶⁰ Addition proposed by the delegation of Croatia.

⁶¹ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁶² 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 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.

⁶³ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁶⁴ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁶⁵ 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 State 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).

[(c) [Illicit] detention and use of [illicitly trafficked or manufactured] firearms, ammunition and other related materials.]⁶⁶

[2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties,⁶⁷ 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]⁶⁸ the commission of said offences.]⁶⁹

[3. State 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.]⁷⁰

Article VI *Jurisdiction*⁷¹

Option 1

Each State Party shall adopt such measures as may be necessary [within its own national legislation]⁷² to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences that it has established pursuant to this Protocol.

Option 2⁷³

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.

⁶⁶ Addition proposed by the delegation of France, with reservations on the language in the inner brackets.

⁶⁷ The delegation of Croatia proposed that the wording “subject to the respective constitutional principles and basic concepts of the legal systems of the State Parties” could be substituted by similar wording to that of article 1 (option 1) of the Convention (A/AC.254/4).

⁶⁸ Deletion proposed by the delegation of Pakistan.

⁶⁹ 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.

⁷⁰ 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).

⁷¹ Depending on the final draft of the Convention, this provision may not be necessary or may require modification.

⁷² Addition proposed by the delegation of Ecuador.

⁷³ 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).

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*⁷⁴

1. States Parties shall undertake to confiscate or [forfeit]⁷⁵ firearms, ammunition[, explosives]⁷⁶ and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

Option 1

[2. States Parties shall adopt the necessary measures to ensure that no firearms, ammunition[, explosives]⁷⁷ 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]⁷⁸ or other disposal.⁷⁹⁸⁰

Option 2⁸¹

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]⁸² has been officially authorized and the firearms and ammunition have been marked or recorded and their disposal also recorded.

⁷⁴ 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.

⁷⁵ Replacement of the word “forfeit” with the words “require forfeit of” was suggested by the delegation of the United Kingdom.

⁷⁶ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁷⁷ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁷⁸ It was noted by the delegation of the Syrian Arab Republic that domestic legislation should determine how the sales of confiscated firearms were regulated.

⁷⁹ 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.

⁸⁰ The Chairman suggested placing this paragraph in brackets because of the conflicts with the domestic laws of some States.

⁸¹ 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.

⁸² Proposal made by the delegation of South Africa.

Article VIII
Record-keeping

1. Each State Party shall maintain for not less than [ten]⁸³ years the information⁸⁴ necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations [under this Protocol]⁸⁵. [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.]⁸⁶

2. [Records shall be kept for a period of not less than [ten]⁸⁷ years after the last transaction effected under a [particular certificate]⁸⁸.]⁸⁹ [States Parties shall identify to one another the agencies responsible for record-keeping.]⁹⁰

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.]⁹¹

Option 2⁹²

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.

⁸³ The delegation of Mexico proposed to reduce "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".

⁸⁴ 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.

⁸⁵ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁸⁶ Addition proposed by the delegation of Switzerland.

⁸⁷ The delegation of the United States proposed to reduce "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.

⁸⁸ 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).

⁸⁹ Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁹⁰ 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.

⁹¹ 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) supported the original paragraph. The Chairman proposed to replace the words "to computerize" with the words "to use modern technology".

⁹² 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

1. For the purposes of identifying and tracing firearms [, referred to in article II, subparagraph (c) (i), of this Protocol]⁹³, States Parties shall:

(a) Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its serial number⁹⁴;

Option 1

(b) Require appropriate markings on each imported firearm permitting the identification of the importer's name and address⁹⁵ [, and an individual serial number if the firearm does not bear one at the time of import]⁹⁶; and

Option 2⁹⁷

(b) Require appropriate markings on each imported firearm following its importation for the purpose of commercial sale within the importing country, or permanent private importation, so that the source of the firearm can be traced; and

(c) Require the appropriate marking of any firearm confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

[... The firearms referred to in article II, subparagraph (c) (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.]⁹⁸

2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings.⁹⁹

[*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.¹⁰⁰¹⁰¹

Article XI
General requirements for export, import and

⁹³ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁹⁴ On this paragraph, the delegation of the United Kingdom suggested that there was a need to refer to the year of manufacture and to clarify the meaning of the "place of manufacture" (A/AC.254/5/Add.1 and Corr.1).

⁹⁵ 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).

⁹⁶ Addition proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1).

⁹⁷ Alternative proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1), which was taken from the action plan recommended by the Senior Experts Group on Transnational Organized Crime.

⁹⁸ Additional paragraph proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

⁹⁹ The delegation of South Africa suggested including the words "developing effective and inexpensive measures to mark firearms" in this paragraph (A/AC.254/CRP.6).

¹⁰⁰ 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).

¹⁰¹ The delegation of Mexico proposed the deletion of this article (A/AC.254/5/Add.1 and Corr.1).

*transit licensing or authorization systems*¹⁰²

1. States Parties shall establish or maintain an effective system of export, import and international transit licensing or authorization for the transfer of firearms, ammunition[, explosives]¹⁰³ and other related materials.

Option 1

2. States Parties shall not permit the transit¹⁰⁴ of firearms, ammunition[, explosives]¹⁰⁵ and other related materials until the receiving State Parties issue the corresponding licences or authorizations.

Option 2¹⁰⁶

2. State 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 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 1

3. States Parties, before releasing shipments of firearms, ammunition[, explosives]¹⁰⁷ and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

Option 2¹⁰⁸

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.

¹⁰² 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).

¹⁰³ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹⁰⁴ The delegation of Japan noted that “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).

¹⁰⁵ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹⁰⁶ Alternative proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of South Africa (A/AC.254/CRP.6).

¹⁰⁷ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹⁰⁸ Alternative proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of South Africa (A/AC.254/CRP.6).

4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition[, explosives]¹⁰⁹ and other related materials.¹¹⁰

[... 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.]¹¹¹

Article XII *Security measures*

States Parties, in an effort to eliminate the [theft,]¹¹² loss or diversion of firearms, ammunition[, explosives]¹¹³ and other related materials, shall undertake to adopt the necessary measures¹¹⁴ to ensure the security of firearms, ammunition[, explosives]¹¹⁵ and other related materials [imported into, exported from or in transit in their respective territories]¹¹⁶.

Article XIII *Strengthening of controls at export points*

Each State Party shall adopt such measures as may be necessary to detect and prevent illicit trafficking in firearms, ammunition[, explosives]¹¹⁷ 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*¹¹⁸

Option 1

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

(a) Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, ammunition[, explosives]¹¹⁹ and other related materials;

¹⁰⁹ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹¹⁰ 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).

¹¹¹ Addition proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1).

¹¹² Addition proposed by the delegation of Colombia.

¹¹³ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹¹⁴ The delegation of Japan suggested that such measures should be clarified (A/AC.254/5/Add.1 and Corr.1).

¹¹⁵ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹¹⁶ The delegation of Colombia proposed that this language be replaced with the words “at the points of manufacture, transport, distribution, sale, export, import and transit through their respective territories”.

¹¹⁷ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹¹⁸ 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.

¹¹⁹ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition[, explosives]¹²⁰ and other related materials; and ways of detecting them;

(c) Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition[, explosives]¹²¹ 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]¹²² 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]¹²³ and other related materials.

Option 2¹²⁴

States Parties shall exchange among themselves and with the International Criminal Police Organization information concerning firearms, ammunition and other related materials relevant to this Protocol, in conformity with their respective domestic laws and applicable treaties, on matters such as:

Option 1

2. States Parties shall provide to or share with each other, 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]¹²⁵ and other related materials and prosecute the persons involved in those illicit activities.

Option 2¹²⁶

2. States Parties shall provide to and share with each other and with the International Criminal Police Organization, as appropriate, relevant scientific and technological information useful to law enforcement, in order to enhance their ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and to prosecute the persons involved in those activities.

¹²⁰ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹²¹ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹²² Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

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

¹²⁴ Alternative proposed by the delegation of Colombia.

¹²⁵ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹²⁶ Alternative proposed by the delegation of Colombia.

Option 1

3. States Parties shall cooperate in the tracing of firearms, ammunition[,explosives]¹²⁷ 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]¹²⁸ and other related materials.¹²⁹

Option 2¹³⁰

3. States Parties shall cooperate among themselves and with the International Criminal Police Organization in the tracing of firearms, ammunition and other related materials that may be illicitly manufactured or trafficked. Such cooperation shall include accurate and prompt responses to requests related to such tracing.

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]¹³¹ and other related materials.

2. Each State Party shall identify a national body or a single point of contact¹³² to act as liaison between it and other States Parties [and between it and the International Criminal Police Organization]¹³³ [on matters relating to this Protocol]¹³⁴.

[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.]¹³⁵

[Article ...
Establishment of a focal point

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]¹³⁶ responsible for:

- (a) Promoting the exchange of information provided for under this Protocol;

¹²⁷ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

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

¹²⁹ 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/CRP.6).

¹³⁰ Alternative proposed by the delegation of Colombia.

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

¹³² 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).

¹³³ Addition proposed by the delegation of Colombia.

¹³⁴ 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).

¹³⁵ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹³⁶ Proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

(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;

(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;

(f) Promoting measures to facilitate the application of this Protocol;

(g) Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;

(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]¹³⁷

Article XVI

*Exchange of experiences and training*¹³⁸

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]¹³⁹ 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]¹⁴⁰ and other related materials. The subjects covered in such training shall include, *inter alia*:

(a) Identification and tracing of firearms, ammunition[, explosives]¹⁴¹ and other related materials;

¹³⁷ New article proposed by the delegations of Mexico and the United States (A/AC.254/5/Add.1 and Corr.1).

¹³⁸ 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.

¹³⁹ Addition proposed by the delegation of Colombia.

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

¹⁴¹ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

(b) Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition[,explosives]¹⁴² 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]¹⁴³ and other related materials.

Article XVII
*Confidentiality*¹⁴⁴

Option 1

Subject to the obligations imposed by its constitution 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,]¹⁴⁵ 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.

Option 2¹⁴⁶

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*¹⁴⁷

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 manufacturing of and trafficking in firearms, ammunition[, explosives]¹⁴⁸ and other related materials, including technical assistance in those matters identified in article 18 of the Convention.

[Article ...
Registration and licensing of brokers

¹⁴² Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

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

¹⁴⁴ 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).

¹⁴⁵ Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

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

¹⁴⁷ 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 paragraph 3 of article XVI of the Protocol (A/AC.254/5/Add.1 and Corr.1).

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

Any person, wherever located, who engages in the business of brokering activities with respect to the manufacture, export, import or transfer of any firearms is required to register with and receive approval from his or her country of nationality.]¹⁴⁹

*[Article ...
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 ...
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.]¹⁵⁰

Option 1

*Article XIX
Final clauses¹⁵¹*

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.

¹⁴⁹ New article proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of South Africa (A/AC.254/CRP.6).

¹⁵⁰ New articles proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹⁵¹ The delegation of the United Kingdom noted that there was no provision for entering into force, for denunciation or accession, and for reservations (A/AC.254/5/Add.1 and Corr.1).

Option 2¹⁵²

Article XIX
Deposit

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.]¹⁵³

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 1998 should be included, together with an appropriate definition in article II of the Protocol;

(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.

¹⁵² Alternative proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

¹⁵³ Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).