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

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### **Revised draft Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime<sup>1, 2</sup>**

*The States Parties to the present Protocol,*

#### Option 1

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

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

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

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<sup>1</sup> The present revised text is the result of the first reading of the draft Protocol, undertaken by the Ad Hoc Committee at its first and third sessions, held in Vienna from 19 to 29 January and from 28 April to 3 May 1999, the and second reading of articles 2, 3, 4, 4 *bis* (partial), 5 and 8 (partial), carried out from 13 to 15 October 1999, during the fifth session of the Ad Hoc Committee. Proposals and suggestions made by States have been incorporated into the text.

<sup>2</sup> Following the discussion at the fifth session of the Ad Hoc Committee, the title was revised to correspond to the wording of Economic and Social Council resolution 1998/18 and General Assembly resolutions 53/111 and 53/114.

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

<sup>4</sup> Addition proposed by the delegation of Japan (A/AC.254/L.22). The delegation of Japan proposed that, throughout the draft Protocol, the words “ammunition [, explosives] and other related materials” be replaced with the words “their parts and components and ammunition”, so that the wording would be the same as in Economic and Social Council resolution 1998/18 and General Assembly resolutions 53/111 and 53/114.

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

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

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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]<sup>9</sup> and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

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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,

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

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

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

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

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

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

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

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

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

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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 enforcing laws and regulations concerning their use and civilian possession, and on increasing the capacity to combat their illicit possession and transfer, by improving mechanisms for the control of firearms, ammunition and other related materials at their manufacture, distribution, transfer and transit points, as well as by enhancing accountability, transparency and the exchange of information at the national, regional and global levels,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### Option 1

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

#### Option 2<sup>25</sup>

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

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

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

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

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

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

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

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

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,

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

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

*Have agreed as follows:*

[Article O

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

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

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

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

### *Article 1*

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

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

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

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

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

### *Article 2*

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

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

(a) “Ammunition”: the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm

<sup>29</sup> There was an extensive discussion on the relationship between the Convention and the Protocols. A majority of 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 draft 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 those 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.

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

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

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

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

[provided that those components are themselves subject to authorization in the respective State Party];<sup>33</sup>

[(b) “Controlled delivery”: the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials [or substance substituted for them]<sup>34</sup> to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of the competent authorities, with a view to identifying persons involved in the commission of offences referred to in article 5 of this Protocol;]<sup>35</sup>

(c) “Firearm”:<sup>36</sup>

(i) Any [portable]<sup>37</sup> [lethal]<sup>38</sup> barrelled weapon that will or is designed to or may be readily converted to expel a shot, bullet, other missile<sup>39</sup> or projectile [by the action of an explosive],<sup>40</sup> [including any frame or receiver of such a weapon]<sup>41</sup> [excluding air weapons]<sup>42</sup> excluding antique firearms manufactured

<sup>33</sup> This text was proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1). At the fifth session of the Ad Hoc Committee, some delegations proposed to delete the text to ensure international consistency in the definition at the international level while some others sought to retain it in order to preserve flexibility at the national level.

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

<sup>35</sup> Some delegations, including that of Mexico, proposed the deletion of this subparagraph (A/AC.254/5/Add.1 and Corr.1). Other delegations noted that this subject was also dealt with in the draft Convention and expressed reservations on this text until the related articles in the draft Convention had been discussed. One delegation stated that this paragraph would encounter problems of a constitutional nature in its country.

<sup>36</sup> The discussion at the fifth session focused on whether the term “firearm” should be defined broadly or narrowly, in the context of three options then before the Ad Hoc Committee: option 1 (original text as previously modified), option 2 (proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1)) and option 3 (proposed by the delegation of Japan (A/AC.254/L.22)). Many delegations supported wording that incorporated elements of all three of the options under discussion. The major issues were as follows: whether it was appropriate, for reasons related to policy and to the mandate of the Ad Hoc Committee, to include other weapons or destructive devices as proposed in subparagraph (c) (ii) of this article (see below); whether the definition should be limited to “portable” or “person-portable” weapons; and whether the reference to antique firearms should include a reference to national law or should simply refer to the date of manufacture. The delegation of the Netherlands proposed to define the term broadly and to limit the application of certain provisions to “portable” firearms (see A/AC.254/L.70). It was agreed that a unified text would be prepared and that the language pertaining to unsettled issues would be placed in square brackets. The text of subparagraph (c) (i) of this article combines this unified text with proposals made during the fifth session of the Ad Hoc Committee.

<sup>37</sup> Several delegations proposed the inclusion of the word “portable” in order to clarify that larger barrelled weapons were not included. For further clarity, some delegations also suggested including the words “person- portable” to clarify that weapons transportable by vehicle were also not included. Some delegations expressed concern about vagueness or uncertainty in determining portability.

<sup>38</sup> Some delegations expressed concern about vagueness or uncertainty in determining lethality.

<sup>39</sup> One delegation expressed concern about the use of the word “missile”, which could refer to either rockets or projectiles in general.

<sup>40</sup> This wording is taken from previous options 1 and 3 of subparagraph (c) (A/AC.254/4/Add.2/Rev.2).

<sup>41</sup> Deletion proposed by the delegation of the United States.

<sup>42</sup> Deletion proposed by the delegation of the United States.

before the twentieth century or [their]<sup>43</sup> replicas [that are not subject to authorization in the State Party concerned];<sup>44</sup> and

[(ii) Any [other weapon or destructive device such as]<sup>45</sup> an explosive, incendiary [bomb]<sup>46</sup> or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine];<sup>47</sup>

(d) “Illicit manufacturing”: the manufacturing or assembly of firearms, [their parts and components,]<sup>48</sup> ammunition [, explosives]<sup>49</sup> and other related materials:

- (i) From components or parts illicitly trafficked;
- (ii) Without a licence or authorization from a competent authority of the State Party where the manufacture or assembly takes place;<sup>50</sup> or
- (iii) Without marking the firearms at the time of manufacturing;<sup>51</sup>

<sup>43</sup> The effect of including the word “their” would be to refer to replicas of antique firearms, which might otherwise be real firearms according to the definition of the term, instead of referring to replicas of firearms, which would not be real firearms.

<sup>44</sup> This text combines the wording used in previous options 2 and 3 of subparagraph (c) (A/AC.254/4/Add.2/Rev.2). The alternative was the phrase “in accordance with domestic law”, proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1). At the fifth session of the Ad Hoc Committee, one delegation sought clarification as to whether the phrase “in accordance with domestic law” would apply to replicas only or to antiques and (their) replicas.

<sup>45</sup> Some of the delegations that supported the inclusion of subparagraph (c) (ii) of this article were of the view that the phrase “Any other weapon or destructive device ...” was too broad. The delegation of the United States, supported by several other delegations, proposed that it be deleted, leaving only the list. The delegation of Mexico proposed that it be placed in square brackets.

<sup>46</sup> This wording, proposed by the delegation of the United States, would be inserted if the phrase “Any weapon or destructive device ...” is deleted (see footnote 45).

<sup>47</sup> This addition was proposed by the delegations of Mexico (A/AC.254/5/Add.1 and Corr.1) and the United States. Views were divided on whether subparagraph (c) (ii) of this article should be included or not. The delegations supporting its inclusion favoured a broad definition, as it would be conducive to the control of such trafficking, and noted that, while some of the listed devices were more likely to be used in armed conflicts or by terrorists, they were still likely to be trafficked by persons engaged in transnational organized crime.

The delegations that opposed the provision raised several arguments. In their view, it was not appropriate to define as “firearms” items that were not commonly recognized as such or included as such in domestic laws or other texts. They also argued that such a broad definition could be seen as an attempt to expand the mandate given to the Ad Hoc Committee and that controls on the items listed were more appropriate in instruments on arms control than in an instrument on crime control.

The delegation of Norway proposed a compromise that consisted of excluding these items from the definition of “firearm” and including them directly in article 5, on the provisions on criminalization (see also footnote 105). Several delegations noted that inclusion of these items might require changes to article 9, since some of them could not be marked in the same way as firearms.

<sup>48</sup> See footnote 2.

<sup>49</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>50</sup> This compromise text, prepared by the delegation of the United Kingdom based on previous options, was supported by other delegations. At its fifth session, the Ad Hoc Committee agreed to use this text as the basis for future discussion.

<sup>51</sup> The delegation of China proposed adding the words “duplicate or false marking” to this provision in order to include cases where firearms are marked at manufacture, but in a manner that would intentionally defeat or resist subsequent efforts to trace them.



(e) “Illicit trafficking”:<sup>52, 53</sup>

(i) The import, export, acquisition, sale, delivery, movement or transfer of firearms, [parts and components,]<sup>54</sup> ammunition [, explosives]<sup>55</sup> and [other related materials] from or across the territory of one State Party to that of another State Party

## Option 1

if the firearms are not marked in accordance with article 9 of this Protocol or if the transaction is not licensed or authorized in accordance with article 11 of this Protocol

## Option 2

[if any one of the States Parties concerned has not legally authorised it]<sup>56</sup>

## Option 3

[if any one of the States Parties concerned does not authorize it in accordance with the terms of this Protocol]<sup>57</sup>

## Option 4

[without the authorization of or in violation of the legislation or regulations of either of the States Parties concerned;]<sup>58</sup>

[, or the brokering of such activities]<sup>59</sup>;

<sup>52</sup> Some delegations, including those 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 were to occur.

<sup>53</sup> The revised text of this provision was proposed by the delegation of Switzerland at the fifth session of the Ad Hoc Committee. This new text was also meant to replace the text of previous subparagraph (c) (ii). The delegation of Pakistan proposed that the definition of “illicit trafficking” be limited to the activities described only when they were engaged in by a transnational organized criminal group. Other delegations opposed that proposal on the grounds that it would limit the effectiveness of many of the measures, since the nature of the group would have to be determined before the provisions of the Protocol could be employed in investigating it. One delegation pointed out that activities such as illicit manufacturing or marking might be carried out by individuals and later taken advantage of by an organized criminal group, leaving no basis for applying the Protocol to those activities.

<sup>54</sup> The delegation of Pakistan proposed that these words be added to make this provision consistent with the mandate of the Ad Hoc Committee (General Assembly resolution 53/111) and that the words “other related materials” be deleted (see also footnote 2).

<sup>55</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>56</sup> Proposed by the delegation of Venezuela at the fifth session of the Ad Hoc Committee.

<sup>57</sup> This proposal was made by the delegation of the United States. At the third session of the Ad Hoc Committee, Sweden had noted the need to clarify the meaning of this phrase (A/AC.254/5/Add.5).

<sup>58</sup> Proposed by the delegation of France at the fifth session of the Ad Hoc Committee.

<sup>59</sup> Proposal of the delegation of Sweden at the fifth session of the Ad Hoc Committee.

- [(ii) The import of firearms without marking at the time of importation;]<sup>60</sup>
- [(iii) The obliteration, removal or alteration of the serial number<sup>61</sup> on a firearm<sup>62</sup>.]<sup>63</sup>

Option 1

- (f) “Other related materials”:<sup>64</sup> any components, parts or replacement parts of a firearm [that are essential to its operation]<sup>65</sup> [or accessories]<sup>66</sup> [that can be attached to a firearm]<sup>67</sup> [and that enhance its lethality].<sup>68</sup>

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<sup>60</sup> Proposal made 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.254/5/Add.5).

<sup>61</sup> At the fifth session of the Ad Hoc Committee, the delegation of India proposed adding the word “marking” after the words “serial number”.

<sup>62</sup> At the fifth session of the Ad Hoc Committee, the delegation of India proposed to insert the words “before, during or after importation or exportation” at the end of this subparagraph.

<sup>63</sup> This proposal was made by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1). The delegations of Botswana, France and the Republic of Korea suggested that criminalization of those acts should be dealt with in article 5 instead of in the definition of illicit trafficking (see also footnote 106 below). The delegation of India suggested that this provision should be kept as part of the definition and proposed changes to link it more closely with import and export activity.

<sup>64</sup> At the fifth session of the Ad Hoc Committee, there was extensive discussion of whether this article should include a definition of “other related materials” or “parts and components”. A majority of delegations favoured a definition of “parts and components” because that phrase most closely reflected the mandate of the Ad Hoc Committee (General Assembly resolution 53/111), but there was a range of views with respect to the balance of the definition. Most delegations sought more general wording to ensure that all of the major parts of firearms would be included but that minor parts would not be included. Delegations were asked to propose a compromise on the definition of “parts and components” at the next session of the Ad Hoc Committee at which the draft protocol would be discussed (see also footnote 2).

<sup>65</sup> Deletion proposed by the delegations of Mexico, South Africa (A/AC.254/CRP.6), the United Kingdom and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of New Zealand.

<sup>66</sup> The deletion of these words was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of New Zealand. Delegations were generally in favour of considering the term “accessories” to include items such as silencers, which though not parts or components and not “essential” to the operation of a firearm, were nevertheless of concern in dealing with organized crime. Most agreed that this issue needed to be dealt with, but many were concerned that the term “accessories” was too broad.

<sup>67</sup> Deletion proposed by the delegations of Mexico and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of New Zealand.

<sup>68</sup> The deletion of these words was 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) and supported by the delegation of New Zealand. The delegation of the United States noted that the use of this criterion would exclude some components or accessories such as silencers, which were of concern in the context of transnational organized crime but did not enhance lethality.

Option 2<sup>69</sup>

(f) “Parts and components”: any elements of a firearm [that are essential to its operation,]<sup>70</sup> [such as] [including]<sup>71</sup> a barrel, frame, cylinder or slide.

[(f) *bis* “Tracing”:<sup>72</sup> the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status and proving ownership.]<sup>73</sup>

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

- (i) Substances and articles that are not in and of themselves explosives; or
- (ii) Substances and articles listed in the annex to this Protocol.]<sup>74</sup>

<sup>69</sup> The delegation of Japan proposed that, throughout the draft Protocol, the words “ammunition [, explosives] and other related materials” be replaced with the words “their parts and components and ammunition”, so that the wording would be the same as in Economic and Social Council resolution 1998/18 and General Assembly resolutions 53/111 and 53/114. In line with that proposal, the delegation of Japan proposed that the definition of “other related materials” be replaced with that of “parts and components” (A/AC.254/L.22).

<sup>70</sup> At the fifth session of the Ad Hoc Committee, some delegations were of the view that these words were too vague, since even some minor components that are not unique to a firearm were “essential” to its operation and some major components, such as the stock, were not. This question was linked to the “illustrative list” that follows. Some delegations were of the opinion that the list was too restrictive, while others felt that it provided an appropriate clarification, excluding minor but “essential” parts. The delegation of the United States proposed that the test for inclusion should not be whether the parts were “essential” or whether they contributed to lethality, but whether they were unique to firearms or identifiable as firearm components or parts. The delegation of Italy proposed inserting the words “the operation of that firearm or any other firearm”.

<sup>71</sup> Proposal submitted by the delegation of Singapore at the fifth session of the Ad Hoc Committee.

<sup>72</sup> During the fifth session of the Ad Hoc Committee, there was extensive discussion of the term “tracing”. Some delegations saw tracing as a term of art referring to the tracing of specific firearms from place to place or from owner to owner using the unique serial number or other markings on the firearm and records of transfers. Other delegations saw the term as a more general reference to technical or investigative assistance. These delegations sought to extend the definition to include the tracing of parts, components and ammunition. Some delegations, however, saw this as requiring additional marking and record-keeping, which, in their view, was impracticable. Some other delegations felt that it was not necessary to define the term “tracing”.

<sup>73</sup> At the fifth session of the Ad Hoc Committee, the delegation of the United States expressed concern about any provision that would require tracing of firearms for purposes other than assisting in criminal investigations. Some delegations wanted wording that would limit tracing to illicitly manufactured or trafficked firearms, but others pointed out that the legal status of a firearm would not generally be known until or unless it had been traced.

<sup>74</sup> This addition was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). At the fifth session of the Ad Hoc Committee, there was extensive discussion on whether the Protocol should deal with explosives or not. The majority of delegations opposed any provisions dealing with explosives in the Protocol on the basis that it would be impracticable on technical grounds and that it would go beyond the mandate given to the Ad Hoc Committee by the General Assembly in its resolutions 53/111 and 53/114. Several delegations wanted the references to explosives to be kept in the text, however, until the status of the mandate and the possibility of a separate protocol were clarified. Pursuant to a proposal of the delegation of the United Kingdom, the Ad Hoc Committee requested the Secretariat to obtain a legal opinion about the scope of the mandate in resolutions 53/111 and 53/114 and the scope of the mandate in the draft resolution contained in document A/C.3/54/L.5, on which the General Assembly was expected to

*Article 3*  
*Purpose*<sup>75</sup>

The purpose of this Protocol is:

(a) To promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, [their parts and components and]<sup>76</sup> ammunition [, explosives]<sup>77</sup> [and other related materials],<sup>78, 79</sup>

Option 1<sup>80</sup>

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

Option 2<sup>81</sup>

(b) To promote and facilitate cooperation and exchange of information and experience among States Parties<sup>82</sup> to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, [their parts and components and]<sup>83</sup> ammunition, [explosives] and [other related materials].<sup>84</sup>

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take action soon.

<sup>75</sup> At the fifth session of the Ad Hoc Committee, some delegations suggested that the subject of article 1, paragraph 2, including subparagraphs 2 (a) and (b), dealt with the purpose of the draft Protocol rather than its relationship with the draft Convention, and should therefore be moved to article 3. There was some support for a revised text of article 3 based on this suggestion and a compromise between the options already proposed. (The delegations of Mexico and the United States proposed a text that will be translated and distributed at the sixth session of the Ad Hoc Committee.) Since this provision was closely related to article 1 of the draft Protocol and several provisions of the draft Convention, it was decided that further discussion should be deferred until the unsettled issues in those provisions had been resolved.

<sup>76</sup> Addition proposed by the delegation of Japan (A/AC.254/L.22) (see footnote 4).

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

<sup>78</sup> Deletion proposed by the delegation of Japan (A/AC.254/L.33) (see footnote 4).

<sup>79</sup> The delegation of the United States proposed that the text of this paragraph be deleted and replaced with the text presently in article 1, paragraph 2.

<sup>80</sup> This option was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Ecuador, Italy, New Zealand, the Republic of Korea, Switzerland and Turkey. The delegation of South Africa suggested adding the words "combating and preventing illicit manufacturing of and trafficking in firearms, ammunition and other related materials" (A/AC.254/5/Add.5).

<sup>81</sup> Alternative proposed by the delegations of Japan and Mexico (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of Senegal.

<sup>82</sup> The inclusion of the phrase on cooperation among States in the article entitled "Purpose" was supported by the delegation of France, which noted that the purpose of such cooperation should not go beyond combating transnational organized crime and into the area of disarmament and arms control.

<sup>83</sup> See footnote 2.

<sup>84</sup> At the fifth session of the Ad Hoc Committee, the delegation of the Syrian Arab Republic proposed inserting the words "within the framework of the Convention against Transnational Organized Crime" at the end of this paragraph.

*Article 4*  
*Scope*<sup>85</sup>

Option 1

This Protocol applies to all classes of [commercially]<sup>86</sup> traded [and manufactured]<sup>87</sup> firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security.<sup>88</sup>

<sup>85</sup> At the fifth session of the Ad Hoc Committee, the delegations of Belgium (A/AC.254/5/Add.10) and China (A/AC.254/5/L.78) proposed new texts. A majority of delegations supported either option 2 or option 3 or some compromise between the two. Some delegations preferred the inclusion of wording that would exclude the import or export of firearms by private individuals such as tourists or visiting hunters, based on option 1 or some other formula. A few delegations supported option 4, which would limit application to firearms that had been illegally manufactured and traded. Most delegations opposed this option on the grounds that, in order to control illicit firearms trafficking, it was necessary to monitor and place restrictions on all firearms trade, in order to determine what was legal and what was not. There was general support for excluding State-to-State transactions on the grounds that they were more related to arms control than crime control, but there was some concern about the precise meaning of the words "State-to-State transactions". Most delegations were of the view that this should exclude transfers from one Government to another but not transfers between entities owned or operated by Governments, such as State-owned arms manufacturers. One delegation proposed that transactions should be exempted if only one party was a State, but others argued that doing so would effectively exclude all acquisitions or transfers by a State.

<sup>86</sup> The deletion of this word was proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of Croatia. The delegation of Croatia also suggested using the same definition of the term "illicit trafficking" in both article 2 and article 4. The delegation of the Syrian Arab Republic proposed to focus only on illicit firearms used by criminal organizations. In a discussion regarding the phrase "commercially traded", there was some concern about what it meant and whether it would exclude certain types of transactions from those covered by the Protocol. The delegation of the United States expressed concern that the phrase "commercially traded and manufactured" might exclude surplus military firearms. The delegation of Canada was of the view that it excluded only firearms taken from one State to another in private hands and regarded the exclusion as necessary. The delegation of South Africa expressed concern about the possible interpretation that firearms simply given without consideration would not be "commercially traded".

<sup>87</sup> Addition proposed by the delegation of Japan (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of the Syrian Arab Republic.

<sup>88</sup> The delegations of Mexico, the Republic of Korea and Turkey expressed their concern about the technical difficulties that might be caused by the scope of the Protocol being strictly limited only to organized crime. Some delegations, including those of Algeria, France, Germany and the Netherlands, suggested that the scope of the Protocol should not go beyond the mandate set forth by the General Assembly. The delegation of Sweden suggested that, even though the Protocol should be subordinate to the Convention, whose scope was to be limited to transnational organized crime, application of the Protocol should not necessarily be limited to transnational organized crime. The delegation of the United States expressed the view that some provisions of the Protocol should go beyond the scope of transnational organized crime; that view was supported by the delegation of the United Kingdom.

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

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

Option 2<sup>89</sup>

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

Option 3<sup>90</sup>

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

Option 4<sup>91</sup>

This Protocol applies to all classes of illegally manufactured and traded firearms, ammunition and other related materials, as defined in article 2 of this Protocol.

*[Article 4 bis  
Sovereignty*

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

2. A State Party shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions that are exclusively reserved to the authorities of that other State Party by its domestic law.]<sup>92</sup>

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<sup>89</sup> Alternative proposed by the delegation of the United Kingdom (A/AC.254/5/Add.1 and Corr.1).

<sup>90</sup> Alternative proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Croatia and Ecuador.

<sup>91</sup> Alternative proposed by the delegation of Colombia.

<sup>92</sup> This addition was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). At the fifth session of the Ad Hoc Committee, after a brief discussion, it was decided to defer further consideration of the proposal until the related provisions of the draft Convention (article 2) had been further developed.

*Article 5*  
*Criminalization*<sup>93</sup>

1. Each State Party shall adopt such legislative [and,]<sup>94</sup> or other measures as may be necessary to establish as [criminal]<sup>95</sup> offences [“serious crimes” as defined in article 2 *bis*, paragraph (b), of the Convention]<sup>96</sup> under its domestic law [, when committed intentionally]<sup>97</sup> [and in connection with a criminal organization]:<sup>98</sup>

(a) Illicit trafficking in firearms, [parts and components,] ammunition [, explosives]<sup>99</sup> [and other related materials]; [and]<sup>100</sup>

<sup>93</sup> At a previous session of the Ad Hoc Committee, there was an intensive discussion on the issue of the scope of criminalization in the draft Protocol in relation to the scope of the draft Convention. The issue was whether this provision criminalized illicit trafficking in and manufacturing of firearms in general or only those acts which were related to organized crime.

Some delegations, including those of China and Senegal, expressed the view that a list of offences should not be created in the draft Protocol. The delegation of Paraguay noted that article 5 did not add new offences to the draft Convention but highlighted specific types of conduct already covered by the draft 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 5 of the draft Protocol to article 3 of the draft Convention. The attention of the Ad Hoc Committee was drawn to Economic and Social Council resolution 1998/18, in which the Council decided that the Ad Hoc Committee should hold discussions on, *inter alia*, effective methods of identifying and tracing firearms, as well as on the establishment or maintenance of an import and export and in-transit licensing or similar authorization regime.

<sup>94</sup> Addition proposed by the delegation of Croatia.

<sup>95</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>96</sup> At the fifth session of the Ad Hoc Committee, the delegation of Japan proposed that wording be added here that would ensure that domestic offences established pursuant to this article would also be considered “serious crime” according to the definition of that term in article 2 *bis*, paragraph (b), of the draft Convention.

<sup>97</sup> The deletion of these words was proposed by the delegations of Mexico, South Africa (A/AC.254/5/Add.5) and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Colombia and Paraguay. The delegation of Japan proposed to modify the same phrase to read “, 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. At the fifth session of the Ad Hoc Committee, a number of delegations supported the deletion of these words on the grounds that the mental element of crime was generally a matter for domestic law and that requiring intentional commission in an international instrument was unnecessarily restrictive.

<sup>98</sup> This addition was proposed by the delegation of France (A/AC.254/L.21). At the fifth session of the Ad Hoc Committee, a number of delegations supported the deletion of this text on the grounds that it was unnecessarily restrictive. The delegation of the Islamic Republic of Iran proposed that the requirement be strengthened by requiring connection to a “transnational” criminal organization. The delegation of the Syrian Arab Republic proposed that the requirement be expanded to include both connection with a criminal organization and the commission of some element of a transnational criminal offence in one of the States involved.

<sup>99</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>100</sup> After some discussion of a proposal to combine subparagraphs 1 (a) and (b), it was decided at the fifth session of the Ad Hoc Committee that separate provisions were needed to clarify that compliance would require the enactment of two distinct offences, rather than a single combined offence. The insertion of the word “and” would depend on whether subparagraph (c), (d) or (e) (or any combination of those subparagraphs) remains in this paragraph.

(b) Illicit manufacturing of firearms, [parts and components,] ammunition [, explosives]<sup>101</sup> [and other related materials];<sup>102</sup>

[(c) [Illicit] detention<sup>103</sup> and use of [illicitly trafficked or manufactured] firearms, [parts and components,] ammunition and other related materials;]<sup>104</sup>

[(d) Importing, exporting and manufacturing of any explosive bomb, incendiary bomb, gas bomb, grenade, rocket, rocket launcher, missile system or mine without a licence or authorization from a competent authority of the State Party;]<sup>105</sup> [and

(e) Obliterating, removing or altering the serial number on a firearm.]<sup>106, 107</sup>

[2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties,<sup>108</sup> the criminal offences established pursuant to paragraph 1 of this article shall include participation in, association or conspiracy to

<sup>101</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>102</sup> The delegation of the United Kingdom suggested giving consideration to establishing a new offence to cover the “brokering” of illicit firearm deals abroad by citizens operating from within their own countries (A/AC.254/5/Add.1 and Corr.1). The delegation of Japan suggested the criminalization of offences involving the offering of funds and transportation for illicit manufacturing and trafficking, in the absence of a conspiracy provision (A/AC.254/5/Add.1 and Corr.1). The delegation of Japan proposed that there should be a provision in this article that would encourage States Parties to reduce or exempt from penalty in the case of voluntary surrender to the authorities for the collection of illicit firearms (A/AC.254/5/Add.1 and Corr.1) (see also footnote 4).

<sup>103</sup> A number of delegations expressed concern or uncertainty about the meaning of the word “detention” in the English text. The delegation of Botswana proposed that it be replaced with the word “possession”. Other delegations expressed concern that dealing with possession was beyond the mandate of the Ad Hoc Committee or that simple possession offences might not be treated as criminal offences (as opposed to administrative or regulatory offences) in domestic law. Others argued that possession offences were needed to control illicit trafficking and were therefore not beyond the mandate of the Ad Hoc Committee and that they would be an important tool in combating transnational organized crime. Some delegations voiced support for including the word “possession” but wanted the word “use” excluded. Several delegations voiced concern that domestic legislation implementing this requirement, if not properly worded, might include innocent possession of illicitly trafficked or manufactured firearms. The delegation of Switzerland pointed out that that possibility would be eliminated by the reference to “illicit” possession or detention, as long as that word was retained.

<sup>104</sup> Addition proposed by the delegation of France, with reservations on the language in the inner brackets (see also footnote 4).

<sup>105</sup> This addition was proposed by the delegation of Norway at the fifth session of the Ad Hoc Committee as a consequence of its proposal that subparagraph (c) (ii) of article 2 (which included these devices in the definition of “firearm”) be deleted. A number of delegations expressed support for this proposal as a compromise solution. Others maintained that the text should be deleted entirely as it went beyond the mandate of the Ad Hoc Committee. Several delegations continued to support its retention in article 2 (for details, see footnotes 45-47). A number of delegations reserved their positions pending translation of the proposed texts.

<sup>106</sup> The delegation of the Republic of Korea proposed that this text, presently in subparagraph (e) (iii) of article 2, be inserted in article 5. The proposal was supported by Botswana and France.

<sup>107</sup> At the fifth session of the Ad Hoc Committee, the delegation of the United States proposed that a provision criminalizing activities relating to the “brokering” of transactions otherwise designated as illicit in article 5 be inserted here.

<sup>108</sup> The delegation of Croatia proposed that the wording “subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties” could be replaced with wording similar to that of article 1 (option 1) of the draft Convention (A/AC.254/4).



commit such offences, attempts to commit such offences and aiding, abetting, facilitating [and counselling]<sup>109</sup> the commission of said offences.]<sup>110</sup>

[3. States Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the Security Council.]<sup>111</sup>

## *Article 6* *Jurisdiction*<sup>112</sup>

### Option 1

Each State Party shall adopt such measures as may be necessary [within its own national legislation]<sup>113</sup> to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences that it has established pursuant to this Protocol.

### Option 2<sup>114</sup>

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Protocol when the offence in question is committed in its territory.

2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offences that it has established in accordance with this Protocol 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 Protocol 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.

<sup>109</sup> Deletion proposed by the delegation of Pakistan.

<sup>110</sup> The delegation of Croatia proposed the deletion of this paragraph since the contents of the paragraph were already included in the draft Convention. This proposal was supported by Paraguay. The delegation of the Netherlands suggested that the same wording as that of article 3 of the draft Convention would be preferable.

<sup>111</sup> This addition was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of the Netherlands and South Africa (A/AC.254/5/Add.5). At the fifth session of the Ad Hoc Committee, a majority of delegations argued that this provision was an arms control measure and not a crime control measure and, being beyond the mandate of the Ad Hoc Committee, should be deleted. Several delegations argued that, to the contrary, the breaking of United Nations arms embargoes in conflict situations was an activity likely to be engaged in by transnational organized criminal groups and should therefore be dealt with in the draft Protocol.

<sup>112</sup> Depending on the final draft of the Convention, this provision may not be necessary or may require modification.

<sup>113</sup> Addition proposed by the delegation of Ecuador.

<sup>114</sup> This alternative was 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 7*  
*Confiscation or forfeiture*<sup>115</sup>

1. States Parties shall undertake to confiscate or [forfeit]<sup>116</sup> firearms, ammunition [, explosives]<sup>117</sup> 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]<sup>118</sup> and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking fall into the hands of private individuals or businesses through auction [, sale]<sup>119</sup> or other disposal.<sup>120</sup>]<sup>121</sup>

Option 2<sup>122</sup>

2. States Parties shall prevent illicitly manufactured and trafficked firearms and ammunition from falling into the hands of criminals by seizing and destroying such firearms and ammunition unless other disposal [that includes destroying them or rendering them unusable]<sup>123</sup> has been officially authorized and the firearms and ammunition have been marked or recorded and their disposal also recorded.

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<sup>115</sup> The final form of this article will be influenced by the general provision on confiscation and forfeiture in the Convention. If that provision proves inapplicable or insufficient in respect of the particular needs of the subject matter of the Protocol, the article will require further elaboration.

<sup>116</sup> Replacement of the word “forfeit” with the words “require forfeit of” was suggested by the delegation of the United Kingdom.

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

<sup>118</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>119</sup> It was noted by the delegation of the Syrian Arab Republic that domestic legislation should determine how the sales of confiscated firearms were regulated.

<sup>120</sup> It was suggested by the delegation of South Africa that the destruction of unauthorized weapons should be also included in this provision (A/AC.254/5/Add.1 and Corr.1). The delegations of the Russian Federation and Senegal suggested that those confiscated firearms disposed in a controlled fashion should not necessarily be destroyed.

<sup>121</sup> The Chairman suggested placing this paragraph in brackets because of the conflicts with the domestic laws of some States.

<sup>122</sup> Alternative proposed by the delegations of Germany and the Republic of Korea, taken from the action plan recommended by the Senior Experts Group on Transnational Organized Crime.

<sup>123</sup> Proposal made by the delegation of South Africa (A/AC.254/5/Add.5).

*Article 8*  
*Record-keeping*

1. Each State Party shall maintain<sup>124</sup> for not less than [ten years]<sup>125</sup> the information<sup>126</sup> necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations [under this Protocol].<sup>127</sup> [In cases involving the export, import, brokerage and transit of firearms, the record shall include in particular:

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

(b) The country and date of issuance, the date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the articles.]<sup>128</sup>

2.<sup>129</sup> [Records shall be kept for a period of not less than [ten]<sup>130</sup> years after the last transaction effected under a [particular certificate].<sup>131</sup>] <sup>132</sup> [States Parties shall identify to one another the agencies responsible for record-keeping.]<sup>133</sup>

<sup>124</sup> At the fifth session of the Ad Hoc Committee, the delegation of the United Kingdom expressed concern about the wording requiring States Parties to “maintain” the specified records themselves. In some cases, record-keeping was required by domestic law, but the records were actually created and kept by the companies that manufactured, imported or exported the firearms and not by the States themselves.

<sup>125</sup> The delegation of Mexico proposed to change “ten years” to “five years” (A/AC.254/5/Add.1 and Corr.1); that proposal was supported by the delegation of the Syrian Arab Republic. During the fifth session of the Ad Hoc Committee, a majority of delegations argued that records should be kept for an extended period on the grounds that firearms themselves were very durable and might have to be traced over long periods. To those delegations, the proposed 10-year period was an acceptable compromise, but any shorter period would not be appropriate. A few delegations preferred more general wording that would simply require records to be kept for “as long as possible”.

<sup>126</sup> Some delegations, including those of Japan, the Netherlands, the Russian Federation, the Sudan, Switzerland, the Syrian Arab Republic and the United Kingdom, noted that there was a need to clarify the contents of “information” required.

<sup>127</sup> This addition was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>128</sup> This addition was proposed by the delegation of Switzerland. At the fifth session of the Ad Hoc Committee, there was further discussion of this proposal and of what the record should include. The delegations of France and Norway expressed their support for the proposal.

<sup>129</sup> At the fifth session of the Ad Hoc Committee, a number of delegations voiced their concern about this paragraph. Many considered that it overlapped paragraph 1 and was therefore unnecessary or confusing. The delegation of the United States explained that the first sentence was intended to refer to records of specific transactions as opposed to records in general, to which different rules applied. The delegation of France expressed concern over the drafting and/or translation of the second sentence, which did not make it clear whether it applied to State-created and State-maintained records, private commercial ones or both. There was general agreement that this provision, if it was to be kept at all, would require revision and clarification. It was agreed that this would be done after the discussion of article 11, which should provide a clearer indication of what sorts of records needed to be kept and by whom.

<sup>130</sup> See footnotes 124-128.

<sup>131</sup> The delegations of Mexico and the United States proposed to replace the words “particular certificate” with the words “licence or authorization” (A/AC.254/5/Add.1 and Corr.1).

<sup>132</sup> Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>133</sup> The delegation of the Russian Federation proposed the deletion of this sentence, noting that the authorities responsible for such record-keeping were not necessarily the same as the authorities responsible for exchanging such information. The delegation of Switzerland noted that the issue here was related to the area

Option 1

[3. States Parties shall use their best efforts to computerize their records for the purpose of enhancing one another's effective access to such information.]<sup>134</sup>

Option 2<sup>135</sup>

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

*Article 9*  
*Marking of firearms*<sup>136, 137</sup>

1. For the purposes of identifying and tracing firearms, [referred to in article 2, subparagraph (c) (I), of this Protocol,]<sup>138</sup> States Parties shall:

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of arms control and that the issue of information exchange should be handled carefully.

<sup>134</sup> The delegations of Mexico and the United States proposed to delete this paragraph. The delegation of the Sudan noted that it was rather difficult for developing countries to computerize such information. The delegations of Norway and South Africa (A/AC.254/5/Add.5) supported the original paragraph. The Chairman proposed to replace the words "to computerize" with the words "to use modern technology". The delegation of South Africa noted that there should be attempts to ensure the compatibility of computer systems at least within regions (A/AC.254/5/Add.5).

<sup>135</sup> This alternative was 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. There was some discussion of this provision at the fifth session of the Ad Hoc Committee. Most of the delegations that spoke on the subject supported the idea of a provision on "best efforts", encouraging States to computerize records, in particular if developing countries were given appropriate technical assistance. Most indicated that allowing other States or agencies direct access to their States' computerized records would not be acceptable. The delegations of Australia, France and Italy supported the idea of inserting in articles 14 and 17 those portions of this paragraph which were acceptable. The delegation of Switzerland indicated that this would be acceptable to it and that it would like to add more details to its proposal in the light of the discussions that had taken place.

<sup>136</sup> The delegation of Germany entered a reservation on this article to allow for more specific comments to be made as negotiations proceed pending further study. However, the importance of this article was stressed by many other delegations, and there was general agreement on both the need for marking and the inclusion of the article in the draft Protocol.

<sup>137</sup> The delegation of the United States suggested that inputs should be sought from experts on the technical issues, including those on marking, which was supported by the delegations of Australia, Ecuador, Norway, the Philippines, Saudi Arabia, Switzerland, Tunisia and Turkey. The delegation of the United States stressed that discussion by experts would not be a drafting exercise. The delegation of Cuba suggested that the expertise developed in the Panel of Governmental Experts on Small Arms established in pursuance of General Assembly resolution 50/70 and in the Department of Disarmament Affairs of the Secretariat might also be utilized. The delegation of the United States suggested that inputs should also be sought from relevant non-governmental organizations and the firearm manufacturing industry.

<sup>138</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1), which was supported by the delegation of the Holy See.

(a) Require,<sup>139</sup> at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its [serial number];<sup>140</sup>

(b) Require<sup>141</sup> appropriate markings on each imported firearm<sup>142</sup> [following its importation for the purpose of commercial sale within the importing country, or permanent private importation],<sup>143</sup> permitting the identification of the importer's name and address [and an individual serial number if the firearm does not bear one at the time of import]<sup>144</sup> [so that the source of the firearm can be traced];<sup>145</sup> and

(c) [Require]<sup>146</sup> the appropriate marking of any firearm confiscated or forfeited pursuant to article 7 of this Protocol that is retained for official use.

[1 *bis* The firearms referred to in article 2, subparagraph (c) (ii), of this Protocol should be marked appropriately at the time of manufacture, if possible.]<sup>147</sup>

2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings.<sup>148, 149</sup>

<sup>139</sup> The requirement for marking at the time of manufacture was generally agreed upon.

<sup>140</sup> On the type of information contained in the marking at the time of manufacture, the delegation of the United Kingdom proposed to include "the year of manufacture", and suggested to clarify the meaning of the words "place of manufacture" (A/AC.254/5/Add.1 and Corr.1). The delegation of Argentina proposed to include "model number", in addition to serial number. The delegation of New Zealand proposed to replace the words "serial number" with "unique identifier". The delegation of China proposed to delete the words "name of manufacturers". The delegation of Switzerland suggested that the marking requirement should not be overloaded.

<sup>141</sup> Many delegations, including those of Kuwait, the Libyan Arab Jamahiriya, New Zealand, Portugal, the Republic of Korea, Saudi Arabia, the United Kingdom and the United States, as well as the representatives of the World Customs Organization and the International Criminal Police Organization (Interpol), supported the requirement of marking at the time of import. The delegations of China and France were of the opinion that further consideration was needed.

<sup>142</sup> The delegation of Japan suggested that there was a need to define the period for marking imported firearms (e.g. the period during which they pass through customs or during which they are legally obtained by the final recipient) (A/AC.254/5/Add.1 and Corr.1).

<sup>143</sup> This addition was proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Croatia, the Philippines, Portugal, Saudi Arabia and Tunisia. The delegations of the Holy See, New Zealand, Nigeria, Qatar and the Republic of Korea addressed their preference to not including this phrase so that marking would be required regardless of the purpose of import.

<sup>144</sup> This addition was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1). The Holy See proposed the deletion of this phrase.

<sup>145</sup> This addition was proposed by the delegations of Japan and the United Kingdom (A/AC.254/5/Add.1 and Corr.1). The delegation of New Zealand requested clarification of the word "source".

<sup>146</sup> The delegations of the Libyan Arab Jamahiriya, the Netherlands and Saudi Arabia supported the requirement for marking confiscated firearms. The delegation of France was of the opinion that further consideration was needed. The delegation of the Netherlands proposed changing "require" to "ensure".

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

<sup>148</sup> The delegation of South Africa suggested including the words "developing effective and inexpensive measures to mark firearms" in this paragraph (A/AC.254/5/Add.5). The importance of there being an inexpensive way of marking was mentioned by the delegation of Pakistan. The delegation of Saudi Arabia made a suggestion to include a reference to "forged or counterfeited marking"; that suggestion was supported by the delegation of Colombia.

<sup>149</sup> Other issues discussed in relation to this article included: (a) a need for an international database on firearm manufacturers (suggested by the delegation of Argentina and supported by the delegations of Colombia, Ecuador, Nigeria, Portugal and Ukraine); (b) a need for a universally compatible marking system (suggested

[Article 10

*Preventing the reactivating of deactivated firearms*

States Parties that have not already done so shall consider taking the necessary measures to prevent the reactivating of deactivated firearms, including through criminalization, if appropriate.<sup>150]</sup><sup>151</sup>

Article 11

*General requirements for export, import and transit licensing or authorization systems*<sup>152, 153</sup>

1. States Parties shall establish or maintain an effective system of export, import and international transit licensing or authorization<sup>154</sup> for the transfer of firearms, ammunition [, explosives]<sup>155</sup> and other related materials.<sup>156</sup>

Option 1<sup>157</sup>

2. States Parties, before issuing export licences or authorizations for the shipment of firearms, ammunition and other related materials for export, shall verify that the importing and transit<sup>158</sup> States have issued licences or authorizations. Each export, import and in-transit licence or authorization shall contain the same information, which at a minimum shall identify the country and date of issuance, the

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by the delegation of the Netherlands and supported by the delegations of Portugal, Switzerland and Ukraine); and (c) a need for marking ammunition (suggested by the delegations of Turkey and Ukraine). While expressing its support for marking, the delegation of China expressed the view that the difference of marking methods in each region needed to be taken into account in developing this article.

<sup>150</sup> The delegation of the United Kingdom suggested identifying and agreeing to a certain standard in the text of the draft Protocol instead of simply committing to “considering taking the necessary measures to prevent the reactivating of deactivated weapons” (A/AC.254/5/Add.1 and Corr.1).

<sup>151</sup> The delegation of Mexico proposed the deletion of this article (A/AC.254/5/Add.1 and Corr.1).

<sup>152</sup> The importance of this article was stressed by many delegations, and the need for export and import control was generally agreed upon. However, the delegation of the Netherlands expressed its hesitations about including a provision on trade control in the draft Protocol, whose purpose would be to promote law enforcement cooperation. The delegation of the Netherlands expressed reservations regarding this article, in particular because of the concern regarding the compatibility of this article with the trade rules of the European Union.

<sup>153</sup> Many delegations, including the delegations of Italy, Japan and the United Kingdom, suggested that inputs should be sought from experts on the technical issues of import, export and transit control.

<sup>154</sup> The delegation of the Netherlands sought clarification on the difference between the terms “licences” and “authorizations”. It was suggested by the delegation of the United States that the term “licence and authorization” should stand for authorizations, which would include both authorization over a period and one-time deal authorization.

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

<sup>156</sup> The requirement for an export and import licensing or authorization system was generally agreed upon.

<sup>157</sup> Alternative (formerly paragraph 2, option 2) proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of Croatia, the Holy See, Kuwait, the Netherlands, Norway, the Philippines, South Africa (A/AC.254/CRP.6) and Tunisia.

<sup>158</sup> The delegation of the Netherlands was of the opinion that the inclusion of transit control would make the scope of the regulation too broad.

date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the article.

Option 2<sup>159</sup>

2. States Parties, before releasing shipments of firearms, ammunition [, explosives]<sup>160</sup> and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

Option 1<sup>161</sup>

3. States Parties shall not permit the transit<sup>162</sup> of firearms, ammunition [, explosives]<sup>163</sup> and other related materials until the receiving States Parties issue the corresponding licences or authorizations.

Option 2<sup>164</sup>

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

4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition [, explosives]<sup>165</sup> and other related materials.<sup>166</sup>

[5. Written approval from the exporting country must be obtained before a State Party may authorize the re-export, retransfer, trans-shipment or other disposition of

<sup>159</sup> Original text (formerly paragraph 3, option 1), which was supported by the delegations of Italy (with reservation), Pakistan and Turkey.

<sup>160</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>161</sup> Original text (formerly paragraph 2, option 1), which was supported by the delegations of Italy, Pakistan and Turkey.

<sup>162</sup> The delegation of Japan noted that the term “transit” should be clearly defined, since it would not be appropriate to impose obligations on a State Party in the following cases: aircraft merely flying over the territory of the State Party; a ship making innocent passage through territorial waters; aircraft in transit through an airport of the State Party; or a ship in transit through the seaport of the State Party. The same delegation also suggested that, in setting up structures based on this paragraph, full consideration should be given to the protection of privacy and a civil servant’s obligation to preserve secrets, as provided for in related domestic law (A/AC.254/5/Add.1 and Corr.1). The delegation of the Republic of Korea shared the concerns noted by the delegation of Japan. The delegations of Australia and the Netherlands also noted the need to clarify the meaning of the term “transit”.

<sup>163</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>164</sup> This alternative (formerly paragraph 3, option 2) was 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). The delegations of Croatia, Kuwait and the Philippines also supported this option.

<sup>165</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>166</sup> The delegation of Japan suggested that the meaning of the words “upon request”, “receipt” and “inform” should be clearly stated (A/AC.254/5/Add.1 and Corr.1).

firearms to any end-user, end use or destination other than as stated on the export licence or authorization.]<sup>167, 168</sup>

*Article 12*  
*Security measures*

States Parties, in an effort to eliminate the [theft,]<sup>169</sup> loss or diversion of firearms, ammunition [, explosives]<sup>170</sup> and other related materials, shall undertake to adopt the necessary measures<sup>171</sup> to ensure the security of firearms, ammunition [, explosives]<sup>172</sup> and other related materials [imported into, exported from or in transit in their respective territories].<sup>173</sup>

*Article 13*  
*Strengthening of controls at export points*<sup>174</sup>

Each State Party shall adopt such measures as may be necessary to detect and prevent illicit trafficking in firearms, ammunition [, explosives]<sup>175</sup> and other related materials between its territory and the territories of other States Parties, by strengthening controls at export points.

*Article 14*

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<sup>167</sup> This addition was proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of the Holy See, Italy, the Philippines and Turkey. The delegations of China, Pakistan and the Republic of Korea proposed the deletion of this paragraph. The delegation of the Netherlands suggested that such approval on re-export should not be obligatory unless the exporting country requested it. The delegation of Nigeria proposed that re-exporting countries submit written explanation indicating why and to whom the firearms would be re-exported.

<sup>168</sup> The delegation of Japan suggested that recognition should also be imposed in the case of import from, export to and transit through non-States Parties, with a view to reducing detour exports (A/AC.254/5/Add.1 and Corr.1). That suggestion was supported by the delegation of the Republic of Korea.

<sup>169</sup> Addition proposed by the delegation of Colombia.

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

<sup>171</sup> The delegation of Japan suggested that such measures should be clarified (A/AC.254/5/Add.1 and Corr.1).

<sup>172</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>173</sup> The delegation of Colombia proposed that this language in the bracket be replaced with the words "at the points of manufacture, transport, distribution, sale, export, import and transit through their respective territories". That proposal was supported by the delegation of the Islamic Republic of Iran. The delegation of France proposed to delete the words in brackets, explaining that they would narrow the scope of the article and exclude domestic control. That proposal was supported by the delegation of Tunisia. The delegation of Turkey proposed to retain the language in the bracket. That proposal was supported by the delegation of Azerbaijan. The delegation of the United States noted that the article should only deal with the security of transnational commerce, not the security of privately owned guns. The delegation of the Islamic Republic of Iran suggested that this provision would apply to both storage by governments and commerce. The delegation of Canada expressed the view that the original intention of this article was to address the security of commercial goods while they were in States' hands.

<sup>174</sup> The delegation of the Islamic Republic of Iran was of the opinion that this article was superfluous, overlapping with article 12.

<sup>175</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).



*Exchange of information*<sup>176</sup>

1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves [and with the relevant intergovernmental organizations];<sup>177</sup> 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]<sup>178</sup> and other related materials;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition [, explosives]<sup>179</sup> and other related materials, and ways of detecting them;

(c) Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition [, explosives]<sup>180</sup> and other related materials;

(d) Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>181</sup> and other related materials; and

(e) Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>182</sup> and other related materials.

2. States Parties shall provide to or share with each other, [and with the relevant intergovernmental organizations,]<sup>183</sup> as appropriate, relevant scientific and technological information useful to law enforcement authorities, in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>184</sup> and other related materials and prosecute the persons involved in those illicit activities.

3. States Parties shall cooperate [among themselves and with the relevant intergovernmental organizations]<sup>185</sup> in the tracing of firearms, ammunition [, explosives]<sup>186</sup> and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for

<sup>176</sup> Although the Convention is likely to include a general provision on the exchange of information, a provision dealing with that issue in this Protocol is recommended. The final form of this provision will need to take into account the corresponding article(s) in the Convention.

<sup>177</sup> Addition proposed by the delegation of Colombia. The delegation of the United States was of the opinion that there was no need to name all relevant intergovernmental organizations in this article. The delegation of the Republic of Korea noted that the exchange of information with a certain intergovernmental organization should be based on the agreements between each State and the intergovernmental organization concerned and that such an issue should not be dealt with in the Protocol.

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

<sup>179</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>180</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>181</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>182</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>183</sup> Addition proposed by the delegation of Colombia.

<sup>184</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>185</sup> Addition proposed by the delegation of Colombia.

<sup>186</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

assistance in tracing such firearms, ammunition [, explosives]<sup>187</sup> and other related materials.<sup>188</sup>

### *Article 15 Cooperation*

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>189</sup> and other related materials.

2. Each State Party shall identify a national body or a single point of contact<sup>190</sup> to act as liaison between it and other States Parties [and between it and the relevant inter-governmental organizations]<sup>191</sup> [on matters relating to this Protocol].<sup>192</sup>

[3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms, ammunition, explosives and other related materials to prevent and detect the illicit activities referred to in paragraph 1 of this article.]<sup>193</sup>

### *[Article 15 bis Establishment of a focal point]<sup>194</sup>*

1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within [the Secretariat of the United Nations]<sup>195</sup> responsible for:

- (a) Promoting the exchange of information provided for under this Protocol;
- (b) Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

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

<sup>188</sup> The delegation of South Africa suggested including in this paragraph a reference to the Interpol Weapons and Explosives Tracking System as one means of cooperating in the tracing (A/AC.254/5/Add.5).

<sup>189</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>190</sup> The delegation of Japan noted that designation of “a single point of contact” should allow the exchange of information already established among the existing authorities (A/AC.254/5/Add.1 and Corr.1).

<sup>191</sup> Addition proposed by the delegation of Colombia.

<sup>192</sup> The delegation of Mexico proposed to replace this language with “for the purposes of cooperation and information exchange” (A/AC.254/5/Add.1 and Corr.1).

<sup>193</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>194</sup> This new article was proposed by the delegations of Mexico and the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegation of South Africa (A/AC.254/5/Add.5). The delegations of Japan and the Netherlands noted a need to clarify the role and responsibility of the proposed focal point to avoid duplication. The delegation of France supported this article and proposed to consider utilizing, in order to avoid duplication of work, existing relevant United Nations mechanisms, such as Coordinating Action on Small Arms of the Secretariat, or relevant intergovernmental organizations. The delegation of Pakistan, the Republic of Korea and Saudi Arabia were of the opinion that this article was superfluous, the delegation of Pakistan noting that it overlapped with article 15, paragraph 2. The delegation of the United Arab Emirates was of the opinion that further consideration was needed on the necessity of such a focal point.

<sup>195</sup> This addition was proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1). The delegations of France, Saudi Arabia and the United States noted that budgetary implications should be kept in mind in designating this focal point in the Secretariat.

(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;<sup>196</sup>

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

(g) Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;<sup>197</sup>

(h) Establishing a database for consultation among States Parties on the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials, including those seized, confiscated or forfeited;

(i) Disseminating information to the general public on matters related to this Protocol;

(j) Coordinating international efforts, in particular among relevant international organizations, to combat the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials.]

#### Article 16

#### *Exchange of experiences and training*<sup>198</sup>

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

2. States Parties shall cooperate with each other and with [the International Criminal Police Organization, as well as other]<sup>199</sup> competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>200</sup> and other related materials. The subjects covered in such training shall include, *inter alia*:

<sup>196</sup> The delegations of Saudi Arabia and the United Arab Emirates were of the opinion that it was not appropriate to extend the role of such a focal point to include cooperation with States that were not Parties to the Protocol (see also footnote 4).

<sup>197</sup> The delegations of Pakistan, the Republic of Korea, Saudi Arabia and the United Arab Emirates were of the opinion that it was not appropriate to address in the Protocol the issue of Security Council embargoes on arms transfers.

<sup>198</sup> Although the Convention is likely to include a general provision on exchanges of experience and training, it would be useful to include a provision dealing with those issues in this Protocol. The final form of this provision will need to take into account the corresponding article(s) in the Convention.

<sup>199</sup> Addition proposed by the delegation of Colombia.

<sup>200</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

(a) Identification and tracing of firearms, ammunition [, explosives]<sup>201</sup> and other related materials;

(b) Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>202</sup> and other related materials, the methods of shipment used and the means of concealment used; and

(c) Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition [, explosives]<sup>203</sup> and other related materials.

### *Article 17* *Confidentiality*<sup>204</sup>

#### Option 1

Subject to the obligations imposed by its constitution [, other law]<sup>205</sup> or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives from another State Party [, including proprietary information pertaining to commercial transactions,]<sup>206</sup> if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.<sup>207</sup>

#### Option 2<sup>208</sup>

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

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<sup>201</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>202</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>203</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>204</sup> The delegation of Japan suggested that full consideration should be given to the protection of privacy and a civil servant's obligation to preserve secrets, as provided for in related domestic law (A/AC.254/5/Add.1 and Corr.1).

<sup>205</sup> Addition proposed by the delegation of the United States.

<sup>206</sup> Deletion proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>207</sup> The delegation of China suggested that State Parties to provide information should be notified prior to providing the information. That suggestion was supported by the delegation of the United Arab Emirates.

<sup>208</sup> Addition proposed by the delegation of Colombia.

*Article 18*  
*Technical assistance*<sup>209</sup>

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition [, explosives]<sup>210</sup> and other related materials, including technical assistance in those matters identified in article 19 of the Convention.

[*Article 18 bis*  
*Registration and licensing of brokers*<sup>211</sup>

Any person<sup>212</sup> [, wherever located,]<sup>213</sup> who engages in the business of brokering activities with respect to the manufacture, export, import or transfer of any firearms [and ammunition]<sup>214</sup> is required to register with and receive approval<sup>215</sup> from his or her country of nationality.<sup>216</sup>]

*Article 19*  
*Settlement of disputes*<sup>217</sup>

1. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time [90 days] shall, at the request of one of those Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

<sup>209</sup> The final form of this provision will need to take into account the corresponding article(s) in the Convention. The delegation of Japan suggested that this article should appear as article 16, paragraph 3, of the Protocol (A/AC.254/5/Add.1 and Corr.1). That suggestion was supported by the delegation of the Netherlands.

<sup>210</sup> Addition proposed by the delegation of Mexico (A/AC.254/5/Add.1 and Corr.1).

<sup>211</sup> New article proposed by the delegation of the United States (A/AC.254/5/Add.1 and Corr.1) and supported by the delegations of South Africa (A/AC.254/5/Add.5) and Turkey. The delegations of France and Saudi Arabia were of the opinion that regulating licit brokers would not help control such illicit trafficking.

<sup>212</sup> The delegation of South Africa noted that, generally, obligation should be addressed to States Parties, not to individual citizens.

<sup>213</sup> Deletion proposed by the delegation of Nigeria and supported by the delegation of the United Kingdom.

<sup>214</sup> Addition proposed by the delegation of Turkey.

<sup>215</sup> The delegation of Switzerland suggested that the meaning of the term “approval” should be clarified.

<sup>216</sup> The delegation of Nigeria noted that brokers should instead register with the country in which they are doing business. The delegations of Japan, the United Arab Emirates and the United Kingdom questioned the enforceability of requiring such registration in the country of nationality. The delegation of the United States noted that it would propose a redrafted text of the article.

<sup>217</sup> The text of these final provisions is identical to the text of the corresponding provisions of the draft Convention and is reproduced here in accordance with a decision made by the Ad Hoc Committee at its sixth session (A/AC.254/23) and without prejudice to its content, which is still under negotiation. Only necessary editorial changes have been made to the text. For issues related to these provisions, see the footnotes to articles 25, 26 and 27-30 of the draft Convention.

2. Each State Party may, at the time of [signature,] ratification [, acceptance] or [approval] of this Protocol, declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by paragraph 1 of this article with respect to any State Party that has made such a reservation.

3. Any State Party that has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

#### *Article 20*

##### *Signature, ratification, acceptance, approval, accession and reservations*

1. This Protocol shall be open to all States for signature from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

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

#### *Option 1*

[3. No reservations may be made in respect of any provision of this Protocol.]

#### *Option 2*

[3. Reservations shall be subject to the provisions of the 1969 Vienna Convention on the Law of Treaties.<sup>218</sup>]

[4. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States Parties at the time of ratification, acceptance, approval or accession.]

[5. Reservations may be withdrawn at any time by notification to that effect addressed to the Secretary-General of the United Nations, who shall then inform all States. Such notification shall take effect on the date on which it is received by the Secretary-General.]

6. This Protocol is subject to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

#### *Article 21*

##### *Entry into force*

1. The present Protocol shall enter into force on the thirtieth day following the date of deposit with the Secretary-General of the United Nations of the [...] instrument of ratification, acceptance, approval or accession.

2. For each State Party ratifying, accepting, approving or acceding to the Protocol after the deposit of the [...] instrument of such action, the Protocol shall enter into force on the thirtieth day after the deposit by such State of that relevant instrument.

#### *Article 22*

##### *Amendment*

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<sup>218</sup> United Nations, *Treaty Series*, vol. 1155, No. 18232.

1. A State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties which have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

*Article 23*  
*Denunciation*

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.

*Article 24*  
*Languages and depositary*

1. The Secretary-General of the United Nations is designated depositary of the present Protocol.

2. The original of the present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol.

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