



# Model Law on Firearms, Ammunition and Related Materials

## **Model Law on Firearms, Ammunition and Related Materials**

- Parliamentary Forum on Small Arms and Light Weapons
- CLAVE, Latin American Coalition for the Prevention of Armed Violence.
- SweFOR, Swedish Fellowship of Reconciliation.
- Parlatino, Latin American Parliament

## **Fact Sheet**

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## PRESENTATION

On April 6 and 7 of 2006, the Committee of Citizen Security, Combat and Prevention of Drug Trafficking, Terrorism and Organized Crime of the Latin American Parliament (Parlatino) decided to elaborate a Model Law on arms and ammunition control in collaboration with the Brazilian Foundation Viva Rio, a member of the Latin American Coalition for the Prevention of Armed Violence (CLAVE).

The Model Law provided Parlatino, Viva Rio and CLAVE a unique opportunity to collaborate and exchange practical and legal experience from the various countries in the region. To this end, the CLAVE Workgroup of Legislation on Arms and the Parliamentary Forum on Small Arms and Light Weapons were invited to join in drafting the document.

In August 2006, the CLAVE Legislation Workgroup, representatives of the Parliamentary Forum on Small Arms and Light Weapons and parliamentary advisers of diverse countries, with the support of SweFOR and the National Assembly of Panama, designed the lineament and commenced work on the Model Law.

This concluded with the presentation of the Model Law on Arms, Ammunition and Related Materials to the Secretary of the Committees, Senator Sonia M. Escudero and to MP Paola Spatola, President of the Committee of Citizen Security, Combat and Prevention of Drug Trafficking, Terrorism and Organized Crime of the Latin American Parliament (Parlatino)

During the sixth meeting of the Committee, which took place between on the 19<sup>th</sup> and 20<sup>th</sup> of October in Montevideo, it was decided to distribute the draft Model Law to each one of the members of the mixed Committee on Human Rights, Justice and Prison Policies and the Committee of Citizen Security, Combat and Prevention of Drug Trafficking, Terrorism and Organized Crime, in order for them to analyze its content during the next meeting.

During the eighth Committee meeting which took place in Bogota in November 2007, the draft model law was once again discussed with input from experts Antonio Rangel Bandeira from Viva Rio, Dario Kosovsky from INECIP and Gustavo Colás, adviser to the Security Committee of the Argentine Senate. Also, the National Director of the National Register of Arms in Argentina gave an account of the experience of legislation reforms and the advances made regarding arms control and disarmament.

With strong support from Parlatino Secretary General, Senator Sonia Escudero, and the Chairperson of the Committee, MP Paola Spatola, the Committee of Citizen Security, Combat and Prevention of Drug Trafficking, Terrorism and Organized Crime of the Latin American Parliament (Parlatino) reached a consensus to approve the Model Law in Mexico City in October 2008.

Having been decided by the Committee the Board approved the text, which was submitted for consideration to the XXIV Ordinary Assembly of Parlatino, held in the National Assembly of Panama in December 2008, where it was adopted unanimously by more than one hundred parliamentarians from 19 countries in the region.

This model law is the result of an intensive and participatory process hosted by Parlatino, which created a space for debate and exchange of views to articulate the contribution of parliamentarians committed to these issues, as well as civil society organizations and experts in the field. The aim was to provide Latin American parliaments with the groundwork for developing new laws to combat illicit arms trafficking and misuse of these deadly goods, with the main objective of making Latin America a more peaceful and secure region for its people.

## WHO WE ARE

### **The Latin American Parliament (Parlatino)**

Founded in 1964, the Latin American Parliament is a regional, permanent and unicameral parliamentary organisation, which promotes the integration of countries in Latin America and the Caribbean and the strengthening of the parliaments in the 22 member countries of the region. Among its most important principles and purposes are the defence of democracy, political and ideological pluralism, condemnation of to the threat and use of force, the just, peaceful and negotiated settlement of disputes, the prevalence of the principles of international law and contribution to international peace and stability.

Website: [www.parlatino.org](http://www.parlatino.org)

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### **Parliamentary Forum on Small Arms and Light Weapons**

The Parliamentary Forum on Small Arms and Light Weapons was created as an international platform for parliamentarians interested in combating the proliferation of small arms in society. The purpose of the organization is to support parliamentarians their work with small arms issues, to contribute to the advancement of the small arms agenda, and to provide space for parliamentarians and other stakeholders, notably civil society, to join forces.

Website: [www.parlforum.org](http://www.parlforum.org)

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### **Latin American Coalition for the Prevention of Armed Violence (CLAVE)**

Latin American Coalition for the Prevention of Armed Violence (abbreviated CLAVE in Spanish) is an initiative of non-governmental organizations who work with these issues from different perspectives with the common objective of reducing the scope of armed violence and its impact on the development of our nations. For the last few years, numerous civil society groups have been working in Latin America to promote arms control and to reduce armed violence. CLAVE comprises 167 members, and is represented in each of the region's countries.

Website: [www.clave-lat.com](http://www.clave-lat.com)

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### **Swedish Fellowship of Reconciliation (SweFOR)**

The Swedish Fellowship of Reconciliation is an ecumenical Swedish peace organization created in 1919. At present there are 2,500 members. The main purpose of SweFOR is the promotion of non-violence through conferences, seminars, public debates, publications, education, interchanges, campaigns and national and international networks. We work for disarmament, reconciliation, respect of human rights, as well as for the peaceful resolution of conflicts.

Website: [www.swefor.org](http://www.swefor.org)

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## STATEMENT OF REASONS

### *Firearms violence in Latin America and the Caribbean*

Latin America is the region in the world that proportionally suffers most from armed violence. For every 100,000 inhabitants in Latin America, 15.5 die every year in firearm related deaths. This is extreme in comparison to Africa, where the ratio is 7.5 and North America, where it is 3.9. Armed violence in Latin America has diverse and well-known expressions: femicide, youth violence, organized crime and quotidian conflicts that turn into shootings. Latin Americans are, indeed, solving their conflicts violently. With the saturation of firearms in the region - between 40 to 65 million - the lethality and gravity of the situation is dire.

The situation implies the decay of institutionalism in Latin American countries. In the first place, costs associated with firearms proliferation weigh acutely on public expenses, which are channeled to take care of firearms casualties. The Inter-American Development Bank calculates that the annual productivity of the region is reduced with approximately ten percent as a result of the death rate caused by firearms. Secondly, public security systems cannot respond appropriately to the increase of armed violence effectively, a key reason being the easy access to firearms and their generalized use. The culmination of these factors results in a devaluation of the state's capability to offer security, which in turn increases the perception of insecurity and the demand of firearms.

### *Relevant instruments*

In Latin America and the Caribbean, and at the international level, the mid-90s can be viewed as the period in which the calamity of the proliferation of small arms and light weapons entered the political agenda<sup>1</sup>. This contributed to several international, regional and sub-regional processes and their subsequent materialization in various instruments to address the matter, among others:

- The 2001 United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade of Small Arms and Light Weapons in All Its Aspects.
- The 2001 Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts, Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime.
- The 1997 Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunitions, Explosives and other Related Materials.
- The Model Ordinance of the Inter-American Commission against Drug Abuse for the International Movement Control of Firearms, its Parts, Components and Ammunitions.
- MERCOSUR decisions 7/98 and 15/04 on a joint registry mechanism for buyers and sellers of firearms, ammunitions, explosives, and other related materials for the MERCOSUR; respectively, a Memorandum of Understanding for information exchange on illicit manufacture and traffic of firearms, ammunitions, explosives and other related materials between the States part of MERCOSUR.
- Decision 552 of the Andean Community of Nations that integrates the 2003 Andean Plan for the Prevention, Combat and Eradication of the Illicit Traffic of Small Arms and Light Weapons.

- The 2005 Code of Conduct of the Central American States relating to Transfers of Arms, Ammunitions, Explosives and other Related Materials.

The existence and adhesion to these instruments proves the firm commitment of Latin American and Caribbean countries in reinforcing small arms and light weapons disarmament and control. Without a doubt, several pioneering initiatives have been born in the region.

### *Challenges in the regulation of firearms*

Notwithstanding the existence of the aforementioned instruments, there are several transcendental aspects whereby the so expressed commitment needs to be translated into concrete actions, actions that will bring about change to the overall picture of armed violence in Latin America and the Caribbean. Certainly, the adoption of international instruments has driven, among other things, reforms on firearms legislation – an essential measure in order to exert proper control on small arms and light weapons. Nevertheless, these reforms have been difficult in several Latin American countries where results have fallen short. This is due to several factors. One is the need to capacitate the relevant authorities on the application of firearms legislation, to realize collection campaigns, to envision firearms legislations in broader reforms of the security sector, etc. Another important factor is that only on a few occasions have legal reforms had a comprehensive approach that covers and regulates all the aspects and activities related with firearms, from their manufacture to their destruction. Indeed, even the international instruments mentioned above do not necessarily invite to such a wider approach, mainly focusing their concern with illicit traffic between countries.

### *Policies of "control" and "disarmament"*

At present there is a great challenge concerning firearms regulation, and that is to fuse two paradigms of measures: "control" and "disarmament". The first refers to the illegal nature of firearms and attempts to reduce the excess of the (*de iure*) illegal firearms in a society, made up of firearms in illegal state; from this point of view the concern is the diversion of firearms, from the legal to the black market. The second paradigm points toward reducing the overall amount of firearms in society, including some of those in the legal market. To put it in another way: it attempts to reduce the (*de facto*) excess of firearms in society, expressed clearly in the thousands of deaths that the easy access and circulation of firearms fosters. In this case the concern is the improper use, the unjustified presence of firearms, whatever their legal state.<sup>2</sup>

To date, few if any firearms law combines these paradigms in a comprehensive and complete instrument. The need to combine the measures included under the paradigms of "control" and "disarmament" arises from the fact that applying only one sort of measures carries little hope of successful reduction, prevention and repression of armed violence. On one hand, it will be impossible to control firearms if society is saturated by them; invariably, a high presence of firearms will lead to deaths and injury through their use. On the other hand, if there is no control over the introduction of new firearms to the market and their diversion to the black market, reducing the amount of firearms in society will not diminish armed violence. Both "control" (inflow) and "disarmament" (outflow) are necessary conditions to reduce armed violence – and they could be sufficient conditions if combined and accompanied by security and justice sector reforms.

### *The need to legislate on firearms and ammunition*

The legislative work on firearms control and disarmament, has occupied a very important place in the international agenda. Practically all of the existing international instruments in the matter, mentioned above, make explicit reference to that task<sup>3</sup>. Nevertheless, these instruments reflect a somewhat technical and narrow understanding of the issue, specifically in regards of the control of illicit trafficking. There are, however and in addition, purely and broader political reasons to give priority to reforming and improving firearms legislations. A comprehensive approach enables us to identify, among others, the following functions associated with the enterprise of legislating on firearms and ammunition:

- Legislation is enacted because it's perceived that armed violence constitutes a serious problem for society, a problem that the State needs to solve<sup>4</sup>.
- For the objective of exerting the State's coercive faculties in the matter, not least including the aim of introducing prohibitions that refer to certain types of arms and certain activities with them; those faculties and prohibitions must be founded in norms and dispositions that enjoy a correct legal value, i.e. legislation.
- Firearm legislation fulfills a normative function at societal level, indicating what is pursued with regulating those arms, what principles govern and orient the policy in the matter; ultimately, what is expected from the citizens and what the State's commitment is<sup>5</sup>.
- Legislation on firearms and ammunitions is also an integral part of each public safety and health policy, since that legislation determines the presence, in society, of objects designed to cause damage, and fundamentally lethal damage.<sup>6</sup>
- Legislating on firearms and ammunitions is, also, a way to "communicate" with neighboring countries and the international community – and indeed essential for the global control of firearms and ammunitions<sup>7</sup>.

That notwithstanding, one final reason to legislate on firearms and ammunition is that these laws present an opportunity to forge public opinion and to rally support for the control of firearms; support to those institutions of the State that attend to the problems caused by the proliferation and illegal uses of such arms.

### *The elaboration of a draft Model Law on Firearms, Ammunition and Related Materials*

The Latin American Parliament's decision to develop a Model Law on Firearms and Ammunition was adopted at the fifth Meeting of the Committee of Citizen Security, Combat and Prevention of Drug Trafficking, Terrorism and Organized Crime of the Latin American Parliament, held on the 6<sup>th</sup> and 7<sup>th</sup> of April 2006 in Buenos Aires, Argentina. As an outcome, a process was initiated to draft a proposal for such a Model Law. In accordance with the decision, Brazilian NGO Viva Rio was entrusted to present a draft document for consideration by the representatives of Argentina, Brazil and Uruguay in the Committee. This work was then conducted in collaboration with support from the Latin American Coalition against Armed Violence (CLAVE) and the Parliamentary Forum on Small Arms and Light Weapons.

During the United Nations Review Conference of the Program of Action on Small Arms and Light Weapons of the UN, held between the 26<sup>th</sup> of June and 7<sup>th</sup> of July, 2006, representatives from the CLAVE network (which includes Viva Rio) and the Parliamentary Forum agreed on a division of tasks

of preliminary research and writing. Once these tasks had been completed, a meeting of CLAVE and Parliamentary Forum experts was held in Panama, with the support of the National Assembly of Panama and the Swedish Fellowship of Reconciliation between the 28<sup>th</sup> of August and the 1<sup>st</sup> of September, 2006.

The meeting resulted in a first draft which, after having been circulated and read by the experts attending the meeting, was reworked by the Committee of Citizen Security, Combat and Prevention of Drug Trafficking, Terrorism and Organized Crime of the Latin American Parliament, for consideration at the Sixth Meeting of the Committee in Montevideo, Uruguay. Instruments and international standards relevant to Latin America, mainly those mentioned above as well as related national laws in Latin America, including those of Argentina, Belize, Brazil, Colombia, El Salvador, Nicaragua, Panama (bill), Paraguay and Uruguay (bill), were used as references during the drafting process of the Model Law.

### *Content and organization of the Model Law on Firearms, Ammunitions and Related Materials*

Starting from the assumption that the lethal effects of massive and indiscriminate firearms use needs to be reduced and prevented, it is clear that a functional and comprehensive legal framework is needed: to control the circulation of these materials from their introduction to the national markets, and over their multiple uses, to their exit from the national jurisdiction or their destruction. That entails controlling various actors, which throughout the “life” of firearms, develop multiple and different activities with firearms and ammunitions.

The Model Law on Firearms, Ammunitions and Related Materials tries to respond both to this panorama and its requirements, offering conditions that allow for the establishment of a legal framework without fissures; a legal framework that aims to avoid both the deflection of firearms, ammunitions and related materials to illegality, and their illegal use: "control" and "disarmament".

This understanding informs the Model Law on Firearms, Ammunitions and Related Materials, and expresses itself in the organization of the law on four main elements:

- Control of the objects, meaning firearms, ammunition and related material (Section 2).
- Control of the subjects, meaning the people authorized to operate those materials (Section 3).
- Control of the activities allowed to certain subjects with these objects (Section 4).
- Mechanisms for the fulfillment of the legal rules and obligations established on the objects, the subjects and their activities (Section 5).

### *The following aspects of the Model Law merit special mention:*

- The Law establishes that prevention and reduction of armed violence, and particularly the lethal consequences of their use, is the fundamental aim of the law. This is to be achieved by controlling both the injection and use of firearms in society, and assuring their withdrawal from circulation (disarmament) when their presence and use are not justified; hence clarifying that the control and withdrawal of firearms and ammunitions is deemed essential precisely because the violence that may follow from their use is what worries<sup>8</sup>.
- The Law is sustained by a broad catalogue of principles for its application. These principles shape the policy and goals of the Law, thus facilitating the reading and application of the Law by the intervening authorities. The prohibition principle is a main axis of the Law, since it

determines that all use of any object or the execution of any activity, which is not explicitly allowed, shall be considered forbidden.

- The Law details the need to fulfill a set of common requirements that constitute a basic standard to carry out any activity related to firearms and ammunitions. Those who fulfill these standards are considered an “Authorized Person”.
- The control of activities in the Law is constructed on a system of licenses - the control "vertebra" – through which is connected: the activity or type of activity, the material to use, and the person authorized to carry out the activity.
- The Law maintains a comprehensive and integrated character, without fissures, thus regulating - by means of authorization or prohibition – all imaginable activities that can be developed with or in relation to firearms, ammunitions and related material: from the purchase of the machinery and fundamental parts to make them, to its physical elimination and the recording of its definitive destruction, including international transfers, storage and transports, domestic commerce, use in its different expressions, safety measures, and the establishment of the circumstances that determine their destruction.
- The Law also establishes a detailed regulation of how it may be possible to possess firearms according to their uses: it differentiates between the possible uses, with the goal of individualizing the weapons and connecting it to the specific use given, so that they correlate to the reason stated when granting the respective license; this prevents their illegal use and the possibility of diversion.
- The role of the State is accentuated by means of an "Authority of Application", thus being the vehicle of control, with ample and correct functions, faculties and resources that allow to fulfill its part in the management of public security, and, to a lesser extent, defense policy, in regards of firearms control. The Authority of Application can grant licenses, register objects, subjects and activities, control the enforcement of the law, etc.
- The Law creates ample faculties for parliamentary control, among them those related to international manufacture, transfer, domestic commerce and destruction of firearms and related materials. This is not only intended to increasing parliamentary control in the matter, both necessary and deficient to date, but also to facilitate the parliamentary co-management of public security and defense. Such co-operation is, for instance, key for the successful implementation of collection campaigns.
- A firearms reduction policy is mainstreamed throughout the Law, which detailed in regulations and pedagogical concepts on destruction, introduces permanent mechanisms of withdrawal and destruction of firearms whose use and presence in society is unjustified: seizure, excess reduction and arms collecting.

*End note*

The Model Law on Firearms, Ammunition and Related Materials of the Latin American Parliament is without a doubt an opportunity to support the work of improving standards which are being encouraged in Latin America. Firstly, a model law can facilitate, serve and strengthen the core functions of legislations on firearms and ammunition, which are to control firearms. Also, a model law can serve as a basis to reach for fully integrated national regulations, without gaps and capable of responding to the problem of gun violence that is today, unfortunately, so prominent in countries and societies of Latin America.

A model law has broad prospects for becoming an instrument of reference to address the essential task of harmonization of legislation of firearms and ammunition. For this reason, a Model Law on Firearms, Ammunition and Related Materials, like the one proposed here, can be a milestone in parliamentary work for control of these materials at the national, sub-regional and regional levels in Latin America and even at a global level. Latin America has played a leading role in generating innovative tools to control firearms and ammunition. The Draft Model Law on Firearms, Ammunition and Related Materials is therefore a broad opportunity to continue to show leadership and parliamentary initiative in Latin America: for its people as well as the rest of the world.

# ARTICLES

## SECTION I: GENERAL DISPOSITIONS

### CHAPTER 1: OBJECT, COMPETENCE AND SCOPE OF APPLICATION

#### *Article 1: Object*

The object of the present Law is to prevent and to reduce violence with firearms, particularly the lethal consequences of their use, by means of a legal framework<sup>9</sup> that regulates:

- a) The control of firearms, ammunitions and related materials;
- b) The control of people authorized to operate with those materials;
- c) The control of authorized activities;
- d) The withdrawal of excess firearms and of all controlled material whose use is not justified; and,
- e) The penalization of the illegal use of firearms, ammunitions and related materials.

#### *Article 2: Competence and scope of application*

It is competence of the National State to establish policies relating to firearms, and to exert the Ordinance and control in the matter, ammunitions and related material<sup>10</sup>. The established control mechanisms shall be applicable across the national territory and will include all the materials, subjects and authorized activities<sup>11</sup>.

Any act with firearms, ammunitions or related material is prohibited without due legal authorization<sup>12</sup>.

All armed forces, security forces, police forces, penitentiary and other State institutions that operate with firearms, will be included in the control system hereby established, without prejudice to the particularities established for them<sup>13</sup>.

### CHAPTER 2: PRINCIPLES

#### *Article 3: General principles*

The following are the general principles for the application of the present Law:

- a) Prohibition: all material or any activity that is not specifically authorized by this law is prohibited;
- b) Restrictiveness: the requirements and conditions enunciated in this law must be interpreted with restrictive criteria, whereby the granted authorizations acquire an exceptional nature<sup>14</sup>;
- c) Anticipation: all activities to be conducted with controlled materials must count with previous authorization;
- d) Temporality: all authorizations, licenses or permissions, are granted for a limited period of time;
- e) Revocability: all authorizations, licenses or permissions, can be the object of revocation in case its terms are not being respected, or in case the revocation is necessary for reasons of public security, foreign policy or national defense;

- f) Justification and Concretion: all requests to carry out an activity must justify the present, specific and verifiable need for its granting;
- g) Correspondence: all authorizations, licenses or permissions, must keep suitable correspondence with the purpose that determined their granting<sup>15</sup>;
- h) Universality: all requests and measures are considered and decided in an objective way, without exceptions for position or assignment, except if the contrary is stated in the present Law<sup>16</sup>;
- i) Individualization: all objects, subjects and authorized activities must be identifiable and individualized;
- j) Non Transferability: all licenses, permissions or controlled materials are non transferable without previous state authorization; and,
- k) Non Recirculation: all seized material, declared as excess or handed over voluntarily to the State, shall be destroyed.

## SECTION II: OF THE OBJECTS

### CHAPTER 1: DEFINITIONS

#### *Article 4: Controlled materials<sup>17</sup>*

To the effects of the present Law, the term “controlled materials” comprises the following objects:

1. "Firearm":

- a) Any weapon that consists of at least one canon by which one bullet or projectile can be unloaded by the action of an explosive and that has been designed for this action or that can easily be modified for such effect, with the exception of the ones made before the 20<sup>th</sup> Century or their replicas; or,
- b) Any other weapon or destructive device such as explosive, incendiary or gas bombs, grenades, rockets, rocket launchers, missiles, missile systems and mines.

2. "Ammunition": the whole cartridge or its components, including capsule, propellant charge (powders), projectile or bullet that are used in firearms.

3. "Related Materials":

- a) All types of firearm spares and connectable external accessories that modify or improve their shooting direction, their power or fire rate, or suppress noises<sup>18</sup>; and,
- b) Specific machinery for the production of firearms, of the materials described in the preceding paragraph, ammunitions and their recharging.

### CHAPTER 2: CLASSIFICATION

#### *Article 5: Classification of firearms according to their characteristics*

According to their own characteristics, firearms are classified as:

- a) Non portable firearms: those that cannot be transported or manipulated by a person without the aid of animal, machinery or of another person.
- b) Portable firearms: those that can be transported and used by a person, without the aid of animal, machinery or of another person.
- c) Portable handguns: portable firearms designed to be used with a single hand, without being supported by any other part of the body.
- d) Portable shoulder or long firearms: portable firearms designed to be used by the gunner with both hands and supported on the shoulder.
- e) Automatic firearms: firearms in which more than one shot takes place in continuous form when the trigger is pulled and kept thus.
- f) Semiautomatic firearms: the firearms in which it is necessary to pull the trigger to shoot and where the loading and unloading cycle takes place without gunner intervention.
- g) Portable repetition firearms: firearms in which the loading and unloading cycle of the firing chamber takes place mechanically and by action of the gunner, with projectiles being accumulated in an ammunition chamber or clip.

- h) Portable single shot firearms: firearms that, because they lack a loading system or firing chamber, force the gunner to manually repeat the complete loading action before each discharge.
- i) Self-propulsion firearms: firearms that shoot rocket shells, grenades, chemical ammunitions, and high-explosive shells.

***Article 6: Classification of controlled materials according to their restrictions of use***

Firearms, ammunition and related materials are classified, according to restrictions of their use, as follows:

- a) Those of prohibited use<sup>19</sup>;
- b) Those of exclusive use by State Institutions of Defense and Security<sup>20</sup>; and,
- c) Those whose use may be allowed to Authorized Persons<sup>21</sup>.

***Article 7: Materials of prohibited use***

The following firearms and ammunitions are of prohibited use:

- a) Firearms and ammunition without serial numbers, with non legible serial numbers, or with adulterated marking;
- b) Firearms with modified firing gear;
- c) Firearms or ammunition manufactured without the permissions and in breach of the conditions established in the present law;
- d) Expansive ammunition<sup>22</sup>;
- e) Poisoned ammunition;
- f) Caliber conversion equipment;
- g) Shotguns with a barrel shorter than 610 millimeters;
- h) Flame throwers; and,
- i) All other controlled materials that the Ordinance foreseen in this Law<sup>23</sup> determines or that may be derived from International Humanitarian Law or other international commitments.

All activities related to firearms and ammunition of prohibited use are forbidden, except for those that lead to their seizure and destruction<sup>24</sup>.

***Article 8: Controlled materials of exclusive use by State Institutions of Defense and Security***

The following are controlled materials of exclusive use by State Institutions of Defense and Security:

- a) Non portable firearms or pieces of heavy artillery;
- b) Portable firearms of a caliber equal or superior to 12.7 millimeters (.50) and .50 AE;
- c) Automatic handguns with a caliber inferior to 12.7 millimeters (.50);
- d) Semiautomatic long arms with smoothbore gun barrels;
- e) Semiautomatic shoulder arms with rifled barrel of a caliber superior to .22 ("long rifle") and whose ammunition has an initial energy and muzzle velocity superior to the one developed by the caliber .22 ammunition ("long rifle");
- f) Firearms disguised as objects of quotidian use<sup>25</sup>;

- g) High-explosive, hollow-point or tearing bullets;
- h) Hand grenades<sup>26</sup>;
- i) Landmines;
- j) Hand-thrown weapons, including laser type electrical devices;
- k) Viewfinders with night vision, infra-red or laser devices;
- l) Bayonets;
- m) Silencers; and,
- n) Any other controlled material that the Ordinance foreseen in this Law may determine.

The material in the aforementioned paragraph cannot be acquired by Individuals, except for duly authorized manufacture, repair and commercialization activities foreseen in this Law. In exceptional circumstances, the use of tearing ammunition can be authorized to individuals for hunting activities.

***Article 9: Materials that may be used by Authorized Persons***

The following are firearms whose use may be allowed to Authorized Persons:

- a) Portable single shot long firearms and/or repetition smoothbore guns with a barrel longer than 610 millimeters;
- b) Semiautomatic rifled barrel long firearms arms with a caliber superior to .22 "long rifle";
- c) Shoulder single shot firearms and/or repetition rifled barrel with a caliber inferior to .50; and,
- d) Single shot, repetition or semiautomatic short arms with a caliber inferior to .50 AE.

Authorized Persons may be allowed the use of appropriate ammunition for the firearms mentioned in the previous paragraph.

In accordance with the rules set forth by the Ordinance foreseen in this Law, the use of related materials, needed to carry out some of the authorized activities described in Section 4, is considered as material whose use may be allowed to Authorized Persons.

**CHAPTER 3: MARKING<sup>27</sup>**

***Article 10: Requirement of branding***

From the moment of their manufacture or entry into the country, all firearms, ammunition, and related materials, as well as their fundamental parts or components, must be properly identified by way of their corresponding marking.

***Article 11: Marking of firearms and their spare parts***

The marking of firearms shall be effectuated under those means which offer the highest conditions of inalterability. The serial number marking must be as deep as the Ordinance foreseen in this Law determines and shall be made in the firearm barrel, in the bolt, the frame and in the non visible and non movable internal parts of the weapon. The spare parts of a weapon's fundamental components shall be subject to identical marking.

The marking shall include the following information<sup>28</sup>:

- a) Serial number;
- b) Trade name;
- c) Model;
- d) Caliber;
- e) Year of manufacture;
- f) Name of the manufacturer;
- g) City of manufacture;
- h) Country of manufacture;
- i) In case of an exported firearm, the country to which it will be exported and the names of the company or import organism;
- j) In case the firearm has been produced for State institutions, abbreviation and shield of the institution; and,
- k) Any other information that the Ordinance foreseen in this Law may determine.

For the purpose of providing unique numbers, the Authority of Application shall assign the corresponding marking, which shall be engraved by the manufacturer or importer<sup>29</sup>.

***Article 12: Ammunition marking***

The ammunition marking shall be effectuated on the cartridge's case base.

The marking shall include the following information:

- a) Name of the manufacturer;
- b) Caliber;
- c) Year of manufacture; and,
- d) Lot number.

Ammunition boxes and packages shall contain the information mentioned in the previous paragraph. Ammunition boxes for export shall also contain the information mentioned in the previous paragraph, as well as the name, city and country of the importer and the year and month of import.

For the purpose of providing unique lot numbers, the Authority of Application shall assign the corresponding marking, which shall be engraved by the manufacturer or importer<sup>30</sup>.

The Ordinance foreseen in this Law shall establish the maximum limits of ammunition to include in each lot<sup>31</sup>.

## SECTION III: OF THE SUBJECTS

### SOLE CHAPTER: AUTHORIZED PERSON

#### *Article 13: Definition and exclusiveness of Authorized Persons*

Authorized Persons are natural or legal persons authorized by the Authority of Application to obtain one or several licenses for carrying out activities related to the materials controlled by the present Law.

Only Authorized Persons can carry out the activities related to controlled materials and to obtain the respective licenses.

#### *Article 14: Requirements to obtain the status of Authorized Person*

Without prejudice to the specific exigencies that are required for certain activities, the following requirements must be fulfilled to obtain the status of Authorized Person:

##### 1. Natural persons:

- a) Full legal age<sup>32</sup>;
- b) Psychological aptitude, verified by a certificate issued by a professional psychiatrist or psychologist authorized by the appropriate professional union<sup>33</sup>;
- c) Absence of addiction to drugs, pharmacological substances or alcohol;
- d) Physical aptitude, verified by a certificate issued by a medical professional authorized by the appropriate professional union<sup>34</sup>;
- e) Suitability for handling of firearms, by means of a certificate issued by an instructor authorized by the Authority of Application;
- f) Knowledge of the legal rules that govern the granted authorization<sup>35</sup>;
- g) Absence of criminal record<sup>36</sup> or domestic violence;
- h) Objective circumstances that justify the need of the required authorization;
- i) Licit means of life;
- j) Permanent residence in the country;
- k) Indicate the place of storage of the controlled material in possession or projected to be acquired;
- l) Possess a tort insurance to cover the damages that might arise from the use of the materials; and,
- m) Submit a Security Plan to protect the materials and to protect third parties.

##### 2. Legal persons

- a) Legal composition and inscription;
- b) Submit regular balance sheets and of the composition of its directive organs;
- c) Absence of criminal record for each of the members of the directory;
- d) Indicate the place of storage of the controlled material in possession or projected to be acquired;
- e) Submit of a security plan regarding the controlled materials in possession or projected to be acquired and designate a person responsible for the security; this person shall be an authorized natural person in accordance with the preceding numeral, and is accountable for the fulfillment of the security plan;

- f) Present a plan of operations for the controlled materials in possession or projected to be acquired and designate a person in charge of operations; this person shall be an authorized natural person in accordance with the preceding numeral, and is accountable for the fulfillment of the plan of operations; and,
- g) Possess a tort insurance to cover the damages that might arise from the use of the materials.

The certificates indicated in letters b), d) and e) of numeral 1) of the preceding paragraph, shall be submitted to the Authority of Application, together with the examinations in which each certificate is sustained.

The condition of Authorized Person will be accredited by means of a unique and uniform credential issued by the Authority of Application. The condition may be granted for renewable periods of maximum three years, without prejudice to those particular conditions that may govern the terms of specific licenses.

***Article 15: Armed Forces, security and penitentiary forces and their personnel***<sup>37</sup>

To the effects of the present Law, the Armed Forces, and the security and penitentiary bodies shall be considered Authorized Legal Persons<sup>38</sup>.

These institutions will have to register the portable firearms and the corresponding ammunition before the Authority of Application and the personnel authorized for its use. If warranted, this information may be classified. The institutions shall also inform the loss, robbery or theft of those materials<sup>39</sup>.

These institutions may authorize personnel that fulfill requirements analogous to those of article 14, numeral 1, to carry out certain acts with firearms, ammunition and related material.

Without prejudice to the preceding paragraph, the general framework established in the present Law shall apply to agents of the referred forces regarding controlled materials not provided by these institutions, with the exception of controlled material owned by the agent and whose affectation to the public service was authorized by the institution in question.

The general framework established in the present Law shall apply after the agent's retirement, also concerning materials provided by the referred forces.

***Article 16: Obligations of Authorized Persons***

Without prejudice to the specific obligations that each authorized activity requires, the Authorized Persons shall have the following obligations:

- a) To receive, dispose or deliver controlled material solely with other Authorized Persons;
- b) To inform of any change concerning the requirements that sustains the granted authorization;
- c) To register and inform the Authority of Application of the stock of materials and the activities realized with them;
- d) To facilitate the control of the materials and the authorized activities;
- e) To immediately denounce the robbery, theft or deviation of controlled material;

- f) To immediately report the robbery, theft or deviation of Authorized Person credentials, as well as any other granted license;
- g) To carry out allowed activities accompanied by the credential of Authorized Person and, if necessary, with the license and corresponding specific authorization;
- h) To inform the Authority of Application the transactions or operations that, according to the uses and customs of the activity in question, are unusual, without practical, economic or legal justification, or of unjustified complexity, with no relation between the volume involved and the usual operating of the user, whether realized in isolated or reiterated fashion; and,
- i) To keep the documentation that corresponds to the firearms, ammunition and related materials under their custody.

The fulfillment, in good faith, of the obligations to inform included in the letters b), c), e), f) and h) of the previous paragraph, shall not generate civil, commercial, penal or administrative responsibility, nor of any other species.

***Article 17: Revocation or suspension of status as Authorized Person***

The status of Authorized Person is revoked or suspended in the following circumstances:

1. The status of Authorized Person is revoked:

- a) By the death or permanent incapacitation of the natural person;
- b) By the dissolution or permanent incapacitation of the legal person; or,
- c) By criminal sentence or permanent sanction of legal incapacitation.

2. The status of Authorized Person is suspended:

- a) By the transitory disability or incapacitation of the natural person;
- b) By prosecution in a criminal or domestic violence case;
- c) By transitory disability of the legal person; or,
- d) By sanction of a transitory legal incapacitation.

***Article 18: Consequences of the revocation or suspension of status as Authorized Person***

The loss or suspension of the Authorized Person status will cause the automatic expiration or suspension of all granted licenses and will force the person, or their successors or representatives, within ten days, to disaffect the controlled materials in accordance with the following options:

- a) Transferring them to another Authorized Person with previous authorization of the Authority of Application;
- b) Giving them in consignment to a holder of domestic commerce license;
- c) Handing them over as deposit to a specially enabled establishment; or,
- d) Handing them to the Authority of Application for their destruction.

When the term fixed in the preceding paragraph has expired, the Authority of Application shall arrange or require the seizure of the materials that have not been handed over in accordance with the alternatives a)-d) same paragraph.

After arranging the seizure, and without precluding the relevant sanctions, the holder of the material, his/her successor or representative has five days to choose one of the options established in letters a) - c) of the present article. After that term expires, the seizure and subsequent destruction of the material will be arranged, without any right to compensation.

The materials handed over in consignment or deposit in the terms of letters b) and c) of the present article will be transferred to another Authorized Person if the holder does not recover his status as Authorized Person within 24 months. After that term expires, the seizure and subsequent destruction of the material will be arranged, without any right to compensation.

## SECTION IV: OF THE ACTIVITIES

### CHAPTER 1: AUTHORIZED ACTIVITIES ACCORDING TO LICENSES

#### *Article 19: Principle of prohibition. Specifically authorized activities.*

Without prejudice to the activities that the State Institutions of Defense and Security are authorized to carry out within their respective legal frameworks, the only activities that may be realized with firearms, ammunition and related materials are the ones specifically indicated in the present Section, and they may only be realized by obtaining the respective license beforehand or, in its case, specific authorization<sup>40</sup>. All other activities are prohibited according to the principle of prohibition.

#### *Article 20: Security measures*

All activities with controlled materials shall be carried out in observance of the highest security standards. These standards shall be pursued in accordance with dynamic criteria<sup>41</sup>.

### CHAPTER 2: OF THE LICENSES

#### *Article 21: Definition and obligation of license*

A license is the authorization granted by the Authority of Application, or with its participation<sup>42</sup>, to an Authorized Person, which allows it to realize, for a limited time, some of the activities with firearms, ammunition and related material considered in the present Law.

Only Authorized Persons are able to obtain licenses and to realize activities with controlled materials specifically authorized by the license.

#### *Article 22: Classification of licenses*

Licenses are classified in:

- a) Manufacture license;
- b) Storage license;
- c) Transport license;
- d) International transfers licenses, which are divided in:
  - i) Import license;
  - ii) Export license;
  - iii) Transit license;
  - iv) Intermediation license; and,
  - v) Sub-licensed manufacture license;
- e) Domestic commerce license;
- f) Repair license;
- g) Ammunition recharge license;
- h) Hunting events organization license;
- i) Shooting range administration license;
- j) Shooting instruction license;

- k) Possession license;
- l) Carrying license;
- m) Collection license; and,
- n) Private security services with firearms license

***Article 23: General terms for license issuance***

Licenses are issued by the Authority of Application and shall contain:

- a) Indication of the type of license granted, in accordance with the classification in the preceding article, with specified indication of the authorized activity;
- b) Individualization of the natural or legal person holding the license;
- c) Specific indication of the controlled material or, if that is not possible, of the type of authorized material requested for realizing the licensed activity; and,
- d) The validity term of the license.

***Article 24: Expiration, revocation or suspension of the licenses***

The expiration, revocation or suspension of the license occurs in the following cases:

- a) Automatically, by expiration of the term for which it was granted<sup>43</sup>;
- b) Automatically, if the status as Authorized Person is lost or suspended;
- c) By administrative or judicial sanction, when a court orders a preventive measure against the Authorized Person<sup>44</sup>; or,
- d) If it is deemed necessary for reasons relating to public security, foreign relations or national defense.

***Article 25: Effects of the expiration, revocation or suspension of the licenses***

The expiration, revocation or suspension of a license forces the Authorized Person to dispose of the material included in the terms of the license, in accordance with the options set forth in article 18.

### **CHAPTER 3: MANUFACTURE**

***Article 26: Definition of manufacture***

Manufacture of controlled materials is the activity whereby an Authorized Person, in use of a previously obtained corresponding license, produces or assembles controlled materials for itself or for the purposes of commercialization, whether partially or wholly.

***Article 27: Manufacture license requirements***

To obtain the manufacture license, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for legal persons in article 14, numeral 2;

- b) A description of the materials to be manufactured, the process of manufacture and the machinery to be used;
- c) Access to an establishment enabled by the Authority of Application that offers security conditions suitable to the type and amount of the material to be to be manufactured<sup>45</sup>;
- d) Submission of personnel list, all of which must lack criminal record;
- e) Specification of the activities to be realized by each of the members of the authorized legal person, crediting their technical aptitude;
- f) Submission of a test plan of the prototypes; and,
- g) Submission of an annual commercialization plan that includes projections of demand to satisfy.

***Article 28: Manufacture license conditions***

The manufacture license may only be granted to duly authorized legal persons and for a term that may not exceed three years. The license can be renewed if the licensee demonstrates fulfillment of the requirements in the previous article.

Without prejudice to the approval by the Authority of Application of technical and security parameters, the authorization and renewal of the manufacture's license will be authenticated by a representative of the State's Executive Branch<sup>46</sup>.

***Article 29: Specific obligations of the manufacturer***

Without prejudice to the obligations contained in articles 16, 115 and 116, manufacturers shall:

- a) Keep a registry that includes:
  - i) Daily production, specifying type, amount and marking assigned to produced firearms, spare parts or accessories, and amount, type and lot number of produced ammunition;
  - ii) Materials acquired and used;
  - iii) Commercial operations with controlled materials; and,
  - iv) Exit of materials from the establishment, by any cause, indicating their final destination<sup>47</sup>.
- b) Request authorization for the acquisition, modification or distraction of the machinery, and its components, referring to the manufacturing process;
- c) Inform the Authority of Application of any alteration in the personnel list;
- d) Adapt the manufacture process to the annual commercialization plan; and,
- e) Prevent the exit from the establishment of firearms, ammunition or its components which lack due marking.

**CHAPTER 4: STORAGE**

***Article 30: Definition of storage***

Storage of controlled materials is the activity whereby an Authorized Person, after obtaining the corresponding license and in use of it, receives, gathers and keeps in deposit firearms or ammunition, their parts and components, or related materials, of his property or of third parties, in physical facilities specially prepared and previously authorized for such ends.

***Article 31: Storage license requirements***

To obtain a license for storage, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for Authorized Persons in article 14;
- b) Submission of a description of the materials to store, specifying the type and amount;
- c) Access to an establishment, duly enabled by the Authority of Application, that offers security conditions suitable to the type and amount of material to be stored in its facilities<sup>48</sup>; and,
- d) Submission of personnel list, all of which must lack criminal record.

***Article 32: Storage license conditions***

The storage license will only be granted to duly authorized legal persons and for a term that will not exceed three years. The license can be renewed if the licensee proves fulfillment of the requirements in the previous article.

The storage license can be an independent main activity or accessory to another authorized activity<sup>49</sup>.

***Article 33: Specific obligations for storage***

Without prejudice to the obligations contained in articles 16, 115 and 116, Authorized Persons with a license for storage shall:

- a) Keep a registry that includes data on:
  - i) Stock of the controlled materials stored, specifying type and amount of firearms, spare parts or accessories, indicating the marking of each one and amount, type and lot number of ammunition; and,
  - ii) Daily entrance and exit movements of controlled materials, specifying who deposits or withdraws the materials from the storage establishment, and indicating their final destination.
- b) Observe the following measures of suitable security management, without prejudice to the conditions established by the Ordinance foreseen in this Law:
  - i) To maintain at any moment the arsenal in charge of an authorized natural person in the terms of article 14, numeral 1;
  - ii) Strict limitations on entrance and effective control of access; and,
  - iii) Periodic physical verification of stored materials.

**CHAPTER 5: TRANSPORT**

***Article 34: Definition of transport***

Transport of controlled materials is the activity whereby an Authorized Person, after obtaining the corresponding license and in use of it, makes the physical transfer of controlled materials after the Authority of Application has authorized their transit via a declared route.

***Article 35: Subjects authorized for transport***

Only those natural or legal persons that are duly authorized by the regulatory organ of the respective transport modality in question will be able to obtain the license for transport of controlled materials<sup>50</sup>.

***Article 36: Transport license requirements***

To obtain a license for transport of controlled materials, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for Authorized Persons in article 14;
- b) The enablement, by the entity that regulates the modality of transport in question, of the means of transportation and its crew or driver; and,
- c) Demonstration of safety and technical measures suitable to the type and amount of the material to transport.

The Ordinance foreseen in this Law may establish a special license for a specific category of Authorized Person, which excludes the suitability requirements of firearms handling for those who try to obtain a transport license in modalities that assure that the material will be delivered and requested in closed and secure packing conditions.

***Article 37: Transport license conditions***

The transport license may be granted for a term not exceeding three years. The license can be renewed if the licensee demonstrates fulfillment of the requirements in the previous article.

The transport license can be an independent main activity or accessory to another authorized activity.

***Article 38: Specific obligations of the carrier***

Without prejudice to the obligations contained in articles 16, 115 and 116, carriers shall:

- a) Keep a registry that includes:
  - i) Transports realized with controlled materials, specifying type, amount and marking assigned to them; and,
  - ii) Indication of the person who dispatched the material and of the person who received it, both of which must be Authorized Persons.
- b) Observe the following measures of suitable security management of each transport, without prejudice to the other conditions that the Ordinance foreseen in this Law establishes:
  - i) Submit, for its approval by the Authority of Application, the planned route;
  - ii) Effectuate the transport solely through previously authorized route;
  - iii) Inform the Authority of Application of any contingency that implies an alteration of the route plan or of circumstances that imply an unforeseen risk for the security of the transported materials; and,
  - iv) Transport firearms unloaded and separated from ammunition.

***Article 39: Prohibition of transport via postal services***

The transport of firearms, ammunition and related material via postal services is prohibited.

#### ***Article 40: Exceptions***

The Ordinance foreseen in this Law shall indicate the exceptional cases in which an Authorized Person, with a license for activities not related to transportation, can transport their controlled materials<sup>51</sup>. Under no circumstances may the Authority of Application authorize those who do not count with a transport license to transport:

- a) Firearms of third parties; or
- b) Amounts superior to the maximum established for such exceptional cases.

#### **CHAPTER 6: INTERNATIONAL TRANSFERS**

#### ***Article 41: Definition of international transfers***<sup>52</sup>

International transfers of firearms, ammunition and related materials is the activity whereby an authorized legal person, having obtained the corresponding license and in use of it, realizes some of the following activities:

- a) Export, which is the exit from the customs jurisdiction of the State;
- b) Import, which is the entry into the customs jurisdiction of the State;
- c) Transit, which is the passing of a shipment through the territory of the State, without that State being the one of origin or the one of final destination of the shipment;
- d) Re-export, which is the export of imported material once the end user has taken possession of it;
- e) Intermediation or brokerage, which is the direct facilitation of regular commercial activities by the person who acts in the name of a third party to negotiate or arrange transfers mechanisms, by carrying out, from inside or outside the State, any activity that is not a referred regular commercial activity<sup>53</sup>; and,
- f) Production under license, which is the production, in a third country, under a license issued by the State<sup>54</sup>.

To the effects of the present Law, the introduction or exit of controlled material without commercial aims, regulated in Chapter 10 of the present Section, shall not be considered as international transfers.

#### ***Article 42: Requirements for the license of international transfers***

To obtain a license for international transfers of controlled materials, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established in article 14, numeral 2<sup>55</sup>;
- b) Description of the materials to be transferred, the process for its realization and the logistical means to employ;
- c) Submission of a personnel list, all of which must lack criminal record;
- d) Specification of the activities to be realized by the members of the authorized legal person, crediting their technical aptitude;
- e) To present, in accordance with the required license, an authorized plan of activities which includes an estimation of demands to satisfy; and,

- f) To report the existence of any other commercial or international transfer licenses granted by third countries to the authorized legal person, to the members of its directory or the members indicated in letter d) of the present article.

***Article 43: Conditions of the license of international transfers***

The license of international transfers can only be granted to an authorized legal person and may not be granted for a term that exceeds a year. The license can be renewed if the licensee demonstrates fulfillment of the requirements in the previous article.

***Article 44: Specific obligations of the international transfer licensee***

Without prejudice to the obligations contained in articles 16, 115 and 116, authorized persons with a license of international transfers shall:

- a) Maintain a daily registry of the specifically authorized transfers; and,
- b) Maintain a daily registry of realized transfers, detailing means of transportation, points of distribution and value of the transfer.

***Article 45: Specific authorization for each international transfer***

Holders of a license of international transfers shall, for each international transfer to be realized, apply for a specific authorization before the operation.

International transfers that lack specific authorization are prohibited.

***Article 46: General criteria for granting of specific authorization***

When granting a specific authorization of international transfer, the following criteria shall be duly considered:

- a) The respect for Human Rights and for International Humanitarian Law in the countries that take part in the transfer, and especially in the country of destination<sup>56</sup>;
- b) The internal and regional situation, in terms of armed conflict, security and stability, in the intervening countries, and especially in the country of destination<sup>57</sup>;
- c) The fulfillment, by the intervening countries, of the commitments and international obligations of relevance for the international transfers of arms, including the compliance with arms embargoes declared by the Security Council of the United Nations or other organisms whose decisions are binding for the State<sup>58</sup>;
- d) The nature and cost, of the material to be transferred, in relation to the economic and social situation of the country of destination;
- e) The proportionality and purpose, of the material to be transferred, in relation to the defense and security threats towards the country of destination;
- f) The risk of diversion of the material to subjects or States that do not respect the criteria of the preceding letters; and,
- g) The conformity of the transfer with the principles and foundations of the State's foreign, defense and public security policies<sup>59</sup>.

***Article 47: Criteria for granting specific authorizations***

To obtain a specific authorization for an international transfer, the licensee shall demonstrate fulfillment of the following requirements:

- a) A valid license of international transfers;
- b) Transfer authorization issued by the State's consulates in each of the intervening countries in the operation;
- c) Final or end user certificate that specifies the natural or legal person, authorized by the importing country to take possession of the materials to be transferred, properly certified by the consular organisms in the receiving country<sup>60</sup>;
- d) Plan of commercialization;
- e) Identification of the person in charge of the operation, who shall be an authorized natural person, in the terms of article 14, numeral 1; and,
- f) Guarantee maximum security conditions for the transport and storage of the materials.

***Article 48: Competent authority for granting specific authorizations***

The specific authorization for international transfer shall be issued by a body at the highest level of the State, being mandatory that the specific authorization is substantiated in a preceding resolution by a commission or other organ integrated by the ministries responsible for foreign affairs, national defense, intelligence, public security, human rights, justice and economy<sup>61</sup>.

***Article 49: Conditions of specific authorizations for international transfer***

The specific authorization for international transfer may be granted for a period that cannot exceed one hundred and twenty (120) days. The period may be prolonged only once, in case of justified delays not imputable to the Authorized Person.

The authorization shall observe and contain the provisions of article 23, and in addition indicate the means of transportation, the points of distribution, the value of the transfer and any other information that the Ordinance foreseen in this Law may determine.

***Article 50: Procedure and registry of international transfers***

The procedure to realize a transfer, properly authorized according to the previous article, shall include the following:

- a) For the cases of transfers conducted from the country, the Authority of Application shall require final or end user certificate and import authorization, counting with the means to certify the documentation's authenticity<sup>62</sup>;
- b) In case of transfers conducted to the country, the Authority of Application shall require the license certificate and authorization of export, counting the means to certify the documentation's authenticity;

- c) The effective confirmation that the transferred material has entered or left through the specifically authorized border points, as well as the type, amount and marking of the material in question;
- d) At the request of any of the intervening States, the Authority of Application shall inform on the moment at which the material has left, transited or entered its jurisdiction;
- e) In case of re-export it is mandatory to inform the original exporting country of the re-export before it is realized; and,
- f) To notify all other intervening or affected countries as soon as the transferred material has been withdrawn.

***Article 51: International cooperation***

In accordance with its international commitments and for the purposes of facilitating international cooperation, the State shall:

- a) Inform periodically of its international transfers by means of presenting, to other countries and multilateral or international organisms, a comprehensive and complete documentation on those transfers; and,
- b) Regularly exchange, with other countries, the information they have on: international transfer registry, national laws and practices in the matters of policy, procedures and transfers documentation.

**CHAPTER 7: DOMESTIC COMMERCE**

***Article 52: Definition of domestic commerce***

Domestic commerce is the activity whereby an Authorized Person, after obtaining the corresponding license and in use of it, habitually and with intention of profit, buys or sells to another Authorized Person controlled materials within the national territory.

***Article 53: License requirements for domestic commerce***

To obtain the domestic commerce license, the solicitor shall demonstrate fulfillment of the following requirements:

- a) Those established for Authorized Persons in article 14;
- b) Possession of an establishment enabled by the Authority of Application that offers security conditions suitable to the type and amount of the material to be commercialized;
- c) Submission of a personnel list, all of which must lack criminal record; and,
- d) Submission of an annual commercialization plan that includes projections of demand to satisfy.

***Article 54: Conditions of the domestic commerce license***

The domestic commerce license may only be granted for a term not exceeding three years. The license can be renewed if the licensee demonstrates fulfillment of the requirements in the previous article.

The Authorized Person who obtains a domestic commerce license must also obtain an accessory storage license<sup>63</sup>.

The domestic commerce license can be independent, in the form of principal activity, or accessory to the licenses of manufacture or international transfer<sup>64</sup>.

***Article 55: Domestic commercialization procedure***

The procedure for realizing a domestic purchasing transfer shall include the following:

1. Of firearms and related materials:

- a) The Authorized Person requests the Authority of Application for a purchase authorization, indicating the type and amount of the material to be acquired and a justification of the need to acquire it;
- b) The Authority of Application, after verifying the correlation between the material to be acquired and the purpose declared by the Authorized Person, and that such material is detailed in the corresponding license already obtained or in the process of being obtained<sup>65</sup>, may grant the purchase permission;
- c) The Authority of Application informs the salesman that the permission has been granted
- d) The firearm in question undergoes a ballistic test<sup>66</sup>;
- e) The Authority of Application issues, in accordance with the purchaser's license, a possession credential or credential of special holder, and the ammunition control card that corresponds to that firearm;
- f) The Authority of Application authorizes the domestic retailer to proceed with the effective delivery of the firearm to the buyer; and,
- g) The Authority of Application notifies the local police authority of the purchase.

2. Of ammunition:

- a) The verification by the domestic retailer of:
  - i) The validity of the buyer's status as Authorized Person and of the possession license or special holder credential
  - ii) The possession of the corresponding ammunition control card;
  - iii) The resting purchase quota; and,
  - iv) The correspondence between the ammunition to be acquired and the type of authorized ammunition.
- b) The accession by the salesman of the amount and type of sold ammunition, both in its registries and in the purchaser's ammunition control card; and,
- c) The notification of the sale to the Authority of Application<sup>67</sup>.

***Article 56: Purchase procedure for diverse aims relating to its final use***

The precautions set forth in letters a), b), c), e) and f) in numeral 1 of the preceding article, shall be observed for the acquisition of controlled materials, including ammunition, by a license holder with the intention to realize any of the commercial activities of manufacture, domestic commerce or international transfer, unless it is of transit or repair.

The correspondence between the material to be acquired and the purpose detailed in accordance with letter b) in numeral 1 of the preceding article, shall be evaluated by the Authority of Application on the basis of the activity plans submitted by the buyer and seller at the moment their respective licenses were granted.

***Article 57: Specific obligations of the domestic retailer***

Without prejudice to the obligations contained in articles 16, 115 and 116, the domestic retailers shall:

- a) Keep a registry that includes:
  - i) Daily operations, specifying commercial value of realized transactions; and,
  - ii) Entrance and exit of material from the establishment by any cause, indicating its origin and destiny.
- b) Fulfill the storage obligations established in article 33, letter b);
- c) Inform the Authority of Application of any alteration in the personnel list; and,
- d) Prevent the exit from the establishment of controlled materials without due authorization from the Authority of Application.

***Article 58: Domestic transfers between Individuals***

Transfers of firearms and related materials between individuals can only be realized if both parties are Authorized Persons and if the transfer, according to criteria determined by the Ordinance foreseen in this Law, does not have a commercial nature.

The dispositions in article 55 on procedure are applicable for transfers of firearms and related materials between individuals, whereby the salesman takes on the obligations of the domestic retailer. At the moment when the Authority of Application grants the possession credential to the buyer or receiver, the salesman gives back the possession credential of the transferred material to the Authority of Application.

***Article 59: Prohibitions***

The following sales are prohibited:

- a) Controlled materials to non-resident foreigners;
- b) Main spare parts of firearms to someone who is not an authorized mechanic gunsmith;
- c) Ammunition components to someone who is not authorized for recharging; and,
- d) Ammunition between individuals.

The individual who wishes to relinquish acquired ammunition, shall do so within any of the options indicated in letters b), c) and d) of article 18.

## CHAPTER 8: POSSESSION

### *Article 60: Definition of possession*

Possession is the activity whereby an authorized natural person, after obtaining the corresponding license, acquires, uses and disposes of a firearm in accordance with the subsequent article.

### *Article 61: Faculties that possession entails*

Possession solely authorizes the following:

- a) To acquire a firearm from another Authorized Person, having obtained authorization by the Authority of Application;
- b) To have and to keep the firearm and ammunition within the building in which the Authorized Person resides<sup>68</sup>;
- c) Exceptionally, to keep the firearm at the work place of the Authorized Person if that person is the legal person in charge of the firearm;
- d) To transport the firearm, which at all times must be unloaded and with no possibility of immediate use;
- e) To exit and re-introduce the material from the country, in accordance with the terms of Chapter 10 of this Section;
- f) To transfer the material to another Authorized Person, in accordance with article 58;
- g) To legally repair the firearm;
- h) To train and to practice in authorized shooting ranges; and,
- i) For hunting and sports activities in authorized localities.

The possession permission does not authorize carrying of the firearm.

### *Article 62: Possession license requirements*

To obtain a possession license, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for authorized natural persons in article 14 numeral 1, being necessary to found the objective circumstances in letter h) of that numeral on any of the following:
  - i) Sport shooting practice;
  - ii) Hunting practice; or
  - iii) Protective needs, within the domestic custody of the firearm, of the person who solicits the license; and
- b) Submission of the firearm to the corresponding ballistic test, in accordance to article 55, numeral 1, letter d).

The Ordinance foreseen in this Law may establish exceptions to the obligation, established in letter i) numeral 1 of article 14, to obtain an insurance.

***Article 63: Conditions of the possession license***

The possession license shall be granted through a uniform and unique, and for a term not exceeding three years. The license can be renewed if the licensee demonstrates fulfillment of the requirements in the previous article.

**CHAPTER 9: CARRYING**

***Article 64: Definition of carrying***

Carrying is the activity whereby an authorized natural person, after obtaining the corresponding license and in use of it, carries a firearm in conditions for immediate use in public places or in places of public access.

***Article 65: Carrying license requirements***

To obtain a license for carrying, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for authorized natural persons in article 14, numeral 1;
- b) The justification of the objective circumstances established in letter h), numeral 1 of article 14, in any of the following:
  - i) Protection against a clear, serious and present risk against the physical integrity of the person who intends to carry the firearm, if the protection cannot be provided by other means; or,
  - ii) Realization of a professional activity that demands it.

Carrying may not be granted on the basis of general insecurity conditions<sup>69</sup>.

***Article 66: Carrying license conditions***

The carrying license shall be granted under restrictive criteria, and only for as long as the objective conditions that justified its granting persist. The Authority of Application has the faculty, in accordance to article 24, letter d), to revoke the carrying license for public security reasons.

***Article 67: Carrying license accreditations***

The carrying license may be granted for a term not exceeding one year. The license can be renewed if the licensee demonstrates fulfillment of the requirements in the previous article.

The carrying license shall be granted by means of unique and uniform credential. In case that the Authorized Person does not have a possession license corresponding to the firearm, the credential will indicate that it is a "special holder of firearm for carrying" and also contain the information that identifies the person and the type of firearm authorized to be carried<sup>70</sup>.

***Article 68: Specific conditions for the carrying of firearms***

The carrying of firearms may only be allowed if the licensee carries the following documentation:

- a) Personal documentation that proves the identity of the licensee;
- b) Carrying credential; and,
- c) Firearm possession credential or special holder credential.

The carrying allowed for professional activities may only take place during the actual realization of the activity that so requires.

The only activities of carrying that may be realized are those established in the Ordinance foreseen in this Law, except for shooting of the firearm in a threatening situation which immediately, when reported to the Police, shall be registered at the Authority of Application in accordance to article 115.

***Article 69: Carrying prohibition<sup>71</sup>***

The carrying of firearms, ammunition and related material is prohibited in the following circumstances:

- a) In recreational or educational centers, gambling establishments or where sports competitions are disputed;
- b) During elections;
- c) Under the influence of alcohol or drugs;
- d) Carrying of more than one firearm; or
- e) Carrying the firearm in an intimidating way.

The Ordinance foreseen in this Law may establish exceptions to the prohibitions contained in the preceding paragraph.

***Article 70: Exception to the effects of a license loss***

The expiration, revocation or suspension of the carrying license does not imply the obligation to dispose of the controlled materials as stated in article 25, if a possession license or special holder credential determined by another type of license, maintains its validity<sup>72</sup>.

**CHAPTER 10: INTRODUCTION AND EXIT**

***Article 71: Definition of introduction and exit***

Introduction and exit is the activity whereby the holder of controlled materials, after obtaining a specific authorization and in use of it, introduces or takes out controlled materials of its property, from the State's customs jurisdiction, as long as the said activity is not of commercial nature.

***Article 72: Introduction and exit authorization requirements***

To obtain an introduction and exit authorization, the solicitor must demonstrate fulfillment of the following requirements:

- a) Endowed with a possession license credential or of special holder, or, if suitable, its analogous authorization emitted by the State from which the material originates<sup>73</sup>;
- b) Declaration of the controlled material in observance of the principle of correspondence; and,
- c) Declaration of the activity to be realized with the material in accordance with the principle of justification.

***Article 73: Conditions of the introduction and exit authorization***

The introduction and exit authorization may be granted for a term not exceeding ninety (90) days of effective use, and can be prolonged only once. By the end of that term the grantee shall either obtain a regular license in the country in which the controlled material remains, or dispose of it in the terms of article 18<sup>74</sup>.

The introduction or exit authorization is accredited by means of an authorization certification, issued by the Authority of Application, for the provisional entrance or exit.

The authorization shall contain the provisions of article 23, and any other information that the Ordinance foreseen in this Law determines.

***Article 74: Introduction and exit procedure***

The procedure to effectuate the introduction or exit of controlled materials, with proper authorization, includes:

- a) The transfer of the materials in the terms of article 61, letter d);
- b) The verification of the documentation specified by the Ordinance foreseen in this Law;
- c) The verification, before the exit or effective introduction, of the type, amount and marking of the material;
- d) The information by the Authority of Application, at the request of any of the affected States, on the moment in which the material entered or left the State's customs jurisdiction; and,
- e) The mandatory notification, to the other countries affected, of the effective withdrawal of the material.

***Article 75: Exclusion***

It is prohibited for individuals to introduce controlled materials that are of exclusive use of the Defense and Security Institutions of the State<sup>75</sup>.

The introduction and exit authorization shall under no circumstances authorize such activities with materials belonging to third parties.

***Article 76: International cooperation***

In accordance with the international commitments of the State and for the purposes of facilitating international cooperation, the State, through the Authority of Application or another institution, shall:

- a) Periodically inform other countries of granted authorizations of introduction and exit; and,
- b) Periodically exchange, with other countries, information on their introduction and exit registry, and also on national laws and administrative practices with respect to introduction and exit procedures and documentation.

## **CHAPTER 11: COLLECTION**

### *Article 77: Definition of collection*

Collection is the activity whereby an Authorized Person, after obtaining the corresponding license and in use of it, acquires and conserves, in localities previously enabled for such aims, controlled materials for the conformation of collections of historical, aesthetic or technological interest.

### *Article 78: Requirements for the collection license*

To obtain a collection license, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for Authorized Persons in article 14;
- b) Description of the materials to be collected;
- c) Access to an establishment, enabled by the Authority of Application, with security conditions suitable to the type and amount of the material to be collected;
- d) Submission of the personnel list, all of which must lack criminal record;
- e) Specification, if it is an authorized legal person, of the activities to be realized by the members of the legal person, crediting their technical aptitude; and,
- f) Submission of an annual plan of activities to be realized with the collection.

### *Article 79: Conditions of the collection license*

The license of collection may be granted for a term not exceeding three years. The license may be renewed if the licensee demonstrates fulfillment of the requirements in the previous article.

The possession of the firearms included in the collection shall be credited by means of a unique and uniform special holder credential, for each firearm.

### *Article 80: Specific obligations of collectors*

Without prejudice to the obligations contained in articles 16, 115 and 116, collectors shall:

- a) Request authorization from the Authority of Application to incorporate a firearm into the collection before they do so;
- b) Keep the firearms deactivated in the terms established by the Ordinance foreseen in this Law; and,
- c) Request authorization before they extract controlled materials from the place in which the collection establishment was authorized.

***Article 81: Exclusions***

Collectors may not:

- a) Incorporate to their collections controlled material of prohibited use or of exclusive use of the Defense and Security Institutions of the State; or,
- b) Use the collected material for other aims than that of exhibiting them<sup>76</sup>.

Collection materials that could suffer serious depreciation if marked, can be exempted from that obligation under the conditions specified by the Ordinance foreseen in this Law<sup>77</sup>.

**CHAPTER 12: REPAIR**

***Article 82: Definition of repair***

Repair is the activity whereby an Authorized Person, after obtaining the corresponding license and in use of it, repairs or modifies firearms or related materials.

***Article 83: Requirements for license of repair***

To obtain the license of repair, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for Authorized Persons in article 14;
- b) Description of the materials to be repaired, the repair process and the machinery to be used;
- c) Access to an establishment, enabled by the Authority of Application, with security conditions
- d) Suitable to the type and amount of the material to be repaired; Submission of the personnel list, all of which must lack criminal record;
- e) Specification, if it is a legal person, of the activities to be realized by the members of the legal person, crediting their technical aptitude; and,
- f) Presentation of an annual plan of repairs which includes an estimation of demands to satisfy.

***Article 84: Conditions of license of repair***

The license of repair may be granted for a term not exceeding three years. The license can be renewed if the licensee demonstrates fulfillment of the requirements in the previous article.

The repair license can be an independent main activity or accessory to another authorized activity.

The repair license shall be credited by means of a certification issued by the Authority of Application. The license will be granted under the title of "authorized technical gunsmith", in case of a natural person, or under the title "firearms repair shop", in the case of legal person.

***Article 85: Specific obligations of the authorized technical gunsmiths and firearms repair shops***

Without prejudice to the obligations contained in articles 16, 115 and 116, the authorized technical gunsmiths and firearms repair shops shall:

- a) Keep a daily registry of acquired and used materials;
- b) Require authorization for the acquisition, modification or removal of the repair process machinery;
- c) Report any alteration in the personnel list;
- d) Request the possession credential or of special holder, before receiving the material to be repaired, to whomever brings the material for its repair, being necessary that the credential remains in hands of the authorized repair person while it is being repaired; and,
- e) Observe the following procedure if the repair requires the replacement of a main part of the firearm:
  - i) Acquisition of the part to be replaced by the authorized repair person;
  - ii) Consignment of the original, replaced piece to the Authority of Application jointly with the firearm special holder or possession credential;
  - iii) Obtain a new credential from the Authority of Application, containing the numeration of the new built-in part; and,
  - iv) If the replaced part is the barrel, the firing pin or the extractor must undergo a new ballistic test.

***Article 86: Prohibitions***

Repair licensees may not:

- a) Introduce modifications that substantially alter the original characteristics of the firearm; or,
- b) Receive any material with suppressed or adulterated original markings.

**CHAPTER 13: SPORT HUNTING**

***Article 87: Definition of organized hunting events. Activities not included.***

Organized hunting events is the activity whereby an Authorized Person, after obtaining the respective license and in use of it, organizes, manages and realizes sport hunting activities with firearms for its associates or for third parties, all of whom must be Authorized Persons.

The occasional hunting activities carried out by the possession licensees themselves, are included within the activities authorized to the possession licensees. Such activities must always be realized with due observance of the norms established by the competent hunting supervisory body or authority.

***Article 88: Requirements of the license for organized hunting events***

To obtain the license for organized hunting events, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for Authorized Persons in article 14;
- b) Description of the type of events to be carried out and the amount and type of controlled materials to be used, indicating if they will be their own, of its members or of third parties;
- c) Submission of the personnel list, all of which must lack criminal record;
- d) Specification, if it is a legal person, of the activities to be realized by the members of the legal person, crediting their technical aptitude; and,
- e) Presentation of a hunting events plan, properly authorized by the competent hunting supervisory body or authority.

***Article 89: Conditions of the license for organized hunting events***

The organized hunting events license may be granted for a term not exceeding three years. The license can be renewed if the licensee fulfills the requirements of the previous article.

The license shall be accredited by means of unique and uniform credential. The possession of the firearms shall be accredited by means of a unique and uniform special holder credential for each firearm.

The hunting activities can only be carried out in places and periods designated for hunting by the competent authority.

***Article 90: Acquisition of controlled materials***

The hunting events organizers can acquire controlled materials allowed for use by individuals, in order to be used by their members, associates or third parties that, under their supervision, require their services.

***Article 91: Exception to the principle of prohibition***

Under their responsibility and shared liability, organized hunting events licensees can lend their services to foreign residents from countries that do not grant an analogous Authorized Person authorization or possession license. Those persons must be under the supervision of the organized hunting events licensee at all times.

## **CHAPTER 14: SHOOTING RANGES**

***Article 92: Definition of shooting range administration***

Shooting range administration is the activity whereby an authorized legal person, upon obtaining the respective license and in use of it, administers an establishment duly enabled for the practice and training in the use of firearms, as well as for the realization of sport competitions where firearms are employed.

***Article 93: Requirements of the license for shooting range administration***

To obtain the shooting ranges administration license, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for Authorized Persons in article 14;
- b) Access to an establishment, enabled by the Authority of Application, with security conditions suitable to the type and amount of the material to be used in its physical facilities;
- c) Submission of the personnel list, all of which must lack criminal record;
- d) Specification of the activities to be carried out by each one of the members of the authorized legal person, crediting their technical aptitude; and,
- e) Presentation of an annual plan, which includes an estimation of demands to satisfy.

***Article 94: Shooting ranges administration license conditions***

The license for shooting range administration may be granted for a term not exceeding three years. The license can be renewed if the licensee fulfills the requirements of the previous article.

The license shall be accredited by means of a certification issued by the Authority of Application. The possession of firearms must be accredited by means of a unique and uniform special holder credential for each firearm.

***Article 95: Material acquisition and ammunition recharge***

For use within their facilities, the shooting ranges administration licensee may:

- a) Acquire controlled materials allowed for use by Authorized Persons in the terms of Chapter 7 of the present Section; and,
- b) Recharge ammunition under the terms of the subsequent Chapter.

***Article 96: Use of ammunition and firearms within shooting ranges***

An Authorized Person can practice shooting within an enabled establishment. Additionally, and with exception to article 13 paragraph 2, shooting practices may be allowed within the facilities for non-authorized people, albeit only under the supervision of a properly authorized instructor.

***Article 97: Extraction of controlled materials***

The materials acquired and the ammunition recharged, in accordance with article 95, cannot be extracted from the establishment by third persons or users under any circumstances.

The shooting range administration licensees shall require previous authorization from the Authority of Application to extract its controlled materials from the establishment.

The ammunition that the licensee provides to customers shall be properly registered.

## **CHAPTER 15: AMMUNITION RECHARGE<sup>78</sup>**

### ***Article 98: Definition of ammunition recharge***

Ammunition recharge is the activity whereby an Authorized Person, after obtaining the respective license and in use of it, reintroduces propellant charge and a projectile in the capsule of a previously used cartridge, restoring its aptitude to be shot by a firearm.

### ***Article 99: Requirements for the license of ammunition recharge***

To obtain the license of ammunition recharge, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for authorized legal persons in article 14, numeral 2;
- b) Possession of a valid manufacture, domestic commerce or shooting ranges administration license<sup>79</sup>;
- c) Description of the ammunition to be recharged, the recharge process and its machinery;
- d) Access to an establishment, enabled by the Authority of Application, that offers security conditions suitable to the type and amount of the ammunition to be recharged in its physical facilities;
- e) Submission of the personnel list, all of which must lack criminal record;
- f) Specification of the activities to be realized by the members of the authorized legal person, crediting their technical aptitude; and,
- g) Submission of an annual commercial plan, which includes an estimation of demands to satisfy.

### ***Article 100: Conditions of the license of ammunition recharge***

The license of ammunition recharge may only be granted to authorized legal persons with a license of manufacture, domestic commercialization or shooting ranges administration, and for a term not exceeding three years. The license can be renewed if the licensee demonstrates the fulfillment of the requirements in the previous article.

The license of ammunition recharge may only be granted as an accessory one to a license of manufacture, domestic commercialization or shooting ranges administration.

The license of ammunition recharge is accredited by means of a certification issued by the Authority of Application.

### ***Article 101: Specific obligations of ammunition rechargers***

Without prejudice to the obligations contained in articles 16, 115 and 116, the ammunition recharge licensees shall:

- a) Keep a daily registry of the acquired and used materials;
- b) Request authorization for the acquisition, modification or disposal of specific machinery in the recharge process;
- c) Report any alteration in the personnel list;

- d) Require and register the information of the person who delivers the used ammunition components, with detailed review of how they were obtained; and,
- e) Guarantee the security conditions of the recharged ammunition.

***Article 102: Delivery and sale of recharged ammunition***

The ammunition recharge licensee can hand the recharged ammunition to the person who previously handed it the used components, or sell it to third parties. In both cases, the ammunition sale provisions established in numeral 2 of article 55 have to be observed.

Recharged ammunition is only authorized for sport hunting and shooting practices in authorized establishments<sup>80</sup>.

***Article 103: Prohibitions***

The ammunition recharge licensee is prohibited:

- a) To introduce modifications that substantially alter the original characteristics of the cartridge to be recharged; or,
- b) To receive ammunition with suppressed or adulterated original marking.

**CHAPTER 16: SHOOTING INSTRUCTION**

***Article 104: Definition of shooting instruction***

Shooting instruction is the activity whereby an Authorized Person, after obtaining the corresponding license and in use of it, instructs and offers improvement of abilities in the handling of controlled materials, possessing the faculty to certify the suitability of third parties in using those materials<sup>81</sup>.

***Article 105: Requirements for the shooting instruction license***

To obtain the shooting instruction license, the solicitor must demonstrate fulfillment of the following requirements:

- a) Those established for Authorized Persons in article 14;
- b) Submission of the personnel list, all of which must lack criminal record;
- c) In the case of legal persons, enablement of the personnel that will act as instructors, by the Authority of Application<sup>82</sup>;
- d) Demonstration of each individual's suitability for instruction in their assigned specialty;
- e) Submission to the Authority of Application of the curricular plans to the courses on offer;
- f) Submission of an activities plan which includes an estimation of demands to satisfy; and,
- g) Adaptation of the controlled materials stock to the activities planned.

***Article 106: Shooting instruction license conditions***

The shooting instruction license may be granted for a term not exceeding three years. The license can be renewed if the licensee fulfills the requirements of the previous article.

The license will be accredited by means of unique and uniform credential. In addition, the possession of the firearms and related materials that have been acquired will have to be accredited individually by means of unique and uniform special holder credential.

***Article 107: Shooting instructors specific obligations and faculties***

After a personal evaluation, each applicant for a shooting instructor license will be able to certify the suitability in the use of firearms and related materials.

Without prejudice to the obligations contained in articles 16, 115 and 116, shooting instructors shall:

- a) Offer practical shooting training only at designated shooting ranges;
- b) Maintain constant supervision in the effective use of the firearms by those who require their services; and,
- c) Fulfill the requirements on proficiency and up-to-date knowledge that the Authority of Application determines.

***Article 108: Exceptions***

Shooting instructors can acquire controlled materials to be used by third parties that require their services. Additionally, and with exception to article 17 paragraph 2, instructors can teach non-authorized persons, albeit solely under their immediate supervision.

**CHAPTER 17: PRIVATE SECURITY SERVICES WITH FIREARMS**

***Article 109: Definition of private security services with firearms***

Private security services with firearms is the activity whereby an Authorized Person, after obtaining the respective license and in use of it, acquires and uses controlled materials with the purpose of offering security and monitoring services for third parties.

***Article 110: License requirements of private security services with firearms***

To obtain the license of private security services with firearms, the solicitor must demonstrate fulfillment of the following requirements:

- a) Proper enabling to offer security and monitoring services by the competent authority
- b) Those established for Authorized Persons in article 14;
- c) Description of the activities to be realized, and the amount and type of controlled materials needed for such tasks;
- d) Submission of the personnel list, all of which must lack criminal record;
- e) Indication of the personnel who will employ the controlled material, which in all cases must be Authorized Persons and, if they offer their services in public places or places of public access, count with a carrying license issued by the Authority of Application; and,
- f) Submission of an annual services plan to be implemented, that includes an estimation of demands to satisfy.

***Article 111: Conditions of the license of private security services with firearms***

The license of private security services with firearms may be granted for a term not exceeding three years. The license can be renewed if the licensee fulfills the requirements of the previous article.

The possession of the firearms and related materials that the licensee owns shall be accredited individually by means of a unique and uniform special holder credential.

***Article 112: Specific obligations of people who offer security services with firearms***

Without prejudice to the obligations contained in articles 16, 115 and 116, licensees shall:

1. Keep a daily registry, sent periodically to the Authority of Application and that includes:
  - a) A chapter of the services offered, indicating the person who required the service, schedule and place in which the service will be given;
  - b) Indication, for each operation, of intervening personnel;
  - c) Indication, for each operation, of the controlled material used, including the amount and marking of the material and the agents to which it is assigned;
  - d) A chapter of the effective shooting of a firearm during the service, with indication of the controlled materials and intervening personnel; and,
  - e) Exit, by any cause, of the material from the establishment.
2. Inform the Authority of Application of any alteration in the personnel list;
3. Adapt the stock of controlled materials to the annual plan of services to render; and,
4. Require authorization to the Authority of Application for withdrawing controlled materials from the establishment, unless it relates to service operations or for the practice and training of its personnel.

***Article 113: Limits and modalities of the use of material and its designation to agents***

The use and designation of controlled materials to agents of private security services licensees is subject to the following limits:

- a) The controlled materials can only be used when realizing security services operations or for the purposes of training the personnel in their handling;
- b) The controlled materials destined to security services operations may only be used by Authorized Persons. If this activity takes place in public places or with public access, they can only be used by those with a carrying license issued by the Authority of Application<sup>83</sup>;
- c) The firearms destined to security services operations may only be carried within the establishment where the service is rendered and during the time when the security service is effectively performed; and,
- d) The firearms and ammunition shall remain in a safe and guarded location at the premises of the licensee, and may only be removed by designated personnel if this action has been registered

beforehand and the material, without delay, is returned to the said location when the service is concluded.

***Article 114: Reference to legislation on private security services***

The dispositions in the present chapter exclusively regulate aspects concerning the use of controlled materials by security services with firearms licensees, without prejudice to the general regulatory framework foreseen for the realization of private security services.

**CHAPTER 18: OF THE REGISTRY OF ACTIVITIES**

***Article 115: Definition and mandatory nature of the registry***

The registry consists of the setting down, by the licensee, of all information referring to an authorized activity and the submission of that information to the Authority of Application for its subsequent conformation as the National Computerized Database<sup>84</sup>.

Each activity indicated in the granted license must to be registered, except for those specifically excluded by the Ordinance foreseen in this Law<sup>85</sup>

***Article 116: General terms of the registry***

The holder of a license, issued under the terms of the present law, shall register the following information:

- a) Each activity carried out;
- b) The natural person authorized to carry out the activity;
- c) Individualized information on any other natural person participating in the activity; and,
- d) Information on the marking, type and amount of controlled materials used in the activity.

The registries shall be in accordance with the formalities specified in the Ordinance foreseen in this Law, both concerning the setting down of the data and the form in which it is submitted to the Authority of Application<sup>86</sup>.

The documentation that sustains the realized activities, the intervening subjects and the used materials, must be kept for a term of minimum 5 years<sup>87</sup>.

## SECTION V: OF THE MECHANISMS FOR ENFORCEMENT AND CONTROL

### CHAPTER 1: AUTHORITY OF APPLICATION

#### *Article 117: Concept of Authority of Application*<sup>88</sup>

The Authority of Application is the centralized national body in charge of granting licenses and authorizations to carry out activities involving controlled materials susceptible to authorization. It is tasked with the conformation of a National Computerized Database containing information referring to the materials, subjects and activities controlled through the present Law. The Authority of Application shall supervise and enforce the fulfillment of the dispositions in the present Law.

#### *Article 118: Authority of Application functions and faculties*

The Authority of Application is charged with the following functions and faculties:

- a) To register all controlled materials, subjects and activities regulated through the present law, conforming a National Computerized Database with all registries;
- b) To grant licenses to carry out activities authorized by the present law, without prejudice to those activities that require a superior level of authorization;
- c) To offer manufacturers and importers the patterns for marking of controlled materials;
- d) To enable, if appropriate, the facilities in which the authorized activities are carried out;
- e) To supervise that authorized activities are carried out according to the terms of the present law and that non authorized activities do not take place;
- f) To request, receive and process all the information related to the object of the present law;
- g) To analyze and, if appropriate, to notify the competent authority about the reports of received operations, in accordance with article 16, letter h);
- h) To notify security forces and police officers of every reported loss, theft or robbery of controlled material and also of all seizure orders emitted by a competent authority;
- i) To conduct applicable procedures for breaches of the Law and the Ordinance;
- j) To collect all applicable fees, fines and customs;
- k) To enforce the safety measures established in the present Law;
- l) To apply the sanctions established in the present Law;
- m) To request, *ex officio*, the seizure of the licensee's material if the license has expired and not been renewed<sup>89</sup>;
- n) To request assistance from the public security forces for the fulfillment of its functions;
- o) To store firearms, ammunition and related materials in its depots;
- p) To carry out the tests comprised in the present Law;
- q) To destroy controlled material when the present, or another Law, so determines;
- r) To receive and submit all information required by other state bodies when it relates to materials materials, subjects and activities regulated by the present Law;
- s) To facilitate the control exerted by the state's institutions charged, according to the present Law, with supervising activities that imply the use of controlled materials;
- t) To carry out campaigns of regularization of the activities covered by the present Law, the prevention of armed violence and collection of controlled materials; and,

- u) To carry out those other tasks that the present Law or the Ordinance foreseen in this Law assigns to it, including the ones deriving from international commitments<sup>90</sup>.

***Article 119: Administrative abode of the Authority of Application***

The Authority of Application will serve through the institutional orbit of the civil body in charge of public security, without prejudice to the intervention of other State bodies when the regulation of certain specific activities so requires due to the nature of the activities<sup>91</sup>.

***Article 120: Authority of Application delegations and agencies***

The Authority of Application shall execute its functions directly through its own delegations and, via agreement, through registry agencies under public organs<sup>92</sup>. The registry agencies must send the Authority of Application all the information they receive for its subsequent conformation in the Computerized National Database, established in article 118, numeral a.

***Article 121: Financing of the Authority of Application***

The operations of the Authority of Application shall be guaranteed by the national budget, without prejudice to other financial resources assigned to it with the intention to optimize its operation.

The Authority of Application may gather differentiated and progressive rates depending on the type of authorization or granted license, the type of activity to be carried out and the amount and type of controlled materials.

***Article 122: Incompatibilities***

No member of the Authority of Application may carry out lucrative activities with controlled materials.

Without prejudice to the previous paragraph, people who have carried out such activities in the 2 years prior of assuming their position, shall not be able to participate in the management of the Authority of Application. Those who have been part of the management of the Authority of Application will be disabled to carry out the referred activities for a term of two years.

Natural or legal persons associated, directly or indirectly with lucrative activities with the materials or subjects regulated in the present law, may under no circumstances take part in the financial administration of the Authority of Application<sup>93</sup>.

## **CHAPTER 2: INFRACTIONS AND SANCTIONS**

***Article 123: Classification of offenses***

According to its fraudulent or negligent character, its seriousness or dangerousness, and the person's criminal record or lack thereof, offenses are classified in:

1. Minor, in case of:

- a) Merely formal breaches that do not constitute a danger for public security, the offender or third parties;
  - b) Fraudulent breaches; or,
  - c) Breaches without antecedents.
2. Serious, in case of:
- a) Breaches consisting of the delivery or transfer of controlled materials to persons who lack the status of Authorized Person;
  - b) Fraudulent actions intended to subtract the material from the control of the Authority of Application;
  - c) Reiterative breaches; or,
  - d) Breaches that, even if fraudulent, generates danger, asserted risk or damage towards public security, the offender or third parties.

***Article 124: Imputable sanctions***

Without precluding the appropriate criminal sanctions, all breaches to the dispositions of the present Law are sanctioned by the Authority of Application as follows:

- a) Formal administrative warning;
- b) A fine of (n) to (n) x 50, in case of natural persons;
- c) A fine of (n) x 10 to (n) x 10,000, in case of legal persons<sup>94</sup>;
- d) Total or partial closure of the enabled establishment between THREE (3) DAYS to (1) YEAR;
- e) Temporary suspension of the license granted between (1) MONTH and (1) YEAR for natural authorized persons, and THREE (3) DAYS to (1) YEAR, in case of authorized legal persons;
- f) Cancellation of the inscription in the Registry, or of the granted authorization, by a term of up to 10 years;
- g) Temporary or permanent incapacitation to acquire the status of Authorized Person in the terms of the present Law; and,
- h) Seizure of the material.

***Article 125: Concurrence of infractions***

In case of concurrence of two or more infractions, the maximum limit of the terms for suspension and closure is doubled.

The Authority of Application shall charge and receive the fines, and, if executive collection by the judiciary is warranted, then the debt certificate issued by the Authority of Application shall be deemed a valid executive title.

***Article 126: Application of the sanctions***

The sanctions established in articles 123 and 124 will be adjusted according to their fraudulent nature, seriousness and danger or damage inflicted by the infraction. Additional factors that may be taken into account are: previous sanctions, if any, the economic situation of the offender, the importance of the offender's activity and the administrative behavior of the offender.

Sanctions can be applied cumulatively.

Minor offenses are sanctioned with warnings, fines and seizure.

Serious offenses are sanctioned with fines, closure, suspension, cancellation, incapacitation and seizure.

***Article 127: Prescription of sanctions***

The ability to sanction the infractions prescribes TWO (2) YEARS after the offense is committed, counting from the day it was committed, or, if it implies continuous execution, when it ceased. The inquiry of the offense, or the commission of a new infraction, has interruptive effects on the said term.

Sanctions prescribe THREE (3) YEARS, counting from the decision with full legal effect that imposed them.

***Article 128: Recidivism***

The offender incurs in recidivism when a new infraction is committed within the terms disposed for the prescription of the last applied sanction.

In this case, the minimums and maximums of the sanctions established in numerals b, c, d, and e of article 124 are duplicated. Without prejudice to this, if an offender incurs in recidivism for a second time, while the first one is still being investigated, the definitive cancellation of the authorization in question shall be deemed necessary.

**CHAPTER 3: PROCEDURE AND SAFETY MEASURES**

***Article 129: Verification of the infractions***

Infractions shall be verified by means of an inquiry carried out by the Authority of Application, being applicable to that effect, as well as for appeals, the Law on Administrative Procedures<sup>95</sup>.

***Article 130: Precautionary measures***

The Authority of Application may impose the following preventive measures until a definitive decision is enacted:

- a) Seizure of the material;
- b) Provisional suspension of the license;
- c) Provisional closure of the presumed offending establishment, which closure must be founded on security reasons or in order to avoid the commission of new infractions, and which may not exceed THREE (3) months; and,
- d) Seizure and destruction of the material, founded in urgent necessity or security reasons and formalized in an administrative act with due justification.

## CHAPTER 4: PARLIAMENTARY CONTROL

### *Article 131: Government's Report to Parliament*

The Government shall submit an annual report to the Parliament, which will contain:

- a) The total amount of existing firearm factories in the country and of new manufacturing licenses granted during the reporting period;
- b) Total amount of controlled materials made in the country during the reporting period, classifying them by type and specifying those destined to the internal market, and type and amount of exported material, specifying country of destination and the monetary values involved in these transactions;
- c) Total amount of imported controlled materials during the reporting period classified by type and specifying country of origin and the monetary values involved in these transactions;
- d) Total amount of existing Authorized Persons in the country and of the licenses granted, according to the type of activity, during the reporting period;
- e) Acquisitions made by Security Forces during the reporting period classified by type and amount of controlled materials and the monetary values involved in these transactions;
- f) Total amount of deaths and injuries caused by the use of firearms during the reporting period, specifying the following:
  - i) Deaths and injuries caused during confrontations with security forces;
  - ii) Deaths and injuries caused concurrently with another crime;
  - iii) Deaths and injuries caused between neighbors or known people;
  - iv) Deaths and injuries caused between family members;
  - v) Deaths and injuries caused with firearms legally possessed by the offender;
  - vi) Deaths and injuries caused with firearms owned by private security companies; and,
  - vii) Deaths and injuries caused with illegitimately possessed firearms, indicating also if the firearm's robbery, theft or deviation has been reported by an authorized licensee, or if the firearm has not been registered in the country.
- g) Estimated healthcare costs caused by firearm injuries, and all other associated costs<sup>96</sup>;
- h) Results of the regularization and collection campaigns, if realized during the reporting period;
- i) Sanctions applied for the violation of the present Law, classified by type of offense and effectively applied sanction;
- j) Seized materials, indicating their type and the offense that determined the seizure;
- k) Material handed in for destruction in the terms of article 18, letter d);
- l) Material declared as surplus during the reporting period, classified by type, amount and institution to which it belonged; and,
- m) Material effectively destroyed during the reporting period, classified by type, amount and cause of destruction.

### *Article 132: Parliamentary evaluation of firearms policy*

Based on the Government's report, Parliament<sup>97</sup> shall realize an evaluation of the domestic policies pursued on firearms control and stock reduction. The evaluation should include, as a minimum, an analysis of the performance of the organs charged with pursuing the policies; the impact of the use of firearms in the rate of violent deaths and on the use of those materials in the commission of crimes; and, the effective observance of criteria contained in article 46 regarding international transfers. Parliament should also consider making pertinent recommendations in the evaluation.

The evaluation is public and available to everyone.

## SECTION VI: OF THE REDUCTION, COLLECTION AND DESTRUCTION

### CHAPTER 1: SURPLUS REDUCTION<sup>98</sup>

#### *Article 133: Definition of Surplus*

Surplus is every firearm, ammunition or related material in possession of a State institution, whether or not with tasks of security or defense, that does not respond to a current or future need for realizing functions of the institutions; or that does not correlate to the purpose of the institution or other means available for it; or whose accumulation can generate risks for the internal and international security or implies technical, economic and ecological obstacles for peaceful development.

#### *Article 134: Evaluation and examinations to determine excess*

All state institutions that possess controlled materials must periodically evaluate whether it has a surplus.

The following considerations are mandatory under the referred evaluation:

1. To ensure the observation of the principles of justification and concretion, of correspondence, and of non recirculation, in accordance with letters f), g), and k) of article 3; and,
2. To consider the following indicators:
  - a) The domestic security situation and threats to national defense;
  - b) International commitments contracted, including those concerning peace operations;
  - c) Modernization of the stock of controlled material, or acquisition of new material;
  - d) Controlled materials in disuse due to their antiquity or lack of adjustment to the present operative needs.

#### *Article 135: Jurisdiction*

The following have the authority to declare, in the terms set forth by the Ordinance foreseen in this Law, the existence of a surplus:

- a) The Authority of Application;
- b) The State's Security and Defense Institutions and any other State organism that possesses firearms; or,
- c) The Government, by proposal of the inter-ministerial commission or body that will be composed in accordance with article 48.

#### *Article 136: Surplus Destruction*

The material declared as surplus shall be destroyed, in compliance with articles 143 and 144.

## **CHAPTER 2: FIREARMS COLLECTION**

### ***Article 137: Definition***

Firearms collection is the reception of controlled materials turned in voluntarily, by its possessors, for their destruction.

### ***Article 138: Collection procedure***

The Authority of Application is authorized to implement campaigns of collection of controlled materials<sup>99</sup> by means of, amongst other, the establishment of incentives for turning in such materials<sup>100</sup>.

Once the material is turned in it shall be destroyed in accordance with articles 143 and 144.

## **CHAPTER 3: SEIZED MATERIALS**

### ***Article 139: Duty to inform on seizures***

The justice and security forces, and all other institutions that, in the use of their faculties seizes controlled materials, shall inform the Authority of Application of the seizure within ten (10) working days and submit the following data:

- a) Place and date of the seizure and a summarized description of the circumstances;
- b) Type of material and marking;
- c) Judicial or administrative authority that has intervened, case number and information on all persons involved; and,
- d) Depot to which the materials are consigned, indicating the responsible authority.

### ***Article 140: Depot of the seized material***

The materials indicated in the previous article shall be deposited in the premises and in observance with the security conditions that the Ordinance foreseen in this Law establishes.

### ***Article 141: Delivery of Seized Material***

When the seized material is properly registered, and if it is deemed prudent, the intervening judicial or administrative may return the material to its legitimate holder. Such a decision must be communicated to the Authority of Application.

### ***Article 142: Confiscation of seized material***

When, by virtue of judicial sentence or firm administrative resolution the seizure of controlled materials it's ordered, the material in question has to be destroyed.

The resolution that ordered the seizure has to be sent to the Authority of Application within forty-eight hours.

## CHAPTER 4: DESTRUCTION OF CONTROLLED MATERIALS

### *Article 143: Definition of destruction and general terms*

Destruction of firearms, ammunition and related materials is the act by which such materials are rendered completely and permanently unusable.

The action of destruction falls within the competence of the Authority of Application, which has to register the destruction.

### *Article 144: Circumstances that determine the destruction*

Based on the principle of non recirculation, all authorities have to proceed with the destruction of firearms, ammunition and related material when there is not an objective, justifiable and reasonable need for the preservation of such materials.

It is, without exceptions, mandatory to destroy the following materials:

- a) Forbidden material;
- b) Material unsuitable for use according to its normal functions, or material which is not repairable;
- c) Confiscated material;
- d) Surplus material; and,
- e) Material voluntarily turned in for its destruction.

## SECTION VII: REGULARIZATION OF STOCK<sup>101</sup>

### *Article 145: Definition*

Regularization is the adequate registry of controlled materials outside the state's control, and the granting of the respective license to those who possess materials without proper authorization.

The Authority of Application is authorized to implement controlled materials regularization campaigns by means of the establishment of incentives.

### *Article 146: Exceptions*

Firearms, ammunition or related materials cannot be regularized when:

- a) The use of the material is forbidden or only allowed to the State's Security and Defense Institutions;
- b) An administrative or judicial inquiry has been initiated concerning the controlled material in a state of irregular possession; or,
- c) The material belongs to an Authorized Person who has reported its loss, robbery or theft.

## SECTION VIII: FINAL DISPOSITIONS<sup>102</sup>

### SOLE CHAPTER: RELATED LAWS

#### *Article 147: Criminal dispositions*

The following should be incorporated to the Penal Code as articles, (xx1) to (xx17):

1. "**Article xx1: Illicit manufacture.** The person who manufactures firearms and ammunition, or proceeds with its recharge without proper authorization, shall be sanctioned with a prison term of (x) to (x). If the manufacturing of the firearms or ammunition constitutes a habitual activity, the sanction shall be increased with half of the minimum and the maximum terms respectively."
2. "**Article xx2: Illicit storing.** The unauthorized storing of firearms, their pieces or ammunitions, or related materials, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n)."
3. "**Article xx3: Omission, adulteration and suppression of marking.** The person who, while possessing legal authorization to manufacture or import firearms or ammunition, omits the corresponding marking according to the effective norm, or assigns to two or more firearms or ammunition lots identical numbers or markings, shall be sanctioned with a prison term of (x) to (x) and special incapacitation for a double term of the imposed prison sentence.

The person who adulterates or suppresses the number or marking of a firearm or ammunition cartridge will also be subject to the aforementioned sanctions.

4. "**Article xx4: Illicit transport.** The person who transports firearms, ammunition or related materials, without proper legal authorization, will be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n)."
5. "**Article xx5: International illicit traffic.** The international transfer of firearms, ammunition or related material, without due legal authorization, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n).

If the illicit transfer of the firearms, ammunition or related materials constitutes a habitual activity, the sanction will be increased with half of the minimum and the maximum terms respectively.

The sanction in the previous paragraph shall apply also if the illegal international transfer implies, directly or indirectly: the non compliance with a firearms embargo, decreed by the Security Council of the United Nations; the disruption of international or regional peace; a breach of the prohibitions on aggression and interference; the commission of genocide, acts or terrorism or military crimes; or the breach of any of the fundamental obligations of International Humanitarian Law."

6. "**Article xx6: Illicit domestic sale.** The person who conducts sales of firearms, ammunition or related materials in the domestic market, without proper authorization, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n).

If the offender is a domestic commerce licensee, an additional special incapacitation for a double term of the imposed prison sentence, shall be imputed to the offender."

7. **"Article xx7: Illegal possession.** The person who possesses firearms, ammunition or related materials, without proper legal authorization, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n). The collection of firearms, ammunition or related material without due authorization, constitutes an illegal possession."

8. **"Article xx8: Illegal carrying.** The person who carries firearms without proper legal authorization shall be sanctioned with a prison term of (x) to (x).

If the person referred to in the previous paragraph is an authorized possessor of the firearm in question, the corresponding scale shall be reduced by a third of the minimum and the maximum term respectively.

In both cases the person who carries the material shall also be subject to a special incapacitation by a double term of the imposed prison sentence."

9. **"Article xx9: Firearms abuse.** The person who shoots with a firearm, thus endangering public safety, shall be sanctioned with a prison term of (x) to (x) and a special incapacitation by a double term of the imposed prison sentence."

10. **"Article xx10: Illicit introduction and exit.** The person who crosses a State's customs jurisdiction with firearms, ammunition or related materials without proper legal authorization, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n), unless this act constitutes an illicit international transfer, which is penalized and sanctioned in accordance with Article xx5."

11. **"Article xx11: Illicit repair.** The person who, without proper legal authorization, repairs, modifies or prepares firearms, ammunition or related materials, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n)."

12. **"Article xx12: Illegal administration of hunting activities.** The person who, without proper legal authorization, organizes or realizes sport hunting activities with firearms for persons who lack status as Authorized Persons, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n)."

13. **"Article xx13: Illegal shooting instruction.** The person who, without proper legal authorization, offers instruction, qualification or improvement in the use of firearms, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n).

The properly enabled instructor who fraudulently certifies the suitability of third parties in the use of firearms shall be imposed the same sanction."

14. **"Article xx14: Illicit security services with firearms.** The person who, without proper legal authorization, acquires and uses firearms, ammunition or related materials for the purposes of offering security services to third parties, shall be sanctioned with a prison term of (x) to (x) and a fine of (n) to (n)."

15. **"Article xx15: Illicit delivery.** Unless the act constitutes a crime and is penalized according to any or several of the Articles from xx1 to xx14, the person who hands over a firearm, ammunition or related materials to someone who is not credited with the status of Authorized Person, shall be sanctioned with a prison term of (x) to (x) years."

16. **"Article xx16: Increase of sanctions for illicit deliveries.** Sanctions shall be increased with half of the minimum and maximum term respectively, for any of the illicit acts of articles (xx1) to (xx15) if it entails a delivery of firearms to a minor or to a person with criminal record, or if the illegal provision constitutes a habitual activity; preventing also the offender from obtaining the status of Authorized Person.

If the said offender possesses an authorization to undertake commercial activities with firearms, ammunition or related materials, an additional, absolute and perpetual special incapacitation, and a fine of (n) to (n), shall be imposed."

17. **"Article xx17: Aggravation for the use of firearms.** When some of the crimes established in this Code are committed with violence or intimidation against people by means of the use of a firearm, the established penalization scale for the crime in question is increased by a third in its minimum and maximum terms respectively."

*Article 148: Customs dispositions*<sup>103</sup>

The following should be incorporated as article (xx) of the Customs Code:

**"Article xx: Firearms contraband.** A prison term of (x) to (x) will be imposed, in any of the assumptions established in article (xx)<sup>104</sup>, when the act refers to goods of firearms, ammunition, their parts and components and the instruments to produce them."

*Article 149: Domestic violence*

The following should be incorporated as article xx of the Law on Domestic Violence:

**"Article xx: [...].** When inquiring the reasons for the police report, the judge shall: communicate with the Authority of Application in the Law of Firearms, Ammunition and Related Materials, informing this body about the details of the report, and demand that it informs the court: if the denounced is a person authorized to use or operate with firearms; about the firearms for which the person has authorization; and their place of storage.

Without prejudice to the other measures that the referred Authority of Application shall be entitled to enact, the intervening judge has the faculty to dispose the preventive seizure of the firearms and ammunition in possession of the denounced."

*Article 150: Law on Succession*

The following should be incorporated as article (xx) of the Legal Procedures Code [in succession matters]:

"**Article xx:** [...]. During the successions procedure, the intervening judge shall inform the Authority of Application in the Law of Firearms, Ammunition and Related Materials of the decedent death, and demand that it informs the court: if the defunct is a person authorized to use or operate with firearms; about the firearms for which the person has authorization; and their place of storage."

*Article 151: Bankruptcies*

The following should be incorporated as article (xx) of the Law on Bankruptcy:

"**Article xx: [Liquidator's authority].** When the insolvent person is a person authorized to operate with or use firearms and ammunition, the liquidator shall: communicate the decreed bankruptcy to the Authority of Application in the Law of Firearms, Ammunition and Related Materials; and dispose such measures that safeguard that the liquidation of the property fully takes into consideration the laws governing firearms, ammunition and related materials."

*Article 152: Legal persons [Liquidation]*

The following should be incorporated as article (xx) of the Law on Legal Persons:

"**Article xx: [Liquidator's Authority].** The liquidator of a legal person that is a person authorized to operate with firearms and ammunition shall: communicate the liquidation proceedings to the Authority of Application in the Law of Firearms, Ammunition and Related Materials; and safeguard that the disposal of those materials is realized within the alternatives established in the referred law."

*Article 153: Police and security forces*

The following should be incorporated as article (xx) of the Law on Operations of the Police, Penitentiary and Security Forces:

"**Article xxx [Functions...].** Without prejudice to the force's internal control and registry of firearms, ammunition and related materials, these objects, as well as the personnel designated as authorized users, must be properly registered before the Authority of Application in the Law of Firearms, Ammunition and Related Materials.

Without prejudice to the additional collection of firearms that may be realized, the deposit of firearms, ammunition and related materials of the forces must comply with the criteria set forth in article 33 of the referred law.

In accordance to the terms of article 134 of the Law on Firearms, Ammunition and Related Materials, and in order to determine the surplus material to destroy, a periodical evaluation shall be effectuated on the following: of the firearms and ammunition stock; of the maintenance of safety and operational conditions; and their correspondence with the services to be rendered."

*Article 154: Health code*

The following should be incorporated as article (xx) of [the Code of Public Health Care]:

"**Article xx: [Report of circumstances]**. Health professionals must report, to the corresponding authority, the reception of patients with wounds produced by the impact of firearm projectiles."

*Article 155: Taxation laws*<sup>105</sup>

"**Article x1: [...]**. A tax is hereby established on the sales of firearms, ammunition and related materials, and whose proportionate rate shall be (n) % of the amount of the transaction.

The tax shall be due by the person executing the sale and is determined over the net amount of the executed sale, having previously deducted any other taxes affecting the transaction."

"**Article x2: [...]**. Sales of firearms, ammunition and related materials to the institutions and forces of defense, security and penitentiary, whether they be at the national or municipal level, shall be exempt from the special tax."

## NOTES AND SOURCES

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<sup>1</sup> It is generally understood that small arms and light weapons are firearms that can be carried and/or used, along with the necessary ammunition, by a single person without mechanical aid. There are different definitions for these weapons that vary according to technical criteria, but notwithstanding these criteria, there are some characteristics that make of small arms and light weapons a political, societal and security preoccupation: they are readily accessible, being relatively cheap; of easy transport, being highly portable; of easy use, since they require minimum qualification; of easy dissimulation, because of their size; they are of long endurance, among others because they are easily repairable; they're used like "payment means", often in criminal circumstances; and, finally, they have manifold users, both civil and public (hunters, sportsmen, security companies, military, police, etc.).

<sup>2</sup> Of course, there are illegal firearms whose use and presence is justified in objective terms; those firearms should not be destroyed but instead legalized, by means of regularization programs or options. However, generally there are relatively few illegal weapons that really have justified uses.

<sup>3</sup> For example, the 2001 United Nations Action Programme to prevent, combat and eliminate the illicit traffic of small arms and light weapons in all its aspects. In paragraphs 2 and 3 of Section II, the UN PoA considers, as a measure at the national level, the establishment of laws, regulations and administrative procedures directed to control the international manufacture and transfers where they are missing; and, in the States that have not already done so, legislative measures or of another nature should be enacted that allows for the criminalization of certain activities related to the illicit traffic.

<sup>4</sup> Although it is a truism, it is worth restating that legislation should only be enacted when there are opposing social interests whose scope and duration make it necessary for the State to intervene in it's solution. It must be clear, from the State's vantage point, that a problem exists that exceeds the abilities and capabilities of private citizens to solve and which cannot be treated in a case by case basis. Because of this, it is difficult to understand the need to enact legislation on the issue of firearms, lest one shares the understanding that the presence of firearms and their use constitute a problem for societies.

<sup>5</sup> The classic version of this normative function is most commonly expressed, and can be synthesized, in the following question, very frequent on firearms debates: Owning a firearm, is it a right or almost an obligation, when there so much perceived lack of safety, or is it a privilege granted with exceptional nature by means of the verification of objective circumstances?

<sup>6</sup> The State's institutions and agencies in charge of the justice and security sectors need a legal framework on firearms and ammunition that helps them to change the present panorama of insecurity – whether perceived and/or factual. There is no doubt that every reform of the security as well as of the justice sector will not succeed without an adequate regulation on firearms and ammunition.

<sup>7</sup> Evidently, the ratification of treaties is part of that "communication", but the implementation of international commitments, through legislation or by means of other measures can also be considered such a "communication". It is equally important to set up continuous mechanisms of international cooperation relating to firearms legislation, as well as to revise domestic legislations with the object of harmonizing relevant legal dispositions for border control, and the like.

<sup>8</sup> And not for any other reasons.

<sup>9</sup> The locution "legal framework" indicates that the laws on firearms include dispositions of different legal nature:

1. Administrative dispositions; they predominate, since the basic structure of the dispositions is: request and possible authorization; the realization of activities and the fulfillment of obligations; and the – ipso facto or ipso jure – finalization of the authorization.
2. Organic dispositions; usually a specific body is established with the overarching task to enforce and supervise the fulfillment of the law(s) on firearms.
3. Civil and contractual dispositions; economic activity between persons is affected due to the fact that controlled materials are considered as not being (wholly) fungible objects. Because of this, every disposition of such material – purchase, sale, transport, storage, inheritance, repair and destruction – is subject to special procedures.
4. Penal dispositions; crimes relating to firearms are individualized and their corresponding sanctions are established (in the actual firearms law, or in the Penal Code).

<sup>10</sup> It is fundamental that the control system is national and centralized, since an atomized system resting on different administrative divisions within the State, will be of almost impossible effective instrumentation (the users would look for the jurisdictions with less strict regulations or controls, and could then move freely within the State).

<sup>11</sup> There are two main types of "legislative traditions" in relation to firearms: the "Anglo-Saxon" and the "holist".

1. The "Anglo-Saxon" regulates the international manufacture and transfer in one law, while domestic commerce and civilian possession in another. This "tradition" is common in countries that manufacture firearms, like U.S.A., Sweden and Great Britain. In parallel and as a reflection thereof, it could be noted that the Disarmament Statute of Brazil, a major producer of firearms, is aimed at regulating that which concerns the use, carrying, possession and domestic commerce of firearms (and not their manufacture and international transfer). This is called the "Anglo-Saxon tradition" because the very common terms "War material act" and "National firearms law", corresponds to that division: of keeping manufacture and international transfers in a "War material act", while domestic commerce and civil use is regulated in a "National firearms law".

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2. The "holistic" tradition regulates, in the same law, all the activities related to firearms, ammunition and related material. This integrated or comprehensive approach is very frequent in Latin America, and some of the most recent firearms legislations in the region are emblematic in that regard, like that of Paraguay (2002) and Nicaragua (2005). The Parlantino Model Law on Firearms belongs, indeed, to this "holist" tradition.

<sup>12</sup> With that, the prohibitive character of the system is clarified.

<sup>13</sup> Although the criteria that each country defines for itself must be respected, in regards of the regulation of armaments pertaining to the armed forces, it is advisable to find a formula that extends some of the aspects regulated by this Law also to those firearms (prohibited arms, registry of some armaments, conditions of storage, etc.). See article 15.

<sup>14</sup> This exceptional nature has different manifestations; the most far-reaching one in Latin America is probably the one found in Colombia. According to the Colombian legislation, and to the case law on the monopoly of force and the use of firearms by civilians established by the Constitutional Court of Colombia, firearms possession is not allowed to individuals themselves; the possession is solely a concession from the State.

The present Model Law has not introduced this model because it implies a re-organization and a normative conceptualization of such scope, as far as firearms regulation is concerned, that it would surpass the mandate and resources of the present Model Law process. This does not mean that the "Colombian model" can't be applied along with the dispositions of the Model Law insofar as they are compatible.

<sup>15</sup> This implies that, in order to grant an authorization, it is necessary to verify the correspondence between: the type and amount of firearms and ammunition with which the activity will be realized; the nature of the activity; and the alleged need or reason stated in the request to carry out the activity.

<sup>16</sup> Although it is considered a fundamental principle of all legal systems, the principle of universality is spelled out in order to ensure its unconditional observance in a legal matter whose application, if asymmetric, could stir sensitivities and frustrate the control regime over firearms. There are, in Latin America, cases of discriminating under the granting process between solicitors with regards to their position (ministers, judges, entrepreneurs) – without there being objective reasons to do so, i.e. on the basis of belonging to a national security force. Such discrimination has an adverse effect on the effective implementation of firearms control and disarmament policies.

<sup>17</sup> To facilitate the understanding and enactment of this Model Law, concepts and definitions which have been established in diverse national and regional instruments have been taken as terminological references. Most definitions used in the Model Law are gathered from instruments like the CIFTA, Decision 552 of the Andean Community, the Firearms Identification and Tracking Manual of Argentina's Registry, and the firearms legislations of Brazil, Argentina, Colombia, Chile, Nicaragua, among others.

It is likewise necessary to clarify that the Model Law, according to the decision of the Parlantino, would not include explosives, as well as nuclear, biological or chemical weapons (this is the reason why, for instance, they are not contemplated as prohibited in the classification).

<sup>18</sup> Such as: infrared sights, laser sights, telescope sights and silencers.

<sup>19</sup> The criteria to classify as prohibited certain firearms and ammunition are:

1. Its excessive destructive power or the indiscriminate effect that its use cause; or
2. Its illegal or irregular nature.

<sup>20</sup> The criteria to restrict the use of certain types of firearms, ammunition and related materials to State Institutions of Defense and Security are:

1. Their elevated firepower, which is defined according to:
  - a) The energy developed by the ammunition at the time of the firing, determinant for its impact, penetration and destructive power;
  - b) The effective range, determined by the maximum distance in which the projectile maintains sufficient energy to produce damage; and,
  - c) The firearm shooting rate, determined by its firing gear (for example: automatic, semiautomatic).
2. The ammunition's characteristics that may increase their destructive power (for example: if the projectile is explosive or not).
3. The characteristics of the related material which can increase the firearm's destructive power, including precision improvement.

<sup>21</sup> The following are criteria to classify firearms as allowed for the use of (certain) individuals: the firing gear, except in the case of long firearms with a rifled bore, which are classified by its caliber.

It is sought to avoid, in this fashion, the acquisition by civilians of semiautomatic versions of assault rifles of exclusive use of the State's Security and Defense Institutions, such as civil versions of the M-16 rifle, AK-47s, G-3s, Galils, etc. This classification has also been determined for short arms of caliber equal or superior to 50 AE, which has an elevated destructive power and which use under no circumstances is justified for self-defense, sport-shooting or private security services.

<sup>22</sup> "Dum-dum" ammunition.

<sup>23</sup> The Ordinance foreseen in this Law must observe legal developments in the area of International Humanitarian Law, as well as the prohibitions that follow other international commitments.

<sup>24</sup> According to the International Court of Justice, it is understood that the prohibition to use certain firearms and ammunition, established by International Humanitarian Law, implies (and presupposes) also a prohibition to manufacture, transfer,

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commercialize, transport or store those materials. Since it is an obligation of States not only to respect IHL, but also to ensure that other states respect it (arts. 3 in the respective Geneva Agreements of 1949), activities that contribute to its violation – in this case, use of prohibited firearms and ammunition – cannot be carried out.

<sup>25</sup> Among others: pens, canes, lighters or clocks.

<sup>26</sup> Includes: offensive, defensive, offensive-defensive and non-lethal, i.e. with irritating gases that carry dazzling and stunning effects.

<sup>27</sup> The criteria established in the present chapter have been developed from the Draft Model Legislation on Marking and Tracking elaborated by the Group of Experts of CIFTA-CICAD (OAS).

<sup>28</sup> Given the small dimensions of the marking, evidently the information required in the present article is not going to be completely engraved in the serial, that is why it is said that the marking will have "to include" the stated information. It means that from the alphanumeric symbols that composes it, and on the basis of the marking guidelines offered by the Authority of Application, such information will be able to be inferred from the synthetic marking.

<sup>29</sup> It is recommended that effectuated markings are reported to INTERPOL. Concerning the provision of the marking by the Authority of Application, it should be noted that although the manufacturer is the one who determines the serial number to be assigned to each material, the guidelines for these markings will be supplied by the Authority of Application, to assure that the mandatory contents are fulfilled, and to avoid duplications.

<sup>30</sup> It is also recommended to inform the INTERPOL on the ammunition markings.

<sup>31</sup> The limits established in the Ordinance shall be oriented by their addressee. For example, the lots destined to the State's Defense and Security Institutions are individual and may not surpass ammunition units of 10,000. The ammunition lots destined for other users must be lower in quantity.

<sup>32</sup> In regards of possession, for example, some countries allow it at 18 years, others at 21 and the most restrictive, like Brazil, only grant licenses to those older than 25 years.

<sup>33</sup> Another recommendable criterion is that only professionals previously enabled by the Authority of Application can certify aptitude.

<sup>34</sup> Ibidem.

<sup>35</sup> This implies: knowledge of the regulations regarding the activity to be realized, i.e. faculties, limits, prohibitions, regime of infractions, legitimate defense limits, transfer mechanisms, etc.

<sup>36</sup> If it's warranted according to domestic law of each country, this requirement on the lack of previous crimes may be restricted to crimes with controlled materials only.

It's advisable – particularly concerning certain types of activities – to extend the investigation to third countries, in order to ensure that the applicant does not have a criminal record in other countries. Extended investigations are also suggested for members of the directory of legal persons, something which is crucial to undertake before granting commercial licenses. Another recommendation is to demand that the applicant's spouse consents to the license, serving as an indication that the person does not have a violent record.

<sup>37</sup> The dispositions of the present article are inspired by and synthesize the following recommended guidelines of "definition and inclusion", in the general law on firearms and ammunition, of the (State's) armed, security and penitentiary forces:

1. To establish that a (possibly) differentiated regime for the referred institutions may not be extended to any other institution who does not perform functions of the same character.
2. To establish as principles:
  - a) That the activities that *lack* direct relation with the *exercise of public functions* in the referred institutions, even if carried out with a firearm provided by them, must be treated as activities governed by the general law on firearms and ammunition (specially when it concerns the agent's retirement); and,
  - b) That the activities in which the firearm is not provided by these institutions must be treated as private activities (tout court).

There will be exceptions to those principles, for example when there is no storage place in the police station for armed police (a), or when they're forced to buy ammunition with their own means (b).

3. In case that according to these principles the general law on firearms and ammunition is applicable, the same rules have to be observed and the fulfillment of the same requirements upheld for each applicant, indistinctively of the position he or she occupies (in any of the referred institutions).
4. To respect the classification and marking requirements established in the general law on firearms and ammunition.
5. If an "Anglo-Saxon" system is chosen: to always include the State's institutions in the legislation that regulates the manufacture and international transfers of firearms and ammunition.
6. To never exempt the institutions of the duty of informing the Authority of Application on all its activities with controlled material, all its users and stocks. That includes among others: to elaborate an inventory, with the safety measures that correspond, of the portable firearms and its corresponding ammunition; to report to the Authority of Application the theft or loss of the materials; and to report when a person disposes of the material if it implies being transferred to third parties.

<sup>38</sup> This identification is related with the internal norm of each country. For that reason, and emphasizing the variety in Latin America, it has not been considered pertinent to include a definition, even a stipulative one, in the present Law. However, the following term is used to describe institutions of such nature: "State Institutions of Defense and Security".

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<sup>39</sup> If it was allowed for the State to transfer controlled materials to third parties, something that the present Law does not envisage due to the policy on reduction of public surpluses, it's highly recommended to maintain the obligation to also report such transfers.

<sup>40</sup> There are exceptional cases when a license won't be required, and a specific authorization will do; for example the foreigner who carries out hunting activities in the country. By contrast, for certain activities it won't be enough to have a license, and a specific authorization is required in addition; for example, concerning international transfers.

<sup>41</sup> In this way, the essence of principle of minimization of damages and risks is stated, a principle that has special relevance when it comes to the actual realization of activities with controlled materials. The concept of dynamic criteria suggests that the standards considered at the time of granting may be severed (or relaxed).

<sup>42</sup> See also international manufacture and transfer. Although for such acts the authorization must be superior, this superior level does not preclude the intervention of the Authority of Application.

<sup>43</sup> Cause of expiration by end of the term.

<sup>44</sup> This letter points to the non fulfillment of license requirements or specific obligations, since such breaches must be the object of an administrative procedure or judicial process, in which sanctions or safety measures can be ordered. (On their own such breaches, without the proper procedures, cannot give rise to the revocation or suspension of the license.)

<sup>45</sup> Without prejudice to those rules which correspond at local level, it is necessary that the Authority of Application enables the establishment, since this enablement is a previous and different step from approving the security plan indicated in article 14.

<sup>46</sup> The authorization to manufacture firearms is a policy at the level of State. Because of this, even if an effective control system exists, the granting of a manufacture license entails the decision to allow the injection of firearms in the internal market or their future sale to other countries. The need for signing the manufacturing authorization by the highest authority of the Executive Branch, is justified by the magnitude and importance of the permission that is being granted.

<sup>47</sup> The exit of the materials to other establishments intervening in the manufacture process, for the accomplishment of specific tasks, must also be informed.

<sup>48</sup> The Ordinance foreseen in this Law must specify the security conditions that storage facilities must abide to, including engineering specification (such as alarms, satellite monitoring, wall dimensions, etc.)

<sup>49</sup> For example, the main activity of the retailer, or manufacturer, is not to store. Thus, each one of them must have an accessory storage license.

<sup>50</sup> There can be, in this regard:

- a) A specific license granted by the Authority of Application, after receiving qualification from the regulating transport organism; or
- b) Recognition of the aptitude for the transport of firearms and ammunition to those who are authorized by the regulating transport organism to transport dangerous substances. In some cases the exigencies to obtain qualification for transporting dangerous substances are so high and strict that a new accreditation of those standards before the Authority of Application would seem superfluous. An alternative writing for letter b) in the paragraph might thus be: "Only carriers properly enabled for the transport of dangerous substances by the competent regulating organism, may be authorized to transport firearms and ammunition."

<sup>51</sup> This means that a transport license is not necessary (see article 38).

<sup>52</sup> The definitions of the types of international transfers, letters a) to e), are from the CIFTA-CICAD Model Regulation.

<sup>53</sup> This includes the following regular commercial activities with firearms, ammunition and related materials: manufacture, export, import, financing, mediation, acquisition, sale, transfer, transport, cargo expedition, provision and delivery.

<sup>54</sup> Regarding the possibility that holders of manufacture license may try to manufacture in a third country, it is considered that, even when obtaining the country's corresponding authorizations for manufacturing these firearms or materials, it is necessary to uphold the (first) country's applicable framework for international transfers. Otherwise, the application of this framework may be circumvented by obtaining a manufacture license.

Concerning the production under a license issued by a third country, the following regulation alternatives may be considered:

1. To demand the fulfillment of what is stated on manufacture in chapter 3 of Section 4. In this case it is expected that the Executive Branch determines the relevant considerations in reference to the third country (compare article 46); and, due to this, it is enough to have a manufacturing license in the State. Subsequently, for a possible exportation of the material produced in the State, the rules on international transfers in chapter 6 shall apply.
2. To interpret the use of a license issued by a third country, the "commercial extension" to the State, as an import; chapters 3 and 6 of Section 4 would then apply jointly. In this case, in order to begin manufacture (under a license issued by a third country), it will be necessary to obtain international transfer licenses (import and manufacture) from both countries; and, subsequently, for a putative exportation, the rules in chapter 6 shall apply.

The present Law has chosen the first alternative regarding manufacture under a license issued by a third country. Assuming there is reciprocity in the system, such production must be regulated by the third country as a production under license in another country; as a consequence, this "commercial extension" will be governed by the international transfers framework provided in the Law (of the third country).

<sup>55</sup> In some countries, like Colombia, it's prohibited for non State actors to make international transfers. Because this prohibition has not been included to date in the main international instruments in the matter – that is to say the UN Protocol on Firearms, the CIFTA and their Model Ordinances, the Wassenaar Agreement, the OSCE "better practices", among others – the Model Law entails the

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possibility that private actors can make international transfers. If those subjects are excluded, it is recommended that the requirements included in article 48 on specific authorizations are upheld.

<sup>56</sup> This letter is considered to comprise and abide by the Convention of the Rights of the Child and the additional Protocol on Children in Armed Conflicts. Explicit reference to Convention and Protocol is recommended for those countries where the normative bodies of Human Rights and the Rights of the Child are treated separately. This means (explicitly) demanding in the letter the fulfillment of the Convention and the Protocol in the intervening countries and in the country of destination. Predictably, there may be countries in which, although both are considered a single normative body, are intent on emphasizing the need to respect the Rights of the Child in relation to international transfers of arms.

<sup>57</sup> This letter regarding "conflict" is deemed to comprise considerations related to the perpetration or risk of genocide and war crimes.

<sup>58</sup> To be understood as: "Emitting State".

<sup>59</sup> Ibidem.

<sup>60</sup> Consult the Model Regulation of the CIFTA-CICAD and the Wassenaar Agreement. Naturally, it is recommended to exclude physical persons from the possibility of appearing as final addressee (which should be domestic retailers).

<sup>61</sup> This procedure is not considered excessive because the inter-ministerial commission can meet with certain regularity to consider several authorizations at a time.

It's likewise recommended to consider establishing a parliamentary mechanism for the ratification and/or cassation of the resolutions enacted by the referred inter-ministerial commission. This recommendation stems from the fact that, in certain circumstances, a decision in these matters can have serious implications for the State's foreign policy and relations; for example, if a transfer may help elude the prohibition of aggression, the principle of non-interference, etc.

<sup>62</sup> The Authority of Application cannot limit itself to receiving this documentation by the operator interested in the transfer.

<sup>63</sup> In addition, some retailers must request an accessory transport license (article 39, paragraph 2).

<sup>64</sup> For example, the main activity of the manufacturer or importer is not the commercialization, but they will be able to obtain the commercialization license so that they may introduce their products to the internal market.

<sup>65</sup> The authorized person could be requiring a new license (for example, a possession license) or trying to incorporate a new firearm to an already existing license (collections, private security).

<sup>66</sup> It is essential that all firearms injected into society are undergo ballistic tests, in order to facilitate identification if used illegally. The purpose of this test is to make the purchaser feel responsible of handling the firearm correctly. But it carries the weakness that it's not been tested at the time of its manufacture or import. Nevertheless, if the firearm rests within the legal market, there are no chances it will be used in this way. An option to consider is to demand the ballistic test from the moment of its manufacture or entrance to the country.

<sup>67</sup> This last point is really not necessary, since it is foreseen in the general obligations. Although redundant, it can be included because of its importance.

<sup>68</sup> Evidently, having a firearm in one's home implies the possibility of using it in case of legitimate defense. Without prejudice to this, it is considered advisable not to specifically establish the possibility of defensive use, since, although tacitly incontrovertible, it could foment a sense of "self management of security" – as opposed to the principle on the State's monopoly on the use of force.

<sup>69</sup> A state of general insecurity, instead of being reduced, would be aggravated if the use of firearms in public places proliferates.

<sup>70</sup> It is advisable that in cases of carrying without possession, the license not only establishes that the authorization is one of special holder, but also the type of firearm in question. For example, an employee of a private security agency may bear a pistol, but not long arms (or vice versa).

<sup>71</sup> Inspired by Panama's Bill on the Control and Regulation of Firearms, Ammunition, Explosives and Related Materials.

<sup>72</sup> The seizure of the controlled material when the license is lost, is established as a general rule (article 18). In case of the loss of a carrying license this is not necessary if the controlled material can remain in possession of the Authorized Person by virtue of another license (possession, private security, etc.).

<sup>73</sup> The sale of firearms, ammunition or related material is prohibited to non-resident foreigners in article 59, paragraph 1, letter a). Because of this, and parting from the reciprocity of this rule, it is not necessary to present a credential emitted by the State to which the material is going to be introduced. In other words: if the transfer is to a third country, it's warranted with a credential emitted by the State (from which the material comes); in case materials are introduced to the country, it's warranted with a credential emitted by the third State (from which the material comes).

In case that the sale of controlled materials to foreigners in a third country is allowed, it's necessary to extend the regulation so that in those cases the license or special holder's credential, or its equivalent, may be emitted by the State to which the material is introduced.

Finally, it will also be necessary for cases of introduction where the authorization emitted by the State of origin contains analogous requirements to those established in article 14 – indifferently of how that authorization is titled. In case that the State of origin does not have analogous requirements, the Authority of Application will establish criteria to allow introduction.

<sup>74</sup> The rules to hand in controlled materials, in case of loss or suspension of status as Authorized Person, have equal validity for materials that exit the country. Nevertheless, the effective implementation of these rules will require and depend on procedures for legal cooperation with other affected countries; in this case the third country to which the material has been introduced.

<sup>75</sup> Only the introduction is prohibited, since no individuals can become users of those materials in the present legal framework.

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<sup>76</sup> It must be very clear that the controlled material that integrates a collection cannot be the object of possession, carrying, or any other use beyond exhibition. In order to allow another use, the corresponding license must be obtained.

<sup>77</sup> Collectors hold that many firearms lose their value if a modification is made which alters their original state; for instance, marking.

<sup>78</sup> Ammunition recharge is an extremely common activity but, although it is dangerous because it means the introduction to the market of ammunition without adequate controls, its absolute prohibition would be impractical, both because of its wide practice and the savings it means for firearm users.

For this reason, it is included among the activities allowed in the present Law, but only in observance with the safety measures which apply to all other activities – and even more, in the sense that it's not admitted as an independent license, but only as an activity accessory to certain licenses.

<sup>79</sup> The limitation of the possibility of recharging to those who have a license of manufacture, domestic commercialization or shooting ranges administration, is based on the following considerations: a) they have enabled physical facilities and complex registry systems for materials; and, b) they are not firstly firearms users, such as possession license holders, security services lenders, hunters, etc. – all of which could have interest in using the ammunition over the limits assigned in their ammunition control cards.

<sup>80</sup> This means, on the other hand, that its use is prohibited for any other activity, such as personal security, private security services and any other use that could require forensic ballistic tests – since, by virtue of its character as recharged ammunition, it could present distortions.

<sup>81</sup> The Model Law has opted for allowing the authority to certify suitability to all instructors. Nothing prevents that, even though any instructor can offer training, the suitability certification is reserved to a differentiated instance, such as the Authority of Application, a security institution, a more specialized group of instructors, etc.

<sup>82</sup> Evidently, being an authorized person is not enough to act as a shooting instructor for a legal person; it is also necessary to be an authorized instructor.

<sup>83</sup> It is considered necessary to differentiate the use of controlled material within the legal person, or in closed places, from its use in public places. For the first case, being Authorized Person will be enough, but in the second case, the person will require a license to bear. This allows limiting carrying licenses to those who actually carry out security tasks in public places, without granting licenses to a greater number of people.

<sup>84</sup> The concept of "registry" is complex, it has different meanings: on one hand, the concept encompasses the registry of the licensee's own activities; on the other, it also entails the information that the Authority of Application must receive and "register". In addition, it is common to refer to the Authority of Application as Arms Registry.

In the Model Law, the concept of registry denotes the obligation of subjects to register activities, and the referral by the Authority of Application of data to the Computerized National Data Base. Thus is accentuated the mutual "registry" obligation of licensees (to inform) and the Authority of Application (to receive) respectively.

Concerning the temporal criteria, i.e. if it's necessary to register the activity before or after realizing it, it's impossible to establish a unique criterion. In that regard, it must be clarified that the principle of anticipation refers to the authorization itself, not to the activities carried out in use of that authorization. For that reason, it's preferable not to establish a time based criteria in the definition of the act "registry". When there exists an obligation to inform ("to register) an activity beforehand, that will be specified (also in section 4).

<sup>85</sup> For example, some of the activities carried out with firearms by a possession licensee will be exempt from this obligation, like the transport for its repair, training in shooting ranges, etc. (Nevertheless, these activities will have to be registered by means of the authorized repairer and the shooting range administrator.)

<sup>86</sup> It's recommended that the Authority of Application keeps a "register" for controlled materials *and* for each activity type included in Section IV, in order to assure correspondence between:

1. Type of activity,
2. License classification, and
3. Registry of activities made in use of the license.

"Registers" must also be kept for all types of safety measures (seizure, confiscation and destruction), since it's essential to register such "activities" with controlled material.

<sup>87</sup> The registered information must include these activities *and* the subjects and materials. The need to conserve the information by 5 years refers not only to the registries, but also to the documentation that sustains the conducted operations (invoices, mandates, etc.).

<sup>88</sup> It was considered suitable not to suggest a name for the application organism in the Model Law (National Arms Registry, Armaments Control National Organism, etc.), since each country must determine a name appropriate to its institutional tradition.

<sup>89</sup> It's critical to entrust the Authority of Application the competence to act as the organism in control of licenses and the one that has to adopt the necessary measures so that State's control on assigned materials is not lost. It's not enough for the interested party to register its acquisition of material; it's also essential that the interested party keeps the material in its power while its authorization persists, and in case it's not renewed, the Authority of Application must automatically proceed to seize the material.

<sup>90</sup> For example, the UN PoA recommends that the Authority of Application works as a National Focal Point, in charge of inter alia summoning a National Coordination Committee on small arms. According to the UN PoA, the National Coordination Committee is the mechanism by which the implementation of the different instruments and firearms control mechanisms are promoted and

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materialized, for example, by means of the analysis and update of initiatives on firearms norms, the viability studies of collection programs, etc. In order to facilitate the accomplishment of those tasks, the Committee should count with representatives of, among others, the ministries of foreign policy, defense, interior, justice and human rights, and also by representatives of authorities in charge of customs, of migration, the State's security forces, and of civil society. Equally, the Committee should choose a National Focal Point that serves as contact reference with homologues in other countries, as recommended in the UN PoA.

It should also be noted that the SALW instruments of SICA, MERCOSUR, CAN and CARICOM stipulate the conformation of National Coordination Committees and the designation of National Focal Points.

<sup>91</sup> This is an effect of the understanding that, at the regional level, armed violence is a public safety problem, rather than one of defense. The Model Law is designed to tackle principally this set of problems. When the Model Law is concerned with areas of external security and defense – manufacture, international transfers and, in certain aspects, surplus destruction – it spells out other or complimentary procedures for control and decision making, such as parliamentary oversight and co-decision (as is commonly done for defense and external security matters).

<sup>92</sup> Each country must match the need to assure the effective centralized state control on the one hand, with the necessary territorial deployment of the agencies of the Authority of Application on the other hand, so that the geographic distance between the user and the agencies do not turn into a disincentive to regularize. Two alternatives are available: a) to only allow the registry of activities at the corresponding organism and its agencies (if the State can guarantee adequate territorial deployment of these agencies); or b) to delegate some functions to other agencies (police forces, security ministries, etc.).

<sup>93</sup> A paradox occurs in Argentina where the National Arms Registry, RENAR, doesn't count on public funds, having its income depend completely on the money obtained by means of fines and tax collection – which are administered by the Association of Firearms Manufacturers and Retailers.

<sup>94</sup> The level of fines must be elevated, due to the diversity of: possible infractions (delay in the remission of information or a more serious offense), and economic volume of the objects involved (ranging from small commerce to a large factory or importer).

<sup>95</sup> It's not deemed necessary to establish a differentiated procedure for the proceedings before the Authority of Application; this is why referral is made to the general administrative procedures.

<sup>96</sup> Workdays loss, social security, etc.

<sup>97</sup> Through its permanent commissions with competence in the subject matter, or through a Special Commission on Firearms, Ammunition and Related Materials Control.

<sup>98</sup> Recommendations, best practices and guidelines for surplus reduction are found, among others, in the UN PoA, the Wassenaar Agreement, and Decision 552 of CAN.

<sup>99</sup> For the execution of collection programs, the following steps should be considered:

1. To present, previous consultation with civil society organizations, a plan of the program that guarantees minimum security conditions for the execution of the program;
2. To establish, as minimum objectives of the program, the decrease of death rates and wounds from gunshots;
3. To include these programs in an ampler frame of security sector reform;
4. To assess the convenience of the place in which collection shall be made, in terms of utility and security;
5. To assure that the putative incentives are appropriate in relation to local culture and needs, as well as fixed on the basis of a classification corresponding to firearm model and caliber, ammunition, or related material;
6. To establish a period of time that allows for awareness-raising and assures the impact of the program at societal level; and,
7. To elaborate inventories and audits in order to assure the program's transparency and certify the destiny of the collected firearms, taking into consideration the convenience that the materials are made unusable during their delivery.

<sup>100</sup> Incentives may be monetary or not, and consist in the reduction of fees to obtain licenses, or the cancellation of debts.

In order to obtain a greater adhesion to firearms collection programs, a specific law should be enacted that precludes the persecution of crimes of illegitimate possession *if* the material is handed in voluntarily.

<sup>101</sup> Each country must assess the convenience of incorporating this chapter in the law's permanent articles, or regulate such issues through a transitory disposition.

The benefit of including that aspect as a permanent disposition is, precisely, the establishment of an incentives regime which is not limited in time. The negative aspect is that it may fuel the idea that at any time an illicitly possessed firearm can be regularized, delaying the urgency of its regularization.

If the regulation of the subject matter is made a transitory disposition, this drives illegitimate possessors to massive regularization. But the certain thing is that irregular possessions takes place continuously in society, and this requires some type of (permanent) stimulus or regularization opportunities.

<sup>102</sup> This chapter regulates the modifications of other laws, necessary to allow for a correct and effective implementation of firearms control.

<sup>103</sup> Dispositions that assure that firearms contraband will be sanctioned like an aggravated figure must be contemplated. The proposed example assumes that each country has a basic contraband legal figure.

<sup>104</sup> Here, it's possible to refer to the basic contraband figure. Normally this type of offense sanctions acts or omissions, fraudulent or not, intended to prevent or hinder the effective exercise of control functions over import and export.

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<sup>105</sup> The presence of firearms in society generates enormous costs because of their illegal use: hospital expenses, police and judicial activity, workday losses, social security schemes to disabled or widows, etc. This can justify the creation of specific taxes on the operations conducted with them, which could contribute to pay off the expenses in which the State has incurred. Many countries have established targeted taxes to activities with risk-prone or damaging goods (for example sumptuary goods, tobacco, spirits, vehicles, etc.). Including firearms and ammunitions under this taxation regime should be enough. In case there isn't a general norm for targeted taxation, a novel regulation must be considered.

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