



**FIREARMS REGULATIONS
IN VARIOUS FOREIGN COUNTRIES**

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FIREARMS REGULATION: A COMPARATIVE STUDY

Introduction

The paramount aim of most countries in regulating the acquisition, possession, use, manufacture, transport, sale, and importation of firearms and weapons is to provide protection for the general public without impinging on the legitimate interests of those who use firearms for sport and recreation or who require them as an essential part of their occupation. It is safe to assert that all countries have some form of firearms regulation, ranging from the very strictly regulated countries like Germany, Great Britain, Japan, and Malaysia to the less stringently controlled uses in the jurisdictions of Mexico and Switzerland, where the right to bear arms continues as a part of the national heritage. Canada recognizes a certain right to own a rifle or shotgun but not other types of weapons.

The general increase in crimes of violence during the past twenty years, fueled by the international drug trade, repeated acts of terrorism, and publicized cases of mass murder, in addition to the general technical advances in the science of killing, has led many countries to reassess the effectiveness of their regulatory methods for preventing crime and violence among their people. Penalties for drug-related offenses and crimes involving weapons are being increased. Importers, manufacturers and dealers in weapons are being subjected to additional regulations and prohibitions.

Available statistics point to a diminishing of crimes involving guns when the laws against their use are strictly *enforced*. However, among the countries surveyed, it is difficult to find a correlation between the existence of strict firearm regulations and a lower incidence of gun-related crimes. For instance, the gun-related crime rate is much higher in the strictly regulated Federal Republic of Germany than in the neighboring states of Austria and Switzerland which have simpler and less restrictive legislation. Switzerland, for example, permits those citizens who serve in the armed forces to maintain their weapons at their home.

The means by which many countries have attempted to meet the threat of increased criminal activities involving firearms has been by:

1. increasing the regulatory and registration provisions of current gun control laws,
2. prohibiting the possession and use of certain weapons,
3. strengthening the penalties for offenses involving the use of firearms, and
4. cooperating with neighboring countries in curtailing the illegal transfer and importation of weapons.

The countries surveyed in this study are Argentina, * Australia, Canada, China, Czechoslovakia, Egypt, the Federal Republic of Germany, France, Great Britain, Greece, India,

* No country report was included for Argentina.

Israel, Italy, Japan, the Republic of Korea, Malaysia, Mexico, the Netherlands, New Zealand, Nigeria, Poland, South Africa, Sweden, Switzerland, Turkey, and the USSR. Twelve of the countries have a "federal" form of government; of these Canada, Czechoslovakia, India, Italy, Mexico, Nigeria, South Africa, and the USSR regulate firearms on the federal level. Although Australia and Switzerland have federal regulation on the import and export of weapons, they leave the regulation of firearms to the states (i.e. in Switzerland, the Cantons). The Federal Republic of Germany has a federal weapons law, generally administered by the states (Lander).

Possession and Use

Prohibited Use

A majority of the countries surveyed have laws that prohibit the possession and use of certain weapons by the general public. Most often, this category includes machine guns and fully automatic weapons. Several countries prohibit assault weapons and silencers. Canada prohibits sawed-off shotguns, while Mexico and Turkey preclude various sizes of pistols and rifles. A chart of the prohibited weapons by country is included as Appendix A.

Restricted Use Weapons

The purchase and possession of a restricted firearm usually requires some form of permit, certificate or license. In Canada, China, and Switzerland, a separate permit is required every time the firearm is removed from its original location (usually a home or place of business). Registered hunters, members of shooting clubs, and antique dealers have the easiest time in obtaining permits to purchase firearms. However, in Japan, Germany, New Zealand and the USSR, documentation of training in the use of the firearms is required before a permit is issued.

It is more difficult to obtain a permit to carry firearms. Such permits are often reserved for high government officials and those whose occupation involves some degree of danger, as in the transport of valuable goods such as money, drugs and weapons. The level of need that must be shown for this type of license is usually so high as to be almost prohibitive for the general public.

Self protection is not considered a valid reason for obtaining a firearm in many countries. However, Israel, due to the volatile situation in that area, permits licenses for the head man of a settlement, the owner of a business, and escorts for an outing or camping trip. Permits for non-excluded firearms in Turkey may be obtained by some farmers, cashiers of highway gas stations, captains of ships and, based on reciprocity, diplomats and the personnel of foreign airlines. In New South Wales, Australia, shotguns and rifles are available to farmers who use the weapons against vermin and to licensed members of shooting clubs. Generally, with the exception of licensed gun collectors, it is very difficult for a member of the public to prove the need to possess a semi-automatic weapon.

Several countries do not require one to register or to obtain a permit for antique guns or air guns. Japan has several categories of persons who may more readily obtain certificates, including those engaged in weapons research and those who participate in international target shooting events. Mexico authorizes those who work for the national, state, and local governments

to obtain firearms, if they can show a need; and China allows certain confidential liaison officers in the Communist Party to have weapons, as well as customs personnel and guards in military production plants, radio stations, scientific research units, and in various transportation facilities. The Ruler of Malaysia and the Ruler's spouse may possess firearms without the requirement of a license.

A license for simple possession is often for an unlimited period, subject to being revoked if the reason for the issuance has changed or the status of the applicant falls within one of the restricted areas. The time period for which permits are issued to carry weapons ranges from three months in Greece to every five years in France.

Restrictions on Granting Permits

Various restrictions are imposed upon those who wish to acquire, possess, or transport firearms that automatically bar them from the privilege. Refusal of a permit is automatic for those under a certain age. A majority of the surveyed countries require the permit holder to be at least eighteen years of age, with certain exceptions allowed for hunting and athletic events. South Africa allows sixteen-year olds to obtain a permit to use firearms and minors under sixteen may have a permit for training under the supervision of an adult license holder. Korea requires the possessor of firearms to be at least twenty years old, and Turkey maintains an age limit of twenty-one years in order to carry a weapon.

Others who are invariably prohibited from possessing firearms are those with a history of mental illness, violent behavior or a criminal record, especially if the latter included a crime involving the use of a firearm. Those addicted to drugs or alcohol are often eliminated from consideration. The courts in Sweden are under an obligation to notify the police whenever a defendant is convicted of violating the Gun Control Law or Regulation or found guilty of any other crime in which a firearm was involved. In addition, those authorities who deal with alcoholics must notify the police or defense authorities whenever they treat a person who has or may be presumed to have a permit to possess a weapon. A similar obligation is extended to hospitals with regard to patients under treatment for psychiatric problems.

A medical certificate of mental and physical health must accompany the application for a permit in Czechoslovakia. Germany, Japan, Korea, New Zealand, Sweden and the USSR require documentation that shows adequate training in the use and safety procedures for the applicant's firearms. For a hunting gun, additional tests may be required on the operation and handling of the weapon.

In Japan, the homeless are not eligible to receive a gun permit, and in Mexico, the applicant must have an honest means of living and must have completed his military service obligation. There does not appear to be any specific waiting period required. However, in countries like Australia, Canada, Germany and Japan, the testing requirements and background checks are very extensive, and these are likely to result in a waiting period of some duration.

Restrictions on Manufacturers, Dealers and Importers

Restricting the importation of prohibited weapons, imposing extensive registration and

record-keeping requirements on dealers in weapons, and creating government monopolies with regard to the manufacture of firearms are various methods by which countries have sought to control the distribution and use of restricted and prohibited firearms. All countries have certain prohibitions on the import, export and transport of weapons without some type of authorization. India permits state governments to issue licenses for the manufacture of specific arms. However, all firearms must be proof tested in accordance with regulations of the Central Government before being sold. Italy has established a Central Consultative Committee on the Control of Firearms which is concerned with the questions of arms control and security, including the manufacture, repair, storage, import, export, transport, and sale of arms. There is a central National Catalog of Common Firearms containing the official descriptions and restrictions on the various firearms. A National Testing Bank is responsible for testing, verification, and certification of the suitability of all firearms, except those that have been tested by a recognized foreign bank, or are destined for the national military corps or foreign armed forces.

In the Federal Republic of Germany, manufacturers and importers must affix an indelible mark on the weapon, designating the dealer or manufacturer and including the type of ammunition required and a registered serial number. Records must be maintained by dealers and manufacturers indicating the type and number of weapons produced and to whom sold. Retailers of ammunition must also keep records on the acquisition and disposition of materials.

Import restrictions of prohibited weapons may also apply to the parts of the guns as well as to the assembled weapons. In France, the importation of forbidden arms and ammunition must be accomplished through a registration process, with exceptions made for firearms used in target shooting or as historical weapons or collectors' items. Dealers in weapons must also be French citizens, and all purchased firearms or those traded must be registered.

The manufacture of firearms for private use in Turkey is completely forbidden, except by the government weapons industry established to supply the armed forces. The importation of firearms is permitted only to supply license holders and to be used for sport or hunting. The sale of firearms by private gun dealers is also prohibited. However, the government supported industry may supply guns to legitimate license holders. Buyers must obtain a sale permit from the governors, and any sale is reported to the police with the identity of the buyer and the specifics concerning the gun. Repairing a weapon also requires a separate license in the Netherlands, Nigeria, and several other countries. Nigeria also requires the manufacture and assembly of firearms to be accomplished only in a public armory or official arsenal, unless special permission is obtained from the Police Inspector General.

In Argentina, only duly registered importers may import weapons of war. All transactions with traders and dealers in weapons must be recorded. Pawnbrokers and lending institutions must record all activities relating to auctioning of weapons for civilian use, and dealers must maintain exact inventories. The manufacture and importation of firearms are prohibited except when specifically permitted by law and regulation.

The Mexican Minister of Defense must authorize all manufacturers or traders in firearms. The manufacture and sale of firearms in Switzerland is strictly a federal monopoly. Export and import licenses are required and the national interest takes priority whenever shipments of arms are concerned. Licensing of manufacturers and importers of arms in Israel is done by the Minister

of Interior.

A further restriction is imposed by the parties to the European Convention on the Control of Firearms. Under this agreement, which applies to Greece, Italy, the Netherlands, Spain, Sweden, Turkey, and West Germany, when weapons are sold, transferred, or disposed of from one country to a person or persons in another country, the former country must notify the latter of the particulars of the transaction as quickly as possible. Belgium, the Netherlands, and Luxembourg have a cooperative agreement concerning the uniformity with respect to permits and the requirements for the transport of weapons between themselves.

Offenses and Penalties

Penalties imposed for the misuse of firearms range from three months in prison to the death penalty. Carrying a weapon without a permit is more serious than simple possession at home or in a place of business. Committing an offense with a firearm, or possession with intent to endanger life or injure property results in greater penalties; additional circumstances, such as engaging in a conspiracy or activities against the state or dealing with prohibited weapons, will also result in higher penalties.

China is the only country imposing the death penalty for the crime of manufacturing, trading in, transporting or stealing guns and ammunition, depending on the seriousness of the action and the resulting consequences. Switzerland and Great Britain sentence offenders to life in prison for using firearms in committing a crime, depending on the seriousness of the crime. China imposes penalties of three years to life in prison for the manufacture or stealing of guns or ammunition for revolution or sabotage. The death penalty is also authorized in Nigeria when firearms are used in a robbery and personal injury results. Malaysia imposes a mandatory death penalty for any person attempting or abetting the commission of an offense where a firearm is discharged with intent to injure, even if no harm is caused. A death sentence will also be imposed in this country on a person apprehended with any firearm or ammunition in a "security area" without lawful authority.

Great Britain, Greece and Mexico maintain the lowest penalty for mere possession of firearms without a permit - a minimum of six months in prison. Other countries have penalties for possession ranging from eight months to ten years in prison, with extra penalties required for possessing prohibited weapons or being charged with a second offense. In Australia (N.S.W.), a parent or guardian is liable for the crime of a child under eighteen years, if the parent or guardian permitted contravention of a provision of the Firearms Act. A chart of the offenses and penalties for the misuse of firearms in the surveyed countries is included as Appendix B.

Prepared by Robert L. Nay
Acting Chief
American-British Law Division
May 1990

FIREARMS PROHIBITED

Country	Prohibited Firearms
Argentina	Weapons, gunpowder, explosives (except for use by armed forces or as provided by law)
Australia (N.S.W.)*	Machine guns or firearms that look like automatic weapons; self-loading rifles designed to have or fitted with a pistol grip; firearms with silencer or muffler; miniature pistols; firearms that look like pens, pencils, walking sticks, etc.; any explosive or incendiary devices
Canada	Generally prohibits all automatic weapons. Except for gun collectors, sawed-off shotguns and silencers are also prohibited
China	All firearms restricted; none completely prohibited
Czechoslovakia	All firearms restricted; none completely prohibited
France	Semi-automatic and other assault weapons
Germany, Federal Republic of	Fully automatic weapons and other firearms that have the appearance of being fully automatic war weapons
Great Britain	All automatic and semi-automatic firearms; short barrel shotguns; rocket or missile launcher; self-loading or pump-action smooth-bore guns, not chambered for .22 caliber rim-fire cartridges, the barrel of which is less than 24 inch or overall length of which is less than 40 inches.

* The Prohibited Weapons Act, 1989, although passed by the Parliament of New South Wales, has not yet been proclaimed in force.

Any cartridge with bullet designed to explode on impact and any ammunition containing noxious substances or designed to explode on impact.

Greece	All firearms restricted; none completely prohibited
India	All firearms prohibited unless licensed; semi-automatic assault weapons totally banned
Israel	All firearms restricted; none completely prohibited
Italy	War weapons and war-type weapons which include automatic weapons, and the ammunition for such weapons
Japan	All firearms restricted; none completely prohibited
Korea	Manufacture, sale or possession of toy guns of metal that resemble real guns (except for export purposes)
Malaysia	Automatic weapons of any kind and arms that discharge noxious liquids or gas; grenades, bombs, or other explosive weapons.
Mexico	Instruments that can only be used to attack and have no application for work or recreation. Revolvers of a calibre greater than .38, 9 mm. Luger, and similar pistols, rifles and carbines with "burst" capacity, submachine guns, shotguns shorter than 25", short carbines, all models of .30 carbines, and the ammunition for all the preceding weapons
Netherlands	All firearms restricted; none completely prohibited
Poland	All firearms restricted; none completely prohibited
South Africa	All firearms restricted; none completely prohibited
Sweden	All firearms restricted; none completely prohibited

Switzerland	Machine guns, machine pistols, explosive weapons, weapons (Zurich) simulating items of daily use
Turkey	War weapons, automatic or telescopic firearms, guns with more than a 10-bullet capacity and all firearms with barrels longer than 15 centimeters (except for hunting guns)
U.S.S.R.	Those weapons used exclusively by the Soviet Army and Navy

MISUSE OF FIREARMS - OFFENSES & PENALTIES

Country	Offenses	Penalties (prison sentences, fines)
Argentina	Carrying weapons, except for legitimate use	max. 10 yrs.
	Manufacture & transport of prohibited weapons	max. 15 yrs. (aggravated if crime vs. national security)
	Stockpiling weapons for civilian use	3 mos. - 6 yrs. (doubled if police official is offender)
Australia (N.S.W.)***	Possession, buying or selling or use of firearms without permit	max. 10 yrs. or fine of \$A5,000
	Manufacture, buying, selling, transfer or repair without permit	max. 7 yrs. or fine of \$A5,000 or both
Canada	Offenses related to certificates & permits (false statements)	max. 2 yrs.
	Use of firearms without permit or possession of prohibited weapons	max. 5 yrs. or 10 yrs.
	Sales of firearms - not keeping	max. 2 yrs. or 5 yrs.

*** The Firearms Act, 1989, although passed by the Parliament of New South Wales, has not yet been proclaimed in force.

records, sale to unauthorized persons, failure to report lost or stolen weapons

China

Manufacturing, seizing, or stealing guns or ammunition for revolution or sabotage

3 yrs. or life

Illegal manufacture, trade, transport, or stealing of guns, ammunition

max. death, depending on seriousness and resulting consequences

Czechoslovakia

Accumulating, manufacturing, or procuring weapons, ammunition

max. 3 yrs.

If act committed on large scale or under state of emergency

1-5 yrs.

France

Unauthorized manufacture or trade in restricted weapons

1-5 yrs., fine of 360-30,000 francs

Importing restricted or prohibited weapons without license

2-5 yrs., fine of 3,600-60,000 francs

Germany,
Federal
Republic of

Manufacture, acquisition, possession & sale or transfer of prohibited firearms

1-5 yrs. (if aggravated circumstances - 10 yrs.)

Unauthorized manufacture or trade in restricted weapons

6 mos. - 5 yrs.

Unlicensed acquisition, possession & carrying by individual

max. 3 yrs., or fine (can be higher, depending on circumstances)

Other lesser offenses

fines up to 10,000 Deutsche marks

Great Britain	Possession of firearms or ammunition without a certificate	6 mos.- 3 yrs., a fine, or both
	aggravated case	15 yrs., a fine, or both
	selling firearms to a person without a certificate	6 mos. - 3 yrs., a fine, or both
	possessing firearm with intent to endanger life, injure property, commit offense or using firearms to resist arrest	life imprisonment, a fine, or both
	carrying a loaded firearm in a public place	6 mos. - 5 yrs. imprisonment, a fine, or both
Greece	Possession or carrying of firearms without proper permit	at least 6 mos. & fine of 5,000-75,000 drachmae
	Second offense	at least 2 yrs. and 150,000 drachmae fine
	Supplying others with firearms including automatic weapons to commit felony	5-15 yrs.
	Member of group being supplied, if they have knowledge of illegal supply	5-15 yrs.
India	Manufacture, importation or dealing without a license	max. 3 yrs. imprisonment, or with fine, or with both
	Possession of firearm or ammunition without a license, or in violation of the conditions of a license	max. 3 yrs. imprisonment, or with fine, or with both

	Carrying a firearm without a license	max. 3 yrs. imprisonment, or with fine, or with both
	Repeat offenses	double the penalties
Israel	Manufacturing, importing and dealing without license	max. 2 yrs., with possible fine
	Possession of prohibited weapons without license, or violation of conditions of license	max. 1 yr., with possible fine (penalty double if involved military firearm)
	Holding of arms without permit	7 yrs.
	Carrying of arms without permit	10 yrs.
Italy	Manufacture, sale, import, or transfer without permit	2-8 yrs. & fine 533,000-3,666,000 lire
	Illegal possession	8 mos.-5 yrs., 4 mos. & fine of 267,000-2 million lire
	Illegal carrying in public place	1 yr., 4 mos. - 6 yr., 8 mos. & fine from 267,000--2,666,000 lire
	Carrying arms on board aircraft	max. 5 yrs & fine 1 million lire
	Altering weapons	1-3 yrs & fine up to 4 million lire
	Acquiring or sale of arms by mail	1-6 yrs & fine up to 300,000 lire

Japan	Illegal possession of firearms	max. 10 yrs. & fines up to 1 million yen
	Illegal importation of firearms	1-10 yrs.
Korea	Manufacture, sale, import, export possession of firearm without permit	max. 10 yrs. & fine up to 10 million won
	Failure to report firearm, making a false report, or carrying or transporting, using or altering firearms, other than permitted by law	max. 2 yrs. & fines up to 2 million won
Malaysia	Possession, control or carrying arms without license	max. 7 yrs. or fine M\$10,000 or both
	Manufacture of arms or ammunition in contravention of valid license or conditions imposed (business entity)	death, imprisonment and whipping max. fine M\$500,000
	Use of arms or imitation arms to prevent lawful apprehension of any person	max. life imprisonment
	Willful forging or obliteration of identification mark or destruction of firearm	max. 2 yrs. or fine M\$2,000 or both
	Offenses in connection with licenses to purchase, obtain or transfer arms	max. 2 yrs. or fine M\$2,000 or both
	Offenses in connection with dealers' or repairers' license	max. 7 yrs. or fine M\$10,000 or both
	Offenses in connection with licenses to import and export arms	max. 7 yrs. or fine M\$10,000 or both
Mexico	Manufacture, storage, importation	3 mos. - 3 yrs. & fine

	or transfer of prohibited weapons	up to 100 days of person's net income
	Carrying or selling pistols or revolvers or other arms illegally, or manufacturing, importing or selling firearms without authorization	6 mos. - 3 yrs., & fine of 10-2,000 pesos
Netherlands	Transport, possession, repair, trade or storage of pistol or revolver	max. 9 mos. or fine of 25,000 guilders
	If more than a single firearm involved, or possession is on an aircraft	max. 4 yrs. & fine of 100,000 guilders
New Zealand	Unlawful possession of pistol or restricted weapon	max. 3 yrs.
	Unlawful possession of other firearms	max. 3 mos.
	Use of firearm in committing a crime	max. 10 yrs.
	Use of firearm vs. a law enforcement officer	max. 14 yrs.
Poland	Illegal manufacture, possession or transfer of airguns	max. 3 mos. or fine of 4,500 zlotys
	Illegal transfer of firearm	max. 3 yrs.
	Manufacture or possession of firearm without permit	max. 5 yrs.
South Africa	Possession, manufacturing, import, export or dealing in firearm and ammunition without license or permit required or making false statements to obtain a license or permit	max. 2 yrs. or fine max. 1,000 rand or both
	Second offense	max. 3 yrs.

Sweden	Possession, importing and dealing with firearms without a permit	max. 2 yrs.
	Misuse by person with a permit or violation of rules for safe keeping and storage	max. 6 mos. or fine
Switzerland	Use of firearms in committing a crime	1 yr. - life
Turkey	Illegal manufacture, importation storing, or sale of ordinary firearms	5-22 yrs. (depending on numbers of persons involved, and quantity of weapons)
	Illegal manufacture, importation storing, or sale of automatic weapons	7 1/2-30 yrs. (depending on numbers of persons involved, and quantity of weapons)
	If war weapons are involved	10-45 yrs.
U.S.S.R.	Possession, carrying, making or marketing firearms or ammunition (except for smooth bore hunting gun)	max. 5 yrs.
	Stealing firearms or ammunition	max. 15 yrs.
	Careless keeping of firearms	max. 1 yr.

AUSTRALIA

Introduction

Australian States and Territories have primary jurisdiction over criminal law and accordingly their laws on firearms have developed separately. Commonwealth provisions, issued under its power over defense and customs,¹ only provide a thin overlay of controls. The laws date back to the 1920s when all the jurisdictions introduced measures regulating handguns with only Western Australia extending the controls to rifles and shotguns.

The legislation has broad similarities but unlike other areas, such as corporations and securities laws or road traffic laws, no uniform law has as yet been adopted. In 1987 a conference of state premiers, chaired by the Prime Minister of Australia, failed to reach agreement on uniform measures.² The governments of Victoria, New South Wales and South Australia decided to tighten their own laws, but Queensland and Tasmania opposed stricter controls. The meeting was called in the wake of a number of incidents of mass shootings. The conference agreed to act on a number of proposals, including a ban on automatic and semi-automatic firearms, strict licensing of those who wish to purchase guns, and registration of all firearms.

This report presents an overview of the new laws enacted by New South Wales, the most populace state in Australia. Firearms control provisions in New South Wales have been spread out in three statutes, the Firearms Act 1989,³ the Prohibited Weapons Act 1989,⁴ and the Crimes (Firearms) Amendment Act 1989.⁵ The latter inserted various firearms offenses into the Crimes Act 1901. The statutes call for the issuance of regulations, but none appear to have been issued yet.

Licenses

The Firearms Act 1989 defines a "firearm" as: "(a) a gun, or other weapon, that can propel anything wholly or partly by means of an explosive; or (b) a blank fire firearm; or (c) an air gun."⁶

¹ Customs (Prohibited Exports) Regulations and Customs (Prohibited Imports) Regulations, in force under the Customs Act 1901, make provisions concerning firearms and ammunition.

² *The Associated Press*, February 5, 1988.

³ No. 25.

⁴ No. 26. Neither of these Acts has been brought into effect at the time of writing and indications are that amendments are already under consideration: Australian Federal Police, Minute Paper OPB 765, April 24, 1990.

⁵ No. 27.

⁶ Firearms Act 1989, § 3(1).

The control imposed under the Act is by way of a system of licenses and permits. Licenses are required for the following: a) possession and use of pistols, rifles and shotguns, b) manufacture, buying, selling, transfer or repossession of firearms and their parts, c) possession of firearms by collectors, and d) possession of blank fire firearms for sporting or theatrical events.⁷ A license will be issued only if the Commissioner of Police is satisfied that the applicant is of good character and reputation and can be trusted to have possession of firearms without danger to public safety and peace, and that a training and testing course, if required by the regulations, has been completed.⁸ Licenses for pistols, i.e., a firearm that is reasonably capable of being raised and fired by one hand,⁹ must only be issued if the applicant has a good reason for possessing and using the weapon.¹⁰ The Commissioner of Police is also given a wide discretion to refuse a license if issuing it would be contrary to the public interest.¹¹ Additional mandatory or discretionary grounds for refusing a license may be provided in the regulations.¹²

A license cannot be issued to one who is not a natural person, or to a person who has, within a period specified in the regulations, committed a criminal offense.¹³ A person who is subject to a recognizance to keep the peace or who is subject to a Firearms Prohibition Order, also must not be issued a license.

Nor must a license be issued if there is reasonable cause to believe that the applicant may not personally exercise continuous and responsible control over firearms because of his life style or domestic circumstances. Any person who has made an attempt to commit suicide or cause a self-inflicted injury or is of intemperate habits or of unsound mind must also be denied a license.

A license may be suspended if a member of the police force thinks there may be grounds for revoking the license, by serving a notice stating the reasons for suspension.¹⁴ The suspension de-authorizes the possession or use of firearms for a period not exceeding twenty-eight days. A license may be revoked for any reason for which it may be refused, or if the holder knowingly supplied false or misleading information of a material nature, or where the provisions of the

⁷ *Id.* § 21(1).

⁸ *Id.* § 25(2).

⁹ *Id.* § 3(1).

¹⁰ *Id.* § 25(4).

¹¹ *Id.* § 25(6).

¹² *Id.* § 25(7).

¹³ *Id.* § 25.

¹⁴ *Id.* § 37(1).

statutes have been breached whether or not there is a conviction for the breach.¹⁵ A license may also be revoked for non-compliance with any conditions imposed under it or for any other reason prescribed by the regulations.

On refusal, revocation or imposition of a condition on a license, an appeal may be brought before a local court.¹⁶ The appeal is conducted by way of a new hearing and new evidence may be given. The court is, however, not bound by the normal rules of evidence and the procedure for the appeal is decided by the court.¹⁷ In determining the appeal, the court must give regard to the laws, the circumstances of the case and the public interest. The decision of the court is final and binding on the parties.¹⁸

The Act also authorizes the Commissioner of Police to issue a Firearms Prohibition Order banning the possession and use of weapons by a person who, in the public interest, is not fit to do so.¹⁹ A person must not handle a firearm while he is under the influence of alcohol or any other drug.²⁰ Nor must possession of a firearm be given to a person if it is known or there is reasonable cause to believe that the person is under the influence of alcohol or any other drug. Parents, including guardians, of persons under the age of eighteen years in contravention of the Act will be deemed to have knowingly authorized or permitted the convention and may be proceeded against and convicted regardless of any proceedings against the young person.²¹

Prohibited Weapons

The Prohibited Weapons Act 1989 places in Schedule 1 an extensive list of weapons that are subject to a special system of permits. Included in the Schedule are self-loading rifles that are designed to have, or are fitted with, a pistol grip and manufactured *inter alia* by Kalishnikov, Armalite and Daewoo. These are firearms "for which no private citizen can ever have a legitimate use."²² A permit for the possession and use of prohibited weapons is only issuable by the Minister who may include conditions limiting the authority it confers and impose certain requirements on the person to whom it is issued. The permit may be cancelled for any reason.

¹⁵ *Id.* § 36.

¹⁶ *Id.* § 41.

¹⁷ *Id.* § 42.

¹⁸ *Id.* § 43.

¹⁹ *Id.* § 39.

²⁰ *Id.* § 16.

²¹ *Id.* § 50.

²² R. Harding, *Firearms and Violence in Australian Life* 4 (1980).

Penalties

Penalties for possession or use of a firearm range from a maximum fine of fifty penalty units²³ and/or imprisonment for two years for summary convictions, to imprisonment for ten years (where the firearm is a pistol) or five years (for other weapons) for convictions on indictment. Similar penalties apply to the offenses of shortening a firearm or converting it into a pistol.

Sale or purchase of ammunition to or by a person without license carries a maximum penalty on summary conviction of twenty penalty units. Failure to produce a license on demand by a police officer is punishable by a maximum penalty on summary conviction of twenty penalty units and/or imprisonment for one year or both. A person who carries on a business of manufacturing, selling, etc., of firearms without a license is liable to a maximum penalty of imprisonment for seven years on conviction on indictment.

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March 1990

CANADA

Introduction

In 1977, Parliament initiated a thorough tightening of Canada's extant gun control laws by adopting a completely redrafted chapter to replace what is now Part III of the Criminal Code.¹ This legislation was brought almost entirely into force by the beginning of 1979² and has been left substantially unchanged since that time.³ Thus, Canadians have had just over a decade to become familiar with the major provisions of their national firearms regime. These provisions generally require:

- (1) purchases of lethal guns to be approved;
- (2) transactions involving lethal guns to be reported;
- (3) handguns to be registered;

²³ The value of a penalty unit is A\$100.

¹ Criminal Code, R.S.C. ch. C-46, §§ 84-117 (1985).

² One subsection that has yet to be proclaimed in effect would require persons applying for a firearms acquisition certificate to prove that they had passed a course or test relating to the safe handling and use of firearms. *Id.* § 106(2)(c).

³ The Criminal Law Amendment Act, R.S.C. ch. 27, §§ 13-14 (1st Supp. 1985), made minor changes to §§ 98 and 100 of the Criminal Code.

- (4) any transporting of handguns to be specifically authorized;
- (5) illegal weapons to be surrendered; and
- (6) mandatory sentences of imprisonment to be imposed upon persons convicted of using a gun in the course of committing a violent crime.

All available studies and polls indicate that the above package has, on the whole, consistently enjoyed the strong support of Canada's three largest political parties, the general public, and most interest groups specially affected by them.⁴ This largely explains why gun control has, in recent years, generally been a dormant issue in the House of Commons, the national press, and federal election campaigns.⁵

The Current System

Part III of Canada's Criminal Code is quite lengthy and fairly complex. These characteristics reflect the fact that the thirty-four sections of this chapter devoted to the subject of "Firearms and Other Offensive Weapons" are: 1) more restrictive than prohibitive; and 2) a modified version of a proposal for even tougher legislation that was originally made by the Department of Justice and then watered down in the face of specific objections. In broad terms, however, the most striking feature of Canada's current gun control law is that it alternates between placing very strict controls on handguns and making a number of major exceptions for long weapons that are to be used by hunters or sportsmen. This theme is so pronounced that the Criminal Code can be said to have effectively established a *prima facie* right of all Canadian residents to obtain a hunting rifle or shotgun without guaranteeing even the most responsible or experienced types of individuals legal access to a handgun.

Before considering §§ 84-117 of the Criminal Code in more detail, the situation they are intended to address will be highlighted.

Violent Crime in Canada

In Canada, the levels of violent crime and the percentage of criminal offenses committed with a firearm have traditionally been far lower than those encountered in the United States. For example, during the year preceding the creation of its current gun control legislation, there were only 668 total homicides and 258 homicides resulting from gunshot wounds throughout the entire

⁴ "Canadian Laws Aimed at Gun Owners," *Toronto Globe and Mail*, Nov. 14, 1987, at D5, col. 1.

⁵ Cf. fn. 28, *infra*. A few opponents of the Canada-United States Free Trade Agreement did, however, attempt to exploit unfounded fears that it might require the Canadian Government to allow American-made guns to be sold more freely within the country.

country.⁶ In the United States, by contrast, the corresponding figures for 1976 were 19,260 and 12,766.⁷ Thus, even though it did not have quite ten times the population of Canada, the United States had more than thirty times the number of total homicides and more than fifty times the number of homicides perpetrated with guns than did its northern neighbor in that one year.

Subsequent statistics reveal that 1976 did not fall within an aberrational period. After rising to just over 700 in 1977,⁸ the Canadian homicide rate only reached this peak one more time before first falling to 569 in 1986 and then climbing back up to 642 in 1987.⁹ Meanwhile, the homicide level in the United States first hit 20,613 in 1986 and then tapered off to 20,096 in 1987.¹⁰

Canada's aboriginal cultures, pioneer heritage, tremendous wildlife resources, and millions of square miles of undeveloped territory have all served to make hunting and shooting fairly popular national pursuits. Yet, while its level of gun ownership might be expected to have long been very high, Canada's ratio of guns to homicides actually appears to have historically been little greater than that of the United States. In 1977, Statistics Canada estimated that with nearly 5.3 million firearms distributed throughout the country, there was one gun for approximately every 4.5 Canadian citizens.¹¹ About the same time, the United States was widely thought to have had close to 200 million firearms or one firearm for approximately every 1.1. United States citizens.¹² Consequently, an individual firearm was apparently only slightly more likely to be used in the commission of a homicide in the United States than in the commission of a homicide in Canada.

As to the types of firearms favored in the two countries, Statistics Canada believed that in contrast to the between fifty-five and sixty million handguns estimated to be in the possession of residents of the United States,¹³ less than 300,000 handguns were being held by residents of

⁶ Canada, Statistics Canada, *Homicide Statistics 1978*, at 71 (Ottawa, 1979).

⁷ World Health Organization, Statistical Service Office, *Table of Mortality by Firearms* (8th ed. unpublished).

⁸ *Supra* note 6, at 67-69.

⁹ Canada, Statistics Canada, *Homicide in Canada 1987*, at 81 (Ottawa, 1987).

¹⁰ *Id.* Statistics obtained from the Uniform Crime Reporting Program, United States Department of Justice.

¹¹ XIII *Ottawa Letter* 99-100 (CCH Can. 1977). Due to the fact that most gun owners have more than one firearm, the actual percentage of gun owners in Canada was believed to be only 14.6 percent.

¹² This estimate was made by a representative of the National Rifle Association and accepted by an official of Handgun Control Inc., in interviews conducted in Washington, D.C.

¹³ *Supra* note 10. All figures respecting gun ownership exclude military weapons.

Canada.¹⁴ This finding pointed to another major difference in the two countries' crime pictures. Unlike the situation with respect to all types of firearms, the ratio of handguns to homicides in Canada was not at all close to the corresponding figure reported for the United States. The forty-seven fatal handgun shootings recorded in Canada in 1978 were less than one-half of one percent of those known to have occurred in the United States in that same year.¹⁵ This means that while handguns were apparently involved in nearly half of all American homicides, they were apparently involved in less than one-fourteenth of all Canadian homicides.

Since 1978, the number of homicides perpetrated with a handgun in Canada has risen so slowly as to have stood no higher than fifty-seven by the end of 1987.¹⁶ The number of handguns, however, seems to have grown substantially. This is because it has been reported that over 860,000 restricted weapons registration certificates were issued prior to January 1, 1988.¹⁷

Public Attitude Toward Violent Crime

Although Canada's rates of violent crime are significantly lower than those of the United States,¹⁸ they tended to grow just as rapidly over the third quarter of the twentieth century. To offer but one illustration of this phenomenon, homicides jumped from 67 in 1948 to 668 in 1976.¹⁹ This startling increase of nearly one thousand percent was particularly disturbing to Canadians who perceived it as a threat not only to their own personal security, but also to their nation's identity. Many Canadians find it very difficult to try to define their country without comparing it to the United States and the cultural difference that is almost invariably among the first to be brought

¹⁴ *Supra* note 11.

¹⁵ *Supra* note 6.

¹⁶ *Supra* note 8, at 88. In studying the incidence of fatal assaults in what they saw as the otherwise similar cities of Seattle and Vancouver, the authors of a well-publicized article recently found that the former had "substantially higher rates of homicide" and that "[m]ost of [its] excess mortality was due to an almost fivefold higher rate of murders with handguns" "Handgun Regulations, Crime, Assaults, and Homicide: A Tale of Two Cities," 319 *New England Journal of Medicine* 1256, at 1260.

¹⁷ *Supra* note 4. But see *infra* note 43. The authors of the study cited in the above footnote failed to take this important point into account before concluding that "[an] analysis of the rates of homicide in [Seattle and Vancouver] suggests that the modest restriction of citizens' access to firearms (especially handguns) is associated with lower rates of homicide." *Id.* at 1261.

¹⁸ On a *per capita* basis, most types of violent crimes are perpetuated between twenty and twenty-five percent as often as they are in the United States.

¹⁹ Canada, Dominion Bureau of Statistics, *Statistics of Criminal and Other Offences* IX (Ottawa, Cloutier, 1950) and see *supra* note 6.

forth in this connection in Canada's lower incidence of violence.²⁰ Consequently, the post World War II crime explosion raised tremendous concern throughout Canada and resulted in the Federal Government being increasingly encouraged to strengthen the country's criminal laws.

The Legislative History of Part III of the Criminal Code

In February of 1976, the minority Liberal Government headed by former Prime Minister Trudeau introduced a package of proposed amendments to the Criminal Code in the House of Commons.²¹ At the heart of Bill C-58 was a plan to require all persons intending to purchase a firearm to first obtain the permission of the police. A national poll taken the following month indicated that eighty-five percent of the population supported the passage of this proposal.²² However, Bill C-58 would have also required all persons intending to purchase a firearm to first obtain two character references and then register their weapon. These two features of the draft legislation proved to be controversial even though they were strongly supported by the police. Outside Parliament, The National Firearms Association voiced loud objections to Bill C-58 and inside the House of Commons, a group of Members from the Progressive Conservative Party recommended the adoption of more than fifty amendments to it. Faced with this opposition, the Government revised Bill C-58 by removing its two most unpopular provisions and reintroduced it as Bill C-51 at the beginning of 1977.²³ In July of that year, this modified proposal was approved in the House of Commons by a vote of 95 to 40. Nearly 150 Members did not vote on the measure.

The Constitutionality of Part III of the Criminal Code

In 1977, Canada's Constitution was called the British North America Act. As this document expressly empowered Parliament to enact legislation establishing "the criminal law," there was no doubt that what is now Part III of the Criminal Code was *intra vires* when it was created.²⁴ Since 1977, the British North America Act has been renamed the Constitution Act and supplemented with a Canadian Charter of Rights and Freedoms.²⁵ Nevertheless, because the Charter does not provide for any "right to bear arms," it does not appear to limit Parliament's constitutional authority to restrict--or even ban--private ownership of firearms in Canada.

²⁰ No political leader has ever been the target of an assassination attempt in Canada.

²¹ 30th Parl. 1976, 1st Sess.

²² "85% Favors Police Permit Before Gun Could be Bought," *Toronto Star*, March 30, 1977, at C5, cols. 6-7.

²³ 30th Parl. 1977, 2d Sess.

²⁴ 30 & 31 Vict. ch. 3, § 91(27).

²⁵ Constitution Act, 1982, R.S.C. ch. 44, § 51-34 (App. 1985).

Classes of Firearms

Part III of the Criminal Code distinguishes between "prohibited," "restricted," and that might be termed "other" weapons. In the first of these categories are sawed-off long guns, switchblades, silencers, tear gas launchers, certain blowguns, a number of devices used by practitioners of the so-called "martial arts," and firearms that are "capable of firing bullets in rapid succession during one pressure of the trigger."²⁶ A proposal to expand this definition to include all firearms that can be modified to fire bullets in rapid succession was recently introduced in the House of Commons.²⁷ The declared purpose of Bill C-218 is to "prohibit the importation of semi-automatic weapons that are capable of being easily converted to the fully automatic mode," but it would effectively outlaw all semi-automatic firearms that can be quickly turned into more a lethal type of weapon.²⁸

Any person found to have been in possession of a prohibited weapon or to have occupied a motor vehicle that he or she knew contained a prohibited weapon is liable to five years' imprisonment, if tried pursuant to an indictment, or two years' imprisonment, if tried in summary proceedings.²⁹ Exceptions to these general prohibitions have been created to allow *bona fide* gun collectors to retain fully automatic weapons that were registered prior to January 1, 1978, or approved subsequent to that date after having been rendered inoperable.³⁰ Non-exempted prohibited weapons must be taken to the police for destruction.

In the "restricted" category are all non-prohibited weapons that are "designed, altered, or intended to be aimed and fired by the action of one hand."³¹

Weapons that are not "prohibited" or "restricted" fall into a residual category. Such "other" guns can be subdivided into two groups. Antiques manufactured before 1898 that do not fire rim-fire or center-fire ammunition and air guns that have a muzzle velocity of less than 500 feet per second are generally outside the scope of Canada's gun control laws.³² Since these weapons are

²⁶ Criminal Code, R.S.C. ch. C-46, § 84(1).

²⁷ Bill C-218, 34th Parl. 1989, 2d Sess.

²⁸ *Id.* In December of 1989, fourteen women were murdered by a lone gunman at the University of Montreal. Responding to public outcries over this tragedy, Canada's Minister of Justice announced in March of 1990 that the government was very close to tabling a firearms control bill in the House of Commons. This bill is expected to ban the importation of all types of military assault weapons, but it is not clear whether it will contain tougher controls on all types of semi-automatic weapons or handguns. (Can. Press, March 16, 1990)

²⁹ Criminal Code, R.S.C. ch. C-46, § 90(2) (1985).

³⁰ *Id.* § 84(1).

³¹ *Id.* Several makes of semi-automatic rifles have also been placed in this category by the Restricted Weapons Order, 1978 Can. S.O.R., No. 670, as amended.

³² *Id.*

second are generally outside the scope of Canada's gun control laws.³² Since these weapons are not considered to be firearms, they do not need to be registered and permission to take possession of them is not required. Rifles and shotguns are also excluded from the class of restricted weapons, but as these types of guns are considered to be firearms, permission to acquire them is needed.

Firearms Acquisition Certificates

Section 97(1) of the Criminal Code provides that it is an offense to sell, barter, give, lend, transfer, or deliver any type of a firearm to a person who is unable to produce a firearms acquisition certificate.³³ A permit of this nature can only be obtained from a firearms officer appointed from among the ranks of the Royal Canadian Mounted Police, the Ontario Provincial Police, the Quebec Provincial Police, or one of Canada's municipal police forces.³⁴ An applicant is generally entitled to receive a firearms acquisition certificate unless he or she:

- (1) is under the age of 16;
- (2) is prohibited from owning a firearm by an order issued by a court that convicted the applicant of a criminal offense;
- (3) has been convicted of an indictable offense involving violence or Canada's gun control laws within the previous five years;
- (4) has been treated as a mental patient within the previous five years; or
- (5) has acted or threatened to act violently within the previous five years.³⁵

Even if an applicant does not fit into one of the above categories, a firearms officer can still deny him or her a firearms acquisition certificate if he or she has reason to believe that "it is desirable in the interests of the safety of the applicant or of any other person that the applicant should not acquire a firearm."³⁶ This provision effectively empowers the police to conduct extensive background checks, but does not authorize them to ask for "details concerning the makes or serial numbers of shotguns or rifles . . . commonly used for hunting or sporting purposes."³⁷

Firearms acquisition certificates cost ten Canadian dollars and are valid throughout the

³² *Id.*

³³ *Id.* § 97(1).

³⁴ Ontario and Quebec are the only provinces that have their own provincial police forces. The Royal Canadian Mounted Police serves as both the federal and provincial police in the eight other provinces.

³⁵ Criminal Code, R.S.C. ch. C-46, § 106 (1985).

³⁶ *Id.*

³⁷ *Id.* § 106(10). See *Unterreiner v. R.*, 51 Can. Crim. Cas. (2d) 373, at 376 (Ont. C.A. 1980).

country for a period of five years.³⁸ Section 107 of the Criminal Code allows the Federal Government to declare that a hunting license issued by a province that will only grant such a permit to a person who would qualify for a firearms acquisition certificate may be accepted in place of a firearms acquisition certificate. However, no provincial government has yet raised its standards for the issuance of a hunting license to such a level that it could request the Federal Government to bring this section into force within its territory.

Restricted Weapon Registration Certificates

In order to lawfully acquire a handgun in Canada, a person must first obtain a permit to bring it to a police officer designated to be a local registrar of firearms and then apply to have it registered. The Commissioner of the Royal Canadian Mounted Police (RCMP) is the only official empowered to grant a restricted weapon registration certificate, but a local registrar of firearms can usually block an application by making a negative recommendation to the Commissioner.³⁹ The *prima facie* right of Canadian residents to obtain a hunting rifle or shotgun does not extend to handguns. This is because the Criminal Code states that a registration certificate is to be issued only when the police do not have information indicating that approval would be contrary to the interests of the safety of the applicant or any other person and the following conditions are met:

(a) the applicant for the certificate is the holder of a firearms acquisition certificate and is eighteen or more years of age, and

(b) the restricted weapon to which the application relates bears a serial number sufficient to distinguish it from other restricted weapons or, in the case of an antique firearm that does not bear such a serial number, it is accurately described in the application,

and further that the restricted weapon to which the application relates

(c) is required by the applicant

(i) to protect life,

(ii) for use in connection with his lawful profession or occupation,

(iii) for use in target practice under the auspices of a shooting club approved for the purposes of this section by the Attorney General of the province in which the premises of the shooting club are located, or

(iv) for use in target practice in accordance with conditions proposed to be attached to the permit to be issued in respect of the restricted weapon under subsection 110(1).

(d) will form part of a gun collection of the applicant who is a *bona fide* gun collector, or

³⁸ *Id.* § 107.

³⁹ *Id.* § 109(7).

(e) is or is deemed pursuant to paragraph 116(f) to be a relic for the purposes of this Part.⁴⁰

In the event that an application for a restricted weapon registration certificate is approved, a permit to transport the handgun to a specified place will be issued by a local registrar of firearms. In almost all cases, this approved location can only be the applicant's usual home or his or her place of business.⁴¹ Once taken to its registered address, a restricted weapon cannot be moved without obtaining a second transport permit or a special carriage permit. The maximum penalty for illegally removing a restricted weapon from its approved location is five years' imprisonment.⁴²

Waiting Periods

Canada's gun control laws do not establish mandatory waiting periods. Nevertheless, firearms acquisition certificates and restricted weapon registration certificates normally take at least several weeks to obtain since the Criminal Code directs the persons authorized to issue these documents to investigate the backgrounds of all applicants. Restricted weapons registration certificates are usually more difficult to obtain than firearms acquisition certificates because they are available to a narrower class of persons and the police are more concerned about handgun violence than they are about most other types of firearms offenses. Still, as has been mentioned, more than 860,000 restricted weapon registration certificates had been issued by the beginning of 1988.⁴³

Carriage Permits

Section 110 of the Criminal Code authorizes the granting of a carriage permit to a person who is able to show that he or she needs a handgun for one of the following purposes:

- (a) to protect life;
- (b) for use in connection with [a] lawful profession or occupation;
- (c) for use in target practice under the auspices of a shooting club approved for the purposes of this section by the Attorney General of the province in which the premises of the shooting club are located; or

⁴⁰ *Id.* § 109(3).

⁴¹ *Id.* § 109(8).

⁴² *Id.* § 91(2).

⁴³ *Supra* note 4. While only a relatively small number of these certificates cover certain types of semi-automatic rifles listed in the Restricted Weapons Order, 1978 Can. S.O.R., No. 670, as amended, nearly forty percent of them appear to have been issued to re-register handguns.

(d) for use in target practice in accordance with the conditions attached to the permit.⁴⁴

Although this standard is very similar to the one established for the granting of restricted weapon registration certificates, it has been interpreted far more restrictively. The practice of Canada's various police departments has been to issue carriage permits for very few purposes other than for transporting a firearm to and from a shooting club.⁴⁵ Employees of Brink's and Wells Fargo have been given permission to carry guns, but other types of bank employees and guards are seldom allowed to be armed. Canada's police commissioners have consistently been strongly opposed to granting carriage permits to private security guards or private detectives. In fact, the R.C.M.P. claim that with the exception of Secret Service agents accompanying Presidents of the United States, they have not even allowed the bodyguards of foreign dignitaries to carry their weapons in Canada. The R.C.M.P. provides its own security forces and generally interprets this as an exclusive duty.⁴⁶

In short, the provisions that a carriage permit may be granted to an applicant to "protect life" or "in connection with [a] lawful profession" have been read so narrowly by the police as to make the obtaining of a carriage permit almost impossible in all but a very few types of situations.

Appeals

Any decision to deny one of the many types of permits and certificates provided for in Canada's gun control law can be appealed first to a magistrate and then to a provincial court judge.⁴⁷ Since a Canadian resident is entitled to receive a firearms acquisition certificate unless the police have some ground for believing that its issuance would not be "in the interests of safety," the police must justify a decision to reject an application for permission to acquire a rifle or shotgun. In the case of a denial of a restricted weapon registration certificate or carriage permit, however, an appellant bears the burden of proving that he or she requires a handgun or other restricted weapon for an approved purpose.

Importation

Unless specially authorized, importing a prohibited weapon and importing a restricted weapon that is not covered by a registration certificate are indictable offenses punishable with incarceration for up to five years.⁴⁸ Importing an unrestricted firearm without an acquisition

⁴⁴ Criminal Code, R.S.C. ch. C-46, § 110(2) (1985).

⁴⁵ Information provided by the Information Office of the R.C.M.P. in Ottawa, Ontario.

⁴⁶ *Id.*

⁴⁷ Criminal Code, R.S.C. ch. C-46, § 112 (1985). Canada does not have federal trial courts, but the federal court of Canada and the Supreme Court of Canada can grant leave to hear appeals of provincial court decisions.

⁴⁸ *Id.* §§ 95 and 96(3).

certificate is generally a crime that carries a maximum sentence of two years' imprisonment.⁴⁹ However, special provisions have been made for the temporary importation of rifles and shotguns by the many non-resident hunters and sportsmen who visit Canada every year. These rules allow such visitors to register such weapons with the Customs Service upon entering the country.⁵⁰ Handguns cannot be brought into Canada in this manner.⁵¹ Residents of the United States used to be able to request permission to take a boxed handgun through one or more of the western provinces on their way to Alaska, but this practice was discontinued in 1979.

Members of visiting armed forces are generally exempted from the above prohibitions on the importation of firearms.⁵²

Search and Seizure

Whenever a member of one of Canada's national, provincial, or local police forces has reasonable grounds for believing that an offense is being committed or has been committed against one of the sections of the Criminal Code dealing with firearms or ammunition, he or she may search a person, vehicle, or building that is not a dwelling-house for incriminating evidence without first obtaining a warrant.⁵³ Evidence uncovered during the course of a lawful search may be seized.⁵⁴ Evidence uncovered during the course of an illegal search is still admissible in judicial proceedings unless the trial judge is of the opinion that, "having regard to all the circumstances, the admission of it . . . would bring the administration of justice into disrepute."⁵⁵

Prohibited Orders

Section 100 of the Criminal Code directs Canada's judges to prohibit anyone convicted of committing, attempting, or threatening to commit a violent offense that is punishable with imprisonment of ten years or more from possessing any type of a firearm for at least five years from the time he or she is released from prison.⁵⁶ This section also authorizes Canada's magistrates to issue an order prohibiting a person from possessing a firearm upon the application of a police officer who has reasonable grounds for believing that such an order would be "in the interests of

⁴⁹ *Id.* § 97(3).

⁵⁰ Tourism Canada, *Travel Information for Visitors from the U.S.A.* 16 (1988).

⁵¹ A permit to bring a handgun into Canada for the purpose of participating in a recognized competition can be obtained from a local registrar of firearms. *Id.*

⁵² Criminal Code, R.S.C. ch. C-46, § 98 (1985).

⁵³ *Id.* § 101(1).

⁵⁴ *Id.* § 101(2).

⁵⁵ Constitutional Act, 1982, R.S.C. No. 44, § 24 (App. 1985).

⁵⁶ Criminal Code, R.S.C. ch. C-46, § 100(1) (1985).

the safety of any person."⁵⁷

Consecutive Sentences

Anyone found to have used a firearm while committing or attempting to commit an indictable offense must be sentenced to at least one year of imprisonment for a first conviction and at least three years of imprisonment for any subsequent conviction.⁵⁸ These minimum sentences cannot be served consecutively with any other sentence arising out of "the same series of events."⁵⁹

Other Offenses

Part III of Canada's Criminal Code creates a number of specific offenses that have not already been identified. Most of these crimes can be placed into one of the following three groups:

1. *Offenses Relating to Certificates and Permits.* Making false statements to the police, failing to comply with the terms of a permit, and altering, defacing, or falsifying a certificate are offenses that are generally punishable with imprisonment for a maximum term of two years.

2. *Offenses Relating to Illegal Uses of Firearms.* Pointing a firearm at another person without a lawful excuse, using a firearm in a careless manner, carrying a weapon for the purpose of committing an offense, carrying a concealed weapon without a permit, possessing a prohibited weapon, and using a firearm while committing an indictable offense form a group of more serious offenses that are generally punishable with imprisonment for maximum terms ranging from five to fourteen years.

3. *Offenses Relating to the Sale of Firearms.* Failing to record firearms transactions, failing to report thefts or losses of weapons, selling a gun to someone who does not have a required firearms acquisition certificate or restricted weapon registration certificate, and selling a firearm to anyone known to be of unsound mind, impaired, or subject to a prohibition order are offenses that are usually punishable with imprisonment for maximum terms ranging from two to five years. Most of these crimes can be prosecuted either as an indictable offense or in summary proceedings.⁶⁰

Assessment

While Bill C-51 was being debated in 1977, the Government agreed to conduct "a thorough and objective evaluation of the effectiveness of [its] firearms control program" once it had been

⁵⁷ *Id.* § 100(4).

⁵⁸ *Id.* § 85(1).

⁵⁹ *Id.* § 85(2).

⁶⁰ *Id.* §§ 93-97.

in place for a suitable length of time.⁶¹ To fulfill this commitment, the Government retained an independent consulting firm to conduct a comprehensive analysis of all data relating to firearms, firearms offenses, and other crimes in 1981. Decision Dynamics released its final report on these matters as *Evaluation of Canadian Gun Control Legislation* in 1983.⁶² Because they were almost entirely based on statistics covering a period of just three years, the major findings set out by this report's author must be viewed as very preliminary conclusions. Nevertheless, Elisabeth Scarff was able to demonstrate that during the immediate post-legislation period:

- (1)the relative use of firearms in most violent crimes declined;
- (2)the rate of decline in accidents increased; and
- (3)suicides with firearms declined moderately.⁶³

On a more negative note, the final report also noted that where firearms were used to perpetrate a violent crime, there was an increasing trend for the firearm to be a handgun.⁶⁴ This was a curious result in light of the fact that Part III of the Criminal Code was designed to place far greater restrictions on the ownership of handguns than on the ownership of rifles and shotguns. Therefore, it is not surprising that more current data seems to indicate that handguns have generally continued to become increasingly more popular with criminals than other types of firearms.⁶⁵

Bibliography

Books

Canada, Solicitor General of Canada. *Firearms control in Canada*. Ottawa, Supply and Services Canada, 1983. 39 p. HC7439.C2F57 1983

Der, Balfour A.H. and Kirkpatrick, Ian F. *The law of firearms and weapons*. Toronto, Carswell, 1989. 193 p. KE3758.D47 1989.

Scarff, Elisabeth. *Evaluation of the Canadian gun control legislation*. Ottawa, Solicitor General of Canada, 1983. 217 p. KE3758.S28 1983

⁶¹ Elisabeth Scarff, *Evaluation of the Canadian Gun Control Legislation* iii (1983).

⁶² *Id.*

⁶³ *Id.* at 71-72.

⁶⁴ *Id.*

⁶⁵ *See supra* note 16.

Stenning, Philip C. *Firearms ownership and use in Canada*. Toronto, University of Toronto, 1981.
215 p. HV8059.S83 1981

----- *Firearms and the private security industry in Canada*. Ottawa, Solicitor General of Canada,
1979. 114 p. HV8290.S77

Articles

Hawley, D.L. Firearms and explosives. 62.1 *Canadian encyclopedic digest* (Ontario) 1-103 (3d ed.
1989). Canada Ontario 6 1973-

Friedland, M.L. Gun control in Canada: politics and impact. *Perspectives on criminal law* 226-
254 (1985). LAW PER

Mewett, A.W. Hand-guns: editorial. 30 *Criminal law quarterly* 129-130 (1988).
LAW PER

Sloan, J.H. Handgun regulations, crime assaults, and homicide: a tale of two cities. 319 *New
England journal of medicine* 1256-1261 (1988). R11.87

Sproule, C.F. and D.J. Kennett. The use of firearms in Canadian homicides 1972-1982: the need
for gun control. 30 *Canadian journal of criminal law* 31-37 (1988).
LAW PER

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May 1990

PEOPLE'S REPUBLIC OF CHINA

Historical Background

Firearms are very tightly controlled in the People's Republic of China (PRC) through the Criminal Code and several more specific regulations. Although the laws currently in force on the subject have been in existence for less than ten years, there has been gun control in the PRC for most of its history. Provisional Measures Governing the Control of Guns were promulgated by the Ministry of Public Security of the PRC on June 27, 1951, just about 18 months after the formal

establishment of the PRC.¹ Article 1 defined "guns" as all kinds of firearms, with the exception of hunting weapons. Seven years later, the Temporary Provisions Governing the Control and Use of Guns and Bullets for Sport were adopted, covering all kinds of sport shooting, including hunting.²

Many of the articles in the 1951 Measures were designed to identify and gain control of the large number of guns which were within the borders of China at the time as a result of the long period of civil war that ended with the Chinese Communist Party (CCP) victory in 1949. There was a provision that public security organs [police] on a local level take inventory of all the guns in the area, so that permits could be issued to those authorized to have guns (art. 15). Aside from military personnel, officials of a certain rank who needed firearms for their duties who obtain permission from the next higher level supervisors could receive authorization to carry guns, as could privately operated enterprises that applied for permits and were approved (arts. 7 & 10). Any individual, group, or enterprise possessing a gun at the time that did not receive authorization was to surrender the weapon to the local people's government (arts. 9 & 10). Anyone carrying a gun had to obtain a permit stating the name of the bearer, his or her age, sex, place of birth, occupation, and residence, plus information about the gun, including its serial number (art. 11). Guns could not be lent, given as a gift, or exchanged (art. 13). Only state authorized factories could make or repair firearms (art. 2). Violators of these measures could be prosecuted; at the very least, they were subject to public security rules specifying detention for less than five days, a fine, or a warning.³ In 1981, the 1951 Provisional Measures were replaced by a new statute, but the Temporary Provisions for sporting guns were not affected.

Current Laws

There are a number of different laws that control firearms in the PRC today. The Criminal Code, adopted in 1979 and in force from January 1, 1980, mentions the subject in three

¹ *Zhonghua renmin gongheguo youguan gongan gongzuo fagui huibian* [Collection of Laws and Regulations Relating to Public Security Work in the People's Republic of China] 51-56 (Beijing, The Masses Press, 1958).

² Mar. 29, 1958, *Zhonghua renmin gongheguo gongan fagui xuanbian* [Selection of Laws and Regulations of the People's Republic of China on Public Security] 103-105 (Beijing, Legal Press, 1982). These Provisions consist of six chapters covering all aspects of control of guns for sport, including supply, purchase, possession, use, and inspection.

³ These punishments were applied under the Regulations of the People's Republic of China Governing Public Security Administration and Punishments, Oct. 22, 1957; English text reprinted in Foreign Broadcast Information Service, *Daily Report: People's Republic of China*, Feb. 26, 1980, at L10. The Regulations were replaced by 1986 legislation of a similar nature, *see below*, note 6.

articles.⁴ The Code was revised in part by a Decision of the Standing Committee of the National People's Congress in 1983; this change affects one of the articles concerning guns.⁵ In addition, the 1986 Regulations on Administrative Penalties for Public Security contain provisions on punishment for minor offenses connected with firearms.⁶ The 1951 measures were replaced in 1981 with Procedures of the People's Republic of China for the Supervision of Firearms⁷, covering most aspects of gun control in a concrete manner. Police weapons are governed by special provisions enacted in 1980.⁸

Under the 1981 Procedures, firearms are defined as pistols, rifles, submachine guns and machine guns, various firearms used for shooting sports, rifled guns, shotguns and powder guns used for hunting, injection guns used for anaesthetizing animals, and air guns which can fire metal bullets. Military weapons are not governed by these Procedures.

Manufacture, Transport, and Sale

According to the 1981 Procedures, only those factories designated by the state are permitted to manufacture, repair, or assemble firearms (art. 9). Application must be made for permission to transport firearms or ammunition. The County or municipal public security bureau at the place of destination is the permit-issuing authority. Once the transport is complete, the same bureau must be shown the transport permit so that a gun-holding certificate may be obtained (art. 18).

Provisions on the purchase of firearms are subdivided according to the intended use. Film studios are permitted to purchase out-of-date guns for use as props, but except for a small number of guns, they must be treated so that they can no longer actually be fired (art. 8). Firearms needed

⁴ English and Chinese texts of the Code, together with the Code of Criminal Procedure, are available in *The Criminal Law and the Criminal Procedure Law of China* [CLCPL] (Beijing, Foreign Languages Press, 1984). Also in 1 *The Laws of the People's Republic of China (1979-1982)* [LAWS] 87-149 (Beijing, Foreign Languages Press, 1979); several other translations are currently available.

⁵ Decision of the Standing Committee of the National People's Congress Regarding the Severe Punishment of Criminal Elements Who Seriously Endanger Public Security, Sept. 2, 1983, CLCPL at 241-242.

⁶ Adopted Sept. 5, 1986, in force from Jan. 1, 1987, *Zhonghua renmin gongheguo falü huibian 1986* [Compilation of Laws of the People's Republic of China 1986] 84-98 (Beijing, People's Press, 1987); English translation in 2 LAWS at 271-281.

⁷ Approved by the State Council Jan. 5, 1981, and promulgated and put into effect by the Ministry of Public Security on April 25, 1981; *supra* note 2, at 97-102; English translation available in 1 *Statutes and Regulations of the People's Republic of China* 810425 (Hong Kong, Institute of Chinese Law, 1987).

⁸ Provisions Governing Police Arms and the Use of Weapons by Police, July 5, 1980; *supra* note 2, at 81-82.

for shooting sports can be purchased with the approval of the physical culture and sports commission at a level one rank higher than the unit seeking to make the purchase, and with a purchase permit from the local public security bureau. The forestry departments above county level and public security organs must approve purchases of hunting and injecting guns. Military firearms may be purchased by work units only after approval by the local public security organ. Only units designated by the state may deal in firearms and ammunition (art. 10). Foreigners who wish to purchase hunting guns in China may do so if they have a certificate from the foreign affairs department at the provincial level or of their host organization and a permit from the local public security bureau (art. 29).

Any Chinese citizen attempting to cross the national border of China with a hunting gun must have a gun-carrying permit, whether entering or exiting. Those with permits to have guns who wish to take them out of the country must return that permit to the issuing authority in return for a carry permit. The carry permit is then given to the frontier inspection station at the place of departure. Those citizens entering the country with a hunting gun must obtain approval in advance from their home public security bureau, should make a declaration at Customs, and then receive a carry permit from the frontier inspection station. After arrival at the destination within China, the carry permit can be exchanged for a holding permit (art. 19).

Foreign nationals entering China, with certain exceptions, are not allowed to carry any firearms or ammunition. Those who do receive permission from the public security bureau of the province or equivalent administrative unit to which they are traveling should make a declaration to Customs on entering China and follow procedures like those used for Chinese citizens (art. 28). Permission can be given for foreign sports teams who wish to bring in guns for shooting contests, with the approval of the Physical Culture and Sports Commission of the PRC (art. 26), and for foreign diplomatic representatives or visiting delegations, with the approval of the Ministry of Foreign Affairs (art. 24). Other than hunting guns, arms brought in by or for resident foreign diplomats are not to be carried out of the consular organ. Bodyguards for foreign delegations must declare their intent to carry firearms in advance to the Ministry of Foreign Affairs or the host unit, and the host unit must inform the frontier inspection station (art. 25).

Possession and Use

Under the 1981 Procedures, certain categories of people are permitted to carry firearms (art. 3). Included are court, procuracy, or police personnel whose work requires it; leading CCP and government officials in frontier, coastal, or remote areas when the provincial governments deem it necessary; confidential liaison officers of CCP and government organs above the provincial level; and confidential communications personnel of county governments, municipalities, and communications departments in frontier regions, when necessary. Certain Customs personnel and guards and escorts of war military production plants are also included. Furthermore, the public security bodies of certain work units are to be provided with guns, including factories, mines, enterprises, CCP organs, government bureaus, schools, and scientific research institutes. In some cases, firearms are to be issued directly to units when needed, rather than only to their public security departments. These units may include important financial units; warehouses; radio stations; scientific research units that do not have security departments; geological prospecting or mapping teams working in remote areas or at sea; coastal and oceangoing passenger and cargo ships, oil tankers, other work vessels; civil aviation airports and civil aircraft. Thus a large variety of types

of work units may have official firearms, although not every warehouse, radio station, etc., will be given them (art. 4). Aside from these units, physical culture and sports commissions above the county level may be provided with guns if they develop shooting sports (art. 5).

Hunting weapons are issued to persons and units specializing in hunting, but non-professional hunters over the age of 18 can apply for permits to have not more than two guns (arts. 6 & 12). When such a person moves from his or her original county or city, the gun-holding permit must be returned to the public security office. A permit to carry the gun to the new location is then issued. Upon arrival at the destination, application should be made to the local public security organ for a new gun-holding permit (art. 17).

Any organization or individual holding a firearm or ammunition must obtain approval through the local public security organ, and the permit must be carried whenever the gun is carried (arts. 11 & 12). Guns may not be fired in a broad range of locations, including cities, residential areas, sightseeing spots, and airports (art. 14). Furthermore, there are some specially designated areas in which guns may not even be carried (art. 15).

Disposal of unusable firearms is also regulated. Each work unit is to compile a register of such rejected firearms, apply for approval of the rejection to their supervising organ, and submit the register to the local public security bureau. The guns are then destroyed by being melted in a furnace (art. 20).

Offenses and Penalties

The 1981 Procedures do not detail punishments for gun-related offenses, other than stating that disciplinary or security supervision punishment can be applied until criminal liability is established (art. 30). There are two types of penalties for violating gun control beyond whatever disciplinary action may be taken by the work supervisors: public security punishment and criminal prosecution. Public security punishment refers to actions taken under the 1986 regulations aimed at basic public order violations and is generally applied in cases considered to be less serious.⁹ Under these regulations, police officers can order detention for up to 15 days, a fine of up to 200 yüan, or a warning for anyone carrying or keeping firearms or ammunition, or otherwise violating gun control regulations (art. 20, sec. 1). Warnings or fines can also be given for anyone building or using shooting ranges in an unsafe manner (art. 21, sec. 1).

Serious cases of gun control violation are punished under the Criminal Code. Article 100 defines the punishment for various actions undertaken for the purpose of counterrevolution, that is, sabotage of state authority. Section 5 lists "manufacturing, seizing, or stealing guns or ammunition." The sentence is ten years' to life imprisonment, but for cases in which "the circumstances are relatively minor," the punishment may be as little as three years' imprisonment. Article 112 governs gun-related offenses in general, rather than counterrevolutionary cases. When the Code was enacted, anyone who illegally manufactured, traded in, transported, or stole from state organs either guns or ammunition was subject to a sentence of up to seven years'

⁹ *Supra* note 6. In Chinese laws, terms like "serious cases" are not clearly defined, allowing local officials some leeway in determining how a case should be handled.

imprisonment; under "serious" circumstances, the sentence could be as long as life imprisonment. In 1983, the Code was amended. Now the death penalty may be imposed on a variety of perpetrators including "those who illegally manufacture, trade in, transport, steal, or forcibly seize guns, ammunition, or explosives, when the circumstances are especially serious or when serious consequences are caused." ¹⁰

The Criminal Code also specifies punishment of up to two years imprisonment for other violations of gun control regulations, including private storing guns and ammunition (art. 163).

Statistics

In 1987, there were a total of 6,507 weapons offenses cases; of them 6,357 (97.7%) were investigated and adjudicated. There were 8,545 punishments given as a result. ¹¹ In comparison with the previous year, these figures represent an increase of 127.3% in cases, of 129.1% in cases investigated and adjudicated, and of 142.1% in punishments. ¹² Although statistics are available for the number of homicides committed each year, there is no breakdown to indicate in how many cases guns were involved.

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CZECHOSLOVAKIA

General

Czechoslovak law on gun control was consolidated by the Law of April 18, 1938, No. 81, Collection of Laws, on Weapons and Ammunition. It dealt with the entire field of gun control and discussed different kinds of weapons and ammunition, the manufacture and commerce, the possession and carrying of firearms and ammunition. The Law had detailed provisions on licensed dealers from whom a private person could acquire firearms and ammunition. Similarly it provided for permits both entitling a person to own a firearm and authorizing a person to carry a firearm. Especially dangerous weapons were classified as military, intended for military use, treacherous, that disguise their deadly nature, weapons the original nature of which was modified to cause more serious injuries, and explosive mechanisms.

Offenses against the Law were punishable by fines and imprisonment up to 6 months.

¹⁰ Art. 1, sec. 4; *supra* note 5.

¹¹ *Zhongguo falü nianjian 1988* [China Legal Yearbook 1988] 820 (Shanghai, Legal Press, 1988).

¹² *Id.*, at 821.

The Law did not apply to the armed forces, the police and all other government departments entitled to hold firearms, like the customs officers and prison guards for whom individual departmental regulations applied.

The communist regime of Czechoslovakia replaced the above Law by the Law of June 16, 1949, No. 162, Collection of Laws, on Weapons and Ammunition. It did not introduce any major changes, but the provisions became more concise leaving the previously spelled out details to the discretion of the communist authorities. It also increased penalties for offenses against the Law to imprisonment up to 3 years.

The presently applicable law is the Law of December 14, 1983, No. 147, Collection of Laws, on Weapons and Ammunition, which was enacted in place of the 1949 Law, and Regulation of the Federal Ministry of the Interior of January 9, 1984, No. 10, Collection of Laws, made thereunder. These two measures cover the entire field of firearms and ammunition.

The Law classifies firearms as firearms proper where the projectile is ejected by the chemical energy of gun powder or other substances, gas propelled weapons, where the bullet is propelled by compressed gas or air, special weapons, e.g., signalling, immobilizing, and firearms that combine several features, e.g., use both bullets and pellets.

The objective of the Law is to set rules for the possession and carrying of firearms and ammunition so that they cannot be used against the communist party and the communist state as well as against the life and health of citizens and against property and the public order. Its further objective is to make provisions concerning the development, manufacture, repair, modification, destruction, export, import, transit, and the purchase and sale of firearms and ammunition.

Firearms are further classified as bullet firing weapons, pellet hunting weapons, military weapons, historical weapons, alarm and starting guns, and prohibited weapons.

The present Law and Regulation do not apply to military weapons, i.e., those intended for military and police use. Their possession and carrying is regulated by the proper authorities.

Historical weapons are those manufactured before the end of the year 1870. Exact reproductions of such weapons are also considered historical weapons. They can be held and carried without permit unless otherwise provided. Historical revolvers loaded from the rear which can still be used are subject to the regular provisions concerning firearms as to their trading, possession, and carrying.

Prohibited weapons are those considered treacherous in that they conceal their real nature or cause more serious injuries. In this category are those that project chemical or toxic substances, those equipped with silencers or that illuminate the target or those operated electronically. Explosive devices are also prohibited weapons. The district police office may grant an exemption and permit socialist organizations the use of prohibited weapons with the exception of treacherous weapons.

The Law and Regulation do not apply to persons enjoying diplomatic and consular

immunity.

Manufacture and Sale

The development, manufacture, repair and modification of firearms may only be undertaken by state organizations so designated by the pertinent central authority in agreement with the Ministry of the Interior of the Czech or Slovak Socialist Republic. These organizations may hold all the component parts needed for the manufacture of firearms without any further authorization. The commerce in firearms may be conducted only by trading organizations so designated by the pertinent central authority in agreement with the particular Ministry of the Interior.

The export, import and transit of firearms may be effected only by authorization issued by the pertinent Regional Police Office, Czechoslovak embassies and consulates abroad, or the passport control office at border crossings. An authorization is not required for the commercial export and import of firearms conducted by trading organizations designated by the pertinent central authority in agreement with the particular Ministry of the Interior.

With respect to import, organizations or individuals who import firearms from abroad must register them within 5 days with the district police office. If an importer wishes to keep or carry such firearms, the proper permits must be obtained. Until that time the weapons must be left for safekeeping with the district police office. If the importer does not intend to keep them, the weapons must be sold within 2 months to an authorized trading organization. If this is not done, the district police office will sell the firearms to an authorized trading organization and turn over the proceeds to the importer. The police may also destroy the firearms.

Possession and Use

A person entitled to hold and carry a firearm and ammunition is bound by law to take special care in handling and to protect it against misuse. A loss or theft of the firearm or of the ammunition must be immediately reported to the police.

The holding and carrying of firearms is subject to a permit issued to a particular person by the district police office. The permit may be issued to a person who complies with the following conditions: Is 18 years of age, has no police record, is in possession of his physical and mental faculties, is conversant with the use of the firearm, can be relied upon that the weapon will not be misused, and there is no public interest contrary to the issuance. The permit will be withdrawn if any condition is no longer complied with after its issuance.

The application for a permit must include the full name, date and place of birth and address of the applicant, the number of his identity card, the place of his employment and give reasons for his application. He must produce a recommendation from his employer, and if not employed (e.g., retired, student) that of the national committee or the school. If a hunting permit is applied for, a recommendation of the hunting association must be produced. If the firearm is needed for purposes of a sport or military cooperation, a recommendation of the district sport office or the association for the cooperation with the armed forces is required. A medical certificate on the applicant's physical and mental health must accompany the application. The

permit is issued for a term of 3 years and is renewable for additional 3-year terms.

The permit holder must notify the district police office of his residence of any change of address within the district within 10 days. If he relocates outside the district, he must within 10 days prior to his leaving surrender the permit to the district police office in exchange for a receipt. Within 5 days of his arrival in the new district, he must obtain a new permit from the district police office in the new district on the strength of the previously issued receipt.

The loss or theft of the permit must be immediately reported to the district police office that issued it and the firearm must be produced.

Once the permit is obtained, the holder may apply to the district police office for an authorization to buy the firearm. The authorization is in writing and gives all the details of the firearm including its brand, model, caliber and number. Having acquired the firearm from an authorized organization dealing in firearms, the applicant must within 5 days produce it to the district police office for registration and deposit with it the proper portion of the authorization of purchase.

Foreigners may acquire firearms under provisions for their export.

Persons and organizations in possession of a permit to hold and carry firearms may obtain the proper ammunition from an authorized organization dealing in firearms.

The district police office may also issue a group permit to hold and carry firearms to an organization for the purpose of the protection of property, the safety of its employees or for other good reasons. The group permit entitles the organization to hold firearms of a stated kind and in determined quantities. The organization must submit a list of persons entitled to handle and carry such firearms and must keep a record on the firearms as well as on the ammunition and its use.¹

Special provisions apply to hunting rifles. A person is entitled to carry a hunting rifle upon issuance of a hunting permit by the proper national committee.² The national committee generally issues a group permit to hold and carry hunting rifles to named hunting organizations. Such organizations must supply the committee with a list of members authorized to hunt and keep records of the rifles and ammunition and ammunition used. They also must take care that the rifles are used only for hunting authorized in the group permit. Individual hunting permits may also be issued.

¹ Under number PDS-1390/ Spr 85, referred to in announcements in issue 1, 1986, *Collection of Laws*, the Ministry of the Interior of the Czech Socialist Republic issued guidelines for the handling of weapons held under group permits. The Ministry of the Interior of the Slovak Socialist Republic issued identical guidelines under number PDS-90-/40-86 in issue 14, 1986, *Collection of Laws*.

² Hunting and hunting permits are governed by provisions of the Law on Hunting of February 23, 1962, No. 23, *Collection of Laws*.

Hunting rifles may be transferred only to persons or organizations holding a hunting permit. Such rifles may also be owned by foreigners upon permission granted by the regional police office.

Upon expiration of the permit to hold and carry a firearm or of the hunting permit, the weapon must be surrendered within 5 days to the district police office (firearms) and the national committee (hunting rifles) for safekeeping together with its ammunition. Such weapons can be transferred to any person or organization holding the proper permit, or the weapons can also be offered for sale to an authorized organization dealing in firearms. If it is not done within 2 months from the expiration of the permit, the district police office (firearms) and the national committee (hunting rifles) will offer the weapon for sale to an authorized organization dealing in firearms and pass on the proceeds to the owner. If the weapon is not purchased, it will be destroyed at the owner's expense.

In the case of death of a permit holder, persons living with him in a common household are required to turn in the firearm to the police and the hunting rifle to the national committee within 10 days for safekeeping together with ammunition. The person who inherited the weapon can apply within 10 days from the order of the Probate Court granting him title for a permit to hold and carry the firearm or for a hunting permit if a hunting rifle is involved. If the permit is not obtained, the above referred to procedure for disposal of the weapon upon expiration of the permit is followed.

Offenses and Penalties

Article 185 of the Criminal Code ³ provides that whosoever accumulates, manufactures or procures for himself or another person, weapons, ammunition or explosives will be punished by imprisonment for a term of up to 3 years. The term of imprisonment is from 1 to 5 years if the act is committed on a larger scale or under a state of emergency.

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EGYPT

Background

It is of interest to note that an Egyptian gun law dating from the turn of the century took into consideration the social status of a certain class regarding gun use and that the beneficiaries of the laws were not "among the people of evil who usually commit crimes," i.e.,

³ Law of November 29, 1961, No. 140, *Collection of Laws*.

the lower classes would be denied the right to bear arms.¹

The government ordained that anyone who carried a firearm had to obtain a permit from the administrative authority, but certain classes of people were exempted from this requirement, including village chiefs, sheikhs, public officials, owners or lessees of at least fifty feddans of land,² members of public assemblies and municipal councils, holders of medals and honorary titles and their children living with them. Children who left their parents' premises had to secure their own permit. The same privilege was granted to landlords and entrepreneurs via a permit issued on the basis of an affidavit showing that they had paid a tax of five Egyptian pounds. An applicant who was denied a permit to carry a gun could have his case referred to the competent director or governor of his jurisdiction, whose decision was final. No machine gun permit could be issued without the advice of the director or governor, either of whom could grant or refuse the permit.

Several years later, the Egyptian government moved to regulate the sale and trade of firearms, ammunition and explosives and to require the surveillance of these weapons and their orderly, legal use.³ Anyone who was granted a license to deal with the above-mentioned items was allowed to import them in accordance with treaties between Egypt and other countries. No dealer was allowed to move any quantity of weapons without a special permit from the authorities, nor could he transport them from one city or village to another without the proper permit containing details of serial numbers, models and the name of the recipient. Any violation of these provisions by the licensee was cause for the revocation of the license and forfeiture of compensation as well as the confiscation of the weapons in question. The police were fully empowered to search houses and shops and to intercept weapons trafficking. However, the law did exempt certain weapons to be brought into Egypt, such as antique flint locks, shotguns for shooting game, carbines and showcase revolvers with silver or gold inlaid designs. Bullets of any kind used in warfare were prohibited including dynamite, cotton powder, nitroglycerine, land mines and other explosives and any material such as sulfur, ether or sodium nitrate that could be exploded or could be assembled for such purpose.

Recent Laws and Policy

Although trade and dealing in firearms and other weapons are governed by Law No. 15 of 1905, possession and carrying firearms of any kind, including "white" arms,⁴ are completely prohibited, and all permits granted under provisions of Law No. 16 of 1904 have become void, in

¹ *Mulhaq lil-Waqa'i al-Misriyah* [Official Gazette of the Egyptian Government] EGY OG Suppl. No. 94, Aug. 17, 1904, amending the High Order of July 13, 1891, p 2-6 [in Arabic].

² One feddan is 1.038 acres.

³ EGY OG No. 50, April 29, 1905, p. 853-874.

⁴ Any weapon not propelled by fire power falls into the category of "white" weapons, such as swords, sabres, knives, blades, daggers, etc.

accordance with Law No. 8 of May 17, 1917.⁵ Nevertheless, the Minister of the Interior or any authority under his jurisdiction may grant a permit to carry guns only as an extraordinary measure. He is free to withdraw and reject any permit, to determine a permit's validity, to dictate any condition at his discretion, and to give the holder of a firearm a certain time limit to sell it to a licensed gun dealer or another authorized person, or to export it to a foreign country.

In order to secure the sanctity of private premises, the law prescribed that the private residences of persons under suspicion of keeping weapons contrary to the provisions of the law may not be searched without a search warrant issued by a judge or public prosecutor. Either of the latter may issue search orders through representatives of judicial authority, the search to be carried out in the presence of two witnesses. Any violation of the 1917 law is punished as follows:

imprisonment for three months or a fine of 50 Egyptian pounds for anyone who is guilty of carrying or possessing a firearm;

if the weapon is of the "white" category such as a bayonet, a dagger, a lance, a switch blade knife, or a pointed cane with an iron ball, the penalty shall not exceed one month and the fine shall be not more than three Egyptian pounds;

the judge must order the confiscation of the weapons.

The Law of 1917 went further with regard to those who hold one weapon or more of the "white" category. Any holder of these weapons is given one month during which to surrender whatever he has to a precinct or police headquarters.

Owners of antique weapons, such as muskets, carbines, and gold or silver inlaid showcase weapons that serve as ornaments, are simply required to send detailed information about them to the Minister of the Interior. Moreover, the governors and directors of various regions were given the authority to search houses during the six-month period that followed the enactment of the law in order to enable the seizure of any unauthorized weapons by the judicial authority indicated.

Subsequent laws of Egypt, such as Law No. 58 of May 10, 1949, on firearms and explosives, reiterated previous provisions, broadened restrictions on the granting of permits, and increased penalties on violations of the new provisions. The following persons, for example, are denied any permit under the new law:

any person who has been previously convicted for a crime or sentenced to one or more years of imprisonment for assault against individuals or involving money;

any person who has been sentenced to a penalty restricting his freedom because of a crime involving explosives, theft or attempted theft, or concealing stolen goods;

any person who has been convicted for a crime in which he used a firearm;

⁵ EGY OG No. 43, May 21, 1917, p. 1-3.

all vagabonds and persons under police surveillance; and

persons who have been committed to asylums or psychiatric institutions.

Nevertheless, the law exempted certain individuals from the license requirement related to carrying arms, namely, members of the Royal Family, former and current cabinet ministers, former and current members of Parliament, high government officials appointed by royal decrees and royal orders, directors of localities and governors, and retired army personnel with the rank of general or above. All these persons are simply required to submit to the police their address and a written statement containing the number and model designations of weapons they possess, one month after the acquisition of the weapons in question. Chiefs of villages and sheikhs are also included in this category.

Any violation related to carrying weapons, whether "white" arms or firearms, carries a penalty of imprisonment and a fine. This penalty consists of imprisonment for a term of six months to five years for regular firearms. For automatic weapons, such as machine guns, repeating rifles with a magazine, tommy guns, and the like, the penalty becomes stiffer, e.g., a sentence of hard labor may be imposed.

When the royal regime was overthrown by a military *coup d'etat*, the government adopted Law No. 394 of July 8, 1954,⁶ regarding the possession of firearms and ammunition. The new law is similar to former laws with the exception that it deals also with the manufacture and repair of weapons and restricts the possession of firearms by any person to two pieces from category No. 2 (smooth bore shotguns) and two pieces from category No. 3 (pistols of all kinds and models). Another new feature has been added to this law, namely, a section pertaining to firearms repairmen. It requires that the repairman be of good reputation, pass an examination, and either deposit 50 Egyptian pounds as a guarantee or secure a letter of credit from a bank or an insurance company. Moreover, the repairman must keep two registers, one to record every weapon and every part he receives, and a second to record every weapon delivered to an owner--who must then sign the record. The Minister of the Interior determines the number of repairmen in each locality.

For the manufacture of weapons and ammunition, the licensed person must have a police record free of any crime or misdemeanor, including a record free of activities related to drugs or explosives. He must also have a good reputation and have never been convicted of declaring any fraudulent bankruptcy. The fee for a license to engage in arms repair is five Egyptian pounds; for a manufacturer's license, the fee is fifty pounds. Permits are renewable for a token fee after each year.

This law was quickly amended by another, Law No. 546 of October 31, 1954,⁷ with a strong emphasis on stiff penalties and fines for violations of firearms provisions. Even a village chief or sheikh, who was allowed to carry a weapon under the old laws, will be fined if a holder of any

⁶ EGY OG No. 67, May 16, 1949, p. 2-3.

⁷ EGY OG No. 86 *bis*, Oct. 31, 1954, p. 1-2.

firearm or ammunition fails to surrender the weapon to the authorities within their jurisdiction. The law also provides for a financial reward to any person who leads the authorities to concealed weapons, ammunition, or explosives which were not surrendered in accordance with provisions of the law and during the time limit allowed. Similarly, those who have a police record and are caught again with a gun will receive a stiff sentence of temporary hard labor. The law provides, further, that anyone who illegally deals in, imports, manufactures, or repairs any firearm, machine gun, tommy gun, and the like shall be punished by the same penalties provided for illegally carrying weapons.

Shortly after the enactment of the 1954 Law, the government of the United Arab Republic amended it by the passage of Law No. 75 of June 22, 1958.⁸ Accordingly, an exemption from a license requirement was extended to students in schools, faculties, and universities within the locales to be determined by both the Minister of Education and the Minister of Municipal and Rural Affairs in order to train students for shooting. Like the previous laws, members of the diplomatic and consular corps, Egyptian and foreign, are also exempt from licenses provided that the rule of reciprocity is observed. Furthermore, the law introduces a new provision which was lacking before; it is absolutely prohibited to carry any weapon in public places where liquor is served, in gambling casinos, at conferences, meetings, and festivals. No one is allowed to deal in weapons and ammunition and engage in their repair at the same time. The issuance of any license to deal in and to repair weapons in the villages is prohibited. Moreover, this law states that the Minister of the Interior is responsible for exempting aliens and members of international marksmanship teams from the license requirement to bear arms.

The Chief of Police in the Immigration Department or his deputy is empowered to issue and to renew temporary licenses to tourists for carrying approved guns or "white" arms; the Chief or deputy may also reject any application for that purpose, provided that his rejection is justified. Once the tourist has a license, he cannot dispose of the weapon in any way as long as he is in Egypt, as stipulated in the Ministerial Decree of December 23, 1954.⁹

Aliens, like Egyptians, are principally not permitted to bear arms except in cases authorized by law. It is a common belief--not only in Egypt, but in most countries of the Middle East--that having an unlicensed firearm is a gross violation of the law that can bring a swift retribution on the part of the authorities.

After the assassination of President Sadat, some articles of the Basic Law of Weapons and Ammunition No. 394 of 1954 have been amended by Law N165 of October 20, 1981, restricting the possession of firearms by drug addicts, drug thieves, or by anyone sentenced more than once to a jail term, or used a gun in a crime he committed. No permit shall be issued to anyone who does not read or write, is under 21 years of age, convicted for bankruptcy, or possessed a "white" weapon without a permit. The penalty for these violations shall be imprisonment of not less than

⁸ EGY OG No. 17, July 3, 1958, p. 3-4.

⁹ 2 *al-Mawsu'at al-Hadithah li Tashri'at al-Jumhuriyah, al-Arabiyyah al-Muttahidah Asliyah wa Dhaka'ir* [The Modern Encyclopedia for the Legislation of the United Arab Republic, Weapons and Ammunition] No. 20-23 Legislative Supplement (1981) [in Arabic].

two months and a fine of not less than 100 and not more than 1,000 E.P. if the purchase or possession of these weapons occurs in a congested place or in places of worship.

Nevertheless, a penalty of temporary or perpetual hard labor shall be reserved for anyone who purchases either for himself or through an intermediary without a permit any firearms or explosives used in congested places, in means of transport, or in places of worship. The penalty will be death if the weapons, ammunition or explosives are meant to be used to disrupt public security, public disorder, destroy the government, the principles of social order, or the national or social peace.

Comparing homicide statistics,¹⁰ those in Egypt are much higher than those in any developing country throughout the Middle East. The following are the latest statistics available in the Law Library's collection:

	Homicides	Attempted Murder	Deaths from Assault and Battery	No. of Weapons Confiscated
1970 ¹¹	767	396	262	2,541
1975 ¹²	876	352	323	3,767
1978 ¹³	1,005	488	329	6,035

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May 1990

FRANCE

General

Arms control regulations in the broadest meaning of the term in France date from the establishment of central authority in the country. The numerous regulations enacted over the centuries clearly show that the government was not completely successful in controlling the possession or the carrying of weapons. The legislation is indicative of the will of the central authorities to regulate a situation which would have been worse without such legislation.

¹⁰ EGY OG No. 105, Dec. 30, 1945, p. 1.

¹¹ *al-Tarqir al-Ihsa'i al-Qada'i al-Sanawi* [Judicial Annual Statistical Report, 1972] 14-32 (Cairo, 1973).

¹² *Id.* [1975] 82-101 (Cairo, 1977).

¹³ *Id.* [1978] 100-101 (Cairo, 1980).

Regulations concerning the possession, carrying of firearms, and trade in them is based on the Decree Law of April 18, 1939, ¹ and the four decrees of application of August 14, 1939. ² The provisions for the application of the 1939 laws were modified by the Decree of March 12, 1973, which constitutes the basic regulation on gun control. ³ Some minor changes and additions were recently made by Decree No. 790-128 of February 1, 1979; Decree No. 79-889 of October 16, 1979; the Directive of September 29, 1980; Decree No. 81-5640 of May 11, 1981; Decree No. 83-578 of August 19, 1983; and Decree No. 86-250 of February 18, 1986.

The Decree Law of April 18, 1939, divides war materiel, arms and ammunition into eight categories as follows:

I. War Materiel

- 1st category Firearms and their ammunition conceived or destined for land, naval, or air war.
- 2nd category Materiel destined for transportation or use in combat with firearms.
- 3rd category Materiel used for protection against poisonous gas.

II. Arms and Ammunition Not Considered War Materiel

- 4th category Firearms and ammunition used for defense.
- 5th category Arms and ammunition used for hunting.
- 6th category Weapons used as sidearms.
- 7th category Arms and ammunition used for target practice by shooting galleries and as dress uniform arms.
- 8th category Arms and ammunition of historical value, as well as weapons included in collections of such arms.

Manufacture and Sale

Any person or corporation desiring to engage in the manufacture or trade in weapons of the first seven categories must first make a declaration to the local prefect. All related activities are then subject to a strict monitoring by the French authorities. According to the Decree of

¹ *Journal officiel* [official law gazette of France, J.O.], June 13, 1939, p. 7463.

² *Dalloz Recueil périodique et critique* 1939, p. 441.

³ J.O., March 30, 1973, p. 3516.

March 12, 1973, the declaration of the applicant must include the name, birth certificate, nationality, the place of the exercise of the profession, the legal status of the corporation, and the number of the registration listed in the commerce register. According to Decree No. 83-1040 of November 25, 1983, individuals or representatives of corporate entities dealing with the trade of weapons of categories 5 and 7 must register weapons of these categories, with the exception of specific sporting rifles, at the police station. This registration must include the name, residence, date and place of birth, photograph, and signature of the buyer or the seller.⁴

In order to qualify to trade in weapons, the individual business must belong to French citizens, and the managers must be of the same nationality. If it is a corporation with limited liability, the members of the board must be French citizens and the majority of the capital must be in French hands. Citizens of a country belonging to the European Economic Community (EEC) as well as corporations whose seat, headquarters, and main business is conducted in a country belonging to the EEC, may deal in retail trade of weapons of category 4. However, if the national defense interest requires the removal of the limitation, the text of the law provides that the limitations on foreigners and foreign corporations of the EEC will be removed.⁵

The general rule is that the importation of arms and ammunition is forbidden with the exception of arms for target shooting, historical weapons, and collector's items. The Decree of March 13, 1973, stipulates that the Minister of Economy and Finance, in conformity with article 11 of April 18, 1939, may by exception allow the importation of arms. Article 11 reads as follows: "Importation of arms of categories 1 through 6 is prohibited. Derogation to this prohibition may be obtained by decree."⁶ In such cases importation is dependent upon the obtaining of an authorization of importation issued under conditions defined by an interministerial decision in accordance with article 41. Article 42 stipulates that notwithstanding more favorable measures derived from international agreements ratified by France, a general derogation to the prohibition on imports is provided as follows:

- for arms and ammunition temporarily imported for experiments, tests, or repairs;
- for elements of arms and ammunition in categories 1 and 2 when the French government takes part in the process to improve, perfect, and maintain;
- for arms and ammunition imported on a permanent or temporary basis on the occasion of international competition, or during a training period for foreign policemen by the French police in the National Center for Shooting Improvement;
- for arms and ammunition that are transported across France without being delivered to a destination in France; and

⁴ J.O., December 7, 1983, p. 3531.

⁵ J.O., March 30, 1973, p. 3517.

⁶ Recueil Dalloz, Appendice des lois nouvelles, p. 14.

-- for arms and ammunition that are reimported according to the procedure provided by the Decision of March 12, 1973.⁷

Military personnel or civil servants who are authorized to carry weapons may enter France with the arms they usually carry when they have been sent abroad provided they can show a receipt for the arms and ammunition. Otherwise, such individuals must surrender them to the customs office, and the arms and ammunition can be withdrawn only by presenting a receipt.⁸ Other persons who are entitled to the same favor, including those belonging to recognized shooting associations and those involved in military preparations. Also accorded this privilege are members recommended by the French Shooting Federation or target shooters chosen by the Federation and participating in an international shooting competition and owners of target shooting stands in fairs. Owners of the arms in categories 5, 7, and 8 may bring these arms back to France provided that they show the original authorization that was granted to them by the authorities. They are also required to leave the arms in the custody of the customs office until they can produce such an authorization.⁹

If a private individual wants to import weapons he has to obtain an authorization of importation from the Minister of Economy and Finance. Such an authorization will constitute an exceptional derogation from the ban on imports required by law. The would-be importer must file a petition with this minister who has to decide after receiving a favorable opinion from the Ministers of Foreign Affairs, National Defense, and the Interior (Security). An exemption is granted to the importation of ammunition for the military departments of the National Defense. An authorization to import arms will be granted when a petition is made to the Minister of Economy and Finance.

Exports of arms and ammunition are subject to the Decree Law of April 18, 1939, which provides that without an agreement secured from the government, arms cannot be exported. The Decision of April 2, 1971, concerning the list of materials subject to export contains mainly military weapons but also includes "weapons intended or transformed to non-military purposes such as hunting or personal defense."¹⁰ Even when an agreement is granted according to the Decree of March 12, 1973, the governmental authorities may at the same time refuse to deliver the authorization to export. French legislation rarely mentions exports of non-military guns because such activity does not increase the weapons available in France to commit crimes.

Possession and Use

It is forbidden to carry arms in categories 1, 4, and 6; those in categories 5, 7, and 8 may be carried. The interdiction against carrying arms in categories 1, 4, and 6 also applies to persons

⁷ *Supra* note 6.

⁸ J.O., March 30, 1973, p. 3521.

⁹ *Id.* at 3519.

¹⁰ J.O., April 4, 1971, p. 3212.

who have been authorized to possess weapons in categories 1 and 4.

The arms of category 4 are mainly revolvers with 12 and 8 millimeter barrels and pistols with 7.65 millimeter and 6.35 millimeter barrels. In addition, the length of the barrel should not be longer than 11 centimeters. Weapons in this category should not shoot by automatic burst, and the chamber of the gun should not contain more than 10 bullets.¹¹

Some arms for use in war listed under category 1 such as 5.5 mm pistols were reclassified as category 4 weapons by the Decree of March 12, 1973. Weapons in category 2 that are destined for transport or use in combat with firearms do not create a problem, and a Frenchman can technically possess a tank just so long as the gun or guns have either been made useless or removed.¹²

Category 3 includes, among others, such items as gas masks. This regulation is no longer pertinent since gas masks of World War I vintage are commonly found in France and have not created any problems.¹³

Judges who establish that the barrel and the butt of a sporting gun in category 5 have been sawn off should reclassify the weapon from category 5 to the more stringent category 4.

Category 6, sidearms, includes daggers, swords, bayonets, and all objects that could be considered as weapons dangerous to public security. This very wide definition can be interpreted to include any harmful object. However, minors above 16 years of age can freely purchase sidearms.

Category 7, which includes weapons and ammunition for target shooting, has been reduced by the removal of .22 caliber hand guns which have been reclassified as category 4 weapons. Alarm guns have been included in this category by a court decision.¹⁴

In order for a weapon to qualify as having historical value or as part of a collection of arms, a category 8 weapon must have been made prior to 1870 or rendered useless by making a hole in the barrel. Some arms made between January 1, 1870, and January 1, 1880, as well as their modern replicas can benefit from the same classification.

¹¹ L. Remplon, *Les arms et la justice militaire* 42 (Paris, Ecole Nationale de la Magistrature, 1977).

¹² *Id.* at 47.

¹³ *Supra* note 11, at 39.

¹⁴ Cour de cassation, ch. crim., June 20, 1978, Dalloz jurisprudence, 1980, p. 240.

Military personnel may carry weapons in accordance with their regulations. The same exception applies to civil servants who may be exposed to dangerous attack ¹⁵ because of the risk inherent in their work. Customs officers are also authorized to carry weapons during duty hours. If a judge must obtain a weapon because of his duties, authorization is obtained from the chief judge of the court, his hierarchical chief.

Persons in charge of protection (security, guarding, or carrying of funds) may, if their duty requires it, obtain an authorization to carry a weapon. This authorization is granted on a case-by-case basis by either the Minister of Interior, who is in charge of the police, or the prefect. ¹⁶ The authorization to acquire and possess arms of categories 1 and 4 may be given after an inquiry by the Commissioner of the Republic (*Commissaire de la République*) of the department where the person resides. Minors below the age of 16 cannot acquire or possess these weapons. Minors between 16 and 18 years of age must be provided with an authorization from their parents. All of these authorizations must be renewed each five years with the exception of arms used in fairs by competition shooting associations. As to individuals, the authorization to carry weapons of the 4th category and some weapons of the 1st category must be obtained from the Commissioner of the Republic. Authorizations for all arms of the 1st category are granted by the Minister of Interior (police). These authorizations can be revoked at any time by the authorities who granted them.

Decree No. 83-758 of August 19, 1983, modified the regulations concerning the sale and possession of some guns. Thus, hand guns with the exception of guns for indicating the starting of a competition such as racing, alarm, and signalling guns are placed in category 4. In order to acquire these weapons one must obtain an authorization which is renewable every five years. Weapons with ten bullet cartridges as well as some shoulder weapons are now part of the 4th category, and people who own them must make a declaration to the commissioner of the republic of their department within 6 months of the implementation of this Decree.

Weapons of categories 5, 6, 7, and 8 which are sold freely in the market, with the exception of smooth bore guns, require a registration by the merchant of weapons. The registration must contain the identity residence, and date and place of birth of the purchaser. If two individuals trade a weapon, they must register the same data with a gun merchant. Some people are barred from purchasing weapons because of their high risk to society. Thus, a person cannot purchase a weapon if:

- he has been convicted of a crime or sentenced to 3 months in jail, with or without reprieve, for a misdemeanor enumerated in article 13 of the Decree of March 12, 1973;
- he is under the supervision of a guardian according to article 490 of section 1 of the Civil Code which applies to people whose mental facilities have been altered by illness, infirmity, or they have been made feeble through age [an authorization may be granted to a person who has been mentally ill but only under very rigorous conditions];

¹⁵ J.O., June 13, 1939, p. 7429.

¹⁶ *Répertoire de droit pénal*, Mise à jour 1980, at 50 (Paris, Dalloz, 1980).

- he is under confinement or has been released on a probationary basis; or
- he is a dangerous alcoholic.¹⁷

Foreigners who have reached the age of majority and are authorized to reside in France may carry weapons according to article 15 of the Decree Law of April 18, 1939.¹⁸

According to Decree No. 83-1040 of November 25, 1983,¹⁹ some weapons of category 1; namely hand guns and shoulder weapons of categories 4, 5, and 7 must be shipped in containers which do not mention the contents on the outside. Weapons of category 1 must be shipped in two separate parts: one container must include the arms themselves without the elements that make them operative such as triggers, cylinders, and breeches. These crucial parts must be shipped at least 24 hours later. If these weapons are shipped by rail freight, they must be sent by express. If the weapons are sent by road, the freight, while loaded on the vehicles, must be kept under lock and key. The shipment must be in a closed container and must remain under the supervision of the driver at all times, especially during the loading and unloading process and during the stops. If weapons are sent through the post office, they must be shipped by registered mail only.

Offenses and Penalties

A person who acquires, gives away, or possesses any weapon from categories 1 or 4 or ammunition for weapons in either of these categories without being authorized shall be subject to a fine from 360 F to 15,000 F and a prison term from one to three years. If the culprit has been jailed before or had been condemned to a more severe sentence for a crime, he shall be subject to prison from two to five years, and a local banishment for a maximum of five years.²⁰

Any person carrying a weapon of categories 1, 4, or 6 outside his domicile without any legitimate reason is subject to imprisonment of two to five years and a fine of 3,000 F to 20,000 F. If the weapon is of category 1 or 4 the penalty is a prison term and a fine of 3,000 F to 20,000 F. If he carries a weapon of category 4, he will serve a prison term of one to three years and in addition be fined 2,000 to 20,000 F if he carries a weapon of category 6. The prison term can be increased to ten years if the individual has been subject to a prison term of one year or more or to a more severe penalty or when at least two persons were found together carrying weapons. In all cases the court will order the confiscation of the arms and ammunition.²¹

¹⁷ J.O., March 30, 1973, p. 1518.

¹⁸ Recueil Dalloz, 1939, Appendice lois nouvelles, p. 44.

¹⁹ J.O., December 7, 1983, p. 3531.

²⁰ Code Penal, Appendice, p. 416 (Paris, Dalloz, 1985-86).

²¹ *Id.* at 417.

Any person who has not been authorized to manufacture or trade in weapons will be subject to a prison term of one to five years and a fine of 360 to 30,000 F. The weapons and ammunition seized can be destroyed at the expense of the defendant or sold at auction, if the court orders such an action at the request of the governmental authorities.³⁵

Importing or attempting to import weapons of categories 1 through 6 without authorization is punished by a prison term of two to five years and a fine of 3,600 to 60,000 F. Other penalties for violations of customs regulations can be added. Unauthorized exports are subject to a fine of 2,500 to 5,000 F and imprisonment from one to two years.³⁶

Carrying a weapon under certain circumstances can be considered a factor constituting an offense in itself or even an aggravating circumstance. Such is the case, for example, in carrying a weapon during a gathering or demonstration pursuant to article 106 of the Penal Code. Vagrants and beggars found in possession of a weapon, according to article 277 of the same Code, are placed in the same category. According to article 384 of the Code, carrying a weapon during a robbery also constitutes an aggravating circumstance. According to article 98, the same condition is met in the case of insurrection while carrying a weapon. Armed invasion with destruction or violence is covered by article 245, and article 309 is concerned with carrying a weapon while committing assault and battery.

Statistics

There is no definition in French law of a weapon except in criminal cases. According to article 102 of the Penal Code, "all machines, tools, or edged, pointed, or blunt instruments are included in the definition of arms.... Pocket knives and scissors as well as common [walking] canes shall not be considered as arms unless used to kill or strike."

French statistics are not available for firearms only. There are, however, statistics for assault and battery causing death, assault and battery causing injury, and armed robbery.³⁷

Assault and Battery Causing Death:

<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
361	327	349	305	286	282	277
<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	
460	371	481	268	318	675	

³⁵ *Id.* at 416.

³⁶ *Id.*

³⁷ Institut National de la Statistique et des Etudes Economiques. *Annuaire Statistique de la France* (Paris, Imprimerie Nationale, yearly).

Assault and Battery With Injury:

<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
29,195	31,270	29,639	31,625	30,532	32,273	32,469
<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	
34,431	38,403	38,770	38,120	39,018	35,874	

Armed Robbery:

<u>1974</u>	<u>1975</u>	<u>1976</u>	<u>1977</u>	<u>1978</u>	<u>1979</u>	<u>1980</u>
2,632	3,523	3,846	4,580	4,706	4,993	4,841
<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>	<u>1985</u>	<u>1986</u>	
5,408	5,535	6,139	7,661	8,909	8,001	

A French government report mentioned in *The New York Times* on August 7, 1977, gives the following figures on crime in France which have undoubtedly led to the various above-cited changes in gun-control laws:

Between 1967 and 1976 armed robberies against individuals multiplied five times and armed robberies against banks and other institutions increased twenty fold. Translated into absolute figures, however, the crime wave described in the report is far below that in the United States. In France reported armed robberies increased from 685 to 3,806 annually during the last decade, while holdups went from 63 to 1,359. The murder rate remained below one per 100,000 inhabitants compared with more than 10 per 100,000 in the United States. The report attributes the growth of criminal acts to urbanization and calls for a return to smaller more cohesive communities.

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THE FEDERAL REPUBLIC OF GERMANY

Introduction

General Remarks

The Federal Republic of Germany has one of the most stringent systems of gun control in Western Europe. Private acquisition, possession, and carrying of firearms is permitted only by licensed individuals. Licenses are granted only after extensive background checks have been carried out during which the authorities scrutinize the applicant's trustworthiness and ability to handle a weapon. In addition, the applicant must prove his need for a weapon. Whereas hunters, target shooters, and collectors are deemed to require the weapons suitable for the pursuit of these

lawful activities, a need for defensive purposes will be recognized only if the applicant is significantly more endangered than the population at large. The licenses limit the types and numbers of firearms that can be acquired, and fully automatic weapons are banned.¹

In the Federal Republic the right to bear arms is not rooted in legal concepts,² although the right to self defense is based on constitutional foundations.³ The use of firearms by hunters and target shooters is based on longstanding traditions, and German gun control law makes certain allowances for these generally law-abiding groups. In the Federal Republic, hunting is a somewhat exclusive sport,⁴ accessible only to those who have undergone extensive training in all aspects of the sport including proper marksmanship.⁵ For this reason, hunting accidents rarely occur. Generally, however, German gun control law is based on the philosophy that the availability of firearms must be restricted in order to prevent crime.⁶ This is achieved not only by restricting individual ownership and use but also by subjecting manufacturers and dealers to many statutory requirements, including the labelling and recording of guns so that the ownership of guns used in criminal activity can be traced.

Public opinion on gun control is divided. The legitimate users and the commercial interest groups decry extensive red tape and overregulation. Others, however, favor severe restrictions on private gun ownership to combat terrorism.⁷ Friend and foe agree that the German Weapons Law on which gun control is based is extremely complicated and difficult to understand.⁸ The law is implemented by numerous regulations, has required a great deal of reform, and has caused much litigation. This complexity is caused in part by German legal drafting methods which aim at covering a great number of eventualities by specific provisions. How effective German gun control law has been remains an open question. In the Federal Republic the incidence of gun-related crimes is much higher than in the neighboring countries of Austria and Switzerland, which have much simpler and less restrictive legislation.

¹ Waffengesetz [WaffG] in der Fassung vom 8. März 1976, *Bundesgesetzblatt* [BGBl., official law gazette for the Republic of Germany] I, p. 432, as amended.

² K. Oswald, *Das neue Waffenrecht* 9 (Melsungen, 1980).

³ T. Maunz and G. Dürig, *Grundgesetz. Kommentar*, note 73 to art. I, ¶ 2 (München, 1985-).

⁴ This was noted by the U.S. occupation government in Bavaria in 1949 which attempted unsuccessfully to democratize the sport: G. Mitzschke and K. Schäfer, *Kommentar zum Bundesjagdgesetz* 11 (Hamburg, 1982).

⁵ Secs. 14-17, Bundesjagdgesetz [BJG] in der Fassung vom 29. September 1976, BGBl. I, p. 2849.

⁶ 80 *Verhandlungen des Deutschen Bundestages*, 11434 (1972).

⁷ H. Schankliss, "Das Mass ist voll," *Deutsches Waffen-Journal* [DWJ] 991 (1987).

⁸ G. Schrötter, *Waffen und Waffenrecht von A-Z*, 12 (München, 1981).

Historic Survey

The development of German gun control law has not been an easy process, and it mirrors the turbulent history of Germany. After World War I, several regulations and laws were issued⁹ to retrieve the vast quantities of guns that had never been relinquished by returning soldiers. These efforts proved unsuccessful. At that time, Germany was torn by civil strife and plagued by paramilitary groups that were not adverse to make their political views known by violent action.¹⁰

In 1928, the first comprehensive federal Firearms and Ammunition Law was enacted.¹¹ It laid the groundwork for the licensing and recording system on which gun control is still based today. A license was required for the acquisition of long and short firearms and ammunition. Exempted were, however, collectors items and guns that because of their large size or limited power were considered less dangerous.¹² A special license was required for the carrying of weapons which was granted only in case of a special need. The 1928 Law was resented as an infringement on personal liberty, and the turbulent political situation made its implementation difficult.¹³ Between 1930 and 1933, further restrictions were enacted, including an emergency regulation that required a need examination for the granting of an acquisitions license,¹⁴ and prohibitions of the carrying of weapons, particularly at political meetings.¹⁵

After the Hitler regime confiscated the firearms of the "enemies of the state," and prohibited the importation of handguns, gun control law was again reformed and made less restrictive in order to make the German people more militarily fit¹⁶ and to assist the German weapons industry.¹⁷ The Weapons Law of 1938¹⁸ permitted the unlicensed acquisition of long

⁹ Verordnung vom 14. Dezember 1918, *Reichsgesetzblatt* [RGBl., official law gazette of Germany until 1945] p. 1425; Verordnung vom 13. Januar 1919, RGBl. p. 31; Gesetz vom 7. August 1920, RGBl. p. 1553.

¹⁰ J. McKenzie, *Weimar Germany 1918-1933*, 163 (London, 1971); G. Schulz, *Aufstieg des Nationalsozialismus*, 285-290 (Frankfurt, 1975).

¹¹ Gesetz über Schusswaffen und Munition vom 12. April 1928, RGBl. I, p. 143.

¹² E. Reiber, *Die Entwicklung des Deutschen Schusswaffenrechts* 45 (Marburg, 1981).

¹³ *Supra* note 8, at 11.

¹⁴ Vierte Verordnung des Reichspräsidenten vom 8. Dezember 1931, RGBl. I, p. 742.

¹⁵ Gesetz gegen den Waffenmissbrauch vom 28. März 1931, RGBl. I, p. 77.

¹⁶ G. Potrykus, *Waffenrecht* 1 (München, 1977).

¹⁷ W. Hoche, *Waffengesetz* 13 (Berlin, 1938).

¹⁸ Waffengesetz vom 18. März 1938, RGBl. I, p. 265.

arms by adults, but required a license for the acquisition of handguns. The licensing criteria for the carrying of guns remained generally unchanged, except that National Socialist Party officials and other favored groups were exempted. The licensing and labelling provisions for manufacturers and dealers were made more stringent, and imports remained subject to control.

After World War II, demilitarization was carried out by the Allied Powers under very strict legislation on the basis of which large quantities of guns and ammunition were removed from the population.¹⁹ These restrictions were gradually eased in the interest of hunters and target shooters,²⁰ and when the occupation regime ended for the Federal Republic in 1955, the 1938 Weapons Law regained effectiveness, except for its National Socialist provisions.²¹ However, at that time, the legislative power over private possession and use of firearms had fallen into the domain of the *Länder*²² (constituent states of the Federal Republic) and the resulting lack of uniformity thwarted the gun control efforts of the more restrictive *Länder*. In Hesse and Bavaria licensed hunters could acquire any number of handguns.²³ By the late 1960s a reform of the gun control law was felt necessary because of the increase in crime committed with guns. This was ascribed to the large number of useable guns in private possession,²⁴ the lack of an acquisition license for long arms, and the lack of restrictions on private construction or alteration of guns.²⁵ A federal Weapons Law was enacted in 1972,²⁶ after legislative power had been conferred upon the Federation.²⁷ It brought about many restrictions, including a *need* examination for all weapons licenses, and for the first time in German history, a license requirement for the mere possession of short or long arms. The new law, however, was hastily drafted under the impact of

¹⁹ Gun collectors still decry the loss of important items that occurred during that period: *supra* note 8, at 11.

²⁰ E. Apel, *Waffenrecht* 8 (Köln, 1977).

²¹ Art. 125, Grundgesetz für die Bundesrepublik Deutschland [GG] vom 23. Mai 1949, BGBl. p. 1.

²² Decision of Bundesverfassungsgericht of April 29, 1958, 8 *Entscheidungen des Bundesverfassungsgerichts* 143 (1958).

²³ M. Kirn, "Das neue Waffengesetz," 88 *Deutsches Verwaltungsblatt* 201 (1973).

²⁴ Estimated at 20 million firearms in 1972, in a population of approximately 60 million: *supra* note 6.

²⁵ *Id.* at 11440; in 1970, sawed-off shotguns were used in 370 criminal incidents.

²⁶ Waffengesetz vom 19. September 1982, BGBl. I, p. 1797. The new law repealed all *Länder* legislation and also the Federal Weapons Law of 1968, which had dealt with manufacture and sale: Bundeswaffengesetz vom 14. April 1968, BGBl. I, p. 633.

²⁷ Einunddreissigstes Gesetz zur Änderung des Grundgesetzes vom 28. Juli 1972, BGBl. I, p. 1305.

some spectacular crimes in 1971,²⁸ and required a major reform by 1976 that made access to guns somewhat less cumbersome for law abiding citizens and closed some loopholes.²⁹ A 1978 amendment was prompted by terrorist attacks; it increased the penalties for possession of automatic weapons.³⁰ The latest amendment of 1980³¹ was made in compliance with the requirements of the European Convention on Control of the Acquisition and Possession of Firearms by individuals.³²

At present yet another reform bill to the Weapons Law is pending. Like its predecessor of 1976, it again purports to eliminate unnecessary restrictions while providing for more effective crime prevention. Among other measures, the restrictions on the acquisition of ammunition may be eased and the provisions on reliability may be reworded. On the other hand, the prohibitions of the carrying of weapons and other dangerous objects at public meetings may be expanded.³³

Scope and Structure of the Current Weapons Law

The sixty-two sections of the Weapons Law are arranged in ten chapters that purport, in a fairly technical and abstract manner, to provide a seamless web of restrictions on the weapons suitable for private use.

The core of the Weapons Law are the licensing requirements for private possession, acquisition, and carrying of firearms which are contained in Chapters V and VI. These build on the definitions supplied in Chapter I, and they are supported by the prohibitions and miscellaneous provisions of Chapters VII and VIII. Manufacture and trade are governed by Chapter II, and Chapter IV addresses both private and commercial importers. The proving of guns, formerly the subject of separate laws, is provided for in Chapter III. Infractions of the Weapons Law are sanctioned by criminal and administrative penalties in Chapter IX. The transitional provisions of Chapter X remained important for some time, because gun owners had to register their weapons in accordance with the new restrictions.

²⁸ *Supra* note 12, at 142.

²⁹ Gesetz zur Änderung des Waffengesetzes vom 4. März 1976, BGBl. I, p. 417.

³⁰ Gesetz vom 31. Mai 1978, BGBl. I, p. 646.

³¹ Gesetz vom 14. Juli 1980, BGBl. I, p. 956.

³² Signed June 28, 1978, at Strasbourg, entered into effect for the Federal Republic August 16, 1980, BGBl. II, p. 953.

³³ 17 *Juristenzeitung*. Gesetzgebungsdienst 68 (1987).

The law has to be read in conjunction with its six federal implementing regulations and a federal directive.³⁴ On procedural aspects, the *Länder* have also issued regulations.³⁵ Although the Weapons Law is a federal enactment, it is generally administered by the *Länder*.³⁶ The execution of federal laws by the administrative authorities of the *Länder* is a fundamental principle of German federalism, and it prevails for many branches of administrative law.³⁷ This system combines the advantages of uniform legislation with local supervision. The Weapons Law is in effect in all of West Germany except for West Berlin, where gun control is still governed by occupation law and, to some extent, by the 1938 Weapons Law. In West Berlin, private possession of firearms is essentially prohibited.³⁸

Although the Weapons Law is primarily concerned with firearms, it contains a few provisions on cutting and thrusting weapons, in particular the banning of such criminal implements as blackjacks, switchblade knives, and brass knuckles. In establishing the extent of gun control, definitions and technical specifications play an important role. These are not only contained in Chapter I, but also scattered throughout the law and regulations and these intricate definitions contribute a great deal to the complexity of German gun control law. Firearms retain their legal classification even after they have been rendered useless, as long as they can be reconstructed with commonly available tools. Silencers and essential parts of firearms are equally restricted as firearms. Toy guns are unrestricted,³⁹ unless they create the realistic appearance of a military weapon, in which case they are banned. Hand firing weapons, as defined by the Law, are small arms whose projectiles are driven by hot gasses, they can be short or long weapons, and they must be proof fired individually before they can be sold. Handguns, on the other hand, are defined by barrel length (less than 60 centimeters) and licenses for these are harder to get.⁴⁰ To prevent the

³⁴ Erste Verordnung zum Waffengesetz [1. WaffV] in der Fassung vom 10. März 1987, BGBl. I, p. 777; Zweite Verordnung zum Waffengesetz [2. WaffV] vom 13. Dezember 1976, BGBl. I, p. 3387; Dritte Verordnung zum Waffengesetz [3. WaffV] vom 20. Dezember 1980, BGBl. I, p. 2344; Vierte Verordnung zum Waffengesetz [4. WaffV] vom 19. Juli 1976, BGBl. I, p. 1810, as amended; Fünfte Verordnung zum Waffengesetz [5. WaffV] vom 11. August 1976, BGBl. I, p. 2117; Sechste Verordnung zum Waffengesetz [6. WaffV] vom 18. Juni 1985, BGBl. I, p. 1150; Allgemeine Verwaltungsvorschrift zum Waffengesetz [WaffVwV] in der Fassung vom 29. November 1979, reprinted in *Waffenrecht* 155 (München, 1981).

³⁵ *Supra* note 20, at 550.

³⁶ Sec. 50, WaffG.

³⁷ Art. 83, GG.

³⁸ *Waffenbesitz und Waffengebrauch in Österreich. Parlamentarische Enquete*. 16 Gesetzgebungsperiode des Nationalrats, 11 (Wien, 1984).

³⁹ Provided that their projectiles are propelled with a force of no more than 0.5 joule: Sec. 1, 1. WaffV, which also exempts other relatively harmless devices.

⁴⁰ Sec. 28, para. 2, WaffG.

circumvention of handgun restrictions, long firearms that are collapsible or can easily be disassembled into parts of handgun size are banned.

The Federal Republic has not experienced a proliferation of assault weapons in private hands. This is due to the restrictive nature of German gun control law and practice. Assault weapons are not a defined category in the Weapons Law. Instead, the Law defines automatic weapons and distinguishes further between fully automatic and semi-automatic weapons. Automatic or self-loading weapons are "firearms in which further shots may be fired through the same barrel by merely setting the trigger in motion after the first shot." Considered as fully automatic are firearms suitable for continuous firing or the emission of thrusts of fire.⁴¹ Their manufacture, sale, acquisition, import and possession are prohibited.

The same prohibitions apply to firearms which create the appearance of being fully automatic war weapons. This in effect bans many assault weapons, particularly those that resemble machine guns, machine pistols, and assault rifles. Moreover, firearms are deemed to resemble fully automatic weapons if they have certain characteristics such as a protruding long magazine or drum magazine, a muzzle brake or stabilizer, cooling devices, shoulder supports or other support devices, or a hilt that is attached in a pistol-like fashion to the trigger or the fore-end. Firearms that are equipped in such a manner are banned, even if these devices are not functional but merely decorative.⁴²

Semi-automatic firearms are those in which the trigger has to be activated for each individual shot, such as, for instance, double-action revolvers. Although licenses for semi-automatic firearms can be obtained, the licensing provisions make it easy for the German authorities to deny licenses, particularly for the more potent semi-automatics. This is accomplished by the German licensing practice specifying for which type of weapon the license is valid so that an applicant may be granted a license for a double-action revolver but not for a more dangerous weapon. Moreover, the applicant's burden of proof that he requires a particular weapon makes it easy to deny a license for an weapon. In Germany, the use of semi-automatic guns that can hold more than two cartridges in one magazine is prohibited for the hunting of game.⁴³

Fully automatic weapons are classified as war weapons under the War Weapons Law, according to which any manufacture, trade, import, export or transportation requires a specific permit from the Federal Government.⁴⁴ There is, however, some overlap between the War Weapons Law and the Weapons Law in that the latter provides sanctions for the unlawful carrying and use of portable war weapons.

⁴¹ Sec. 1, para. 5, WaffG; *supra* note 16, at 17.

⁴² Sec. 37, para. 1, no. 1, lit. 3, WaffG; sec. 37.2.4 WaffVwV; *supra* note 20, at 184.

⁴³ Sec. 19, para. 1, no. d, BJG.

⁴⁴ Ausführungsgesetz zu Artikel 26 Abs. 2 des Grundgesetzes (Gesetz über die Kontrolle von Kriegswaffen) vom 20. April 1961, BGBl. I, p. 444.

Manufacture and Sale

The Weapons Law regulates the gun control aspects of commercial manufacture and trade of firearms and ammunition by requiring licenses and by imposing record keeping, labelling, and notification duties. In addition, these activities are governed by industrial and trade legislation.⁴⁵ Non-commercial production or alteration of firearms is also subjected to detailed supervision.⁴⁶ Moreover, commercial and private sellers and transferors must assure that the recipient of firearms or ammunition is entitled to acquire these and commercial as well as private owners of firearms and ammunition must take adequate precautions for their safekeeping.⁴⁷

The commercial license must be obtained by the owner or corporate representative of the enterprise, and it will be granted only if the applicant, manager, and the branch managers are personally reliable. The license can be denied to aliens or non-residents.⁴⁸ Proof of technical ability is not required because the quality of the products is assured by the proving process for certain guns and the licensing by construction type for other firearms and ammunition.⁴⁹ The dealer's license, however, will be granted only if managers and branch managers have proven their technical and legal knowledge in an examination. Exempt from this examination requirement are gunsmiths who are duly licensed according to the provisions of the Trade Law.⁵⁰ A gunsmith's license permits the manufacture and sale of firearms. Germany is well-known for the quality of its vocational training programs, and to become a gunsmith involves lengthy and extensive practical and theoretical instruction.

The export of firearms and ammunition is restricted by licensing requirements which are primarily aimed at controlling the export of war materiel to East Bloc countries in coordination with COCOM (Coordinating Committee for East-West Trade Policy).⁵¹ In keeping with the liberal German foreign trade policy, the import of weapons and ammunition suitable for private use is quite unrestricted. For gun control purposes, an importer must have a license entitling him to acquire the firearms and ammunition he wishes to import. This applies to both commercial and private importers. The authorities must be notified of imports, and private importers must have

⁴⁵ Sec. 60, WaffG; Gewerbeordnung in der Fassung vom 1. Januar 1978, BGBl. I, p. 97, as amended.

⁴⁶ Sec. 41, WaffG.

⁴⁷ Secs. 34 and 42, WaffG; *supra* note 20, at 210.

⁴⁸ Secs. 7 and 8, WaffG. Allowances are made for citizens of European Economic Community countries: 2. WaffV.

⁴⁹ Secs. 15-26, WaffG.

⁵⁰ Handwerksordnung in der Fassung vom 28. Dezember 1965, BGBl. I, p. 1966, as amended.

⁵¹ Sec. 5, Aussenwirtschaftsverordnung vom 18. Dezember 1965, BGBl. I, p. 2671; Nos. 0001 through 0003, Ausfuhrliste in der Fassung vom 25. März 1988, *Bundesanzeiger*. Beilage 68a/1988.

their imported firearms recorded in their license.⁵² Travellers who wish to bring a gun into the Federal Republic are advised to apply for a license in advance. Until they have obtained a license, the customs authorities will keep the gun. The importation of banned weapons and of firearms without recognized proof marks or recognized licenses by construction type is banned.⁵³ The Federal Republic is a member of the Convention on the Reciprocal Recognition of Proof Marks on Small Arms.⁵⁴

The record keeping, labelling, and notification duties of the Weapons Law are designated to afford the authorities accurate information on the types and numbers of firearms and ammunition in commercial and private possession, to allow for the supervision of weapons production and trade and to facilitate the tracing of individual weapons for crime detection purposes. Manufacturers and importers must affix in an indelible manner on an essential part of each gun the name or trademark of the manufacturer or dealer, the type of ammunition to be used, and a serial number. Retail packages of ammunition must also be labelled. Only properly labelled firearms and ammunition can be sold. Dealers and manufacturers must keep records indicating the types and numbers of the weapons produced and to whom they were sold. Retailers of ammunition must also keep books on acquisitions and dispositions.⁵⁵

Private Possession and Use

The Licensing Process

The private possession and use of firearms is permitted only to licensed individuals, and licenses are granted only after a thorough governmental investigation of the applicant to ensure that he meets the statutory criteria of personal reliability, expertise, physical ability, and a need for the weapon. The minimum age for a license is eighteen, and it lies in the discretion of the authorities to grant or deny a license to aliens and non-residents.⁵⁶

Personal reliability is defined generally as the absence of facts indicating that a person might abuse weapons or handle them carelessly and also by a catalog of specific disqualifying criteria which lists convictions for certain offenses and personal disabilities such as addiction to alcohol or drugs, mental illness or feeble-mindedness.⁵⁷ In practice, the most important step in

⁵² Sec. 27, WaffG.

⁵³ *Supra* note 20, at 130.

⁵⁴ Done at Brussels, July 1, 1969, 795 UNTS 247; entered into effect for the Federal Republic on October 10, 1971, BGBl. II, p. 1276.

⁵⁵ Secs. 12 and 13. WaffG.

⁵⁶ Sec. 30, WaffG.

⁵⁷ Sec. 5, WaffG.

determining the law-abiding character of an applicant will be to check his criminal record.⁵⁸ This is easily accomplished, because criminal justice records are kept for all of West Germany by the Federal Central Register (*Bundeszentralregister*) in Berlin.⁵⁹

The most restrictive and controversial aspect of the German licensing process is the examination of the need for a weapon. Whereas certain allowances are made for hunters, target shooters, and collectors, the need for a weapon for defensive purposes will be recognized only if the applicant substantiates that:

he is significantly more endangered by attacks on his life and limb than the population at large and that the acquisition of firearms or ammunition are suitable to reduce this danger.⁶⁰

This statutory criterion is narrowly interpreted by the administrative authorities who are generally upheld by the courts. Altogether, the need examination has generated a vast body of case law and literature and has led to some surprising doctrinal statements such as a denial of the need for applicants who would be subject to surprise attacks, on the grounds that a weapon would not be effective in countering these. Generally, a need will be recognized for persons who are endangered by their occupation, such as those who transport or have custody over desirable goods such as money, drugs, or weapons⁶¹ and for politicians or other widely known persons who are more exposed to personal attacks.

Licenses are tailored to the specific requirements of the applicant. The license describes the number and types of weapons for which it is valid, and special conditions, restrictions, or time limitations can be imposed. If the license is issued for more than one weapon, it contains a separate rubric for each weapon. After each acquisition, the specifics of the transfer and the identifying data of the weapon must be inscribed in the license by the authorities.⁶² Moreover, licenses can or must be revoked if they were obtained surreptitiously or if the prerequisites for their granting no longer exist.⁶³

Types of Licenses

The two basic licenses for private individuals are the Weapons Possession Card (*Waffenbesitzkarte*) authorizing the holder to acquire and possess designated types and numbers of

⁵⁸ B. Wilhelm, "Grundsätze der Bedürfnisprüfung" 19 *Die öffentliche Verwaltung* 33 (1960).

⁵⁹ Bundeszentralregistergesetz in der Fassung vom 21. September 1984, BGBl. I, p. 1229.

⁶⁰ Sec. 32, para. 1, no. 3, WaffG.

⁶¹ *Supra* note 20, at 154; *supra* note 16, at 153.

⁶² Sec. 28, WaffVwV.

⁶³ Sec. 47, WaffG.

guns, and the Weapons Certificate (*Waffenschein*) authorizing the holder to carry a gun.⁶⁴ Holders of these licenses are entitled to acquire the ammunition suitable for their weapons. Other acquirors of ammunition require an Ammunition Acquisition Certificate (*Munitionserwerbschein*).⁶⁵ Exemptions from these private licensing requirements exist for law enforcement personnel, the military, and certain officials.⁶⁶

Generally, a Weapons Possession Card is valid for acquisition purposes for one year, but it is unlimited in time for possession. Easier conditions prevail for target shooters, collectors, and hunters. It is relatively easy for certified target shooters⁶⁷ to obtain a weapons possession card entitling them to acquire any number of single-shot long arms, and they also can obtain a license for semi-automatic weapons and up to two handguns under somewhat easier conditions, if these are required for the practice of their sport.⁶⁸ Licensed hunters are not required to have a Weapons Possession Card for the acquisition of single-shot long arms, but they are required to have a card for handguns and semi-automatic weapons, and it is relatively easy for them to obtain permission to own up to two handguns.⁶⁹ The German authorities apply stringent criteria in qualifying collectors and weapons experts.⁷⁰ Only serious collectors are granted the licenses suitable to their needs. For decorative purposes, individuals can acquire only weapons that have been rendered permanently useless.⁷¹

The Weapons Certificate entitles the holder to carry one weapon outside of his fenced-in residential or business property. A carrying license is not required for hunters while engaged in their sport, for the use of weapons at shooting galleries and ranges, and for the carrying of weapons within fenced-in property with the permission of the property owner. Firearms can be transported without a carrying license, if they are not loaded and if they are wrapped so that they are not readily useable. Applicants for a carrying license must meet all the statutory criteria for weapons licenses in general, and they must also have obtained liability insurance with a coverage of 500,000 Deutsche Mark [DM] for personal injury and 50,000 DM for property damage.⁷²

⁶⁴ Secs. 28 and 35, WaffG.

⁶⁵ Sec. 29, WaffG.

⁶⁶ Sec. 6, WaffG.

⁶⁷ Sec. 32.2.1, WaffVwV.

⁶⁸ *Supra* note 20, at 163.

⁶⁹ *Id.* at 158.

⁷⁰ Sec. 32.4, WaffVwV.

⁷¹ Sec. 3.1, WaffV.

⁷² Secs. 35 and 36, WaffG.

Liability insurance with even higher coverages is required for hunting licenses.⁷³ The carrying of weapons (firearms as well as cutting and thrusting weapons) is prohibited at public gatherings, but exceptions are provided for traditional events of marksmen's associations and for theatrical performances.⁷⁴

Use of Firearms

Generally, the discharge of firearms is permitted only in shooting ranges and galleries. Exempt from this restriction are hunters who stay within the confines of the hunting districts. Self defense and the defense of others is lawful, within the justification of criminal law.⁷⁵ Even within fenced-in property, and with the permission of the owner, shooting is limited to certain relatively harmless firearms, and it is permissible only if adequate safety precautions have been taken so that the projectiles cannot leave the property. A specific permit is required to discharge all other firearms. A permit may be granted, for instance, for industrial uses.⁷⁶ Shooting ranges and galleries are carefully supervised and regulated, and very stringent restrictions exist for instruction in combat training. Such courses are limited to defensive techniques and are available only to individuals with a particular need for such training.⁷⁷

Offenses and Penalties

Infractions of the Weapons Law are punishable either as criminal offenses or as contraventions of administrative law. The criminal sanctions of the Weapons Law are quite severe, by German standards; however, the penalties actually imposed by the courts tend to be on the low side within the range of punishments provided.⁷⁸

The most stringent penalty is imposed for the manufacture, possession, sale, or other disposition of banned automatic firearms. Such conduct constitutes a felony, punishable with imprisonment of one year to five years, and up to ten years under aggravating circumstances, such as organized crime.⁷⁹ Introduced in 1978 to combat terrorism, this sanction has been considered excessive in practice, because it also applies to collectors who failed to notify the authorities of their holdings; a reduction to the misdemeanor level is being discussed.⁸⁰

⁷³ Sec. 17, para. 1, no. 4, BJG.

⁷⁴ Sec. 39, WaffG.

⁷⁵ Secs. 32-34, Strafgesetzbuch in der Fassung vom 2. Januar 1975, BGBl. I, p. 1, as amended.

⁷⁶ Sec. 45, WaffG.

⁷⁷ Sec. 47, Waffg.

⁷⁸ *Supra* note 12, at 200.

⁷⁹ Sec. 52a, WaffG.

⁸⁰ "Entwicklung des Waffenrechts," in DWJ 660 (1987).

Two ranges of punishment are provided in the misdemeanor category. The higher one, imprisonment of six months to five years, applies largely to misconduct on a commercial scale, such as unlicensed commercial sale and manufacture, the acquisition of firearms and ammunition with the intent of transferring them to unauthorized persons and dealings with banned weapons. Punishable with imprisonment up to three years or a fine are offenses such as unlicensed individual acquisition, possession or carrying of firearms, and transfer of a weapon to an unlicensed person. Individuals are subject to the higher punishment range for unlicensed imports of or any involvement with banned weapons, and for exercising control over a firearm for which they do not have a license in restaurants or entertainment facilities that are open to the public.⁸¹

A long list of other infractions of the Weapons Law and its regulations is punishable as an administrative offense with a fine up to 10,000 DM. Moreover, objects that were the subject of an administrative or criminal offense or were used in its commission can be confiscated.⁸²

Statistical Evaluation

To some extent the German statistics justify the assumption that rigid gun control laws reduce crime. In 1972, the year before the Weapons Law with its many new restrictions entered into effect, 20,000 criminal offenses were committed that involved the use of guns. In 1974, one year after the effective date of that law, this annual figure declined to 13,000 incidents. This figure rose again in 1975 to 15,600 cases, and it fell in 1977, the year after new restrictions became effective through the 1976 amendment to the Weapons Law, to 13,380 cases. Since then the incidence of gun-related crime has risen to approximately 17,000 cases in 1982.

Between 1972 and 1982, the population of the Federal Republic remained constant, and criminality in general rose more sharply than that involving the use of guns. Moreover, during that period, the number of murders and homicides committed with a gun decreased by 50%. The majority of offenses committed with a gun were relatively minor, involving only property damage. Ninety percent of the criminal uses involved handguns, and most criminals use illegally obtained weapons. This is particularly true of the terrorists, who supply themselves through break-ins, robberies, and illegal imports.

Within the Federal Republic there is a great local variance in the criminal use of guns, which is significantly higher in densely populated areas. In 1982 the statistical average of criminal gun use for all of West Germany amounted to 27.5 cases per 100,000 inhabitants. In Hamburg this figure was 75.1 cases, as compared to only 16.4 cases in Bavaria, where criminality in general lies at 50% below the federal average. Of interest is the figure from Berlin, which is reported at 25.2 cases, just below the federal average. Undoubtedly the prohibition of private gun ownership in Berlin and the lack of a local market in which guns can be obtained is responsible for this

⁸¹ Sec. 53, WaffG.

⁸² Secs. 55 and 56, WaffG.

relatively low criminal use statistic for a big city.⁸³

A correlation between population density and criminal gun use may also be drawn from looking at the statistics for Austria and Switzerland, and this may explain in part the otherwise rather puzzling fact that these countries have more liberal gun control laws than the Federal Republic and also lower criminal use statistics. In Switzerland, where several hundred thousand men of military age keep their military assault weapons and ammunition at home, and where the right to bear arms is based on strong traditions, very few criminal uses were recorded for 1982. During that year, only 70 intentional homicides were attempted or committed with a gun, only 105 criminal batteries, and 446 armed robberies in a population of 6.38 million inhabitants.⁸⁴ The Swiss population density is approximately 154 inhabitants per square kilometer which is significantly lower than the German density of 245.

In Austria, in 1982, the population density was 90 inhabitants per square kilometer, although almost one-third of the 7.5 million Austrians resided in Vienna. In Austria only 476 criminal gun uses were recorded in 1982, which amounts to a ratio of approximately 6.46 cases per 100,000 inhabitants.⁸⁵ Austrian gun control law is structurally similar to that of West Germany. In fact, the Austrian Weapons Law of 1967⁸⁶ influenced the German Weapons Law of 1972, particularly in developing the concept of personal reliability for individual license holders. Affinities also exist because both laws have their roots in the German Weapons Law of 1938.⁸⁷ However, the Austrian Weapons Law is much less technical and complicated than its German counterpart, and it is generally considered as being more liberal. In Austria long arms can be acquired and possessed by anyone above the age of 18, but a license is required for the carrying of long arms, and it will be granted only if a need is proven. Handguns can be acquired and owned only with a license, which will be granted to law-abiding citizens above the age of 21 without examining their need. A license to carry handguns will only be granted on a need basis to applicants above the age of 21. The privileges of hunters and target shooters are somewhat comparable to those existing in Germany.

Bibliography

Apel, Erich. *Waffenrecht*. Kommentar mit Vorschriftensammlung.

Auflage. Deutscher Gemeindeverlag und Verlag W. Kohlhammer, Köln, 1977. XVII, 672 p.

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⁸³ These statistical data were disclosed by W. Teichmann, of the Bundeskriminalamt the Federal Republic, in a hearing before the Austrian Parliament in 1984: *supra* note 38, at 11, 59.

⁸⁴ *Id.*

⁸⁵ *Id.* at 6.

⁸⁶ Waffengesetz 1967 vom 1 März 1967, *Bundesgesetzblatt* [official law gazette of Austria] no. 121/1967, as amended.

⁸⁷ *Supra* note 12, at 168.

----- *Waffenrecht*. Ergänzungsband zur 2. Auflage. Deutscher Gemeindeverlag und Verlag W. Kohlhammer. Köln, 1980. VII, 118 p. KK6010.A276A63 1980

Deutsches Waffen-Journal. Journal-Verlag Schwend, Schwäbisch Hall. TS532.D18

Hinze, R. *Waffengesetz* 3. Auflage. Deutscher Fachschriften-Verlag, Wiesbaden, 1981. 366 p. KK7750.G 1981

Hoche, Werner. *Schusswaffengesetz*. 3. Auflage. Vahlen, Berlin, 1931. 240 p. LAW GERMANY 7 HOCH

----- *Waffengesetz*. 2. Auflage. Vahlen, Berlin, 1938. 226 p. LAW GERMANY 7 HOCH

Kirn, M. "Das neue Waffengesetz," 88 *Deutsches Verwaltungsblatt* 201 (1973). LAW PER

Potrykus, Gerhard. *Waffenrecht*. 4. Auflage. Beck, München, 1977. XII, 624 p. LAW GERMANY 4 WEAPONS

Reiber, Erich. *Die Entwicklung des Deutschen Schusswaffenrechts zum 2. Bundeswaffengesetz in der Fassung vom 8. März 1976 und eine kriminalpolitische Kritik unter besonderer Berücksichtigung der Begriffe Erwerb, Besitz, und Führen*. Dissertation, Philipps-Universität zu Marburg, 1981. 240 p. KK6010.R44 1981

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November 1989

GREAT BRITAIN

History

The first comprehensive controls on the possession and use of firearms were imposed in Britain seventy years ago.¹ The enactment necessitated by an increase in the circulation of weapons after World War I, and based on the experience of previous narrow controls, required the issuance of certificates by the chief officer of the police for all weapons except shotguns. Certificates were issued for a good cause and only if the police were satisfied that the use of

¹ Firearms Act, 1920, 10 & 11 Geo. 5, ch. 43.

the firearms would not cause any great danger to public safety or peace. This limitation on the ownership and possession of weapons did not attract any great controversy. During the parliamentary debate of the statute, the issue was raised that the right to bear arms enabled a citizen to obtain redress against encroachments by the state. However, the view prevailed that such redress was adequately obtainable through the ballot box and through access to Parliament and the courts.

Experience in the ensuing years indicated that the legislation had reduced the likelihood of the more dangerous weapons falling into the hands of criminals and had narrowed the chances of accidental injuries occurring through the irresponsible use of firearms and use by the young. Further controls were introduced in 1936 to allow conditions to be attached to firearms certificates and to place more stringent restrictions on particularly dangerous weapons such as machine guns. Other changes were introduced in the 1960's to stem a growing concern about the use of weapons in crime and to restrict the use of air guns and shot guns.

The paramount aim of the controls is to ensure the safety of the general public, while acknowledging the legitimate interests of those who use firearms for sports and recreation. Recent changes, however, enacted in quick response to mass shootings involving the use of semi-automatic weapons, are deemed by the government itself to have made a significant shift in the balance of controls.²

Manufacture and Sale

All persons who deal with firearms, shotguns or ammunition by way of business or trade must be registered under the Act.³ Registration may be refused if the chief officer of the police is satisfied that it would cause a danger to public safety or to the peace. Registration may also be refused if it is not clearly shown that the applicant will engage in business as a firearm dealer to a substantial extent or as an essential part of another trade or business. The rationale here is to remove the temptation of firearms enthusiasts to register as dealers simply in order to pursue their hobby and to collect a larger number of weapons than would be allowed.⁴ The registration is renewable every three years (previously every year).

Registration may be removed by a court if a dealer has been convicted of specified offenses under the Act or offenses concerning the import/export of weapons. The police may also delete a name from the register if satisfied that the dealer cannot be permitted to carry on business without danger to public safety or peace. The police may also withdraw the authority to conduct a firearms business from a particular location where there is any danger to public safety or peace.

² The present law is found in the Firearms Act, 1968, ch. 27 (referred to as "the Act"); the Firearms Act, 1982, ch. 31 and the Firearms (Amendment) Act, 1988, ch. 45 (referred to as the "1988 Act").

³ §§ 33-39.

⁴ Gt. Brit., Home Office, *Firearms Act 1968 Proposals for Reform*, Cmnd. 6, No. 261, para. 34 (1987).

Import/Export

All goods imported into the United Kingdom, including arms and ammunition, are subject to import controls requiring the issuance of licenses.⁵ Conversely, all arms and ammunition, including small arms, machine guns, rifles and smooth bore guns and other weapons are completely prohibited from being exported from the United Kingdom to any destination.⁶

A visitor to Britain for a stay of not more than thirty days may purchase a firearm or shotgun, but not a prohibited weapon, for export only. Possession of such a weapon cannot be obtained in Britain. It must be packaged and sent abroad.⁷

Within the United Kingdom, the Secretary of State has the authority to prohibit the removal of firearms and ammunition unless such a removal is approved by the chief constable of the area from which they are to be taken.⁸ If it is intended to take firearms into Northern Ireland, the approval of the Chief Constable of the Royal Ulster Constabulary must also be obtained.

Prohibited Weapons and Ammunition

Particularly dangerous weapons are placed in a prohibited category which requires special authority for their manufacture, sale, acquisition or possession.⁹ The Home Secretary has the absolute discretion to refuse the special authority and there is no appeal allowed against the refusal. The special authority is issued only in a limited number of cases after careful screening and the permission is generally not granted to private individuals. The basis for this strict approach is the recognition that such weapons have a very limited private use.

The prohibited category, expanded under the 1988 changes, now includes the following weapons:

(a) any firearm which is designed or adapted to successively discharge two or more missiles without repeated pressure on the trigger. This definition extends to all automatic burst firearms.

⁵ Import of Goods (Control) Order 1954, 1954 S.I. No. 23.

⁶ Export of Goods (Control) Order 1987, 1987 S.I. No. 2070, Sched. I, part II, Group I.

⁷ 1988 Act, § 18.

⁸ 1969 Act, § 8.

⁹ *Id.* § 5.

(b) any self-loading or pump-action rifle except one chambered for .22 rim-fire cartridges. A self-loading weapon is one that is designed or adapted "so that it is automatically reloaded."¹⁰ A pump action rifle is one that is "re-loaded by the manual operation of the fore-end or forestock of the weapon."¹¹ Semi-automatic weapons are thus included in the former category.¹² Weapons chambered for .22 rim-fire cartridges are excluded from control because of their low muzzle velocity and their wide use for control of vermin

(c) self-loading or pump-action smooth-bore guns not chambered for .22 caliber rim-fire cartridges, the barrel of which is less than 24 inches or the overall length of which is less than 40 inches

(d) a smooth-bore revolver gun, other than one which is chambered for 9mm. rim-fire cartridges or which is loaded at the muzzle end of each chamber. This is a shot-gun with a short barrel made in South Africa and used exclusively in military operations and riot control

(e) any weapon designed to discharge any noxious liquid, gas or other thing

(f) any rocket launcher or mortar for projecting a missile other than those designed for line-throwing, pyrotechnics or as signalling apparatus.

The 1988 amendments also placed in the prohibited category any cartridge with a bullet designed to explode on impact, any ammunition containing a noxious substance, as stated in (e) above, and any grenade, bomb, missile, rocket, or shell which is capable of being used with a weapon of any description and which is designed to explode on impact.

The Secretary is granted the authority to issue regulations adding to the category any firearm which was not for sale in substantial numbers before 1988 and which appears to him to be (i) specially dangerous, or (ii) wholly or partly composed of material that cannot be detected by metal detectors, or (iii) any ammunition which is not presently specified but appears to him to be specially dangerous. The regulation must first be approved by Parliament.

Section 1 Firearms

Certification under § 1 is applied to all handguns and rifles. The section exempts specific shotguns, e.g., a smooth bore gun which has a 24-inch barrel with a bore not exceeding 2 inches in diameter and which has no magazine or has a non-detachable magazine incapable of holding over two cartridges. Thus, a shotgun which does not have an internal magazine or has a magazine for holding three or more shots, whether integral or detachable, will require a firearms certificate. Shotguns which have been adapted to hold an integral two shot magazine so that it can be exempted from the need of a certificate must bear an approved mark made by approved proof

¹⁰ *Id.* § 57(2A).

¹¹ *Id.*

¹² G. Scanlon, *Current Law Statutes 1988*, ch. 45, general note on § 1.

offices. The requirements for certification also apply to any ammunition for a firearm, except:

(a) cartridges with five or more shots, none of which exceed .36 in diameter; b) ammunition for an airgun, air rifle or air pistol; and c) blank cartridges not more than one inch in diameter.

Shotguns

The possession of shotguns, other than those licensed under section 1, requires a shotgun certificate. The criteria for the issuance of these certificates are different from a firearms certificate.

Air Weapons

Except for those air weapons that have been declared as specially dangerous, there are no requirements for certification. However, there are restrictions placed on their possession and use by young persons under 17.

Certification Procedure and Requirements

Applications for firearms and shotgun certificates are made to the local police. Under § 26(2)(b) a verification is needed of the likeness of the four photographs and of the particulars given in the application. The Firearms Rules 1989¹³ require the person verifying (not being a member of the applicant's family) to be a resident of Great Britain, to have personally known the applicant for two years, and be a member of Parliament, justice of the peace, minister of religion, doctor, lawyer, established civil servant, bank officer or person of similar standing.

A firearms certificate is only granted if the police are satisfied that the applicant has a good reason for acquiring and possessing the weapon and that he can be allowed to do so without danger to the public and to the peace. The applicant must state his reasons for acquiring the particular type of firearm. Thus, applicant for a revolver with ammunition may show that he has an opportunity for using the weapon legitimately and regularly, e.g., for target practice as a member of a shooting club. Particulars must also be stated as to where the firearm and ammunition are to be stored and the arrangements that are to be made for their safe custody. The applicant is personally interviewed by a police officer and inquiries are made into his background.¹⁴

¹³ 1989 S.I. No. 854, r. 5(2); the Firearms (Scotland) Rules 1989, 1989 S.I. No. 889, r. 5(2).

¹⁴ The system does break down now and again. In August 1987, Michael Ryan shot to death 16 persons in Hungerford, England. Although known in his neighborhood for violence, he received a firearms license within 24 hours of applying. Ryan had amassed an arsenal of pistols, shotguns, semi-automatic rifles, including an AK47, and a Second World War machine gun. Most of these weapons were properly licensed. Blake, "Gun Law in Britain: How Hard is it to Buy a Gun," *The Illustrated London News* (August 1988). Reassuringly, however, the author tested the system by going to twelve gun shops seeking an AK47 and met with an "encouraging lack of success." *Id.* at 26.

The police policy is not to consider personal protection as a good reason for acquiring the weapon. A certificate may also be refused where the applicant has previously received a sentence of imprisonment or where there is reason to believe that he is of intemperate habits or of unsound mind, or is thought for any reason to be unfit to be entrusted with a firearm. A previously issued certificate may be revoked on the same grounds.

A refusal to issue a firearms certificate is appealable to the Crown Court. However, a restrictive procedure is followed since the decision of the Court of Appeal in *Kavanagh v. Chief Constable of Cornwall*,¹⁵ holding that on an appeal under the Act, the court was exercising an administrative function and the normal rules of evidence did not apply. As a result, all the information gathered by the police about the applicant seeking a certificate is available to the court, regardless of the rules of admissibility. The chances of bringing a successful appeal have therefore been reduced.

A firearms certificate specifies the type and serial number of the weapon to which it relates and the holder must comply with conditions, such as, keeping the weapon and ammunition in a safe place when not in actual use, and reporting its loss or theft to the police. The certificate may contain additional conditions, e.g., confining the use of the weapon to an approved firing range or prohibiting the use or firing of collectors' weapons.

Certification requirements for shotguns, imposed since 1969, have been tightened under the 1988 amendments. Previously, the police were obliged to issue a shotgun license unless there was reason to believe that the applicant was prohibited from holding a certificate under the Act, e.g., because of a previous conviction, or if the possession would endanger public safety or peace. The certificate enabled the holder to possess any number of shotguns and there was no legal requirement for storing the weapons in a secure place when not in use.

Under the new criteria, the chief officer of the police must be satisfied that the applicant can possess a shotgun without danger to public safety or peace. Moreover, no certificate can be granted or renewed if the chief officer is satisfied that the applicant does not have a good reason for wanting the weapon. This shifts the burden of proof on to the applicant. The white paper introducing the changes expressed concern that shotguns were being acquired for unacceptable reasons, namely for self-defense.¹⁶ Under the statutory guidance provided, an intention to use the gun for sporting or competition purposes or for shooting vermin will be accepted as being a "good reason."¹⁷ An application may not be rejected merely because the applicant intends neither to use the gun himself or lend it to anyone else to use. This is to allow shotguns to be passed on as family heirlooms or to be held by the surviving spouse of the owner. A shotgun certificate must

¹⁵ [1984] Q.B. 624 (C.A.).

¹⁶ *Supra* note 4, at para. 25.

¹⁷ 1968 Act, § 28(1B).

give details, including the identification number of each weapon held. There is, however, no limit on the number of weapons that may be held under a certificate.

Certification Exemptions

The more important of the exemptions granted from the holding of firearms and shotgun certificates are:

- 1) those granted temporary permits, e.g. to allow an executor to dispose of a weapon belonging to the estate,
- 2) a member of an approved shooting club when engaged as a member of the club or in target practice,
- 3) persons running miniature rifle ranges where air guns or rifles up to .23 inch caliber only are used, and
- 4) a person who does not hold a shotgun certificate may borrow a shotgun from the occupier of private premises and use it on those premises in the presence of the occupier.

Private Sales and Transfers

The private sales of section 1 firearms and ammunition within the United Kingdom to anyone except a registered dealer, are prohibited unless the vendee possesses a certificate of authority to buy. A sale, hire, transfer or borrowing of a shotgun for more than 72 hours must only be made to a transferee who possesses a shotgun certificate and the police are notified of the transaction. Shotgun ammunition may generally not be sold unless the buyer produces a shotgun certificate or that of another person along with a written authority to purchase ammunition on behalf of that person.

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January 1990

SELECTED OFFENSES AND PENALTIES¹⁸

<u>Offense</u>	<u>Mode of prosecution</u>	<u>Punishment</u>
Possessing firearm or ammunition without certificate.	Summary	6 months or statutory max. fine or both.
	On indictment	3 years or fine or both; in aggravated cases 5 years or fine or both.
Non-compliance with condition in certificate	Summary	6 months or level 5 fine or both.
Selling firearm to person without a certificate	Summary	6 months or statutory max. fine or both.
	On indictment	3 years or a fine.
Possessing or distributing prohibited weapons	Summary	6 months or statutory max. fine or both.
	On indictment	5 years or fine or both
Possessing firearm with intent to endanger life or injure property	On indictment	Life imprisonment or a fine or both.
Use of firearm to resist arrest	On indictment	Life imprisonment or a fine or both.

¹⁸ *Id.* § 51 and Sched. 6, as amended.

Carrying a firearm
with intent to commit
indictable offense

On indictment

Life imprison-
ment or a fine
or both.

Carrying loaded
firearm in a public
place

Summary

6 months or
statutory max.
fine or both.

On indictment

5 years or fine
or both.

Failure to comply
with instructions
in certificate when
transferring firearm
dealer; failure to
to other than regd.
report transaction
to police

Summary

6 months or
statutory max.
fine or both.

On indictment

3 years or a
fine or both.

Great Britain - Offenses in Which Firearms Were Used¹⁹

Year	Homicide	Attempted Murder	Other Acts of Injury	Robbery	Burglary	Other Offense Excluding Criminal Damage	Criminal Damage	Total Offenses
1978	40	239	2,480	996	102	40	1,775	5,672
1979	55	255	2,909	1,038	80	52	2,158	6,547
1980	25	274	2,471	1,149	67	31	2,569	6,586
1981	34	277	2,691	1,893	98	28	3,046	8,067
1982	46	308	2,404	2,560	79	46	2,957	8,400
1983	43	269	2,429	1,957	87	29	3,148	7,962
1984	67	322	2,330	2,098	93	49	3,417	8,376
1985	45	353	2,652	2,531	125	59	3,977	9,742
1986	51	363	2,015	2,629	96	69	4,140	9,363
1987	77	508	1,944	2,831	109	80	3,453	9,002
1988	36	531	1,816	2,688	107	111	3,235	8,524

¹⁹ Gt. Brit., Home Office, *Criminal Statistics England and Wales 1988*, Cmnd. 6, No. 847, p. 59 (1989).

GREECE

General

The issue of gun control and its underlying ramifications has never generated much controversy, publicity, or debate in Greece. The various laws that have been enacted so far reflect on one hand the will of the Greek government to control the manufacture, trade in, possession of guns and explosive substances, and on the other hand, the political situation and social disorder that Greece has experienced. One law in particular clearly reveals the turmoil and social unrest in Greece's history and that is Law 453/1945 that was passed during the Civil War and provided for the death penalty or life imprisonment to anyone belonging to a private organization that had guns or explosives at its disposal.

Current Legislation

The latest major legislation pertaining to handguns, shotguns, and explosive substances and devices is Law 495/1976 which supersedes the previous law on the subject, Legislative Decree 549/1970.¹

Definitions Inherent to this Law:

- A **gun** is regarded as any device that can propel either a bullet, gas, chemical, laser beam or flame that might cause harm to the health or life of a person or damage property. Under this definition fall all types of military guns, machine guns, pistols, hand guns, shotguns, and grenades as well as any devices that may cause the same results.
- **Hunting guns** are those with one or two barrels, automatic or not, with a smooth bore which are operated by power created by the burning of powder.
- **Air-propelled guns** are those which operate through the use of compressed air with the aid of a spring which launches a bullet.
- **Ammunition** includes all cartridges used to load guns, machine guns, and pistols.
- **Explosives** include those substances that, through impact or heat application, undergo a rapid chemical change that releases a large quantity of damage-causing gas.
- **Explosive devices** include any devices that can cause an explosion with the aid of any combustible substance.

¹ P. Raptarches, 4A *Diarkes Kodix Nomothesias* [Continuous Compilation of Laws] 337(a).

Manufacture and Sale

Manufacture

The manufacture, alteration, assemblage, or repair of firearms within Greece is permitted only upon obtaining a license from the Ministry of Public Order or the police authorities. In addition, the recapping of empty cartridges by a factory the operation of which is not supervised by the police is prohibited.

Commercial Sale

An individual or legal entity may trade in or dispose of guns in any way upon obtaining a permit through the Minister of Public Order. Importers and dealers in guns must store them in warehouses that operate in compliance with the existing provisions. Firearms can be stored only in places that have been approved by the authorities. Also, trade in hunting guns and air-compressed guns, their parts, and cartridges is allowed only through a license from the police. No license is required for trade in knives and arrows. In exceptional cases, upon a decision of the Minister of Public Order and for safety and public security reasons, any trade in handguns, pistols, and explosive substances and their importation is prohibited.

Importation

Generally, the importation of guns and other objects classified as such as well as their parts is prohibited. However, these objects can be imported through a license which is granted individually by the Minister of Public Order for a specific object and quantity. Exceptions to this rule are knives, iron clubs, arrows, and swords which are regarded as potentially harmful but can be imported with a special license.

The importation of hunting guns, cartridges, and parts of guns used for hunting is possible in the following cases:

-- A foreigner can import a hunting gun and 20 cartridges without a license under the condition that upon his departure from Greece, he will take the gun with him. The foreigner is obliged, however, to declare the weapon to the customs officials upon entering Greece and have it registered on his passport. The gun will be inspected again when the foreigner departs from Greece.

-- A national who is 18 years of age may import one hunting gun together with 100 cartridges. The gun must be registered on his passport when he enters Greece, and the customs officials will furnish a certificate of possession.

Guns in Transit

The transport of guns, explosive substances, devices, and ammunition from one foreign country to another through Greek territory is possible only through a decision of the Ministers of Public Order, Commerce, and National Defense that defines the conditions of safe transit.

Transport and Use of Guns

The transport and use of explosives and weapons are prohibited. Sharp knives and arrows are allowed.

Sale, Transport, and Use of Explosives in Particular

The sale, transport and use of explosive substances, except powder used for hunting cartridges, is prohibited without a license granted by the police. This license which includes the purchaser's identification and the allowed quantity is valid for two years.

The transport of explosive substances by regular means of transportation, regardless of the quantity, is prohibited. Adequate security measures must be taken in order to prevent accidents during the transport of explosive substances. The agent, the driver of the carrier, and the dealer involved are responsible. When the quantity to be transported exceeds 100 kilos, the transportation means and the route to be followed must be written on the license.

Manufacturers, dealers, and consumers must take extra care to avoid theft or loss of explosive substances and inform the police of all the measures taken so the police can recommend additional ones. In case of any theft or loss of license to purchase or make use of explosive substances, the police must be notified by the persons mentioned above. Particularly, owners of mines who are authorized to use explosives must keep detailed records of purchases and sales of explosives. These records must include the serial number, the authority that issued the license, type and quantity of the purchased substance, date, identification of the purchaser, and a statement addressed to the police containing information regarding the manager of the mine.

Importation and Manufacture of Explosive Substances

The importation of explosive substances is allowed upon a permit of the Department of Interior which is issued individually and for a specific type and quantity of explosives. Explosives may be manufactured within the country upon a permit issued by the Departments of Industry, Finance, and Interior. At the beginning of each month, manufacturers must supply the police with a statement that includes the type and quantity of the raw materials imported during the previous month and the quantity of explosives produced.

Prohibition of Sale

Trade in explosives is allowed with both a permit issued by the Department of Interior and a clearance from the police authorities. Any persons who have been convicted of illegal fishing or illegal possession of explosives will not be considered for such a permit. The authorities have the right to deny a permit or revoke one already granted to persons who pose a threat to the public or national security.

Sales Records

Dealers in guns and explosives are obliged to keep the following records:

- A warehouse record includes all the information pertaining to the importation of guns such as number, type, number of items sold, name of manufacturer, and date of sale.
- The sales record lists the number of guns sold, type, manufacturer, and the full identification of the purchaser.
- A warehouse record includes all explosives, the importation, purchase, quantities, type, and manufacture.
- The record of the explosives sold includes such information as the quantities, the place of sale, purchaser's identity, and the number of his license.
- Importers of hunting guns are obliged within ten days of importation to make a statement of L.D. 105/1969 on "Personal Responsibility" to the police authorities. The importer must also state the number of imported guns and their main features such as kind, place of production, etc.
- At the end of the month, dealers in hunting guns are obliged, for each sale of a hunting gun, to submit to the police authorities of the place where the buyer resides a copy of the bill which includes the complete identification of the buyer (first and last name, father's name, occupation, place and date of birth, address, identification number, and the name of the authorities who issued the card) and the main features of the hunting guns sold. ²

Possession and Use

Possession

The possession of pistols, revolvers, or cartridges as well as explosive substances is possible upon obtaining a license from the police. There is a license requirement for the possession of sharp knives, air compressor guns, and cartridges. For the advancement of the sports of target shooting and fencing, persons engaged in either of the activities may be authorized by the police to possess the necessary weapons. Guns of historical or personal value that are kept in private collections are allowed by the police.

Carrying

A national who is 21 years old may carry a gun with a police permit for the following reasons:

- for his own safety, provided that the local prosecutor consents that the person's well being is endangered;
- for the safety of public buildings, banks, museums, public utilities, or installations that serve national security or other important functions; and

² Presidential Decree No. 1195/1977 (Official gazette N°390).

-- the police can authorize the carrying of guns except pistols and revolvers to protect installations or safeguard persons, objects, or money supplies.

Sale

A person authorized to sell guns must request from the prospective buyer a police document stating that the buyer has a license to carry and possess the gun. In addition, the sale of explosive substances to someone who has not obtained a license from the authorities is also prohibited. The gun dealers must keep records of all sales. All items sold must be entered into a log containing information concerning the purchaser's identification.

License Requirement

In order to obtain a license to carry a gun, one must do the following:

- file an application that includes all the information pertinent to the applicant, the reasons the permit is needed, and the location the applicant will carry or possess the gun;
- furnish a certificate obtained from the local prosecutor's office stating that the applicant is not a fugitive; and
- supply a copy of the permit to own the gun and three recent photographs.

A license granted upon meeting the above criteria is valid only for the particular area it covers. If the licensee wishes to carry the gun in an area other than that designated, he must file an additional application with the police of that area. A violation of any of the above requirements will result in a loss of the license.

A license to carry a gun must include the applicant's name, address, place of birth, profession, the regions for which it is valid, date of its validity, and the gun's specifications. The license can be renewed every three months. The bearer has to reapply each time. Non-observance of these requirements renders the license invalid, and the gun must be surrendered.

License Denial

A license for the importation, manufacture, assembly purchase, transport, or use of explosive substances may be denied to the following individuals:

- those sentenced to death but serving punishment that was commuted to imprisonment;
- those convicted of violating the law on narcotics or fishing with the use of explosives;
- those convicted of the possession of contraband, illegal possession of arms, illegal importation, manufacture, repair, possession, transportation, and use of explosives within five years from the date of serving the sentence;
- those convicted of offenses against the state within five years of serving the sentence;

- those considered as threatening to public order and security, and those suspected of being unable to handle firearms safely; and
- those who are under 18 years of age.

Sale of Explosive Substances

The sale or disposition of explosive substances to anyone who does not possess a permit to purchase, transport, or use them is prohibited. Manufacturers, dealers and users are obliged to store the substances in a secure place and notify the police of any possible danger of theft or actual theft of a permit to purchase, transport, or use explosive substances.

Offenses and Penalties

Persons who violate the provisions on importation of objects classified as guns or parts of guns are punished by imprisonment for no less than 6 months and a fine of no less than 20,000 drachmae. In cases involving a foreigner who imports a hunting gun but fails to export it when he departs or a foreigner or national who imports more than one hunting gun may be punished by imprisonment up to one year or by a fine.

Those who violate the provisions on manufacture, alteration, assemblage, or repair of firearms will be punished by imprisonment of no less than one year and a fine of no less than 20,000 drachmae.

Anyone who possesses a pistol, revolver, cartridges, and explosive substances without a proper permit is punishable by imprisonment of no less than 6 months and a fine of 5,000 to 75,000 drachmae. In case of recidivism, violators are punishable by imprisonment of no less than 2 years and a fine of 150,000 drachmae. Unauthorized possession of arrows and swords is punishable by imprisonment up to 6 months and a fine.

People who carry guns illegally will be punished by imprisonment of no less than 6 months and a fine up to 75,000 drachmae and in case of recidivism, by a fine up to 150,000 drachmae.

Those who violate the provisions on transportation and use of explosives and weapons are punishable by imprisonment of no less than three months.

Severe penalties are provided for those who supply others with guns in order to commit felonies or supply guns or organizations with firearms. Those who import, possess, manufacture, provide or sell arms for such purposes including such weapons as pistols, shotguns, explosives, machine guns, and grenades will be punished by imprisonment from 5 to 15 years. Members of the board of any group or association on the leader of the group if they have knowledge of the illegal supply or possession of the guns by any member of the association are punishable by the same penalties. People convicted of intentionally preparing to commit the above offenses are liable to imprisonment for a minimum of 2 years.

Seizure and Confiscation

All guns illegally possessed, carried, manufactured, and transported as well as those voluntarily submitted to the authorities are confiscated. Customs officials are authorized to confiscate all guns illegally imported. Officers of the armed forces are also authorized to seize guns in the border areas.

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INDIA

Historical Background

Some restrictions on the possession and carrying of arms under the British rule existed since 1841.³ In 1857, following a great military and political upheaval in India which threatened to end British rule in the country, the Government enacted the first major law on the subject of gun control.⁴ Though promulgated for only a temporary period of time, the law regulated the import, manufacture, sale, possession, and use of arms and ammunition.

An 1860 Act, while repealing the 1857 law, in addition, regulated the right to keep and use arms.⁵ It restricted the possession of arms, like cannon, howitzers and mortars, requiring licenses for carrying them. It also empowered the Government to disarm any province, district or place and to prohibit the possession without license of arms of any description. Both buyers and sellers were required to obtain licenses. Originally intended to stay on the statute book for five years, it was not repealed until 1878.⁶ The purpose of the 1878 Act was to consolidate and amend the then existing law. Two reasons given for certain new features in the Act were (a) to ensure stricter control over the import of cheap firearms, and (b) to restrict and regulate the transport of firearms so as to prevent their reaching hostile tribes beyond the frontier, or the criminal elements in the country. The Act, inter alia, also provided that licenses must be obtained for the import and export of arms; required sanction of the Government for warehousing of arms; established searching stations along the frontiers; regulated transport of arms; required licenses for being armed (with any arms) or for the possession of firearms, ammunition and military stores in all places; and required that a notice of the possession of all arms in certain places be published in the official

³ Act No. 18 of 1841.

⁴ Act No. 28 of 1857.

⁵ Act No. 31 of 1860.

⁶ The Indian Arms Act, 1878, No. 11

gazette. Except for some minor amendments, the Act remained in force until 1959.⁷ The new Act is a compromise between the strict control of the old law and total liberal policy sought by some of the representatives.

Manufacture and Sale

No person, without a license, is allowed to (1) manufacture, sell, transfer or have in his possession for sale, transfer, conversion, test or proof, any firearm of such class and description as may be prescribed.⁸ An exception authorizes a person, not holding a license, to sell, or transfer by sale any arms or ammunition which he lawfully possesses for his own private use to another person who has a license. But the fact of the sale or transfer will be communicated immediately after the sale to the District Magistrate. The state governments, generally, issue manufacturing licenses to dealers for specific firearms only and not a blanket license for all types of arms. Moreover, the licenses granted authorize dealers to sell or keep for sale a specified amount of ammunition of certain categories.⁹ The proof-testing of firearms manufactured by a licensed dealer must be carried out only in accordance with regulation framed by the Central Government or authorities specified by the latter. Unless the firearm has been proof-tested, it must not be sold.¹⁰

The dealer is required to maintain registers of all arms manufactured, converted or repaired, etc. He cannot enter into a partnership with any person without the approval of the licensing authority. He may sell arms only to licensees. His registers are subject to inspection by the area Magistrate or the police officer. He may not keep Government arms or ammunition without the special order of the authorities.

A person engaged in shortening of barrels of firearms must obtain a license. The license shall specify the category and description of the firearm for which conversion is allowed, and the license will be displayed in a conspicuous place at the shop.

Import into or export out of India, whether by sea, land or air, of arms or ammunition without a valid license is banned. However, the provisions make an allowance in the case of a person who, without a license, can bring into or take out of the country such arms or ammunition in reasonable quantities for his own private use.¹¹ In the case of bona fide tourists, the provisions also exempt them from the ban provided they bring such arms and ammunition only for purposes of sport. If the Collector of Customs is in doubt as to the applicability, in a particular case, of the exemption or the reasonableness of the quality of arms or ammunition brought in, he may detain them until he receives the orders of the Central Government.

⁷ The Arms Act, 1959, No. 54.

⁸ *Id.* § 5.

⁹ The Arms Rules, 1962, rule 24.

¹⁰ *Id.* rule 22.

¹¹ The Arms Act, 1959, No. 54, § 10.

Depending upon the type of transportation and the nature of the arms and ammunition to be exported or imported, several kinds of licenses are prescribed. The conditions of the license require that the articles not be conveyed by any route other than that specified in the license nor the bulk be broken or stopped in transit until they reach the destination. Moreover, the rules require that an account of each package be legibly written, and when transported by rail, the boxes being marked with the word "Arms" or "Ammunition" as the case may be. The conditions require furthermore, that the articles be delivered to the person lawfully entitled to receive them.

Possession and Sale

It is prohibited to acquire, possess or carry any firearm or ammunition unless the person holds a license from the licensing authority.¹² However, a person, without holding a license, may carry any firearm or ammunition in the presence or under the written authority of the licensee provided it is carried for the purpose of repair or for renewal of the license or for use of the licensee himself.

Different licenses are meant for different purposes and for different weapons. A license may be issued for sport and protection, or for crop protection or animal protection. Similarly, a different license is prescribed for target practice. A transit license may be issued to a traveller. In addition to the prescribed conditions, new license conditions may be imposed by the licensing authorities. In no case, is a person allowed to acquire, possess, manufacture, sell or transfer any prohibited arms or prohibited ammunition, unless he has been specifically authorized by the Central Government.¹³ Prohibited arms means such firearms which are so designed that, if pressure is applied to the trigger, missiles continue to be discharged until the pressure is removed from the trigger. Similarly, prohibited ammunition means any ammunition containing any noxious liquid, gas or other such thing, including rockets, bombs, grenades, etc.¹⁴

It is also prohibited to obliterate, remove or alter any name, number or other identification mark shown on a firearm. No person may sell or transfer any firearm which does not bear the name of the maker, number or other identification mark. It is presumed that when a firearm has no identification mark that the person possessing it has obliterated or removed the mark unless he can prove to the contrary.¹⁵ Thus, the onus to prove innocence is laid on the person who is alleged to be in possession of any firearm which does not disclose the maker's "name, number or other identification mark."

A person who has not completed the age of sixteen years, or a person convicted of a violent offense or for moral turpitude, or a person who has been bound to execute bond for

¹² The Arms Act, 1959, No. 54, § 3.

¹³ *Id.* § 7.

¹⁴ *Id.* §§ 2(h) and (i).

¹⁵ *Id.* § 8.

maintaining peace, are disqualified from obtaining a license or possessing a firearm. Therefore, no person may sell arms or make any dealing with respect to a firearm or ammunition with the above disqualified persons. Similarly, a person of unsound mind cannot possess or be sold a firearm.¹⁶ When a person has completed the age of sixteen years, he may obtain a license for training purposes. However, different age limits may be prescribed for different types of firearms.

Licensing

An application for a license may be made to the licensing authority on a prescribed form accompanied by the appropriate fee. The authority will grant a license to an Indian citizen for the acquisition and possession of a smooth bore gun having a barrel of not less than twenty inches in length when it is to be used for protection or sport; or with respect to a muzzle loading gun to be used for bona fide crop protection. A license may also be granted for a .22 bore rifle or an air rifle to be used for target practice by a member of a rifle club licensed or recognized by the Central Government. The authority may also grant a license under the provisions of § 3, for acquisition and possession in any other case, or §§ 4-6, 10 and 12, if it is satisfied that the applicant has good reason to obtain the license.

When a license is denied, the authority must record reasons and furnish them to the applicant upon the latter's request. However, a license may not be denied merely on the ground that the applicant does not own or possess sufficient property.

The license may be granted for a period not exceeding three years. The licensing authority may impose new conditions on the license. However, it cannot change the conditions prescribed under the Arms Rules, 1962. A cancellation of a license may be ordered if the license was obtained by suppression of material information or on the basis of wrong information or if there was a violation of the conditions of the license. The order of cancellation or suspension is appealable.

Any police officer may demand the production of license from a person carrying a firearm. Upon his refusal or failure to produce the license, he may be arrested. When there is a reasonable suspicion or belief that the arms being carried by the person may be used for an unlawful purpose, any magistrate, police officer, or any public servant may arrest the suspect without a warrant and seize from him such arms or ammunition. Whenever a Magistrate has reason to believe that any person in the area has arms or ammunition for an unlawful purpose, or that the person, in the possession of arms or ammunition, is a danger to public peace, he may after recording these reasons cause a search to be made of the house or premises of the person, and seize and detain the arms or ammunition for safe custody. Even, though a person may be entitled to the arms or ammunition in his possession, the Central Government may order seizure of the same and detain them for such period of time as it may consider necessary.

¹⁶ *Id.* §§ 9, 14.

Offenses and Penalties

Any person who, in violation of the Act:

- (1) acquires, possesses or carries any firearm or ammunition; or
- (2) acquires, possesses or carries in a notified place any arm or ammunition specified in the notification (§ 3, § 4); or
- (3) manufactures, sells, transfers, converts, repairs, tests or proves, exposes, or offers for sale, or transfer or possesses for sale, conversion, repair, test any arms or ammunition (§5); or
- (4) shortens the barrel of a firearm or converts an imitation firearm into a firearm (§6); or
- (5) acquires, has in his possession or carries, manufactures, sells, converts, repairs, tests or proves, or offers for sale or transfer any prohibited arms or ammunition (§ 7); or
- (6) sells or transfers any firearm which does not bear the name, manufacturer's number or other identification mark, as required (§ 8(11)); or
- (7) being a convict or a person bonded to keep the peace, acquires or possesses or carries any firearm or ammunition; or
- (8) sells, transfers, or converts, repairs, tests a firearm or ammunition to a person below the age of sixteen years, or a convict or any who has been bound to keep the peace (§ 9(1)(b)); or
- (9) brings into or takes out of India any arms or ammunition (§ 10); or
- (10) brings into or takes out of India any arms or ammunition of a description prohibited by the notification (§ 11); or
- (11) transports over India any arms or ammunition (§ 12); or
- (12) fails to deposit arms or ammunition (§ 21); or
- (13) being a manufacturer or dealer in firearms or ammunition, fails to maintain a proper or correct record of his dealings and stocks, or obstructs the inspection of such record or account or the making of copies of entries therefrom, or intentionally fails to exhibit or conceal such arms or ammunition;

is punishable with imprisonment for a term which may extend to three years, or with a fine, or with both.

Any person who has not completed the age of sixteen years and is found carrying any firearm or ammunition would be liable to punishment with imprisonment which may extend to one year, or with a fine, or with both.

Whoever, having sold or transferred any firearm or ammunition, fails to inform the district magistrate of the sale or transfer, is punishable with imprisonment for a term which may extend to six months, or with a fine, or with both.

Whoever fails to deliver-up a license, after being called up, for varying the conditions of the license, or whose license has been suspended or revoked, is punishable with imprisonment for a term which may extend to six months, or with a fine, or with both.

Whoever, when required by a police officer or any authorized person, while carrying any arms or ammunition, fails to disclose his name or address, or gives an incorrect

name or address is punishable with imprisonment which may extend to six months, or with a fine, or with both.¹⁷

Whoever, having violated the provisions of §§ 3-7, or §§ 10-12 acts so as to conceal such violation from being known to any public servant or a person employed or working upon a railway, aircraft, vessel, vehicle, or other means of transportation; or, upon search, conceals any arms or ammunition, is punishable with imprisonment for a term extending to seven years, or with a fine, or with both.¹⁸

Whoever possesses any arms or ammunition with intent to use them for an unlawful purpose or to enable any other person to use them for any unlawful purpose, is punishable with imprisonment which may extend to seven years, or with fine, or with both regardless of whether the unlawful purpose was carried out or not.¹⁹

A person, who uses or attempts to use a firearm or an imitation firearm with intent to prevent the lawful arrest or detention of himself or another person, is punishable with imprisonment for a term which may extend to seven years, or with fine, or with a both.²⁰

Purchasing firearms or other arms, as may be prescribed, from any other person knowing that such other person is not entitled or is not a licensee; or delivering arms or ammunition into the possession of a person without ascertaining that he is entitled to or is not prohibited by any law from possessing them is also an offense punishable with imprisonment for a term which may extend to six months or with a fine, or with both.²¹

Contravention of any condition of a license or any provision of this Act or the rules thereunder is punishable with imprisonment for a term which may extend to three months, or with fine, or with both.²²

Any person, having been convicted of an offense under this Act, upon a subsequent conviction for an offense under this Act, is punishable with double the penalty provided for the latter offense.²³

¹⁷ *Id.* § 25.

¹⁸ *Id.* § 26.

¹⁹ *Id.* § 27.

²⁰ *Id.* § 28.

²¹ *Id.* § 29.

²² *Id.* § 30.

²³ *Id.* § 31.

Whenever an offense has been committed by a corporation under this Act, then every person who, at the time, was in charge of the company or the conduct of the business of the company, is deemed guilty of an offense and is liable to be proceeded against accordingly unless he proves that the offense was committed without his knowledge and that he exercised due diligence to prevent the commission of the offense. However, if the offense was committed by the company and it is proved that it was with the consent or connivance of, or is attributable to any neglect on the part of a director, manager or secretary of the company, then such officer will be deemed to be guilty of the offense and be punished accordingly.²³

If an offense had been committed and arms or ammunition are found on the premises or in a vehicle in the joint possession or occupation of several persons, and it is believed that they were aware of the existence of arms or ammunition in the place, then each of them, unless the contrary can be proven, is liable for the offense as if he did it alone.²⁴ Every person, who knows of the commission of an offense under the provisions of the Act, in the absence of reasonable excuse, must give information of the offense to the area Magistrate or the police officer. The burden of proving reasonable excuse is on that person. Similarly, every employee on a railway, aircraft or vehicle must give information about any box or bail which he believes may contain arms or ammunition. Failure to inform constitutes an offense, unless the person proves that he had a reasonable excuse for not informing.²⁵

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²³ *Id.* § 32.

²⁴ *Id.* § 35.

²⁵ *Id.* § 36.

ISRAEL

Section 1 of the Firearms Law, 5709-1949, as amended, ¹ defines a firearm as "a barrelled instrument adapted to throw a bullet, projectile, shell, bomb or the like capable of killing a person, and includes any part of, accessory to, and ammunition for such an instrument; it also means a weapon adapted to project any substance intended to harm a person, and includes a part of, accessory to, and ammunition for such a weapon and a container containing or adapted to contain any such substance."

Manufacture of Firearms

Section 2 (a) of the Firearms Law, 5709-1942 ² provides a general requirement for all types of firearms as follows: "A person shall not make a firearm save under a license and by commission, or with the approval of the government."

Import and Export of Firearms

The law distinguishes between military firearms and non-military firearms. While for the import into or export from Israel of non-military firearms a license issued by the Minister of Defence (in case of a firearms destined for the Defence Army of Israel) or by the Minister of the Interior (otherwise) suffices--in case of import or export of a military firearm--an approval of the whole government is required.

A military firearm was defined in a declaration issued by the Minister of Defence on April 30, 1950 ³ as

every firearm the barrel of which is
 (a) smooth--if its diameter is 20 millimeters or more, or
 (b) spiral--if the length of its barrel is more than 100 millimeters and its diameter exceeds 5.6 millimeters.

Possession

Possession and carrying of firearms requires a license. Such license can be issued by a licensing officer upon the recommendation of the Superintendent of Police or his representative. ⁴ Exempted from this latter licensing requirement are firearms delivered on behalf of or with the consent of the Defence Army of Israel or the Israeli Police for the purpose of training or with a

¹ 3 *Laws of the State of Israel* [hereafter LSI] 61 (5709-1949).

² *Id.*

³ 2 *Yalkut Hapirsumim* [Collection of Publications] of 5710-1950, No. 90, p. 1028 (5710-1950) [in Hebrew].

⁴ Sec. 11, *supra* note 1, at 63.

certificate of authorization.⁵ Furthermore, people who have a license to import, to deal with, or to carry firearms are exempt from the requirement of having a license for possession of firearms.

Special licenses may be given to:

1. a head man of a settlement for the protection of the people and property and of traffic to and from the settlement;
2. owner or manager of eligible undertaking to protect the undertaking, its employees and traffic;
3. an employee designated by a Minister for security purposes in connection with the functions of the employees of that ministry;
4. producers of a film or a play, or people authorized by them to carry the licensed firearm at the time of performance;
5. holder of a license under section 18 (a) of the Guard Services and Private Investigators Law, 5732-1972⁶ on conditions prescribed in such a permit;
6. escorts for an outing or for camps may be granted a license, provided that the application is made in advance as prescribed.

Requirements for Obtaining a License

First, the firearm must be tested by a licensed seller or one appointed by the Minister of the Interior who will certify that he has tested the firearm and found it fit for use. Second, the applicant should be found qualified to get a license.

Internal instructions guide the authorizing officer in deciding whether or not to grant a license. Among such instructions there is one recommending such grant to a person whose occupation necessitates travel across the "green line" or within a hostile population or, for example, a person who is involved in construction or research in open and unpopulated areas.⁷ However, the licensing officer is under no obligation to cite any reason for denial or revocation of a license,⁸ although the general rule is that he should not act arbitrarily.

A license may be issued as stated above, only upon recommendation of the Superintendent of Police. It was held by the Israeli Supreme Court that past criminal convictions for violent offenses is a valid consideration in deciding whether or not to grant a license under the Firearm

⁵ Sec. 5 B & C, Firearms (Amendment No. 3) Law, 5722-1962, 16 LSI 57 (5722-1961/62), Firearms (Amendment No. 6) Law, 5738-1978 32 LSI 151 (5738-1977/78).

⁶ 26 LSI 107 (1971/72).

⁷ H.C. 799/80 Shalalam v. The authorized officer under the Firearm Law 36 (1) *Piske Din* [Decisions of the Supreme Court] 317 (1982) [in Hebrew].

⁸ Administration Procedures (Decisions and Reasoning) 5719-1958, 19 *Dinim* [Laws] 8675 (1966) [in Hebrew].

Law.⁹ However, if an excessive time period has passed between such conviction and the date of the application without any repeated criminal activity, there is a presumption that the person has been rehabilitated and will continue to be a law-abiding citizen. Such a person may not be refused a gun based on his criminal record.

Another requirement for obtaining a license is that the licensing officer transmits applications to the Director General of the Ministry of Health who then checks the applicant's name against the National Psychiatric Case Register, which contains the name of everyone ever admitted to an Israeli psychiatric hospital. About 2 percent of the yearly number of handgun applications are filed by people found to have a history of treated mental illness and they are denied handguns.¹⁰

Unlike the granting of a license, revocation of a license is very limited. Once a license is issued only an event of special risk will justify its revocation.

Offenses and Penalties

A person who manufactures, imports, exports, or deals in firearms without a license is liable to imprisonment for a term not exceeding two years, to a fine, or both.

A person who possesses or buys a firearm without a license or one who violated the conditions of such a license is liable to imprisonment for a term not exceeding one year or to a fine or to both. A person who committed an offense involving a military firearm is liable to a double penalty of the above. The firearm in these cases may be forfeited to the State.¹¹

The holder of arms who cannot provide a legal permit for such holding will be imprisoned for seven years. The carrier of arms who cannot provide a legal permit for its carrying will be imprisoned ten years.¹²

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⁹ H.C. 28/58 Dalal v. The authorized agency for granting licenses according to the Firearms Law, 12 *Piske Din* [Decisions of the Supreme Court] 318 (1958) [in Hebrew].

¹⁰ M. Rahav, "Mental Illness Doesn't Predict Dangerousness," *The New York Times*, May 6, 1987, at 34, col. 5.

¹¹ Secs. 16-18, Firearms Law, 5709-1949, *supra*, note 1.

¹² The Penal Code 5737-1977, Sec. 144, *Sefer Ha-Hukim* [Primary Legislation] of 5737, p. 251 [1976/78] [in Hebrew].

ITALY

General

In Italy the laws on the subject of weapons and explosives have become stratified into a series of poorly coordinated provisions. As legal writers have pointed out, the legislators have often acted on contingent needs rather than with a systematic vision of the problems that might result in a harmonious organization of norms.¹ The fragmented condition of the norms found in various laws makes their interpretation complex. The need is felt for their collection and harmonization into a consolidated act.² In any case, it can be observed that Italian legislation has consistently and progressively resorted to more stringent measures governing the possession, manufacture, and sale of firearms, explosives, and ammunition. Law No. 110 of April 18, 1975,³ is still the centerpiece of this legislation, while statutes promulgated prior to Law No. 110/1975 remain in force as amended by or referred to in this Law.⁴

If a weapon is defined as an instrument that has as its natural purpose an offense against a living being, one may note that the Italian Penal Code assumed this definition while limiting its consideration to a potential offense against human beings.⁵ For firearms, however, it is not required that the natural purpose of the offense be a person, since it is presumed that all are potentially offensive to persons. This applies then to hunting guns, so-called target guns, and rocket-launching pistols.

A fundamental distinction is made between the following two categories:

- A. War Weapons and Ammunition and War-type Weapons, and
- B. Common Firearms and Ammunition.

¹ P. L. Vigna and G. Bellagamba, *Armi, Munizioni, Esplosivi*, 3rd ed., p. 1 (Milano, Giuffrè, 1981).

² *Id.*

³ *Gazzetta Ufficiale della Repubblica Italiana* (Official law gazette of Italy) No. 105 of April 21, 1975.

⁴ Criminal Code of October 19, 1930, arts. 585, 678-680, and 697-704. Royal Decree No. 733 of June 18, 1931, promulgating the Consolidation Act on Public Security Laws, arts. 28-45. Royal Decree No. 635 of May 6, 1940, promulgating the Regulation for the Enforcement of the Consolidation Act on Public Security Laws, art. 44. Law Decree No. 1274 of November 22, 1956. Law No. 895 of October 2, 1967. Presidential Decree No. 641 of October 26, 1972. Ministerial Decree of August 2, 1973. Law No. 694 of December 23, 1974. Law No. 110 of April 18, 1975. Law No. 286 of May 28, 1981. Law No. 452 of July 16, 1982. Law No. 85 of March 25, 1986. Law No. 36 of February 21, 1990.

⁵ See art. 585 of the Italian Criminal Code.

Category A includes firearms of any type which, because of their clear potentiality to injure are, or can be, designated as modern armament for national or foreign troops under war employment. This category includes bombs of every type, aggressive chemicals, lethal war devices of any nature and explosive or incendiary bottles or containers. War-type weapons are those which, although not classifiable as war weapons, can utilize the same ammunition as war weapons, can fire automatically (in bursts), or present ballistic or employment characteristics common to war weapons. War ammunition includes cartridges and pertinent cartridge casings, rounds, or parts thereof for the loading of war weapons.

Regarding war weapons, legal writers have pointed out the difficulty that arises from the legislative definition of these weapons, as far as the evaluation of their potential destination to military troops, when they are no longer or not yet assigned to the equipment of troops. It has been noted that the only criterion offered for interpretation is that which comes from the concepts of clear potentiality to injure, of modernity of armaments, and the capability of being used for war employment as mentioned in article 1 of Law 110/1975.⁶

The following firearms belong in Category B:

- a) rifles, even semiautomatic, with one or more smooth barrels;
- b) bolt-action, double-barreled rifles;
- c) bolt-action rifles with two or three combination barrels, smooth or rifled;
- d) rifles, carbines, and muskets with one barrel, even semiautomatic;
- e) rifles and carbines with circular percussion ammunition so long as the weapon is not automatic;
- f) revolvers;
- g) semiautomatic pistols; and
- h) replicas of antique muzzle-loading arms manufactured before 1890.
- i) so-called target guns or gas emitting guns, rocket-launching devices, air pistols and rifles--unless they are declared by the committee to be incapable of injuring human beings or are meant for fishing.

For rocket-launching devices and ammunition carried and used during rescue and salvage operations or in civil protection activities, the requirements for licensing do not apply.

Article 2 also classifies as common firearms those rifles and carbines that can be loaded with war ammunition but which at the same time essentially reflect hunting and/or sporting characteristics.

As for the ammunition intended for these weapons, the Law establishes that they cannot be bullets with a perforating nucleus, tracer shells, or incendiary bullets. The projectile cannot

⁶ See also the following decisions of the Supreme Court of Cassation: November 17, 1978, in *Giustizia Penale*, 1979, II, 456; February 2, 1979, in *Cassazione Penal Massimario*, 1980, 1190; October 1, 1980 in *Giustizia Penale*, 1981, II, 482; November 30, 1981, in *Cassazione Penale Massimario*, 1982, 2058.

emit drugs, poisons, etc., except for cartridges which launch narcotic substances or narcotic holding instruments used for scientific or zoophilous purposes for which special permits can be issued. In any case, the limiting provisions regarding the holding and carrying of weapons do not apply to rocket-launching instruments and the appropriate ammunition when their use is foreseen by legislative or regulatory provisions.

Controls on Weapons and Explosives

In order to strengthen preventive controls, Law 110/1975 instituted a Central Consultative Committee on the Control of Arms, and the *National Catalog of Common Firearms*. The Committee's task consists of expressing obligatory opinions on the cataloging of arms both produced in and imported into Italy. The Committee certifies that these do not belong in the category of war weapons or war-type weapons and is concerned with questions of a general legislative character regarding arms and security measures concerning, among other things, the manufacture, repair, storage, commerce, importation, exportation, transport, etc., of arms. The initiation of the *Catalog* can be considered an important innovation, the main purpose of which is to definitively certify the prototypes listed in the *Catalog* as common firearms. As a consequence, firearms which do not have a prototype registered in the *Catalog* are either a war or war-type weapon or are illegal. Registration or denial of registration in the *Catalog* is ordered by decree of the Minister of the Interior. The *Catalog*, among other things, must contain a description and caliber of the firearm, the manufacturer, or in the case of an imported firearm, the importer, the country in which it was produced, and the country from which it was imported. The Ministerial Decree of September 18, 1979, established the publication of the *National Catalog of Common Firearms*, and it is periodically updated.

In addition, Law No. 110/1975, reorganized the duties and the functions of the National Testing Bank which had been established by Royal Decree No. 20 February 10, 1910. The tasks of the Bank include the testing of all firearms, performing all verifications required by law, and the certifying of the suitability of the firearms.

Common firearms manufactured abroad and tested by a Bank recognized by law in Italy and which have all the required identification marks need not undergo presentation at the Italian National Bank.⁷ The provisions regarding the testing bank are not applicable to weapons destined to national military corps, even if they are imported. Weapons destined for armed forces abroad are not examined by the testing bank.

Manufacture and Sale

All activities pertinent to weapons, ammunition, and explosives are regulated in detail by law. Rules regulate the manufacture, repair, import and export, transport, and in those cases in which it is permitted, sale, possession, collection, and the carrying of weapons. Specifically regarding war weapons and war-type weapons, Law 110/1975 contains a radical innovation. It

⁷ See Bruxelles Convention of July 15, 1914, ratified by the Law of December 24, 1928, No. 2486 and the more recent Bruxelles Convention of July 1, 1969, ratified by the Law of December 12, 1973, No. 993.

established a general prohibition on private citizens to possess, collect or carry said arms.

Under the provisions previously in force, the collection of war weapons and war-type weapons was allowed under the condition that a special permit had been obtained. According to Law 110/1975, only individuals (or their heirs and devisees) who already hold such licenses may retain these arms or may transfer them exclusively to the state or to other public entities authorized to possess said arms and war materials. The possession of any ammunition for the arms detained as above described is absolutely prohibited.

Regarding war and war-type weapons, the following crimes are foreseen:

- manufacture, introduction into the country with the prescribed permit or the collection, sale or transfer for any reason, are punished by imprisonment from 3 to 12 years and a fine from 800,000 to 4 million lire;
- illegal possession is punished by imprisonment from 1 to 8 years and a fine from 400,000 to 3 million lire;
- illegal possession in public places is punished by imprisonment from 2 to 10 years and by a fine from 400,000 to 4 million lire;
- failure to consign the weapons to authority upon orders is punished by imprisonment from 1 to 8 years and by a fine from 400,000 to 3 million lire;
- illegal transfer is punished by imprisonment from 2 to 6 years and by a fine from 400,000 to 4 million lire; and
- failure to observe rules concerning transport is punished by imprisonment from six months to 1 year and by a fine from 40,000 to 200,000 lire.

Other illegal activities are considered as misdemeanors and are punished with lesser penalties.

In contrast with war or war-type weapons, the sale, possession, and carrying of common firearms are not absolutely prohibited. For these as well, all activities of manufacture, repair, import, export, transport, and sale are regulated by law in detail and come under the constant control of the police authorities. Therefore, the licensing provisions of the Consolidation Act of Public Security Laws are confirmed and/or expanded by Law 110/1975 which also makes industrial repair and maintenance of common firearms contingent upon licensing. The Law requires that the grounds for the acquisition and transfer of arms be specified so the necessary police clearance may be obtained. The technical competence of individuals who apply for the authorization to manufacture, repair, trade, store, collect, and acquire arms is further subject to administrative control and examination with the appropriate commission referred to by the Law.

Importation and Exportation

Articles 12 - 16 of Law 110/1975 govern the importation and exportation of firearms. Permanent importation is subject to specific types of licensing based on the nature of the importer's business, i.e., a manufacturer, dealer, or an ordinary citizen. Arms not listed in the *National Catalog of Common Firearms* cannot be imported. The temporary importation of common firearms for sporting or hunting purposes, with the license required by law, is applicable to both Italian citizens who reside abroad because of their work and to nonresident aliens. In order to qualify for a temporary importation license, the weapon must bear a serial number, and

it can be kept in Italy for no longer than 90 days. After this period expires, the provisions governing permanent importation apply.

The exportation of arms is subject to a license issued by the police authorities. This license is valid for 90 days.

Possession

The possession of common firearms is subject to quantitative limits and is conditional upon declaration to the local police authorities. In order to obtain a waiver of these limitations, a collector must apply to the provincial chief of police (Questore) for an additional license for this specific purpose. Possession of ammunition for the extra firearms is forbidden. The limiting rules do not apply to licensed dealers.

Specific licensing is required in order to carry handguns and hunting rifles or shotguns respectively outside the owner's dwelling. Before granting a permit to carry these firearms, the competent authority must ascertain that the applicant meets the following criteria:

- a clean police record,
- a technical competence in the use of firearms, and
- a need caused by a dangerous occupation, threats to one's life, etc.

In addition, the authorities may require special tests to ascertain the applicant's psychological competence.

Obviously, minors may not be granted licenses to carry firearms. Exceptionally, the Law allows a minor who is at least 16 years of age and who proves his technical competence to obtain a permit to carry a rifle exclusively for hunting purposes and then only with his parents' or guardians' written consent. Once granted, carrying permits must be periodically renewed in order to check that the necessary conditions still exist. The carrying of firearms in public gatherings is absolutely prohibited, even by people who hold the appropriate licenses. Other restrictions may be imposed by the competent authorities for reasons of public security.

Special procedures were established by Law No. 694 of December 23, 1974, for the carrying of firearms abroad on aircraft.

Regarding common firearms, the section of Law 110/1975 related to offenses and penalties can be summarized as follows:

- manufacture, introduction into the country, sale, or transfer for any reason and collection without a permit are punished by imprisonment from 2 to 8 years and by a fine from 533,000 to 3,666,000 lire;
- illegal possession is punished by imprisonment from 8 months to 5 years and 4 months and by a fine from 267,000 to 2 million lire;
- illegal carrying in public places or places open to the public is punished by

imprisonment from 1 year and 4 months to 6 years and 8 months and by a fine from 267,000 to 2,666,000 lire;

- failure to consign arms upon order of the competent authority is punished by imprisonment from 8 months to 5 years and 4 months and by a fine from 267,000 to 2 million lire;
- collecting arms without a permit is punished by imprisonment from 1 to 4 years and by a fine from 400,000 to 2 million lire;
- failure to observe provisions regarding the procedures for introducing into the country, holding or carrying arms temporarily imported carries the penalty of imprisonment from 6 months to 1 year and a fine from 40,000 to 200,000 lire;
- carrying arms on board an aircraft is punished by imprisonment up to 5 years and a fine up to 1 million lire;
- the manufacture, introduction into the country, sale, etc., of illegal firearms or barrels is punished by imprisonment from 2 to 8 years and a fine from 400,000 to 3 million lire;
- the possession of said arms or gun barrels is punished by imprisonment from 6 months to 5 years and by a fine from 200,000 to 2 million lire; and
- whoever erases, counterfeits, or alters catalog or registration numbers on arms or gun barrels is punished by imprisonment from 1 to 6 years and a fine from 300,000 to 3 million lire.

Other offenses are misdemeanors and are punished by lesser penalties.

What remains to be observed is that the intention of the Italian lawmakers to limit and control the diffusion of firearms is made clear by the provisions introduced by Law 110/1975.

Article 3 of the Law introduced the new concept of the "altered weapon." Such is any firearm which has undergone any sort of modification of its mechanical characteristics in such a way that their offensive potential is increased or its dimensions are altered in order to facilitate carrying or concealment. Typical examples of altered weapons are sawed-off shotguns and those with butt which has been cut. Whoever alters a weapon can be punished by imprisonment from 1 to 3 years and a fine from 600,000 to 4 million lire.

Article 17 of the Law prohibits anyone who resides in Italy from acquiring or selling arms through the mail, unless it is someone who is authorized to conduct an industrial or commercial activity regarding arms. Offenders are punished by imprisonment from 1 to 6 years and a fine up to 300,000 lire.

The Law also deals with toy weapons and establishes that legislation on arms does not apply to them. However, toys which are reproductions of real arms may not be manufactured with

the use of techniques and materials that might allow for the use of ammunition for the real arms they mimic or the shooting of objects fit for offenses against persons. Such arms, in fact, must have the extremity of the barrel closed with a red plug. Offenders are punished by imprisonment from 1 to 3 years and a fine from 1 million to 5 million lire.

The Minister of Interior may authorize police and security forces of a foreign country escorting an official of the same country to bring weapons into Italy and to carry those same weapons assigned to them for defense purposes. The authorization lasts only for the period the foreign official is in Italy and may be issued only under condition of reciprocity.

On May 18, 1981, a popular referendum sponsored by the left-wing Radical Party (Partito Radicale) was held with the intent of abrogating the norms that enable private citizens to carry handguns. Had the referendum achieved the desired results, only police officials would have been able to carry handguns. As it turned out, the electorate cast a ballot in favor of retaining the present legislation.

Bibliography

Antolisei, F. "Armi," in *Manuale di Diritto Penale*. Parte Speciale I. Milano, Giuffre, 1982.
LAW ITALY 7 ANTO 1981

Azara, A. and E. Eula, eds. *Armi e Munizioni*. [Appendice A-Cod] Novissimo Digesto Italiano.
Torino, UTET, 1980. KKH25.D54 1957

Barbera, C. and G. De Carlo, comps. *Codice di Pubblica Sicurezza*. Rimini, Maggioli, 1981.
LAW ITALY 4 PUBLIC SECURITY

Bonito, P. L. *La Nuova Disciplina Giuridica delle Armi*. Firenze, Editoriale Olimpia, 1982. LAW
ITALY 7 BONI 1982

Cantagalli, R. *Le Armi e gli Esplosivi nella Legislazione Vigente*. Roma, Laurus, 1986.
KKH3010.C36 1986

Conso, G. and A. di Majo, comps. "Armi," in *I 4 Codici e le Leggi Complementari*. Milano,
Giuffre, 1987. KKH15I85 1987

Luzzi, A. *Classificazione delle Armi*. Firenze, Laurus, 1976.
TS534.5.L89

Vigna, P. L. and G. Bellagamba. *Armi, Munizioni, Esplosivi*, 3rd ed. Milano, Giuffre, 1981. LAW
ITALY 7 VIGN 1981

Wise, E., trans. *The Italian Penal Code*. Littleton, Colorado, Fred B. Rothman & Co., 1978.
LAW ITALY 3 CRIM 1978

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JAPAN

Historical Survey

In 1872, the Meiji Government promulgated Japan's first Gun Control Regulation, which adopted a licensing system for the sale, purchase, and possession of guns, handguns, and ammunition. In 1899, the Regulation was superseded by the Firearms and Explosives Control Law. In 1910, this law was completely revised and made to incorporate the following provisions: (1) the manufacture and sale of guns and explosives were subject to government license; (2) the sale of guns and explosives door-to-door or in outdoor markets was banned; (3) government inspectors were empowered to enter a manufacturer's plant or warehouse to inspect guns and explosives without a warrant; (4) when it was deemed necessary for maintaining public security, the government could control the transfer, transportation, and possession of guns and explosives; (5) the transfer of guns for military use was to be made only under government license; (6) the possession of explosives was in principle prohibited; and (7) transfer, transportation, and possession of handguns, shotguns, rifles, and swords were authorized only with the approval of the chief of the competent police station.¹

The 1910 Law was in effect during the U.S. occupation of Japan and remained in force up until 1950. In fact, the Supreme Commander for the Allied Powers (SCAP), who administered gun control from 1945 to May 1950, strengthened the control measures delineated in the 1910 Law. In order to safeguard against any possible danger which might arise in the transfer of firearms from disarmed servicemen of the Imperial Army and Navy to Japanese civilians, the SCAP issued several gun control directives that were subsequently implemented through the Imperial Ordinance Concerning the Prohibition of the Possession of Guns.² Under this Ordinance, the possession of firearms and swords by private citizens was banned in principle; their possession was allowed only under government license.

In May 1950, the Japanese Government reassumed the administration of gun control from the SCAP by issuing the Ordinance Concerning Firearms and Swords³ pursuant to the general directives of the SCAP (SCAPIN 2099). This Ordinance prevailed as law soon after the Peace Treaty came into force on April 28, 1952, and until the present law was enacted in 1958.

Recent Legislation

At present, gun control in Japan is governed by the Law Controlling the Possession of

¹ For a historical survey, see H. Nakashima, *Juho tokenrui nado no torishimari* [Control of Firearms and Swords] 16-18 (1979).

² Imperial Ordinance No. 300, June 3, 1946. This and all subsequent laws, etc., may be found in *Kampō* [Official Gazette] under the date of promulgation.

³ Cabinet Order No. 334, Nov. 15, 1950.

Firearms and Swords, ⁴ the Enforcement Order of the Cabinet, ⁵ the Enforcement Regulation of the Prime Minister's Office, ⁶ and the Registration Regulation of the Cultural Properties Protection Commission. ⁷ These laws and regulations, which are concerned mainly with possession of firearms, are enforced by the police. Their manufacture and sale, however, are regulated by the Minister of International Trade and Industry under the Weapons Manufacture Law, ⁸ the Enforcement Order of the Cabinet, ⁹ and the Enforcement Regulation of the Ministry of International Trade and Industry. ¹⁰

Bullets, cartridges, and blank cartridges are also subject to the control of the same Minister, but under a different set of legislation--the Explosives Control Law, ¹¹ the Enforcement Order of the Cabinet, ¹² and the Enforcement Regulation of the Ministry of International Trade and Industry. ¹³ In addition, the Order Concerning Transportation of Explosives issued by the Prime Minister's Office ¹⁴ is in force.

An increase during the 1960s in the number of crimes committed with unauthorized firearms gave impetus to the argument for a major revision of the 1958 Law Controlling the Possession of Firearms (hereafter the 1958 Law). As a result, in 1965 the 1958 Law was amended

⁴ Law No. 6, Mar. 10, 1958, came into force on Apr. 1, 1958; last amended by Law No. 55, May 21, 1980.

⁵ Cabinet Order No. 33, Mar. 17, 1958, as last amended by Order No. 310, Oct. 27, 1981.

⁶ Regulation No. 16 of the Prime Minister's Office, Mar. 22, 1958, as last amended by Regulation No. 56, Nov. 14, 1980.

⁷ Regulation No. 1 of the Cultural Property Protection Commission, Mar. 10, 1958, as last amended by Regulation No. 4 of the Ministry of Education, Mar. 17, 1975.

⁸ Law No. 145, Aug. 1, 1953, as last amended by Law No. 23, May 1, 1984.

⁹ Cabinet Order No. 198, Aug. 15, 1953, as amended by Cabinet Order No. 135, May 15, 1984.

¹⁰ Regulation No. 43 of the Ministry of International Trade and Industry, Sept. 1, 1953, as last amended by Regulation No. 47, May 1, 1971.

¹¹ Law No. 149, May 4, 1950, as last amended by Law No. 54, May 20, 1986.

¹² Cabinet Order No. 323, Oct. 31, 1950, as amended by Cabinet Order No. 317, Dec. 21, 1985.

¹³ Regulation No. 88 of the Ministry of International Trade and Industry, Oct. 31, 1950, as amended by Ordinance No. 22, June 8, 1985.

¹⁴ Order No. 65 of the Prime Minister's Office, Dec. 28, 1960, as amended by Order No. 44, Dec. 1, 1969.

to curtail the illegal possession of firearms so as to prevent the use of such weapons in crimes of violence. The amendment provided for an overall increase in the punishment of offenders, in addition to incorporating a new provision placing tighter controls on the importation of firearms. In 1971, the 1958 Law was further amended to include stricter standards on the possession of rifles and the safekeeping of firearms in general.

In view of the increasing number of crimes committed by gangsters and terrorist groups using model (or toy) guns, which are easily converted into regular guns, the 1958 Law was again amended on June 1, 1977, to ban the possession of such guns. The ban is applicable, however, only to the possession of model guns for vending purposes and not for purposes of collection.

By revision of the 1958 Law on May 24, 1978, and May 21, 1980, more stringent requirements for the possession of firearms, especially hunting guns, were imposed. Entire penal provisions also were amended to impose heavier penalties for illegal possession of firearms.

From its promulgation up until the present day, the 1958 Law has been revised 11 times in all. The above amendments represent the major revisions of it.

The Contents of the Law Controlling the Possession of Firearms and Swords of 1958

The 1958 Law consists of five chapters (37 articles) and includes the following: general provisions, procedures connected with obtaining permission to possess firearms or swords, registration of matchlock-type firearms or swords, miscellaneous provisions, and penal provisions.

The aim of the Law is to provide control measures necessary for the prevention of danger and injury arising from the possession of firearms, swords, etc. The term "firearms" in this law means pistols, rifles, machine guns, hunting guns, other powder-charging firearms that project a shell and also air guns (including those using compressed gas) that have a mechanism for shooting bullets.

The possession of firearms is strictly limited to public officials who are required to possess firearms in the line of performing their official duties (members of the police and defense forces, prison guards, and other law enforcement officers), public officials who are engaged in the testing and study of firearms, legally licensed hunters, target shooters, athletes who compete in national or international games, licensed dealers, manufacturers, or exporters who possess firearms to carry on business, antique gun collectors, and those who are designated as legal custodians of firearms by Cabinet order.

Importation of firearms is allowed only in the case of public officials who possess firearms to perform official duties or who are engaged in the testing and study of firearms and athletes who participate in national or international games.

The 1958 Law fails to mention whether import restrictions apply to parts of guns. According to a Japanese lower court decision, parts which can be so easily assembled as to compose a gun should be treated as a gun within the meaning of the 1958 Law. Therefore, it may

be construed that import restrictions apply both to parts of guns as well as to assembled guns.¹⁵

Chapter II (arts. 4-13) is concerned with the procedure for obtaining permission to possess firearms as well as the restrictions on possession. Any person who wishes to possess firearms, in accordance with the procedure prescribed by the Enforcement Regulation of the Prime Minister's Office, must obtain permission from the public safety commission of the *To*, *Do*, *Fu*, or *Ken* prefecture¹⁶ controlling possession of firearms and swords in that person's place of residence.

Permission must be obtained to possess the following: (1) hunting guns to be used for the shooting of game, or hunting or air guns to be used in target shooting or for the extermination of harmful birds and animals; (2) firearms necessary for lifesaving, butchery, fishery, and industrial construction; (3) firearms necessary for testing or research; (4) pistols to be used in international athletic games upon the recommendation of a person designated by Cabinet order; and (5) firearms to be used for signaling by an umpire in international or national athletic games upon the recommendation of a person designated by Cabinet order.¹⁷

The following persons may not possess the firearms mentioned above: (1) a person less than 18 years of age (less than 20 years of age for possession of a hunting gun); (2) a mentally deranged person, a person addicted to narcotics or "taima" [*cannabis sativa*], or a feeble-minded person; (3) a person without fixed abode; (4) a person with respect to whom five years have not elapsed since the day his permission to possess firearms was withdrawn; (5) any person who has been sentenced to a fine or a more severe punishment and five years have not elapsed since his sentence was completed or remitted (in the case of a hunting gun, any person using firearms, swords, or cutlery to commit a crime designated by Cabinet order and 10 years have not elapsed since he committed such a crime); and (6) any person (also taking into consideration relatives living with that person) reasonably suspected of posing a threat to the life or property of other persons or to the public peace.

Exceptions will be made to the prohibition stated in item (1) above under the following circumstances: (1) a person over 14 years of age may be given permission to possess an air gun to be used in a national athletic game, upon recommendation by a person designated by Cabinet

¹⁵ Decision of the Osaka District Court, Sept. 22, 1975, as cited by Nakashima, *supra* note 1, at 43.

¹⁶ These terms refer to the administrative division of Japan, which is as follows: (1) *To* (Metropolis) refers to Tokyo; (2) *Do* (District) refers to Hokkaido; (3) *Fu* refers to the urban prefectures, Kyoto and Osaka; and (4) *Ken* refers to the 42 rural prefectures. The respective public safety commissions have control over each police force under their jurisdiction (see Police Law, Law No. 162, June 8, 1954).

¹⁷ As of the end of 1977, about 902,000 guns and pistols were owned by individuals after permit requests had been authorized. More than 90 percent of these authorized firearms were hunting guns (rifles and shotguns) or air guns which had been authorized for possession for the purpose of hunting, target shooting practice, or eliminating harmful animals. See *The Police of Japan* 30 ([n.d.]).

order and (2) a person over 18 years of age may be given permission to possess a hunting gun to be used in a national athletic game upon recommendation by a person designated by Cabinet order.

Further, in the normal instance of possession of a hunting gun by a person over 20 years of age or possession of an air gun by a person over 18 years of age, the requisite permission is also contingent upon the person's having successfully completed a course of lectures given by the Public Safety Commission having jurisdiction over the place where he resides. The lectures are concerned with the laws and regulations on possession of hunting or air guns and the methods of their use and custody. A certificate is issued by the commission to those who complete the course.

For a hunting gun, one must additionally pass a number of tests on its operation and proper method of handling. The examinations, which are administered by the Public Safety Commission, cover the maintenance and inspection of a hunting gun, the methods of loading and unloading gun cartridges, various shooting or firing positions, and target practice at both fixed and moving objects. The permit granted is valid for a period of three years.

In the case of a rifle to be used for hunting or for the extermination of harmful animals and birds, permission for possession is not granted unless the person is a professional hunter who will use the rifle in the course of his occupation; a person who will use it for the protection of his business; or a person who has had a permit to possess a hunting gun for more than 10 years. Permission shall also be granted to athletes who will use a rifle to participate in a rifle-shooting competition.

When a Public Safety Commission gives a person permission to possess a firearm, a permit certificate must be issued. The permit becomes invalid, however, when: (1) a person has been unable to take possession of the firearm within three months from the day the permit was granted; (2) a person who had permission has died; (3) a person has transferred the said firearms and no longer has them in his possession at his voluntary will; (4) the firearms have been lost, stolen, or destroyed; (5) the firearms have been recalled by the Public Safety Commission or confiscated by the same commission; (6) the person designated by Cabinet order has withdrawn his recommendation for permission granting a person less than 18 years of age to possess an air gun for use in a national athletic game, or a person less than 20 years of age to possess a hunting gun for use in a national athletic game; or (7) the permit has expired.

The carrying, transporting, or discharging of firearms, other than that specifically permitted by law, is prohibited with certain exceptions. The person who has been authorized to possess a firearm must himself keep it in a gun locker installed in accordance with the standards determined by an order of the Prime Minister's Office. The person who has obtained permission to possess a handgun for the purpose of participating in international games must have the said handgun put under the custody of another person designated by Cabinet order.

Furthermore, any person who has been authorized to possess firearms is subject to supervisory actions such as revocation, provisional holding, hearings, and inspection by the competent Public Safety Commission.

Chapter III (arts. 14-21) is devoted exclusively to problems arising from the registration of

matchlock-type firearms and swords, which have an artistic value, with the Cultural Property Protection Commission.

Chapter IV (arts. 21-2 - 30) sets forth miscellaneous provisions. The manufacturer of firearms, hunting guns, and signal guns for whaling or the dealer in hunting guns or signal guns for whaling shall not transfer any guns to an assignee unless the former has confirmed that the latter is legally authorized to possess the gun or unless the assignee has displayed the permit as required by law.

Except in the case of the manufacturer or exporter, possession of imitation pistols--made of metal and the shape of which bears a marked resemblance to a real pistol--is prohibited. Possession of a model or toy gun for the purpose of sale is also prohibited. A model gun is defined as one made of metal, with a shape resembling a pistol, rifle, machine gun, or hunting gun or a device that is identical to a shooting device and that can easily be remodeled into a real gun.

Any person who has found or picked up firearms must report the fact promptly to the nearest police station. A person authorized to possess a firearm must report its loss or theft to the police station.

Any person who carries or transports a gun must carry with him the permit and registration, which are subject to police inspection upon request.

The possessors of firearms are subject to police inspection and temporary custody of the firearms. When there is reasonable suspicion that a person carrying or transporting firearms may be a threat to the life or property of other persons or to the public peace, judging from unusual behavior or the attendant circumstances, a police official may compel the person to show the said firearms for inspection. When the police deem it necessary, they may withhold the firearms. The firearms will be returned to the original possessor within five days from the time of their surrender to the police, unless the police official deems that their return would not be proper and that the firearms should be returned instead to relatives of the original possessor or to other persons. If it is discovered that the firearms in question were in the possession of unauthorized persons, they will not be returned. If it is impossible to return the firearms to the possessor or his relatives (due to his or their address being unknown) within five days from the day upon which the police officer provisionally took them into custody, the police chief must announce the reason for non-return in a public notice in accordance with the Ordinance of the Prime Minister's Office. If the firearm has not been returned within six months from the time when the public notice was made, ownership of that firearm will be assumed by the state or local government.

If a Public Safety Commission deems that the delivery, transport, or carrying of firearms for which a permit has been obtained is directly dangerous to the maintenance of public order due to the existence of a disaster or a disturbance of the peace, the commission may prohibit or limit such acts to a fixed district and time period by means of a notice in the form of an announcement and, in cases in which such a notice has been issued, retain the firearms provisionally. Furthermore, the notice given by the commission must be approved by the deliberative assembly of the local public body convened within seven days from the day of notice. If approval is not obtained, the notice loses its effect thereafter. When the fixed period has expired or the notice has become invalid, the commission must immediately return the firearms provisionally held.

The possession of firearms by aliens is limited to those who enter Japan in order to use firearms in international athletic games to be held in Japan and who obtained permission from the local Public Safety Commission with jurisdiction over the particular port of entry and exit. In granting permission, the Public Safety Commission considers whether the applicant will participate in the game and whether the firearms in question will be used in that game. As a matter of international comity, the rigid requirements for the granting of permission to a Japanese national are waived for aliens.¹⁸ Such permission is granted for a period of two months and may be extended, but may not exceed the alien's period of stay in Japan as authorized under the Immigration Control Order. At present, the Japanese Government has not concluded any international agreement governing gun control.

Any alien who possesses a gun and intends to stop over Japan must surrender his gun to the chief of the police station having jurisdiction over the port of entry. The gun is to remain in the temporary custody of the police station until the alien departs Japan or obtains permission to use the gun in an international game. This does not apply to a member of a diplomatic mission or to a foreign law enforcement officer.¹⁹

Under Chapter V of the 1958 law (arts. 31-37), any person who illegally possesses a handgun is subject to a maximum punishment of penal servitude for not more than 10 years or a fine not to exceed one million yen. Any person who illegally possesses a hunting gun is subject to penal servitude for not more than five years or a fine not to exceed 500,000 yen. Any person who illegally possesses a firearm other than a handgun or a hunting gun is subject to penal servitude for not more than three years or a fine not to exceed 300,000 yen.

Any person who illegally imports firearms may be punished by penal servitude for not less than one year or more than 10 years. Any person who imports firearms in order to make a profit is subject to penal servitude for a minimum of one year or penal servitude for not less than one year and a fine not to exceed three million yen. For a minor violation, a fine not exceeding 100,000 yen may be imposed.

It should be noted that the Weapons Manufacture Law and the Explosives Control Law, which regulate the manufacture and sale of firearms and ammunition, do not contain provisions banning certain kinds of ammunition.

¹⁸ Nakashima, *supra* note 1, at 142.

¹⁹ *Id.* at 286.

Statistics

According to *Hanzai hakusho* [Whitepaper on Crimes], published by the Ministry of Justice, the number of homicides and of arrests made by the police in connection with cases involving firearms (including shotguns and handguns) in the 1970s was as follows:

Table 1 ²⁰

Year	Total Cases (A)	No. of handgun- caused	Total no. of arrests involving use of firearms (B)	Percent $\frac{B}{A} \times 100\%$
1974	1,912	37	72	3.8%
1975	2,098	78	108	5.1%
1976	2,111	65	85	4.0%
1977	2,031	66	110	5.4%
1978	1,862	47	68	3.7%

The above figures are based on statistics compiled by the National Police Agency. ²¹

For the year 1979, the figures compiled by Handgun Control Inc., as reported by *The Washington Star* on April 30, 1981, show that 48 persons were killed by pistols in Japan. Since 1979, *Hanzai hakusho* has not reported statistics on deaths caused by handguns such as those shown in Table 1. Instead it has reported the number of pistols confiscated from gangster organizations, e.g., as follows:

²⁰ Table 1 is based on that given in *Hanzai hakusho* 21 (1979).

²¹ Note that for 1978 in the chart above, according to figures supplied by the Pan American Health Organization, a total of 1,034 homicides were committed in Japan, of which 23 involved the use of firearms and explosives.

Table 2 ²²

Year	Total Pistols Confiscated	Real Pistols	Remodeled Pistols
1979	907	462	445
1980	932	526	406
1981	1,027	594	433
1982	1,131	740	391
1983	1,089	631	458
1984	1,729	1,160	569
1985	1,767	1,338	429
1986	1,551	1,321	230

The table is based on statistics compiled by the National Police Agency.

As the above figures indicate, in 1984 the total number of pistols confiscated climbed to 1,729, an increase of 640 pistols as compared with the number seized in 1983 and the highest number recorded for the six years from 1979 to 1984. Most of the 1,160 unremodeled pistols were smuggled into Japan from foreign countries. Nevertheless, despite the increased number of pistols confiscated, the number of shooting incidents that occurred in 1984 was 139, a decrease of 91 as compared with the previous year. In 1985 the total number of pistols confiscated climbed to a record high of 1,767 pistols.

In 1986, the total number of pistols confiscated was 1,551, a decrease of 216 pistols (12.2%) as compared with the number seized in 1985. Likewise, the number of shooting incidents in 1986 was 317, a decrease of 9 as compared with the previous year. However, these shooting incidents resulted in 59 deaths (vs. 44 in 1985) and 106 injuries (vs. 96 in 1985), an increase in each category as compared with 1985 and the highest number reported for the past 10 years. ²³ According to statistics compiled by the World Health Organization, in 1987 there were 112 deaths attributable to the use of firearms. Of these, 49 deaths were homicides. ²⁴

²² Table 2 is based on that given in *Hanzai hakusho*, 1985, 1986, and 1987.

²³ *Hanzai hakusho* 1987, at 41-42.

²⁴ W.H.O. Facsimile, received by the Law Library in January 1989.

The low number of deaths and shooting incidents attributed to firearms and handguns indicates that Japan's gun control legislation is among the toughest in the world. Nevertheless, Japanese gun control legislation--which is based on dual control by police (possession) and the Ministry of International Trade and Industry (manufacture, sale, production of cartridges, etc.)--is complex and difficult to enforce, resulting in the inefficient administration of gun control. This group of laws has been the target of constant criticism for many years by those who advocate the enactment of uniform gun control legislation under the exclusive control of the police. Some argue that the possession of firearms, which is the most important aspect of gun control, is so closely connected with the problems of import, sale, and transfer of guns that unitary administration of a law that covers both aspects of firearms control is needed.²⁵

Bibliography

Gun, rifle and sword control in Japan. Washington, Embassy of Japan, 1974. 24 p. Uncataloged

Hanzai hakusho [Whitepaper on crimes]. Tokyo, Homusho Homu Sogo Kenkyujo, 1979, 1985, 1986, and 1987. HV 7112.H6 LLFE

Honda, Yoshimitsu. Bohanjo shin kitei o setchi [New provisions have been incorporated for the purpose of preventing crimes]. *Toki no horei*, no. 1091, Nov. 1980: 25-29. LAW PER

Koike, Isao. Juho tokenrui nado shoji torishimariho no kaisei [Amendment to the Law Controlling the Possession of Firearms and Swords]. *Toki no horei*, no. 536, June 1965: 1-10. LAW PER

The Law Controlling the Possession of Firearms and Swords [English translation]. 3 *EHS Law Bulletin Series*, 1978. 60 p. LAW JPN 3 EHS

Nakabayashi, Eiji. Boryokudan no senzai kenju ni taisuru torishimari ni tsuite [On the control of pistols latently possessed by gangsters]. *Keisatsugaku ronshu*, v. 36, no. 7, July 1983: 65-84. LAW PER

Nakashima, Haruyasu. *Juho tokenrui nado no torishimari* [Control of firearms and swords]. Tokyo, Keisatsu jihosha, 1979. LAW JPN T2624

Nakashima, Haruyasu. Juho tokenrui nado shoji torishimariho no ichibu o kaisei suru horitsu ni tsuite [On the Law Concerning Partial Amendment of the Law Controlling Firearms and Swords]. *Keisatsugaku ronshu*, v. 30, no. 8, Aug. 1977: 24-47. LAW PER

The Police of Japan. Tokyo, National Police Agency, [n.d]. 68 p. Uncataloged

²⁵ Nakashima, *supra* note 1, preface; Isao Koike, "Juho tokenrui nado shoji torishimariho no kaisei" [Amendment to the Law Controlling the Possession of Firearms and Swords], 536 *Toki no horei* 9 (June 1965).

Sano, Kunitomi. Juho tokenrui nado shoji torishimariho no ichibu o kaisei suru horitsu [The Law Concerning Partial Amendment of the Law Controlling Firearms and Swords]. *Keisatsugaku ronshu*, v. 36, no. 7, July 1983: 65-84. LAW PER

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January 1990

REPUBLIC OF KOREA

General

The Republic of Korea's original gun control law, known as the Law Controlling Firearms and Explosives (43 articles), was enacted in 1961. After two minor revisions in 1962 and 1975, the law was amended in its entirety in 1981 and renamed the Law Controlling Firearms, Swords, and Explosives (61 articles). The 1981 law in turn was entirely amended in 1984. The amendment provided for an overall increase in the punishment of offenders and for the banning of the manufacture, sale, and possession of toy guns, in addition to incorporating a new provision establishing the Safety Techniques Association for Firearms and Explosives. Particularly noteworthy is the fact that the law was rewritten in plain vernacular Korean so that every citizen could easily understand its content. ¹

A 1986 revision of the 1984 law stipulated new requirements for testing manufactured or imported firearms prior to sale and prohibited the remodeling of firearms by persons authorized to possess them. At present, gun control in Korea is governed by the 1984 law ² as revised in 1986 and its Enforcement Decree ³ and by the Enforcement Regulation of the Ministry of Home Affairs. ⁴

The 1984 law has eight chapters (76 articles), which include the following: general provisions (arts. 1-3); manufacture and sale (arts. 4-9); possession and use (arts. 10-23); custody and inspection (arts. 24-42); supervision (arts. 43-47); Safety Techniques Association for Firearms and Explosives (arts. 48-62); supplemental provisions (arts. 63-69); and penal provisions (arts. 70-76).

¹ 95 *Popche* [Legislation] 12-14 (Aug. 20, 1984).

² Law No. 3764, Aug. 4, 1984, as last amended by Law No. 3876, Dec. 31, 1986.

³ Presidential Decree No. 11617, Feb. 2, 1985, as last amended by Decree No. 12276, Nov. 10, 1987.

⁴ Regulation No. 427, Feb. 6, 1985.

The aim of this law is to prevent danger and injury caused by firearms, swords, and explosives by controlling their manufacture, sale, export, possession, use, and the like, and thereby contribute to the maintenance of public safety (art. 1). The term "firearms" in the law means pistols, rifles, machine guns, hunting guns, other powder-charged firearms that project a shell and also air guns (including those using compressed gas) that have a mechanism for shooting bullets (art. 2).

Contents of the 1984 Law

Manufacture and Sale

Any person desiring to manufacture or sell firearms must obtain a permit for each plant from the Minister of Home Affairs (art. 4). Any person who intends to import or export such items is also required to obtain a permit from the same minister for each transaction (art. 9). Outdoor sale or peddling of firearms is banned (art. 8).

Possession and Use

The possession of firearms is strictly limited to public officials who are required to possess firearms in performing their line of duty (members of the police and armed forces and other law enforcement officers); legally licensed manufacturers, dealers, importers, or exporters and their employees; and those who are designated as possessors of firearms by Presidential decree (art. 10).

The following persons may not possess firearms: (1) a minor less than 20 years of age, except where such person is allowed to use firearms in athletic games upon the recommendation of the president of the Korea Sports Association, the mayor of Seoul Special City, or the president of the provincial sports association; (2) a feeble-minded person, a person addicted to narcotics, marijuana, or alcohol, or other mentally disturbed individuals; (3) any person who has been sentenced to a fine or a more severe punishment in violation of this law, or to imprisonment or a more severe punishment in violation of other laws, and three years have not elapsed since his sentence was completed or remitted; (4) any person who has been given a suspended sentence of imprisonment or a more severe punishment in violation of this law and one year has not elapsed since his sentence was suspended; (5) a person with respect to whom one year has not elapsed since the day his permit to manufacture or possess firearms was revoked; and (6) any person concerning whom there is the fear that he may pose a threat to the life or property of other persons or to public peace (art. 13). However, permission to possess firearms may be granted to athletes who will use them in a shooting competition (art. 14).

Manufacture, sale, or possession of an imitation (or toy) gun, made of metal and the shape of which bears a marked resemblance to a real gun, is prohibited (art. 11). The manufacture of such toy guns for the purpose of export must be reported to the police station having jurisdiction over the manufacturing plant.

Carrying, transporting, or using firearms other than as specifically permitted by law is prohibited, with certain exceptions. Furthermore, remodeling firearms for the purpose of altering their firepower to that other than originally permitted by law is prohibited (art. 17).

In the case of possession of a hunting gun or air gun, the requisite permission is contingent upon the person's having successfully completed a course of lectures given by the mayor of a city or chief of a police station. Such courses are concerned with the laws and regulations relating to firearms in general, the method of their use, and custody of a hunting gun or air gun (art. 22). Any person who has found or picked up firearms must report this promptly to the nearest police station (art. 23). It may be noted that a person authorized to possess a firearm must report its loss or theft to the police station (art. 35).

Custody and Inspection

The major portion of this chapter is concerned with the custody and storage of explosives. Only a small portion of the chapter treats various aspects of inspection of firearms. Thus, the place of manufacture of firearms is subject to an annual safety inspection by the Minister of Home Affairs (art. 41). Firearms manufactured or imported by the licensed manufacturer, or importer are also subject to the minister's inspection (art. 42). The manufacturer of firearms must establish rules concerning the prevention of danger and injury that must be approved by the mayor or provincial governor (art. 38).

Supervision

When it is deemed necessary for the prevention of danger and for the maintenance of public safety, the competent minister may conduct an inspection of the manufacturing place, shop, or warehouse and may ask the manufacturer to submit a report or present documents, books, or other items. In certain cases, he may order the business to be closed or its operations suspended, the firearms to be provisionally surrendered, or the permit to be revoked (arts. 44, 45, and 47).

The Safety Techniques Association for Firearms and Explosives

This association is a juridical person established in order to study and develop safety techniques necessary for the prevention of danger and injury caused by firearms and explosives and to carry out educational programs and other business entrusted to it by government agencies (art. 48). Any person authorized to manufacture, sell, import, export, or possess firearms automatically becomes a member of the Association from the day he obtains a permit from the government (art. 49). It engages in the following activities, among others: research and experiments concerning the safety, safety inspection, manufacture, transportation, use, and storage of firearms; education; collection and publication of technical materials; import of safety techniques; international cooperation; other matters requested by the government (art. 52).

The Safety Techniques Association is operated with subsidies from the national and local governments, fees collected from the conducting of various tests, educational programs, and membership dues (art. 58). Its officers include a chairman, not more than five directors, and an auditor. The chairman and auditor are appointed by the Minister of Home Affairs, whereas directors are appointed by the chairman with the consent of the Minister of Home Affairs. The chairman and directors serve for three years and the auditor serves for two years (art. 53).

Penal Provisions

Any person who manufactures, sells, imports, exports, or possesses firearms without a permit is subject to penal servitude not to exceed 10 years or a fine not to exceed 10 million *won*. Any manufacturer who fails to observe an administrative order, such as an order to close or suspend business or to surrender the firearms provisionally, or any other order necessary for the maintenance of public order, is subject to penal servitude not to exceed five years or a fine not to exceed five million *won*.

Any manufacturer or dealer who refuses to undergo inspection or obtains a permit by fraudulent means is punishable by penal servitude not to exceed three years or a fine not to exceed three million *won*. Any person who finds or picks up firearms and refuses to give a report or makes a false report, who engages in the outdoor sale of, or who carries, transports, uses, or remodels firearms other than as specifically permitted by law, is subject to penal servitude not to exceed two years or a fine not to exceed two million *won*.

Statistics

Pomjoe paekso [Whitepaper on Crimes] reported that in 1985 there was a total of 148 homicides caused by firearms and swords, five by firearms and 143 by swords, and that in 1986 there was a total of 179 homicides, 15 by firearms and 164 by swords.⁵

Bibliography

Ch'ongp'o togom hwayak dansokpop [Law Controlling Firearms, Swords, and Explosives]. In *P'allye hyongsabop* [Criminal law cases]. Nam-ok Kim, ed. Seoul, Popcho Munhwasa, 1982. p. 947-952. LAW KOR 2005

Ch'ongp'o togom hwayak dansokpop kaejong pomnyul [Revision of the Law Controlling Firearms, Swords, and Explosives]. *Popche*, v. 95, Aug. 20, 1984: 12-14. LAW PER

Ch'ongp'o togom hwayak dansokpop uyiban [Violations of the Law Controlling Firearms, Swords, and Explosives]. In *Hyongbolpop taechon* [Compendium of penalties]. Sang-won Cho, ed. Seoul, Hyonamsa, 1983. p. 690-691. LAW KOR 2060

Kwanbo [Official gazette], Aug. 4, 1984; Dec. 31, 1986.

LAW KOR 1 KWANBO

Pomjoe paekso [Whitepaper on crimes]. Seoul, Pommu Yonsuwon, 1986 and 1987.

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⁵ *Pomjoe paekso* 43 (1986); 43 (1987) (Seoul, Pommu Yonsuwon, 1986 and 1987).

MALAYSIA

General

National legislation on the subject of arms and ammunition control dates from the days when all thirteen constituent states of the present-day Federation of Malaysia were British colonial possessions.¹ Beginning in 1915 with the passage of the Arms Enactment of the Federated Malay States,² which regulated the possession, sale, import and export of certain types of arms, Malaysia now has a system of arms licenses and arms permits through which the various aspects of gun control can be exercised.

It has been said that the independence of Malaysia was attained in 1957 "in the midst of a campaign of destruction and terror by communist terrorists."³ In fact, a state of emergency had been proclaimed by the British government in 1948 following attacks by members of the Communist Party of Malaya on rubber plantations owned by Europeans. The state of emergency was declared to be ended in 1960 after the communist armed offensive had been put down.⁴

A state of emergency was also declared by the Supreme Ruler of Malaysia in September 1964 due to the launching by President Sukarno of Indonesia of a "Confrontation Campaign" with the avowed aim of crushing Malaysia.⁵ While the 1964 emergency was never expressly revoked, another state of emergency was declared in 1966, although applicable only to Sarawak. When in 1969 general elections held in Malaysia led to racial riots and acts of violence in the capital city of Kuala Lumpur, a nationwide state of emergency was again declared in May 1969. The Emergency (Essential Powers) Ordinance of 1969, which has since been translated into an Act of Parliament in the form of the Emergency (Essential Powers) Act, 1979, was promulgated, and the whole country was declared to be a security area by means of a proclamation made under the

¹ Four of the nine peninsular states joined together in 1896 to form the Federated Malay States: Negri Sembilan, Pahang, Perak, and Selangor. The other five formed the Unfederated Malay States: Johore, Kedah, Kelantan, Perlis, and Trengganu. Penang and Malacca, which had until then been part of the Straits Settlements, joined the other nine states to collectively become the Malayan Union in 1946, at the end of the Second World War. In 1948, the Malayan Union was renamed the Federation of Malaya, which in turn became the Federation of Malaysia with the entry into the union in 1963 of Singapore, Sabah (formerly North Borneo), and Sarawak. Singapore seceded from the Federation in 1965.

² Federated Malay States: Enactments Passed During the Year 1915 and Rules Thereunder 129-144 (1916).

³ H.P. Lee, "Emergency Powers in Malaysia," in F.A. Trindade and H.P. Lee, eds., *The Constitution of Malaysia: Further Perspectives and Developments* 135 (1986).

⁴ *Malaysia: A Country Study* 51 (1984).

⁵ *Id.* at 56.

Internal Security Act. This emergency ended in 1971 and the Malaysian Parliament, which had been dissolved in 1969, was reconvened on February 20, 1971. ⁶

Changes in the gun laws of Malaysia have a direct correlation with the various periods of emergency that have been declared. It was at the end of the 1948-1960 emergency period that the earlier law on arms was revised and replaced by the Arms Act of 1960. An Explosives Act had been passed three years earlier. The Internal Security Act, also passed at the end of the emergency period, is reported to have been intended to ensure that the provisions of the Emergency Regulations that had been promulgated during that period would continue to have the force of law. ⁷ Again, at the end of the emergency declared in 1969, the Firearms (Increased Penalties) Act was passed in 1971, with penalties for offenses involving arms or ammunition being made a great deal more severe.

At present, the laws of Malaysia regulating activities that involve firearms or ammunition are: the Penal Code, 1935, ⁸ the Explosives Act, 1957, ⁹ the Arms Act, 1960, ¹⁰ the Internal Security Act, 1960, ¹¹ and the Firearms (Increased Penalties) Act, 1971. ¹² Other laws which may also have relevance to offenses involving firearms or ammunition are the Emergency (Essential Powers) Act, 1979, ¹³ the Essential (Security Cases) Regulations, 1975, ¹⁴ and the Essential (Security Cases) (Amendment) Regulations of the same year. ¹⁵

Definitions

The Arms Act of 1960, as amended from time to time until 1975, contains definitions of the terms "arm," "ammunition," and "imitation arm." An arm is any lethal barreled weapon of any description from which a shot, bullet, or other missile can be discharged, and also any weapon

⁶ *Supra* note 3, at 136-137.

⁷ *Id.* at 283-284.

⁸ Penal Code (F. M. S. Cap. 45) (Kuala Lumpur, Government Printer, 1980).

⁹ Explosives Act, 1957 (Kuala Lumpur, Government Printer, 1978. rev. ed.).

¹⁰ Arms Act, 1960 (Kuala Lumpur, Government Printer, 1978. rev. ed.).

¹¹ Internal Security Act, 1960 (Kuala Lumpur, Government Printer, 1972. rev. ed.).

¹² Firearms (Increased Penalties) Act, 1971 (Kuala Lumpur, Government Printer, 1971). Amended in 1974, 1975, and 1978 by the Firearms (Increased Penalties) (Amendment) Acts of those years.

¹³ Emergency (Essential Powers) Act, 1979 (Kuala Lumpur, Government Printer, 1979).

¹⁴ 19:20 Government Gazette 1285-1294 (Legislative Supplement (A), no. 69, Oct. 4, 1975).

¹⁵ *Id.* at 1400-1407 (Legislative Supplement (A), no. 77, Nov. 4, 1975).

designed for the discharge of a noxious liquid, gas, or other thing. It includes in the definition of an arm an air gun, air pistol, automation gun, pistol, and any component parts of such weapons, as well accessories to diminish the noise or flash caused by firing. Ammunition is defined as meaning ammunition, including blanks, for any arm, and includes grenades, bombs, and other such missiles, as well as ammunition containing any noxious liquid, gas, or other thing. An imitation arm is defined as being anything having the appearance or intended to give the impression of being an arm, whether it is capable or not of discharging a shot, bullet, missile, noxious liquid, gas or other thing (sec. 2).

The Explosives Act of 1957, as amended in 1974, includes in its definition of explosives "ammunition of all descriptions" (sec. 2).

Manufacture and Sale

Under section 12(1) of the Arms Act, the manufacture of arms or ammunition in Malaysia is permitted only under license. A license to manufacture arms or ammunition may be granted, subject to this Act and any regulations made thereunder and subject also to certain conditions and restrictions. These restrictions may be on the type and quantities of arms or ammunition the license holder is authorized to manufacture and on the security measures to be undertaken by the license holder at the place of manufacture or at any other place. Granting of the license to manufacture may also be subject to a requirement that the license holder, if a business entity, permit a government official to be present at any meeting of its board of management and to any other requirement that the government may see fit to impose, according to section 12(2).

Section 9(1) of the Arms Act stipulates that no one is to sell or transfer, or to keep or expose for sale or for transfer, any arms or ammunition unless he is the holder of a valid license to deal in arms and ammunition granted under this section. A license to deal may be granted for arms and ammunition; a license to repair arms and ammunition only may also be granted. A combined license both to deal in and to repair arms and ammunition may also be granted, according to section 9(3). Persons carrying on any trade or business of dealing in arms and ammunition at more than one place of business are required to have a license in respect of each such place, according to section 9(5).

Section 15 of the Arms Act deals with the import and export of arms and ammunition. Subsection 15(1) states that no person shall import any arms or ammunition or parts of arms into Malaysia, either by sea, land, or air, unless he holds a license in that behalf. This type of license must be applied for to the chief police officer of a state, and must be in the prescribed form. If the applicant is a person who either already holds or is applying at the same time for a license to manufacture arms or ammunition, the application must be submitted to the minister in charge, according to subsection (2). Interim licenses, to remain in force for one month, may be obtained if a bona fide traveler arrives in Malaysia with personal arms and ammunition, or if the manager or other responsible member of a theatrical or circus company has to bring in arms and ammunition to be used in the company's performances, according to subsection (5).

Similarly, section 19(1) of the Arms Act provides that no person is to export any arms or ammunition from Malaysia either by sea, land, or air unless he holds a license in that behalf. The Government may from time to time specify by notification certain ports and places and declare

that arms or ammunition shall not be imported into or exported from Malaysia except at these ports and places (sec. 20). Also, under section 21(1), the import or export of arms or ammunition or parts of arms or of particular kinds of arms or ammunition or parts may be prohibited for specified periods without a special permit signed by the Minister concerned. The landing or transshipment of arms and ammunition may only be done under the terms of a permit granted to the owner, agent, master, or captain of a vessel or aircraft arriving or about to arrive in Malaysia, which will authorize the holder to land the arms or ammunition consigned to the vessel or aircraft at the port or place for landing or for transshipment (sec. 18(1) and (2)).

The 1957 Explosives Act empowers the minister concerned to prohibit, by special notification in the *Government Gazette*, the manufacture or importation of especially dangerous explosives, according to its section 4(1), and such prohibition may be either absolute or subject to conditions.

Possession and Use

Section 3(1) of the Arms Act states that, subject to the Act and its regulations, no person is to have in his possession, custody, or control any arms or ammunition unless he is the holder of an arms license in that behalf granted to him under section 4 (*see below*). Subsection (2) of section 3 provides that notwithstanding subsection (1), a person may carry and use arms or ammunition in accordance with the terms of a valid permit granted to him under section 4, provided that there is in force an arms license in respect of those arms and ammunition granted to some other person.

Section 4 governs the grant and renewal of both arms licenses and arms permits. Applications for licenses and permits are to be made to the chief police officer of the state in which the applicant resides. The applicant is to state the particulars required by the form. The chief police officer may grant the license or permit, as the case may be, if satisfied that the applicant has a good reason for having in his possession, custody, or control, or for carrying and using, the arms and ammunition for which the application is being made and that he can be authorized to do so without danger to the public safety or the public interest.

An arms license or arms permit expires on the 30th of June following the date on which it is issued and may be renewed for a further period of one year. Particulars of each license or permit are to be registered by the chief police officer.

Section 5 contains certain exceptions to the general rule above. For instance, it stipulates that no arms license will be granted for a pump or repeating shotgun of any kind, unless the magazine is permanently plugged so that it is incapable of firing more than one cartridge at each pressure of the trigger, or one cartridge from each barrel if a double-barreled gun. Nor will an arms license be granted for arms designed in such a way that missiles, once the trigger is pressed, continue to be discharged until the pressure is removed or until the magazine is empty. Arms licenses will not be granted for arms designed to discharge noxious liquids, gas, or any other things, nor for grenades or bombs or other missiles like them, nor for any ammunition containing or designed to contain a noxious liquid, gas, or other thing.

A person under the age of 18 cannot, under section 5(2), be granted an arms license.

However, if an applicant is at least 16 but under 18, the chief police officer of his state has discretionary power to waive this restriction. Under section 5(3), no arms license or arms permit is to be granted in the name of a firm or other business entity, but a responsible person nominated by or on behalf of that firm or business entity may be granted the license. An arms permit will not, in any event, be granted or renewed unless there is an arms license in force in respect of the arms and ammunition described in the permit, according to section 5(4).

Certain categories of persons are exempted from the requirement to have an arms license or arms permit. For example, the Supreme Ruler of Malaysia or any Ruler or Ruler's spouse of any of the Malaysian States is exempt, according to section 6(1), provided that annual returns are made on his or her behalf describing the arms and ammunition in his or her possession, custody, or control.

Under the provisions of the same section, a licensed dealer or repairer, or his servant acting in the course of his employment, may have in his possession, custody, or control, and may carry or use, arms or ammunition in the ordinary course of business in accordance with his dealer's or repairer's license (subsec. (2)(a)). Similarly, a licensed manufacturer can do the same with arms or ammunition manufactured under his license and in accordance with its terms (subsec. (2)(b)), and an auctioneer or carrier or his servant may, without holding an arms license or arms permit, have in his possession, custody, or control, or convey or carry, in the ordinary course of business, arms and ammunition, provided that he has obtained written permission from a chief police officer to sell at auction or to convey arms and ammunition and that he also complies with all conditions and restrictions subject to which the permission has been granted (subsec. (2)(c)). Under section 6(2)(d), someone who is licensed to import or export arms or ammunition may have in his possession, custody, or control, or carry or convey, arms or ammunition authorized to be imported or exported without having to hold an arms license or arms permit.

Members of the armed forces, police officers, and persons engaged in police duties may have or carry or use arms or ammunition without having to have an arms license or arms permit, as may crew members or passengers of any vessel or aircraft if the arms and ammunition are part of the ordinary armament or equipment of the vessel or aircraft or are required for its services, according to subsections (2)(e) and (f) of section 6.

Finally, a person may carry or use, without holding an arms license or arms permit, a miniature rifle and ammunition for it if the rifle is being provided for use at a miniature rifle range or shooting gallery, and may in the same way carry or use arms and blank ammunition at a theatrical performance, rehearsal, or athletic meeting, provided that permission has already been obtained to use the arms or ammunition in the course of that performance, rehearsal, or meeting, according to subsection (2)(g) of section 6.

Offenses and Penalties

The Internal Security Act, 1960, includes in its definition of "terrorist" in section 2 any person who, by the use of a firearm, explosive, or ammunition, acts in a manner prejudicial to the public safety or to the maintenance of public order or incites to violence or counsels disobedience to the law or to any lawful order. A terrorist is also any person who carries or has in his possession or under his control any firearm, ammunition, or explosive without lawful authority

for it, according to the same section of the Act.

The Internal Security Act also has a special part, Part III, entitled "Special Provisions Relating to Security Areas" and consisting of sections 47 through 63. Under this portion of the Act, the Yang di-Pertuan Agong, or Supreme Ruler of Malaysia, may proclaim any area as being a security area for the purposes of Part III if in his opinion public security in that area is seriously disturbed or threatened because of action taken or threatened by a substantial body of persons, whether inside or outside Malaysia, to cause a substantial number of citizens to fear organized violence against persons or property (sec. 47(1)).

Chapter III of Part III is entitled "Offenses Relating to Security Areas" and lists a number of such offenses. The chief offense consists of carrying or having in one's possession or under one's control in a security area, without lawful excuse (the onus of proving lawful excuse being on the person), any firearm or any ammunition or explosive without lawful authority for it (sec. 57(1)). The penalty prescribed is, on conviction, a mandatory death sentence.

Lawful authority for the purposes of this section means that the person must be a police officer, a member of the security forces, or an employee in the Prisons Department, acting in performance of his duty, or a person duly licensed, or authorized without a license, to possess, carry, or have under his control the firearm, ammunition, or explosive; or a person exempted from the provisions of this section by an officer in charge of a Police District, or a member of any class of persons similarly exempted by the Inspector-General by notification in the *Government Gazette*, according to section 57(2). The proviso follows that no person will be deemed to have lawful authority or to be exempt if he carries or has in his possession or under his control any such firearm, ammunition, or explosive for the purpose of using it in a manner prejudicial to public security or the maintenance of public order, as also stated in section 57(2).

Lawful excuse will be constituted only if the person proves that he acquired the firearm, ammunition, or explosive in a lawful manner and for a lawful purpose and that he has not since then acted in a manner prejudicial to public security or the maintenance of public order, according to subsection (3) of the same section.

A person who in a security area consorts with or is found in the company of another who is carrying or has in his possession or under his control a firearm, ammunition, or explosive, in contravention of section 57 above, is to be punished with death or life imprisonment if the circumstances raise a reasonable presumption that he has, is about to, or intends to act with that other person in the prejudicial manner described, according to section 58(1). A lesser offense is constituted if the person is only presumed to know that the other person had the firearm, ammunition, or explosive in contravention of section 57 (subsec. (3)).

The Arms Act, 1960, contains a wide range of offenses and a correspondingly wide range of penalties, from a fine of M\$500 to the death sentence, although the latter is not a mandatory penalty. In connection with arms licenses and arms permits, section 7 stipulates in its subsection (1) that failure to report within 14 days arms that are lost or destroyed is liable to be punished with a fine of up to M\$1,000. Imprisonment for up to two years or a fine of up to M\$2,000, or both, is prescribed for a person who willfully obliterates, defaces, alters, or forges any identification mark used for the identification of arms or ammunition or who willfully destroys an arm without

the chief police officer's written consent, according to subsection (2) of section 7.

The penalty for possession, custody, or control of, or for carrying or using, an arm or ammunition without a license or permit or otherwise than as authorized or, in the case of ammunition, in quantities in excess of those authorized, or for failing to comply with a condition or restriction of the license or permit is imprisonment for up to seven years or a fine of up to M\$10,000, or both imprisonment and fine, according to section 8.

Offenses in connection with dealers' and repairers' licenses are governed by sections 9 and 10 of the Arms Act. The prescribed penalties range from a fine of M\$500, stated in subsection (2) of section 10, for contravention of the requirement to affix a board outside the place of business indicating the possession of a license to deal in and/or to repair arms and ammunition, to imprisonment for up to seven years or a fine of up to M\$10,000, or both, listed in subsection (14) of section 9, for contravention of the requirement to have valid arms licenses or permits before a person can sell or transfer, or keep or expose for sale or transfer, or repair or accept for repair, as specified in subsections (1) and (2) of section 9, any arms or ammunition.

Offenses in connection with licenses to purchase, obtain, or transfer arms or ammunition are governed by section 11, subsections (1) through (5). Subsection (5) of section 11 states that any person who contravenes this section shall, on conviction, be liable to imprisonment for a term not exceeding two years or a fine not exceeding M\$2,000, or both.

Offenses related to licenses to manufacture arms and ammunition are governed by sections 12, 13, and 14 of the Arms Act. While contravention of the requirement that a licensed manufacturer must affix a board indicating the nature of his license outside the place of manufacture is punishable with a fine of M\$500, according to section 13(2), any person who manufactures an arm or ammunition either in contravention of a valid license granted to him under section 12 or in contravention of any condition imposed under section 12(2)(a) is, on conviction, liable to punishment with death or imprisonment for life and a whipping of not less than six strokes. In the case of a business entity or a body of persons, the penalty is a fine of up to M\$500,000 (section 14(1)). Failure to comply with any other restrictions or conditions imposed by the license is punishable with a fine of up to M\$25,000 and, in the case of a business entity or body of persons, of up to M\$100,000, according to section 14(2).

Offenses in connection with licenses to import and export arms and ammunition are dealt with in sections 15 through 24 of the Arms Act. Penalties in this part of the Act range from those prescribed in section 21(3) for the import or export of arms, ammunition, or parts of arms in contravention of notifications published under this section or in breach of restrictions and conditions of any special permit, which are imprisonment for up to seven years or a fine of up to M\$10,000, or both imprisonment and fine, to fines of up to only M\$1,000 for contravention of provisions on the marking of cases or packages of arms or ammunition as specified in section 16. The offense of knowingly concealing arms or ammunition imported without a license is punishable, on conviction, with imprisonment for up to seven years or a fine of up to M\$10,000, or both, according to section 24.

The Arms Act also contains some general penalties. Licensed dealers, repairers, or manufacturers must submit their stock-in-trade for inspection on demand by any police officer of

or above the rank of sergeant; intentional concealment of such stock-in-trade or willful refusal to point out where it is kept may be punished with imprisonment for up to seven years or a fine of up to M\$10,000, or both, according to section 25.

Failure to make returns required in connection with arms licenses, the forwarding of returns containing false statements or omissions, or the failure to account satisfactorily for arms or ammunition described in a license are all punishable, on conviction, with imprisonment for up to six months or a fine of up to M\$500, or both, according to section 26.

Under that part of the Arms Act entitled "Other Offenses, Penalties and Proceedings," consisting of sections 32 through 46, a number of assorted offenses are listed. The most serious offense in this part is the making or attempting to make use of an arm or imitation arm with intent to resist or prevent the lawful apprehension or detention of the person himself or any other person. It is punishable on conviction either with life imprisonment or with imprisonment for up to 14 years, according to section 32(1). This penalty will be in addition to any penalty to which the person may be sentenced for the offense regarding which the lawful apprehension or detention is taking place, according to subsection (1)(b) of section 32. According to subsection (2) of the same section, a person who at the time of committing any offense specified in the First Schedule has in his possession an arm or imitation arm will be liable to imprisonment for up to 10 years in addition to the penalty to which he may be sentenced for the offense listed in the Schedule, unless he shows that he had the arm in his possession for a lawful purpose.

Anyone who has an arm or ammunition in circumstances raising a reasonable presumption that he has used or intends or is about to use it for an unlawful purpose, or that the arm or ammunition is likely to be used for an unlawful purpose, is guilty of an offense under section 33 and is liable on conviction to imprisonment for up to seven years or a fine not exceeding M\$10,000, or both, and is liable also to whipping. Section 34 stipulates that anyone who is drunk or who behaves in a disorderly manner while carrying an arm is liable on conviction to imprisonment for up to one year or a fine of up to M\$1,000, or both.

Under section 35, any person who is authorized to possess an arm or ammunition but who has it stolen from him or who loses it is liable to be punished with imprisonment for up to one year, a fine not exceeding M\$1,000, or both, unless he can prove that he took all reasonable precautions against the loss or theft. According to section 36, importing or having an imitation arm in one's possession or custody is punishable with imprisonment for up to one year, a fine of up to M\$5,000, or both imprisonment and fine. However, section 36(1)(b) also provides that it will not be an offense under this section for a person under the age of 14 years to possess an imitation arm nor for any person to import or be in possession of an imitation arm in accordance with a license issued by the chief police officer of the state in which the person resides.

Discharging an arm and injuring any person without lawful justification or excuse or in spite of taking all reasonable precautions is punishable with imprisonment for up to two years, a fine of up to M\$5,000, or both, according to section 37.

Whoever abets the commission of any offense punishable under the Arms Act or its regulations or attempts to commit any such offense is liable to the same penalty as if he had committed the offense, according to section 41. Finally, section 43 contains a general penalty

providing that any person who contravenes or fails to comply with any provision of this Act or its regulations and for which no special penalty is provided is liable on conviction to imprisonment for a term of up to one year, a fine of up to M\$2,000, or both.

It should be noted that under the provisions of the Firearms (Increased Penalties) Act, 1971, as last amended in 1978, penalties for the use of firearms in the commission of certain offenses have been increased. This Act contains two new definitions. "Traffic in firearms" is defined as meaning to sell or transfer, or to keep or expose for sale or transfer, a firearm in contravention of the Arms Act of 1960; to repair or to accept for repair a firearm in contravention of section 19(2) of the same Act; to transfer, sell, or offer for sale a firearm to a person other than specified in section 11(1) of the Act; to import a firearm in contravention of section 14(1) of the Act; and to manufacture a firearm in contravention of regulations made under the Act and without such authorization as may be required. "Unlawful possession of a firearm" is defined as meaning possession, custody, or control of a firearm, or the carrying thereof, in contravention of the provisions of the Arms Act of 1960.

Under section 3 of the Firearms (Increased Penalties) Act, the death penalty is mandatory as the punishment for any person who, while committing or attempting to commit or while abetting the commission of an offense listed in its Schedule, discharges a firearm with intent to cause death or hurt, even if no hurt is caused.

Accomplices involved in such offenses are also liable to the same penalty as the principals, i.e., the death penalty. According to the Amending Act of 1974, each of the accomplices present at the scene of the commission, the attempted commission, or the abetment of the commission of a scheduled offense will be treated in the same way as the principals, provided they may reasonably be presumed to have known that the principal was carrying or had in his possession or under his custody or control the firearm, unless they can prove that they took all reasonable steps to prevent the discharge of the firearm, according to section 3(a) of the 1974 Amending Act.

The 1974 Amending Act also added abduction or kidnapping and house-breaking or house-trespass to the list of scheduled offenses. Previously, the offenses listed in the Schedule were: extortion, robbery, preventing or resisting one's own arrest or the arrest of another by a police officer or anyone lawfully empowered to make the arrest, and escaping from lawful custody.

The above survey of the various penalties prescribed for offenses relating to arms and ammunition demonstrates that the same offense may be liable to a number of penalties quite different in severity. The unlawful possession of a firearm or ammunition, to take one example, is a criminal offense under the provisions of the Internal Security Act as well as under the provisions of the Arms Act. However, while under the latter the offense is punishable under section 8 with imprisonment for a term not exceeding seven years, a fine not exceeding M\$10,000, or both, under the Internal Security Act it carries a mandatory death sentence if committed in a security area. Further, under the Firearms (Increased Penalties) Act, if the unlawful possession of a firearm or ammunition should occur during the commission of certain listed offenses, the penalties are increased to imprisonment for up to 14 years and whipping with not less than six strokes. The factors that will increase the severity of the penalty are therefore whether or not the offense is committed in a security area and whether or not the offense is committed during the commission of an offense which appears in the list or schedule of offenses, which will have the

effect of compounding the arms offense.

It should be noted, in addition, that when an offense involving a firearm or ammunition is committed in a security area, the Attorney-General must prosecute the offender under the Internal Security Act with its heavier penalties and cannot opt to prosecute under any other law.¹⁶

Statistics of Crimes Involving Firearms

For 1982, it was reported that one-half of all violent crime in that year took the form of robbery without firearms and that property crimes accounted for almost 90 percent of all criminal offenses.¹⁷

Bibliography

The Constitution of Malaysia: further perspectives and developments. F.A. Trindade and H. P. Lee, eds. Singapore, Oxford University Press, 1986. LAW Malaysia 7 Cons 1986

Federated Malay States: enactments passed during the year 1915 and rules thereunder. Kuala Lumpur, Government Press, 1916. LAW F.M.S. 1

Malaysia: a country study. Frederica M. Bunge, ed. 4th ed. Washington, Foreign Area Studies, The American University, 1984. DS 592.M345 1984

Singh, Awther. *The Emergency Laws of Malaysia.* Singapore, Quins Pte., 1981. LAW Malaysia 7 Sing 1981

Teh Cheng Poh v. Public Prosecutor, 1 *Malayan law journal* 50-57 (1979).

LAW PER

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April 1990

MEXICO

Like the United States, Mexico has a constitutional provision granting its citizens a right to arms as well as legislation prescribing the limits of that right. Article 10 of the Constitution reads as follows:

The inhabitants of the United Mexican States have the right to possess arms in their homes for their security and legitimate defense with the exception of those prohibited by federal law and of those reserved for the exclusive use of the Army, Navy, Air Force, and

¹⁶ Teh Cheng Poh v. Public Prosecutor, 1 *Malayan L. J.* 50 (1979).

¹⁷ *Supra* note 4, at 282.

National Guard. Federal law shall determine the cases, conditions, requirements and places [under and] in which the inhabitants may be authorized to bear arms. ¹

The Mexican law governing the use of firearms is principally that of the **Federal Penal Code** ² as amended plus the **Federal Law of Firearms and Explosives** as amended, ³ which is implemented through its Regulations, ⁴ and supplemented by certain Presidential Decrees. ⁵ Additionally, penal laws of the several states may be applicable, although only that of the Federal District (Mexico City) is related here, as this is generally the "leading jurisdiction" in matters of Mexican state law.

The carrying of firearms by certain government employees is also subject to the regulations of the government ministries which employ them. ⁶ Treaties play a role, although largely in regard to the selection of weapons for the military. ⁷

The Federal Penal Code

Articles 160-163 of the Penal Code for the Federal District and for Federal Matters deal with prohibited weapons. Article 160 provides that persons who carry, manufacture, import, or store, without a legal purpose, instruments that can only be used to attack [*agredir*] and which have

¹ Constitución Política de los Estados Unidos Mexicanos (*Diario Oficial* [D.O.], Feb. 5, 1917; errata: D.O., Feb. 6, 1917), as amended numerous times.

² Código Penal para el Distrito Federal en Materia de Fuero Comun, y para Toda la Republica en Materia de Fuero Federal, Decree of Jan. 2, 1931 (D.O., Aug. 14, 1931), as amended.

³ Ley Federal de Armas de Fuego y Explosivos of Dec. 29, 1971 (D.O., Jan. 11, 1972), as amended by Decree of Nov. 21, 1984 (D.O., Feb. 8, 1985).

⁴ Reglamento de la Ley Federal de Armas de Fuego y Explosivos of May 4, 1972 (D.O., May 6, 1972).

⁵ Decree of Dec. 20, 1974 (D.O., Feb. 4, 1975), as amended by Decree of July 10, 1979 (D.O., July 17, 1979).

⁶ E.g., Executive Decree of Apr. 9, 1985 (D.O., Apr. 25, 1985), which modifies the Interior Regulation of the Finance Ministry (Secretaría de Hacienda y Crédito Público) dealing with the carrying of firearms by officials while on official duty.

⁷ Mexico is a party to the Geneva agreement of 1982 prohibiting or restricting the use of certain weapons, including fragmenting explosives whose pieces cannot be located with the use of X-rays; booby traps and certain incendiary weapons. "Decreto de Promulgación de la Convención sobre Prohibiciones o Restricciones del Empleo de Ciertas Armas Convencionales que Puedan Considerarse Excesivamente Nocivas o de Efectos Indiscriminados y sus tres Protocolos," D.O., May 4, 1982.

no application for work or for recreation, will be imprisoned for three months to three years, and fined a sum up to 100 days of the guilty party's net income,⁸ and the weapons confiscated. These crimes are punishable whether or not included within the Federal Law of Firearms and Explosives.

Article 160 further provides that public employees may carry the arms needed to perform their duties, subject to the regulation of the applicable laws.

Article 161 states that licenses are required to carry or sell pistols or revolvers.

Article 162 imposes imprisonment from six months to three years plus a fine of 10 to 2,000 pesos for whoever:

- a) imports, manufacturers, or sells the weapons described in article 160; or who gives away or sells them;
- b) places on sale pistols or revolvers without legal authorization;
- c) carries the weapons described in article 160;
- d) without a legal purpose, and without the required permission, stockpiles arms, and
- e) without a license, carries any weapon listed in article 161.

Additionally, any weapons involved in the above-described acts shall be confiscated.

Article 163 provides that the licenses mentioned in article 161 will be granted by the President through the Department or Ministry that shall be designated, subject to the applicable laws and the following:

- a) The sale of weapons described in article 161 may only be made by mercantile establishments, and not by individuals; and
- b) Applicants for licenses to carry arms must meet the following requirements:
 - (i) They must post bond in the amount set by the authority, and
 - (ii) They must prove their need to carry weapons as well as their prior history of honesty and prudence, with the testimony of five persons well known to the authority.

Federal Law of Firearms and Explosives

An outline and summary of the **Federal Law of Firearms and Explosives** (hereinafter "The Law"), which supplements and greatly expands on the provisions of the Penal Code, follows:

⁸ Fines in terms of earnings of the convicted person are defined in the Federal Penal Code (*supra* note 2) in art. 29.

Title One of The Law states that it affects the general public, and is applicable to The President of the Republic, the Ministry of Internal Affairs [*La Secretaría de Gobernación*], the Ministry of National Defense, and all other federal authorities in their areas of jurisdiction [*competencia*]. Additionally, the State, Federal District, and municipal authorities are to fulfill the roles set forth for them within The Law and its Regulations.

The Federal Arms Registry

The President, through the Ministries of Internal Affairs and of National Defense, are to control all arms in the Nation, and to that end, a Federal Arms Registry [*Registro Federal de Armas*] is to be established by the Ministry of National Defense.

Educational Campaign

Title One also requires the Federal Executive Branch as well as the governments of the States, the Federal District, and each local jurisdiction [*ayuntamiento*], to conduct permanent educational campaigns with the intention of inducing a reduction in the possession carrying, and use of weapons of every type. Further, advertising is permitted only for sporting arms for use in hunting or for target shooting, under the restrictions set forth in this Law.

Registration, Possession, and Permitted Firearms

Title Two requires all firearms to be registered with the Ministry of National Defense in the Federal Arms Registry. Neither possession nor carrying of any arms prohibited by law or restricted to the exclusive use of the Army, Navy and Air Force shall be allowed, except as provided in this Law. Possession or carrying of arms with the following characteristics is allowed, but subject to the terms and conditions set forth in this Law:

1. Semiautomatic pistols with a caliber not greater than .380" (9 mm.), but excluding .38 Super and .38 [Colt?] Commander [Comando] pistols as well as the 9 mm. Mauser, [Webley & Scott] Parabellum, and Commander pistols, and the similar 9 mm. models of other brands.⁹

2. Revolvers with a caliber not greater than the .38 Special, excluding the .357 Magnum.¹⁰

3. Additionally, members of agricultural collectives [*ejidatarios* and *comuneros*] and other rural workers [*jornaleros del campo*] may possess and carry, outside of urban areas, any of the [permitted] arms above, or a rifle of .22", or a shotgun of any caliber, except those with a barrel longer than 635 mm. (25") and those with a caliber greater than 12 (.729" or 18.5 mm.), providing

⁹ *Supra* note 3.

¹⁰ *Id.* art. 9(II).

these have been licensed. ¹¹

4. Those arms which hunters or target shooters may be authorized to possess in their homes and to carry, with a license, are the following:

- a) Pistols, revolvers and .22 caliber rifles with revolving magazines [*de fuego circular*]. ¹²
- b) .38 caliber pistols for olympic or competition shooting. ¹³
- c) Shotguns of all calibers and models except those with barrels of less than 635 mm. (25"), and those of a caliber greater than 12 (.729" or 18.5 mm.). ¹⁴
- d) Shotguns of three barrels of the calibers permitted in the preceding section, with one barrel for metal cartridges of a different caliber. ¹⁵
- e) High-powered repeating or semi-automatic rifles, not convertible into automatics, with the exception of the .30 caliber carbine rifles, short carbines [*mosquetones*], and .223 caliber carbines, 7 and 7.62 mm., and Garand .30 caliber rifles. ¹⁶
- f) High-powered rifles of calibers greater than those mentioned in the preceding section, for use abroad, with special permission, for the hunting of big game which do not exist among the National fauna. ¹⁷
- g) Other sporting arms consistent with the legal rules for hunting or the regulations of national or international target shooting organizations for use in competitions. ¹⁸
- h) The Ministry of National Defense is authorized to determine which target shooting or hunting arms and munitions may be possessed. ¹⁹ In regard to hunting weapons, a prior opinion

¹¹ *Id.* art. 9(II), 2nd para.

¹² *Id.* art. 10(I).

¹³ *Id.* art. 9(II).

¹⁴ *Id.* art. 10(III).

¹⁵ *Id.* art. 10(IV).

¹⁶ *Id.* art. 10(V).

¹⁷ *Id.* art. 9(VI).

¹⁸ *Id.* art. 9(VII).

¹⁹ *Id.* art. 19.

from the Ministry of Internal Affairs or relevant agencies is required.²⁰

Application for approval of a type of hunting or target shooting firearm may be made directly or through an association or club.²¹

i) Additionally, authorization may be granted to those who practice the sport of *charrería* [giving Mexican-style "cowboy" demonstrations] to have revolvers of greater caliber than .38", but only for the sake of authenticity of their costumes, and these revolvers must be carried unloaded.²²

6. Gun collectors and private or public museums, with prior permission of the Ministry of National Defense, may have collections of old and/or modern arms. They may possess arms prohibited by this law if these have value [*tengan valor*] or have cultural, scientific, artistic or historic significance. If a collection or museum not connected to a military institute of the Nation has arms reserved for the exclusive use of the Army, Navy and Air Force, written authorization from the respective branch of the military must also be obtained.²³

Prior permission is required to acquire new arms for private collections and to register them²⁴ as well as to dispose of arms in collections.²⁵ The destruction, loss, or theft of arms must be reported to the Ministry of Defense, in compliance with regulations set for this.²⁶

Tools and utensils known to be used for farming or for any trade, profession or sport are not considered arms, providing they are used at the work or sport site, or if it can be shown that they are being transported for the purpose of their use in work or sport.²⁷

Arms may be kept in the home for the defense of the owner and those who live there, but such arms must be registered with the Ministry of National Defense.²⁸ To make these controls effective, for purposes of the Registry, individuals may have only a single domicile for themselves

²⁰ *Id.*

²¹ *Id.*

²² *Id.* art. 9(VII), 2nd para.

²³ *Id.* art. 21.

²⁴ *Id.* art. 22.

²⁵ *Id.* art. 23.

²⁶ *Id.* art. 14.

²⁷ *Id.* art. 13.

²⁸ *Id.* art. 15.

and their family.²⁹ Anyone who acquires one or more arms is obligated to register it with the Ministry of National Defense within 30 days, stating in writing the brand, caliber, model, and serial number if it has one.³⁰

Public servants and the chiefs of the federal police services and of those of the Federal District, the States, and municipalities are also obligated to register the arms under their control.³¹

Prohibited arms for the purpose of this Law include those already listed in the Federal and Federal District Penal Code,³² which are described *supra*.

Arms Reserved for the Military

Article 11 of the Law described what weapons are reserved for the exclusive use of the military. These are as follows:

- a) Magnum .357 revolvers and those of a caliber greater than the .38 Special;
- b) 9 mm. Parabellum, Luger and similar pistols; .38 Super and Commander and larger pistols;
- c) Rifles, short carbines [*mosquetones*], carbines, .223 caliber and 7 mm. short carbines [*tercerolas*], and all models of .30 carbines;
- d) Pistols, carbines and rifles with a "burst" [*rafaga*] capacity; submachine guns, grape-shot firers [*metralletas*], and machine guns of all calibers;
- e) Shotguns with barrels shorter than 635 mm. (25"), those of a caliber greater than 12 (.729") or 18.5 mm.) and gas-throwers, except those for industrial use;
- f) Munitions for the preceding weapons and special cartridges such as tracers, armor-piercing, smoke-shells, expanding shells, gas-carrying shells, and shotgun shells larger than "00" (.84 cms. in diameter);
- g) Cannons, artillery pieces, mortars, and combat vehicles with their armaments, accessories, projectiles and munitions;
- h) Rocket projectiles, torpedoes, grenades, bombs, mines, depth charges, flamethrowers and

²⁹ *Id.* art. 16.

³⁰ *Id.* art. 17.

³¹ *Id.* art. 18.

³² *Id.* art. 12.

the like, as well as the apparatus, devices and machines for launching them;

- i) Bayonets, sabers and lances;
- j) War ships, submarines, landing ships and sea planes for naval war and their armaments;
- k) War planes and their armaments, and
- l) War materiel, gases and chemical substances with an exclusively military application, and the equipment for their military use;
- m) In general, all arms, munitions and materiel designed exclusively for use in war.

Use of the above may be authorized, upon a showing of need, by the Ministry of National Defense, to those working for the national government or that of the Federal District, for the States, or for municipalities.

Licenses for Carrying Firearms

Articles 24-26 of the Law deal with the requirements for granting licenses to carry firearms.

To carry arms, a license is required. Members of the Armed Forces and the police are exempt from this general requirements, but are subject to specific laws and regulations.³³

Licenses are of two types: for private individuals, which must be renewed every two years, and for officials, which are valid so long as the person holds the position or job that supplies the reason for issuing the license.³⁴

Licenses for individuals are for the exclusive use of that individual.³⁵

Licenses are to be issued to private individuals who meet the following requirements:

- a) They have an honest means of living;
- b) They have completed any military service obligation;
- c) They have no physical or mental impediment to their use of arms;

³³ *Id.* art. 24.

³⁴ *Id.* art. 25.

³⁵ *Id.* art. 35.

d) They have not been convicted of any crime committed with the use of arms, and

e) By the nature of their employment or occupation, or by the special circumstances of the place in which they live, or because of other factors deemed credible in the judgment of the Ministry of National Defense, there is a necessity to carry arms.³⁶

Licenses to private individuals for one or more firearms may also be issued for the purposes of target shooting or hunting, but only if the interested party is a member of a registered club or association meeting the requirements of law.³⁷

Foreigners may be authorized to carry arms only when, in addition to satisfying the conditions set forth above, they also have immigrant status, except that temporary licenses may be issued to tourists for sporting purposes.³⁸

Article 29 provides that licenses to officials may be either to individuals, or collective, for police departments. These collective licenses are valid only for the number of persons on the police payrolls, and the police departments must issue credentials to the individuals who will be using these firearms.³⁹

Cancelling and Suspending Licenses

The Ministry of National Defense has the power to issue, suspend, and cancel these licenses.⁴⁰ The following are grounds for cancellation:

- a) If the holder makes bad use of the arms or license;
- b) If the holder alters the license;
- c) If the arms are used away from the authorized places;
- d) If the holder carries a firearm other than that licensed;
- e) If the firearm's original characteristics are altered;

³⁶ *Id.* art. 25.

³⁷ *Id.*

³⁸ *Id.* art. 27.

³⁹ *Id.* art. 29.

⁴⁰ *Id.* art. 30.

- f) If the issuance of the license was based on fraud, or, in the judgment of the Ministry of National Defense, the reasons for the issuance of the license no longer exist;
- g) Upon order of a court of competent authority;
- h) If the holder changes domicile without notifying the Ministry of National Defense, and
- i) If the holder fails to comply with the requirements of this Law or its Regulations.

Licenses to carry arms may be suspended when in the judgment of the Ministry of National Defense this may be necessary to restore the tranquility of a municipality or region. ⁴¹

Suspension or cancellation of licenses is to be recorded in the National Registry of Firearms. ⁴²

Restrictions in Licenses

Police credentials alone do not convey a right to carry arms unless there is a corresponding license to do so. ⁴³

Licenses to carry arms shall state the territorial limits in which they are valid. In the case of neighborhood guards or those of a specific place, the license sets forth exactly the area in which they are valid. ⁴⁴

Holders of licenses to carry arms are prohibited from carrying these arms to public demonstrations and public celebrations; legislative or similar meetings; courts and meetings in which disputes are to be argued, or to any gathering which, for whatever purpose, at which disputes are predictable, and are also prohibited from any act to obtain a result through using or threatening to use arms. Exceptions are made for parades and for sports events of *charrería* [Mexican rodeo], target shooting and hunting. ⁴⁵

Manufacturing and Import-Export

Articles 37-67 of the Law deal with the manufacture, trade, importation, and exportation

⁴¹ *Id.* art. 31.

⁴² *Id.* art. 32.

⁴³ *Id.* art. 33.

⁴⁴ *Id.* art. 34.

⁴⁵ *Id.* art. 36.

of firearms. Article 37 reserves to the President, acting through the Ministry of Defense, the right to authorize the establishment of businesses to manufacture or trade in firearms. The Law covers businesses dealing in any of the firearms mentioned in articles 9 and 10 of the Law, as well as ammunition and explosives (including but not limited to some 16 types specifically listed), plus detonators, fireworks, and related materials.⁴⁶

Article 55 provides that any arms to be imported must be of the precise characteristics for which the import license was granted. Any change will require a new permit.

Exporters of firearms must show that they have an import permit from the country to which they are to be shipped.⁴⁷

When customs agents deal with commercial shipments of firearms for import or export, they must notify the Ministry of National Defense in a timely manner so that it can intervene if it deems necessary.⁴⁸

Additional Infractions

The Law adds several penalty provisions separate from those listed in the Penal Code. The following are to be punished with a fine of from one to 10 days' net earnings or, if the fine is not paid, with incarceration of not more than 36 hours:

- a) Possession of arms in a place not authorized or not the holder's domicile;
- b) Possession of firearms in the home without their being registered with the Ministry of National Defense or without the required license;
- c) Possession of arms reserved for the exclusive use of the armed forces;
- d) Carrying licensed arms to a public gathering, etc., as is prohibited in art. 36.

Additionally, the person fined is to be turned over to local authorities to answer for any infractions of local codes or regulations which, in the case of the Federal District, may result in far stricter penalties, as discussed *supra*.

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March 1990

⁴⁶ *Id.* art. 41.

⁴⁷ *Id.* art. 56.

⁴⁸ *Id.* art. 58.

THE NETHERLANDS

Background

The first important step in controlling the possession of weapons in the Netherlands was the Law on Weapons of 1890.¹ This law forbids the carrying of weapons on a public road or any other place accessible to the public, unless the weapon was wrapped in such a way that it could not be used immediately. The Law which allows a number of exceptions to this general prohibition included the following as controlled weapons: firearms, an object used to strike another person, and a weapon propelled by the thrust of the arm. The Law, however, was not intended to prevent the population from dealing in weapons. It was not until 1919 that the Law of Firearms² became effective, and this Law is concerned mainly with dealing in firearms. Firearms and ammunition used in such weapons in the broadest sense are included under this Law. More specifically, it includes bombs, hand grenades, most kinds of alarm pistols, and devices that look like real weapons. The Law of 1919 controls the manufacture, repair, storage, delivery, import, export, transit, and transport of firearms and ammunition through a restrictive licensing system in accordance with an Executive Measure.³ Although the Law of 1919 has been amended numerous times, it is still the most important part of the existing legislation on weapon control.

The New Law

In 1977 a new Law on Weapons and Ammunition was introduced in Parliament in the Netherlands. This Law implements the 1970 Benelux Convention on Weapons and Ammunition which was concluded in Brussels between Belgium, the Netherlands and Luxembourg.⁴ The Convention was intended to harmonize the legislation on weapons and ammunition between the three countries because of an "increased need to limit the legal possession of weapons by issuing restrictive regulations and the executing of a most effective way to control the trade in such." The Convention was further necessitated by an increased mobility between the Benelux countries and the very limited control at the borders. This situation had promoted trade in illegal weapons. According to the *Explanatory Memorandum on the Law*,⁵ the currently existing separate national legislation had been found inadequate.

¹ Wapenwet, Law of May 9, 1890, Staatsblad [official law gazette of the Netherlands, Stb.] 81, as amended.

² Vuurwapnwet, Law of June 7, 1919, Stb. 310, as amended.

³ Decree of July 11, 1919, Stb. 474, as amended.

⁴ *Tractatenblad van het Koninkrijk der Nederlanden* [official treaty gazette of the Kingdom of the Netherlands] 1971, 41.

⁵ G. P. A. Aler, "De politiebevoegdheden in het wetsontwerp wapens en munitie" [police authorities in the proposal of the law on weapons and ammunition], *Delikt en Delinkwent*, July 1977, p. 433.

This inadequacy was emphasized by the increase in terrorism during the 1970s, and the inevitable link between terrorists and illegally possessed weapons and an effort to combat this particular problem motivated the Dutch government to propose the new law.⁶ As a result, the new Law grants the authorities rather far reaching inspection and investigative powers such as the ability to search vehicles and their cargoes, the entering of places, and the examination of houses and the searching of individuals.

In 1986 the Dutch Parliament passed the final version of the Law on Weapons and Ammunition, and it was published in the official gazette.⁷ The Royal Decree to implement the Law of 1986 was promulgated on May 10, 1989⁸ and this Decree also implements the Benelux Convention in the Netherlands.

This 1986 Law on gun control replaces the old legislation on weapons, and under this comprehensive Law, all aspects of this issue are centralized. Virtually every kind of weapon is covered including stilettos, bludgeons, imitation weapons, and every kind of ammunition. A practical system of division into categories has been devised. Category 3 covers those weapons and the accompanying ammunition that private citizens may own under certain circumstances and not only deals with shooting weapons in the form of revolvers, pistols, and rifles but also swords, sabers, throwing knives, truncheons, alarm and shooting pistols, and revolvers. This category deals with firearms which private citizens may possess under certain circumstances as well as the accompanying ammunition and will be dealt with below.

Manufacture and Sale

Without a special authorization from the Minister of Justice, it is forbidden to manufacture, transform, repair, or trade (as a business) in weapons and ammunition.⁹ This rule does not apply to the military. The authorization is given for a period of five years, can only be extended for maximum periods of five years, and only applies to specifically mentioned actions, kinds of weapons, ammunition, and businesses dealing in such things. The requester must supply information required by the Minister of Justice. The individual must meet age, professional skills, and moral behavior requirements as determined by the General Administrative Measures. The place in which the business will be conducted must also meet security requirements set by the Minister of Justice. The Law enumerates in which situations an authorization will be denied or withdrawn. The provisions concerning weapons and ammunition also apply to their parts and accessories.¹⁰ The import or

⁶ B. van der Beck, "Opsporings- en Kontrole bevoegdheden in het gewijzigd ontwerp Wet Wapens en Munitie" 29-6 *Ars Aequi* 354 (1980).

⁷ Wet Wapens en Munitie, Law of February 5, 1986, Stb. 41.

⁸ Stb. 190, effective September 1, 1989.

⁹ *Id.* para. 2.

¹⁰ Art. 3.

export of weapons and ammunition is forbidden without a permit.¹¹ The destination of the weapons and ammunition cannot be changed without changing the permit to indicate the legal destination. While in transit, the weapons and ammunition must be packaged in such a way that they cannot be used immediately. Additional requirements demanded by the Minister may have to be met. The requester of the permit must be entitled to possess such weapons or ammunition in the Netherlands, Belgium, or Luxembourg. He must also be able to prove that the proper authorities of the country of destination do not object to the presence of the weapons or ammunition on their territory. The country of destination must also be approved by the General Administrative Measure.

If the weapons or ammunition are entering the Netherlands from Belgium or Luxembourg and an export permit is requested for the Netherlands, the requester must prove that the proper Belgian or Luxembourg authorities do not object to its destination. A permit can be withdrawn by the authority who has granted the permit, if untrue information has been supplied during the course of issuing the permit, if one of the requirements which had to be met is no longer being met, and if the permit, weapons, or the ammunition are misused. This decision has to be well founded and include the reasons why it was made.

Except for the person who is entitled to carry a weapon and its accompanying ammunition (see below), it is forbidden to transport such without a permit or a license.¹² The head of the local police in the place from which the weapon is to be transported or where the requester is established can issue a permit for transport. The requester must be entitled to possess the weapon or ammunition. Information as determined by the Minister of Justice must also be supplied. The license can be withdrawn by the head of the local police or the Minister of Justice, and this must be well founded and include the reasons it was made.

Possession and Carrying of Weapons and Ammunition

The Law has a general prohibition against the possession and carrying of weapons and ammunition,¹³ but this general prohibition does not apply to the following individuals:

- 1) Persons who are part of the armed forces as determined by the Minister of Defense.
- 2) Persons who are part of the police force as determined by the Minister of the Interior.
- 3) Persons in the Civil Service who are authorized to carry firearms by a work-related regulation. Such arms may only be carried in pursuit of official duties.
- 4) Persons who have a hunting license are authorized to carry those weapons and

¹¹ *Id.* para. 4.

¹² *Id.* para. 5.

¹³ *Id.* para. 6.

the accompanying ammunition described in the license.

- 5) Persons who have a permit to possess or carry weapons and ammunition through a permit but only insofar as the permit allows them to do so.

A permit to possess a weapon and its accompanying ammunition is granted by the head of the local police of the residence of the requester. If the requester does not have a residence in the Netherlands, the permit is granted by the Minister of Justice. The request is granted if:

- the requester has supplied information and documents as required by the Minister of Justice, as well as all other information needed by the head of the local police for the review of the request;
- a reasonable interest demands the granting of the license. A reasonable interest can, for instance, be proven by a sportsman who is required to have a weapon as a member of a shooting club since membership in the club includes the activity of using such a weapon. The sportsman's club will specify the activities of its members. A request for a permit for self protection is not seen as a reasonable interest, and such a request will not be granted on these grounds.¹⁴
- there should be no reason to fear that there will be a misuse of the permit, the weapons, or the ammunition. The Minister of Justice can make further rules by decree regarding medical stability and the necessary skill in handling a weapon. A document can be requested to prove that the requester meets the requirements.

The reasonable interest for which the permit is granted is described in the permit. A permit is only provided for a one-year period and can only be extended if the above-mentioned requirements are still being met. If demanded, the permit can also allow the individual to carry the weapon and the appropriate ammunition on his person, but this fact must be mentioned on the permit.

It is forbidden to transfer a weapon or any ammunition to a person who is not entitled to possess such material according to the law. The person who transfers the firearms has to receive a permit to obtain the weapon from the individual to whom the weapon is being transferred.

The Minister of Justice can, for the sake of safety, establish standards for storage facilities and the means of transportation for weapons. The technical standards that must be met for such activities can also be set regarding the transfer of weapons and ammunition.¹⁵

The law provides for appeal procedures against decisions made based on this Law.

¹⁴ P. D. R. Tazelaar, "Vervanging van de oude wetgeving in Nederland," 86-3, *Benelux*, p. 12.

¹⁵ *Supra* note 7, para. 8.

Inspection and Investigative Measures

In the area of investigation, the Law gives broader authority to the police and other especially designated investigators than the old legislation. The authorities can search cargoes from which they suspect within reason that weapons or ammunition may be found.¹⁶ These investigators are authorized to gather information on all persons who either privately or professionally have been granted permission to carry weapons, and their investigations may include the inspection of bookkeeping records. Those involved are legally obliged to cooperate with the authorities in this regard. Furthermore, the police have the right to enter all places where weapons and ammunition are kept for business purposes or even where there is suspicion that such weapons might be maintained. If the case involves a private residence, the police must present a written order to enter, and this document is obtained from the public prosecutor.¹⁷ Besides these authorities, which were according to some authors going too far, the police are also entitled to search vehicles or order the opening of goods including luggage in transit if there is a reasonable indication that, based on criminal evidence, that the contents of the packages might contain weapons for criminal use. The police may confiscate the weapons found, and even in certain circumstances an individual's clothing may be searched.

Offenses and Penalties

Whenever a crime has been committed through the use of a weapon, the Criminal Code provides the government with many avenues of control. Necessitated by an increase in illegal weapon possession and crimes linked to such possession, the Law on Firearms was amended in 1970.¹⁸ As a result, the penalties for illegal trade and possession were increased. The heavier provisions are included in the new Law of 1986.¹⁹

According to the new Law, the transport, possession, transfer, repair, trade, or storage of a pistol or a revolver can be punished with a maximum prison term of 9 months or a fine of 25,000 guilders. If more than one pistol or revolver is involved, the maximum prison term can be 4 years and a fine of 100,000 guilders. In regards to transporting such firearms in or out of the Netherlands, possession in an airport or in an aircraft, the penalty can be 4 years in prison and fine of 100,000 guilders. The same penalty exists for one who professionally transforms, trades or repairs firearms illegally.

Before 1970 these acts were classified as misdemeanors in the Netherlands, but under the new Law they are classified as felonies making it easier to take involved individuals into custody at a much earlier stage. The change to a felony from a misdemeanor allows for prosecution for complicity.

¹⁶ *Id.* para. 11.

¹⁷ *Supra* notes 5 and 6.

¹⁸ Law of June 24, 1970, Stb. 284.

¹⁹ *Supra* note 7, para. 12.

The Benelux Convention

The Convention between Belgium, the Netherlands, and Luxembourg recognizes three categories of weapons.²⁰ The first category consists of the most dangerous weapons: rifles that can be broken down, camouflaged weapons, gas weapons, small and easily hidden weapons such as stilettos, daggers, bludgeons, and brass knuckles. Most acts involving such weapons are forbidden.

The second category lists weapons which may be legally carried on one's person. Included are ordinary rifles, revolvers and pistols. Certain air pressure rifles are also in this category along with a certain kind of gas revolver or pistol. This was done in deference to Luxembourg where a permit can be obtained for self defense. Sabers and swords which are not sporting weapons are included in this category.

Category 3 consists of all fire weapons and accompanying ammunition not included in either Category 1 or 2. In general, Category 3 includes larger weapons especially meant for military use. These may not be owned or possessed by private individuals. Cannons, machine guns, machine pistols, bazookas, etc., are included in this category. All weapons of Category 3 are forbidden.

If interpretation problems arise from borderline cases, the Benelux Court of Justice has been given the predominant authority to guarantee a uniformity of interpretation between the three countries. The Appendix to the Convention also determines that each of the nations will inform the others of questions that arise in applying both the Convention and its Appendix. A committee of ministers may amend the three categories as this becomes necessary, and each country may make exceptions for weapons which are part of a collection, are decorative, or of antique value.

The Benelux Convention only provides for norms or standards, not sanctions. The necessary penalties will have to be adopted in the national legislatures. Furthermore, the individual countries are free to adopt more stringent standards than those given in the Convention, but they cannot deviate from this in such a way that their national laws are more lenient than those provided by the Convention.

Article 7 of the Convention provides for a general exception to this rule in case of war or other exceptional circumstances. In such a situation, each country is free to deviate from the Benelux Convention and its Appendix. The deviating country has to inform the other parties to the Convention of this action, so they may take the necessary measures to secure public order and security within their territory.

The provisions that contain the prohibitions of the Appendix are not applicable to the public authorities (army, police, etc.) of the three member states, except insofar as sale to a private individual is concerned. The Benelux Court of Justice is the competent authority for the final and uniform interpretation of the Convention on Weapons and Ammunition and its Appendix.

²⁰ *Supra* note 4.

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May 1990

NEW ZEALAND

Introduction

In a report prepared for the government-appointed Committee of Inquiry into Violence in 1986, New Zealand's Department of Justice offered a large collection of statistics to support its basic conclusion that the country's 3.3 million residents had "good reasons" for becoming "increasingly concerned" about violent crime.¹ One of the most striking developments revealed by these figures was that convictions for all types of serious offenses against persons had grown by more than six hundred percent over the preceding twenty-five years.² The data used in calculating the amount of this increase was subsequently broken down to show that when averages for the years 1960-64 were compared with ones for the years 1981-85, proven charges were up over: 1) four hundred percent for manslaughter, rape, and attempted rape; 2) five hundred percent for murder; 3) nine hundred percent for assault causing bodily harm; and 4) fifteen hundred percent for aggravated robbery.³ Further analysis demonstrated that convictions for each of these types of crimes had risen between 29 and 234 percent over the previous decade alone.⁴

In order to keep matters in perspective, the Department of Justice hastened to add that despite the disturbing trends in the nation's crime picture, the *per capita* rates for most of the individual offenses it studied appeared to still be lower in New Zealand than they were in such countries as the United States, Australia, Canada, the Netherlands, and West Germany.⁵ This point would certainly seem to be borne out by the fact that in 1985, New Zealand's courts only entered: 1) 14 convictions for murder; 2) 5 convictions for attempted murder; 24 convictions for manslaughter; 4) 95 convictions for rape and attempted rape; and 5) 8,609 convictions for all types of violent crimes.⁶ Yet while these raw figures are extremely low, they actually represent higher percentages of the population than most of the comparable ones reported in such countries as

¹ New Zealand, Department of Justice, Submission to the Committee of Inquiry into Violence 1 (1986).

² *Id.* at 40.

³ *Id.* at 47-61.

⁴ *Id.*

⁵ *Id.* at 130-141 and New Zealand, Department of Justice, *Appendices to the Submission to the Committee of Inquiry into Violence* 2-23 (1986).

⁶ *Supra* note 1 and New Zealand, Department of Statistics, *New Zealand Official Yearbook* 1987-88, 297 (1987).

England and Japan for the same year.⁷

Criminologists and large segments of the public have advanced many theories to help explain why the average number of persons found to have committed serious offenses has escalated so greatly in a country that long enjoyed the reputation of having some of the world's lowest crime rates. Without attempting to reach many firm conclusions respecting the extent to which they may in fact have led to increases in violent incidents, the report submitted to the Committee of Inquiry into Violence noted that all of the following factors had drawn considerable attention:

- 1) rapid urbanization;
- 2) changes in the roles of women;
- 3) increases in consumption of alcohol and illegal drugs;
- 4) persistent unemployment;
- 5) the effects of poverty, illiteracy, and malnutrition;
- 6) the alienation of Maoris and other Pacific Islanders;
- 7) leniency in sentencing;
- 8) inadequacies in the penal system;
- 9) the abolition of the death penalty for murder;⁸ and
- 10) the negative influences of the media.⁹

Not mentioned along with the conditions and developments included on the above list was the role, if any, that the availability of firearms may have had in facilitating or encouraging the commission of violent offenses. While this omission was conspicuous, it was neither unprecedented¹⁰ nor entirely surprising. In New Zealand, concern about rising crime rates has not served to raise questions respecting the adequacy of domestic efforts to restrict access to firearms nearly as frequently as it has in North America.

Two reasons why the availability of firearms has not repeatedly flared up as a major political issue in New Zealand are that guns have not been used to perpetrate: 1) any political assassinations or random killing sprees in the country; or 2) a high percentage of the nation's murders. Of the sixty-one homicides that the police classified as murders during the fiscal year that ended on the last day of March 1986,¹¹ only eleven appear to have been committed with a

⁷ *Supra* note 5.

⁸ *Id.* at 201. One notion that the Department of Justice did attack was that the abolition of the death penalty for murder in 1961 had contributed significantly to the rise in New Zealand's homicide rate.

⁹ *Id.* at 23-137.

¹⁰ This issue was also neglected in an even more extensive study of violence in New Zealand conducted almost twenty years earlier. New Zealand, Department of Justice, *Crime in New Zealand* (1968).

¹¹ New Zealand, Department of Statistics, *New Zealand Official Yearbook 1987-88*, 293 (1987).

firearm.¹² Even so, these crimes may well have generated more controversy if the public had not generally been convinced that Parliament had created extensive gun control laws long ago and has been gradually tightening them ever since. Most New Zealanders seem to believe that their country's firearms legislation is now so strict that it could be significantly strengthened only by prohibiting large groups of citizens from owning or possessing all types of guns. Persons who share this view tend to perceive illegal uses of firearms as reflecting the impossibility of denying all potential criminals access to guns rather than major weaknesses in the government's efforts to keep weapons out of the hands of individuals who are known to be dangerous.

The History of Gun Control in New Zealand

Less than five years after it met for the first time, New Zealand's General Assembly¹³ passed a statute designed to "regulate the importation, sale, and other disposition of arms, gunpowder, and warlike stores."¹⁴ Since this event occurred during the "Taranaki War" between British troops and several native tribes, the prevailing military situation would seem to largely explain why the original Arms Act, 1860 contained provisions that were so extensive for their era. Among the most important of these were sections requiring dealers and importers to obtain special licenses and to keep detailed records as well as authorizing the government to issue whatever types of regulations it might deem necessary "for the registration of the sale and transfer of Arms."¹⁵ The latter term was defined to "include any gun, pistol, or other firearm and any sword, cutlass, pike, bayonet, or other instrument of war."¹⁶

Since 1860, the Arms Act has been amended many times and consolidations of it have been prepared for reenactment by Parliament on quite a few occasions.¹⁷ The current revised version of this statute was adopted in 1983¹⁸ and consists of seventy-eight relatively lengthy sections supplemented by the twenty-eight sections of the much shorter Arms Regulations.¹⁹ Matters addressed in this legislation extend from what types of weapons may be owned or possessed by

¹² World Health Organization, Table of Mortality (unpublished 1988).

¹³ The General Assembly was renamed the "Parliament of New Zealand" by the Constitution Act, 1986, No. 114, § 14, 1986 N.Z. Stat. 984.

¹⁴ Arms Act, 1860, 24 Vict. No. 38.

¹⁵ *Id.* § 8.

¹⁶ *Id.* § 2.

¹⁷ Arms Act, 1908, 1 N.Z. Consol. Stat. No. 9 (1908); Arms Act, 1920, 11 Geo. V, No. 14; Arms Act, 1958, No. 21, 1958 N.Z. Stat. 307.

¹⁸ Arms Act, 1983, No.44, 1983 N.Z. Stat. 495, as amended by the Arms Amendment Act, 1985, No. 5, 1985 N.Z. Stat. 18 and the Crimes Amendment Act (No. 2) 1986, No. 71, 1986 N.Z. Stat. 854.

¹⁹ Arms Regulations, 1984, S.R. No. 121, 1984 S.R. 497.

authorized persons to what penalties may be imposed upon persons who use firearms illegally. Yet despite its great breadth, the Arms Act is not the exclusive source of New Zealand's gun control laws. This is because the nation's Crimes Act was recently given a significant complementary role in the field.

The Crimes Act

When the Crimes Act was consolidated in 1958, the only firearms offense that it contained was that of "discharging or attempting to discharge a loaded gun 'with intent to maim, disfigure, or do grievous bodily harm to any one.'"²⁰ Over the next twenty-seven years, the only related crime to be added to this statute was that of "discharging a firearm with intent to injure or with reckless disregard for the safety of others."²¹ In 1986, however, the Crimes Act was amended to specifically outlaw all of the following activities:

- 1) using a firearm against a law enforcement officer;²²
- 2) using a firearm with intent to avoid arrest;²³
- 3) using a firearm in committing any crime;²⁴ and
- 4) being in possession of a firearm in circumstances that *prima facie* show an intention to use it while committing any crime.²⁵

The maximum penalty for the first of the above offenses is fourteen years' imprisonment and the maximum penalty for the other three is ten years' imprisonment. The Crimes Act does not establish minimum sentences for these offenses or provide that any sentence imposed upon a person for committing one of them must be served consecutive to any other sentence imposed upon that person. Therefore, it cannot be said that the 1986 amendment has ensured that any person found to have used a gun to commit a crime or found to have been prepared to use a gun when he or she committed a crime will be dealt with more harshly than he or she would have been prior to that date. Nevertheless, this reform has given Crown attorneys the opportunity to seek the imposition of a fairly severe sentence upon a person convicted of committing one of several new firearms offenses that are both very specific and very general in nature.

²⁰ Crimes Act, 1908, 3 N.Z. R.S., § 197 (1958).

²¹ Crimes Act, 1961, 1 R.S., § 198 (1979).

²² *Id.* § 198A, as added by the Crimes Amendment Act (No. 2) 1986, § 3, No. 71, 1986 N.Z. Stat. 854.

²³ *Id.*

²⁴ *Id.*, § 198B, as added by the Crimes Amendment Act (No. 2) 1986, § 3, No. 71, 1986 N.Z. Stat. 854, 855.

²⁵ *Id.*

An Overview of the Arms Act

While the Crimes Act creates a handful of roughly equivalent offenses that provide for the punishment of persons who have used or appeared ready to use a gun while committing a crime, the Arms Act establishes no less than thirty-five disparate offenses that a person can commit in the course of manufacturing, purchasing, selling, importing, owning, possessing, carrying, and shooting a firearm. Aside from being uniformly bereft of limitation periods,²⁶ these offenses do not have any notable features in common with one another. In fact, the many differences in the constituent elements they contain, the maximum penalties they carry, the burdens of proof they impose, the defenses they allow, and the appeals they permit all make it extremely difficult to even divide the crimes set out in the Arms Act into meaningful groups.

Still, even though New Zealand's primary gun control statute presents a fairly complex picture, there are two aspects of the Arms Act and Arms Regulations that do tend to tie many of their largely scattered provisions together. The first of these is that responsibility for administering this legislation has been given entirely to the police. Instead of creating a separate agency to develop and enforce its firearms policies or posting special firearms agents throughout the country, the Government has directed the New Zealand Police to designate suitable stations as "arms offices" and specially trained constables as "arms officers."²⁷ This national force is composed of sixteen district units supervised by a Commissioner of Police and represented in the Cabinet by a Minister of Police.

The second harmonizing aspect of the Arms Act and the Arms Regulations is their tendency to deal with almost all of the dimensions of gun ownership they address by establishing one set of general rules for most types of "firearms" and another set of more stringent rules for "pistols and restricted weapons." For these purposes, the term "firearms" usually encompasses all guns that are capable of firing a shot and "specially dangerous airguns,"²⁸ the term "pistols" refers to firearms that are less than 762 millimeters long; and the term "restricted weapons" describes the military-type devices that are listed in the Schedule to the Arms Regulations.²⁹ These devices include grenades, mines, mortars, tear gas launchers, Molotov cocktails, and "machine carbines or guns, submachine carbines or guns, and machine pistols, of any kind whatsoever."³⁰ The latter definition is understood by the police to cover all types of automatic and semi-automatic firearms.

Licensed Dealers

All persons who intend to either manufacture or buy and sell firearms in New Zealand

²⁶ Arms Act, § 68, No. 44, 1983 N.Z. Stat. 495, 531.

²⁷ *Id.* § 2, at 497.

²⁸ *Id.* at 498.

²⁹ *Id.*

³⁰ Arms Regulations, 1984, 1984 S.R. No. 121.

are required to obtain a special dealer's license from "a commissioned officer."³¹ Applications for such licenses must be filed at the Arms Office nearest to where the weapons would be assembled or bought and sold and must identify all of the classes of guns that the applicant plans to produce or handle.

The Arms Act states that the constable who is assigned the task of reviewing an application for a dealer's license must approve it whenever he or she is satisfied that the applicant is a "fit and proper person to carry on the business of a dealer in, or manufacturer for sale of firearms."³² Even though this standard is quite vague, neither the Arms Act nor the Arms Regulations offer any guidance as to what individuals and corporate entities must show in order to establish that they meet it. Therefore, what Parliament envisioned when it assigned the police the responsibility of weighing applications for dealers licenses is not clear. One possibility is that Parliament only foresaw constables checking to see whether the applicant had ever contravened any of New Zealand's laws, but another is that it wanted to authorize the police to also investigate such matters as a manufacturer's reliability, a dealer's expertise, or even the desirability of having another supplier of firearms within the country.

Dealer's licenses are normally valid for a period of one year. While these certificates may be renewed, they may also be revoked by the Commissioner of Police, "at any time."³³ A decision to cancel a dealer's license does not have to be explained to its holder, but it may be appealed to a District Court judge.³⁴ Although there are no reported cases on point, it would appear that the taking of this course of action would be most likely be found to have been justified if it followed the discovery of a serious and deliberate violation of the record-keeping, security, or authorized sales provisions of the Arms Act or the Arms Regulations.

Record-keeping

New Zealand's gunmakers and firearms dealers are required to not only record information respecting the serial numbers, calibers, models, and completion dates of all weapons they produce, buy, and sell, but also the identities and firearms license numbers of all persons who have received any guns from them. While police constables are free to inspect and make copies of these records "at all times,"³⁵ they do not usually have to be kept for more than five years.

Security

Under the Arms Regulations, a licensed dealer is required to: 1) make sure that his or

³¹ Arms Act, § 5, No. 44, 1983 N.Z. Stat. 495, 500.

³² *Id.*

³³ *Id.* § 9, at 501.

³⁴ *Id.* § 62, at 528.

³⁵ *Id.* § 12, at 501.

her place of business is sound; 2) take "all reasonable steps" to try to prevent unlawful entries to his or her premises; and 3) keep all pistols that are not being handled by a member of the firm or shown to a prospective customer locked in an approved steel cabinet, safe, or strong-room.³⁶ Other types of firearms must also be locked up in a secure place unless they are dismantled, rendered inoperable, or immobilized.

Authorized Sales

Any person who sells or supplies a pistol or "restricted" weapon to an individual or corporate entity that does not have a permit to import or procure one of those types of firearms is liable on conviction to three years' imprisonment and a fine of up to \$NZ4,000.³⁷ Any person who sells or supplies any other type of a firearm to an individual or corporate entity that does not have a firearms license is liable on conviction to three months' imprisonment and a fine of up to \$NZ1,000.³⁸ These provisions apply to manufacturers who sell their products to retailers as well as to persons who sell firearms to individuals who are not required to hold a dealer's license.

A gunmaker or retailer who has had his dealer's permit cancelled will normally be given at least three months to sell or dispose of the firearms and ammunition in his or her possession. However, the Arms Act empowers the Commissioner of Police to authorize the seizure of all firearms and ammunition under the control of a licensed dealer at any time. Seized goods "may be detained by the Police for such period as the Commissioner thinks fit, or may, in the discretion of the Minister of Police, become the property of the Crown, free and discharged of all rights . . ."³⁹ An application for the restoration of goods detained by the Commissioner can be made to a District Court judge, but only the amount of compensation offered a licensed dealer can be appealed when goods are forfeited by order of the Minister.⁴⁰

Imports and Exports

New Zealand requires all firearms made or taken outside of the country to be covered by an import permit when they arrive at the Customs Service. An application for approval to bring a gun or to cause a gun to be brought into New Zealand can be filed at the Arms Office nearest to the applicant's residence or place of business or nearest to where it would be presented for clearance. Whenever an examination or test of a firearm import is deemed to be necessary, production of an available sample can be demanded.⁴¹

³⁶ 1984 S.R. No. 121, § 6.

³⁷ Arms, Act, § 44, No. 44, 1983 N.Z. Stat. 495, 518.

³⁸ *Id.* § 43.

³⁹ *Id.* §13, at 502.

⁴⁰ *Id.* § 63, at 629.

⁴¹ *Id.* § 18, at 504.

Unlike the case of a dealer's license, the Arms Act does not purport to give persons found to be "fit and proper" the right to be awarded an import permit. In fact, this statute provides that, as a general rule, the constable given the task of processing an application "may refuse to grant" this type of a certificate "in his discretion" and it then goes on to establish tougher criteria for pistols and restricted weapons.⁴² Permission to import all types of weapons that fall into these two categories must be obtained from the Commissioner of Police and can only be given when he or she is satisfied that "there are special reasons why they . . . should be allowed into New Zealand."⁴³ Any imported pistol or restricted weapon that does not bear a serial number must be stamped with an identification number unless it is an antique.⁴⁴

The police are authorized to "use such force as is reasonably necessary" to seize any firearm they suspect was brought or sent to the country in violation of the law.⁴⁵ Notice that a gun was imported pursuant to a permit must be filed within thirty days of its arrival in the country. Notice of an intention to take a pistol or restricted weapon outside New Zealand must be given at least four days prior to its removal.⁴⁶ New Zealand does not issue export permits for firearms.

Possession

The heart of New Zealand's strict gun control legislation is a provision that generally forbids all persons from having possession of most types of firearms without a regular firearms license and most types of pistols and restricted weapons without a specially endorsed firearms license. This provision does not usually apply to Crown employees acting within the course of their duties or to tranquilizer guns, flare pistols, spear guns, miniature cannons, airguns that are not extremely dangerous, or antiques that not capable of firing ammunition that is currently being manufactured. The Arms Act also contains an exemption that allows persons who are under the immediate supervision of a holder of a firearms license to have possession of a gun that is not a pistol or a restricted weapon. Unlawful possession of a pistol or restricted weapon is an offense that is punishable with up to three years' imprisonment and unlawful possession of any other type of gun is an offense that is punishable with up to three months imprisonment.⁴⁷

⁴² *Id.* § 18. at 504.

⁴³ *Id.*

⁴⁴ 1984 S.R., No. 121, § 10.

⁴⁵ No. 44, § 19, 1983 N.Z. Stat. 495, 505.

⁴⁶ *Id.* § 38, at 514.

⁴⁷ *Id.* § 20, at 505.

Firearms Licenses

A firearms license can only be obtained by a person who is over the age of sixteen and, unless he or she has been exempted from this requirement, is able to show that he or she has: 1) undergone a "course of training" . . . designed to teach individuals how to handle firearms safely; and 2) passed "such theoretical tests as may be required to determine whether an individual is able to handle firearms safely."⁴⁸ The form that must be used to apply for a firearms license is fairly lengthy and must be filed at the Arms Office closest to the applicant's residence or workplace.

As in the case of dealer's licenses, the Arms Act states that a firearms license must be issued to any eligible applicant who is able to satisfy a member of the police force that he or she is "a fit and proper person."⁴⁹ One exception to this rule is that permission to be in possession of any type of gun other than a pistol or restricted weapon can be withheld whenever it appears reasonably likely that it will be handed over to another person who is not "fit and proper" to have access to a firearm.⁵⁰ An appeal from any decision denying a person a firearms license can be taken to a District Court judge.⁵¹

Holders of a firearms license are required to: 1) store their guns so that young children will not have "ready access" to them; 2) dismantle their weapons or store ammunition for them separately; and 3) take reasonable steps to ensure that their guns have been "secured against theft."⁵² A failure to observe any of these conditions could result in a person's firearms license being revoked. This is because the Commissioner of Police is empowered to demand the surrender of a firearms license issued to a person he or she has come to believe is not "fit and proper" to be in possession of a weapon. While individuals who have been stripped of their permits will normally be given three months to dispose of their guns, they may be ordered to surrender them immediately.⁵³

Unless it is revoked or returned, a firearms license remains in force until its holder dies. Possessing a weapon that is not a pistol or specially-restricted one is an offense that is punishable with up to three months imprisonment and a fine of up to \$NZ1,000.⁵⁴

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.* § 20, at 505.

⁵¹ *Id.* § 62, at 508.

⁵² 1984 S.R., No. 121, § 16.

⁵³ §§ 27-28, No. 44, 1983 N.Z. Stat. 508.

⁵⁴ *Id.* § 20, at 505.

Endorsements Respecting Pistols and Restricted Weapons

At the same time that an individual applies for a firearms license, he or she can request that it be endorsed to allow him or her to possess a particular pistol or restricted weapon. A constable can generally approve the addition of such an endorsement to a permit issued to any "fit and proper" person who is: 1) a member of a recognized pistol shooting club; 2) a bona fide collector of firearms; 3) someone to whom the pistol or restricted weapon has special significance; 4) the director or curator of a museum; 5) a licensed dealer or an employee of a licensed dealer; or 6) an approved member or employee of a theater, motion picture, or television company.⁵⁵ Neither the Arms Act nor the Arms Regulations make provisions for permitting ranchers, farmers, or persons whose lives may have been threatened to possess pistols or restricted weapons. These omissions reflect New Zealand's policy of strongly discouraging private ownership of handguns and military weapons.

Most persons allowed to possess a handgun or restricted firearm are required to keep it locked in a strongroom or, if it has been dismantled or rendered inoperable, in a special steel box or steel cabinet. Members of approved shooting clubs are usually allowed to lock up their pistols in a safe without dismantling them.

Unlawful possession of a pistol or restricted weapon is an offense that is punishable with up to three years' imprisonment and a fine of up to \$NZ4,000.⁵⁶

Purchasing Firearms

Holders of firearms licenses are allowed to purchase all types of guns that are not handguns or listed on the schedule to the Arms Regulations. Pistols and restricted weapons can only be lawfully procured pursuant to a special permit. These permits can only be issued to persons who are in possession of a firearms license that bears an endorsement. Notification that a permit was used to procure a pistol or restricted weapon must be sent to the Arms Office that issued it within thirty days.

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⁵⁵ *Id.* § 39.

⁵⁶ *Id.* § 36, at 513.

NIGERIA

General

The law relating to firearms and munitions in Nigeria ¹ is in certain respects dissimilar to gun control laws of the United States ² both in scope and content. Similarities are, however, discernible in that both laws control the manner by which an individual can own or possess a firearm. In the United States, debate on legislation such as the Gun Control Act of 1968 ³ generally involves examining the implications of the second amendment to the United States Constitution and the "right to bear arms." ⁴

In Nigeria, however, arms and munitions legislation is of no constitutional import, though Adinkrah maintains otherwise. ⁵ In Nigeria, therefore, wide discretion unfettered by the Constitution or any other similar instrument is granted to authorities to impose various terms and conditions on the ownership and possession of firearms. Just as the United States Gun Control Act of 1968 was enacted in response to major political events of the 1960s, ⁶ in Nigeria, the Robbery and Firearms (Special Provisions) Act, 1970, ⁷ was an attempt to control private ownership

¹ Certain parts of this study are based on the introductory sections of Chapter 17 of the author's forthcoming *Guide to the Law and Legal Literature of Nigeria*, "Military and Other Armed Forces-Related Laws: XII: Firearms and Munitions."

² See generally, "Symposium on Gun Control" 49 (1) *Law and Contemporary Problems* (1967) 267 p.

³ Pub. L. No. 90-618 Stat. 1213 (codified as amended at 18 U.S.C. 921-928 (1982) U.S.C. app. § 1201-1203 (1982); 26 U.S.C. § 5801-5872 (1982). These same provisions appear to have been re-enacted as part of the Omnibus Crime Control and Safe Street Act, 1968, Pub. L. No. 90-351 (codified as amended in scattered sections of titles 5, 18, 42 and 47 of U.S.C. (1982).

⁴ S.P. Halbrook, "What the Framers Intended: A Linguistic Analysis of the Right to Bear Arms," *supra* note 2, at 150-162. Note also the "Symposium on Firearms Legislation and Litigation," 6 *Hamline L.R.* (1983) 487 p. It must be stated, however, that the precise nature of the "right to bear arms" in the United States does not seem to include private antecedents. This is born out by numerous United States Supreme Court decisions strongly indicating that this "right" is not a private one, but rather constitutes an aggregate, collective or corporate right of the body of the people to possess and bear arms in the utilization by a formal militia.

⁵ K.O. Adinkrah, "Arresting Armed Robbery with Firearms: The Case for Free Access to Guns in Nigeria," 13 *Nigerian Law Journal* 60 (1986).

⁶ *Supra* note 4: see D.J. Theos, "Federal Firearm Legislation," in *Hamline L.R.* at 409.

⁷ *Annual Volume of the Laws of the Federal Republic of Nigeria* [hereafter AV/LFRN], A209 (1970); see also Attorney General of the Federation v. Hanum 1983 (1) *The Nigerian Criminal*

and possession of firearms in the wake of the Nigerian Civil War. Increasingly large quantities of arms in private hands contributed to a rise in robberies, a problem still prevalent in the country. In this sense, these laws are both remedial legislative measures prompted by incidents not touched by the mainstream of regulation by the ordinary firearms laws of the land.⁸

Historical Survey

The law on firearms and munitions in Nigeria is traced to "An Ordinance to Declare and Prevent the Export of Arms and Munitions of War from Lagos," No. 11 of September 13, 1865.⁹ The preamble to this Ordinance states:

Whereas it is desirable to prevent the export of arms and other munitions of war from Lagos until such time as the questions now pending between the government of Porto Novo, Abeokuta and the British Government respectively shall have been satisfactorily arranged.

Therefore, it was illegal under section 1 of this Ordinance for any person to export from or import into Lagos firearms or ammunition. Penal sanctions accompanied the prescription of offenses in section 3 of the Ordinance. The Law of 1865 was repealed, however, in the following year by Ordinance, No. 1 of 1866.¹⁰ In 1892, Ordinance No. 8 of 1890 to "Regulate Dealings in Arms and Munitions" was superseded by another entitled "An Ordinance to Regulate the Importation and Storage of Firearms, Ammunition, and Gun Powder in the Colony of Lagos," No. 3 of May 21, 1892.¹¹ Section 1 of this enactment contoured the scope of the law when it stated:

All firearms, ammunitions and gun powder [sic] imported into the Colony of Lagos shall be deposited at the cost and risk of the person or persons importing the same in such public warehouses as shall be appointed by the Governor....

Furthermore, it was also illegal to introduce or bring into the Colony or Settlement of Lagos by any means whatsoever any firearms or ammunition from any of the neighboring countries except under the authority of a license under section 2 of this Ordinance. This law also contained penal sanctions in cases of violations of its provisions.

Reports [hereafter NCR] 101.

⁸ See for example "The National Firearms Act" of June 26, 1934, ch. 757, 48 Stat. 1236-1240, 26 U.S.C. 1132.

⁹ *Ordinances of the Settlement of Lagos, 1862-1870*, 97 (1874).

¹⁰ *Id.* at 104.

¹¹ *Ordinances of the Colony of Lagos, 1893*, 637 (1894).

In the Protectorate of Northern Nigeria, the law applicable to matters of gun control originated from the Arms and Ammunition Exportation Proclamation No. 19 of 1900,¹² and the Firearms Proclamation of 1901, as amended, in 1904.¹³ For example, section 4 of the Arms and Ammunition Exportation Proclamation declared that it was unlawful to bring into the Protectorate of Northern Nigeria any arms and ammunition from neighboring countries, unless such material passed through any of the British-controlled territories in West Africa.

In the southern part of the country, the Firearms (Manufacture and Conversion) Ordinance, No. 15 of 1908,¹⁴ was enacted to continue the tradition of legislative control of matters pertaining to firearms and ammunition. This Ordinance formed an integral part of the general law on arms and munitions then primarily contained in the Firearms Ordinance, chapter 72 of the 1908 edition of *The Laws of Nigeria*.¹⁵

Sources and Definitions

As indicated above, the law applicable to firearms in Nigeria is contained in the Firearms Act, No. 7 of 1958,¹⁶ reinforced by the Robbery and Firearms (Special Provisions) Act, No. 47 of 1970,¹⁷ amended, in 1974,¹⁸ and also in 1977.¹⁹

¹² *The Laws of the Protectorate of Northern Nigeria*, Ch. 33, 477 (1910).

¹³ *Id.*, Ch. 32 at 465.

¹⁴ *1908 Southern Nigeria Ordinances*, 3 p.

¹⁵ The Arms Ordinance No. 8 of 1917, *Ordinances of Nigeria* 59 (1917) replaced by Arms Ordinance No. 38 of 1922, *Ordinances of Nigeria* 107 (1922) consolidated in 1923 as Chapter 132 and in 1948 as Chapter 14 were superseded by the current Firearms Act, No. 7 of 1958, AV/LFRN A29 (1958). *But see* The Arms Ordinance, No. 20 of 1942 repealed by section 40 of the law of 1958.

¹⁶ *Id.*

¹⁷ NCR, *supra* note 7.

¹⁸ By No. 8 and No. 29 of 1974 AV/LFRN, A25 & A139 (1974).

¹⁹ AV/LFRN, A203 (1977). Related to firearms and munitions laws of Nigeria are legislative measures governing explosives as outlined in the Explosives Act, No. 9 of 1964, AV/LFRN, A63 (1964), supplemented by Regulations of same title, L.N. No. 38 of 1967, appearing in same volume at B64. Explosives laws mainly originate from Ordinance, No. 4 of 1894, *Ordinances of the Colony of Lagos* 1893, 440 (1894); 1 *The Laws of the Colony of Southern Nigeria* 1901, 454 (1902) applicable initially to the southern part of the country only. In the then Protectorate of Northern Nigeria, a "Proclamation to Regulate the Importation, Storage and Sale of Explosives," No. 5 of 1912, *Northern Nigeria Proclamations*, 12 (1912) constituted the Protectorate's version of the explosives law. These enactments were replaced in 1915, consolidated in 1923, 1948 and 1958 culminating in the post-independence legislation, No. 9 of 1964. Mention should also be made of

A firearm is defined in section 2 of the Act of 1958 to mean any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes a prohibited firearm, a personal firearm or any of the categories referred to in Parts I, II and III respectively of the schedule hereto, and any component part of any such firearm.

This same section also describes ammunition as "ammunition for any firearm and any component part of any such ammunition, but does not include gun powder [sic] not intended or used as such a component part."

Manufacture and Sale

Section 23 of the currently applicable Firearms Act prohibits the manufacture of any firearms, their assembly, or their repair, except as carried out in a public armory or other official arsenal. Public armories are established and constructed for the deposit and storage of firearms and ammunition pursuant to sections 14-17 of the Act. A public armory is a place or building established and recognized under the above-cited provisions in keeping with the requirements of section 2 of the Act. The manufacture of firearms by the armed forces of Nigeria under appropriate legislative measures as indicated above ²⁰ is exempted. It is also permissible under sections 24 to 26 of the Act for private persons to manufacture, carry on business, assemble, or repair legally obtained firearms on the basis of a license from the Inspector General of Police. The only firearms authorized for commercial use are flintlock and cap guns according to sections 24 to 26, Part III of the Schedule to this Act. Section 26 of the law of 1958, on the other hand, enables a registered firearms dealer to repair personal and muzzle-loading firearms. Personal firearms constitute shotguns, sporting rifles, air guns, air rifles or air pistols as well as "humane killers of the captive bolt" type, according to Part II of the Schedule corresponding to the provisions of sections 2-5, 9, 24-26 and 34 of this enactment.

Section 25 of the Act, effecting the general exception of section 23, contains the only incident of the private manufacture of firearms under the authority of a license issued under this provision. This section states in part:

The Inspector-General of Policy may...in his discretion grant a permit to any person to carry on the business of manufacture and repair of firearms referred to in Part II of the Schedule and shall maintain a register of such permits in force.

No particular provision of the Act regulates the assembly of firearms. This is generally deemed part of the larger subject of manufacture and assembly covered by both sections 23 and 25 of the Act. These two sections must be read together with section 27 of the Act which prohibits "shortening of a smooth-bore [sic] firearm to a length of less than twenty inches from the

the Defence Industries Act, No. 14 of 1964, AV/LFRN, A156 (1964) which established the Defence Industries Corporation as a statutory authority to oversee the development and production of firearms and munitions for the primary use of the armed forces.

²⁰ *Id.* The Defence Industries Act, No. 14 of 1964.

muzzle to the point at which the charge is exploded on firing...." Ownership and possession of such shortened, smoothbore firearms is outlawed.

Commercial Sales and Transfers

Only licensed arms dealers can sell and transfer any weaponry or ammunition under the terms and conditions stipulated by the 1958 Act. As a result, the Inspector General of Police maintains a register of arms dealers. Arms dealerships are frequently inspected by the police and other law enforcement officers as required by section 11 of the Act. Even then, a permit or license from the police must accompany any sale or transfer of any firearms and ammunition whether or not such transactions be intra-company transactions or between individuals and arms dealers. The Nigerian police must, in one way or another and at any point in the transaction pertaining to ownership or possession of firearms, be involved to ensure effective control and compliance with section 12 of the Act. Section 13, on the other hand, requires that all firearms in any commercial transaction be permanently stamped with the manufacturer's name and serial number on the weapon.

Import and Export

The import and export of firearms and ammunition are governed by sections 18 to 22 of the law of 1958. Import and export of firearms outlined in Part I of the Schedule to the Act are prohibited unless licensed by the Nigerian Head of State. The discretion of the Head of State or Governor is wide enough to exclude almost all private arms dealerships in military or military-related firearms and ammunition, according to Part I of the Schedule in conjunction with sections 18-19 of the law.

Personal and muzzle-loading firearms can be imported and exported under section 20 of the Act, subject to numerous restrictions. For example, firearms and ammunition must be channeled through legally established customs posts as outlined in the license. They can also be imported into the country as part of personal effects of an individual or by a licensed commercial arms dealer. The law, however, prohibits the import of firearms and ammunition through the post, although even when and where the import and export of such firearms are permitted, they are subject to intense scrutiny by the customs officials and other lawful authorities. Firearms transportation is restricted by section 18 of this Act to import and export by sea and air only through certain locales defined by the law. Transportation of weapons to these locales must be over the shortest routes to/from the frontier.

Use, Ownership, and Possession

The use, ownership, and possession of firearms and ammunition are governed by sections 3-9 of the Act. These sections prohibit ownership and possession as well as the use of all military-type weapons outlined in Part I of the Schedule to the Act. These include heavy artillery of all kinds, any apparatus or weapon used to discharge different kinds of explosives, rocket launchers and other similar weapons, bombs, grenades as well as machine guns and machine pistols, military rifles, namely 9mm--300 inch and .303 inch caliber; revolvers and pistols whether rifled or unrifled covering both flint-lock pistols and cap pistols or any other firearms not included in the commercial or non-military list outlined in Parts II and III of the Schedule to the Act.

As noted above, only the Head of State or Governor can grant a permit or license for an arms dealership involving the weapons referred to in Part I of the Schedule to the Act. To personally possess a firearm described in Part II of the Schedule classified as "Personal Firearms," an individual must secure a license from the Inspector General of Police as required by section 4 of this Act. A license is also required to possess, own, and control muzzle-loading firearms enumerated in Part III of the Schedule to the Act.

The difference in approach to gun control laws between the United States and Nigeria lies in section 7 of the law of 1958. This section effectively denies that a right to a license to own firearms exists *per se*. Nigerian law also grants wide discretion to refuse a license without giving any reasons. In addition, even when a license is granted, other terms and conditions may be imposed on the holder if the issuing authority deems fit. The authorities also at their discretion may revoke a license or a permit for possession of a firearm. However, an administrative-type appellate process is available to an aggrieved party seeking redress and re-institution of a gun permit. Furthermore, concerning ownership and possession of muzzle-loading firearms, a license can be denied only for various incidents of incapacity (sec. 7(2) (a) to (e) of the Act) including: lack of majority denoting an age below seventeen years, being of unsound mind, having defective eyesight, intemperate habits, and/or a record of conviction for a violent criminal offense or threat of violence within five years of application for a license.

Owners of firearms are responsible for their custody and safekeeping and must report any loss, theft, or destruction of firearms to the police within fourteen days. A firearm is also an inheritable item subject to conditions of bequeathment. However, continued possession depends on validation of licenses and other permits. Nigerian law gives the police extensive authority to enforce this law; they may confiscate firearms, bequeathed or otherwise, and may retain them for deposit into public armories until the infraction in the license has been remedied, according to section 8 of this Act. Ammunition is also controlled under the same conditions upon which the holder operates a firearm.

Offenses and Enforcement Mechanisms

Section 28 of the Act broadly prescribes penalties pertaining to general sections 3-13, 18-23 and 27. Any person in violation of these provisions "shall be guilty of an offence and upon conviction shall be liable to a fine...or imprisonment...or to both...in addition, the court may order the forfeiture of any firearm or ammunition to which the offence relates...."

Furthermore, failure to produce a license when required constitutes an offense punishable by a fine or six months' imprisonment. Section 28 was significantly altered by the Firearms (Amendment) Act, No. 31 of 1966 ²¹ in order to enhance the state of internal security. The amendment was made at the time of major domestic tensions and disturbances in the country leading to the military take-over of government by the armed forces and the eventual civil war. Therefore, stringent penalties were imposed for offenses, and the law now prohibits possession and

²¹ AV/LFRN, A135 (1966).

control of firearms of certain classes (sec. 3); ²² prohibits imports and exports of firearms and ammunition in other areas than through prescribed ports of entry and exit (sec. 18); restricts imports and exports of certain firearms and ammunition (sec. 19); and prohibits manufacture, assembly or repair of firearms and ammunition to a minimum sentence of ten years (sec. 23). A prison term of 5 years' maximum is imposed for offenses committed under various sections of the law, which, for example, restricts possession or control of personal firearms (sec. 4); ²³ regulates possession and control of certain firearms and ammunition (sec. 9); makes dealing in firearms illegal (sec. 1); restricts further imports and exports of personal firearms and ammunition (sec. 20); ²⁴ and which, among other things, prohibits shortening of smooth-bore firearms (sec. 27). Violations concerning the following are punishable by a prison term of two years and a stiff fine: possession of firearms of muzzle-loading type in the Federal Territory (sec. 5 (3)); requirement of notification in case of loss, theft or destruction (sec. 11); registration of dealers' armories (sec. 11); regulation of sale and transfer of firearms or ammunition to licensed holders (sec. 12); and stamping of all firearms sold and transferred (sec. 13). Furthermore, this amendment also required that in addition to any penalties prescribed here, courts of law in Nigeria are at liberty to order confiscation and forfeiture of any firearm and ammunition to which a particular offense relates. This amendment also rendered the provisions of section 28 (1) (a) to (c) of the Parenting Act ²⁵ to be summarily triable by a Magistrates Court notwithstanding the jurisdiction of other courts on summary jurisdiction under these provisions.

Amendment No. 68 of 1966 ²⁶ declared all automatic, semi-automatic and non-automatic

²² *Attorney General of the Federation v. Hanum* 1983 (1) NCR 101 decided by the Court of Appeal (federal) involving also the effect of the provisions contained in the Robbery and Firearms (Special Provisions) Act, No. 47 of 1970.

²³ See, for example, *Commissioner of Police v. Eriabe* 1980 (2) NCR 181, where the accused was charged in the Magistrates Court, Benin City with *inter alia* possession of a firearm without a license contrary to section 4 of the Firearms Act. The accused was acquitted, however, based on lack of expert testimony, adducing evidence that the implement in his possession was actually a firearm within the meaning of section 2 of the Act of 1958.

²⁴ *Federal Republic of Nigeria v. Eze* 1981 (2) NCR 167 where the accused was charged in the High Court with two counts of unlawful importation of firearms without a valid license in contravention of section 20 (d) of the Firearms Act. On appeal, the Federal Court of Appeal remanded the case for re-hearing and determination by the Federal High Court which initially had declined to adjudicate the case for want of jurisdiction. The Court of Appeal confirmed justiciability of the case based on violation of section 20 (d) of the Act of 1958.

²⁵ *Supra* note 22.

²⁶ AV/LFRN, A285 (1966). A new section 28 (a) was inserted by Amendment Act, No. 31 of 1966 which stated that where a person contrary to section 21 of the Act of 1958 imports or causes to be imported firearms or ammunition by post or in contravention of section 22, exports or causes to be exported any firearms or ammunition, such a person is guilty of an offense and liable on conviction to a minimum prison term of not less than ten years. For other ancillary

shotguns or any other similar firearm capable of or with features of mechanical reloading to be prohibited firearms either under this amendment or the principal legislation. The provisions of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970, as amended,²⁷ dealing with offenses and penalties are briefly outlined below.

Supreme Court Justice Aniagolu, expounding on the *raison d'être* leading to the promulgation of the Robbery Act, postulated as follows:

Obviously intent on containing the violent aftermath of the Nigerian Civil War at the end of hostilities in 1970 and to deal expeditiously with those threatening law and order by violence, the then Military Government passed the Robbery and Firearms (Special Provisions) Decree, 1970 which prescribed 21 years imprisonment, and if the convict was armed or violence used, death....²⁸

Adinkrah also admits while arguing in favor of increased access to readily available firearms that, "It is our view also that, in any case there must be many thousands, perhaps millions of weapons that are being kept illegally."²⁹

Specifically, section 3 of the Robbery Act states that persons possessing firearms in violation of the Firearms Act of 1958 or any other law may be sentenced if convicted under the Robbery Act to a fine or a prison term up to seven years or both. Therefore, robbery within the scope of this Act is punishable by an imprisonment term of not less than 21 years. Capital punishment is imposed under section 1 (2) and (3) of the Act if a person commits robbery using firearms or any other offensive weapon or is in the company of any armed person through whom violence ensues to another person.

Various ranks of officers of the Nigerian Police Force and other authorized branches of the armed forces are qualified to sit on tribunals of adjudication as required by the principal law of 1970 and to additionally confer rule-making powers on the Attorney General of the Federation, especially in matters of procedure. Amendment No. 29 of 1974 also conferred a right of appeal to the Supreme Court of Nigeria against convictions under the Parenting Act. Amendment Act, No. 39 of 1977 repealed section 7 inserted by Amendment No. 29 of 1974 into the body of the original promulgation of 1970.³⁰

legislation on firearms, see F.A. Oduba, Nigeria: *Index to Federal Statutes in Force 1984*, 41-42 (1985).

²⁷ Hereafter referred to as: the Robbery Act.

²⁸ *The State v. Johnson and Akpojofo* 1981 (1) NCR 31, at 33.

²⁹ *Supra* note 5, at 67.

³⁰ For other related developments on firearms and robbery in Nigeria, see, generally, *supra* note 26, Oduba. No specific data is available in sources consulted on death and crimes involving firearms. However, general statistical information on offenses and offenders is found in D.

Bibliography

- Adinkrah, K.O. Arresting armed robbery with firearms: The case for free access to guns in Nigeria. 13 *Nigerian law journal* 60-72 (1986). LAW PER
- Asuni, T. Corrections in Nigeria. In *International corrections*. R.J. Wicks and H.H.A. Cooper, eds. 163-181 (1979). HV8665.I6
- Ertman, D. Homicide in Southern Nigeria: A Survey of some aspects of law and criminological data. 14 *Verfassung und Recht in Ubersee* 269-286 (1981). LAW PER
- Kayode, O. Some notes on research into crime and punishment in Nigeria. 11 *The Australian and New Zealand journal of criminology* 241-251 (1978). LAW PER
- Lejins, Peter P. Crime, its prevention and control in a developing country, Nigeria. 15 *Annales internationales de criminologie* 141-171 (1976). HV6016.A65
- Oloruntimehin, O. Operational problems of modern penal justice in Nigeria. 5 *Ghana social science journal* 84-97 (1978). H1.G47
- Proceedings of the 20th International Course in Criminology on Non-Institutional Treatment of Offenders, Lagos (Nigeria), August 11, 1970. 10 *Annales internationales de criminologie* (1971, No. 1: entire issue). HV6016.A65
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POLAND

Historical Survey

Prior to World War II, two legislative acts regulated the acquisition, possession, and carrying of handguns, sport guns, and ammunition: the Decree of January 25, 1919,¹ and the Order of the President of the Republic of October 27, 1932.²

Ertman's "Homicide in Southern Nigeria: A Survey of Some Aspects of the Law and Criminological Data," 14 *Verfassung und Recht in Ubersee*, 269 (1981); see also, O. Kayode, "Some Notes on Research into Crime and Punishment in Nigeria," 11 *The Australian and New Zealand Journal of Criminology* 241 (1978).

¹ *Dziennik Praw*, No. 9, item 123 (1919).

² *Dziennik Ustaw* (Dz. U.) No. 94, item 207 (1932).

According to both of these laws, firearms could be acquired, possessed, and carried only upon obtaining a permit issued by agencies of the government administration. The issuance of permits was left to the discretion of the authorities. Only persons who guaranteed that they would not use firearms for purposes inconsistent with the security of the State, public security, peace, or public order could obtain a permit (art. 19). Permits could not be issued to minors under the age of 17 years, mentally unsound persons, alcoholics or drug addicts, vagabonds, or to persons who had been punished twice for a violation of the law concerning firearms (art. 20).

After World War II, the right to possess firearms was regulated by the Statute of January 31, 1961, on Firearms, Ammunition, and Explosive Materials.³ This law, in general, was patterned after the prewar Law summarized above.

Sources of Current Laws

General Regulations

- The Law of January 31, 1961, on Firearms, Ammunition, and Explosive Materials, hereinafter Law on Firearms, is still in force. It has been amended twice.⁴ Any article quoted without further description refers to this law.
- The Regulation of the Minister of Internal Affairs of December 12, 1986, on the Application of Some Provisions of the Law on Firearms, Ammunition, and Explosive Materials to Pistols, Revolvers, and Other Devices for Expelling Chemical Disabling Agents and for Shooting Alarm and Warning Ammunition,⁵ hereinafter: Reg. 2.

Manufacture and Sale

- The Regulation of the Minister of Internal Trade and the Minister of Internal Affairs of May 18, 1962, on Conditions for Selling, Recording, and Storing Firearms, Ammunition, and Gunpowder by State Trade Enterprises,⁶ hereinafter: Reg. 3;
- The Regulation of the Minister of Internal Trade and the Minister of Internal Affairs of October 10, 1962, on Rules and Procedures for Supervision of Enterprises Trading Firearms and Ammunition by Citizens' Militia,⁷ hereinafter: Reg. 5;

³ Dz. U. No.6, item 43 (1961).

⁴ Dz. U. No 6, item 43 (1961); No. 6, item 35 (1983), hereinafter 1983 Amendment; and No. 41, item 324 (1988), hereinafter 1988 Amendment.

⁵ Dz. U. No. 1, item 6 (1987).

⁶ Dz. U. No. 31, item 148 (1962).

⁷ Dz. U. No. 54, item 270 (1962).

- The Law of February 1, 1983, on Road Traffic Regulations, ⁸ hereinafter: Traffic Reg.;
- The Regulation of the Minister of Transport and the Minister of Internal Affairs of December 2, 1983, on Conditions and Control of the Road Transportation of Dangerous Materials, ⁹ hereinafter: Reg. 7;

Possession and Use

- The Regulation of the Minister of Internal Affairs of August 2, 1961, on Payment for Use of Firearms Belonging to the State and on Handling Firearms Accepted by Citizens' Militia Authorities as Deposits which are not Suitable for Further Use, ¹⁰
- The Regulation of the Council of Ministers of September 12, 1961, on Rules and Procedures for Disposing of Firearms and Ammunition, ¹¹ hereinafter: Reg. 9;
- The Regulation of the Minister of National Defense of December 21, 1962, on the Military Authority Competent to Issue Permits to Transport Abroad Military Firearms Other than Small Arms, ¹² hereinafter: Reg. 10;
- The Regulation of the Minister of Internal Affairs of December 12, 1986, on the Authorities Competent to Issue Firearms Permits, Forms for Permit Applications, and on the Definition of Substantial Parts of Firearms and Ammunition, ¹³ hereinafter: Reg. 11.
- The Regulation of the Minister of Internal Affairs of March 21, 1989, on Categories of Persons Who Can Possess Firearms Without a Permit Issued by Appropriate Authorities Subordinate to the Minister of Internal Affairs. ¹⁴

⁸ Dz. U. No. 6, item 35 (1983).

⁹ Dz. U. No. 67, item 301 (1983).

¹⁰ M.P. No. 61, item 263 (1961).

¹¹ Dz. U. No. 42, item 221 (1961).

¹² M.P. No. 4, item 16 (1963).

¹³ Dz. U. No. 1, item 7 (1987).

¹⁴ Dz. U. No. 16, item 91 (1989), hereinafter: Reg. 12.

Offenses and Penalties

-- Articles 143, 159, and 286 of the Polish Penal Code of April 19, 1969.¹⁵

Definitions

Pursuant to article 1 of the Law on Firearms, *firearms*, without further specification, mean small arms and hunting and sport guns; and *ammunition*, without further specification, means ammunition made for these arms and guns. Section 3 of Reg 2 extends the provisions of Chapters I-IV and articles 29, 30, 33, and 34 of the Law on Firearms on pistols, revolvers, and other devices for expelling chemical disabling agents and for shooting alarm and signal ammunition.

Substantial parts of firearms or ammunition, as defined in section 3 of Reg. 11, are treated as firearms or ammunition, even if they are not ready for immediate use or assembly (art. 1, Law on Firearms).

Manufacture and Sale

Trade in firearms and ammunition is subject to extremely strict government regulations. The law defines types of enterprises, which can conduct this activity, as well as their clients.

Commercial Sale

Pursuant to article 19 of the Law on Firearms, an enterprise can sell firearms and ammunition only to persons who possess a valid firearms permit. Section 2 of Reg 3 requires these persons to show a valid permit or an identity card as proof of the fact that the person is exempt from the regulation as a member of the diplomatic corps (art. 29, Law on Firearms). Reg. 3 also requires that a trading enterprise keep an exact record of each transaction and store firearms and ammunition according to specified safety measures. Pursuant to Reg. 5, compliance with these requirements is checked annually and periodically by the appropriate organs of the Citizens' Militia.

Transportation

According to article 33 of the Law on Firearms, its provisions do not apply to transportation of firearms, ammunition, and explosive materials into, through, and out of Poland for trade and commercial purposes by licensed enterprises and institutions.

Transportation of firearms and ammunition in Poland is governed by Traffic Reg., Reg. 7, and other specialized laws. The regulation of other topics is not available.

Possession and Use -- Acquisition, Permits, and Licenses

According to article 4 of the Law on Firearms, firearms may be possessed only with a valid permit granted by the Citizens' Militia (police). A permit authorizes the holder to acquire, possess,

¹⁵ Dz. U. No. 13, item 94 (1969), as amended.

and carry only the firearms specified. The permit may also prohibit the right to carry the weapon for which the permit was issued and give the holder the right to possess and keep a given firearm at only a specified location. The firearms permit for members of the Armed Forces is issued by the competent military authorities. The provisions stated above do not apply to members of the Armed Forces insofar as the firearms belonging to their equipment are considered the property of those who, by virtue of the character of their service and in conformity with the law, are entitled to possess firearms of a specified category and to persons using firearms for sport purposes and for practice on licensed shooting ranges where the possession of them is involved only within the shooting range.

No permit is required for the possession of firearms of any kind manufactured prior to 1850.

The Minister of Internal Affairs is authorized to specify, by regulation, categories of persons other than those enumerated above who may possess firearms without a permit granted by the Citizens' Militia, as well as categories of firearms other than those specified above which may be in their possession without such a permit. Pursuant to this delegation, the Minister of Internal Affairs issued Reg. 12 (*see footnote 14*).

According to article 5, it is left to the discretion of the Citizens' Militia agencies whether or not to grant a person a permit. The Law states that one may be granted "if the factual circumstances specified by a person applying for a permit justify the issuance of such a permit."

Reg 11 provides in its section 1 that authority to issue firearms permits for air guns and other sport guns working on the basis of air compression, pistols, revolvers, and other devices for expelling chemical disabling agents and for shooting alarm and warning ammunition, belongs to chiefs of the district (or corresponding) offices of internal affairs. Chiefs of *voivoodship* (administrative district) offices of internal affairs are authorized to issue permits for other types of firearms. They can also authorize the chief of a local police station to issue permits for air guns and other sport guns.

Permits are usually issued for the duration of one to three years, but permits for hunting firearms are issued for one to five years.

Article 7 forbids the issuance of a permit for a firearm to minors (below 18 years of age) or to people who are mentally unsound, drug addicts, to persons who do not possess a permanent residence or an established source of support, and to those individuals who may use firearms for purposes inconsistent with the safety interests of the State or public order. According to article 8, the police agency which issues permits may be exempted from giving reasons for its refusal if it is considered to be in the interest of the State security or public order.

A firearms permit is valid throughout Poland. It also covers the possession of ammunition for the firearm (art. 9). The Citizens' Militia agency which issues a firearms permit is authorized to withdraw it at any time, if the factual circumstances supporting the issuance of the permit cease to exist. The agency is obliged to do so if it is shown that a person to whom a permit was issued belongs to one of the categories of persons enumerated in article 7 cited above (art. 11).

A person whose firearms permit has been revoked or has expired, or who has come into possession of a firearm by way of succession but does not have a firearms permit, must sell his firearm within the period of time prescribed by the police agency (art. 12). Pursuant to Reg 9, the firearm may be sold only to a person who has a valid permit or to an enterprise licensed to trade in firearms. The sale must be reported to the police agency authorized to issue firearm permits, and the report must indicate the name and address of the purchaser as well as the number of his permit. Firearms which are not sold within the prescribed period of time must be surrendered to the police agency or accepted by an enterprise licensed to trade in firearms. The sum obtained from such a sale is returned to the owner after the commission has been deducted. A holder of a firearms permit is obliged to report in writing to the Citizens' Militia Station any change of address within 14 days from the day of the change. Within the same period of time, he is also obliged to submit to the Citizens' Militia of his new residence a copy of the above report, along with the firearms permit, so that it may be registered anew (art. 10).

Hunting and sport guns and ammunition for them may be given for temporary use only to persons who possess a valid permit for firearms of this sort. Firearms and ammunition may not be transferred under a chattel mortgage. The loss of a firearm must be reported to the Citizens' Militia without delay (art. 13).

Should the interest of the State so require, the Minister of Internal Affairs may order the deposit of any kind of firearm at a specified place within a specified time. The Minister is also authorized to forbid, for the above reasons, the temporary carrying of any firearms of certain types (art. 15).

Pursuant to article 22 of the Law on Firearms, the provisions of the Law apply to military firearms, other than small arms. Reg 10 provides that permits to transport military firearms abroad may be issued by the Chief of General Headquarters of the Polish Army.

The regulation of other topics is not available.

Offenses and Penalties

A breach of the rules concerning firearms, ammunition, and explosive materials is punished by administrative agencies or courts. Courts of ordinary jurisdiction have jurisdiction over the violation of any provisions of the Polish Penal Code. Articles 143 and 286 of the Code apply to firearms, ammunition, or explosive materials. Article 143 states:

Whoever, without the required permission, manufactures, stores, or possesses explosive materials or devices, or any other articles likely to cause a widespread danger to human life, health, or property of considerable extent shall be punished by imprisonment for six months up to five years.

Article 286 states:

Whoever, without the required permission, possesses or manufactures firearms or ammunition shall be punished by imprisonment up to five years.

Article 83 of the Code of Minor Offenses ¹⁶ of May 20, 1971, applies only to explosive materials. Because the Law on Firearms and other implementing statutes provide for special penalties, article 130 of the Code explicitly states that some of its provisions do not apply to firearms, ammunition, and explosive materials or devices.

Administrative agencies have jurisdiction over the violation of any provision of the Law on Firearms. Pursuant to article 27, their jurisdiction extends to illegal manufacture, possession, or transfer of air-guns and over violation of provisions of article 4, paragraph 1, articles 10, 13, and 15, paragraph 1, and articles 21 and 25, paragraph 4, and any implementing regulations issued pursuant to article 32, e.g., Reg 2. The penalty is imprisonment up to three months or fine up to 4,500 *zlotys*. The illegal transfer of firearms, ammunition, or explosive materials or devices carries the punishment of imprisonment up to three years (art. 28).

Statistics

Article 159 of the Polish Penal Code contains a qualified type of battery--with the use of firearms--and provides higher punishment for this crime than for simple battery. In spite of this fact, statistics for crimes involving the use of firearms are not available.

Bibliography

Dawidowicz, W. *Polskie prawo administracyjne* (PWN, Warszawa, 1978).

Jastrzebski, L., J. Lang, J. Sluzewski, and M. Wierzbowski.

Polskie prawo administracyjne, czesc II (PWN, Warszawa, 1985).

Smoktunowicz, E. *Encyklopedia obywatela PRL, Status administracyjnoprawny* (Wyd. Prawnicze, Warszawa, 1987).

Zarys prawa administracyjnego, red. Z. Leonski (PWN, Warszawa, 1985).

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¹⁶ Dz. U. No. 12, item 114 (1971), as amended.

SOUTH AFRICA

Introduction

Until 1937, in the Republic of South Africa different laws of various provinces regulated the control of firearms and ammunition. In the pre-union days, colonies felt the need to control arms and ammunition, especially to prevent them from falling into the hands of natives. Thus, they regulated possession, sale, export and import of firearms and ammunition since the middle of the 18th century.

When the Arms and Ammunition Act, 1937¹ was enacted, Cape Acts No. 1877 and No. 17 of 1892, Natal Law No. 16 of 1862, Natal Act No. 1 of 1906, Orange Free State Act No. 23 of 1908 and Transvaal Act No. 10 of 1907² were in force. All these laws forbade dealing, importing, exporting and possessing firearms without a license under various penalties of provisional laws. Licenses were issued only to whites. However, under special conditions with the permission of the Secretary for Native Affairs blacks and coloreds could get licenses only to possess firearms. The Arms and Ammunition Act of 1937 consolidated the laws of various provinces. Different provisions existed in these provinces, which made it impossible to establish an effective control throughout the union. In the opinion of the Defense Minister the danger of the natives having firearms was greater than ever and some crimes would not have occurred if the same provisions could be applied to all provinces.³ The law represented to a large extent the existing provisions of the provincial law, especially the Transvaal Act of 1907. It was amended several times.⁴ The 1965 amendment was the most important. It provided for a central arms register system which was one of the reasons that led to the enactment of the Arms and Ammunition Act of 1969⁵ and the repeal of the Act of 1937.

¹ Act No. 28 of 1937 in *Statutes of the Union of South Africa 1937* 250-282 (Government Printer, Cape Town, 1937).

² In *Statutes of the Cape of Good Hope* 240-242 (Saul Solomon, Cape Town, 1882); R.L. Hitchins, ed., *Statutes of Natal* 17-20 (P. Davis and Sons, Pietermaritzburg, 1900); *Acts of the Parliament of Natal* 1-13 (P. Davis & Sons, Pietermaritzburg, 1906); *Statutes of the Orange River Colony 1907-1908* 225-245 (Friend Printing and Publishing, Bloemfontein, 1909); *The Transvaal Government Gazette* No. 477 of August 16, 1907, p. 218-222, respectively.

³ 29 *Union of South Africa: Debates of the House of Assembly* 3165 (Nasionale Pers, Beperk, Cape Town, 1937).

⁴ Act No. 32 of 1952, Act No. 2 of 1956, Act No. 68 of 1957, Act No. 39 of 1961, Act No. 33 of 1962, Act No. 80 of 1964 and Act No. 64 of 1965 in *Statutes of the Union of South Africa* 1952 p. 177-179, 1956 p. 9-11, 1957 p. 1062-1064, 1961 p. 466-468 and in *Statutes of the Republic of South Africa* 1962 p. 1717-1719, 1964 p. 1303, 1965 p. 1114-1117, respectively.

⁵ Act No. 75 of 1969 in 3 *Statutes of the Republic of South Africa Classified and Annotated From 1910-* 75-109(i) (Durban, Butterworth).

Previously every magistrate had to keep a register of licenses and permits that he had issued. Information was recorded alphabetically according to the names of the license holders. This system was not much help to police in tracing the owner of a gun found at the scene of a crime unless the license holder was one of the suspects and the place of registry was known. To remedy the situation, the central registry was arranged in such a way that police could identify the owner of a registered gun without delay. However, the 1965 amendment did not provide for re-registration of the firearms but required the compilation of the needed information for the central registry from existing registries.⁶ When a central registry could not be effectively compiled with the information extracted from the old registers, re-registration of all firearms in the possession of private parties became necessary.

According to the Minister of Police, since the enactment of the 1937 law, circumstances changed a great deal in the country. The terrorist threat and infiltration across the borders increased and the pattern of crime changed. Firearms were used more and more in cases such as robbery and manslaughter. The need for stricter control over arms and ammunition was obvious. A reliable central registry was essential for such control. The Arms and Ammunition Act of 1969⁷ by providing for re-registration made the compilation of such a registry possible. It was important to register not only previously licensed guns but also the ones possessed illegally. To encourage the owners of such firearms to apply for licenses, the law provided indemnity from prosecution if the application was made within eighteen months from the commencement of the enforcement of the new law.⁸

Besides re-registration, the Act of 1969 brought only two other important changes to the previous law. The Ministry of Police became responsible for the enforcement of the act instead of the Ministry of Justice.⁹ The reason for the change was simple. Control of firearms was always left to the police. The police department had been a part of the Ministry of Justice in 1937, but then it developed into a separate Ministry. Consequently, the law had to be amended to adapt to the administrative change. The only other notable change in the new law was the age limit for the possession of firearms. Under the previous law, a license to possess a gun could not be issued to persons under the age of fourteen.¹⁰ The age limit was raised to sixteen.¹¹

⁶ *Supra* note 3, 14 *Debates of the House of Assembly* 1965 p. 5234.

⁷ *The Senate of the Republic of South Africa: Debates* 3098 (Government Printer, Pretoria, 1969-).

⁸ Sec. 4, *supra* note 5, at 83.

⁹ Sec. 1, *id.*, at 79.

¹⁰ Sec. 4, *supra* note 1, at 21.

¹¹ Sec. 3, *supra* note 5, at 81.

The scope of the Arms and Ammunition Act is very wide, encompassing manufacture, import, sale and possession of firearms.¹² However, the Armaments Development and Production Corporation of South Africa, military and persons acting on behalf of the state are outside the control of the Act.¹³ Although automatic guns and rifles¹⁴ are excluded from the definition of firearms, the Act also regulates their importation, supply and possession by private persons.

Possession

As a general rule the Act forbids the possession of a firearm without a license or a machine gun or rifle without a permit and makes it an offense. Ammunition can only be possessed by a license holder of a firearm as long as it is for the licensed arm. Section 1 of the Act defines possession as including custody, thereby calling for a wider interpretation than would normally be applied to possession. Physical control of the firearm with the intention to hold it as possessor constitutes the possession required for the offense. However, the Act also creates presumption of possession by stating,

Whenever in any prosecution for being in possession of any article contrary to the provisions of this Act, it is proved that such article has at any time been on or in any premises, including any building, dwelling, flat, room, office, shop, structure, vessel, aircraft or vehicle or any part thereof, any person who at that time was on or in or in charge of or present at or occupying such premises, shall be presumed to have been in possession of that article at that time until the contrary is proved.¹⁵

Thus, the accused must prove that he was not in possession of the firearm by showing absence of knowledge or control over the firearm to be acquitted.¹⁶ Although possession of a firearm without a license is an offense, there are some exceptions to this general rule. A person who has applied for a license to possess a firearm may be permitted to possess it by the Commissioner of Police for a specified period before a license is issued to him.¹⁷

¹² Sec. 1 of the Act defines a firearm as any firearm other than a cannon, machine gun or machine rifle and includes a gas rifle of .22 of an inch or larger calibre or a gas pistol or revolver, an air rifle of .22 of an inch or larger calibre or an air pistol other than a toy pistol, an alarm pistol or revolver, and also the barrel of an arm.

¹³ Sec. 45.

¹⁴ Under section 1 of the Act, "machine gun or machine rifle includes any firearm capable of delivering a continuous fire for so long as pressure is applied to the trigger thereof, whether or not that firearm was originally designed to function in that manner."

¹⁵ W.A. Joubert, ed., 9 *The Law of South Africa* 385 (Butterworth, Durban, 1979).

¹⁶ *Id.*

¹⁷ Sec. 3(5).

If a person has a firearm with him when entering the country and a permit is issued for the importation of such arm, he can legally possess the firearm without a license for the period specified on the permit.¹⁸

A person who is 16 years or older and not a "disqualified person"¹⁹ may possess a firearm legally without a license if the license holder permits him. Permission must be given in writing for a specified period and contain particulars sufficient for identifying the firearm. If the period is longer than fourteen days, the written statement of the license holder must be endorsed by a person acting under the authority of the commissioner. However, permission does not have to be written when the person possesses the firearm in the immediate vicinity of the license holder or on land that belongs to the license holder or that he is lawfully occupying.²⁰

Furthermore, when a person over the age of sixteen is hired to protect a license holder's land or the land he lawfully occupies or the game on such lands, he may possess a firearm if he has a written permit issued with the consent of the license holder by a person acting under the authority of the commissioner.²¹

Although as a general rule the law does not allow a person under the age of sixteen to possess firearms, there is one exception to the age limit. A person under the age of sixteen may temporarily possess a firearm if the weapon is given to him by a license holder who is over the age of twenty-one and the minor uses it only under the immediate supervision of the license holder.²²

Since a person under the age of sixteen cannot possess firearms legally, when a person over the age of twenty-one sees such a minor possessing a weapon on his land or on the land he lawfully occupies, he may take the weapon from the minor. He must deliver the firearm immediately to the officer in charge of a police station, and will not be deemed as unlawfully possessing a firearm during his delivery of it to the officer.²³

A person may possess a firearm without a license if the license holder of the weapon gave it to him to carry from one place to another or for storage.

It is not illegal for the executor, administrator, trustee or liquidator of the license holder's estate to possess his firearm.

¹⁸ Sec. 27.

¹⁹ A disqualified person is a person who has been declared unfit to possess a firearm by a commissioner, magistrate or a judge.

²⁰ Sec. 8(1).

²¹ Sec. 8(2).

²² Sec. 45(4).

²³ Sec. 37.

A person who inherits a firearm may possess it for three months without a license.

Licensed arms dealers, authorized manufacturers, gunsmiths, carriers or storage contractors and their employees may possess firearms in the ordinary course of their businesses.

A license is not required if the firearm cannot be discharged and is possessed solely as a trophy, curiosity, or ornament.

Possessors of firearms designed and intended solely for the slaughter of domestic animals do not need licenses.²⁴

License or Permit for Possession

In the Republic of South Africa legal entities as well as natural persons may have licenses to possess firearms.

A natural person may apply to the Commissioner of Police for a license to possess firearms. If the person is sixteen or older and is not unfit to possess a firearm, the Commissioner, has the discretion to grant him a license.²⁵

However, a license to possess a firearm cannot be issued without a manufacturer's serial number or another identifying number engraved or stamped on the metal of the weapon. In addition to such numbers, the Commissioner may give an identification number to the applicant and require him to engrave or stamp it on the firearm.²⁶ Except on the written authority of the Minister of Police, which may be granted only in exceptional cases, no person may be issued a license or licenses to possess more than twelve firearms.²⁷

If the Commissioner decides that an applicant is a person,

whose possession of any arm constitutes a danger to the peace or to such person himself or any other person; or

who has discharged an arm at or in the direction of himself or any other person or has threatened or expressed the intention to kill or injure himself or any other person by means of an arm; or

²⁴ Sec. 45(2)

²⁵ Sec. 3(1).

²⁶ Sec. 7.

²⁷ Sec. 3(6).

who has by means of an arm killed or injured any other person through negligence or wantonly or through negligence endangered the life or limb of any other person; or...²⁸

after giving notice and hearing him, the Commissioner may declare such person unfit to possess arms.

The Commissioner, with the approval of the Minister of Police, may also declare unfit a person,

who while in lawful possession of an arm, has lost such arm through negligence; or

who while in lawful possession of an arm, failed to take all reasonable steps for the safe-keeping of such arm.²⁹

Furthermore, an accused may be declared unfit by a judge or a magistrate if he is found to be one of the persons mentioned above in spite of the outcome of the trial.³⁰

The person who has been disqualified to possess firearms by a Commissioner may appeal to the Minister within thirty days of the notice informing him of the declaration. The Minister's decision is final. The Minister also has the power to repeal any declaration of unfitness after the elapse of three years from the date of such declaration.³¹

A license to possess a firearm may be issued to a legal entity only with the approval of the Minister of Police.³² The permission of the Minister is also required for the possession of automatic guns and rifles. The Minister may issue the permit with any restrictions he deems necessary.³³ Once a license for possession of a firearm is issued it will be valid until the possession of the firearm is permanently transferred to another by the license holder or the firearm is forfeited to the state by a court order or expropriated in terms of any law or the license holder is declared unfit to possess firearms.³⁴

²⁸ Sec. 11.

²⁹ Sec. 11 (1 & 6).

³⁰ Sec. 12.

³¹ Sec. 3(4).

³² Sec. 3(4).

³³ Sec. 32(1).

³⁴ Sec. 5.

Rights of the License Holder

A license to possess a firearm also gives the holder the right to buy and possess the ammunition for the licensed gun.³⁵

A license holder is free to keep and carry the licensed firearm wherever he deems it appropriate to do so, unless it is a revolver or a pistol. These weapons can be carried in public places only in a pocket completely covered, a holster, handbag, attache case, rucksack, or similar holder in a manner that the possessor can exercise control over the weapon at all times.³⁶

A license holder may permit another person temporarily to possess the licensed firearm, provided the person is sixteen years or older and is not declared unfit to possess a weapon.³⁷ If the license holder is twenty-one or older, he may allow a minor under the age of sixteen to use the firearm under his immediate supervision.³⁸

Sale of Firearms and Ammunition

Sale of firearms and ammunition is forbidden without a dealer's license except in the case of,

the sale of arms or ammunition by an auctioneer on instructions given by an officer in the public service in the execution of his duties or given by the executor or administrator in a deceased's estate or the trustee in an insolvent estate or the liquidator of a company, for the purpose of administering or winding up that estate or company;

the sale of arms or ammunition by an officer of a court of law in the execution of his duties;

the sale by any person of arms or ammunition held in stock by any person whose dealer's license or permit to manufacture arms or ammunition has been cancelled or has ceased to be valid in terms of the provisions of this Act or whose application for renewal of a dealer's license has been refused, if such sale takes place under the authority of a permit issued by the Minister or a person designated by him and in accordance with such conditions as stated in the permit.

³⁵ Sec. 35(a).

³⁶ Sec. 38(a).

³⁷ Sec. 8.

³⁸ Sec. 45(4).

the sale by an authorized manufacturer to a licensed dealer of arms or ammunition manufactured by that manufacturer.³⁹

and supply of automatic weapons to another person is also forbidden without a permit issued by the Minister.⁴⁰

License to Deal in Arms and Ammunition

A license to deal in arms and ammunition may be issued to individuals, partnerships or companies. Upon application the Commissioner of Police, at his discretion, may issue a license to deal in arms and ammunition under specified conditions on the premises described in the application.

If the license is issued for a company or a partnership it should state the trade name. In the case of partnerships, a license is issued to the partners jointly.

Dealer licenses are valid until the thirty-first day of December of the year they are issued unless the licensed person or, in the case of a partnership, one of the partners or, in the case of a company, any managing director or manager is declared unfit to possess arms.⁴¹

A license to deal in arms may be transferred with the endorsement of the Commissioner. The permission of the Commissioner must also be sought to change a dealer's premises.⁴²

Whenever the Commissioner imposes some conditions on or refuses an application for a license to deal in arms, transfer a license, or change a premise, the applicant can appeal to the Minister of Police within sixty days from the date of notice.⁴³ Police officers have the authority to inspect dealers' registers and stock.⁴⁴ Furthermore, dealers are required to submit to the Commissioner returns of all arms received and all arms disposed of in a month within seven days after the end of that month.⁴⁵

³⁹ Sec. 18.

⁴⁰ Sec. 32(1).

⁴¹ Sec. 19.

⁴² Secs. 20-21.

⁴³ Sec. 22.

⁴⁴ Sec. 24.

⁴⁵ Sec. 13 Regulation No. 1474 of 1971 in *Republic of South Africa Government Gazette* No. 3238 of August 27, 1971, p. 30.

Import and Export of Arms and Ammunition

Importation and exportation of firearms, automatic weapons, and ammunition, including any arms and ammunition in transit, is prohibited without a permit except the importation by the holder of a license to possess the firearm to be imported and its ammunition and the arms and ammunition designed and intended solely for the slaughter of domestic animals.⁴⁶

Any officer authorized by the Minister of Police may, at his discretion, issue a permit to the applicant to import or export any arm or ammunition specified in the permit. However, if the arm does not have the manufacturer's serial number or any other identifying number engraved on it, the officer cannot issue such permit unless the Minister otherwise directs him. When an authorized officer refuses to issue a permit the applicant has the right to appeal to the Minister.⁴⁷ For automatic weapons, a permit may be issued only by the Minister.⁴⁸

Manufacture of Arms and Ammunition

The manufacture of arms and ammunition is prohibited without a permit. Applications must be submitted to the Minister of Police. He, at his discretion, may issue a permit to manufacture arms in a factory registered under the Factories, Machinery and Building Work Act or to manufacture ammunition in a factory licensed under the Explosives Act. The permit may contain conditions, terms, restrictions or directions including directions on the keeping of registers or rendering returns. The Minister may amend any terms, conditions, restrictions and directions contained in the permit or cancel the permit by giving a written notice to the permit holder.⁴⁹

To ascertain whether the requirements of the manufacturer's permit is complied with, any policeman or person authorized by the Minister can enter and inspect any arms or ammunition factory.⁵⁰

Search and Seizure

Search and seizure of arms may be conducted with or without a warrant. A Commissioner of Police or a judge may issue a search and seizure warrant if he has reason to believe the person he has declared unfit to possess firearms is in possession of an arm.⁵¹ However, if the weapon is

⁴⁶ Sec. 25.

⁴⁷ Sec. 26.

⁴⁸ Sec. 32(1).

⁴⁹ Secs. 28-30.

⁵⁰ Sec. 31.

⁵¹ Secs. 11-12.

an automatic gun or rifle and the possessor becomes a disqualified person any policeman can seize the weapon without a warrant.⁵²

Section 41 of the Act empowers a police officer to search and seize arms and ammunition without a warrant if he has reason to believe that an offense under the Act has been committed by means of a firearm which is located in the place or on the person to be searched, or that a disqualified person is in possession of any arm or ammunition, or that for the investigation of an offense or alleged offense the arm or ammunition involved is in a given place or on a particular person.

Offenses and Penalties

Section 32 of the Act makes it an offense to contravene or fail to comply with its provisions, i.e., unauthorized importing, supplying, or possessing automatic weapons and not reporting when one has the knowledge of anybody possessing an automatic weapon without a permit, and prescribes imprisonment up to 25 years. While Section 39 makes it an offense to contravene or to fail to comply with any provisions of this Act and prescribes punishments in accordance with the seriousness of the offense.

If a lawful possessor of an arm fails to take reasonable steps to safeguard that arm, loses it through negligence, unlawfully carries a pistol or revolver in a public place, or willfully points any arm at another person, he may be imprisoned up to six months or fined up to five hundred rand.

If a possessor of an arm fails to produce the license or the licensed weapon at the request of a police officer in a reasonable time, or fails to report within forty-eight hours to a police officer on duty that an arm is lost, stolen or destroyed; if a disqualified person possesses an arm; if a licensed dealer does not keep registers and renders returns as required by law, or does not make available such registers and stock for inspection to a police officer when requested at reasonable times he may be imprisoned up to six months, fined up to five hundred rand, or both.

If a person possesses, deals in, imports, or exports firearms and ammunition without a license, manufactures arms and ammunition without a permit, fails to comply with any of the restrictions issued by the Minister of Police, or forges or alters any license, permit or document, or makes false entries in any register or return to be rendered under the act, or makes false statements to obtain a license or permit for himself or for another, he may be imprisoned up to two years or fined up to one thousand rand or both. In the case of a second or subsequent conviction of such offenses, he may be imprisoned up to three years.

If a person illegally possesses more than one firearm exceeding .22 of an inch calibre or a shotgun exceeding .410 of an inch calibre, or ammunition of more than one hundred rounds for such arms, he may be imprisoned up to ten years.

⁵² Sec. 32(4).

Bibliography

Joubert, W.A., ed. *The Law of South Africa*. Pretoria, Butterworth, 1976- .

LAW Sou 2 1976

Republic of South Africa. *Debates of the Senate*.

J705.J212

Republic of South Africa. *Government Gazette*.

LAW Sou 1

Republic of South Africa. *House of Assembly Debates*.

J705.K22

Republic of South Africa. Parliament House of Assembly. *First and Second Reports of the Select Committee on the Arms and Ammunition Amendment Bill*. Pretoria, 1982.

LAW Sou 8 Parl Firearm 1982

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October 1989

SWEDEN

Introduction

The activities respecting the manufacture, commerce, import, export, possession and use of firearms by individuals in the Scandinavian countries are regulated by law. ¹

Although the sole aspiration of the gun control laws in Scandinavia is the same, namely to assure governmental control, the laws in this field differ slightly in various Scandinavian countries. However, it can be asserted that the gun control laws in Scandinavia are very strict. They all require permits for possession and use, and there are restrictions on commerce and import and export of firearms.

Laws and Regulations

The questions relating to the manufacture, sale, possession and use, export and import and transportation of firearms (including all types of war materiel) in Sweden are stipulated in a

¹ Denmark: Vabenlovbekendtgørelse, No. 529, Dec. 11, 1985, as amended; Finland: Lag ang. skjutvapen och skjutförmånenheter, Nr. 33, Jan. 27, 1933, as amended; Iceland: Law, Nr. 46, May 13, 1977, on Firearms and Explosives, as amended; Norway: Lov, Nr. 1, June 9, 1961, om Skytevapen og Ammunisjon, as amended; Sweden: Vapenlag, Nr. 1176, Dec. 14, 1973, as amended.

number of acts which in principle regulate these activities. These acts are: the 1983 Law ² Respecting Control on Manufacture of War Materiel, the 1988 Law ³ Concerning Prohibition on Exportation of War Materiel, the 1982 Law ⁴ on Transportation of Dangerous Goods, the 1975 Law ⁵ on Explosives and Hazardous Substances and the 1973 Law ⁶ on Gun Control that regulates mainly questions relating to possession and use by individuals. Moreover, the Gun Control Regulation ⁷ provides more detailed rules for the implementation of the law. ⁸

Definitions

The 1983 Law Respecting Control on Manufacture of War Materiel does not define the term "war materiel." The task of defining the term "war materiel" in this law understandably has been left to the government. However, the 1973 Law on Gun Control provides comprehensive definitions for the terms "firearms" and "ammunition." Accordingly, by firearms is meant any gun by which a bullet, a shot or a projectile can be fired by a charge of gunpowder, carbonic acid gas, compressed air or the like. Devices that have similar effects and purposes are likewise included in this definition of firearms. Furthermore, in operative weapons that could be considered firearms if they are in an operative condition, as well as parts of firearms, and even devices that make it possible to use ammunition for firearms other than the ammunition for which they were originally designed, are covered by the definition of the term "firearms." Also devices which are constructed with a purpose of causing injury or stunning a person by electric charges, and are meant to be carried by hand, are likewise defined as firearms (art. 1).

The law does not apply to: (1) firearms that are manufactured before 1890, (2) bolt guns used in the construction industry, (3) firing devices used for animal slaughtering, signalling, life saving or similar purposes, and (4) starting pistols (art. 2).

The term *ammunition* is defined as cartridges or projectiles for firearms that are subject to gun control together with primers and other detonaters for such cartridges or projectiles. Respecting the ammunition which contains explosives or poisonous substances, such ammunition is even subjected to the provisions of the 1949 Regulation Concerning Explosives, ⁹ and the 1985

² *Svensk Författningssamling* 1983: 1034.

³ *Id.* 1988: 558.

⁴ *Id.* 1982: 821.

⁵ *Id.* 1975: 69.

⁶ *Id.* 1973: 1176.

⁷ *Id.* 1974: 123.

⁸ There are also certain laws regulating the customs activities and several provisions of penal law which are likewise applicable.

⁹ *Svensk Författningssamling* 1949:341.

Law Concerning Chemical Products ¹⁰ (art. 3). However, with the exception of some provisions, the law excludes certain types of ammunition as follows: (1) shot and other solid bullets, (2) projectiles designed for compressed air and spring weapons, (3) shot cartridges and primers for these, (4) carbonic acid cartridges, (5) cartridges and charging containers without primers designed for firearms that are not subject to control, and (6) bullet ammunition with central primers designed for hunting rifles (art. 4).

Manufacture and Sale

The 1973 Law on Gun Control does not contain any provisions on the manufacture of weapons. However, the provisions of the 1983 Law Respecting Control on Manufacture of War Materiel are likewise applicable to manufacturing of firearms and ammunition, the subject-matter of this study.

The 1983 Law regulates questions relating to the manufacturing and supplying of all types of war materiel including the invention and methods of presentation of such materiel. This law does not apply to governmental activities; and it does not contain, as mentioned above, ¹¹ any definition of the term "war materiel."

Licenses

War materiel shall not be manufactured in Sweden without a license issued by the government. Only Swedish physical and legal persons can obtain such a license. However, a license can even be granted to a non-national for minor activities (art. 2).

War materiel, including the invention and methods of presentation of such materiel, shall not be supplied in the country by means of the sale, exchange or brokerage inside or outside the country without a license issued by the government. However, no license is required in the following matters:

- Supplying the Swedish government or a person who has the license to manufacture the kind of war materiel that is being supplied;
- a license holder does not need a new license if the supply concerns war materiel, inventions and methods which belong or are in the possession of the licensee; and
- the government may issue regulations concerning exemption from the requirement of a license insofar as the commerce of firearms and ammunition (the subject matter of the Gun Control Law of 1973) is concerned (art. 3).

In connection with the issuance of licenses, the government may prescribe conditions and impose certain rules respecting supervision and control. Duration of validity of the license can be defined or be indefinite. It can be revoked by the government, if the licensee does not follow instructions or there are other reasons for such a revocation (art. 4).

¹⁰ *Id.* 1985: 426.

¹¹ *See supra* Definitions.

All licensees are under the supervision of an appropriate government authority. The licensee must, in accordance with the instructions issued by the government, submit a periodical declaration, on honour and conscience, respecting the activities for which the license has been issued. Upon request by the supervisory authority, the licensee must furnish information and documents which are deemed necessary for carrying out the supervision. Also the officials of the supervisory authority must be admitted to inspect the locations where war materiel are manufactured (arts. 5-7).

Import and Export

Most of the provisions of the laws regulating the import and export of war materiel/firearms are phrased with a negative approach. These laws prohibit, in principle, the export and import of such weapons unless a license is issued by the appropriate authority. However, articles 14-17 of the 1973 Law on Gun Control provide rules according to which permits can be obtained to import firearms.¹² Moreover, according to article 20 of this Law, a person who holds a license to do business in firearms may also obtain a license to import such weapons.¹³

The 1988 Law Concerning Prohibition on Exportation of War Materiel forbids the export of war materiel without a license issued by the government. A person who is licensed to manufacture war materiel may not without a government permit transfer his rights to a party for the purpose of manufacturing such materiel abroad; nor may a person who is permanently residing in Sweden, including a Swedish authority, conclude with a party abroad an agreement respecting the development of methods and the presentation of war materiel.

The government is authorized by law to issue regulations respecting the export of firearms and hunting rifles for personal use for hunting, competition and the like.

Transportation

Articles 28 (a) and 28 (b) of the 1973 Gun Control Law stipulate provisions respecting the transportation of firearms. According to article 28 (a), when firearms are to be transported by mail, they must be declared and insured. Moreover, a person who undertakes to transport firearms or ammunition must take the necessary safety measures to prevent access to such weapons or ammunition by unauthorized people.

Article 28 (b) of the Law stipulates that a person who, for personal use, intends to export firearms to a country that is a party to the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals,¹⁴ must inform the police authority of his intention

¹² See *infra* Possession and Use.

¹³ *Id.*

¹⁴ See *supra* Introduction.

before the actual exportation, if he/she plans to stay more than three months in the said country. However, the government may prescribe rules of exemption for certain types of weapons.

In addition to the above-mentioned provisions, the 1974 Law on Explosives and Hazardous Substances ¹⁵ and the 1982 Law on Transportation of Dangerous Goods ¹⁶ also contain rules that are applicable to transportation of certain types of war materiel including ammunition.

Possession and Use

The 1973 Law on Gun Control regulates the rules governing the possession and use of firearms by individuals and certain entities. The police is the appropriate government authority for the implementation of the law. The Gun Control Regulation of 1974, which serves the purpose of implementing the Gun Control law, also contains certain additional procedural rules in this context.

Gun Control Law

The requirement for a *permit* to possess and use, import and sell firearms, and to acquire or import ammunition is stipulated in articles 5-7. However, article 5, paragraph 2, allows, as an exception, any person over 18 years of age to possess, import and sell without a permit compressed air or spring operated weapons that are designed for target shooting practice, provided such weapons have a comparatively limited effect.

The permit to possess firearms may, according to article 8, be granted to the following:

1. private individuals,
2. entities of the voluntary or State controlled rifle associations, and
3. other associations that have been approved by the government.

Moreover, a permit to possess firearms may be granted to weapon museums, under certain circumstances, and to approved security services to be loaned to their employees for security assignments that require the use of firearms. Such loans may be made only to those employees who are personally granted a permit to use firearms and ammunition on loan.

Article 9 establishes the general rule that a *private individual* should be granted a permit to possess a firearm only if he has a need for it, and there are reasons to believe that he will not abuse his use of the weapon. However, a permit to possess firearms that primarily have sentimental value, firearms that serve decorative purposes, and hunting weapons that have been acquired through marriage, inheritance, or through the provisions of a will may be granted even though the applicant does not have need for such weapons for shooting purposes. On the other hand, a permit to possess pistols, concealed weapons, or automatic weapons may be granted only if the application is supported by very convincing circumstances.

¹⁵ *Supra* note 5.

¹⁶ *Supra* note 4.

A permit to possess firearms is always granted for a specifically stated purpose. These permits may be granted on the condition that the firearm be made either permanently inoperative or on detailed conditions as to safekeeping and storing the weapon (arts. 10, 26-27). Similar provisions apply with regard to possession and storage of ammunition (arts. 12-13 and 26-27).

The provisions concerning the permit to import firearms or ammunition are stipulated in articles 14-17. Of special interest is the provision of article 16 which allows citizens of Denmark, Finland and Norway to import firearms and ammunition into Sweden for hunting and for shooting competitions. Such weapons must be taken out of Sweden within 3 months. Otherwise it applies that all travelers who have declared firearms or ammunition to the customs authorities have the right to export such weapons or ammunition within 4 months.

A permit to do business in firearms is granted to a person who is known for honesty and reliability. The permit may also include the right to import weapons. However, these permits are subject to a number of conditions, including the conditions on how the weapon should be stored (arts. 18-20).

The detailed provisions on loans of firearms deal, in principle, with entities that have been granted a permit to possess weapons (arts. 22-23). Unless the borrower is eligible to obtain a permit, the said loans are allowed only under restricted conditions. However, less dangerous weapons, for instance certain hunting rifles, may be loaned to persons who do not meet the eligibility requirement. Moreover, it is prohibited to lend firearms to a person whose permit has been revoked, or when it can be assumed, for other reasons, that the borrower may abuse the use of the weapon.

Substantial alterations of firearms are prohibited (art. 24), and the law requires a special license to repair or alter firearms (art. 25).

An application for a permit to possess and use or to deal with firearms can be denied. Also a permit already granted can be revoked. The law grants the police authority a rather broad discretionary power in this respect. However, a denial of permit, or a revocation of a permit already granted, may be appealed to the county government, to an administrative tribunal, and in certain cases, even to the central government (arts. 29-32).

Gun Control Regulation

While the provisions of the Gun Control Regulation ¹⁷ primarily serve to implement the Gun Control Law, some of these provisions add a substantial amount of information on Swedish gun control policy.

According to article 5 of the Regulation, a permit for private individuals to possess firearms, except permits for collections of guns, and for the use of guns for decorative purposes, shall not be issued before the applicant has documented that he has received adequate instruction and training in using the firearms in question. These requirements become more stringent with regard

¹⁷ *Supra* note 7.

to more dangerous firearms, such as handguns and hunting weapons suitable for hunting large animals such as elk. Hunting weapons of this type are referred to as Class 1 weapons. In addition, article 6 limits the issuance of permits for certain weapons and attachments, such as silencers, for specifically stated purposes.

Articles 24-35 contain detailed provisions on the commercial sale and importation of weapons and ammunition, including strict requirements on record keeping. Corresponding requirements on record keeping for those who have been permitted to repair or alter weapons are found in articles 39-40.

Permits to individual persons under the Gun Control Law must be registered in the Population Registration Records (art. 53).

The courts are under an obligation to notify the police whenever a defendant has been found guilty of violating the Gun Control Law or Regulation or found guilty of any other crime in which a firearm was involved (art. 54). The authorities dealing with alcoholics must notify the police or defense authorities whenever they treat a person who has or may be presumed to have a permit to possess a weapon (art. 55). A similar obligation is extended to hospitals with regard to patients being treated for psychiatric diseases or abnormalities (art. 55a).

Offenses and Penalties

The above-mentioned laws respecting control on manufacture of war materiel, prohibition on exportation of war materiel and gun control all contain provisions on offenses and penalties. Moreover, with regard to the import and export of said materiel, the provisions of the Law on Penalties for Smuggling of Goods ¹⁸ are likewise applicable.

The 1983 Law Respecting Control on Manufacture of War Materiel

Offenses concerning the requirement of a license for manufacturing of war materiel including inventions and methods of presentation of these materiel as well as offenses regarding the requirement of a license to supply war materiel ¹⁹ are punishable by a fine or up to two years imprisonment.

For violations of other provisions of the law, such as the rules relating to supervision and control, the penalty will be a fine or a maximum of six months imprisonment. Unless it is deemed to be unreasonable, the property involved in a violation of the law will be confiscated. If the offense is punishable under the provisions of the penal law, the penalty provisions of this law are no longer applicable. Finally, a violation of the provisions of the law cannot be prosecuted unless the supervisory authority approves of the action.

¹⁸ *Svensk Författningssamling* 1960:418.

¹⁹ *See supra* Licenses.

The 1988 Law Concerning Prohibition on Exportation of War Materiel

If a person who lawfully manufactures war materiel in the country, transfers his rights to a person abroad, without obtaining a government permit, he will be punished by a fine or imprisonment of up to two years, if the violation is intentional. The penalty is the same regarding a person who concludes an agreement with a party abroad in order to develop the methods and preservation of war materiel outside the country, without a government permit. If the violation is not intentional, the penalty will be a fine or imprisonment of up to six months. However, if the offense is flagrant, based on the value, duration of activities and the danger involved, the punishment will be a minimum of six months and a maximum of four years imprisonment.

Where violation of this law is punishable by the terms of the penal law, the penalty provisions of this law are not applicable.

If the war materiel are exported without a license, the provisions of the 1960 Law on Penalties for Smuggling Goods will be applied. Accordingly, a violation of this Law brings about a penalty of a fine of up to two years imprisonment. However, if the offense is flagrant, the penalty will be six months to six years imprisonment.

The 1973 Gun Control Law

An intentional violation of the Gun Control Law brings about imprisonment of up to two years. However, a minor violation is punished with a fine or imprisonment up to six months.

Thus an abuse or misuse of the rights, by a person who has a permit to possess and use firearms, will bring about a penalty of a fine or up to six months imprisonment. The penalty will be the same for a person who violates the rules respecting the safe-keeping and storage of firearms and ammunition, or is engaged in the commerce of firearms without a permit. Other violations of the law are punishable by fines only.

Respecting the illegal importation of firearms and ammunition, the provisions of the 1960 Law on Penalties for Smuggling of Goods will be applied.

Finally, the property involved in a violation of the law will be confiscated, if such a confiscation is deemed to be a reasonable undertaking.

Judicial Decisions

On a few occasions, the Swedish Supreme Court has had the opportunity to review questions relating to the Gun Control Law. In some of these cases the Court has expressed the view that the degree of punishment for violation of the law should depend on the seriousness of the crime. And the seriousness of the crime should be judged in connection with the intention of the person and the type of weapon involved. In the opinion of the Court, if the firearm does not belong to the most dangerous types of weapons, and there are minor risks that the gun would be used to commit a crime, or it would be abused, a fine should be an adequate punishment.

In a borderline case concerning whether a certain type of firearm is subject to gun control laws, the Court decided that a harpoon gun designed for underwater use, with an effective range of about 3 yards, was not included in the statutory definition of a firearm.²⁰

In a case regarding the duty to obtain a permit for a gun that had been in possession of the owner before the date of entry into force of the 1973 Gun Control law, the Court said that the owner was under the obligation to request a permit when the new law entered into force. The 1973 law, contrary to the law that it had replaced, did not contain transitional provisions that allowed continuing possession of the firearm in question without obtaining the required permit.²¹

Criminal Statistics

Swedish criminal statistics are included in the official yearbook of legal statistics. The last year for which the statistics are available is 1986.

The following legal statistics cover only those areas that are deemed to be most relevant to gun control.²² For further information, the yearbooks may be consulted. The main text of the legal statistics yearbook as well as the subtitles relevant to gun control are in Swedish, but the headings, diagrams, and charts contain an English text.

The figures indicated below show the number of homicides and robberies that were committed with the use of firearms. It is also possible to determine the number of violations of the Gun Control Law, specifying the number related to handguns and hunting weapons.

Violations of the Law on Gun Control

Table 3.2.2 in the Legal Statistics Yearbook indicates the following violations of the Law on Gun Control since 1975:

1975-79: 1703/ 1983: 1779 1985: 1756/ 1986: 1919

The total number of reported violations of the law: 1919

Unlawful possession of handguns: 790

Unlawful possession of hunting weapons: 451

Unlawful possession of other weapons: 442

²⁰ *Nytt Juridiskt Arkiv*, 1977:23, avdeln.I, pp. 120-123.

²¹ *Id.*

²² *Arttsstatistisk Arsbok* [Yearbook of Legal Statistics], 1979-1987, part 3.

Other violations of the Law and

Regulation on Gun Control: 236

Homicides

The total number of reported murders, manslaughters and assaults which resulted in death since 1983, according to Table 3.2.2 in the *Yearbook of Legal Statistics* are as follows:

1983: 121/ 1984: 116/ 1985: 126/ 1986: 147

A further analysis of the figure for 1986 indicates that only in 15 cases firearms were used.

Murders, manslaughters or assaults
which resulted in death in 1986: 147

By the use of firearms: 15

Of which:
in connection with suicide: 4
other cases: 11

Robberies

In reported offenses of robbery for the year 1986 was 3,806. The figures for the years 1983-1985 were:

1983: 3473/ 1984: 3681/ 1985: 3851

The following figures indicate the number and type of locations in which robbery by use of firearms were committed in 1986.

Robberies and Aggravated Robberies in 1986: 3,806
By the use of firearms: 367

This includes:
Bank robberies: 61
Postal robberies: 5
Store robberies: 74
Taxicab robberies: 3
Robberies of handicapped persons: 13

Of which:
At home: 4
Outside: 9
Other robberies: 166

Thefts of Firearms

The number of reported thefts of firearms, ammunition and explosives for the year 1986 was 685. The respective figures for the years 1984 and 1985 were 774 and 673.

The firearms thefts for 1986 were divided into the following subtitles:

Thefts of firearms, ammunition
or explosives for 1986: 685
From military stocks: 111
From military establishments: 93
From rifle associations: 29
From arms dealers: 16
From stocks of explosives (non-military): 40
From private residences: 199
From vacation homes: 36
From motor vehicles: 55
Other thefts of firearms: 106

Bibliography

Hemberg, Jar. *Lagen om Ratt till Jakt*. Stockholm, Tidens Förlag,
1951. 116 p. LAW Sweden 4 Game

This compilation of laws of interest to hunters contains a summary of the gun control laws of 1949 that had effect until 1974 on pages 95-98.

Jansson, Stig. *Den Nya Vapenlagen*. Stockholm, Natur och Kultur,
1974. 132 p. LAW Sweden 4 Firearms

This is a commentary on the Swedish Gun Control Law and Regulation.

Lindquist, Bernt. *Jakt Enligt Lao*. Stockholm, LTs Förlag, 1977.
132 p. LAW Sweden 4 Game

This compilation of laws of interest to hunters contains the text of the Statute and Regulation on Gun Control with annotations issued by the State Police on pages 176-217 and the Regulations for Storage of Weapons on pages 218-226.

Nytt Juridiskt Arkiv, v. 1. Stockholm, Nordstedt.

LAW Sweden 5

Part I (Avd. I) of this publication contains court reports.

Olsson, Ulf. *The Creation of a Modern Arms Industry*. Göteborgs
Univ., Göteborg, Sweden, 1977. HD9743.S82057

Part I (Avd. I) of this publication contains court reports.

Olsson, Ulf. *The Creation of a Modern Arms Industry*. Göteborgs Univ., Göteborg, Sweden, 1977. HD9743.S82057

Rattsstatistisk Arsbok 1979-1987 Sveriges Officiella Statistik; Yearbook of Legal Statistics, Official Statistics of Sweden
Stockholm, Statistiska Centralbyran. LAW Sweden 8 Stat

Svensk Författningssamling [The Swedish Gazette] 1973, 1975, 1982-1987 (Stockholm, Liber Frlag). LAW Sweden 1

Sweden. *Justitiedepartementet. Andringar i Vapenlagstiftningen*
17. Liber Förlag, 1979. (DS Ju 979:17). LAW Sweden 4, Firearms 1979

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October 1989

SWITZERLAND

General

As far as the legislation of gun control is concerned, there is a striking similarity between Switzerland and the United States. Indeed, the notion that a person whose right to bear arms, if denied, is a person deprived of his honor and basic human rights, is deeply rooted in Swiss history and political culture. In the old Confederation of Swiss tribes, the right to bear arms was considered an undisputed prerogative of every free citizen. Today, Swiss citizens of sufficient age who have not been deprived of their basic rights by law (see following discussion) can purchase, own, and carry a gun. In fact, every Swiss soldier keeps his army weapons with the ammunition at home and will own his personal weapon upon his retirement from the army at age 50. Thus, as late as the turn of this century, there was no law regulating personal ownership of weapons in Switzerland. Legislation limiting the right of citizens to carry arms was sporadic and on the cantonal level. Yet events and developments throughout the 20th century have also affected Swiss legislation pertaining to gun control. Today the guiding principles of gun control legislation in Switzerland represent a mixture of recognizing historically well-defined basic human rights while, at the same time, excluding those individuals from enjoying the right to bear arms who are deemed to be morally unfit or otherwise dangerous to society.

These principles are embodied in the following laws: ¹

- 1) Federal Constitution May 29, 1874;
- 2) Federal Law of June 30, 1972, on War Materiel;

¹ *Systematische Sammlung des Bundesrechts*, vol. 1/1, position 101.

Manufacture and Sale

Pursuant to article 41, paragraph 1, of the Federal Constitution, the manufacture and sale of gunpowder are a federal monopoly. According to paragraph 2 of the same article, the manufacture, purchase, and distribution of weapons, ammunitions, explosives, other war materiel, and their components require authorization by the Federation. Such an authorization can only be given to persons and business entities whose activities are commensurate with the national interest. The import and export of the materiel enumerated in paragraph 2 is only legal if it is authorized by the Federation (art. 41, para. 3). The same requirement holds for the transit of such materiel (art. 41, para. 4).

In implementing article 41 of the Federal Constitution, the Federal Council enacted a Law on War Materiel. According to its article 1, the term *war materiel* includes weapons, ammunition, explosives, additional products and their attachments that can be used as a combat weapon (*Kampfmittel*). Article 4 forbids the manufacture and acquisition of trade in and arranging for the purchase and sale of war materiel without prior authorization of the Federation. This authorization is granted to trusted persons or business entities, if the applicant offers the necessary guarantee for the proper management of this type of business and the intended activity is not contrary to national interests and to international agreements. Authorization is only granted to those who are in the possession of appropriate cantonal authorization. The authorization is not transferable and is valid only for the war materiel listed in the authorization itself.

The export and import licenses for war materiel are denied if the intended export or import activity is contrary to the national interests or to international agreements (art. 10). Furthermore, no export license is granted for territories in which there is an armed conflict, a threat of such a conflict is apparent, or dangerous tensions exist. Finally, an export license must also be denied if there is reason to assume that the delivery of war materiel would contradict the international objectives of Switzerland, in particular its objectives with regard to the respect of human dignity, and in the area of humanitarian and economic assistance (art. 11, para. 2).

An export license is granted if war materiel is delivered to a foreign government or to a manufacturer licensed by the foreign government to carry out such business and the said government issues a declaration that the war materiel will be used only for self-defense and will not be reexported. The Swiss supplier obligates himself to supply the appropriate certificates upon request (art. 11, para. 1).

Since there are no federal firearms control laws in Switzerland, the cantons joined in a Concordat to regulate the sale of firearms and ammunition. This Concordat to which all cantons have been parties since May 1, 1961, was approved by the Federal Council on July 20, 1944. It provides in essence:

- that whoever is engaged professionally in the sale of firearms and ammunition requires an authorization (*Waffenhaendlerpatent* - firearm-sale-permit) issued by the competent authority of the canton where the business is domiciled;

- commercial sales of handguns (i.e., pistols and gas guns) are only allowed to persons presenting a duly signed firearms purchase certificate (*Waffeberwerbsschein*) issued by the competent authorities of the canton where the purchaser is domiciled;
- such purchase certificates are not issued to persons under 18 years of age, to mentally ill or deficient persons, to persons under interdiction, to habitual drinkers under protective custody as well as to different categories of persons with a criminal record;
- persons authorized to sell handguns and gas guns are required to keep detailed records containing the date of sale, the exact personal data of the purchaser, the serial number of the firearm, the name of the issuing authority, the date of the purchase certificate as well as the type and the serial number of the firearm thus purchased.

Under the above-listed provisions of the Concordat it appears that rifles and shotguns are not subject to the firearm purchase certificate requirement.

Possession and Use

Some cantons only regulate the carrying of firearms and so-called pointed weapons; however, a number of cantons have subjected the carrying and transportation of firearms to the issuance of a special permit. An example is found in the "Weapons Rules" of the Canton Zürich which issues a personal permit to regulate trade in weapons and ammunition, the carrying and owning of a weapon in the canton, and the transportation of these weapons in public transport facilities. This permit is valid up to 2 years, if the threat of danger to the applicant's person or property has been substantiated. Private ownership of machine guns, explosive weapons (i.e., hand grenades and bombs) as well as weapons simulating articles of daily use is also prohibited.

Belonging to the militia is a duty of every male Swiss citizen. The Ordinance of November 25, 1974, on the Equipment of the Enlisted Men ² provides that, as a rule, all persons called into the armed service are under an obligation to keep the weapons delivered to them in their homes. After a person satisfies his regular military service and leaves it, he becomes the owner of his equipment, which, according to the law, includes weapons. Not covered by this rule is equipment originally loaned to him, and the list of the equipment given on loan is provided by the Department of the Army. For instance, the assault rifle model 1957, an automatic and semi-automatic weapon, is given on loan to army recruits as a personal weapon until the soldier is discharged from the army. A militiaman who uses his military weapon and ammunition in self-defense to defend his or his family's life when not on active military duty, while infringing the service regulation concerning the unauthorized use of his emergency ammunition ration, would face no conviction under military law if no charges are held against him under civilian criminal law.

² *Recueil des lois fédérales* 1974, at 1838.

Offenses and Penalties

A militiaman who uses his military weapon for unauthorized and improper purposes may, under military criminal law, be sentenced to prison or, if the offense is of small gravity, be punished by a disciplinary action.

Under the Swiss Federal Criminal Code,³ penalties for murder (arts. 111-117), armed robbery (art. 139), and assault with a deadly weapon (art. 129) vary from confinement in a penitentiary for one year up to life imprisonment. It must be emphasized that as a general rule it is not the use of a weapon as such but the aggravating circumstances created by the offender's willful and criminal intent that will determine the severity of the imposed penalty.

Statistics

Generally, Switzerland still has a low crime rate. The number of crimes involving the use of weapons is very small. Statistics concerning murder, deadly assault, and armed robbery from 1931 (the beginning of criminal statistics in Switzerland) indicate the following trend: In 1931 there were 24 cases in which a weapon as an instrument of the crime was used. In 1948 only 12 cases were reported. In 1967 18, in 1968 11, in 1969 13, in 1970 12, in 1971 18, and in 1972 12 such cases were counted.⁴

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October 1989

TURKEY

Introduction

Until 1953 the Criminal Code of 1926¹ regulated the possession and carrying of firearms. Carrying "unforbidden"² guns was not restricted outside cities and towns, but guns could not be carried without a permit in the cities and towns, under penalty of law.³ Even persons with permits

³ *Supra* note 1, vol. 3, position 311.

⁴ E. Papper, *Waffengesetzgebung in der Schweiz* 85 (Langenthal, 1973).

¹ Law No. 765 of March 1, 1926, as amended, in F. Çoker & S. Kazanci, *T.C. Kanunlari* 594-915 (Ankara, 1979-).

² War weapons, automatic or telescopic firearms or arms that work in a similar fashion, guns with capacity of more than ten bullets and all firearms regardless of calibre, make or model with barrels longer than fifteen centimeters, except hunting rifles, are forbidden to be possessed by private persons.

³ Art. 549, *supra* note 1, at 696.

were not allowed to carry loaded guns in large gatherings. The Code also prescribed penalties for giving a gun to a child under the age of fifteen, a person who does not know how to use it, or a mentally incapable person, and for failing to take adequate precautions to prevent such people from obtaining a gun.⁴

Possession and the use of firearms in the commission of a crime is an aggravating circumstance in several provisions of the Code, that either increases or in some cases doubles the penalty.⁵

The Law of 1934⁶ on the Sale of Unforbidden Firearms and Their Ammunition aimed at reducing the number of guns in the hands of private persons by restricting gun sales. The law required firearms dealers to keep a record of all their sales and report them to the Department of Police at the end of each week. The law also required the dealers to check the permits of the buyers and sell guns only to valid permit holders.

In 1943 the Department of Monopolies was given the responsibility of regulating the import, manufacture, and sale of unforbidden guns and their ammunition. The Department had the right to contract private firms to import or to manufacture guns and their ammunition and to issue licenses to gun dealers.⁷

The restrictions in these laws could not establish effective controls over the import and sale of firearms to prevent their acquisition for criminal purposes. Furthermore, provisions in the criminal code concerning the possession and carrying of firearms were not effective either because obtaining a permit to carry guns was not difficult and the penalties for possessing unlawful firearms or carrying unprohibited guns without a permit were not severe enough to deter such offenders. Statistics indicated that the number of crimes committed with firearms were increasing from year to year.⁸

The legislature felt the need for a much stricter regime for the control of firearms and enacted the Firearms, Knives and Other Implements Law.⁹ Firearms used by the armed forces, police, and other government security forces as well as smooth bore guns and air guns used for hunting or sports are outside the scope of this law.

⁴ Art. 550, *id.*

⁵ *Id.*, arts. 168-169, 188, 190-191, 193, 254, 257-258, 277, 308, 313, 457 & 497.

⁶ Law No. 2637 of December 22, 1934 in *T.C. Resmi Gazete* [hereafter OG TUR] No. 2637 of December 27, 1934.

⁷ Law No. 4374 of January 14, 1943 in OG TUR No. 5310 of January 21, 1943.

⁸ Ahmet Erdogdu, "Ateşli Silahlar ve Bıçaklar," [Firearms and Knives] 45 *Adalet Dergisi* 297-298 (1954).

⁹ Law No. 6136 of July 10, 1953, as amended, *supra* note 1, at 4766-4769 (2).

The new law is more inclusive than the previous ones. It not only regulates the possession and carriage of firearms by private persons but also the manufacture, import, transport and sale of them for private use. The law has been amended several times to increase the restrictions and penalties in response to the spread of terrorism.

Possession and Carriage

As a general rule, the law forbids the possession or the carrying of firearms. Article 7 of the Law provides the exceptions to this rule.

Carrying of Firearms

1. The following persons are allowed to carry guns by law:
 - a. President
 - b. Prime Minister
 - c. Ministers
 - d. Members of Parliament
 - e. persons who formerly served in the above positions
 - f. officers and petty officers retired from the armed forces
 - g. retired governors, deputy governors, judges, public prosecutors, members of the police force and central intelligence service.
2. The following persons are allowed to carry guns with the permission of the Council of Ministers:
 - a. employees of the government
 - b. employees of municipalities and
 - c. employees of public organizations
 - d. persons who have permission of the governor based on the regulation issued by the Council of Ministers.

Previous laws had left to the governors and the chiefs of police the decision of who might carry or possess guns. According to the new law, the Council of Ministers must regulate who may be permitted by the governors to carry guns.

According to articles 5 and 6 of the regulation,¹⁰ governors may allow the following persons to carry guns,

- a. farmers whose land is at a distance from towns and villages and employ at least 25 workers

¹⁰ Regulation No. 8/4182 of January 15, 1982 in OG TUR No. 17619 of February 28, 1982, p. 2-11.

- b. large herd owners who must frequently travel between pastures
- c. building contractors whose construction sites are outside the towns and employ at least 25 workers
- d. cashiers of gas stations on highways outside towns
- e. cashiers and security guards of banks
- f. cashiers and security guards of factories which have at least 100 workers
- g. captains of ships
- h. the owners of hunting rifles and other licensed hunting guns
- i. and--based on reciprocity confirmed by the Ministry of Foreign Affairs, diplomats--non-diplomatic personnel of embassies and the personnel of foreign airlines.

Possession

The Regulations on firearms provide fewer restrictions for possession of firearms. Although governors do not have the power to decide who may carry guns, at their discretion they can allow persons with clean police records to possess guns. Furthermore, governors must allow the possession of relic and antique firearms. Guns claimed to be antiques must be checked by a police laboratory and must be proved to be old, rare, unique, and valuable.¹¹ According to article 16 of the regulation, only the following firearms are regarded as relics if proved to have been:

- a. a gift of the President or Prime Minister of a foreign state or a member of a foreign government
- b. a gift of the President, Prime Minister, or the chief of staff of the armed forces of Turkey
- c. gifts to members of the first Parliament of the Republic of Turkey as souvenirs of victory
- d. firearms used during the wars before the War of Independence and kept by the veterans of the war
- e. firearms used and kept by the veterans of the War of Independence, and
- f. gifts made to veterans of the Independence War by their commanders.

Carriage Licenses

Licenses are issued only to persons who may be permitted to carry guns by the governors for one year if the applicants can satisfy the requirements of the regulation. The licenses must be renewed during the first month of each fiscal year. If the license holder's situation has not

¹¹ Art. 17, *id.*, at 8.

changed, the renewal must be granted.¹² All applicants must prove that they are over twenty-one years old, in good mental and physical health, they have no criminal record, and their business is among the ones listed in article 5 of the regulation. Article 8 of the regulation specifies which documents can be accepted as proof.

Persons who have permission to carry guns by law do not need licenses. However, make, serial number, and the caliber of their guns are required to be recorded on their identification cards by the governors' offices.¹³

Possession of Firearms Licenses

Governors may grant licenses to possess guns to persons over the age of eighteen with no criminal record. The license must show the place where the gun will be kept. It may be the home or the business place of the person.¹⁴

Governors' offices are required to issue a license to possess a firearm if it is verified by the department of police as a relic or antique.¹⁵

All licenses for possession are issued for an unlimited time. For each licensed gun a file must be kept containing the required information on the license holder and the gun.

Rights of License Holders

Holders of a license to possess a gun must keep their guns at the addresses shown on the license. To transport a gun to and from that address requires the permission of the police department.¹⁶

Licenses to carry guns do not always give the holders the right to carry their guns everywhere in the country. Limits vary according to who grants permission and for what reason it is granted. Persons allowed by the governors to carry guns may do so only where their business takes them, i.e., farmers on their farms, herd owners between and in pastures, builders at their construction sites, cashiers at their workplaces, captains on their ships, and hunters in hunting areas.¹⁷ However, foreign diplomats, foreign embassy, and foreign airline staffs, and persons allowed to carry guns by law and by the Council of Ministers can carry them anywhere in Turkey

¹² Art. 9, *id.*, at 6.

¹³ Art. 26, *id.*, at 10.

¹⁴ Art. 11, *id.*, at 6.

¹⁵ Arts. 16-17, *id.*, at 7-8.

¹⁶ Art. 12, *id.*, at 6.

¹⁷ Art. 7, *id.*, at 4-5.

except in courthouses, schools, student dormitories, union quarters, association buildings and places where general meetings of association members are held, workplaces where there are lockouts or strikes, wherever sports competitions are taking place, detention centers, and penitentiaries.¹⁸ Only judges, public prosecutors, governors, deputy governors, administrative heads of towns and villages, central intelligence service members, and security personnel on duty can enter the above places carrying guns.

Revocation

The same rules apply to the revocation of licenses to possess and to carry guns. According to article 9 of the law, a license must be revoked if the holder commits a crime or if a third person obtains the gun because of the license holder's negligence and uses it to commit a crime or suicide. Furthermore, according to article 22 of the regulation if the license holder becomes mentally ill, an alcoholic, a compulsive gambler, or a vagrant, or if he/she is suspected of being a member of a terrorist group by the police the license has to be revoked.

Search and Seizure

In Turkey the increase of terrorist activities paralleled the increase in the possession and use of illegal guns. Although the law of 1953 has been amended several times to tighten the controls the expected results have not been attained. According to article 8 of the law, the Council of Ministers can authorize the governors to conduct area-wide searches. Such searches have been conducted especially in the eastern and southeastern part of Turkey and sizeable caches of firearms and ammunition have been seized.

Manufacture

Manufacture of firearms for private use is forbidden except by the Machinery and Chemical Industries established by special law to supply arms and ammunition to the armed forces. Repairs of licensed guns can be made only by this organization.

Import

The Department for the Support of the Defense Industries can import firearms to supply license holders and the Department for Sports can import rifles, guns and ammunition to be used only in sports and hunting. The law forbids anyone else from bringing firearms into the country for private use except for the following:¹⁹

- a. diplomats based on reciprocity
- b. those staff of foreign embassies and consulates
for whom the permission has been asked by the

¹⁸ Art. 1, Suppl., *supra* note 9, at 4768-2.

¹⁹ Art. 2, *supra* note 9, at 4766-1.

- Ministry of Foreign affairs and granted by the Ministry of Internal Affairs based on reciprocity
- c. officials who are given firearms with ammunition as gifts by the President, Prime Minister or a member of the government of foreign state if such can be documented
- d. Turkish ambassadors, consul generals, military officers and the members of the police force, restricted to importing one firearm one time only.

Sale

In Turkey private gun dealers are not permitted to operate. For private use, guns may be bought only from the Machine and Chemical Industries or other license holders with a sale permit obtained from the governors. Sale permits may be issued only to persons who may be allowed to carry or possess guns. The permit must be registered with the Department of Police before being submitted to the Machine and Chemical Industries; which must report the sale to the Department of Police with the information of the identity of the buyers and the specification of the gun. The buyer must obtain his/her license within a month.²⁰

A license holder can sell or give as a gift his/her firearm to a person who is eligible to hold a gun license,²¹ but some licensed firearms are not allowed to be sold, i.e., relic firearms and guns imported by persons under article 2 of the law. Such guns may only be passed to one's heirs. The sale of antique firearms, on the other hand, is not restricted by law.

Offenses and Penalties

The Law of 1953 added several new criminal offenses to the ones already existing in the Criminal Code and prescribed more severe penalties to some of the existing offenses. As previously mentioned, according to the Criminal Code, to carry guns in the cities without a license, to carry loaded guns in large gatherings even by license holders, to give a gun to a child under the age of fifteen, to a person who does not know how to use it, or a person mentally incapable, and fail to take adequate precaution to prevent them from obtaining it are offenses punishable by a fine.

According to the law of 1953 possessing or carrying any firearms and ammunition without a license is forbidden, and guns must be confiscated whenever found. Violation of this law is a serious crime and carries a penalty from one to three years' imprisonment and a fine. If only one gun and a reasonable amount of ammunition is kept without a license at home or in an office a lesser penalty, imprisonment from one to two years and a fine, may be imposed. However, the penalty more than doubles, i.e., imprisonment from five to eight years and a fine, when the firearm has a capacity of more than ten bullets or is automatic or telescopic or the number of firearms or

²⁰ Art. 19, *supra* note 10, at 8.

²¹ Art. 18, *id.*

the amount of ammunition in violation is dangerously high.²² The Turkish legislature deemed the above penalty insufficient for carrying or possessing war weapons,²³ and doubled the penalty for offenders.

Although the law defines the war weapons whose possession doubles the penalty, it does not define the terms "reasonable" or "dangerous" which are used in the law. How these words are interpreted by the courts is very important to offenders because the severity of their penalties will vary depending on the interpretation. During the debates of article 13, some members of parliament objected to the wording of the article because they were of the opinion that passing the article without defining these words would create inconsistencies in application. In fact court decisions do differ on the amount of ammunition and number of guns that should increase or decrease the penalty. There is no set amount or number. Courts take into consideration all the circumstances of the case and decide whether the penalty can be increased or decreased based on the number of guns or the amount of ammunition carried or possessed by the offender.²⁴

Article 12 of the law provides penalties for illegal import, attempt to import, manufacture, sale, storing for sale, and transport of firearms and ammunition. Perpetrators of the above crimes may be imprisoned from five to eight years and be fined. The punishment is increased to eight to twelve years and a fine if two or more persons are involved.

The legislature was more concerned about organized illegal gun dealers who supplied firearms, especially to terrorist organizations. They therefore prescribed more severe penalties when the above crimes are committed by members of an organization established to manufacture, import, store and/or transport firearms. The penalty is imprisonment from ten to fifteen years and a fine. If the number of the firearms is high or the amount of ammunition is a dangerous quantity or the firearm has the capacity of more than ten bullets or is automatic, telescopic, (or works in a similar fashion) the above penalties had to be increased by half. However, if both conditions exist at the same time, i.e., number of automatic telescopic or similar firearms and a dangerous quantity of ammunition, the penalty has to be doubled.

In the hands of terrorists, arms and ammunitions manufactured by war industries for the armed forces not only endanger lives but also the very existence of the state. Punishment for those who are involved in any of the above activities to supply such arms is doubled.²⁵

²² Art. 13, *supra* note 9, at 4768-1.

²³ Art. 5, Suppl., *id.*, at 4769.

²⁴ A. Mumin Kavalai, *Hukukumuzda Silahlar ve Patlayici Maddeler* [Our Laws on Arms and Explosives] 301-314 (1983).

²⁵ Art. 5, Suppl., *supra* note 9.

Furthermore, the law requires the confiscation of all implements and vehicles that are knowingly used in the commission of the above crimes even when owned by third persons.²⁶

**PENALTIES FOR ILLEGAL MANUFACTURE, IMPORT, STORAGE, TRANSPORT
AND SALE OF FIREARMS WHEN INVOLVING:**

Number of Persons Involved	Ordinary Firearms	Firearms in Dangerous Quantities	Automatic & Similar Firearms	War Weapons	Automatic & Similar Firearms in Dangerous Quantities	War Weapons in Dangerous Quantities
One Person	5-8 yrs.	7.5-12 yrs. + fine	7.5-12 yrs. + fine	10-16 yrs.	10-16 yrs.	15-24 yrs.
More than one person	8-12 yrs. + fine	12-18 yrs. + fine	12-18 yrs. + fine	16-24 yrs. + fine	16-24 yrs. + fine	24-36 yrs.
Members of an organi- zation established to commit above offenses	10-15 yrs. + fine	15-22 yrs. + fine	15-22 yrs. + fine	20-30 yrs. + fine	20-30 yrs. + fine	30-45 yrs.

²⁶ Art. 12, *supra* note 9, at 4768-1

Conclusion

As previously stated, the firearms law of Turkey has been amended several times imposing more and more restrictions and penalties to cope with the ever increasing use of firearms in the commission of crimes. Without reliable statistics, it is impossible to ascertain the effect of the law in reducing the number of unregistered guns in the hands of the public, but it certainly has pushed the price of illegally sold guns out of the price range of ordinary persons. Although the governors at their discretion may grant licenses to possess guns, they have been very selective and granted only very few such licenses. In some regions of Turkey, especially in the eastern parts of the Black Sea, men are used to having guns and for some of them it is a proof of their manhood. If they cannot buy firearms legally they turn to illegal gun dealers. Even severe penalties of the firearms law do not deter them, but most of them cannot afford the high prices of illegally imported guns and look for another alternative, guns manufactured in homes by gunsmiths. In the eastern part of Turkey's Black Sea coast this old trade is flourishing as the demand for homemade guns is increasing.²⁷

Bibliography

- Alicanoglu, Mahmut. *Izanlı içtihatlı, notlu Ateşli Silahlar ve Bıçaklar Kanunu ve tatbikati* [Annotated firearms and knives law]. Istanbul, Kurtuluş Matbaası, 1972. 168 p.
LAW Tur 4 Firearms 1972
- Çatalkaya, Cevdet & Özkaya, Hasan. *Ilmi ve kazai içtihatlı ateşli silahlar ve bıçaklar hakkında kanunşerhi* [Annotated firearms and knives law with supreme court decisions]. Ankara, Ayyıldız Matbaası A.Ş.
LAW Tur 7 Çata 1967
- Çoker, Fahri and Sadi Kazancı, eds. *Türkiye Cumhuriyeti Kanunları* [Laws of the Republic of Turkey]. Istanbul, Kazancı Matbaacılık Sanayii A.Ş., 1972-. g.v. LAW Tur 2 1972-
- Gözübüyük, A. Pulat. *Ateşli silah ve bıçaklara dair mühim bir içtihat* [An important supreme court decision concerning firearms and knives]. 45:6 Adalet Dergisi, 1954. 731-734.
LAW PER
- *Ceza hukukunda silah ve bıçak mefhumları* [Concept of arms and knives under criminal law]. 36:11 Adalet Dergisi, 1945. 1138-1149. LAW PER
- *Silah çekme ve bıçak çekme üzerine tenkidi bir inceleme* [A critical study of the offense of drawing a gun or a knife]. 37:4 Adalet Dergisi, 1946. 380-387. LAW PER
- *Silahlara ait suçlar ve cezalar hakkında mukayeseli bir inceleme* [A comparative study of firearms offenses and penalties]. 40:2 Adalet Dergisi, 1949. 1109-1120. LAW PER

²⁷ *Supra* note 24, at 222 and 224.

Kavalali, A. Mumin. *Ateşli Silahlar, bıçaklar ile diğer aletler hakkında kanun* [Firearms, knives and other implements law]. Büyükçekmece, Kazancı Yayınları, 1980. 328 p.

LAW Tur 4 Firearms & Knives 1980

----- *Hukukumuzda silahlar ve patlayıcı maddeler* [Our laws on arms and explosives].

Büyükçekmece, Kazancı Yayınları, 1983. 867 p.

LAW Tur Kava 1983

Kayali, Osman Fikret. *İçtihatli ceza tatbikatında silah suçları ve silah kullanma yetkisi ile Ruhsat alma durumu* [Firearms offenses, permission to use firearms, firearm licences and relevant Supreme Court decisions]. İstanbul, Dilek Matbaası, 1968. 144 p. LAW Tur 7 Kaya 1968

Kor, Şuayyip. *Türk ceza kanununun 550 inci maddesi hakkında bir düşünce* [Thoughts on article 550 of Turkish criminal code]. 35:4 Adalet Dergisi, 1944. 347-348. LAW PER

T. C. Resmi Gazete [Official Gazette of Turkey].

Toker, Selahattin. *Polisle ilgili kanunlar* [Laws concerning police]. Ankara, Ajans Türk Matbaası, 1967-. 2 v.

LAW Tur 4 Police 1967-

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Legislation on Gun Control

In the Soviet Union a distinction is made for the purpose of legislative control between rifled firearms and smoothbore hunting guns. The former are under strict control, and their acquisition and possession with a proper permit issued by police agencies or state security organs are prohibited and punishable under the provisions of administrative and criminal law. The laws regulating hunting will be discussed below.

The basic law ¹ concerning gun control was enacted in 1924 and, notwithstanding some changes caused by renaming the agencies involved, is still in force. This Decree established three classes of weapons (including cannons, munitions, and explosives):

Class A: Those used exclusively by the Soviet Army and Navy (items listed in paragraphs 1-5 of the Decree).

¹ Decree of the Central Executive Committee and the Council of Ministers of the USSR of December 12, 1924 (*USSR Law Collection* 1924, No. 29, item 256).

Class B: Those which may be used by the Soviet Army and Navy (items listed in paragraphs 1-3 of the Decree).

Class C: Those not used by the Soviet Army and Navy (items listed in paragraphs 1-4 of the Decree).

All Class A weapons and the items enumerated in paragraph 1 of Class B ² are not subject to private ownership or acquisition (*res extra commercium*), and only the remainder (Class B, paras. 2 and 3, and Class C) are as listed below:

Class B:

2. Caucasian and Asiatic types of weapons: daggers, yataghans, and other cutting and thrusting weapons; and
3. Explosives and detonating substances used for blasting purposes.

Class C:

1. Revolvers and pistols with cartridges of a type that do not belong in Class A and B;
2. hunting guns, including automatic, smoothbore and rifled-percussion ones; flintlocks, matchlocks, and those with a recoiling barrel (carbine types); rifled guns with sliding, dropping or rising locks that cannot use rifle cartridges but can use revolver cartridges, double-barreled and multi-barreled guns for small shot and bullets; and cartridges for guns listed in this paragraph.
3. silent hunting weapons of types other than those listed in Classes A and B; and
4. hunting gunpowder.

The acquisition of hunting guns listed in Class C is regulated by administrative agencies.

Possession and Use of Hunting Guns

The principal all-union enactment regulating hunting is the USSR Law on the Protection and Use of the Animal World adopted on June 25, 1980. ³ Hunting rules and management are left largely to union republic regulation. State, cooperative, and other social enterprises,

² Types of arms listed in Class A that may be used by the Armed Forces. A list of such arms is revised from time to time by the proper authorities in agreement with the state security organs.

³ *Vedomosti Verkhovnogo Soveta SSSR*, No. 27, 1980, text 530.

institutions, and organizations may be granted the right to hunt for commercial purposes on designated hunting grounds.

Under the Model Hunting Rules, all USSR citizens who are 18 years old, who are members of a hunters' society, who have passed a hunting test, and who have paid a state fee may hunt with a firearm. The acquisition, registration, re-registration, and keeping of hunting weapons is regulated by a Decree of the USSR Council of Ministers of July 23, 1975.⁴ Hunting weapons may be sold only through the authorization of internal affairs agencies and upon the presentation of a hunting permit. Once acquired, the weapons must be registered within a month at the internal affairs agency and re-registered every three years.

Poaching is a criminal offense (art. 166 of the RSFSR Criminal Code)⁵ and can result in confiscation of weapons and game, substantial compensatory damages, and possible deprivation of freedom. State and social hunting inspectors enforce the regulations.

Offenses and Penalties

Penalties for the unauthorized possession of weapons are those imposed by (a) a court sentence, or (b) an administrative fine.

(a) Although there is no federal criminal law for the whole of the USSR, all the previous criminal codes of the Soviet constituent republics, as well as all the present ones in force since 1961, have provided criminal penalties for the unauthorized acquisition, illegal carrying or stealing of firearm, ammunition, or explosives. Article 218 of the Criminal Code of RSFSR stipulated that the carrying, keeping, acquiring, making or marketing of a firearm (except a smoothbore hunting piece), ammunition, or explosives, without an appropriate permit, shall be punished by deprivation of freedom for a term not to exceed five years. The article notes, that a person who has voluntarily turned in a firearm, ammunition, or explosives, which were in his possession without an appropriate permit, shall be criminally responsible. Article 218 of the same Criminal Code imposes criminal responsibility for stealing of firearm, ammunition or explosives. The punishment ranges up to fifteen years' deprivation of freedom.

The careless keeping of a firearm is criminal offense punishable under article 219 of the Criminal Code. It provides for the deprivation of freedom for a term not exceeding one year or by correctional labor for the same term. Under article 251 Soviet military personnel are responsible for carelessness in handling of firearms which inflict bodily injury or death.

(b) Although the unauthorized carrying, possession, etc., of certain hunting weapons are not punishable under the Soviet criminal codes, they are, nevertheless, subject to administrative

⁴ *Sobranie Postanovlenii Pravitel'stva SSSR*, 1975, No. 18, p. 110.

⁵ *Ugolovnii Kodeks RSFSR* (Moskva, Iuridicheskaya Literatura, 1986).

finer. Such fines are imposed for the failure to obtain a hunting license, to register or re-register acquired firearms, etc. In case of a recurrence, the firearms may be confiscated.⁶

An Edict of the Presidium of the Supreme Soviet of the RSFSR of October 14, 1963,⁷ makes punishable by a fine, imposed in an administrative procedure, various acts involving weapons which are not grave enough to be punished (in judicial procedure) according to the Criminal Code. This Edict embraces such acts as the use of firearms (by persons who have been granted a firearms permit) in populated areas, the lending or sale of smoothbore hunting firearms to persons who have no hunting permit, etc.

Pursuant to the Edict of the Supreme Soviet of the RSFSR of September 25, 1969, on Confiscation of Firearms [Owned by] Persons Committing Antisocial Acts,⁸ hunting guns, other firearms, and ammunition belonging to persons who consistently disturb the public order, who are alcoholics or are mentally ill can be confiscated by the decision of the local soviets of people's deputies or by their executive committees.

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⁶ I. I. Evtikhiev, *Administrativnoe Pravo SSSR* 226-229 (1948); S. S. Studenikin and I. I. Evtikhiev, *Sovetskoe Administrativnoe Pravo* 298-299 (1950); A. E. Lunev, joint author, *Sovetskoe Administrativnoe Pravo* 432-433 (1960).

⁷ *Vedomosti*, No. 41, 1963, text 719.

⁸ *Id.* No. 4, 1969, text 1231.