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Office on Drugs and Crime

**Second Biennial Meeting of States to Consider the Implementation of
the Programme of Action to Prevent, Combat and Eradicate the
Illicit Trade in Small Arms and Light Weapons in All its Aspects
New York, 11-15 July 2005**

**Thematic discussion on linkages between terrorism, organised crime,
trafficking in drugs and natural resources**

*Statement by Ms. Johanna de Winter, United Nations Office on Drugs and Crime
New York Liaison Office*

FULL VERSION

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Entry into Force of the UN Firearms Protocol

1. One of the recent progresses on the fight against the illicit trade in small arms and light weapons is the achievement of the entry into force on 3 July 2005 of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime (Firearms Protocol). At the time of writing, the Firearms Protocol, signed by 52 Member States, has received the following 42 ratifications: Algeria, Azerbaijan, Belarus, Belgium, Benin, Bulgaria, Burkina Faso, Cape Verde, Costa Rica, Croatia, Cyprus, El Salvador, Estonia, Grenada, Guatemala, Jamaica, Kenya, Lao People's Democratic Republic, Latvia, Lesotho, Liberia, Libya, Lithuania, Malawi, Mali, Mauritius, Mexico, Netherlands, Norway, Oman, Panama, Peru, Poland, Romania, Saint Kitts and Nevis, Slovakia, Slovenia, South Africa, Turkey, Turkmenistan, Uganda and Zambia. Given that the Protocol is included in this year's annual Treaty Event Focus 2005: *Responding to Global Challenges*, to be held at the United Nations Headquarters in New York from 14 to 16 September 2005, further ratifications and accessions are expected.

2. From 10 to 21 October 2005, the Conference of the Parties to the United Nations Convention against Transnational Organized Crime and the Protocols thereto, established in accordance with article 32 of the Convention, will hold its second session in Vienna and embark on the review process of the implementation of the Firearms Protocol.

New Security Challenges: SALW and the Uncivil Society

Uncivil society: emerging threats

3. The benefits of globalization have been embraced by many criminal groups who have recognized and taken advantage of the opportunities for transnational crime. Changes in the nature of governance in some parts of the world since the end of the Cold War are having, and will continue to have, important impacts. In this context some societies – particularly those in transition, conflict, or with weak states – will be particularly vulnerable to the activities of transnational organized crime and its potential links to corruption and terrorism. That does not mean that other parts of the world will not have (or continue to have) their own problems of transnational organized crime, but that given particular conditions in some countries, or parts of them, these have the potential to serve as 'springboards' for organized criminal activities of a transnational nature.

4. The link between organized crime and terrorist groups, often in the context of weak, failing or conflict ridden states, must be viewed with concern. While criminals and terrorists can, in broad terms, be distinguished by their motives – the aim of the former being profit and the latter the promotion of political ideology – the distinction in some cases has blurred. Providing a clear explanation of how this occurs is complicated by the fact that when it occurs cooperation between criminal and terrorist groups generally falls along a spectrum. In its most extreme form, at one poll of the spectrum, the activities of some criminal and terrorist groups (most particularly in conflict areas) are indistinguishable. Terrorist groups may smuggle drugs or people for profit, while criminal groups may terrorize for political ends. In some cases, the conduct of illegal economic activity by terrorist groups subverts their ideological aims as members' key activities centre on the acquisition of illegal resources, ensuring that in the end ideology becomes secondary to profit. More commonly, however, and moving towards the other end of the

spectrum, criminal groups may render services to the terrorist, through the provision of false documentation or weaponry for payment.

5. In the extreme cases, a strong nexus between organized crime, terrorism and corruption develops. Seeking funding, some terrorist or guerilla groups (the state sponsorship of which has declined since the end of the Cold War), seek income to sustain their activities through illegal means, such as drug trafficking or armed robbery. For this reason, maintaining links to organized crime allows for the use of already established smuggling routes, tested by crime syndicates for drug and arms trafficking and moreover, provides terrorists with logistical infrastructure to carry out trafficking activities of people, arms and materiel and other criminal acts. Organized crime on the other hand takes advantage of the control of specific territories by terrorist or guerilla groups. In addition, the prevalence of corruption in some countries fuels organized crime and terrorism, facilitating illegal activities such as the acquisition of counterfeit state and travel documents, and hampering the efforts of honest law enforcement officials. In the worst case, it results in 'capture' of the state or some of its sectors by criminal interests.

6. Understanding the links between organized criminal and terrorist groups remains a key challenge with a burgeoning debate both as to their nature, but also the implications for global security¹. Whatever the nature of the links in any particular case, given that both organized criminal activity and terror adopt the same methods – cell like structures, secret communications, the movement of financial resources, codes of silence, the use of violence to control and intimidate – similar responses are required. Building law enforcement capacity to counter organized criminal activity and related corrupt practices, therefore, also reinforces the ability to effectively control terrorism. But, this implies that states have both the will and capacity to achieve this goal. In a few cases, however, a high level of tolerance amongst governments and citizens has developed for criminal activities. This reflects both a feeling of helplessness among citizens, lack of political will, political complicity and a dearth of expertise and mechanisms of national and/or regional cooperation to combat organized crime. Corrupt officials are often seen as beyond the law. The low rate of prosecution of corruption cases serves to reinforce this sense of helplessness. Police and prosecution, even if they themselves are not corrupt (or perceived as such), do not possess the resources and knowledge to fight organized crime. Those involved in organized crime benefit from resources that those responsible for combating it do not have. The result is a vicious cycle where organized crime gets stronger and law enforcement weaker.

7. Ensuring public safety and providing a system of justice are core functions of government. Corruption of those functions has a ripple effect that touches almost every aspect of political and economic life. Left unchecked judicial and police corruption poses a powerful threat not only to the courts and the police but to the freedom and prosperity these institutions are designed to preserve. The consequences of this type of corruption are by no means limited to the domestic arena and corruption in judicial and law enforcement systems in one country threatens the ability of the global community as a whole to respond effectively to the growing threat of international crime.

¹ Sanderson T.M. (2004), 'Transnational Terror and Organized Crime: Blurring the Lines', SAIS Review, Vol XXIV, No. 1, Winter-Spring.

SALW and the Uncivil Society

8. The nexus between terrorism and organized crime as described above is further enabled through the widespread availability of small arms and light weapons that can be both trafficked for money and used in operations. Conflicts in the former Yugoslavia, West Africa, East Timor and Central, South and South-West Asia have only invigorated the demand for illicit weapons². There are clear links between this trade in illicit firearms and organized crime – not only do criminal groups make use of firearms but are also involved in their illicit transfer. Recently completed UNODC studies of organized crime in West Africa and Central Asia indicate in both regions that criminal groups are actively engaged in the theft and smuggling of firearms³. In both regions criminal groups have acquired weapons not only for their own activities but to sell them onto warlords, rebels or terrorist groups. EUROPOL's 2004 review of organized crime in the European Union also notes the continued role of organized crime groups in the illicit firearms trade originating in the Balkans, with firearms being made in legal and illegal armoury workshops as well as those stolen from military warehouses being trafficked⁴.

9. Illicit trafficking in firearms ensures their availability and misuse in various parts of the world with a wide range of humanitarian and socio-economic consequences. These include: sustaining conflicts, increasing their level of violence and impact, displacing civilians, undermining respect for international law, impeding the provision of humanitarian assistance to victims of armed conflict, and fuelling violent crime. Often weapons are diverted from poorly secured government stockpiles by corrupt officials or thieves, but frequently transactions are facilitated by illicit brokers taking advantage of poor or non-existent import and export controls. Porous international borders and corrupt or ill-trained law enforcement in many countries have also played a role enabling the growth of the arms trade, to the benefit of organized crime and terrorist groups.

10. While accurate estimates of the number of small arms in circulation are difficult to make – by some accounts there are some 500 million, or one weapon for every twelve people⁵ – the easy availability of firearms in some regions and countries, particularly those in conflict, suggest that the problem has reached significant proportions. The continued production of new weapons – there are some 1,249 companies in more than 90 countries involved in some aspect of small arms and light weapon production⁶ – ensure that stockpiles of older (and now cheaper) weaponry become available, often on the illicit market. There are also other even more dangerous opportunities for criminal involvement in the weapons trade: the potential for trafficking nuclear and other radioactive materials and biological and chemical weapon relevant material by organized crime groups. There is some evidence that organized criminal groups have been involved in such illicit trafficking, although the overall nature and extent of their involvement remains unclear⁷. Nevertheless, given the links between organized crime and terrorist groups in

² Sanderson p.51.

³ United Nations Office on Drugs and Crime (UNODC) (2005), *Transnational Organized Crime in the West African region*, New York.

--- (2005), *Transnational Organized Crime in the Central Asian Region*, (unpublished).

⁴ EUROPOL (2004) *European Union Organised Crime Report*, Open Version, December, p.14.

⁵ This figure is used in several publications (see Oxfam (2001), *Up in Arms: Controlling the International Trade in Small Arms*, July.p.2).

⁶ Graduate Institute of International Studies, Geneva. (2004). *Small Arms Survey 2004. Rights at risk*. Oxford: Oxford University Press.

⁷ Submission by the International Atomic Energy Agency (IAEA) to the UN Systems Chief Executive's Board, June 2004.

some regions, preventing such material falling into criminal hands must be regarded to be of the highest priority.

Main requirements of the Firearms Protocol

11. Despite the fact that its ambit is restricted to firearms⁸ – thus excluding light weapons –, the Firearms Protocol is the first legally binding measure⁹ to be adopted at the global level, addressing issue of some importance as indicated above.
12. Article 5 of the Firearms Protocol requires the criminalization of the offences relating to the illicit manufacturing of and trafficking in firearms, their parts and components, and ammunition, as well as to the tampering with firearms markings without including the elements of transnationality and the involvement of an organized criminal group. Generally, these criminalization requirements are intended to ensure that States parties establish a legal framework within which legitimate manufacturing and transfer of firearms can be conducted and which will allow illicit transactions to be identified to facilitate the prosecution and punishment of offenders.
13. With the aim of supporting these criminal offences to be established by States parties, the Firearms Protocol also sets out various control measures. The scope of application of those measures, as defined by Article 4, paragraph 2, provides that the Protocol “shall not apply to state-to-state transactions or to state transfers in cases where the application of the Protocol would prejudice the right of a State Party to take action in the interest of national security consistent with the Charter of the United Nations”. The intention in paragraph 2 was to exclude certain transactions or transfers that involve States. The extent of the limitation depends on the interpretation of the terms “state-to-state transactions” and “state transfers”. Generally, this is left to States parties, but the drafters were concerned that the Protocol should apply to activities undertaken by States parties on a commercial basis, such as the dealings of state-owned or -operated manufacturers of firearms. To clarify this, the interpretative notes to the Protocol indicate that the words “state-to-state transactions” refer only to transactions by States in a sovereign capacity, thereby excluding States acting in their commercial capacity.
14. The following control measures are, among others, provided for by the Firearms Protocol: firearms must be uniquely marked to support identification and tracing (Art. 8); systems must be established for the issuance of import and export authorizations (Art. 10); and records must be kept to support later tracing, based on the information generated by marking the firearms and the issuance of authorizations (Art. 7). In addition, the Protocol establishes rules for confiscation, seizure and disposal of firearms, their parts and components and ammunition (Art. 6). The Protocol also sets standards for the deactivation of firearms (Art. 9) and requires States to consider measures to regulate brokers (Art. 15).

⁸ It covers “portable barrelled weapons that expel, are designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, including antique firearms or their replicas” (art. 3(a) of the Protocol).

⁹ The Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, agreed upon in the context of the relevant United Nations Conference (New York, 9-20 July 2001), although not legally binding, has also served to raise the level of commitment of States to address the issue of the illicit trade in small arms. See the Report of the Conference (A/CONF.192/15) and Graduate Institute of International Studies (2002) pp. 203-231.

15. Given their complex and technical nature, the adequate implementation of the provisions of the Protocol on firearms presents a challenge to many countries, particularly in the area of marking and recording. The Protocol highlights the critical importance of providing adequate levels of technical assistance in this regard (Art. 14)

Road Ahead

16. This note outlines the critical steps that have been taken to respond to the issue of trafficking in small arms and light weapons by transnational organized crime groups. Most significant is the Firearms Protocol – here the challenge remains to ensure that more States ratify and implement the instrument and that adequate support is provided to developing countries to ensure its effective implementation. It is critical that the experience of effectively implementing the Protocol be gained, particularly in countries where resources for marking and record keeping may be limited. Lessons from such efforts will be important in informing the United Nations conference to review progress made in the implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, to be held in New York for a period of two weeks between June and July 2006.

17. Since the adoption of the United Nations Convention against Transnational Organized Crime and its Protocols by the General Assembly, promoting ratification of those instruments and providing assistance to States seeking to ratify and implement them has been a top priority of the United Nations Office on Drugs and Crime. Immediately following the conclusion of the High-level Political Signing Conference held in Palermo, Italy, from 12 to 15 December 2000, the Office began developing and putting in place a strategy and a series of activities to promote the ratification of the Convention and the Protocols thereto. The Office's immediate goal was to support the speedy entry of the instruments into force. Upon the entry into force of the instruments, the objective of the Office's activities have shifted to focus on the universal ratification of and full compliance with the instruments, with a view to assisting Member States in combating effectively organized crime. With the aim of facilitating its assistance activities to States in the ratification and implementation process, the Office has developed the Legislative Guide for the Firearms Protocol, which identifies legislative requirements, issues arising from those requirements and options available to States in developing the necessary legislation. The Guide is made available in all official languages and can be downloaded from the following website (http://www.unodc.org/unodc/en/organized_crime_convention_legislative_guides.html).

For more information, please contact:

Crime Conventions Section
Division for Treaty Affairs
United Nations Office on Drugs and Crime
Vienna International Centre PO Box 500 A-1400 Vienna Austria
FAX: +43-1-26060-5841
Email: crimeconventions@unodc.org