



UNODC

United Nations Office on Drugs and Crime

Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition



Second revised edition

UNITED NATIONS OFFICE ON DRUGS AND CRIME

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Illicit Manufacturing of and Trafficking
in Firearms, Their Parts and
Components and Ammunition**

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UNITED NATIONS
Vienna, 2014

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UNITED NATIONS PUBLICATION

Sales No. E.14.V.8

ISBN 978-92-1-133826-3

eISBN 978-92-1-056834-0

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Preface to the first edition*

The Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition was developed by the United Nations Office on Drugs and Crime (UNODC) in response to the request of the General Assembly to the Secretary-General to promote and assist the efforts of Member States to become party to and implement the United Nations Convention against Transnational Organized Crime¹ and the Protocols thereto.² It was developed in particular to assist States in implementing a legislative regime consistent with the provisions contained in the 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.³ Consequently, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in its decision 4/6, adopted at its fourth session, urged States parties to the Firearms Protocol to strengthen their national legislation in a manner consistent with the Protocol, and requested the Secretariat to facilitate, whenever possible, technical assistance to States parties facing difficulties in its implementation; and also requested the Secretariat to develop technical assistance tools to assist States parties in the implementation of the Firearms Protocol.

The Model Law is also a response to the specific technical assistance needs identified by Member States in the questionnaires/checklist used to gather information and assess the implementation of the Organized Crime Convention and the Protocols thereto,⁴ in which many States indicated the need for model legislation or guidelines in order to harmonize domestic legislation with the requirements of the Convention and its Protocols. The Model Law will both facilitate and help systematize provision of legislative

* The present preface is intended as an explanatory note on the genesis, nature and scope of the Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition; it is not part of the text of the Model Law.

¹ United Nations, *Treaty Series*, vol. 2225, No. 39574.

² *Ibid.*, vols. 2237, 2241 and 2326, No. 39574.

³ *Ibid.*, vol. 2326, No. 39574.

⁴ See the note by the Secretariat on an overview of technical assistance needs identified by States in their responses to the questionnaires/checklist on the implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto (CTOC/COP/WG.2/2009/2) and the related report on an overview of technical assistance requests made by States through the questionnaires/checklist on the implementation of the Convention (CTOC/COP/WG.2/2009/3).

assistance by UNODC, as well as facilitate review and amendment of existing legislation and adoption of new legislation by States themselves. It is designed to be adaptable to the needs of each State, whatever its legal tradition and social, economic, cultural and geographical conditions.

The Model Law is divided into three parts:

- Part One (Introductory provisions) contains Model Law text on the introductory provisions and definitions States may choose to include in their domestic legislation. Terms used in the Firearms Protocol and its parent Convention are included in the definitions. Additionally, draft definitions are suggested for other terms used in the present Model Law.
- Part Two (Mandatory provisions) contains Model Law text on all the mandatory provisions of the Firearms Protocol that States are required to ensure are included in their domestic legislation. This includes chapters on preventive measures aimed at regulating the manufacturing, marking, record-keeping and international transfers of firearms, their parts and components and ammunition. The mandatory penal provisions that derive from the preventive measures and the mandatory international cooperation measures are also included in chapters in this part.
- Part Three (Non-mandatory provisions) elaborates on provisions in the Firearms Protocol on brokers and brokering activities that States are required to consider for inclusion in their national legislation. It also discusses the provision in the Protocol whereby States may adopt simplified procedures for the temporary import, export and transit of firearms, their parts and components and ammunition.

Annex I (Additional considerations) contains other provisions that States can also consider for inclusion in their national legislation. These provisions are included to assist States in developing comprehensive legislation on various aspects of firearms regulation. These suggestions stem from other international instruments and national practice.⁵

Each chapter and Model Law provision includes a commentary that explains the requirements of the Firearms Protocol and indicates the source

⁵The international legal regime on firearms started to develop in the 1990s, when increasing concern for the proliferation of (illicit) firearms brought the issue of illicit manufacturing of and trafficking in firearms onto the international agenda. Since then, several global and regional instruments have been adopted, both legally and non-legally binding in nature. Most of these instruments have either preceded or influenced the adoption of the Firearms Protocol (e.g. the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials of 1997) or have been adopted after, building on and further developing the *acquis* of the Firearms Protocol (see annex II for a detailed list of instruments).

of the provision within the Protocol. Due regard is also given to the interpretative notes for the *travaux préparatoires* of the Protocol,⁶ the *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*,⁷ as well as the UNODC *Technical Guide to the Implementation of the 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*.⁸ The commentaries to the chapters and individual provisions are an integral part of the Model Law and should be read in conjunction with its provisions.

The Model Law is designed primarily to assist States in their implementation of the Firearms Protocol. It is not an exhaustive instrument for firearms control. The Model Law also does not provide suggested language for other legislative (criminal, administrative or regulatory) provisions that may need to be reviewed and adapted as a consequence of the adoption of a firearms law beyond those directly referred to in the present Model Law.

It should be emphasized that matters related to international cooperation in criminal matters, as well as crimes of participation in an organized criminal group, corruption, obstruction of justice and money-laundering, which often accompany trafficking in firearms, are contained in the Organized Crime Convention. It is therefore essential that the provisions of the Firearms Protocol be read and applied together with the provisions of the Convention and that domestic legislation is developed to implement not only the Protocol but also the Convention. In addition, any legislation on illicit manufacturing of and trafficking in firearms, their parts and components and ammunition should be in line with a State's constitutional principles, the basic concepts of its legal system and its existing legal structure and enforcement arrangements. Further, definitions used in such legislation on illicit manufacturing of and trafficking in firearms, their parts and components and ammunition should be consistent with similar definitions used in other laws. The Model Law is not meant to be incorporated as is, but requires a careful review of the whole legislative context. In that respect, the Model Law cannot stand alone and domestic legislation also implementing the provisions of the Convention is essential for it to be effective.

⁶ Interpretative notes for the official records (*travaux préparatoires*) of the negotiation of the 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 (A/55/383/Add.3).

⁷ United Nations publication, Sales No. E.05.V.2.

⁸ The UNODC *Technical Guide* developed by the Office between 2007 and 2010 provides practical examples and advice to Member States on how to implement particular aspects of the Firearms Protocol.

States may choose to legislate with respect to a broader range of weapons and adopt additional measures to those provided for by the Convention and the Protocol to prevent and combat illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and related transnational organized crime, bearing in mind that any investigation, prosecution or other procedures outside the scope of the Convention or the Protocol would not be covered by the various requirements to provide international cooperation.

The Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition has been drafted by two legal consultants, Clare da Silva and Sarah Parker, under the guidance and supervision of Simonetta Grassi, Legal Officer, Information Support Section, Organized Crime and Trafficking Branch, Division for Treaty Affairs of the United Nations Office on Drugs and Crime.

A group of experts⁹ from 23 countries, eight international organizations, five civil society organizations and the private sector specialized in the field of firearms manufacturing, licensing and trafficking prevention and control and representing a variety of legal and geographical areas were consulted to review the draft of the Model Law at three expert group meetings held in Vienna in November 2009 and February and June 2010. UNODC is profoundly grateful to all of them for their personal dedication and feedback throughout the process of developing the Model Law. A list of the experts is provided in annex V.

⁹ Experts from the following countries were invited to participate: 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. The following organizations were also represented: the Counter-Terrorism Committee Executive Directorate, the United Nations Co-ordinating Action on Small Arms, the East African Community, the European Commission, the International Criminal Police Organization (INTERPOL), the Organization for Security and Cooperation in Europe, the Southern African Regional Police Chiefs Cooperation Organization and the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. Civil society and private sector participants included the Group for Research and Information on Peace and Security, FN Herstal, the International Action Network on Small Arms, the Italian National Association of Arms and Munitions Manufacturers (ANPAM), Saferworld, the Small Arms Survey and the World Forum on the Future of Sport Shooting Activities.

Preface to the second edition

Since its finalization in November 2010, the Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition has been published and widely disseminated among Member States and practitioners. Overall, the feedback on the Model Law has been overwhelmingly positive.

In 2013, the United Nations Office on Drugs and Crime (UNODC) decided to undertake a thorough internal review of the Model Law in order to streamline the legal drafting style and to introduce, where relevant and appropriate, alternative language options for common and civil law legal systems, especially with regard to the criminalization provisions. This latter purpose arose in response to specific comments and observations received from practitioners, who considered that the Model Law would be of greater assistance to practitioners and legislators from civil law jurisdictions if it contained alternative drafting options for those systems.

A further incentive to revise and update the Model Law was provided by several developments that have occurred over the past two years in the field of firearms control, which relate directly to and complement to some extent important aspects of the Firearms Protocol and which deserved to be reflected in the main corpus of the Model Law or, most frequently, in the commentary to it. Those developments included the establishment in the course of the period 2011-2012 by the International Criminal Police Organization (INTERPOL) of its new Illicit Arms Records and tracing Management System (iARMS), an important tool in facilitating firearms tracing and related criminal investigations; the adoption of the European Union regulation 258/2012 of the European Parliament and of the Council of 14 March 2012 implementing article 10 of the Firearms Protocol, which provides for its member States useful details and drafting options related directly to the implementation of a very relevant part of the Firearms Protocol; and, last but not least, the adoption by the General Assembly in its resolution 67/234 B of April 2013, of a global, legally binding Arms Trade Treaty. That treaty, in particular, introduces new elements that enrich and strengthen the domestic and international control of firearms transfer, and touches directly on several relevant aspects of the current firearms control regime, giving new impetus to preventing and combating trafficking. In particular, given that the

Treaty is also meant to supplement the Firearms Protocol and its parent Convention, States parties (or non-parties) to it may wish to take into account its relevant provisions in order to strengthen their national law, thereby adopting a holistic and integrated approach to combating illicit activities and unregulated arms transactions. Therefore, in revising the Model Law, particular attention has been given to strengthening its criminalization provisions and to including specific references to the Arms Trade Treaty in various sections of the Model Law, in particular in its annexes I and II.

In doing so, UNODC has sought the comments and contributions of international experts and practitioners from different countries and legal systems familiar with the international legal regime and in particular with the Firearms Protocol and the Model Law, who have revised and commented on many of the provisions in question and have provided valuable suggestions for improving the document. Subsequently, two experts, one specialized in international criminal law and the other in international arms transfers, incorporated the comments and suggestions into the Model Law.¹⁰ UNODC wishes to express its gratitude to all of the experts involved for their valuable support.

It is hoped that the Model Law as revised will further assist States in their efforts to strengthen their domestic firearms control legislation and practice in a manner consistent with the Firearms Protocol and other relevant regional and international instruments, and will promote and facilitate international cooperation in preventing and combating criminal activity relating to firearms.

¹⁰ The following experts provided comments and feedback on the Model Law and contributed to strengthening its review: Fabián Brufau, Legal Advisor, Ministry of Defence (Uruguay); Jorge Di Lello, Federal Firearms Prosecutor (Argentina); Andrea Kutis, Substitute Federal Firearms Prosecutor (Argentina); Jacinta Nyamosi, Prosecutor (Kenya); Vincent Paris, Crown Prosecution Service, Ontario (Canada); Gioacchino Polimeni, former judge and expert on international criminal affairs (Italy); Eduardo Vetere, expert on international affairs (Italy); and Zeray Yihdego (Ethiopia). Special thanks go to Gioacchino Polimeni and Zeray Yihdego for their final review and incorporation of all the comments into the text of the Model Law.

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Part One. Introductory provisions

Commentary

Part one contains Model Law text on the introductory provisions and definitions States may choose to include in their domestic legislation.

Chapter I. General provisions

Commentary

Depending on the national legal system and legislative drafting practice, States may choose to introduce a preamble and provisions setting out the general scope of the law and its adoption process. The following draft articles are designed to assist States in drafting such preliminary and introductory provisions of their domestic legislation and are not mandatory under the 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,¹ nor under the Arms Trade Treaty, adopted by the General Assembly in its resolution 67/234 B, to which the present Model Law also refers, as appropriate.

Article 1. Title

The present Law may be cited as the [*title of the law, e.g. Law on Firearms, Their Parts and Components and Ammunition*] of [*name of State*] [*year of adoption*].

Commentary

The inclusion and formulation of this provision depends on the national legal system and should be adapted accordingly. This article is redundant when there is a separate law promulgating the present law on illicit manufacturing of and trafficking in firearms, their parts and components and ammunition. In such a case the title of the law will be mentioned in the promulgation law.

¹United States, *Treaty Series*, vol. 2326, No. 39574

Examples of titles are:

- Arms and Ammunition Act
- Firearms Act
- Weapons Law

Article 2. Commencement

Option 1

The present Law shall come into force on [date].

Option 2

The present Law shall come into force [... days] after its official publication in [name of official gazette or equivalent].

Commentary

States should follow their legislative procedures governing commencement and this article of the Model Law should be adapted accordingly. The present Law provides alternative options for civil and common law systems.

Article 3. General purposes and application

1. The purposes of this Law are:

- (a) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition;
- (b) To ensure investigation and prosecution of the offences established under the present Law; and
- (c) To promote, facilitate and strengthen national and international cooperation in order to meet those objectives.

Commentary

Source: Protocol, articles 2 and 4, paragraph 1.

In addition to general provisions regarding the title and commencement of the law, in some jurisdictions it may be appropriate to include provisions addressing the general purposes and application of the law. A national law on firearms should be sufficiently comprehensive to prevent and combat illicit manufacturing of and trafficking in firearms. This is in line with decision 4/6 of the

Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in which it urges States parties to strengthen their national legislation in a manner consistent with the Protocol.

Article 4 limits the applicability of the Firearms Protocol to the prevention, investigation and prosecution of offences that are transnational in nature and involve an organized criminal group. However, those requirements are not part of the definition of the specific offences set out in article 5 of the Protocol and national laws should establish those offences independently of the transnational nature or the involvement of an organized criminal group (see the Convention,² article 34, paragraph 2).

2. Except as otherwise stated in the present Law, the provisions of this Law shall apply to all commercially traded firearms, their parts and components and ammunition.

Commentary

Article 4, paragraph 2, of the Protocol stipulates that the Protocol shall not apply to state-to-state transactions or state transfers where the application of the Protocol would prejudice the right of a State party to take action in the interest of national security consistent with the Charter of the United Nations. The Legislative Guide for the Implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime³ clarifies that the words “state-to-state transactions” refer only to transactions undertaken by the State in its sovereign capacity and excludes those transactions where a State is acting in its commercial capacity (see the Legislative Guide, paragraph 64).

It should be noted that the Arms Trade Treaty also refers in its preamble to “the need to prevent and eradicate the illicit trade in conventional arms and to prevent their diversion to the illicit market, or for unauthorized end use and end users, including in the commission of terrorist acts”. Unlike the Firearms Protocol, however, the Arms Trade Treaty applies to all transactions concerning conventional weapons except for international movement of arms by a State for its own use (article 2, paragraph 3).

²Ibid., vol. 2225, No. 39574.

³United Nations publication, Sales No. E.05.V.2, part four.