National Legal Frameworks

The UNODC Model Law to implement the United Nations Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts, Components and Ammunitons

Meeting of Government experts on Marking, Tracing and record Keeping
New York, 9-13 May 2011
Analytical reports from States identified the existence of significant gaps in compliance with the mandatory and optional provisions of the Firearms Protocol.

Self-assessment checklists on five crime-related instruments in one application.
Implementation of the Convention and its Protocols: Conference of the Parties (COP)

COP1 2004
COP2 2005
COP3 2006
COP4 2008
COP5 2010

COP established by Convention to (article 32, 33)
- Promote and review implementation
- Make recommendations to improve Convention
- Consider means of implementing and difficulties encountered by States

- Main participants: States parties (vote) and signatories
- Decision-making: consensus
- Area of competence: Convention and Protocols
- Funding: regular budget (regular session only)
- Secretariat: UNODC
Analytical reports identified the existence of significant gaps in compliance with the mandatory provisions of the Firearms Protocol.

**DECISION 4/6:**

- **Urged States Parties to strengthen their national legislation** in a manner consistent with the Protocol.

- **Requests UNODC to support States** in the ratification and implementation of the Firearms Protocol.

- **UNODC to develop technical assistance tools** to assist States parties in the implementation.

- **States to consider the advisability of establishing an open-ended intergovernmental working group on the Firearms Protocol.**
Existing Tools on Firearms

**Legislative Guide (2006)**
- Provides guidance to understand the specific requirements
- Explains the different level of obligation contained in the provisions

**Technical Guidelines to implement the Protocol (2008)**
- Developed by a group of independent experts
- Addressed the most technical aspects of the Protocol
- Took new technological innovations into account when providing guidance and recommended good practices (e.g. Marking techniques)
Development of the ML

EWG 1st Round
Nov. 2009
Prevention and Security Measures

EWG 2nd Round
Apr. 2010
Investigative Criminal provisions Int. Coop. Annex

EWG 3rd Round
June 2010
Overall Review

COP5
Oct. 2010
Endorsement and request to translate and disseminate it in 6 languages
Composition of the EWGs

National experts:
Argentina, Australia, Belgium, Brazil, Chile, China, Croatia, Ethiopia, Guatemala, India, Italy, Kenya, Mexico, Nigeria, Peru, Saint Vincent and the Grenadines, Senegal, Spain, the former Yugoslav Republic of Macedonia, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America (23)

International and Regional Organizations:
The East African Community, the European Commission, the International Criminal Police Organization (INTERPOL), the Organization for Security and Cooperation in Europe (OSCE), the Southern African Regional Police Chiefs Cooperation Organisation (SARPCCO), the United Nations Coordinating Action on Small Arms (CASA), the United Nations Counter-Terrorism Committee Executive Directorate (CTED) and the Wassenaar Arrangement. (7)

Civil society and industry representatives:
The Group for Research and Information on Peace and Security (GRIP), FN Herstal, the International Action Network on Small Arms (IANSA), the Italian National Association of Arms and Munitions Manufacturers (ANPAM), Saferworld, Small Arms Survey, and the World Forum on the Future of Sport Shooting Activities (WFSA) (6)
**Nature**
- Voluntary: Advice MS when reviewing / upgrading national laws on firearms
- Tool for Technical / Legislative assistance to MS
- Takes complementary instruments and multiple obligations into account
- State cannot apply as is, but need to adapt to their domestic legal system

**Diversified Classification system of provisions:**
- Mandatory / Optional /additional considerations
- Alternative options for different legal systems
- Clear indication of sources when other instruments are contemplated
- Extensive Commentary and cross links to relevant other instruments

**Considers – where appropriate – mutatis mutandis application of UNTOC provisions**
Structure of the Model Law

- Part I: Introductory provisions and definitions
- Part II: Mandatory Provisions
- Part III: Non-Mandatory provisions
  - Obligation to consider (Brokers and brokering activities)
  - Optional provisions (simplified procedures for temporary transfers)
- Annex: Additional Considerations (provisions that stem from other global and regional instruments) and List of instruments and documents
Purpose and Scope (art. 3 ML)
- To prevent and combat illicit manufacturing of and trafficking in firearms
- To ensure investigation and prosecution of related offences
- To promote, facilitate and strengthen national and international cooperation
- Shall apply to all commercially traded firearms, their parts and components and ammunition (see art. 4 (2) FP)

What does the ML NOT cover?
- The ML does not contain address civilian possession of firearms
- It does not regulate or define dealers

Definitions
- All FP definitions and some additional terms from UNTOC or other legal instruments
- New suggested definitions: broker and brokering activities; deactivated firearm; importer and exporter; transit; reactivation;
PART II: MANDATORY PROVISIONS – Section 1 Preventive measures

- Ch. III: Manufacturing
- Ch. IV: Marking
  - Provisions for marking at time of manufacturing, import, transfers and at time of destruction and deactivation
- Ch. IV: Record Keeping
  - Specifies information requirements for firearms, parts and components and ammunition, at all stages of their life time
  - Variants according to whether responsibility for keeping records lies with State or other entities
  - Reflects longer standards for duration of records (from 10y. onwards)
- Chapter VI: Deactivation of Firearms: Applies only to States that do not recognize a deactivated firearm as a firearm
- Ch. III: VII: Import, export and transit
  - Establishes a broad licensing or authorization regime
PART II: MANDATORY PROVISIONS – Section 2: Penal Provisions

- Broad comments on mutatis mutandis application of UNTOC
  - Non inclusion of transnationality element in the offences
  - Reference to general principles that MS need to consider: Liability of legal persons, relationship to UNTOC offences, investigation and procedural rules, int'l cooperation in criminal matters

- Ch. VIII - X: Criminal offences of Illicit manufacturing – illicit trafficking – marking –

- Ch. XI: Offences specific to deactivated firearms

- Ch. XII: Ancillary offences: Attempt, participation, organizing, directing, aiding, abetting, facilitating, counselling

- Ch. XIII: Seizure, confiscation and disposal

- Ch. Jurisdiction: Broad jurisdiction per UNTOC;
  - Requirement to consider all offences as extraditable offences
Section 3: International Cooperation

- Reduced number of provisions
- General reference to the need for MS to broaden its formal and informal mechanisms of cooperation so as to sufficiently address also firearms issues.
  - Designation of a National Point of Contact (suggestion to use the same focal points for global and regional instruments)
  - Information exchange - Confidential information
  - Cooperation for the Purpose of Tracing (Incorporation of principles contained in the International Tracing instrument; reference made to broad UNTOC provisions on Mutual Legal Assistance)
PART III: NON-MANDATORY PROVISIONS

(a) – MUST CONSIDER PROVISIONS
- Ch. XVI: Brokers and brokering activities
  - Consideration of Art. 15 FP and to Report of the group of Governmental Experts
  - Registration of brokers
    - Application, authorization criteria, review of decision, validity, records
  - Licence for / Authorization for brokering activities

(b) – OPTIONAL PROVISIONS
- Ch. XVII: Simplified procedures for temporary import, export and transit
  - Associated offences
Additional Considerations

Designed to supplement mandatory provisions – reflect best practices and principles derived from national practice and global / regional instruments

**MANUFACTURING:** Develops a comprehensive licensing system for manufacturing

**MARKING** – Initial marking – Proofmarks; Additional markings; Methods of marking

**RECORD KEEPING** - Records on domestic transfers, on import/export/transit, on brokering activities; Information on manufacturer and on disposal

- Additional information: on license; collected through inspections, formal records, access to records, reports, storage of records, submission of records upon cessation of business etc.

**IMPORT, EXPORT TRANSIT** - Develops a comprehensive licensing/authorization system for international transfers; Proposes concept of “Conditional export licence” - Transit license, end user certificates, delivery verification, database etc.
PENAL PROVISIONS:
Apply consequently if MS decide to adopt some of the draft provisions contained in the additional considerations part

Offences Specific to Record Keeping
- Falsification or alteration of records, failure to keep records; destruction of records, failure to submit reports etc.

Offences Specific to Licensing
- Operating without registration, provision of misleading or false applications

Offences Specific to Brokering
- Illicit brokering; Operating without registration, provision of misleading or false applications etc
Mandate from the Conference of the Parties (2010)

DECISION 5/4:

- Urges States to become Party to the Protocol
- Requests UNODC to facilitate technical assistance to State parties to implement the Firearms Protocol.
- Requests UNODC to finalize the model law and disseminate it in 6 official UN languages
- Develop other technical assistance tools to support implementation
- Conduct a study on the transnational nature of and routes used in firearms trafficking
- Decides to establish an open-ended intergovernmental working group on firearms, to hold at least one inter-sessional meeting and one meeting during the COP, and to report to COP6.
Next Steps:

- Final review, editing and type setting in English (March 2011)
- Presentation of the E-document at the Crime Commission (April 2011)
- Print of limited copies in English and upload to UNODC’s webpage (May 2011)
- Translation into official UN languages (subject to XB resources)
- Roll-out and promotion of the model law through regional workshops and in the context of the delivery of legislative assistance
  - Upon request and in the framework of existing project initiatives (UNODC-EU project for South America, Caribbean and West Africa)
THANK YOU

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