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**Ad Hoc Committee on the Elaboration of a
Convention against Transnational Organized Crime**

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**DRAFT PROTOCOL AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING
IN FIREARMS, AMMUNITION AND OTHER RELATED MATERIALS SUPPLEMENTARY
TO THE UNITED NATIONS CONVENTION AGAINST
TRANSNATIONAL ORGANIZED CRIME**

Proposal submitted by Canada

The States Parties to the present Protocol,

(a) *Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,

(b) *Concerned* by the increase, at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and by the serious problems resulting therefrom,

(c) *Reaffirming* that States Parties should give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,

(d) *Considering* the urgent need for all States, especially those States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

(e) *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation, exchange of information, and other appropriate measures at the national, regional and global levels,

(f) *Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the database established by the International Criminal Police Organization (Interpol), the Interpol Weapons and Explosives Tracking System, to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

(g) *Stressing* that the promotion of harmonized import and export controls over the licit international movement of firearms, ammunition and other related materials, in addition to a system of procedures for applying them, is essential to the prevention of illicit international trafficking in firearms, their parts and components and ammunition,

(h) *Recognizing* that States have developed different cultural and historical uses for firearms, and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not intended to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by the States Parties,

(i) *Recalling* that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit the States Parties to enact legislation or regulations pertaining to firearm ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

Have agreed as follows:

Article I

Relationship with the United Nations Convention against Transnational Organized Crime

This Protocol supplements the United Nations Convention against Transnational Organized Crime, done at ... (hereinafter referred to as “the Convention”), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

Article II

Definitions

For the purpose of this Protocol, the following definitions shall apply:

(a) “Ammunition”: the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm;

(b) “Controlled delivery”: the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to identifying persons involved in the commission of offences referred to in article V of this Protocol;

(c) “Firearm”: any barrelled weapon that will or is designed or may be readily converted to expel a bullet or projectile by the action of an explosive, including any frame or receiver of such a barrelled weapon but not including any antique firearm manufactured before the twentieth century or its replicas;

(d) “Illicit manufacturing”: the manufacturing or assembly of firearms, ammunition and other related materials:

(i) From components or parts illicitly trafficked; or

(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacturing;

(e) “Illicit trafficking”: the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from or across the territory of one State Party to that of another State Party if any one of the States Parties concerned does not authorize it;

(f) “Other related materials”: any components, parts or replacement parts of a firearm that are essential to its operation or accessories that can be attached to a firearm and that enhance its lethality.

Article III

Purpose

The purpose of this Protocol is to promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

Article IV

Scope

This Protocol applies to all classes of commercially traded firearms, ammunition and other related materials but not to State-to-State transactions or transfers for purposes of national security.

Article V

Criminalization

1. Each State Party shall adopt such legislative or other measures as may be necessary to establish as offences under its domestic law, when committed intentionally:

(a) Illicit trafficking in firearms, ammunition and other related materials; and

(b) Illicit manufacturing of firearms, ammunition and other related materials.

2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties, the criminal offences established pursuant to the foregoing paragraph shall include participation in, association or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating and counselling the commission of such offences.

Article VI

Jurisdiction¹

Each State Party shall adopt such measures as may be necessary to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences that it has established pursuant to this Protocol.

Article VII

¹Depending on the final draft of the Convention, this provision may not be necessary or may require modification.

Confiscation or forfeiture²

1. States Parties shall undertake to confiscate or forfeit firearms, ammunition and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.
2. States Parties shall adopt the necessary measures to ensure that all firearms, ammunition and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking do not fall into the hands of private individuals or businesses through auction, sale or other disposal.

*Article VIII
Record-keeping*

1. Each State Party shall maintain for not less than ten years the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations.
2. Records shall be kept for a period of not less than ten years after the last transaction effected under a particular certificate. States Parties shall identify to one another the agencies responsible for such record-keeping.
3. States Parties shall use their best efforts to computerize their records for the purpose of enhancing one another's effective access to such information.

*Article IX
Marking of firearms*

1. For the purposes of identifying and tracing firearms, States Parties shall:
 - (a) Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its serial number;
 - (b) Require appropriate markings on each imported firearm permitting the identification of the importer's name and address; and
 - (c) Require the appropriate marking of any firearms confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.
2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings.

*Article X
Preventing the reactivating of deactivated firearms*

States Parties that have not already done so shall consider taking the necessary measures to prevent the reactivating of deactivated firearms, including through criminalization, if appropriate.

*Article XI
General requirements for export, import and*

²The final form of this article will be influenced by the general provision on confiscation and forfeiture in the Convention. If that provision proves inapplicable or insufficient in respect of the particular needs of the subject matter of this Protocol, the article will require further elaboration.

transit licensing or authorization systems

1. States Parties shall establish and maintain an effective system of export, import and international transit licensing or authorization for transfers of firearms, ammunition and other related materials.
2. States Parties shall not permit the transit of firearms, ammunition and other related materials until the receiving States Parties issue the corresponding licences or authorizations.
3. States Parties, before releasing shipments of firearms, ammunition and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.
4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition and other related materials.

Article XII
Security measures

States Parties, in an effort to eliminate the loss or diversion of firearms, ammunition and other related materials, shall undertake to adopt the necessary measures to ensure the security of firearms, ammunition and other related materials imported into, exported from or in transit through their respective territories.

Article XIII
Strengthening of controls at export points

Each State Party shall adopt such measures as may be necessary to detect and prevent illicit trafficking in firearms, ammunition and other related materials between its territory and the territories of other States Parties, by strengthening controls at export points.

Article XIV
Exchange of information³

1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves, in conformity with their respective domestic laws and treaties applicable to them, relevant information on matters such as:

(a) Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, ammunition and other related materials;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition and other related materials; and ways of detecting them;

(c) Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition and other related materials;

(d) Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials; and

³Although the Convention is likely to include a general provision on the exchange of information, a provision dealing with that issue in this Protocol is recommended. The final form of this provision will need to take into account the corresponding article(s) in the Convention.

(e) Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

2. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities, in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and prosecute those involved in those illicit activities.

3. States Parties shall cooperate in tracing firearms, ammunition and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition and other related materials.

Article XV
Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

2. States Parties shall identify a national body or a single point of contact to act as liaison between States Parties on matters relating to this Protocol.

Article XVI
Exchange of experiences and training⁴

1. States Parties shall cooperate in formulating programmes for the exchange of experiences and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proven to be effective in efforts to implement this Protocol.

2. States Parties shall cooperate with each other and with competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials. The subjects covered in such training shall include, *inter alia*:

(a) Identification and tracing of firearms, ammunition and other related materials;

(b) Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, the methods of shipment used and the means of concealment used; and

(c) Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition and other related materials.

Article XVII
Confidentiality

⁴Although the Convention is likely to include a general provision on the exchange of experiences and training, it would be useful to include a provision dealing with those issues in this Protocol. The final form of this provision will need to take into account the corresponding article(s) in the Convention.

Subject to the obligations imposed by its constitution or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives, from another State Party, including proprietary information pertaining to commercial transactions, if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

Article XVIII
*Technical assistance*⁵

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, including technical assistance in those matters identified in article 18 of the Convention.

Article XIX
Final clauses

1. This Protocol shall be open for signature by all States from at United Nations Headquarters in New York.

2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Note:

Additional provisions on the following subjects may be required, pending the development of corresponding provisions in the Convention, if it is determined that the tools needed to combat the illicit trafficking in firearms require greater specificity or flexibility than those provided by the Convention:

(a) *Mutual legal assistance*. It will be necessary to ensure, for those States that require specificity in their agreements on mutual legal assistance, that the subject matter covered by the Protocol is included by reference in the provisions of the Convention;

(b) *Controlled delivery*. In the specific context of cross-border trafficking, a provision on controlled delivery would be useful. If no provision on controlled delivery is included in the Convention, an article based on article 11 of the United Nations *Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of 1988 should be included, together with an appropriate definition in article II of the Protocol;

(c) *Extradition*. It will be necessary to ensure, for those States that require specificity in their agreements on extradition, that the subject matter covered by the Protocol is included by reference in the provisions of the Convention.

⁵The final form of this provision will need to take into account the corresponding article(s) in the Convention.