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United Nations Convention  
against Transnational Organized Crime:  
Protocol against the Illicit Manufacturing of  
and Trafficking in Firearms, Their Parts and  
Components and Ammunition

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The problem:  
transnational organized crime

- Globalization and new technologies create the same new opportunities for crime as for legitimate activities
- Crimes such as money-laundering, trafficking in human beings and corruption are a serious and growing problem
- Groups are less structured, more transnational and involved in a wider range of criminal activities
- Transnational nature of the problem requires a transnational solution
- Focus is on organized crime - transnational crimes of individuals may require further instruments (corruption, computer-crime)

The negotiation of the Convention against Transnational Organized Crime reflects the recognition of many countries that this form of crime is growing in scale, scope and degree of sophistication.

Criminal groups are able to expand, communicate with one another and coordinate their operations on a global basis, using modern technologies in much the same way as legitimate operations use them.

They are also able to use many of the security methods developed for legitimate users to protect their communications from surveillance by law enforcement agencies.

As transnational crimes become easier to commit, volumes of offences increase, straining existing frameworks for cooperation, which do not extend to all of the new types of offending and are not available in many parts of the world.

The Convention addresses this by expanding both the scope of cooperation available, and by inducing many States which have not found it necessary to develop bilateral or regional cooperation agreements to subscribe instead to a global instrument.

The Convention only applies to transnational crime which involves “organized criminal groups”, and does not apply to transnational crimes which involve only individuals.

For this, a separate instrument is needed, although the provisions of the TOC Convention may well serve as a useful precedent in some areas.

This is why a separate instrument is being developed for corruption. Separate instruments would also be needed for other areas where purely individual transnational crime is a problem (eg. computer-related crime).

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Negotiation of the instruments	
December 1994	General Assembly approves Naples Declaration and Global Action Plan (Res/49/159)
December 1996	Poland proposes draft framework Convention to General Assembly, other proposals circulated
1997-98	Original draft Convention developed by expert group and 7th session of UN Crime Commission
December 1998	General Assembly creates open-ended intergovernmental Ad Hoc Committee (Res/53/111)
1999-2000	Over 100 States successfully complete Convention and 3 Protocols in only 21 months and 11 sessions.

On the recommendation of a 1994 ministerial conference on organised crime, the General Assembly called on the Commission for Crime Prevention and Criminal Justice to seek the views of States about a possible instrument against transnational organised crime. [GA/RES/49/159]

Consensus gradually developed that an instrument should be created, and discussion turned to the content of such an instrument. By 1996 ideas for possible provisions had begun to circulate.

In December 1997, the Assembly established an open-ended intergovernmental expert group to produce a preliminary text [GA/RES/52/85]

The text was reviewed by the Crime Commission at its 7th (1988) Session and by an informal preparatory committee which met in Buenos Aires in Aug.-Sept 1988.


In December 1998 [GA/RES/53/111], the Assembly established the Ad Hoc Committee and called upon it to complete the Convention and three Protocols by the end of 2000

The Committee finished the Convention at its 10th session [July 2000], and two Protocols at its 11th session [Oct.2000]. The third (firearms) Protocol required a 12th session and was finished March 2nd 2001.

The General Assembly adopted the first 3 instruments in November 2000 [GA/RES/55/25] and the last Protocol in May 2001 [GA/RES/55/255]

The adopting resolutions keep all of the instruments open for signature until 12 December 2002, 2 years after the opening of the first 3 instruments at Palermo, Italy. After that date, States can still become Parties by accession.

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- **United Nations Convention against Transnational Organized Crime**
  - Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children
  - Protocol against the Smuggling of Migrants by Land, Sea and Air
  - Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition
- General Assembly Resolutions 55/25, 15 November 2000 and 55/255, 31 May 2001

At its meetings in July and October of 2000, the Ad Hoc Committee finalised 3 of the 4 instruments on its agenda. To permit adoption by the Millennium Assembly, the Convention and the Protocols dealing with trafficking in persons and the smuggling of migrants were referred to the General Assembly in October 2000.

The General Assembly adopted these instruments by its resolution 55/25, on 15 November 2000.

Resolution 55/25 also called for the holding of a high-level signing conference at Palermo, Italy in December 2000, and called on the Ad Hoc Committee to resume its work in order to finalise the remaining Protocol as soon as possible.

The fourth (firearms) Protocol was finalised at the 12th session of the Ad Hoc Committee (26 February - 2 March 2001) and adopted by the General Assembly by its resolution 55/255, on 31 May 2001.

All four instruments (including the firearms protocol) remain open for signature for 2 years from the date at which the first 3 were opened for signature at Palermo: 12 December 2000 - 12 December 2002. Countries wishing to become Parties after that date may still accede to them.

The Palermo Conference resulted in the signature of the instruments by a record number of countries:

**124** States and the European Community signed the Convention

**80** States and the European Community signed the Protocol on Trafficking in persons

**77** States and the European Community signed the protocol on smuggling of migrants

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First 3 instruments (GA/RES/55/25) opened for signature at Palermo Italy 12-15 December 2000.

Third (firearms) Protocol adopted and opened for signature by GA/RES/55/255, 31 May 2001

As of 31 March 2004:\*

- 146 States and the European Community had signed the Convention and 65 had ratified it
- 116 States and the European Community had signed the Protocol on Trafficking in Persons and 50 had ratified it
- 111 States and the European Community had signed the Protocol on Smuggling of Migrants and 144 had ratified it
- 51 States and the European Community had signed the Protocol on Firearms and 14 had ratified it

\* For up to date status see: [http://www.odccp.org/crime\\_cicp\\_convention.html](http://www.odccp.org/crime_cicp_convention.html)

As called for by resolution 55/25, the Centre for International Crime Prevention began efforts to assist countries in their efforts to ratify the instruments.

During 2001, a series of regional and sub-regional meetings were held to inform countries about the content of the instruments and to assess specific needs for pre-ratification assistance.

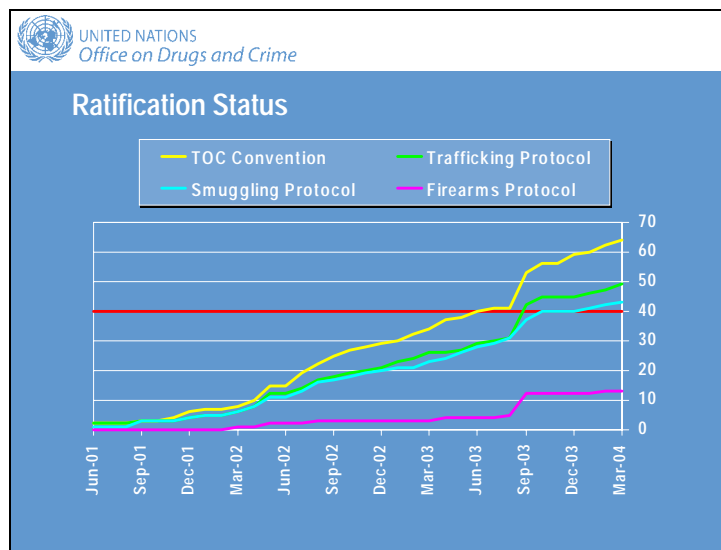
During 2002-03 specific issues will be identified and assistance will focus more on individual countries.

Generally, early assistance will focus on the development of legislative changes, such as new laws creating Convention and Protocol offences or modifying existing offences to conform, and laws establishing the powers and procedures needed to meet commitments in areas such as extradition and mutual legal assistance,

Later assistance is expected to focus more on the development of the administrative structures needed to support the legal requirements. Some of this may take the form of post-ratification assistance with the implementation and administration of the instruments once they have come into force.

Each instrument comes into force 90 days after the 40th country has ratified it, except that the Protocols cannot take effect until the parent Convention does.

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As of 7 April 2004,

**TOC Convention:** 147 Signatories; **64** Parties;

**Protocol against Trafficking in Human Beings:** 117 Signatories; **49** Parties;

**Protocol against the Smuggling of Migrants:** 112 Signatories; **43** Parties; and

**Protocol against Trafficking in Firearms:** 52 Signatories; **13** Parties.

The instruments will enter into force on the 90<sup>th</sup> day after the date of deposit of the 40<sup>th</sup> ratification/accession.

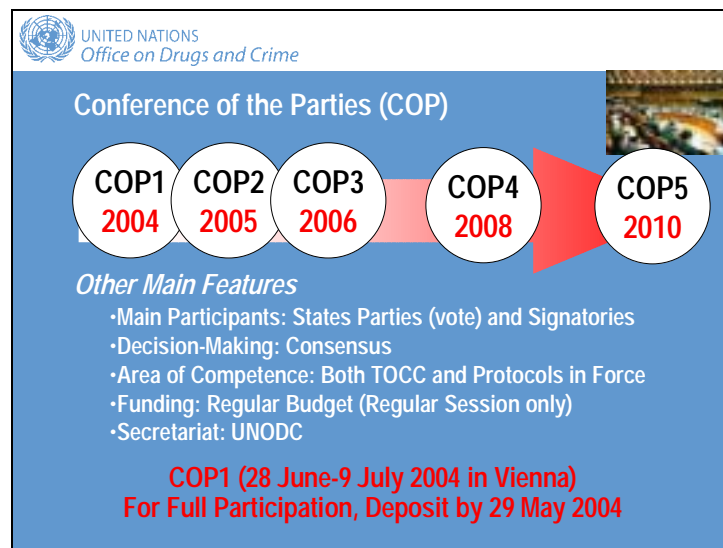
**TOCC:** Entered into Force on 29 Sep 2003;

**Trafficking Protocol:** Entered into Force on 25 Dec 2003;

**Smuggling Protocol:** Entered into Force on 28 Jan 2004;

**Firearms Protocol:** Not Yet into Force.

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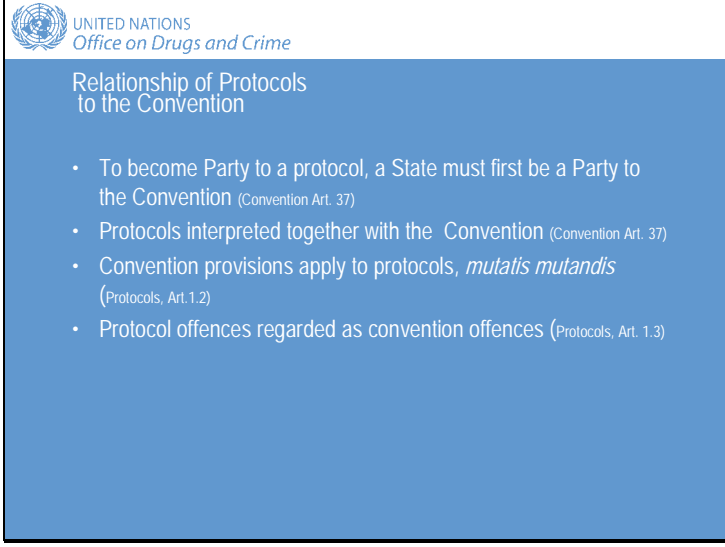
A Conference of the Parties (COP) is established according to Article 32 of the Convention; it aims at improving the capacity of States Parties to combat transnational organized crime and promoting and reviewing the implementation of the Convention and its Protocols.

13<sup>th</sup> session of the Ad Hoc Committee finalized the draft rules of procedure for the Conference of the Parties to the TOC Convention, which would be submitted to the inaugural session of the Conference for consideration and adoption.

For the first three COPs will be held annually; from then, the COP should be held at least every two years. All States Parties, as well as signatories, are entitled to participate in the COP. The decision-making is consensus-basis. The Conference covers both the Convention and its Protocols in force. Agenda covers all aspects of the Convention and the Protocols thereto. UNODC will serve as the secretariat to the COP.

COP1 is scheduled to be held from 28 June to 9 July 2004 in Vienna. For participating in the COP1, States must **deposit (ratification is not enough)** their instruments of ratification by 29 May 2004.

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### Relationship of Protocols to the Convention

- To become Party to a protocol, a State must first be a Party to the Convention (Convention Art. 37)
- Protocols interpreted together with the Convention (Convention Art. 37)
- Convention provisions apply to protocols, *mutatis mutandis* (Protocols, Art. 1.2)
- Protocol offences regarded as convention offences (Protocols, Art. 1.3)

The first requirement for ratifying any protocol is that the country concerned must first ratify the parent Convention.

The Protocols are separate instruments for the purposes of ratification, but they are not separate “stand-alone” instruments in terms of their content.

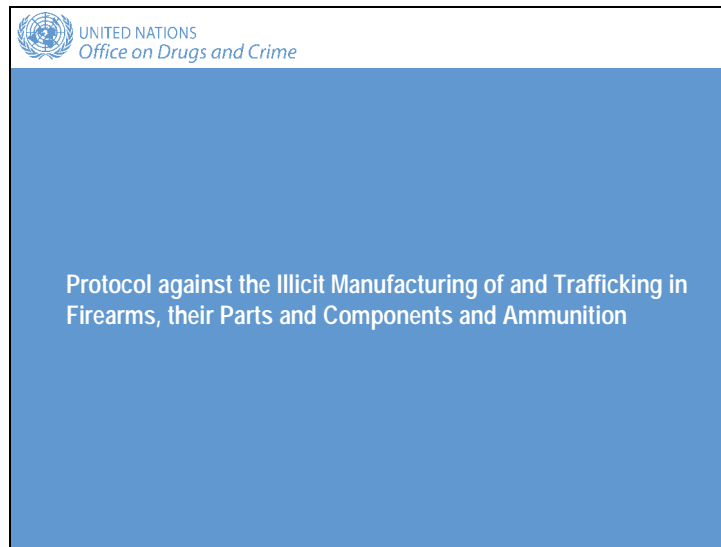
Effectively, each Protocol and the Convention combine to form one large instrument:

- general powers against Transnational Organized Crime in the Convention
- specific powers/provisions dealing with specific crime problems in each Protocol

The relationship between the Convention and Protocols is governed by Article 37 of the Convention and Article 1 of each Protocol:

- States can be party to the Convention only, but cannot be a party to any Protocol without first becoming party to the Convention. This means that whenever a Protocol applies, the parent Convention also applies.
- To ensure consistency both instruments are interpreted together (ie: terms have the same meaning unless otherwise specified etc.) and Convention provisions apply *mutatis mutandis* (“with such modifications as the circumstances require” – see *Travaux preparatoires*) to each Protocol.
- Protocol offences are deemed to also be Convention offences (Protocols, art.1), thereby invoking all Convention powers, procedures etc.

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The Protocol against the illicit manufacturing of and trafficking in firearms was developed under the same original General Assembly mandate (Res.53/111, 17-12-98) as the Convention. It was also negotiated in parallel with the Convention and two other protocols throughout 1999 and 2000.

Where the other three instruments were finalised at the 11<sup>th</sup> session of the Ad Hoc Committee (October 2000) and opened for signature at a signing ceremony at Palermo Italy in December 2000, however, this Protocol required an additional session to finalise. It was finalised at the 12<sup>th</sup> session of the Ad Hoc Committee (2 March 2001) and adopted by a separate General Assembly resolution – 55/255 on 31 May 2001. As a result, the Protocol has fewer signatures and only one ratification, although additional countries have signed since the September 2001 terrorist attacks and the resulting adoption of Security Council resolution 1373 of 28 Sept. 2001.

As of May 2002,


- the Convention had 140 signatures and 11 ratifications

- the Protocol had 27 signatures and 1 ratification

40 ratifications are needed to bring the Protocol into force, but the Convention must take effect with or prior to the Protocol.

The requirements of the Protocol overlap with other political and legal obligations, notably SC/RES/1373 and various initiatives (e.g. OSCE) on small arms and light weapons (SALW). Countries may wish to consider joint implementation in these areas.

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Status of the Protocol against  
Illicit trafficking in firearms

Concluded at the 12<sup>th</sup> session of the Ad Hoc Committee, 2  
March, 2001.  
Adopted by the General Assembly on 31 May 2001.  
Open for signature 30 days after adoption at UN  
Headquarters in New York  
In force 90 days after 40th country ratifies

Firearms Protocol proved the most difficult of the four instruments to find consensus.

Most provisions were agreed at the 11th session of the Ad Hoc Committee (October 2000), but **aspects of the basic scope of application** remained open:

narrow or broad **definition of “firearm”** (whether to include explosive devices, artillery)

nature of exemption for **“national security” transactions**


whether to exempt transactions related to the **“right of self-determination”**

There were also questions related to **marking**:

whether to require marking of government/state firearms

form of marking: **alpha-numeric or “simple geometric symbols”**

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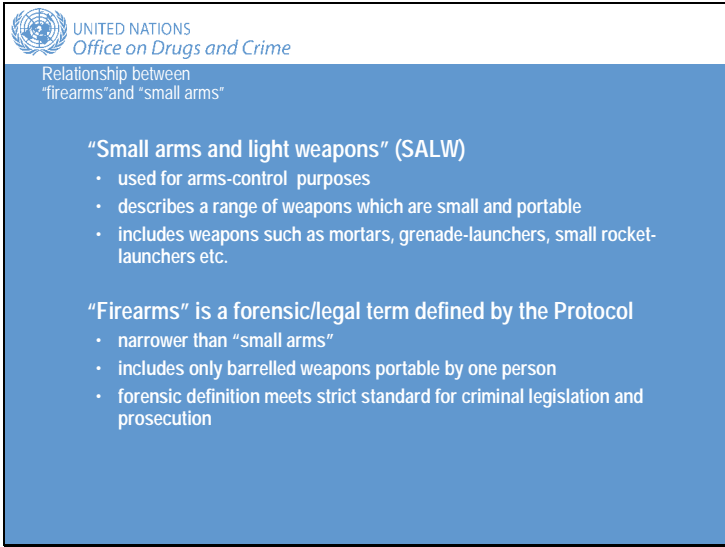
What the Firearms Protocol does:

- Standardizes terminology (Art.3)
  - Standard definitions of "firearm", "trafficking", "tracing"
- Links export to subsequent import permit (Art.3(e), 10(2))
- Requires marking and record-keeping to support identification and tracing (Art.7,8)
- Security measures against diversion (Art.11)
- Criminal offences for illicit manufacturing, trafficking and defacing firearm markings (Art.5)
- International cooperation in tracing and other matters (Art.12,13)

The essential policy underlying the Protocol is that the export of firearms, parts, components and ammunition should be prohibited by each State Party unless, at the time of export, the country into which the items will be imported has legally authorized or issued a permit in respect of the import. This is intended to address diversions which take place in the course of international shipment. To enforce these requirements, the definition of "illicit trafficking", which States Parties are required to criminalise, includes any transfer from one state to another where "...any of the States Parties concerned..." has not authorized this. (Art.3(e) definition and Art.5(1)(b) offence).

Most of the other elements of the Protocol support this basic policy or are intended to facilitate the investigation and prosecution of the related offences. For example, firearms must be marked to ensure unique identification (Art.8), and records must be kept (Art.7) to ensure that firearms which are diverted can later be traced (Art.3(f) definition and Art.12(4) requirement to assist in tracing).

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Relationship between  
"firearms" and "small arms"

**"Small arms and light weapons" (SALW)**

- used for arms-control purposes
- describes a range of weapons which are small and portable
- includes weapons such as mortars, grenade-launchers, small rocket-launchers etc.

**"Firearms" is a forensic/legal term defined by the Protocol**

- narrower than "small arms"
- includes only barrelled weapons portable by one person
- forensic definition meets strict standard for criminal legislation and prosecution

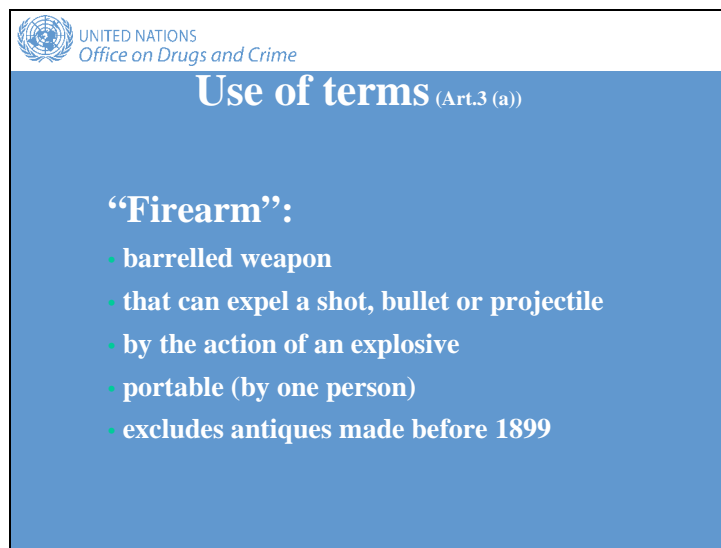
The concept of SALW is used by political bodies (UNGA, OSCE etc.) to support efforts at conventional arms-control for domestic, regional and international stability/security purposes.

It includes a relatively wide range of military hardware, identified because factors such as small size, low cost and easy availability raise serious concerns about proliferation.

For SALW, the problem of "proliferation" includes official state-related transfers, legitimate commercial transfers, and illicit smuggling or trafficking. SALW programmes therefore often include political commitments that governments will limit their own transfers as well as acting to control legal and illegal private transactions. SALW commitments thus far are in the nature of political agreements between countries or within regions.

The concept underlying the TOC Convention and Firearms Protocol is the much-narrower agenda of controlling crime, including illicit trafficking in firearms, their parts and components, and ammunition.

Since the remedies of criminal law and punishments are harsher, a higher standard of clarity in defining "firearm" (a forensic standard) was needed. Also, the criminal law does not apply to the actions of the States themselves or those acting on their behalf. Delegations also decided to limit the range of hardware to which the Protocol would apply to "firearms", excluding forms of small arms which are not portable barrelled weapons.



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## Use of terms (Art.3 (a))

**“Firearm”:**

- barrelled weapon
- that can expel a shot, bullet or projectile
- by the action of an explosive
- portable (by one person)
- excludes antiques made before 1899


The term “firearm” delineates the scope of the mandate accorded to the Ad Hoc Committee by the General Assembly in Resolution 53/111, and the definition of that term in Article 3(a) establishes the subject-matter scope of the Protocol.

A recurring theme in the negotiations was that the Protocol should focus on crime-control and not go too far into the area of conventional arms-control. This arose primarily with respect to this provision and Article 4 (Scope). Definitions of “firearm” which would have extended the application of the Protocol to other forms of explosive, destructive or dangerous device were ultimately rejected in the course of negotiations. The term “portable” was also added, accompanied by a note in the *travaux préparatoires* to the effect that “portable” means portable by one person without mechanical or other assistance to further exclude very large-bore weapons such as mortars or artillery-pieces from the subject matter to which the Protocol applies.

The language of the definition connotes a conventional, relatively narrow concept of “firearm”. It is similar to that adopted by the Inter-American (OAS) Convention, on which the original draft Protocol was partly based, and to the domestic legal definitions of a number of countries.

As noted below, the definition of “firearm” sets the **minimum** which must be dealt with. States can legislate with respect to a broader range of hardware in domestic law, if they wish but they may not be able to get foreign cooperation (TOCC Art.34(2)).

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Scope of application (Art.4)

**Applies to:** the prevention investigation and prosecution of illicit manufacturing and trafficking...  
...where offences are transnational in nature and involve an organized criminal group

**Does not apply to:** state-to-state transactions or state transfers related to national security interests consistent with U.N. Charter (Art. 4(2))

The Scope provision strikes the essential balance between the need for effective controls on transnational crime and the desire of many States to ensure that essential sovereignty and national security interests were not compromised. There was clear agreement that the Protocol restrictions should not apply to transactions or transfers directly between two States Parties or between agents on their behalf. Other national-security-related interests proved more difficult to pin down, however. Most States recognized the need for some form of exclusion, but there was general concern about excluding State firearms from all of the Protocol requirements, since such firearms are a primary source of illicit firearms when disposed of by States or illegally diverted from State stocks to illicit commerce. The compromise ensures that all firearms will be marked at manufacture, but that State national security transactions will not be subject to other requirements, such as those for the issuance of licenses or authorizations, or the keeping of records.



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Criminalization (Art.5)

States Parties required to criminalize:

- Illicit trafficking
- Illicit manufacturing
- Falsifying, obliterating, removing or altering markings
- Attempts, participation as an accomplice, organizing or directing others to commit Protocol offences

-See also Convention Art.34.2

The Protocol requires the criminalisation of both the basic offences of “illicit manufacturing” and “illicit trafficking” and other conduct linked to trafficking.

**Illicit trafficking** includes any transnational transfer for which legal authorization has not been obtained from all of the involved States Parties beforehand.

**Illicit manufacturing** involves any manufacturing or assembly of firearms without marking or without legal permits or authorization to manufacture issued by the country involved.

An additional offence is established to deter potential traffickers from removing or **altering serial numbers or other markings** in order to frustrate the identification and/or tracing of a firearm.

The requirements to criminalise **attempts, organizing, directing, aiding, abetting, facilitating or counselling** Protocol offences are similar (but slightly more detailed than) the provisions of the other Protocols. They were intended to take into account differences in national systems, particularly with respect to conspiracy.

Essentially, the trafficking and manufacturing offences consist of taking the specified actions without having the necessary permit or authorization. They are likely to be similar to other offences already in existence in most countries. Much of the legislative detail of the scheme lies not in the offences but in the legal requirement to obtain permits and the content of permits and applications.

Countries which have domestic gun-control laws imposing licensing restrictions on import, export and domestic possession may modify these to conform and may in some cases already conform, but the Protocol itself only imposes requirements on import and export, not domestic controls such as licensing or registration of firearms.

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Marking of Firearms (Art.8)

States Parties must require unique marking which provides the name of manufacturer, the country or place of manufacture and the serial number.

Countries which presently combine simple geometric symbols and a numeric or alpha numeric code may maintain this practice.

Firearms must be marked at time of manufacture, import, and when transferred from government to private hands.

The basic requirement to mark firearms for the purpose of unique identification and tracing was seen by many countries as a core provision of the Protocol. Since the language of Article 4 (Scope) does not exempt any firearms, including those made for the military forces of States Parties, it also has significant transparency implications for small-arms and conventional arms-control in general.


Some delegations supported additional transparency, in the form of international standards for marking which would have effectively encoded information in a standard format, enabling anyone with a firearm to ascertain basic information such as the country and approximate date of manufacture, and in some proposals, further information about subsequent import, export or other transfers. These did not find consensus, and there was concern on the part of some delegations that even basic alpha-numeric serial numbers would effectively disclose information about the production of firearms.

From a legislative standpoint, countries may codify the marking requirements, but all that is needed is

to criminalise manufacturing without marking to the specified standard (“**illicit manufacturing**”) and

to criminalise altering, removing or defacing markings.

Countries can adopt the higher standard (unique serial numbers) if they wish - only those already using geometric markings can “maintain” that system.



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Import/export/transit requirements (Art.10)

Establish or maintain effective licensing or authorization systems for import and export

Other measures for international transit

- Issuance of export permits contingent on issuance of import permit, as well as transit permission
- Documentation must contain minimum information about firearms and parties to be retained as records and support later tracing if needed
- Appropriate security for documents and procedures
- Simplified processes for temporary import/export

The content of the documents used for legal import and export is critical to support the offence of trafficking and to the enforcement of the Protocol itself.

the form and content of licenses or authorisations must be legally established in order to support the prosecution of offenders for not having obtained such documents.

content is also critical both to prosecution and to the subsequent ability to trace legally-transferred firearms. Art. 10(3) requires appropriate dates, information which identifies the parties to the transaction, the firearms and the countries involved. The language of Art.10(3) should be read with Art.7, which sets out the information which must be kept as a record of each transaction.

Art.10(6) (temporary import/export) is intended primarily to deal with cases such as hunters or other recreational firearm users who take a firearm when traveling

To ensure adequate enforcement, countries may wish to consider additional offences relating to required documents and records ( but this is not required):

failing to keep the records required by Art.7 for the required 10 years (where not kept by the State)

failing to report transactions to the State (where records kept by the State)

failing to provide complete information required by applications

filing applications for licenses or authorisations which are false or misleading (e.g. which mis-identify either firearms or parties)



**Article 6** modifies the Convention principles for disposing of seized instrumentalities or proceeds of crime - unlike other instrumentalities, which are usually sold, the preference with firearms is that they are either destroyed or precautions are taken to ensure that they do not fall back into circulation.

**Article 7** requires basic records to be kept for use in tracing and similar requests. These may be kept by States or pursuant to State requirements that others – most commonly companies engaged in import/export activities, do so.

**Art.9** sets basic deactivation standards to ensure that when firearms are deactivated and records destroyed, the firearms cannot later be restored to functionality.

**Articles 10-11** outline the basic requirements for controlling imports and exports and taking basic security precautions against potential thefts or diversions.

**Art.10(2)** requires States not to allow export until lawful import is verified


**Art. 10(3)** has basic requirements for import/export licenses.

**Art.12-13** supplement cooperation provisions in Convention Art.27-30

**Art 12(4)** has basic requirement to assist in tracing firearms

**Art.15** Controls on brokers are not mandatory

**TOCC Art.32** Conference of States Parties has mandate to facilitate and review implementation, make recommendations.



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### Major elements for ratification

- Legal definitions of “firearm”, “parts and components” and “ammunition” (Art.3)
- Offences of manufacturing, trafficking, altering serial numbers (Art.5)
- Creation of import/export permits and issuance process (Art.10, 5)
- Legal requirement to keep records or report transactions to government records (Art.7,8,10)
- Provisions may be broader or stricter than Convention or protocol require (TOCC Art 34(3))
- No requirement to include State-related activities (Art.4)

Countries need to define “firearm” in a way consistent with Protocol - definition can be broader/more inclusive, but cannot be narrower.

3 basic offences must include sub-offences set out in Art.5. For example, the manufacturing offence must include both manufacture without a license and manufacture without the required markings. Offences can be broader or more severe (TOCC Art.34(2)), as long as all conduct proscribed by the Protocol is criminalised. Creation of basic permits to import and export, as well as process for issuance of permits, is required to support the offence of trafficking (=import/export without a permit). OSCE SALW criteria may be useful in establishing process/requirements for obtaining an export/import permit.

Record-keeping can either be done by the State or the importers/exporters:

- require importer/exporter to report transaction information to State for records


- or require importer/exporter to keep records themselves

- offences for non-compliance not mandatory but desirable

All legislative provisions can go beyond requirements of Convention and Protocols, as long as the essential elements are there (eg: definition of “firearm”)

Parties are not obliged to criminalise certain State-related activities. They can still do so if they wish, but would probably not be able to get international cooperation beyond the scope set out in Art.4

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For further information:

Division for Treaty Affairs  
United Nations Office on Drugs and Crime  
P.O. Box 500  
A - 1400 Vienna, Austria

Telephone           +43 - 1 - 26060 - 4269  
Fax                   +43 - 1 - 26060 - 5898

Web: <http://www.unodc.org>  
E-mail: [uncicp\\_hq@unodc.org](mailto:uncicp_hq@unodc.org)

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Thank you for your attention