

105TH CONGRESS }
2d Session }

SENATE

{ TREATY DOC.
105-49 }

INTER-AMERICAN CONVENTION AGAINST THE ILLICIT
MANUFACTURING OF AND TRAFFICKING IN FIRE-
ARMS, AMMUNITION, EXPLOSIVES, AND OTHER RE-
LATED MATERIALS

MESSAGE

FROM

**THE PRESIDENT OF THE UNITED
STATES**

TRANSMITTING

INTER-AMERICAN CONVENTION AGAINST THE ILLICIT MANUFAC-
TURING OF AND TRAFFICKING IN FIREARMS, AMMUNITION, EX-
PLOSIONS, AND OTHER RELATED MATERIALS, SIGNED AT WASH-
INGTON, D.C., UNITED STATES, ON NOVEMBER 11, 1997, AT THE
TWENTY-FOURTH SPECIAL SESSION OF THE GENERAL ASSEM-
BLY OF THE ORGANIZATION OF AMERICAN STATES



JUNE 9, 1998.—Convention was read the first time and, together with
the accompanying papers, referred to the Committee on Foreign Rela-
tions and ordered to be printed for the use of the Senate

U.S. GOVERNMENT PRINTING OFFICE

59-118

WASHINGTON : 1998

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 9, 1998.*

To the Senate of the United States:

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (the "Convention"), adopted at the Special Session of the General Assembly of the Organization of American States (OAS) at Washington on November 13, 1997. The Convention was signed by the United States and 28 other OAS Member States on November 14, 1997, at the OAS Headquarters in Washington. So far, 31 States have signed the Convention and one (Belize) has ratified it. In addition, for the information of the Senate, I transmit the report of the Department of State with respect to the Convention.

The Convention is the first multilateral treaty of its kind in the world. The provisions of the Convention are explained in the accompanying report of the Department of State. The Convention should be an effective tool to assist in the hemispheric effort to combat the illicit manufacturing and trafficking in firearms, ammunition, explosives, and other related materials, and could also enhance the law enforcement efforts of the States Parties in other areas, given the links that often exist between those offenses and organized criminal activity, such as drug trafficking and terrorism.

The Convention provides for a broad range of cooperation, including extradition, mutual legal assistance, technical assistance, and exchanges of information, experiences, and training, in relation to the offenses covered under the treaty. The Convention also imposes on the Parties an obligation to criminalize the offenses set forth in the treaty if they have not already done so. The Convention will not require implementing legislation for the United States.

This treaty would advance important U.S. Government interests, and would enhance hemispheric security by obstructing the illicit flow of weapons to criminals such as terrorists and drug traffickers. In addition, ratification of this Convention by the United States would be consistent with, and give impetus to, the active work being done by the United States Government on this subject in other fora, such as the United Nations, the P-8 Group, and the OAS Inter-American Drug Abuse Control Commission (CICAD).

I recommend that the Senate give early and favorable consideration to the Convention, and that it give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, May 29, 1998.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmittal to the Senate for advice and consent to ratification, the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (the "Convention"), adopted and opened for signature at the Special Session of the General Assembly of the Organization of American States (OAS) in Washington on November 13, 1997. The Convention was signed by the United States and twenty-eight other OAS member states on November 14, 1997, and so far thirty-one States have signed and one (Belize) has ratified. The Convention will enter into force following the deposit of instruments of ratification by two States. I recommend that the Convention be transmitted to the Senate for its advice and consent to ratification.

The Convention is the first instrument of its kind in the world. It establishes a treaty-based regime of obligations among the OAS member states to combat the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials. Such obligations include various forms of cooperation analogous to those that exist pursuant to a number of multilateral treaties on law enforcement matters to which the United States is a party. The Convention will enhance the United States' ability to cooperate with, and receive assistance from, other countries in the hemisphere in connection with efforts to prevent, investigate, and prosecute the offenses covered by the Convention.

The Convention will not require implementing legislation for the United States. As further discussed below, the existing body of federal laws in the United States is adequate to satisfy the Convention's provisions regarding requirements for legislation, and the other provisions contained in the Convention are self-executing and will not require new legislation.

The Convention includes a Preamble, thirty articles and an Annex. The Preamble makes clear that the Convention is intended to address the problem of transnational trafficking in firearms, and is not meant to regulate the internal firearms trade of the States Parties. The Preamble expressly recognizes, for example, that the Convention "does not commit States Parties to enact legislation or regulations pertaining to firearms ownership, possession or trade of a wholly domestic character. . . ." Furthermore, the Preamble re-

flects the recognition 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 recognized by the States Parties.”

Article 1 (“Definitions”) sets forth definitions of a number of terms used in the Convention. “Illicit manufacturing” is defined as the manufacture or assembly of firearms, ammunition, explosives, and other related materials from components or parts illicitly trafficked; or without a license from a competent governmental authority of the State Party where the manufacture or assembly takes place; or without marking the firearms that require marking at the time of manufacturing. This definition is consistent with existing U.S. law, and would not require the United States to render “illicit” any act that is not already deemed to be such under U.S. law.

“Illicit trafficking” is defined as “the import, export, acquisition, sale, delivery, movement, or transfer of firearms, ammunition, explosives, and other related materials 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.” This definition makes it clear that the Convention applies only to trafficking of a transnational nature, and, more specifically, to cross-border transactions in which the requisite authorization for the transaction has not been granted by all of the Parties whose territory will be transited by the items in question.

“Firearms” are defined as 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 any other weapon or destructive device such as any explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system, or mine. Although the definitions of “firearms” contained in relevant U.S. laws are not identical in all respects to the definition set forth in the Convention, such definitions are broad enough to enable the United States to comply with the obligations imposed in the Convention.

“Ammunition” is defined as “the complete round or its components, including cartridge cases, primers, propellant powder, bullets, or projectiles that are used in any firearm.” “Explosives” are defined as any substance or article that is made, manufactured, or used to produce an explosion, detonation, or propulsive or pyrotechnic effect (except substances and articles that are not in and of themselves explosive, or substances and articles listed in the Annex to the Convention). “Other related materials” are defined as “any component, part, or replacement part of a firearm, or an accessory which can be attached to a firearm.”

As with the definitions of “firearms,” the definitions of “ammunitions” and “explosives” contained in relevant United States laws are not identical in all respects to the Convention’s definition of such terms. However, the definitions in U.S. law are broad enough to enable the U.S. to comply with the obligations imposed therein. Similarly, although there is no definition of the term “other related

materials” as such in U.S. law, items covered under the Convention’s definition are subject to regulation under relevant U.S. statutes. For example, all components and parts for firearms are regulated under the Arms Export Control Act, 22 U.S.C. Sec. 2778. The implementing regulations also make it clear that certain accessory items, such as riflescopes, silencers, and flash suppressors, are subject to the import controls of the Act. *See* 27 C.F.R. Part 47.

The definition of “controlled delivery” was drawn by the negotiators largely from the definition of that term in the United Nations Convention Against the Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, done at Vienna on December 20, 1988. The term is defined as “the technique of allowing illicit or suspect consignments of firearms, ammunition, explosives, 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 offenses referred to in Article IV of the Convention.”

Article II (“Purpose”) sets forth the purpose of the Convention, which is to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials; and to promote and facilitate cooperation and exchange of information and experience among State Parties to prevent, combat, and eradicate the illicit manufacturing of and trafficking in these items.

Article III (“Sovereignty”) requires States Parties to carry out the obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States, and of nonintervention in the domestic affairs of other States. The Article also prohibits a State Party from undertaking in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved to the authorities of that other State Party by its domestic law.

Article IV (“Legislative Measures”) directs States Parties that have not yet done so to adopt the necessary legislative or other measures to establish as criminal offenses under their domestic law the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials. The Departments of Treasury and Justice have concluded that the obligation to criminalize the acts of illicit manufacturing and trafficking mentioned in Article IV of the Convention can be fully satisfied under various existing federal laws. The Gun Control Act of 1968, 18 U.S.C. Sec. 921 *et seq.*, the National Firearms Act, 26 U.S.C. Sec. 5801 *et seq.*, the Arms Export Control Act, 22 U.S.C. Sec. 2778 *et seq.* and other federal statutes, *e.g.*, Title 18 U.S.C. Chapter 40, establish criminal penalties for the acts covered under Article IV of the Convention. Accordingly, the United States would not be required to enact any additional legislation to comply with this provision of the Convention.

Article IV also states that, subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties, the criminal offenses established pursuant to the foregoing paragraph must include participation in, association or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating,

VIII

and counseling the commission of such offenses. Although with respect to some of these acts U.S. law uses a different terminology than the Convention, existing U.S. laws provide for criminal penalties for such acts. Therefore, this provision will not require additional U.S. legislation.

Article V (“Jurisdiction”) sets forth provisions on the establishment of jurisdiction which are similar to those contained in a number of other multilateral treaties on law enforcement matters to which the United States is a party. Article V.1 obligates each State Party to adopt the necessary measures to establish its jurisdiction over the offenses it has established in accordance with the Convention when the offense in question is committed in its territory.

Article V.2 allows, but does not require, each State Party to adopt the necessary measures to establish its jurisdiction over such offenses when committed by one of its nationals or by a person who habitually resides in its territory.

Article V.3 requires that each State Party establish its jurisdiction over offenses established in accordance with the Convention when the alleged criminal is present in its territory but it declines to extradite such person to another country on the ground of the person’s nationality.

Article V.4 provides, finally, that the Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

Article VI (“Making of Firearms”) states that, for the purposes of identification and tracing of the firearms referred to in Article I.3.a, States Parties shall require, at the time of manufacture, appropriate markings of the name of manufacturer, place of manufacture, and serial number. The Article further provides that such States shall also require appropriate markings on imported firearms permitting the identification of the importer’s name and address, and appropriate markings on any firearms confiscated or forfeited pursuant to Article VII.1 that are retained for official use. U.S. law requires that licensed importers and licensed manufacturers mark the firearms they import or manufacture. There is no requirement of domestic law that government agencies must mark forfeited firearms that are retained for official use. However, this requirement can be imposed by amending relevant regulations or through issuance of an Executive Order.

Article VI also requires that the firearms referred to in Article I.3.b be marked appropriately at the time of manufacture, if possible. U.S. law requires markings of certain, but not all, of such items. The negotiating delegations recognized that certain of the listed items, due to their nature, might not be susceptible to marking in a safe manner. Accordingly, the phrase “if possible” was included to indicate that such markings should be required only where doing so would be safe and practical.

Article VII (“Confiscation or Forfeiture”) states that the States Parties undertake to confiscate or forfeit firearms, ammunition, explosives, and other related materials that have been illicitly manufactured or have been the subject of illicit trafficking. The States Parties must adopt the necessary measures to ensure that all such items that are seized, confiscated, or forfeited as the 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 (“Security Measures”) commits States Parties, in an effort to eliminate loss or diversion, to adopt the necessary measures to ensure the security of firearms, ammunition, explosives, and other related materials imported into, exported from, or in transit through their respective territories.

Article IX (“Export, Import, and Transit Licenses or Authorizations”) requires that the States Parties establish or maintain an effective system of export, import, and international transit licenses or authorizations for transfers of firearms, ammunition, explosives, and other related materials. Article IX.2 bars the States Parties from permitting the transit of such items until the receiving State Party issues the corresponding license or authorization. Article IX.3 requires States Parties, before releasing shipments of such items for export, to ensure that the importing and in-transit countries have issued the necessary licenses or authorizations. The importing State Party must, under Article IX.4, inform the exporting State Party, upon request, of the receipt of dispatched shipments of such items.

Existing U.S. federal laws provide a statutory framework sufficient to enable the United States to meet the obligations imposed under Article IX of the Convention. Appropriate modifications to current federal regulations or practices would be made as necessary by the appropriate agencies to comply fully with the obligations under the Convention. U.S. statutory authority to regulate international trade in munitions and related items and services is exercised by the Department of State, the Department of the Treasury (including ATF and the U.S. Customs Service), and the Commerce Department.

Article X (“Strengthening of Controls at Export Points”) provides that each State Party must adopt the measures necessary to detect and prevent illicit trafficking in firearms, ammunition, explosives, and other related materials between its territory and that of other State Parties, by strengthening controls at export points.

Article XI (“Recordkeeping”) requires States Parties to ensure the maintenance for a reasonable time of the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable them to comply with their obligations under Articles XIII and XVII. The phrase “reasonable time” was included because the negotiating delegations were unable to agree upon a specific time period. The U.S. delegation explained that, with respect to most weapons, U.S. law currently requires that records be maintained for 20 years. Not all delegations thought it necessary to require so lengthy a period, and it was agreed that a shorter period of time could be appropriate. In any event, it was the understanding of the negotiating delegations that the period of time currently required by U.S. law would meet the requirements of this provision.

Article XII (“Confidentiality”) provides that, subject to the obligations imposed by their Constitutions or any international agreements, the States Parties shall guarantee the confidentiality of any information they receive, 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 must be notified prior to its disclosure. This provision is similar to that contained in bilateral mutual legal assistance treaties to which the United States is a party.

Article XIII (“Exchange of Information”) requires, in paragraph 1, that the States Parties exchange among themselves, in conformity with their respective domestic laws and applicable treaties, relevant information on matters such as authorized producers, dealers, importers, exporters, and, whenever possible, carriers, of firearms, ammunition, explosives, and other related materials. The Article also contemplates exchanges of information on the means of concealment used in the illicit manufacturing of, or trafficking in, those items, and ways of detecting such means; and information on routes customarily used by criminal organizations engaged in such illicit trafficking. In addition, and in conformity with each State Party’s domestic laws and applicable treaties, exchanges of information are required on legislative experiences, practices, and measures to prevent, combat, and eradicate such illicit manufacturing and trafficking, as well as on techniques, practices, and legislation to combat money laundering related to those offenses.

Article XIII.2 contains requirements for information sharing, and for cooperation in the tracing of illicitly manufactured or illicitly trafficked firearms, ammunition, explosives, and related materials. Under their current statutory authority, certain U.S. agencies, such as ATF and the U.S. Customs Service, already engaged in the forms of international cooperation contemplated in this Article, and would continue to do so consistent with the Convention.

Article XIV (“Cooperation”) provides that 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, explosives, and other related materials. In addition, the Article calls for States Parties to identify a national body or a single point of contact to act as liaison among States Parties, as well as between them and the consultative committee established in Article XX, for purposes of cooperation and information exchange. It is expected that the Treasury Department would be designated to serve in this capacity for the United States.

Article XV (“Exchange of Experience and Training”) requires the States Parties to cooperate in formulating programs for the exchange of experience and training among competent officials, and to provide each other with assistance to facilitate access to equipment or technology proven to be effective for the implementation of the Convention. The Article also provides that State 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, explosives, and other related materials. As with exchanges of information under Article XIII, various U.S. agencies such as ATF and the U.S. Customs Service already engaged in these types of international cooperation under their current statutory authority, and would continue to do so consistent with the Convention.

Article XVI (“Technical Assistance”) requires States Parties to cooperate with each other and with relevant international organizations, as appropriate, so that States Parties requesting technical assistance receive it as necessary to enhance their ability to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials. Technical assistance would include assistance in matters identified in Article XV.2. United States federal agencies such as ATF and the U.S. Customs Service already engage in this form of international cooperation under their current statutory authority, and would continue to do so consistent with the Convention.

Article XVII (“Mutual Legal Assistance”) contains standard provisions on mutual legal assistance contained in a number of multilateral treaties on law enforcement matters to which the United States is a party. It is expected that the U.S. Department of Justice would serve as the central authority for the United States for purposes of assistance under this Article, and would coordinate with other U.S. agencies as appropriate.

Article XVIII (“Controlled Delivery”) directs that, if their domestic legal systems so permit, States Parties must take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in the offenses referred to in Article IV and to taking legal action against them. Existing U.S. law permits such controlled deliveries. The Article states that decisions by States Parties to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned. Finally, the Article provides that, with the consent of the States Parties concerned, illicit consignments under controlled delivery may be intercepted and allowed to continue with the firearms, ammunition, explosives, and other related materials intact or removed or replaced in whole or in part.

Article XIX (“Extradition”) sets forth standard provisions on extradition which are found in other multilateral treaties on law enforcement matters to which the United States is a party. The Article applies to the offenses referred to in Article IV of the Convention, and provides that each such offense shall be deemed to be included as an extraditable offense in any extradition treaty in force between or among the States Parties. Moreover, the States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between or among them.

Article XIX.3 provides that, if a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it does not have an extradition treaty, it may consider the Convention as the legal basis for extradition with respect to any offense to which this Article applies. In addition, Article XIX.4 establishes that States Parties that do not make extradition conditional on the existence of a treaty shall recognize offenses to which the Article applies as extraditable offenses between themselves.

Article XIX.5 further provides that extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition. Under Article XIX.6, if extradition for an offense to which this Article applies is refused solely on the basis of the nationality of the person sought, the Requested State is required to submit the case to its competent authorities for the purpose of prosecution under the criteria, laws, and procedures applied by that State to those offenses when committed in its own territory. The formulation of this provision is an improvement over that of similar provisions in other treaties, in that it requires, in cases where the Requested State refuses to extradite someone on the basis that the person is a national of that State, that decisions regarding domestic prosecution of such person be made under the same standards as would be applied had the offense been committed in that State's territory. This requirement was included as a compromise following the United States delegation's proposal to include a requirement for the extradition of nationals, which many delegations were unable to accept. The compromise language was included as a means of ensuring that any domestic prosecution carried out in lieu of extradition will be pursued with vigor. This Article also provides that the Requested and Requesting States Parties may, in accordance with their domestic laws, agree otherwise in relation to any such domestic prosecution. This provision is intended to provide the flexibility to not have the prosecution pursued in the Requested State if another arrangement is preferable or appropriate.

Article XX ("Establishment and Functions of the Consultative Committee") requires the States Parties to establish a Consultative Committee. It was made clear during the negotiations that this committee is not to be a new OAS organ, but rather will be a body composed of representatives from the States Parties. Accordingly, the Consultative Committee will not require the expenditure of additional OAS resources.

The Consultative Committee will be responsible for promoting the exchange of information contemplated under the Convention; facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties; encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition, explosives, and other related materials; promoting training and exchange of knowledge and experience among States Parties and technical assistance between States Parties and relevant international organizations, as well as academic studies; requesting from nonparty states, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials; and promoting measures to facilitate the application of the Convention. The Article states expressly that decisions of the Consultative Committee shall be recommendatory in nature. The Article also requires the Consultative Committee to maintain the confidentiality of any information it receives in the exercise of its functions, if requested to do so.

Article XXI ("Structure and Meetings of the Consultative Committee") provides that the Consultative Committee shall consist of

XIII

one representative of each State Party. The Consultative Committee is to hold one regular meeting each year and special meetings as necessary. The first regular meeting shall be held within 90 days following deposit of the 10th instrument of ratification of the Convention. The Consultative Committee will prepare its own internal rules of procedure and adopt them by absolute majority.

Articles XXII–XXX contain the final clauses. Article XXII (“Signature”) provides that the Convention is open for signature by member states of the OAS.

Article XXIII (“Ratification”) states that the Convention is subject to ratification, and that the instruments of ratification shall be deposited with the OAS General Secretariat. The negotiators expressly agreed to preclude the possibility of accession to the treaty by States other than member States of the OAS. Accordingly, the Convention does not include an accession provision as is customary in OAS conventions, and this Convention is to be open to participation only by OAS member States.

Article XXIV (“Reservations”) permits reservations to the Convention, provided that they are not incompatible with the object and purposes of the Convention and that they concern one or more specific provisions thereof.

Article XXV (“Entry into Force”) states that the Convention will enter into force on the 30th day following the date of deposit of the second instrument of ratification. For each State ratifying the Convention after such entry into force, the Convention shall enter into force on the 30th day following deposit of its instrument of ratification.

Article XXVI (“Denunciation”) provides that the Convention shall remain in force indefinitely, but any State Party may denounce it by depositing an instrument of denunciation with the OAS General Secretariat. The denunciation will take effect six months after the date of deposit of the instrument, but will not affect any requests for information or assistance made during the time the Convention is in force for the denouncing State.

Article XXVII (“Other Agreements and Practices”) states that no provision in the Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other existing or future international, bilateral, or multilateral agreements, or any other applicable arrangements or practices. The Article also stipulates that States Parties may adopt stricter measures than those provided for by the Convention if, in their opinion, such measures are desirable to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials.

Article XXVIII (“Conference of States Parties”) states that five years after the entry into force of the Convention, the depositary shall convene a conference of the States Parties to examine the functioning and application of the Convention. Each conference shall determine the date on which the next conference should be held.

Article XXIX (“Dispute Settlement”) provides that any dispute that may arise as to the application or interpretation of the Convention shall be resolved through diplomatic channels or, failing

which, by any other means of peaceful settlement decided upon by the States Parties involved.

Article XXX ("Deposit") provides that the original instrument of the Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the OAS General Secretariat, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the U.N. charter. The OAS General Secretariat shall notify the OAS member states of signatures, deposits of instruments of ratification and denunciation, and of any reservations.

Finally, the Convention includes an "Annex," which contains a list of items that are not encompassed by the definition of the term "explosives."

It is my belief that this Convention would afford substantial benefits to the United States, and would be consistent with existing United States legislation. The Department of the Treasury (including the U.S. Customs Service and the Bureau of Alcohol, Tobacco and Firearms), the Departments of Justice and Commerce, the Arms Control and Disarmament Agency (ACDA), and the Office of the U.S. Trade Representative (USTR) join the Department of State in recommending that the Convention be transmitted to the Senate at an early date for its advice and consent to ratification.

Respectfully submitted.

STROBE TALBOT.

INTER-AMERICAN CONVENTION AGAINST THE ILLICIT MANUFACTURING
OF AND TRAFFICKING IN FIREARMS, AMMUNITION, EXPLOSIVES,
AND OTHER RELATED MATERIALS

**INTER-AMERICAN CONVENTION AGAINST THE ILLICIT MANUFACTURING
OF AND TRAFFICKING IN FIREARMS, AMMUNITION, EXPLOSIVES,
AND OTHER RELATED MATERIALS**

THE STATES PARTIES,

AWARE of the urgent need to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials, due to the harmful effects of these activities on the security of each state and the region as a whole, endangering the well-being of peoples, their social and economic development, and their right to live in peace;

CONCERNED by the increase, at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials and by the serious problems resulting therefrom;

REAFFIRMING that States Parties give priority to preventing, combating, and eradicating the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime, and mercenary and other criminal activities;

CONCERNED about the illicit manufacture of explosives from substances and articles that in and of themselves are not explosives--and that are not addressed by this Convention due to their other lawful uses--for activities related to drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities;

CONSIDERING the urgent need for all states, and 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, explosives, and other related materials;

CONVINCED that combating the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials calls for international cooperation, exchange of information, and other appropriate measures at the national, regional, and international levels, and desiring to set a precedent for the international community in this regard;

STRESSING the need, in peace processes and post-conflict situations, to achieve effective control of firearms, ammunition, explosives, and other related materials in order to prevent their entry into the illicit market;

MINDFUL of the pertinent resolutions of the United Nations General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all states to guarantee their security, and of the efforts carried out in the framework of the Inter-American Drug Abuse Control Commission (CICAD);

RECOGNIZING the importance of strengthening existing international law enforcement support mechanisms such as the International Weapons and Explosives Tracking System (IWETS) of the International Criminal Police Organization (INTERPOL), to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials;

RECOGNIZING that international trade in firearms is particularly vulnerable to abuses by criminal elements and that a "know-your-customer" policy for dealers in, and producers, exporters, and importers of, firearms, ammunition, explosives, and other related materials is crucial for combating this scourge;

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 recognized by the States Parties;

RECALLING that States Parties have their respective domestic laws and regulations in the areas of firearms, ammunition, explosives, and other related materials, and recognizing that this Convention does not commit States Parties to enact legislation or regulations pertaining to firearms ownership, possession, or trade of a wholly domestic character, and recognizing that States Parties will apply their respective laws and regulations in a manner consistent with this Convention;

REAFFIRMING the principles of sovereignty, nonintervention, and the juridical equality of states,

HAVE DECIDED TO ADOPT THIS INTER-AMERICAN CONVENTION AGAINST THE ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, AMMUNITION, EXPLOSIVES, AND OTHER RELATED MATERIALS:

Article I Definitions

For the purposes of this Convention, the following definitions shall apply:

1. "Illicit manufacturing": the manufacture or assembly of firearms, ammunition, explosives, and other related materials:
 - 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.
2. "Illicit trafficking": the import, export, acquisition, sale, delivery, movement, or transfer of firearms, ammunition, explosives, 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.
3. "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.
4. "Ammunition": the complete round or its components, including cartridge cases, primers, propellant powder, bullets, or projectiles that are used in any firearm.

5. "Explosives": any substance or article that is made, manufactured, or used to produce an explosion, detonation, or propulsive or pyrotechnic effect, except:
 - a. substances and articles that are not in and of themselves explosive; or
 - b. substances and articles listed in the Annex to this Convention.
6. "Other related materials": any component, part, or replacement part of a firearm, or an accessory which can be attached to a firearm.
7. "Controlled delivery": the technique of allowing illicit or suspect consignments of firearms, ammunition, explosives, 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 offenses referred to in Article IV of this Convention.

Article II

Purpose

The purpose of this Convention is:

to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials;

to promote and facilitate cooperation and exchange of information and experience among States Parties to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials.

Article III

Sovereignty

1. States Parties shall carry out the obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of states and that of nonintervention in the domestic affairs of other states.
2. A State Party shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions which are exclusively reserved to the authorities of that other State Party by its domestic law.

Article IV

Legislative Measures

1. States Parties that have not yet done so shall adopt the necessary legislative or other measures to establish as criminal offenses under their domestic law the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials.
2. Subject to the respective constitutional principles and basic concepts of the legal systems of the States Parties, the criminal offenses established pursuant to the foregoing paragraph shall include participation in, association or conspiracy to commit, attempts to commit, and aiding, abetting, facilitating, and counseling the commission of said offenses.

Article V Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense in question is committed in its territory.
2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the offense is committed by one of its nationals or by a person who habitually resides in its territory.
3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offenses it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal.
4. This Convention does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

Article VI Marking of Firearms

1. For the purposes of identification and tracing of the firearms referred to in Article I.3.a, States Parties shall:
 - a. require, at the time of manufacture, appropriate markings of the name of manufacturer, place of manufacture, and serial number;
 - b. require appropriate markings on imported firearms permitting the identification of the importer's name and address; and
 - c. require appropriate markings on any firearms confiscated or forfeited pursuant to Article VII.1 that are retained for official use.
2. The firearms referred to in Article I.3.b should be marked appropriately at the time of manufacture, if possible.

Article VII Confiscation or Forfeiture

1. States Parties undertake to confiscate or forfeit firearms, ammunition, explosives, and other related materials that have been illicitly manufactured or trafficked.
2. States Parties shall adopt the necessary measures to ensure that all firearms, ammunition, explosives, and other related materials seized, confiscated, or forfeited as the 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
Security Measures

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

Article IX
Export, Import, and Transit Licenses or Authorizations

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

Article X
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, explosives, and other related materials between its territory and that of other States Parties, by strengthening controls at export points.

Article XI
Recordkeeping

States Parties shall assure the maintenance for a reasonable time of the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable them to comply with their obligations under Articles XIII and XVII.

Article XII
Confidentiality

Subject to the obligations imposed by their Constitutions or any international agreements, the States Parties shall guarantee the confidentiality of any information they receive, 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 XIII
Exchange of Information

1. States Parties shall exchange among themselves, in conformity with their respective domestic laws and applicable treaties, relevant information on matters such as:
 - a. authorized producers, dealers, importers, exporters, and, whenever possible, carriers of firearms, ammunition, explosives, and other related materials;
 - b. the means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition, explosives, and other related materials, and ways of detecting them;
 - c. routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition, explosives, and other related materials;
 - d. legislative experiences, practices, and measures to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials; and
 - e. techniques, practices, and legislation to combat money laundering related to illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials.
2. States Parties shall provide to and share with each other, as appropriate, relevant scientific and technological information useful to law enforcement, so as to enhance one another's ability to prevent, detect, and investigate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials and prosecute those involved therein.
3. States Parties shall cooperate in the tracing of firearms, ammunition, explosives, and other related materials which may have been illicitly manufactured or trafficked. Such cooperation shall include accurate and prompt responses to trace requests.

Article XIV
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, explosives, and other related materials.
2. States Parties shall identify a national body or a single point of contact to act as liaison among States Parties, as well as between them and the Consultative Committee established in Article XX, for purposes of cooperation and information exchange.

Article XV
Exchange of Experience and Training

1. States Parties shall cooperate in formulating programs for the exchange of experience and training among competent officials, and shall provide each other assistance that would facilitate their respective access to equipment or technology proven to be effective for the implementation of this Convention.

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, explosives, and other related materials. The subject matters of such training shall include, *inter alia*:

- a. identification and tracing of firearms, ammunition, explosives, and other related materials;
- b. intelligence gathering, especially that which relates to identification of illicit manufacturers and traffickers, methods of shipment, and means of concealment of firearms, ammunition, explosives, and other related materials; and
- c. improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and nonconventional points of entry and exit, illicitly trafficked firearms, ammunition, explosives, and other related materials.

Article XVI Technical Assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties that so request receive the technical assistance necessary to enhance their ability to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials, including technical assistance in those matters identified in Article XV.2.

Article XVII Mutual Legal Assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance, in conformity with their domestic law and applicable treaties, by promptly and accurately processing and responding to requests from authorities which, in accordance with their domestic law, have the power to investigate or prosecute the illicit activities described in this Convention, in order to obtain evidence and take other necessary action to facilitate procedures and steps involved in such investigations or prosecutions.

2. For purposes of mutual legal assistance under this article, each Party may designate a central authority or may rely upon such central authorities as are provided for in any relevant treaties or other agreements. The central authorities shall be responsible for making and receiving requests for mutual legal assistance under this article, and shall communicate directly with each other for the purposes of this article.

Article XVIII Controlled Delivery

1. Should their domestic legal systems so permit, States Parties shall take the necessary measures, within their possibilities, to allow for the appropriate use of controlled delivery at the international level, on the basis of agreements or arrangements mutually consented to, with a view to identifying persons involved in the offenses referred to in Article IV and to taking legal action against them.

2. Decisions by States Parties to use controlled delivery shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

3. With the consent of the States Parties concerned, illicit consignments under controlled delivery may be intercepted and allowed to continue with the firearms, ammunition, explosives, and other related materials intact or removed or replaced in whole or in part.

Article XIX Extradition

1. This article shall apply to the offenses referred to in Article IV of this Convention.
2. Each of the offenses to which this article applies shall be deemed to be included as an extraditable offense in any extradition treaty in force between or among the States Parties. The States Parties undertake to include such offenses as extraditable offenses in every extradition treaty to be concluded between or among them.
3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it does not have an extradition treaty, it may consider this Convention as the legal basis for extradition with respect to any offense to which this article applies.
4. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offenses to which this article applies as extraditable offenses between themselves.
5. Extradition shall be subject to the conditions provided for by the law of the Requested State or by applicable extradition treaties, including the grounds on which the Requested State may refuse extradition.
6. If extradition for an offense to which this article applies is refused solely on the basis of the nationality of the person sought, the Requested State Party shall submit the case to its competent authorities for the purpose of prosecution under the criteria, laws, and procedures applied by the Requested State to those offenses when they are committed in its own territory. The Requested and Requesting States Parties may, in accordance with their domestic laws, agree otherwise in relation to any prosecution referred to in this paragraph.

Article XX Establishment and Functions of the Consultative Committee

1. In order to attain the objectives of this Convention, the States Parties shall establish a Consultative Committee responsible for:
 - a. promoting the exchange of information contemplated under this Convention;
 - b. facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties;
 - c. encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition, explosives, and other related materials;
 - d. promoting training and exchange of knowledge and experience among States Parties and technical assistance between States Parties and relevant international organizations, as well as academic studies;
 - e. requesting from nonparty states, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials; and

- f. promoting measures to facilitate the application of this Convention.
- 2. Decisions of the Consultative Committee shall be recommendatory in nature.
- 3. The Consultative Committee shall maintain the confidentiality of any information it receives in the exercise of its functions, if requested to do so.

Article XXI
Structure and Meetings of the Consultative Committee

- 1. The Consultative Committee shall consist of one representative of each State Party.
- 2. The Consultative Committee shall hold one regular meeting each year and shall hold special meetings as necessary.
- 3. The first regular meeting of the Consultative Committee shall be held within 90 days following deposit of the 10th instrument of ratification of this Convention. This meeting shall be held at the headquarters of the General Secretariat of the Organization of American States, unless a State Party has offered to host it.
- 4. The meetings of the Consultative Committee shall be held at a place decided upon by the States Parties at the previous regular meeting. If no offer of a site has been made, the Consultative Committee shall meet at the headquarters of the General Secretariat of the Organization of American States.
- 5. The host State Party for each regular meeting shall serve as Secretariat *pro tempore* of the Consultative Committee until the next regular meeting. When a regular meeting is held at the headquarters of the General Secretariat of the Organization of American States, a State Party that will serve as Secretariat *pro tempore* shall be elected at that meeting.
- 6. In consultation with the States Parties, the Secretariat *pro tempore* shall be responsible for:
 - a. convening regular and special meetings of the Consultative Committee;
 - b. preparing a draft agenda for the meetings; and
 - c. preparing the draft reports and minutes of the meetings.
- 7. The Consultative Committee shall prepare its own internal rules of procedure and shall adopt them by absolute majority.

Article XXII
Signature

This Convention is open for signature by member states of the Organization of American States.

Article XXIII
Ratification

This Convention is subject to ratification. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

**Article XXIV
Reservations**

States Parties may, at the time of adoption, signature, or ratification, make reservations to this Convention, provided that said reservations are not incompatible with the object and purposes of the Convention and that they concern one or more specific provisions thereof.

**Article XXV
Entry into Force**

This Convention shall enter into force on the 30th day following the date of deposit of the second instrument of ratification. For each state ratifying the Convention after the deposit of the second instrument of ratification, the Convention shall enter into force on the 30th day following deposit by such state of its instrument of ratification.

**Article XXVI
Denunciation**

1. This Convention shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the General Secretariat of the Organization of American States. After six months from the date of deposit of the instrument of denunciation, the Convention shall no longer be in force for the denouncing State, but shall remain in force for the other States Parties.

2. The denunciation shall not affect any requests for information or assistance made during the time the Convention is in force for the denouncing State.

**Article XXVII
Other Agreements and Practices**

1. No provision in this Convention shall be construed as preventing the States Parties from engaging in mutual cooperation within the framework of other existing or future international, bilateral, or multilateral agreements, or of any other applicable arrangements or practices.

2. States Parties may adopt stricter measures than those provided for by this Convention if, in their opinion, such measures are desirable to prevent, combat, and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives, and other related materials.

**Article XXVIII
Conference of States Parties**

Five years after the entry into force of this Convention, the depositary shall convene a conference of the States Parties to examine the functioning and application of this Convention. Each conference shall determine the date on which the next conference should be held.

**Article XXIX
Dispute Settlement**

Any dispute that may arise as to the application or interpretation of this Convention shall be resolved through diplomatic channels or, failing which, by any other means of peaceful settlement decided upon by the States Parties involved.

Article XXX
Deposit

The original instrument of this Convention, the English, French, Portuguese, and Spanish texts of which are equally authentic, shall be deposited with the General Secretariat of the Organization of American States, which shall forward an authenticated copy of its text to the Secretariat of the United Nations for registration and publication, in accordance with Article 102 of the United Nations Charter. The General Secretariat of the Organization of American States shall notify the member states of the Organization of the signatures, of the deposits of instruments of ratification and denunciation, and of any reservations.

The term "explosives" does not include: compressed gases; flammable liquids; explosive actuated devices, such as air bags and fire extinguishers; propellant actuated devices, such as nail gun cartridges; consumer fireworks suitable for use by the public and designed primarily to produce visible or audible effects by combustion, that contain pyrotechnic compositions and that do not project or disperse dangerous fragments such as metal, glass, or brittle plastic; toy plastic or paper caps for toy pistols; toy propellant devices consisting of small paper or composition tubes or containers containing a small charge or slow burning propellant powder designed so that they will neither burst nor produce external flame except through the nozzle on functioning; and smoke candles, smokepots, smoke grenades, smoke signals, signal flares, hand signal devices, and Very signal cartridges designed to produce visible effects for signal purposes containing smoke compositions and no bursting charges.

