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DRAFT PROPOSED MODEL LEGISLATION
ON THE MARKING AND TRACING OF FIREARMS AND AMMUNITION

(Prepared by the Technical Secretariat of the Group of Experts CIFTA-CICAD
to Prepare Model Legislation on the Areas covered by the CIFTA)

DEVELOPMENT OF MODEL LEGISLATION FOR THE EFFECTIVE APPLICATION
OF THE INTER-AMERICAN CONVENTION AGAINST THE ILLICIT MANUFACTURING OF
AND TRAFFICKING IN FIREARMS, AMMUNITION, EXPLOSIVES, AND OTHER RELATED
MATERIALS (CIFTA)

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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:

“Ammunition”: the complete round or its components, including cartridge cases, primers, propellant powder, bullets, or projectiles, that are used in any firearm, as defined in Article I of the Inter-American Convention.

"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.

“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 illicit firearms found or seized on a territory of a State from the point of manufacture or the point of importation through the lines of supply to the point at which they become illicit.

“Unique serial number”: a number on each firearm that is not duplicated on any other firearm produced by the same manufacturer.

CHAPTER II MARKING OF FIREARMS

Article 2: Marking of Firearms

- (1) Every person who manufactures a firearm shall ensure that the firearm is marked at the time of manufacture, in the manner set out in Article 3(1) (a);
- (2) Every person who imports a firearm shall ensure that, in addition to the marking referred to in paragraph (1), the firearm is marked in the manner set out in Article 3(1)(b);
- (3) Paragraph (2) does not apply to:
 - (a) a firearm that is imported temporarily¹; or
 - (b) a firearm that has been previously imported and duly marked.
- (4) Every firearm that has been confiscated or forfeited and that is retained for official use, shall be marked in the manner set out in Article 3 (1)(c).

Article 3: Manner of Marking

- (1) Every firearm shall be permanently marked by a stamping or engraving that,
 - (a) in the case of a manufactured firearm, at a minimum, identifies the manufacturer, the place and year of manufacture, and the unique serial number of the firearm;
 - (b) in the case of an imported firearm, identifies the country of import, the year of import and the importer; and
 - (c) in the case of a confiscated or forfeited firearm, identifies the country in which the firearm was confiscated or forfeited, and the year in which the confiscation or forfeiture took place, but that is visibly distinguishable from the marking that is applied to the firearm for import under subparagraph (b)².

1. In order to apply paragraph (c), countries also require norms that address the temporary import of a firearm 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.

2. The marking of confiscated or forfeited firearms (illegal per se simply by virtue of the fact that they have been the subject of such measures) raises the collateral question of whether such firearms should be used for official use at all, or whether they should simply be rendered inoperable or destroyed. If a country decides under its legal norms to authorize that a confiscated or forfeited firearm may be put to official use, it will also have to require that the corresponding competent authority shall be responsible for ensuring that the firearm is appropriately marked.

- (2) Markings on firearms shall:
- (a) consist of simple geometric symbols in combination with a numeric and/or alphanumeric code;
 - (b) be of a size that is readily legible to the naked eye;
 - (c) be of a quality and/or depth such that the markings cannot be readily tampered with or removed; and
 - (d) be visible on an exposed surface with no need to disassemble the firearm.
- (3) Subject to paragraph (4), with respect to firearms being marked for manufacture, the markings referred to in paragraph (2) shall be placed:
- (a) on one or more of the following locations: frame, receiver, barrel and slide 3; and,
 - (b) on an essential structural component of the firearm.
- (4) Markings on firearms defined in paragraph b. of the definition “Firearms” in Article 1, shall be placed on an exposed surface of each essential structural component of the firearm at the time of manufacture, whenever possible⁴.

CHAPTER III MARKING OF AMMUNITION

Article 4: Marking of Ammunition

- (1) Every person who manufactures ammunition shall ensure that each cartridge⁵ is marked at the time of manufacture, in the manner set out in Article 5(1).
- (2) Every person who manufactures ammunition shall ensure that each box⁶ of ammunition is marked at the time of manufacture, in the manner set out in Article 5(3) and, as applicable, Article 5(4).
- (3) Every person who imports ammunition shall ensure that, in addition to the cartridge marking referred to in paragraph (1), each box of imported ammunition is marked in the manner set out in Article 5(3) and (4).

Article 5: Manner of Marking

- (1) Each cartridge shall be permanently marked by a headstamp⁷ impressed, stamped or embossed that identifies the manufacturer, the country and year of manufacture, and a unique batch or lot number.⁸

3. It is proposed that these terms be defined.

4. The words “if possible” reflect the wording of Article VI 2. of the CIFTA.

5. The term “cartridge” is used to refer to individual rounds of ammunition of all types. In the Spanish and Portuguese texts of this Model Law, the term used is “munición”.

6. The term “box” is used to describe the container or packaging of ammunition.

- (2) Headstamp markings on cartridges shall:
 - (a) consist of simple geometric symbols in combination with a numeric and/or alphanumeric code;
 - (b) be of a size that is readily legible to the naked eye; and
 - (c) be of a quality and/or depth such that the markings cannot be readily tampered with or removed.
- (3) Each box of ammunition⁹ shall be marked with
 - (a) the same identification as on the headstamp marking referred to in paragraph (2);
 - (b) the unique batch or lot number of the ammunition in the box.
- (4) Each box of imported ammunition shall contain, in addition to the marking referred to in paragraph (3), information that identifies the country of import, the year of import and the importer.

CHAPTER IV RECORD-KEEPING^{10, 11}

Article 6: Record Keeping

- (1) Information on manufactured, imported, and confiscated or forfeited firearms and ammunition shall be kept and maintained in a registry by the corresponding competent national authority.¹²
- (2) The register shall contain at a minimum, in relation to marking information, the following information:
 - (a) The identifying marking of a firearm as set out in Article 3, including the firearm type/model and caliber;

7. "Headstamp" is a marking impressed, stamped or embossed on the base of a cartridge during the manufacturing process. In the Spanish text of this Model law the term "marca" is used.

8. For certain types of ammunition some countries are also identifying the original recipient of the firearm on the basis that this could further facilitate tracing. Other fora have suggested techniques such as marking the powder or the bullet.

9. It should be noted that Brazilian legislation already provides for a bar code on ammunition containers that identifies manufacturers and purchasers. A bar code could be similarly employed to include the information in paragraphs 5(3) and (4). Several NGOs have also noted that providing an upper limit on the number of rounds of each type of ammunition in a box might further facilitate tracing.

10. In accordance with Article XI of the CIFTA.

11. Included on the premise that the subjects of marking, record-keeping and tracing cannot be addressed in isolation from one another.

12. 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. 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.

- (b) The identifying marking of a cartridge and ammunition box as set out in Article 4;
 - (c) The name and location of the owner of a firearm and/or ammunition and ammunition boxes and each subsequent owner thereof, when possible;
 - (d) The date of entry of the corresponding information into the register;
 - (e) The name and location of authorized producers, dealers, brokers, importers and exporters of firearms and ammunition;
 - (f) Information concerning each firearms and/or ammunition 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; and
 - x. Broker information;
 - (a) Information on destroyed firearms and ammunition, and
 - (b) Records pertaining to firearms and ammunitions held by companies that go out of business.
- (3) Records under paragraph (2) shall be kept for 30 years.

CHAPTER V TRACING FIREARMS AND AMMUNITION

Article 7: National Authority

- (1) The National Authority responsible for responding to and making tracing requests in relation to firearms and ammunition shall be the Office of _____, situated in the Ministry of _____.
- (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 the purposes of this Chapter and shall be kept confidential and not released to any other person without the prior consent of the State providing by or receiving that information.

Article 8: Tracing Requests

- (1) Any State that requests information from a National Authority for a tracing request regarding firearms or ammunition should provide:
 - (a) Information on the markings, type, caliber and other relevant characteristics, as appropriate, of the firearm or ammunition concerned;
 - (b) The legal justification for the request such as information describing the illicit nature of the firearm or ammunition, and the circumstances under which the firearm or ammunition was found; and
 - (c) Intended use of the information being sought.

Article 9: 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, to the extent possible, the following response to a tracing request:
 - (a) confirmation that the firearm or ammunition 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 or ammunition 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 or ammunition 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.

CHAPTER VI OFFENCES

Article 10: Offences

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, ammunition or an ammunition box shall be guilty of an offense;

- (2) Any person who manufactures a firearm or ammunition and fails to mark the firearm, ammunition or ammunition box in accordance with this Model Law shall be guilty of an offense;
- (3) Any person who imports a firearm or ammunition and fails to mark the firearm or ammunition in accordance with this Model Law shall be guilty of an offense; and
- (4) Any person who fails to mark a confiscated or forfeited firearm retained for official use in accordance with this Model Law shall be guilty of an offense.