Promoting International Cooperation Against Illicit Firearms Trafficking: Ten Years of the Palermo Convention and its Firearms Protocol

Meeting of Government Experts on Marking, Record-Keeping, International Cooperation and Tracing
NY, 9-13 May 2011
Most TOC flows begin on one continent and end on another, often by means of a third, so only interventions at the scale of the problem – *global* – are likely to have a sustained effect.

- *The Globalization of Crime, UNODC 2010*
Increasingly threatening

TOC threatens international peace and security, human rights and development.

The Security Council has noted with growing concern the threat TOC poses to international security.

(S/PRST/2010/4)
Firearms relate to transnational organized crime in distinct ways:

1) As **means to facilitate the commission of crimes** and to enhance the military power of criminal groups

2) As a lucrative **commodity for the illegal trafficking** by criminal organizations, firearms trafficking is often inter-connected with other criminal activities

Yet, only few criminals are brought to justice for firearms trafficking charges, while far more are investigated for drug trafficking or associated crimes

The link between illicit firearms and organized is often neglected by analysts, policy makers, and legislators. The relevance of firearms for the purpose of investigation and prosecution of TOC is often underestimated.

Tendency to go for the more serious or the easier offences and to neglect the others… or to go after the weapon and not after the traffickers. Isolated approaches to firearms control can jeopardize actions against TOC!

Firearms trafficking is a transnational and global crime that crosses borders and regions and needs to be addressed through global solutions.
THE FIREARMS PROTOCOL

• Its addresses the firearms problematic from a crime prevention and criminal justice perspective

• It establishes a comprehensive regulatory framework for legal firearms (Prevention), and measures to combat the illicit firearms and ammunition (Crime control),

• It supplements the Organized Crime Convention. States are required to implement the Protocol in conjunction with UNTOC (Mutatis mutandis application)

• The combined application of both instruments provides a framework for States to enhance international cooperation and information exchange among States, for the purpose of tracing illicit firearms, and to facilitate investigation and prosecution of traffickers
Distinction between legal and illegal firearms

- Article 3 - Definition
- Article 5 – Criminalisation
- Article 6 - Confiscation

Prevent Diversion of Legal Firearms into the Hands of Criminals

- Article 7 – Record-keeping
- Article 8 – Marking of Firearms
- Article 10 – Export, Import, Transit Licensing of Authorisation Systems
- Article 11 – Security & Preventive Measures
- Article 12 – Tracing & Information Sharing
Global minimum standards in relation to SALW marking, record-keeping and tracing
Specific Protocol Provisions

**Information exchange among States** (art. 12)

- Authorized producers, dealers, exporters, carriers
- Organized criminal groups known or suspected to be involved in illicit manufacturing or trafficking
- Means of concealment used and ways of detecting them
- Methods and means of trafficking, routes etc.
- Legislation and practices, relevant scientific and technological information
- Guarantee confidentiality and restricted use of information, or notify a priori
- **Ensure prompt responses to assistance requests to trace illicit firearms**
Cooperation (Artt.13 Protocol)

- States are encouraged to cooperate at bilateral, regional and international level to prevent, combat and eradicate illicit trafficking and manufacturing of firearms.

- Identification of a national body or a focal point to liaise with States for matters pertaining to the Protocol.

- States shall seek support and cooperation from manufacturers, dealers, importers, exporters, brokers and commercial carriers to prevent and detect illicit activities.
Cooperation in tracing

- The ITI sets out detailed modalities for tracing cooperation: its operational core (paras. 14-23)

- States may restrict or refuse tracing cooperation in certain circumstances (confidentiality, reasons of national security, etc.) …

- … but must explain any such restriction or refusal (paras. 22–23).

- Interpol can help build national capacity to initiate and respond to tracing requests (para. 35c).
Tracing alone is not enough to bring criminals to justice.

In the context of a criminal investigation States may need to obtain additional information and evidences related to firearms which is not covered by a tracing request (e.g. freezing of bank accounts, identification and arrest of suspect persons, seizure and confiscation of firearms) and which may require international cooperation among States;

- Not all information obtained through informal cooperation mechanisms can be admitted in court as evidence – more formal cooperation mechanisms may be required (judicial cooperation)

- States must submit their request in a timely, correct and user-friendly manner, so as to enable requesting States to provide assistance, and in a manner that is acceptable to the court of the requesting state.

- Absence or obsolete bilateral agreements may not cover cooperation on firearms trafficking and related tracing.
A global, flexible and practical legal instrument with the aim of promoting cooperation to prevent and combat transnational organized crime more effectively

(UNTOC, Art.1)
Ratification of the Organized Crime Convention (In force 09/2003)

161 countries have ratified or acceded to UNTOC (as of 10/05/2011)
85 are also Party to the Firearms Protocol
UNTOC applies to the "prevention, investigation and prosecution" of:

(1) Convention offences
   • Participation in an organized criminal group (Art.5)
   • Laundering of proceeds of crime (Art.6)
   • Corruption (Art.8)
   • Obstruction of justice (Art.23)

(2) Protocol offences
   • Trafficking in persons
   • Migrant smuggling
   • Illicit trafficking or manufacturing in firearms

(3) Serious crimes

When the offence
(a) is transnational in nature
and
(b) involves an organized criminal group

Transnationality and involvement of an organized criminal group must not be made elements offences established under domestic law (Art. 34. 2)
### Serious crime

Any offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty

### Organized criminal group

- A structured group of three or more persons;
- Existing for a period of time and acting in concert;
- With the aim of committing one or more serious crimes or Convention offences;
- To obtain a direct or indirect financial or other material benefit

### Transnational in nature

- Committed in more than one State; or
- A substantial part of preparation, planning, direction or control takes place in another State; or
- Involves an organized criminal group engaging in criminal activities in more than one State; or
- Has substantial effects in another State

Applicable to any existing or unforeseen form of serious crime meeting this definition

“Structured” and “material benefit” to be interpreted broadly

Definition further expanded in Articles 16 and 18 on Extradition and Mutual Legal Assistance.
Tools for cooperation

UNTOC establishes legal frameworks that enable and legal obligations that compel international cooperation

Acts as an autonomous legal basis for:

- **Extradition** (Art.16)
  - Minimum standards
- **Mutual legal assistance** (Art.18)
  - “Mini treaty”
- **International cooperation for the purpose of confiscation** (Art.13)
  - Proceeds of crime, instrumentalities
- **Law enforcement cooperation** (Art.27)
  - Measures to enhance communication and collaboration

Permits case-by-case cooperation for:

- **Joint investigations** (Art.19)
  - Creation of international teams
- **Special investigative techniques** (Art. 20)
  - Domestically and internationally
MLA - Types of Assistance

Service of Judicial Documents
- Provide Information & Evidentiary items
- Taking evidence or statements from persons

Execution of searches, seizures, freezing
- Provide documents and records
- Facilitating voluntary appearances

Examining objects & sites
- Identify & trace proceeds & property for evidence
- Temporary transfer of persons in custody

OTHER ASSISTANCE UNLESS PROHIBITED
Investigative Measures

Agreements governing **joint investigations** (Art.19)

joint investigation bodies or on a case-by-case basis

Domestic and **cooperative use of special investigative techniques** (Art.20)

controlled delivery
electronic or other forms of surveillance
undercover operations
interceptions, allow goods to continue intact or be removed

Measures to encourage those involved in transnational organized crime to **cooperate with law enforcement authorities** (Art.26)

**LEGISLATIVE POWERS REQUIRED!**
Integrated approaches to existing instruments on firearms allow States to go for the highest common denominators and to make their own national framework robust and strong.

Harmonized legal frameworks are essential for the promotion of effective international cooperation.

National arms control regimes allow to clearly distinguish between legal and illegal arms, and this facilitates cooperation among States. Criminal offences in line with international instruments creates a common language which facilitates cooperation.

By taking a broader perspective on firearms States can “discover: that they have already additional tools at their disposal, States can overcome some current problems in international cooperation and enhance the application of their firearms control regime domestivally and internationally.”
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