



Explanatory Report to the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals

Strasbourg, 28.VI.1978

I. The European Convention on the control of the acquisition and possession of firearms by individuals, drawn up within the Council of Europe by a committee of governmental experts under the authority of the European Committee on Crime Problems (ECCP) was opened to signature by the member States of the Council of Europe on 28 June 1978.

II. The text of the explanatory report prepared by the committee of experts and submitted to the Committee of Ministers of the Council of Europe, as amended and completed by the CCJ, does not constitute an instrument providing an authoritative interpretation of the Convention, although it might be of such a nature as to facilitate the application of the provision contained therein.

Introduction

1. On 6 October 1971, ten members of the Parliamentary Assembly of the Council of Europe tabled a motion for a recommendation on the control of crimes of violence (Doc. 3031), calling upon the Committee of Ministers to consider whether this control might not be facilitated by a European convention providing for harmonised legislation on fire arms. The parliamentarians noted that the rising crime rate in almost all member States of the Council of Europe, and particularly as regards acts of violence, had given rise to grave public anxiety.

They considered that crimes involving firearms constituted a particular danger to public safety and order.

They also observed that the conditions under which firearms could be acquired differed considerably from one member State to another and, in particular, that in certain States the legal acquisition of firearms was relatively difficult for nationals of the country but not for aliens, provided they undertook to export such firearms immediately. Their motion was referred to the Assembly's Legal Affairs Committee, which appointed Mr H. Sieglerschmidt (Federal Republic of Germany) Rapporteur.

2. In January 1972, Mr Sieglerschmidt submitted to the Assembly a report and draft recommendation (Doc. 3077), containing a number of general observations on violence designed to place the question of firearms in its proper legal and sociological context. The report contains statistics which illustrate the increase in the number of acts of criminal violence in certain member States over recent decades; for example, in the Federal Republic of Germany the number of crimes committed with firearms increased almost tenfold between 1962 and 1971. After explaining the broad outlines of member States' legislation on the matter, the Rapporteur stresses the importance, and indeed necessity, of a combined effort on the part of the member States of the Council of Europe to control the purchase and possession of firearms by individuals and curb the international trade in firearms. Present legislation in force in some member States, under which it is possible to buy arms without sufficient control or restriction as long as they are exported, ought to be reconsidered. In the

Rapporteur's view, this legislation does not reflect the "European spirit". It may even be counter-effective, since a "legally" exported firearm may be reimported illegally immediately afterwards. He therefore proposed that, first of all, Council of Europe member States should take measures to control the sale of arms to residents and make the export of firearms subject to approval by the importing State. In addition, the Rapporteur emphasised the need for better control of the sale and possession of firearms in some member States and for harmonisation of the relevant legal provisions in Europe, since differences between them, and especially the possibility of obtaining firearms in one country more easily than in another, lead to illegal traffic in firearms among the member States.

3. At the third part of its 23rd Ordinary Session in January 1972, the Parliamentary Assembly adopted Recommendation 655 (1972) on the control of the sale and possession of firearms in order to combat violence, the operative part of which reads as follows:

"Recommends that the Committee of Ministers take urgent action with a view to reducing crimes of violence and securing more effective control of firearms in member States:

- a. by examining the possibility of drafting European agreements introducing appropriately harmonised regulations on firearms; and, pending the harmonisation of the law on the acquisition and possession of firearms as it applies on the territory of member States,
- b. by working out effective regulations governing the export of such weapons, and thus preventing their illegal import and use on the territory of other member States."

4. The Committee of Ministers of the Council of Europe, having taken note of this recommendation, replied to the Assembly as follows:

"The Committee of Ministers has examined with keen interest Recommendation 655 on the control of the sale and possession of firearms in order to combat violence. The Assembly has, in that recommendation, raised an important problem of general interest which warrants study within the Council of Europe. For that reason the Committee of Ministers has instructed the ECCP to examine Recommendation 655 in the light of the comments made in the Committee of Ministers, in the hope that a consensus may be reached enabling concrete results to be arrived at as speedily as possible. It is with this aim in view that the question has been entered in the draft 1973-74 Intergovernmental Work Programme."

5. The ECCP decided at its 22nd plenary session (in May 1973) to set up a sub-committee (No. XXXV) with the following terms of reference previously drawn up by the bureau:

- to consider and prepare effective regulations concerning the import and export of firearms;
- to study the desirability and the possibility of strengthening the national regulations concerning the possession of firearms;
- to study measures designed to combat the illegal possession of firearms and in particular to report on measures that might be usefully adopted in member States to inhibit the unauthorised manufacture and sale of firearms and to reduce the incidence of theft of firearms, and

- to consider whether any useful purpose would be served in order to combat violence by endeavouring to harmonise member States' regulations on the sale, possession, carriage and use of firearms and, if so, whether such harmonisation would be possible.

Mr Frixos Michaelides (Cyprus) was appointed Chairman. The sub-committee was assisted by a representative of the International Criminal Police Organisation (Interpol) who provided highly detailed information, mainly legal, on the arrangements governing importation and exportation of short firearms among member States of the Council of Europe. It was serviced by the Crime Problems Division of the Directorate of Legal Affairs of the Council of Europe.

6. The sub-committee met in its restricted membership (nine member States being represented):

- a. from 29 to 31 October 1973;
- b. from 8 to 10 April 1974;
- c. from 21 to 23 October 1974;
- d. from 3 to 6 March 1975;
- e. from 13 to 16 October 1975;

and in its enlarged membership (the nineteen member States being invited to attend):

- f. from 8 to 11 November 1976;
- g. from 21 to 24 March 1977.

The sub-committee discharged the first part of its terms of reference in the course of these meetings by finalising the texts of a draft European convention on the control of the acquisition and possession of firearms by individuals and an explanatory report.

7. In the meanwhile the ECCP, after hearing an oral report presented by Mr Michaelides at its 25th plenary session (in May 1976), held an exchange of views on the preliminary draft convention prepared by the sub-committee in its restricted membership. In the course of that discussion the delegations from the member States and the representative of the Parliamentary Assembly expressed themselves very much in favour of the preliminary draft. In order to speed up the adoption of the convention and its opening for signature by the member States, the ECCP instructed its bureau to examine it as soon as possible after the final meeting of the enlarged sub-committee and transmit it to the Committee of Ministers.

8. The bureau of the CDPC meeting on 23 May 1977 examined the draft convention and decided to transmit it to the Committee of Ministers.

g. The Committee of Ministers decided to request from the Parliamentary Assembly an opinion on the draft convention. The matter was referred to the Legal Affairs Committee of the Assembly and Mr Grieve (United Kingdom) appointed Rapporteur.

In its Opinion No. 87 (1978) the Parliamentary Assembly,

"Recalling the importance it attaches to the control of the sale and possession of firearms in order to combat violence;

Considering that the draft convention will help in combating terrorism and other crimes of violence;

Underlining, like the Committee of Ministers, the urgency and importance of this text,

(Welcomed) the draft convention, and generally (approved) its principles and provisions;

(Recommended) that the Committee of Ministers soon open the draft convention for signature and ratification by member States; ..."

10. In March 1978, the Committee of Ministers agreed to open the Convention for signature and authorised publication of the pursuant explanatory report.

General considerations

11. For the purposes of the draft convention, the experts drew upon the text of the Benelux Convention on arms and ammunition signed in Brussels on 9 December 1970. They also noted that, at the date of their last meeting, this convention had not entered into force.

The Benelux Convention was prompted by the fact that the abolition of controls at the frontiers between the three States would in practice mean reducing control over firearms to the lowest common denominator of the controls in force in the States concerned. A system was thereby devised which, once in operation, would maintain controls in the three States at a satisfactory level through the harmonisation of legislation, without adversely affecting trade with outside States.

The Benelux Convention was not to apply to State dealings in arms nor to weapons for the use of the army, police, etc. Exceptions could also be made by individual Contracting Parties:

- a. subject to safeguards, for antiques or collections of arms or arms for scientific or educational use;
- b. in wartime.

It would not be possible to make reservations to the Benelux Convention.

The Contracting Parties would undertake:

- a. to afford each other mutual assistance in surveying stocks of, and combating illicit traffic of firearms;
- b. to bring their legislation into conformity with the rules set out below. Each State would remain free:
 - i. to make detailed regulations so long as they were compatible with the convention;
 - ii. to fix its own sanctions for breach of the convention or other rules.

Under the Benelux Convention arms (the term includes spare parts and ammunition and covers certain devices other than firearms in the strict sense) were to be divided into three categories:

- I. particularly dangerous arms, e.g. folding and disguised weapons, offensive knives, etc.;
- II. arms not in category I and potentially fit for individual use, e.g. pistols, revolvers, rifles, shotguns, hunting knives, truncheons;
- III. other arms, e.g. military weapons.

12. The experts of the Council of Europe sub-committee also took as their starting point the fact that firearms used by criminals are often obtained abroad. This traffic is facilitated by two factors: the gradual abolition of frontier controls among the member States, and the differences in national regulations on the acquisition of firearms. It is clear that the absence of frontier controls would automatically bring about a sort of de facto harmonisation as regards the possibilities to acquire firearms and ammunition. This would be a levelling-down in that the de facto situation would be adjusted to the least stringent rules in force in the Council of Europe member States. Such a situation is undesirable and would moreover be contrary, particularly in view of American experience, to the increasing need to combat crimes of violence by subjecting the possession and carrying of arms to strict rules and the trade in arms to as effective a control as possible; this necessity is acknowledged by virtually all the member governments and by the Parliamentary Assembly of the Council of Europe.

The sub-committee's terms of reference, as defined by the ECCP, required it to consider whether "any useful purpose would be served in order to combat violence by endeavouring to harmonise member States' regulations on the sale, possession, carriage and use of firearms and, if so, whether such harmonisation would be possible".

It is true that harmonisation of legislation would appear to be the obvious solution. When the rules relating to the carrying and possession of and trade in arms are the same in all the member States, frontier controls will no longer be needed and their abolition will no longer have the same implications for the effectiveness of the fight against crimes of violence.

However, it seemed more realistic to assume that such harmonisation would prove difficult or even impossible in the short term. Moreover, the fact of ratifying the Convention is by no means tantamount, for the Contracting Parties, to a commitment to bring their legislation into line with a common model at some future stage. It was therefore thought appropriate, in the interests of crime prevention, for some system of controlling inter-State transactions in firearms by individuals to be instituted from the outset. However, any such system should neither hamper nor distort legitimate trade nor involve the introduction of unworkable frontier controls.

13. The Convention has been framed to apply in particular to all cases in which a firearm (as defined in Appendix I) situated in one Contracting State is sold, transferred or otherwise disposed of to a resident in another Contracting State.

The sub-committee examined the following possible control methods:

- a. an obligation on the State in which the firearm was originally situated to give notice of the transaction to the State in which the purchaser or transferee is resident (the "notification system");
- b. an obligation on the State in which the firearm was originally situated not to permit the transaction to take place before it has given its authorisation, and not to issue such an authorisation unless and until the transaction, if subject to authorisation in the State in which the purchaser or transferee is resident, has been authorised by that State (the "double authorisation system").

The experts considered that the latter method would provide a far more effective control, particularly since it would be applied before the event. However, they considered that, for economic and administrative reasons, such a method could not be made obligatory to all the Contracting States at the present moment and that a flexible approach was considered more appropriate.

They also noted that domestic legislation on the authorisation and registration of firearms transactions varied as regards the categories of firearms covered. For example, regulations in the Netherlands and in the Federal Republic of Germany are far more stringent than in Belgium or France where sporting and hunting weapons are concerned. Consequently, the

Convention is framed in such a way that, where the less dangerous firearms are concerned, a Contracting Party may put it into operation by stages.

In view of the options provided for in Appendix II, the Contracting Parties may undertake:

- a. to apply the notification system in respect of the most dangerous firearms (item 1.a to h of Appendix I), or
- b. to apply the notification system in respect not only of the most dangerous firearms but also of certain or all of the remaining items in Appendix I, or
- c. to apply the notification and the double authorisation systems in respect of the most dangerous firearms, or
- d. to apply the notification and double authorisation systems in respect of the most dangerous firearms and also the notification system in respect of certain or all of the remaining items in Appendix I, or
- e. to apply the notification and double authorisation systems in respect of the most dangerous firearms and also the double authorisation system in respect of certain or all of the remaining items in Appendix I, or
- f. to apply the notification and double authorisation systems in respect not only of the most dangerous firearms but also of certain or all of the remaining items in Appendix I.

14. The experts thought that existing controls over dealers in firearms were such that transactions involving them might merit special treatment. Accordingly, Appendix II permits a State which chooses to apply the double authorisation system to exclude such transactions from its ambit. They would, however, remain subject to the notification system, at least as regards the most dangerous weapons.

The wish not to distort legitimate trade, while maintaining control over internal transactions, underlies Article 10. It is designed to ensure that the State in which the firearm is situated does not authorise a transaction involving a non-resident on conditions less stringent than those applicable to a purely internal transaction, if the non-resident in question takes possession of the firearm immediately. However, if the firearm is immediately exported, the control is limited to checking whether the State in which the purchaser is resident has authorised the transaction.

15. The Convention prescribes rules, but no penalties. The necessary penalties must therefore be provided for in national legislation.

16. The experts recognised that in addition to the systems of notification and double authorisation, mutual assistance among the administrative authorities in member States, including police authorities, is necessary in order to combat effectively illicit traffic in, and illicit transfers of, firearms on an international level. Consequently, Article 2 of the Convention provides a rule in this respect without dealing with the ways, means and procedure of the assistance. In so far as the assistance relates to the suppression and detection of a crime under the ordinary penal law, the implementation of this article takes account of the system of international police co-operation created under the auspices of ICPO (Interpol); as a general rule, this will also be the case in respect of the prevention of crimes in this field. In so far as this assistance is outside the field of competence of ICPO (Interpol) other provisions might apply; in this context reference may be made to the European Convention on the Obtaining Abroad of Information and Evidence in Administrative Matters opened to signature by the member States of the Council of Europe on 15 March 1978. (European Treaty Series No. 100).

17. Appendix I lists the categories of arms and ammunition to which the Convention applies. The list in Part A indicates the dangerousness of the various arms, in decreasing order from a to n. It emerges clearly from the Appendix that the Convention also applies to component parts and certain accessories for the firearms subject to control. Part B defines a number of concepts relating to firearms.

It should be noted that the ECCP is empowered by Article 17.2 of the Convention to make proposals for adding to the list of arms in Appendix I. This could be important if certain arms should prove to have been omitted or if new and hitherto unknown weapons were to make their appearance. It is important that the control of firearms and co-operation among the Contracting Parties should be easily and flexibly adaptable to developments in weapons techniques and crimes of violence.

18. Appendix II sets forth an exhaustive list of the reservations open to Contracting Parties. Its effect is that the notification system is obligatory for the items covered by sub-paragraphs 1.a to h of Appendix I and optional for the remaining items in that Appendix. The double authorisation system remains optional, even for the most dangerous weapons (see paragraph 13 above).

Comments on the various articles of the Convention

The following observations are called for on the various articles of the Convention.

CHAPTER I

Article 1

This article provides for definitions of the following terms:

1. "Firearm",
2. "Person",
3. "Dealer",
4. "Resident".

1. Because of the difficulty of defining the term "firearm", the experts decided not to encumber the text of the Convention with an analytical definition, but to indicate in Appendix I the meaning to be attached to that term for the purposes of the Convention. For a detailed account of this term, therefore, reference should be made to the comments on Appendix I below.

2. Sub-paragraph b stipulates that the Convention also applies to legal persons having their place of business (including a branch) in the territory of a Contracting Party. Thus all dealings between private individuals, between commercial firms (whether national or multinational), and between private individuals and such firms are covered by the provisions of the Convention. The reason for this is that firms operate on a far greater scale than individuals, so that the Convention would lose much of its importance if they were excluded from it. The only exception to this rule appears in Article 4 and concerns transactions to which the parties are individuals or firms acting on behalf of States.

3. The Convention specifies that the term "dealer" covers any person who is engaged by way of business in transactions involving firearms, including arms manufacturers.

It should be pointed out that the term "dealer" is used only in Appendix II.d, that is for excluding the application of the double authorisation system to dealers. It follows from this that the term does not apply to persons who sell, purchase, etc., such arms occasionally.

4. For the definition of the term "resident", the Convention refers to Resolution (72) 1 on the standardisation of the legal concepts of "domicile" and of "residence", adopted by the Committee of Ministers of the Council of Europe on 18 January 1972. Rule No. 9 in the annex to that resolution stipulates that:

"In determining whether a residence is habitual, account is to be taken of the duration and the continuity of the residence as well as of other factors of a personal or professional nature which point to durable ties between the person and his residence."

The concept of "residence" has traditionally been opposed to that of "domicile".

However, both under certain systems of national legislation and in international conventions, there has been a tendency in recent times to replace the concept of "domicile" by that of "residence". The Convention reflects that trend.

The concept of "residence" serves above all to establish a connection between a person and a place. The concept is often used for this purpose in private international law (including the rules on international jurisdiction), and also to determine the jurisdiction of courts and administrative authorities in domestic law, e.g. to determine the authorities which are competent to issue a licence to acquire or carry arms.

The concept of "residence" has been chosen because it is more closely based on fact and, whilst leaving some room for discretion, is not subjected to any hard and fast definition. If the Convention is to remain a flexible and adaptable instrument - and a convention on a controversial and difficult matter must necessarily meet this requirement- it seems preferable not to define residence in legal terms but to allow it to stay as factual as possible. Account is taken of this in Resolution (72) 1.

The concept of residence depends on the consideration of objective facts. Generally speaking, little weight is placed upon the intentions of the person concerned or upon the outward signs of those intentions.

Residence is something more than mere presence in a place, in other words than a "stay". The concept attaches importance to duration, without specifying the period of time after which a stay becomes residence.

Residence maybe either "simple" or "habitual". For the purposes of the Convention, in other words in determining which authorities are to be informed of transactions involving firearms or be empowered to give the requisite authorisation for such transactions, the experts have opted for the notion of "habitual residence".

The dividing line between (simple) residence and habitual residence - a term often used both in national legislation and in international instruments, including the Convention - is somewhat vague. It is not that different criteria are used but simply that the facts are assessed differently. Certain factors are regarded as more important for the purposes of habitual residence than for the purposes of simple residence, namely the establishment of a household or the carrying on of an occupation at the place of residence. The word "habitual" should therefore be interpreted literally, i.e. as implying a more stable territorial link. That stability may be reflected either in the length of stay or in a particularly close tie between the person and the place.

The nationality of the person receiving the weapon is immaterial in this connection. The Convention thus applies, for example, to a transaction whereby a German national resident in the Netherlands purchases a firearm in the Federal Republic of Germany, but does not apply if he purchases it in the Netherlands. In the latter case, the Convention does not place an obligation on the Netherlands to inform the Federal Republic of Germany (in the case of notification) or to require a German authorisation (in the case of double authorisation). If a

German national resident in the Netherlands purchases a firearm in Belgium, the Convention places an obligation on the Belgian authorities vis-à-vis the Dutch authorities, but not vis-à-vis the German authorities.

The Convention does not apply in principle to transactions to which one of the parties is a person resident in the territory of a non-member State of the Council of Europe or of a member State which is not a Contracting Party to the Convention.

Legal persons are considered to have "residence" where they have a place of business.

Article 2

The Convention does not set out to regulate in detail the administrative assistance which the Contracting Parties agree to afford each other. It merely lays down a general principle, the implementation of which is left to national legislation or international instruments such as that on international mutual assistance in administrative matters drawn up by the Council of Europe (see paragraph 16 above).

The Convention does not cover mutual assistance between judicial authorities, though it goes without saying that the conventions in force on mutual assistance in criminal matters, such as the European Convention of 20 April 1959 (Council of Europe Treaty Series No. 30), remain applicable in so far as the implementation of the present convention results in judicial proceedings.

Article 3

Quite clearly, the Convention does not set out to introduce comprehensive firearms regulations. It passes over a great many matters of detail which remain subject to national legislation.

The Convention does however specify that such laws and regulations must be compatible with its provisions. When signing and ratifying this instrument, States accept an obligation to scrutinise and, as appropriate, in cases where legislative action is called for, to amend their legislation in order to bring national law into line with that established by the Convention.

Article 4

The Convention stipulates that the systems which it advocates should not apply to transactions in which all the parties are States or are acting on behalf of States. The last part of the sentence is concerned with the situation in which international trade takes place through firms or private individuals instructed by governments to make foreign purchases of arms for official, e.g. military, paramilitary or police purposes. The reason for this is that the States would be fully aware of such transactions and it would therefore be superfluous to set the Convention's machinery in motion.

CHAPTERS II AND III

The ultimate purpose of the Convention is to prevent illicit traffic in firearms or ammunition. The immediate purpose is to prevent persons residing in one Contracting State from acquiring in another Contracting State firearms or ammunition which they would not have been entitled to acquire under the legislation of their own State. To that end, as has been explained above, the Convention makes provision for two systems, i.e. notification and double authorisation. Briefly stated, the double authorisation system entails verification by the competent authorities, prior to the transaction, of authorisations issued abroad; under the notification system these authorities are obliged to inform the State in which the buyer resides of each transaction.

The rules relating to notification are laid down in Articles 5 to 9 while those relating to double authorisation are contained in Articles 10 and 11.

Chapters II and III apply also if the agreement relating to the transaction was reached elsewhere than in the State in which the firearm is situated and also if delivery has taken place elsewhere. The relevant factor is the location of the weapon which is the subject of the transaction.

Article 5, paragraph 1

This article obliges a Contracting Party within whose territory a weapon is sold, transferred or otherwise disposed of to notify the Contracting State in which the person acquiring it is habitually resident. This article therefore presupposes a change of possession. The weapon is no longer in the possession of the same person after the transaction.

The word "person" has the meaning given to it in Article 1. b. In practice, the system operates as follows: a person resident in Belgium who disposes of a firearm covered by the Convention to a person resident in the Federal Republic of Germany must inform the Belgian authorities, giving them all particulars of the transaction in order that they may notify the German authorities. Neither the person disposing of the firearms nor the Belgian authorities are required to check that the transaction is authorised by the German authorities.

Regarding loans, it should be pointed out that a number of experts thought it inexpedient to bring the lending of firearms between private individuals within the scope of the Convention. Some of them observed that their national legislation contained no regulations whatever on the lending of firearms which, moreover, are often freely on sale (e.g. hunting weapons); others feared the difficulties which would inevitably arise in the practical application of the controls envisaged. They therefore suggested three possibilities:

- exemption from all notification in the case of short-term loans (two or four weeks, for example);
- stipulation that the concept "disposal" does not include lending in the strict sense;
- amendment of Appendix II, paragraph a, to enable States to make a reservation regarding notification of loans.

On the other hand, certain experts observed that from the standpoints of safety and the prevention of violence, the lending of firearms was in no way different from their sale or transfer.

In view of this argument, it was decided by a majority of the delegation that the term "otherwise disposed of" must be taken to include loans.

The notification system applies to all firearms defined in Appendix I. Each State ratifying the Convention must have legislation allowing it to control all its arms. However, by the reservations referred to in Appendix II, it is possible that certain arms are controlled in one State but not in another State. In this case a distinction can be drawn between two situations:

- if the firearms are subject to control in the purchaser's "State of residence" but not in the State where the transaction takes place, no procedure can be effective because the vendor will not know the purchaser's place of residence, and may not even know his identity;
- if the firearm is subject to control in the State where the transaction takes place but not in the purchaser's "State of residence", the Convention's machinery remains applicable although of less value to the State of residence.

Article 5, paragraph 2

The Contracting Parties undertake to enact the legislation or issue the regulations needed to satisfy the obligation set forth in paragraph 1. They must therefore ensure that dealers and persons disposing of weapons are required to furnish to the competent authority - whose designation is left to each Contracting Party - the following particulars, among others:

- the identity of the person disposing of the weapon;
- the identity of the person receiving the weapon;
- the address of that person abroad;
- the number of his passport or identity card;
- the type, make and characteristics of the weapon in question as well as its number (e.g. Pistol Walter P. 38, 9 mm, No. ...).

These particulars must be supplied, in accordance with Article 8 paragraph 2, to the Contracting Party in whose territory the person receiving the weapon is resident.

Article 6

This article stipulates that the notification system shall also apply to movements of firearms without change of ownership or possession, in order to give States a clearer picture of movements of weapons in their respective territories. It refers particularly to the situation of a private individual possessing a weapon who moves from one Contracting State to another, a private purchaser who has a weapon sent or delivered to him in another country and of a firm moving its stock-in-trade from one country to another in order to sell it there. Transfers for very short periods up to three months followed by return to the country of origin do not fall within the scope of Article 6 but are covered by Article 7 (see below).

Article 7

This article is concerned with firearms in transit. The Convention places no obligation on the Contracting Parties to notify the State or States through whose territory the weapon passes. The article gives the State full discretion to judge the necessity of actuating the warning system. Notification is given only when the State of origin deems it expedient or necessary. The reason for this is that the experts did not wish to encumber the notification system or impose obligations which, in the vast majority of transit cases, would scarcely be justified, e.g. in the case of a Dutch national visiting France to join a shooting party and crossing Belgium with his shotguns. Notification of the Belgian authorities was thought to be superfluous in such a case.

The concept of transit is also included to cover cases in which a firearm is taken temporarily from one State to another and brought back within a very short time to the first State, e.g. the case of a Dutch national travelling to Germany for a day's shooting.

Article 8

This article requires the Contracting States to effect notification as expeditiously as possible. It is of course essential in combating crimes of violence that the authorities of the State to which weapons are transferred shall be informed promptly, if preventive measures (control and possibly confiscation) are to be successful.

Paragraph 2 specifies the details of the transaction which must be given in the notification (see Article 5, paragraph 2).

Article 9

This article lays down rules for the international notification procedure instituted by the preceding articles.

Notification must of course be made or confirmed in writing.

The notifications are made between the national authorities designated by each State, whose identities must be communicated to the Council of Europe for circulation to the Contracting Parties. Notifications may be sent through the International Criminal Police Organisation (Interpol), which has a sophisticated telecommunications network.

Article 10

Article 10 relates to the other systems of international control, that of double authorisation.

This system operates as follows: a person resident in the Federal Republic of Germany wishing to acquire a firearm in the Netherlands applies first (paragraph 2) for the authorisation of the German authorities. Whether or not that authorisation is to be granted depends of course on the relevant German legislation. Having obtained this authorisation, the person in question can apply to the Dutch authorities who, on the basis of the German authorisation, grant a Dutch authorisation (paragraph 1) for the weapon to be transferred from a person resident in the Netherlands to the person resident in the Federal Republic of Germany. It should be pointed out that the Dutch authorities will grant or refuse this second authorisation on the basis of the criteria they would have applied if the person requesting the authorisation had been resident in their own territory and not abroad.

The majority of the experts agreed that the double authorisation system was the one most likely to serve the purposes of the Convention in effectively combating crimes of violence. Nevertheless, in present day society one can scarcely ignore the existence of other considerations which also influence any appraisal of the measures to be taken, particularly industrial and commercial interests.

The following objections were raised from various quarters:

- the double authorisation system would seriously hamper trade;
- the system would be impracticable and entail unduly high administrative costs;
- the system would raise language difficulties;
- application of the system would expose member governments to political pressures from certain lobbies;
- introduction of the system would come up against constitutional obstacles in one member State with a federal structure.

In the view of the majority of experts these difficulties must not be overestimated: although they are real ones they can be overcome by providing the competent authorities with additional resources.

Paragraph 3 attempts to safeguard industrial and commercial interests without detracting from the efficiency of the double authorisation system. It stipulates that, if a person acquiring a weapon does not take possession of it in the territory of the State where the transaction takes place, the authorities of that State may grant the double authorisation more readily than if the person requesting it was resident there or took possession of the weapon immediately. The second sentence of this paragraph thus provides for differences of treatment for the different

categories of persons wishing to acquire a weapon. Turning again to the example cited earlier, the Dutch authorities are still required to ensure that the German authorisation is in order, but are free to grant the second (Dutch) authorisation without having strictly to respect the requirements of Dutch legislation applicable to persons resident in the Netherlands.

It should be pointed out in this context that a general authorisation will normally suffice for commercial purchases by dealers holding a general licence. Private individuals will have to produce an authorisation for each separate transaction.

Paragraph 4 presupposes the institution of an international licence for the acquisition and carrying of firearms. Such a licence, to be sure, is not seriously envisaged at the present time; but the experts are convinced that the firearms licence will be made international sooner or later as is the case with the international driving licence. Paragraph 4 will obviate amendments to the Convention which would otherwise be necessitated by the institution of such a licence.

Article 11

This article corresponds in respect of the double authorisation system, to Article 9, paragraph 3, which is applicable to the notification system.

Articles 12 to 19

Articles 12 to 19 are for the most part based on the model final clauses for agreements and conventions as approved by the Committee of Ministers of the Council of Europe at the 113th meeting of the Deputies. Consequently, they do not call for any particular remarks, with the exception of Article 17, paragraph 2, comments on which have already been given, and of Article 18, paragraph 1, which is based on Article 7 of the Benelux Convention.

APPENDIX I

Explanatory note

1. From the standpoint of violence, the dangers inherent in the arms defined in section A of Appendix I lie mainly in the following factors:

- ease of concealment,
- rapidity of use and firing rate,
- the projectile's kinetic energy together with accuracy of fire.

a. Ease of concealment

Firearms are easier to conceal the shorter they are. Concealment can be considered to become difficult once an arm measures over 60 cm.

To take account of easily effected changes of length, an arm is regarded as short if:

- its barrel does not exceed 30 cm in length, regardless of the overall length of the arm;
- its overall length is not more than 60 cm, regardless of the length of the barrel.

An arm is regarded as long if:

- its overall length exceeds 60 cm and the length of its barrel 30 cm.

b. Rapidity of use and firing rate

By this criterion, arms can be classified as follows:

- automatic arms,
- semi-automatic arms,
- repeating arms,
- single-shot arms, with one or more barrels.

c. Projectile's kinetic energy and accuracy of fire

The projectile's initial kinetic energy, i.e. on leaving the barrel, depends on its mass and speed.

Its residual kinetic energy when it makes impact with a target some distance away will depend on its initial energy, as well as the physical characteristics of the environment in which -the shot is fired, the distance covered by the projectile and its form and substance.

Although an arm's residual kinetic energy is the true criterion of its potential danger in specific circumstances, for simplicity's sake, only its initial kinetic energy has been taken into account.

The precision and accuracy of fire will depend on the ballistic properties of the arm and the ammunition as well as on the firing distance. These are difficult to take into consideration.

On the basis of the above factors, the Committee of Experts divided arms into categories a to n.

2. The Convention concerns only arms, as defined in section A of Appendix I, which are capable of being used for attack or defence or for the commission of a crime. Arms intended for other purposes come outside the scope of the Convention, provided that they cannot be converted into weapons of attack or defence.

For this reason, the committee of experts included in section A.1 the following exceptions which are applicable whenever the above proviso is observed:

- a. arms that have been permanently rendered unfit for use, i.e. arms having been altered in such a way that it is in practice impossible to make them fit for firing any kind of missile.

It is desirable that an official authority should be made responsible for the individual control of arms rendered unusable;

- b. arms not subject to control, on account of their low power, in the State from which they are to be transferred;

- c. arms designed for alarm purposes, i.e. those with which only blank ammunition can be used;

- d. signalling arms, i.e. arms which are intended to fire flares, cannot be used for firing any other type of projectile and whose initial kinetic energy does not exceed a fixed limit;

- e. animal slaughtering arms whose bolt cannot detach itself from them;

- f. harpoon guns for hunting and fishing;
- g. life-saving devices, e.g. rope-throwers;
- h. arms for industrial and technical purposes;
- i. antique arms, such as muzzle-loading long arms or single-shot single-barrel, muzzle-loading short arms.

3. Points A.1.f and g refer only to arms intended for attack or defence.

4. The term "ammunition" used in point A.3 refers exclusively to ammunition which is ready for immediate use and not to the component parts of ammunition.

5. The experts did not decide on the technical specification for alterations to be made to arms to render them unfit for use (Appendix I, A.1.g) and considered that, if need be, this matter might later be examined in detail within the framework of Article 17, paragraphs 1 and 2, of the Convention.

The same solution was adopted in respect of a list of substances which are considered harmless to human life and health (Appendix I, A.1.g).

APPENDIX II

This Appendix sets out the four reservations which Contracting Parties may make when depositing their instruments of ratification, acceptance or accession in accordance with Article 15, paragraph 1.

Reservations a to c enable States to choose the obligations under the Convention "A *la carte*". As a minimum, they are obliged to notify transactions involving the weapons listed in Appendix I. a to h.

Moreover, they are free to accept notification in respect of the other weapons and double authorisation in respect of all the arms listed. Initially, therefore, they can gear their obligations under the Convention to their treaty obligations in the light of social and technological trends, including the development of crimes of violence.

Article 15, paragraph 3 establishes the principle of reciprocity in respect of the reservations.

The reservation in d enables States to apply less stringent rules to dealers, who are subject to specially rigorous controls under all systems of national legislation.