MODEL LEGISLATION
ON THE MARKING AND TRACING OF FIREARMS

(Approved by the Consultative Committee on April 19, 2007)
PREAMBLE

Member States that seek to strengthen the legislative and/or regulatory regimes in relation to the marking and tracing of firearms may wish to adopt, in accordance with the provisions of their national policies, their legal systems and in accordance with their fundamental laws, the policies and practices identified in the legal provisions of the proposed Model Legislation.

CHAPTER I
DEFINITIONS

Article 1: Definitions

The following definitions shall be applicable throughout the text of this model legislation except when another meaning is expressly indicated:

“Firearms”:

(a) any barreled weapon which will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, except antique firearms manufactured before the 20th Century or their replicas; or

(b) any other weapon or destructive device such as any explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system, or mine;

as defined in Article I of the Inter-American Convention.

“Illicit manufacturing”: the manufacture or assembly of firearms:

(a) from components or parts illicitly trafficked; or

(b) without a license from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

(c) without marking the firearms that require marking at the time of manufacturing.
“Illicit trafficking”: the import, export, acquisition, sale, delivery, movement, diversion or transfer of firearms from or across the territory of one State Party to that of another State Party, if any one of the State Parties concerned does not authorize it.

“Inter-American Convention”: the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and Other Related Materials.

“Person”: includes natural and legal persons.

“Tracing”: the systematic tracking of firearms and, where possible, their parts and components from manufacturer to purchaser for the purpose of assisting the competent authorities of a State Party in detecting, investigating and analyzing illicit manufacturing and illicit trafficking.

“Serial number”: a number on each firearm that is not duplicated on the same make and model of the firearm produced by the same manufacturer.

CHAPTER II
MARKING OF FIREARMS

Article 2: Marking of Firearms

(1) Firearms, in accordance with Article 6 of the Inter-American Convention, shall be marked at the time of manufacture, in the manner set out in Article 3(1) and 3(2).

(2) All imported firearms, in addition to the marking referred to in paragraph (1), shall be marked in the manner set out in Article 3(3).

(3) Paragraph (2) does not apply to:

(a) a firearm that is imported temporarily;¹ or

(b) a firearm that has been duly marked and that has been temporarily exported from and re-imported into the same country.

(4) Every firearm that has been confiscated or forfeited and that is not to be destroyed, but retained for official use, shall be marked and/or recorded, if not already marked and/or recorded pursuant to Articles 3 and 4 below.

¹. In order to apply this provision, countries also require norms that address the temporary import of firearms by way of a temporary permit/authorization system and the registration of the temporarily imported firearm. Factors to be considered in allowing a temporary importation would include, among others, the type of firearm(s) being imported, the verifiable purpose of the temporary importation, and the allowable duration of the importation. The registration would record and certify the dates of entry and departure of the firearm by the corresponding competent authority, typically a customs and/or immigration official. This authority should also record and maintain the information in a registry/data base for possible tracing.
Article 3: Manner of Marking

(1) Every firearm shall be legibly and conspicuously marked in a manner that is not susceptible of being readily obliterated, altered, or removed.

(2) In the case of a manufactured firearm, the marking shall include the name of the manufacturer, the place of manufacture and the serial number. Whenever possible, additional markings should be placed upon the firearm by the manufacturer to further identify it for tracing purposes. These could include the model, caliber or gauge.

(3) In the case of an imported firearm, in addition to the marking referred to in section (2), above, a firearm shall contain appropriate markings that permit the identification of the country of import, the importer’s name and, whenever possible, the year of import.

EXPLANATORY NOTE: Although the obligation under Article VI (1)(b) of the Inter-American Convention to require appropriate markings on imported firearms is on the importing state, the importing state may by contract or other means require that import markings be placed upon the firearm by the manufacturer of the country of export.

(4) Required markings on firearms shall be placed upon the frame or receiver and, wherever possible, on the other components of the firearm such as the barrel or slide. These markings shall be in alphanumeric form.

EXPLANATORY NOTE: Because the serial number is perhaps the most important datum in identifying and tracing a firearm, the serial number should be placed upon the frame or receiver (the essential component of the firearm). Additional markings may be placed upon other component parts, recognizing, however, that these parts (such as the barrel) are often interchangeable or replaced.

(5) Frames or receivers manufactured or imported for use as replacement parts for firearms shall be subject to the same marking requirements as those set out in paragraphs (1) and (2), above. Wherever possible and appropriate States should consider requiring appropriate markings on other structural components (such as barrels and slides) manufactured or imported for use as replacement parts for firearms.

CHAPTER III
RECORD-KEEPING

Article 4: Record Keeping

(1) Information necessary to trace and identify manufactured, exported, imported, re-exported, in-transit, or marketed in the internal market and/or confiscated or forfeited firearms shall be kept and maintained by the corresponding competent national authority.

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2. In accordance with Article XI of the CIFTA.
3. Included on the premise that the subjects of marking, record-keeping and tracing cannot be addressed in isolation from one another.
4. The report of the United Nations Open-ended Working Group of June 27, 2005 proposes that records pertaining to marked small arms and light weapons should, to the extent possible, be kept indefinitely.
(2) The recorded information shall include at a minimum, in relation to marking, the following:

(a) The markings on a firearm as set out in Article 3;

(b) The name and location of the owner and legal user of a firearm and each subsequent owner and legal user thereof, when possible;

(c) The date of entry of the corresponding information maintained by the state;

(d) The name and location of authorized producers, dealers, importers and exporters and, wherever possible, brokers of firearms;

(e) Where available, information concerning each firearms import, export and in-transit transaction, including:
   
   i. The issuance and expiration dates of the import, export and in-transit licenses or authorizations;
   
   ii. Point of departure in the country of export;
   
   iii. Identification of the country of import;
   
   iv. Identification of the in-transit countries;
   
   v. Arrival point in the country of import;
   
   vi. Identification of the final recipient;
   
   vii. Identification of the end-user;
   
   viii. Date of delivery;
   
   ix. Classification, description and quantity of the shipment;
   
   x. Broker information; and
   
   xi. Information on the shippers.

(f) Information on destroyed firearms, and

(g) Records pertaining to firearms held by companies that go out of business.

(3) Records maintained under this Article shall, in principle, be kept indefinitely, but in any case a State shall ensure the maintenance of:

(a) Manufacturing records for at least 30 years; and

(b) All other records, including records of import and export, for at least 20 years.

The shortest periods of time for keeping records recommended in the report are, 30 years for firearms manufacturing records and 20 years for all other records, including import and export records.
CHAPTER IV
TRACING FIREARMS

Article 5: National Authority

(1) The National Authority responsible for responding to and making tracing requests in relation to firearms shall be the Office of __________, situated in the Ministry of __________.

EXPLANATORY NOTE: If more than one national authority exists for this purpose they should each be identified.

(2) The National Authority shall receive and release information in relation to requests under paragraph (1) only from and to the competent authorities designated by the requesting or requested State.

(3) The information provided or received under paragraph (2) shall be used solely for purposes of tracing and its legal, judicial or administrative consequences and shall not be released to any other person without the prior consent of the State providing or receiving that information.

Where for legal, constitutional or administrative reasons, the confidentiality of the information cannot be guaranteed or the restrictions placed on its use in accordance with the present paragraph cannot be maintained by the requesting State, the requested State will be so informed at the time the tracing request is made.

Article 6: Tracing Requests

(1) Any tracing request regarding firearms should provide, where available:

(a) Information on the markings referred to in Article 3 and any other markings on the firearm including, type, caliber and other relevant characteristics, as appropriate, of the firearm concerned;

(b) The legal justification for the request such as information describing the illicit condition of the firearm, and insofar as this is possible, the circumstances under which the firearm was found; and

(c) Intended use of the information being sought.

Article 7: Tracing Response

(1) The National Authority shall acknowledge receipt of the tracing request and provide a timely and accurate response.

(2) The National Authority shall provide, where relevant towards identifying the point of diversion of the firearm that is being traced, the following response to a tracing request:

(a) confirmation that the firearm was manufactured or imported by the requested state;
(b) information on the manufacturer or importer;

(c) the date of manufacture or importation;

(d) if the firearm was legally exported out of the requested state:
   
i. the date of export;
   ii. identification of the importing state;
   iii. identification of any transit states, if applicable;
   iv. authorized final recipient; and
   v. details of the import, export and in-transit licenses; and

(e) if the firearm was not legally exported out of the requested state, this fact should be promptly communicated to the requesting state and the former shall provide results of the ensuing investigation, where appropriate.

CHAPTER V
OFFENSES

Article 8: Offenses

In accordance with its internal norms, each country will, as necessary, adopt legislation that penalizes the following acts, and prescribe the appropriate penalties:

(1) Any person who removes, alters, obliterates or defaces a marking on a firearm;

(2) Any person who manufactures a firearm and fails to mark the firearm in accordance with this Model Legislation;

(3) Any person who imports a firearm that does not contain a mark in accordance with this Model Legislation;

(4) Any person who fails to mark and/or record a confiscated or forfeited firearm that is not to be destroyed but retained for official use in accordance with this Model Legislation;

(5) Any person who manufactures or imports firearms frames or receivers without complying with the relevant requirements of Article 3(5) of this Model Legislation. Where a State requires markings on additional components of firearms, it shall be an offense to import or manufacture them without such markings; and

(6) Except as authorized by the State, any person who deals in, transfers or possesses firearms that do not contain the corresponding markings required under Article 3.