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GUN CONTROL LAWS IN FOREIGN COUNTRIES

Prepared by Members of the Staff

Revised 1976

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ARGENTINA

Control of handguns in Argentina is governed basically by Law 20,429, its regulation and amendments, and Law 20,467, all enacted in 1973.

I. The Basic Statute

The basic statute on firearms is Law 20,429 of May 21, 1973,^{1/} which repealed the previous basic statute on the matter, Law 13,945 of September 15, 1950.^{2/}

A. General Scope

The current enactment provides that the acquisition, use, possession, carrying, transfer under whatever title, transportation, entry into the country, and importation of firearms or explosives designed for launching by hand or any other throwing devices, "aggressive" chemicals of whatever kind, and any other materials classified as weapons of war, gunpowder, and related substances, as well as weapons, ammunition, and other material classified as of civil use are subject to control under the current statute throughout the national territory with the following exceptions:

a) Activities concerning weapons, materials, and substances referred to above, when performed by the armed forces of the nation.

b) Sharp and blunt weapons, provided they are not included either as integral parts of or as accessories to items classified as weapons of war.

^{1/} Boletin Oficial [B.O.], July 5, 1973.

^{2/} B.O., Oct. 13, 1950.

B. Central Authority and Enforcement Agency

All the activities in the purview of this law and concerning materials classified as weapons of war, importation of weapons of civil use, and any other activities involving the use of gunpowder, explosives, and related substances are under the control and supervision of the Ministry of Defense.

The control of weapons of war and related activities as well as the importation of weapons of civil use and related activities is entrusted to the Registro Nacional de Armas (National Registry of Arms). Concerning gunpowder, explosives, and related substances, surveillance is entrusted to the Dirección General de Fabricaciones Militares (Board of Military Industries).

The control of all other activities related to materials classified as weapons of civil use is entrusted to the local authorities under the supervision of the Ministry of Defense, through its National Registry of Arms.

The Ministry of Defense is empowered to summon private individuals, establishments, or corporations to appear before the National Registry of Arms at its discretion for inspection. Appearance of the parties concerned before the Registry shall always be supported by all related documentation.

Storage, shops, or repair and display areas may be subject to inspection and surveillance at all times. Alterations or modifications of original versions of weapons are penalized, except when expressly authorized

by the competent authority who may act only by request of the legitimate owners or users.

The executive branch is empowered to issue regulations concerning the requirements for recording of registrations in the National Registry of Arms. These regulations shall include terms, format, number of books, and supporting information, as well as procedural provisions to be observed for importation. Content and format of bills of lading, invoices, certificates, listings, and related shipping documents shall also be subject to regulatory measures.

C. Basic Classification

All weapons are classified as follows:

- Weapons of war;
- Weapons of civil use; or
- Gunpowder, explosives, and related substances.

The executive branch is empowered by the statute to issue pertinent regulations for each of the above classes. These regulations are expected to determine, from among the weapons in the first two classes, which are to be assigned for the exclusive use of the armed forces and the police, which are to be subject to conditional or restricted civil use, or to special uses, and finally, which are absolutely forbidden to be used.

All the materials subject to the provisions of this statute shall bear a serial number and other factory or authority identification markings, either engraved or stamped in accordance with the regulations to be issued.

D. Manufacture and Shipping

The manufacture and shipping of these materials will continue to be governed by Law 12,709 and the pertinent customs regulations. These materials are barred from entering the national territory except in those cases specifically permitted by the laws and regulations. Bills of lading, consular invoices, certificates of shipping, and any other documentation concerning these items shall be neither accepted nor certified by the consulates of the republic if the name of the addressee, receiver, or consignee can not be determined.

The use of the postal services is forbidden for the shipping of these materials. The same prohibition is applicable to the circulation thereof within the national territory. Exceptions are restrictively provided by the law.

E. Weapons of War

All weapons of war within the national territory shall be registered in the National Registry of Arms, with the exception of those assigned to the armed forces. Persons within the purview of this statute shall provide the National Registry authorities with all the data required within the terms and in the manner legally prescribed.

The importation of weapons in this class and their entry into the national territory are matters governed by the following basic norms. Private individuals are permitted to import these items only after express

authorization has been granted. All items in this class shall otherwise be retained by customs until full evidence of such authorization has been presented. There are alternatives for cases in which the authorization was denied. When there is no action on the part of the affected receiver within the term of 180 days, counted from the date of the notification of the denial, the State shall seize and expropriate the shipment. The authorized entry of such material into the country shall only be made through the ports and custom houses designated by the executive branch.

Armed vessels and vessels loaded with materials included in this class are barred from cruising in the territorial waters of the republic, except when a license to do so has been issued by the competent authority. The same restriction is extended to aircraft flying over these waters and the national territory.

A special license is also required when there is transit of weapons of war through the national territory en route to another country. Temporary storage of this material when needed or required will be allowed only in places especially designated.

Weapons of war may not be subject to transactions of any kind except under the following circumstances. The selling of items in this class may only be conducted by duly registered importers, industrialists, or businessmen in favor of individuals, establishments, or corporations so designated by this statute. They are: security personnel, members of the

police force, members of the armed forces, settlers of underpopulated areas or regions where enforcement agencies are either scarce or non-existent, professional hunters, rifle associations and their members, vessels and airports (with restrictions), and institutions with a demonstrated need for security. Any loss or misplacement of weapons by the above shall be immediately reported to the National Registry of Arms through the local authorities. Transactions involving weapons whose use is forbidden are, as a general rule, outlawed. Exceptions are to be expressly granted by the executive branch.

Persons and private or public institutions who have in their possession weapons of war at the time of the enactment of this law shall register them in the National Registry of Arms within the terms established thereby. Individuals affected by criminal charges related to illegal possession of weapons in this class are given the benefit of amnesty, provided they proceed to register within the prescribed terms.

The statute further provides for a number of procedural and penal aspects as well as for special norms on seizure and expropriation of privately owned weapons in this class.

All licenses issued prior to the enactment of this statute either for the possession or for the carrying of weapons of war shall be ratified and reissued by the competent authority, provided they conform to the current statute and regulations. Materials in this category which are not

to continue in the possession of private individuals, establishments, or corporations shall be transferred to qualifying legitimate users within a period of 90 days from the date of the statute's publication. If this term has expired and no transfer has taken place, the material concerned shall be declared of public utility by the state and expropriation proceedings shall be established. Indemnification is provided for the affected parties.

The Ministry of Defense, at the request of the National Registry of Arms, shall redistribute the expropriated materials among the units of the armed forces, the police, and the other institutions designated as legitimate users of weapons of war.

F. Weapons of Civil Use

All materials classified in this category are subject to control by the authorities according to the following general norms:

In the Federal Capital and other areas under federal jurisdiction, the transfer of materials under any title, as well as their use, possession, and carrying, shall be controlled by the Federal Police, the National Gendarmerie, and the Argentine Naval Police, within their respective jurisdictions. In the provinces, such control is entrusted to the local police, which will discharge its responsibilities in this respect under the supervision of the Ministry of Defense.

Only persons of legal age are entitled to secure a license for the exercise of the rights related to the weapons in this class, in accordance with the formalities to be established.

Owners or managers in charge of establishments or business organizations trading in weapons of civil use, even when such activities are undertaken accidentally or as an accessory to a main line of business, shall keep a special record thereof and comply with all the other prescribed norms.

Official lending banks and pawnbrokers shall also keep records of all activities related to the auctioning, whether judicial or extrajudicial, of weapons of civil use. Such sales shall be effected only if duly authorized by competent local authorities.

Authorized individuals or organizations with a stock of weapons of civil use shall maintain an inventory of all materials in this class with specific references to new entries and all other transactions thereon.

Regulations to be issued for the control of the transfer of weapons of civil use from one private individual to another shall invariably include provisions for the supervisory participation of local authorities and for the issuance thereby of certificates of ownership or licenses. A certificate of either ownership or possession is not a license for the carrying of such weapons. The latter is a special and separate document to be issued under the pertinent provisions.

G. Gunpowder, Explosives, and Related Substances

Importers, exporters, manufacturers, users, and any other person or establishment engaged in either trade or industrialization of material for which gunpowder, explosives, or related substances are required shall

register with the Registry to be established by the Ministry of Defense. The above activities shall be conducted with strict observance of the regulations. Detailed regulations on the storage, handling, transporting, manufacturing, and marketing of such materials shall be issued by the executive branch with special attention to safety and security concerning the above activities.

H. Penalties

Penalties for violations of this statute and regulations thereof shall be implemented by the designated authorities. The penalties are the following:

- (1) Administrative warning.
- (2) Fine of 20 to 2,000 pesos when the violators are private individuals or individual agents.
- (3) Fine of 200 to 20,000 pesos, when the offenders are stores, industrial plants or factories, mining organizations, builders, importers, exporters, or their corporate agents.
- (4) Temporary suspension of the license, from 1 month to 1 year when the offender is a legitimate individual user, and from 3 days to 1 year when the offender is a store, factory, industrial establishment, mine, builder, importer, exporter, or their collective or corporate agents.
- (5) Closedown of the establishment for a period of from 3 days to 7 months.
- (6) Seizure of the material affected when the same offender commits two or more violations. In this case, the penalties will be increased twofold.

Special penalties are prescribed for recidivists, and appeal procedures are provided for.

II. The Law on Offenses Against the General Security

On May 23, 1973, two days after the enactment of the basic law, the Argentine legislature passed Law 20,467,^{3/} concerning offenses against the general security (seguridad común), amending article 189 bis of the Criminal Code. The fundamental aspects of this statute may be paraphrased as follows.

The person who, with the purpose of perpetrating a crime against the general security, manufactures, supplies, acquires, feloniously takes, or keeps in his possession bombs, materials or devices capable of releasing nuclear energy, explosive or flammable substances and toxic gas, firearms and their ammunition, and substances or materials used for the manufacture thereof, shall be penalized with imprisonment from 2 to 6 years. The same penalty is applicable to individuals who knowingly either participate in the perpetration of an offense against the general security or give instructions for others to act in such a manner.

The individual who manufactures, supplies, acquires, feloniously takes, or has in his possession the objects or materials referred to above, without proper authorization when required, shall be penalized with imprisonment from 3 months to 3 years, except when the violation concerns weapons and ammunition of civil use. The stockpiling of weapons and related

^{3/} B.O. Aug. 13, 1973.

materials of civil use is penalized with imprisonment from 3 months to 6 years. When the stockpiling concerns weapons or ammunition of war the prescribed penalty is from 2 to 6 years of imprisonment.

When the above offenses are perpetrated by the heads and officers of the police force, the penalties shall be increased twofold.

III. The Regulation of the Basic Statute

The basic regulation of Law 20,429 was issued by Decree 4,593 of May 21, 1973.^{4/} Its text includes 152 provisions dealing in detail with the major basic principles established by the law.

The decree itself is actually comprised of five articles which approve the regulation appended thereto as Anexo I, establish the date the regulation shall become effective (150 days after the publication of the decree), provide for the Ministry of Defense to submit a proposal to the executive branch for the structural and functional organization of the National Registry of Arms within the term of 30 days from the date of the publication of the decree, and finally, repeal decrees 3,189 of May 28, 1960, and 8,172 of November 22, 1972, as well as chapter XII of decree 26,028/51.

The regulation contains detailed provisions on the scope of the subject and definitions on categories and specific types of weapons as well as ammunition. The basic classification established by the law is

^{4/} B.O., July 5, 1973.

reaffirmed, and lists of specific weapons are provided for each class. Specific norms for parts, markings and serial numbers, alterations and repairs, certifications, transportation, and inspection are also covered.

One chapter of the regulation is devoted to the class of weapons of war. It includes the supervisory functions of central and delegated authorities, registration, legitimate users, issuance of permits and licenses, distribution, manufacture and export, importation by private persons or entities, authorized ports and custom houses, transit, storage, transportation, and individual carrying. Additional sections cover specific aspects of commercial transactions, auctioning, transfer between private parties, and prohibited materials. Weapons of civil use are subject to similar control.

There are special sections on precautionary measures, collection of fines, and seizure, and transitory provisions on reporting violations, special supervision, and rates and fees.

The regulation is appended with the official form to be adopted as the record and permit to be filled by sellers when transacting purchase and sale of weapons of civil use.

Chapter VI, Section I of the above regulation of the basic law was again amended by Decree 331 of August 3, 1973.^{5/} The amendment affected

^{5/} B.O., Aug. 10, 1973.

articles 144 to 150, the transitory provisions concerning the filing of a statement with the National Registry of Arms.

IV. Other Regulations

Further regulations on the control of firearms have been issued as follows:

(1) Decree 1,756 of June 8, 1974, ^{6/} extended for 1 year the effects of Decree 3,610 of April 30, 1973, concerning safety measures to be observed in the transportation of arms, gunpowder, munitions, and explosives.

(2) Decree 395 of February 20, 1975, ^{7/} approves the new regulation of the basic Law on firearms and explosives (Law 20,429), and supersedes Decree 4,693 of May 21, 1973, as amended.

(3) Other administrative aspects were covered by Resolution 810 of July 14, 1975, ^{8/} and Decree 2,450 of September 5, 1975. ^{9/}

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July, 1976

^{6/} B.O., June 14, 1975.

^{7/} B.O., Mar. 3, 1975.

^{8/} B.O., July 23, 1975.

^{9/} B.O., Sept. 30, 1975.

AUSTRALIA

The control of firearms in Australia is regulated through the legislatures of each of the Provinces. There are three basic types of acts in which this is accomplished: the Firearms Acts, Police Offenses Acts, and the Pistol License Acts. We have chosen to summarize the Firearms Acts of Queensland as typical of this type of legislation, together with the pertinent regulations.

QUEENSLAND

The use of handguns in Queensland is covered by the Firearms Acts, 1927-1967^{1/} and the Firearms Regulations, 1946, as amended.^{2/}

A "concealable firearm" (handgun) is defined as "any firearm of any length of barrel--(a) designed, adapted or modified so as to be reasonably capable of being fired from the one hand; and, (b) reasonably capable of being concealed about the person" (§ 2).

The following persons are exempted from the act: (a) members of the defense forces and police or prison officers; (b) persons assembling or handling firearms for the Commonwealth or the State; (c) anyone performing experiments with firearms on behalf of the

^{1/} The Firearms Acts, 1927-1959, 5 Queensl. Stat. 765 (1962), amended by the Firearms Acts Amendment Act of 1967, No. 9.

^{2/} The Firearms Regulations, 1946, 166 Queensl. Gaz. 163-170 (January 25, 1946), amended by the Firearms Regulations Amendments, 1959, 202 Queensl. Gaz. 566, 2387 (September 19, 1959, December 23, 1959), and the Firearms Regulations, 1965, 219 Queensl. Gaz. 194 (May 8, 1965).

Minister; and, (d) members of a rifle club when using the weapons for the purposes of the club (§ 2A).

A person may not buy, carry, or use a handgun without first obtaining a non-transferable license for each firearm used (§ 3). The application for a license, using a prescribed form,^{3/} is made to the police officer in charge of the division station. An inquiry is then conducted to determine if the applicant has good reason for carrying a gun and whether his doing so will not endanger the public (§ 4(2)). The application and the police report are sent to the inspector of police at the Criminal Investigation Branch, Brisbane, who may issue or refuse to issue a license to the applicant (§ 4(3)). No license will be issued to a person under 18 years or to one of unsound mind, intemperate habits, or a known criminal or reputed prostitute (§ 4(4)).

If the applicant is refused the license, he may appeal to the Minister who decision is final (§ 7(A)). The license remains in effect until December 31 of the year issued and an application for renewal must be submitted 60 days prior to that date (§ 8). The inspector of police at the Criminal Investigation Branch, Brisbane may revoke any license upon receiving a written report from the local police station that a person is in some way "unfitted

^{3/} The Firearms Regulations, 1946-1965, Sch. A, Form 1.

to be entrusted with a concealable firearm" (§ 9(i)). The firearm must then be handed in to the police station or to a dealer for disposal or sale, the proceeds of which are given to the former owner (§ 9(iv), (vi)).

Special licenses may be issued to members of pistol clubs for carrying a gun to and from the range and for firing on the range only, ^{4/} or to the manager or an employee of a bank or corporation for the sole purpose of protecting the property of the firm in its possession or while being conveyed to or from the premises (§ 4(5)).

Dealers in firearms or in the repair of firearms are required to register with the police and obtain a certificate of registration, following the same procedure as that for obtaining a license (§ 7). Dealers must also keep records of purchases and sales of concealable firearms which are subject at all times to police inspection (§ 7B).

Persons are prohibited from carrying any article appearing to be other than a firearm that is capable of discharging any shot, bullet or other missile (§ 7E). A member of the police force may search anyone in any public place suspected of having a handgun without a license. If the individual does not surrender the firearm on demand, he may be arrested on the spot without a warrant (§ 9).

^{4/} Firearms Acts, 1927-1967, § 4(4A). (See also § 4C).

The inspector or sub-inspector of police is authorized to issue a prohibition order to any person he believes should not have firearms in the interest of public peace (§ 15). No person who is intoxicated may carry a concealable firearm and no one may lend a gun to another (§ 15A). The discharge or carrying of firearms on Sunday is also prohibited (§ 11A).

A person guilty of an offense under this act, if no specific penalty is provided, shall be liable to a penalty of up to \$200 (Aust.) or imprisonment for up to 6 months or both, and for a second or subsequent offense, to a penalty of up to \$400 (Aust.) or imprisonment for up to 1 year or both (§ 16).

The Governor in Council is empowered at any time, if the interest of public safety so warrants, to issue a proclamation demanding that any person who has possession of a firearm relinquish same to the Minister or other authorized person. The proclamation may apply to the whole State or any portion thereof (§ 19).

The Firearms Regulations, 1946-1965 provide for the necessary forms (Sched. A), the information required to be kept in the register of concealable firearms (Sched. B), and the required fees for obtaining a license or the certificate of registration (Reg. 13).

If any firearm is lost, stolen, transferred, sold or destroyed, the licensee must notify the police within 7 days (Reg. 19). If the licensee moves to a new address, he must notify the police within 28 days (Reg. 20).

Australia

19.

Regulations also cover the procedures for obtaining duplicate licenses and certificates (Regs. 9, 10, 11).

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AUSTRIA

I. Introduction

The Austrian Weapons Act (Waffengesetz) of 1967^{1/} is the original act still in force. It was amended in 1971,^{2/} 1973,^{3/} and 1975.^{4/} The amendment of 1971 added to the category of the hand weapons covered by the original law--i.e., handguns with a barrel length of up to 30 cm.--by including guns with a barrel length up to 60 cm. The other amendments reflect the changes resulting from changes in the voting age and the enactment of the new Criminal Code.^{5/}

II. Administration of the Weapons Act

Under Austria's Constitution, legislating on weapons is a federal matter and the implementation of the Act is a police concern. The Weapons Act, as amended, is administered by the Federal

^{1/} Schuppich-Sporn, 2 Oesterreichisches Recht, item 330, Waffengesetz (Weapons Act) (Salzburg, 1968).

^{2/} Waffengesetz-Novelle 1971 (Weapons Act, 1971) Bundesgesetzblatt [official law gazette of Austria, hereafter cited as BGBl.] 109/1971.

^{3/} Waffengesetz-Novelle 1973 (Weapons Act, 1973) BGBl. 168/1973.

^{4/} Waffengesetz-Novelle 1975 (Weapons Act, 1975) BGBl. 92/1975.

^{5/} K. Czeppan, Waffengesetz 1967 5-7 (Wien, 1975).

Ministry of the Interior (Sec. 45) and its local offices in the districts, the Bezirkshauptmannschaften. In a variety of matters, the Ministry of the Interior acts together or in agreement with other central executive agencies, such as the Ministry of Defense, concerning military weapons and ammunition, even though military weapons and ammunition are not regulated by the present Act (Secs. 30 and 40), or the Ministry of Trade and Commerce in matters of gun and ammunition trade or importation (Secs. 11, 31-33 and 44). Criminal justice in matters of penal sanctions, according to Section 36, is administered by ordinary courts.

III. License System

Administrative decisions granting applications are made in the form of permits; a denial is made in the form of an administrative act, a Bescheid.

The most comprehensive permit is the gun pass (Waffenpass); it authorizes its holder to acquire, possess, carry and import a hand weapon and its ammunition (Sec. 16). A gun pass is also an implicit authorization to acquire, possess and carry any other unprohibited weapon or ammunition. The need to acquire, possess and carry a hand weapon must be justified by the applicant (Sec. 19). In addition, in order to qualify for the right to have a gun pass, a person must establish his dependability, be 21 years of age, and be an Austrian

citizen (Sec. 17). Otherwise, a gun pass may be issued at the discretion of the administrative agency.

A gun card (Waffenbesitzkarte) is a limited permit authorizing the holder to acquire and possess a hand weapon and its ammunition, but not to carry it.

The term of validity for both the above permits is unlimited; however, the issuing agency has the statutory duty to review the holder's dependability status every five years and to institute proceedings for revocation of the permit if its findings so warrant (Sec. 16, par. 2). An alien resident may apply for a gun permit, but the terms of such permits, if issued, are limited.

The third type of permit is the weapons certificate (Waffenschein) (Sec. 29) authorizing its holder to carry weapons other than handguns. It is a subsidiary document issued to a person who has not applied for a gun pass.

Finally, a special permit is required when a person not in possession of a gun pass or a gun card intends to import another weapon not requiring special qualification, as in the case of a gun pass or gun card. This is the certification (Bescheinigung) provided for in Section 27.

Hunting permits (Jagdkarten) are limited to hunting rifles and are not regulated by the Weapons Act. However, the Act does

entitle the holder to possess and carry certain stabbing weapons otherwise prohibited by the Weapons Act (Sec. 29, par. 2). A hunting permit may be revoked on the grounds of proven undependability, and the administrative decision will be forwarded for appropriate action to the agency which issued the hunting permit.

IV. Criteria of Dependability and Public Interest vs. Private Rights

The requirements for establishing dependability and for protecting public interests as provided by Sections 6 and 7 of the Weapons Act read as follows:

Sec. 6 (1) For the purpose of this Federal Act, a person shall be deemed dependable if the statement of facts warrants the assumption that:

1. he will not misuse or recklessly use the weapon;
2. he will use the weapon with caution and give it proper care; and
3. he will not turn it over to persons unauthorized to possess weapons.

(2) In no case shall a person be considered reliable if he:

1. has been sentenced by a final decision to a penalty involving deprivation of liberty for more than two months or a monetary fine amounting to more than 120 day fines, or on more than two occasions to a lighter sentence for using or threatening to use force in committing intentional attacks against limb or life, freedom, the property of another, or public morals, or intentional, generally dangerous activities, or for procuring, for high treason or other attacks on high government officials, for resisting government authorities or intentional punishable activities against the public peace;
2. has been sentenced by a final decision for smuggling exercised as a trade, by a band or with arms;

3. has been sentenced by a final decision for negligent use of firearms resulting in injuries or danger to people;
4. has been punished more than on two occasions for criminal acts committed while in a state of drunkenness; as long as the convictions (punishments) have not been expunged (served);
5. is given to the misuse of an intoxicating or addicting substance;
6. has been mentally sick or feebleminded;
7. has been unable to handle a weapon.

(3) [irrelevant]

Sec. 7. In the application of the discretionary provisions of the present Act, private rights and interests shall be given consideration to the extent that they may not disproportionately damage the public interest in protecting against inherent danger from the use of weapons.

Paragraph 1 of Section 6 first establishes the positive criteria from which the statement of facts about an applicant should be viewed and used to establish his claim to a permit. Only then does the Weapons Act continue with a demonstrative enumeration of groups excluded from the right to have a weapons permit. Similarly, while Section 7 gives precedence to the public interest, it qualifies that interest as legitimate only if it is disproportionately greater than all private rights and interests involved. Within these limits discretionary power is conferred on the administrative authority.

The Constitution of Austria provides for a supreme judicial review of all administrative decisions by the Administrative Court (Verwaltungsgerichtshof), and in cases where constitutional issues are involved, for a judicial review by the Constitutional Court (Verfassungsgerichtshof). Under these judicial safeguards,^{6/} an administrative officer in using his limited discretionary power had first to consider the equal protection of the law given to individual citizens. The administrative decision must rest on considerations that may be proved or disproved, i.e., by weighing all the evidence and measuring it against voluminous rulings to decide on whether or not "discretion amounts to arbitrariness."^{7/}

The issue of dependability may also come up when certain facts concerning a gun permit holder--which have become known to the administrative agency--warrant the assumption that he might use the weapons in his possession to endanger public security (Sec. 12). An interdiction issued in such a case, if appealed, has no staying effect. However, the issuance of such a prohibitive act is not within the discretionary power of the agency; it requires the weighing of all

^{6/} These judicial safeguards are about 100 years old.

^{7/} Erkenntnisse des Verfassungsgerichtshofes, Slg., Nr. 2602, 2631, 2717, 2869, and also B. 109/53.

evidence and proof. On the other hand, the definition of "public safety" is broad, and a judicial test has not come up as yet. An interdiction may be issued only against an individual person, not against a certain group of people.^{8/} A search requires a court warrant issued by a judge.

V. Juveniles

The possession of weapons and ammunition by persons below the age of 18 is prohibited (Sec. 14).^{9/} The administrative authority may grant exceptions to persons who have reached the age of 16, on the motion of their legal representatives, provided the authority is satisfied of the dependability and maturity of these persons in recognizing the danger inherent in the use of weapons. This provision is liberally applied, especially with regard to youths who hunt with their parents.

VI. Prohibited Weapons

The Weapons Act prohibits the possession and import of the following types of weapons: camouflaged firearms, folding guns, firearms with silencers or those made to discharge liquids or gases without

^{8/} Supra note 5, at 73.

^{9/} Nationalrat. XI. G.P. Stenographische Protokolle. Beilagen, Nr. 99. In the explanatory remarks to the government bill, this statement appears: "The prohibition comprises all weapons and ammunition, and also weapons of lesser effectiveness, such as those listed in Sec. 30: air guns between 4.5 and 5.5 mm caliber, gas-operated guns of less than 6 mm caliber, short-barrelled guns used for target shooting, etc."

the use for striking, stabbing or cutting. Equally prohibited (Sec. 11) is the import of new weapons or kinds of ammunition which may be a danger to public security. The administrative authority may seize prohibited weapons or ammunition without giving rise to a claim for compensation, if such objects are in the possession of undependable persons.

VII. Criminal Sanctions

The two categories of criminal offenses entail different kinds of sanctions. There are contraventions decided upon by the courts (Sec. 36) for unauthorized possession or carrying of hand weapons; unauthorized possession of prohibited weapons (Sec. 12); or possession of weapons and ammunition despite a prohibition imposed upon the offender (the fraudulent use of any permit, unless it is punishable by severer laws, falls in this category). Punishment for these offenses is deprivation of liberty up to 6 months or a fine of up to 360 day fines. In addition, there are administrative contraventions considered to be lesser violations. The fines for these run from 300 to 30,000 Schillings and confinement from 3 days to 6 weeks (Sec. 37).

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BELGIUM

The manufacture, sale, and use of firearms, as well as the ammunition trade, are regulated by the Law of January 3, 1933, as amended.^{1/}

According to the Decree of June 1933^{2/} implementing the above, manufacturers, artisans and merchants dealing in firearms and ammunition must file with the communal administration a declaration which includes the address of their place of manufacture, sale, or repair, as well as the location of any branch stores, regardless of whether such firearms are for domestic use or for export (Arts. 1-3). They must also keep correct records of the production and sale of guns and ammunition (Arts. 32 and 34).

The purchase of firearms for self-defense is subject to an authorization issued by the police of the petitioner's domicile, or if he is a foreigner, by the police office of the vendor's domicile (Art. 6). The authorization is issued on prescribed forms. Such a permit is good for 3 months and must be returned to the police within 8 days after its expiration (Art. 8). The permit must describe the characteristics of the firearm for which the

^{1/} Moniteur belge [official law gazette of Belgium, hereafter cited as M.B.], June 22, 1933.

^{2/} Id.

permit is issued, i.e., its manufacturer, caliber, and number. The recipient of the permit is obliged to show it to any authority on demand. Within one month from the date of sale, the vendor must inform the issuing authority of the transaction and give a description of the firearm, as well as the name and address of the buyer.

The import of firearms for self-defense is also subject to a permit issued by the police. If the applicant is a foreigner, only the Minister of Justice is competent to issue such a permit.

The application for a permit to carry a firearm for self-defense purposes must be filed with the King's state attorney (procureur) of the petitioner's domicile, or if he is a foreigner, with the Minister of Justice. Such an application must include the applicant's name, place and date of birth, profession, and domicile, as well as a description of the firearm, the purpose for which it is to be used, and the circumstances of time and place where it will be used (Art. 14). A special regulation determines the form of the holder's permit, and the permit must be signed by the holder, carried with the gun, and shown to any official upon request. In case of a court conviction or revocation of a permit, it must be returned to the issuing authority within 48 hours after the holder receives the notice of revocation or the decision of conviction becomes final (Art. 15). When the holder of a firearm for self-defense purposes changes his domicile, he must inform that authority within 15 days (Art. 16).

The Minister of Defense also may issue permits for firearms for purposes of self-defense; in such cases he must establish the regulations and conditions under which these permits are to be issued.^{3/}

Penalties. In addition to those penalties stated in the Criminal Code, the Law provides as punishments for violations of its provisions, imprisonment for 1 month to 1 year, or a fine of 100 to 5,000 francs, or both of these penalties (Art. 18).

In accordance with Article 1 of the Decree of March 1, 1956,^{4/} as amended, permits for hunting arms are issued by the police office of the applicant's domicile. These permits must be renewed each year, and the regulations for the issuance of new permits must be observed (Art. 1, par. 3). Such permits must bear the signature and picture of the holder (Art. 4).

The police office must refuse applications for hunting permits by persons convicted of criminal offenses (Art. 5). The applications of minors may also be refused. However, an appeal against refusal of a hunting permit may be filed with the governor of the province. If he decides that he cannot issue the permit, he will forward the applicant's dossier to the Minister of Agriculture for a decision (Art. 8).

^{3/} Decree of September, 1944, M.B., September 15-16, 1944.

^{4/} 2 Les Codes Larcier (Bruxelles, 1975).

Article 1 of the Decree of March 15, 1967, on the Classi-
5/
fication of Certain Arms in the Category of Defensive Guns included
in that category automatic or semiautomatic air or gas [powered] re-
peating pistols. The Articles of the Law of January 3, 1933, referring
to the manufacture of, commerce in, and possession of guns, as well as
the Articles governing commerce in ammunition, extend also to these
types of guns.

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5/ M.B., April 1, 1967.

BULGARIA

I. Prewar Legislation

The Bulgarian prewar legislation dealing with the possession and carrying of firearms, as well as the manufacture of explosives and ammunition, was introduced as early as May 21, 1912.^{1/} Under this legislation, which remained in force until June 1, 1950, the possession and carrying of firearms were subject to prior registration, while the manufacture of explosives and ammunition was placed under government control.

II. Communist Legislation

Immediately after the present Communist Government came to power in Bulgaria (September 9, 1944), it confiscated every firearm found in the possession of individuals, organizations and agencies; even hunting guns were taken away during the early period of the establishment of Communist rule in the country, namely, between September 9, 1944, and the end of 1949.

By its Law on Explosives, Firearms, and Ammunition of June 1, 1950,^{2/} the Communist Government imposed a more rigid control over the

^{1/} Dürzhaven Vestnik [official law gazette of Bulgaria, hereafter cited as DV], No. 111, May 21, 1912; amended several times.

^{2/} DV, No. 128, June 1, 1950; correction of Secs. 7, 8, and 21, DV, No. 137, June 12, 1950; amended; DV, Mo. 51, June 29, 1965, and by Sec. 11 of the Criminal Code, DV, No. 26, April 2, 1968.

possession and carrying of firearms, the manufacture, transportation, and repair of firearms, or any trading in firearms, ammunition and explosives. The possession and carrying of firearms are now permissible only with a permit issued by the Ministry of the Interior, and such permit must be renewed each year. Firearms coming into a person's possession by whatever means must be reported to the said Ministry, which then may expropriate them.

The Law of 1950 defines firearms as technical devices which through instant combustion of explosives or otherwise can eject objects causing destruction.^{3/}

The same legislative act as well as the special Regulation of June 11, 1968,^{4/} concerning its implementation, prescribe that no person may possess or carry firearms or ammunition without the permission of the Ministry of the Interior. A permit for the possession or carrying of firearms or ammunition is given for a period of one year and is subject to renewal. An individual who inherits firearms or receives them through a testament or as a gift is obliged within 7 days following their receipt to request permission from the Ministry of the Interior to possess or carry them.

^{3/} Sec. 2, par. 2, of the 1950 Law.

^{4/} DV, No. 45, June 11, 1968.

Any citizen denied permission to possess or carry firearms must surrender them for expropriation to the authorities of the Ministry of the Interior. Similarly, any person who finds a firearm is obliged within 3 days to surrender it to the agencies of the said Ministry.

Every enterprise or organization which manufactures, trades in, or uses explosives, weapons and ammunition must have special store-houses for their safe-keeping.^{5/} These must be placed under "day-and-night" supervision by the agents of the Ministry of Interior. Such supervision must also "include special dog protection."^{6/}

Only government enterprises and public organizations which have been selected and approved by the Council of Ministers and possess a special license issued by the Ministry of the Interior may manufacture firearms, while the production of and trade in side arms such as brass knuckles, swords, yataghans (long knives), daggers and the like are prohibited. Repair of shotguns may be made only by enterprises and agencies especially licensed for such works.

^{5/} Ordinance Concerning the Organization of the Enterprises for Manufacturing and the Warehouses for Explosives, Firearms and Ammunition as well as the Control of the Various Activities Therewith, DV, No. 45, June 11, 1968.

^{6/} Sec. 3 of the Regulation.

Export and import may be conducted by authorized foreign trade organizations determined by the Ministry of Foreign Trade through border check points specified in the permit.

Foreign citizens who are traveling through or who are temporarily staying in the country may import and export their own hunting arms or personal weapons without a license, but they are obligated to declare them at the control-checking border points.

Finally, all enterprises and organizations which trade, use, keep, etc., explosives are obliged periodically to give an account as to the traffic of such items.

Violations of the above provisions of the 1950 Law and its implementing Regulation are subject to penalties as prescribed by these acts and the Criminal Code of May 1, 1968.^{1/} In its Sections 337-339, this Code makes every unauthorized manufacture, repair, trade, export, import, or possession of explosives, firearms or ammunition a criminal act subject to penalty.

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^{1/} DV, No. 26, April 2, 1965; the Code entered into force on May 1, 1968.

BURMA

There has been no recent legislation on gun control in Burma, and the basic statutes on this subject remain the Arms Act of 1878 and the Arms (Temporary Amendment) Act of 1951.^{1/} The only new development visible in recent years is the increased strictness with which the provisions of these Acts are enforced.

Section 5 of the Arms Act states that no person is to manufacture, convert or sell, or keep, offer or expose for sale, any arms, ammunition or military stores, except under a license and in the manner and to the extent permitted by the license. The term "arms" is defined to include knives of various descriptions, and also fire-arms, but the term "fire-arms" is not further defined.

Under Section 6, the unlicensed importation and exportation of arms is prohibited except under license, and again, except in the manner and to the extent permitted thereby. Going armed without a license is prohibited by Section 13, and no person is to have in his possession or under his control any firearms or ammunition except under license to do so and in the manner and to the extent permitted, according to Sections 14 and 15.

The President of the Socialist Republic of the Union of Burma is empowered by Section 17 of the Arms Act to make rules

^{1/} 2 Burma Code, Rangoon: Ministry of Justice, 1956, p. 189-199.

regarding the issuance of licenses. At present, the licensing authority is in the hands of the People's Councils which have been set up under the new Constitution of 1974. This means that licenses for carrying arms, for example, or for possessing or having arms under one's control, now have to be applied for to the Village-tract People's Council concerned, in the rural areas, or to the Ward People's Council concerned, in the cities.

These local People's Councils are extremely strict and consequently it is most difficult for a private citizen to obtain a license even authorizing the possession of arms. Also, in the light of the present government's stated goal of building a socialist economy, any private enterprise applying for a license for the manufacture, import, or export of arms would not receive it.

The Arms Act also provides that any license may be cancelled or suspended by the officer granting it or any authority to which he may be subordinate, by a District Magistrate in whose jurisdiction the holder of the license may be, or by a Judge or Magistrate before whom such person is convicted of an offense against this Act or against rules made under the Act. The President may cancel or suspend all or any licenses throughout the whole or any part of the country by notification in the Official Gazette. He may also make rules providing for appeal from or revision of orders refusing to issue or renew arms licenses or cancelling or suspending such licenses.

The Arms (Temporary Amendment) Act adds a new section, 19A, to the Arms Act. Section 19A increases the penalties for offenses under Sections 13, 14, and 15 of the Act, under certain circumstances, and also lists the types of arms pertinent to this section. Under Section 19A, whoever, with the intention of committing the offense of High Treason, and, in contravention of the provisions of Sections 13, 14, or 15, goes armed with, or has in his possession or under his control, any of the specified types of arms, is to be punished with rigorous imprisonment for a term which may extend to 7 years. It is also provided that, notwithstanding anything to the contrary contained in any other law in force, it is to be presumed until the contrary is proved, in a prosecution under this section, that the person found going armed with, or in possession of, or having under his control any of the arms specified, had the intention of committing the offense of High Treason.

The specific arms listed include small arms, such as rifles, light automatics, sten guns, bren guns, tommy guns, Brownings, and 300 American carbines, also light machine guns, and heavy machine guns such as the Vickers Machine Gun and the Browning Machine Gun.

Penalties for contravention of the provisions of Sections 5 and 6 are imprisonment for a term which may extend to 3 years, or fine, or both.

CANADA

The legal provisions regulating the use of handguns in Canada are found in §§ 82-88, 91-106 of the Criminal Code of Canada.^{1/} Section 2 contains the definitions used throughout the code.

Canada does not employ the word "handgun" as such but in § 82(1) defines a "restricted weapon" as a firearm designed to be fired by one hand, capable of firing bullets in quick succession during one pressure of the trigger and shorter than 26 inches when ready for firing. It must be designed to fire a shot, bullet or other missile at a muzzle velocity exceeding 400 feet per second or to fire a shot, bullet or other missile designed to attain a velocity of more than 500 feet per second. (§ 82(2)).

Offenses

A person carrying or possessing a weapon or imitation for a purpose "dangerous to the public peace" or for the purpose of committing an offense is guilty of an indictable offense and liable to imprisonment for 5 years (§ 83).

Carrying a weapon at a public meeting or on the way to a public meeting constitutes an offense punishable on summary conviction (§ 84).

Carrying a concealed weapon without a permit constitutes either (a) an indictable offense punishable by imprisonment of 5 years, or (b) an offense punishable on summary conviction (§ 85).

^{1/} Martin's Annual Criminal Code 1974 (1974).

Pointing an unloaded or loaded firearm at another person or using, carrying or possessing any ammunition or firearm in a fashion dangerous to the safety of other persons constitutes (a) an indictable offense punishable by 2 years in prison, or (b) an offense punishable on summary conviction (§ 86).

It is an offense punishable on summary conviction to sell, barter, deliver, etc. any firearm or ammunition to a person under 16 years of age who does not have a permit for its lawful possession (§ 87).

It is an offense punishable on summary conviction for any person to deliver, sell, barter, etc. any firearm or ammunition to a person whom he has good reason to believe should not have such a firearm or ammunition in his possession by any order made pursuant to § 95 (§ 87(1)). It is also an offense for any person to deliver, sell, etc. any firearm or ammunition to any person whom he has good reason to believe is (a) of unsound mind, or (b) is prohibited by any order made pursuant to subsection 105(5) (§ 87(2)).

It is an offense punishable on summary conviction or an indictable offense subject to 2 years imprisonment for a person to have a restricted weapon in his possession without a registration certificate unless he is a holder of a permit under § 98(2)(a) which authorizes the applicant for a registration certificate to transport the weapon to the local registrar of firearms (§ 91).

Any person who delivers a restricted weapon to a person who does not have a permit issued to him under § 98(2)(a) is guilty of (a) an indictable offense and is liable to imprisonment for 2 years, or (b) an offense punishable on summary conviction (§ 92).

It is an offense for any person to have in his possession, other than in his house or place of business, a restricted weapon without a permit granting him the lawful right to possess it and he is guilty of (a) an indictable offense and liable to imprisonment for 2 years, or (b) an offense punishable on summary conviction (§ 93).

An occupant of a motor vehicle in which he knows there is a restricted weapon is liable for the same punishment as described in § 93, unless he can establish he had reason to believe that some occupant of the vehicle was a holder of a permit granting lawful possession of the restricted weapon (§ 94).

It is an offense to fail to turn over or report to a peace officer or a local registrar of firearms a restricted weapon that appears to have been lost or abandoned (§ 102(1)). It is an offense not to report the loss of a restricted weapon for which there is a registration certificate (§ 102(2)). It is also an offense to alter, deface or remove a serial number on a restricted weapon without lawful authority or to alter, deface or falsify a registration certificate

or permit (§ 102(3)). The offenses committed are punishable on indictment by 2 years imprisonment on summary conviction.

Order Prohibiting Possession of Firearm or Ammunition

The court, judge, justice or magistrate in addition to the punishment received from the conviction for an offense involving the use, etc. of any firearm or ammunition may issue an order prohibiting such person from carrying or having in his possession any such gun or ammunition for a period up to 5 years from (a) the time of his conviction, or (b) from the date of the end of his imprisonment (§ 95(1)). If this order is broken, the person is guilty of (a) an indictable offense and may be imprisoned for not more than 5 years, or (b) an offense punishable on summary conviction (§ 95(2)).

Records and Permits for Restricted Weapons

A permit is required, issued by the Commissioner or a person authorized in writing by him or by the Attorney General of a province or a person authorized in writing by him, for the possession of restricted weapons outside one's dwelling house or place of business (§ 97(1)). The person issuing the permit must be satisfied that the applicant needs the restricted weapon (a) to protect life or property, (b) for his business or lawful profession, (c) for target practice as set forth in the conditions of the permit (§ 97(2)). A permit to transport the weapon is necessary when a person is moving from one area to another (§ 97(3)). A permit to operate a business

involving the selling, repairing, or pawning of restricted weapons as specified in § 96(2) may be granted and remain in force until it is revoked (§ 97(4)). Permits may be issued to persons under 14 years under certain conditions (§ 97(5)).

Every person in a business involving the manufacturing, buying or selling, the importing, the repairing or the pawning of restricted weapons must keep a record of every transaction in a form prescribed by the Commissioner, show the record for inspection at the request of a peace officer, and send a copy to the Commissioner when so requested (§ 96(1)). A person must have a permit to carry on a business that involves the selling, repairing, or taking of restricted weapons in pawn (§ 96(2)). Any failure to comply with subsections (1) or (2) constitutes (a) an indictable offense liable to imprisonment for 2 years, or (b) an offense punishable on summary conviction (§ 96(3)).

Registration

The Commissioner keeps a registry where every firearm registration certificate issued under this section is recorded. The applicant for a certificate uses the form prescribed by the Commissioner and gives it to the local registrar of firearms who gives the applicant a permit to transport the weapon to him for examination. Following the examination and after endorsing the application, the registrar sends one copy to the Commissioner, one

copy to the applicant and keeps one copy. If he has notice of any information about the applicant that he considers would make the applicant unsuitable, in the interests of the safety of other persons he should inform the Commissioner. Subject to § 99 which deals with the revocation of permits, the Commissioner may issue the firearms registration certificate in such form and with such conditions as he may determine necessary to keep the registry current (§ 98).

Revocation of Permit

Any permit may be revoked by the person who granted the permit (§ 99(1)), and a registration certificate may be revoked by the Commissioner (§ 99(1)(2)). If the person authorized to grant a permit to carry on a business as described in subsection 96(2) has reason to believe that it will interfere with the safety of other persons, he may refuse to issue the permit (§ 99(3)). The Commissioner may refuse to issue a registration certificate for the same reason (§ 99(4)). The applicant must be notified in writing of the refusal to grant a permit or a certificate and the reasons therefor, and a copy of this section must be included (§ 99(5)). The applicant has 30 days or longer if allowed by the magistrate to file with the magistrate a notice of appeal "setting out with reasonable certainty" the action or decision complained of and the grounds of appeal and "such further material as the magistrate may require" (§ 99(6)). A

copy of the notice of appeal must be served on the person who denied the permit or the certificate or on any other person the magistrate directs (§ 99(7)).

The magistrate may dismiss the appeal or allow the appeal, cancelling the revocation of the permit or registration certificate, or direct that a permit or a registration certificate be issued to the applicant (§ 99(9)). Either the applicant who took the appeal to the magistrate or the Attorney General or his counsel may appeal the magistrate's decision against the dismissal or against the allowance of the appeal (§ 99(10)).

Members of Forces, Peace Officers, etc.

Members of the Canadian Forces or the armed forces of a state other than Canada that are lawfully in Canada or a peace officer or public officer or an officer under the Immigration Act, the Customs Act or the Excise Act may have weapons in their possession for the purpose of their duties or their employments (§ 100).

Search and Seizure

A peace officer may search, without a warrant, a person or vehicle or premises other than a dwelling house and seize anything connected with the offense when he has reasonable grounds for believing that an offense is being committed or has been committed against the provisions of this act (§ 103). A peace officer who finds a person under 16 years of age in possession of any

firearm or ammunition without a permit may seize the firearm and ammunition and take them to a magistrate who shall give the person a chance to be heard. The magistrate may declare the articles forfeited to Her Majesty for disposal by the Attorney General (§ 104).

The Attorney General may apply to a court to have it issue a warrant, based on reasonable grounds for believing that a person is in possession or control of an offensive weapon or ammunition detrimental to the safety of that person or other persons, for the seizure of the firearm or ammunition. Following the execution of the warrant, the Attorney General shall make a return showing all the articles seized and the date of the execution. After the Attorney General, within 30 days following the execution of the warrant, asks for an order to sell the seized articles, a superior court of criminal jurisdiction shall set a date for a hearing on the application and notify the persons specified by the court. The court hears all the relevant evidence including evidence as to the value of the seized articles. It may find that it is not desirable that the person should have the articles in his possession, custody or control in the interests of the safety of that person or of other persons and order the manner for the disposal of the articles (§ 105(1)(2)(3)(4) and (5)).

In instances where the court does not make such a finding or the Attorney General does not apply to the court for a finding within 30 days, the court may return the articles to the lawful owner or if the possession is unlawful, order them returned to the lawful owner or have them forfeited or dealt with in accordance with law where the lawful owner is not known (§ 105(6)).

Provision is made for appeals to the court of appeals on questions of law, or mixed questions of law and fact, and other grounds the court of appeals judges to be sufficient grounds for appeal (§ 105(7)(8)).

Onus on the Accused

The onus is on the accused to prove that the person is or was the holder of a permit or registration under §§ 83-104, and any document which appears to be a permit or registration certificate is evidence of the statements contained therein without proof of the signature or the official character of the person who appears to have signed it (§ 106).

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CHILE

I. Gun control legislation

The general law concerning gun control in Chile is law 17,798 of 1972.^{1/} Articles 1, 4, 6, 7, and 9 of this law were amended by decree laws 23 of 1973^{2/} and 1060 of 1975.^{3/}

The control of firearms in Chile is the responsibility of the Ministry of Defense. Direct supervision is entrusted to the Recruiting Office of the Armed Forces, the Army Command posts, the police, and the specialized agencies of the armed forces.^{4/}

Gun control extends to the following:

- (a) firearms of any type;
- (b) ammunition;
- (c) explosives, with the exception of those specifically exempted by regulation;
- (d) inflammable or asphyxiating chemicals, as determined by the regulations; and
- (e) the plants which manufacture or store the above-mentioned firearms and materials.^{5/}

^{1/} Law 17,798 of Oct. 20, 1972, Diario Oficial [D.O.], Oct. 20, 1972.

^{2/} Decree Law 23 of Sept. 19, 1973, D.O., Sept. 26, 1973.

^{3/} Decree Law 1060 of June 6, 1975, D.O., June 18, 1975.

^{4/} Law 17,798, art. 1, as amended by decree law 1060.

^{5/} Law 17,798, art. 2.

II. Ownership or possession of firearms which is prohibited

Private ownership of machine guns, submachine guns, or any other automatic arms of a higher destructive power is prohibited. The use of these weapons is exclusively entrusted to the armed forces and the government agencies mentioned in the law.^{6/}

III. Ownership or possession of firearms under special control

Private persons can only enjoy the possession of handguns or ammunition of any type if duly authorized by the Army Command posts or, where there are no posts, by the police.^{7/} The import, export, manufacture, transportation, or any other contract concerning firearms requires a license previously granted by the Recruitment Office.

IV. Registration

All privately owned firearms must be registered under the name of their owners or possessors with the Army Command post or the local police. The Recruitment Office is in charge of the National Registry of Firearms. The registration only enables its owner or possessor to keep it in his home, business place, or the place he intends to protect.^{8/}

^{6/} Law 17,798, art. 3.

^{7/} Law 17,798, art. 4, as amended by decree law 1060.

^{8/} Law 17,798, art. 5.

Under the provisions of decree law 1060, all firearms not registered at the time of its enactment should be registered within 30 days following the date of publication of the decree law. The applications must be submitted in duplicate, indicating the following: name, nationality, profession, domicile, and national identification card number of the applicant; type, identification number, caliber, and number of barrels of the firearm; and the purchase bill or a sworn declaration before a notary public concerning the ownership of the firearm. The duplicate of the application, duly signed and sealed by the corresponding authority, is sufficient evidence of registration.^{9/} The registration of more than five firearms by the same person is forbidden.^{10/}

V. Licenses to carry firearms

Licenses to carry firearms outside the places mentioned above may be granted by the same authorities in charge of the registration of those arms. Licenses shall be valid for 1 year. These authorizations are also recorded in the National Registry of Firearms.^{11/}

VI. Penalties and offenses

According to title II of law 17,798, several violations

^{9/} Decree law 1060, art. 2.

^{10/} Law 17,798, art. 7, as amended by decree law 1060.

^{11/} Id. art. 6.

of that statute are considered as crimes and punishable therefor. These offenses are under the jurisdiction of the Military Courts.

The application of article 18 of law 17,798, which provides that prosecution for the violations of gun control legislation may be initiated only by request of a political, judiciary, or administrative authority, has been suspended since 1973.^{12/}

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^{12/} Decree law 23, art. 5.

PEOPLE'S REPUBLIC OF CHINA

On June 27, 1951, the Ministry of Public Security of the People's Republic of China promulgated the "Provisional Measures Governing the Control of Guns,"^{1/} which superseded all previous legislation on gun control. Its Article 1 defines "guns" as referring to all kinds of firearms, with the exception of hunting guns.

Many of the articles of these measures were aimed at identifying and gaining control of the large number of guns which were within the borders of China as a result of the long period of war which preceded the institution of the present government.

Article 15 stipulates:

After these measures are promulgated, the local people's public security organs together with other government organs must take inventory within a defined period of all guns currently in existence so that gun permits may be issued to authorized personnel.

Categories of persons whose members could be authorized to carry guns are specified in Article 7:

In addition to military personnel on active duty, the following personnel may carry guns:

- (1) If it is necessary to their work and after having received permission from the proper organs, those with the rank of section head or above of a people's

^{1/} Chung hua jen min kung ho kuo yu kuan kung an kung tso fa kwei hui pien [Collection of laws and regulations relating to public security work in the People's Republic of China], Peking, Ch'un chung ch'u pan she [Mass Press], 1958, pp. 51-56.

government at the level of shih [city] or hsien [county] or above.

- (2) If it is necessary to their work and after having received permission from the head of the hsien, the primary responsible cadres of the people's government at the ch'ü [a subdivision of the hsien] level.
- (3) If it is necessary to their work and after having received permission from the head of the people's public security organ at the shih or hsien level or above, public security personnel at the various levels.
- (4) If it is necessary to their work and after having received permission from the proper organs at the shih or hsien level or above, the guards of the communications and telecommunications personnel of various organs and of the chief of such organs, and other cadres not covered by the provisions of sections 1 and 2.
- (5) If it is necessary to their work or training and after having received permission from responsible persons at the school and moreover the agreement of the people's public security organ at the shih or hsien level or above, higher level cadre schools and classes which have a military nature.

Article 8 provides that without special permission the personnel of publicly operated factories, stores, enterprises and mass organizations; and teachers and students of non-military schools are not allowed to carry guns.

By the provisions of Article 9, guns presently in the possession of personnel of various organs, groups, and enterprises who do not meet the requirements stated in Articles 7 and 8 are to be surrendered to the people's governments at the hsien level or

above. In Article 10 it is ruled that privately operated enterprises having guns must apply for a gun permit for such guns; if this application is denied, the guns are to be confiscated.

Those carrying guns are required by Article 11 to obtain a gun permit, which is to contain the following particulars about its bearer and the gun for which it was issued: name, age, sex, place of birth, residence, organ, occupation, type of gun, serial number, identifying marks [of gun], quantity of ammunition, and expiration date. With the exception of members of the militia, who may substitute a fingerprint, a picture of its bearer is to be displayed on the gun permit.

Article 13 counsels that those carrying guns must: (1) take special care to prevent the loss of their guns; (2) in case of loss, report it immediately to the people's public security organ, at which time they are to surrender their gun permit; (3) never lend their gun, give it as a gift, or exchange it; (4) carry their gun permit whenever carrying the gun for which it was issued; (5) show their gun or permit for inspection on demand to public security personnel or armed forces personnel; (6) in case of loss of the gun permit, insert an announcement in the newspaper to invalidate the lost permit, and report to the public security organ for the issuance of a new permit.

Control by the government of guns in the People's Republic of China goes beyond the requirement and issuance of permits to authorized personnel. Article 2 of these measures provides that ammunition and guns can be manufactured and repaired only in state factories and repair shops. Article 3 stipulates that only organs designated by the state may buy or sell guns and ammunition.

Article 19 places responsibility for the enforcement of these measures upon the Ministry of Public Security of the People's Government. Without spelling out definite penalties, Article 16 provides:

In case of violation of these measures, the public security organs of the area must report the case to the local people's government for punitive action in accordance with the seriousness of the offence.

It is provided in Article 18 that different regulations are to be issued for the minority nationality areas.

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CZECHOSLOVAKIA

Since its creation in 1918, Czechoslovakia has had regulations on guns and ammunition. The old Gun Patent of the Austro-Hungarian Empire enacted in 1852^{1/} remained in force until 1938 when Czechoslovakia issued her own Law on Firearms and Ammunition.^{2/} At the present time, the Law of June 16, 1949,^{3/} is in force. Its main provisions are as follows:^{4/}

Part One

Provisions Concerning Weapons and Ammunition,
with the Exception of Military and Illegal Arms (Ammunition)

Section 1

Manufacture, Trade, and Repairs

(1) Only those persons who have been granted a license under the pertinent provisions are permitted to manufacture, trade in, and repair weapons, and then only in permanent workrooms.

(2) A Regional People's Committee may in exceptional circumstances grant a license for the manufacture of arms and ammunition as tools for research or teaching.

(3) With the exception of the cases specified in subsections 1 and 2, no one shall be permitted to

^{1/} The Imperial Patent of October 24, 1852, No. 223, Reichsgesetzblatt.

^{2/} Law of April 8, 1938, No. 81, Sbírka zákonů [official collection of laws of Czechoslovakia, hereafter cited as Sb.].

^{3/} Law of June 6, 1949, No. 162, Sb.

^{4/} Translated by Dr. Stefan Kocvara, Legal Specialist, European Law Division, Law Library, Library of Congress.

manufacture arms or ammunition or to repair arms, not even for his own use.

Section 2

Possession

(1) Only that person may possess firearms or ammunition who has been granted permission therefor (gun license) by the county people's committee.

(2) A gun license may be issued if there is no need to fear its misuse; persons under the age of 18 years may be granted a license only in cases deserving special consideration.

(3) The persons specified in Section 1, subsections 1 and 2, do not need any gun license for [the possession of] arms (ammunition) which they are authorized to manufacture, repair, or deal with in the trade.

(4) No license is required for possessing weapons used for cutting, stabbing, and striking. However, persons under the age of 18 must not possess such weapons, unless an exception is granted by county people's committees. If there is fear of misuse, a county people's committee may prohibit a person from possessing such weapons altogether or from possessing more than a certain number.

Section 3

Carrying [of Arms]

(1) Only a person who has been granted permission (a gun license) by a county people's committee may carry any arms or ammunition.

(2) A gun license may be granted, as a rule, only to persons who are over 18 years of age, provided they prove the need to carry arms and there is no need to fear their misuse.

(3) Permission to carry arms also constitutes an authorization to possess them; permission to carry a fire-arm shall also serve as an authorization to possess and carry the appropriate ammunition in the amount specified by the gun license. A person who has been granted a gun license must always have it with him when he carries the weapon (ammunition) and must [be prepared to] show it to members of the National Security [Forces] or other public guards.

(4) The rules under subsection 3 shall also apply to hunting licenses (Sec. 33 of the Law of December 18, 1947, No. 225, Sb., on Hunting).

Section 4

Purchase and Other Methods of Transfer

As a rule, only a person who is authorized to possess or carry a pertinent kind of weapon (ammunition) shall be entitled to purchase weapons (ammunition), or acquire them in some other way, and even then, only in such quantity as not to exceed the number he is entitled to possess or carry. Only under these conditions may a weapon (ammunition) be sold to such a person or conveyed to him in some other way.

Part Two

Provisions Concerning Illegal Arms and Illegal Ammunition

Section 5

Illegal Arms and Ammunition

(1) The following arms shall be considered illegal:

(a) weapons of stealth, e.g., guns or sword sticks, rubber truncheons, life preservers [zabiják], and brass knuckles;

(b) arms fixed in such a way that their design may be easily concealed through disassembly or other means;

(c) arms whose original shape has been changed in order to cause more severe injury; [and]

(d) explosive devices.

(2) Cartridges with explosive projectiles, as well as cartridges whose projectile is fixed in such a way as to cause more dangerous wounds, shall be considered illegal ammunition.

Section 6

Limitations

It is forbidden to manufacture, repair, sell, or in any other way alienate, acquire, possess, or carry illegal arms (ammunition); exceptions may be granted by regional people's committees in cases deserving special consideration.

[The translation of Sections 7-13 dealing with military arms and ammunition and with exceptions is omitted.]

Part Five

Common Provisions

Section 14

Parts of Arms and Ammunition

(1) This Law shall apply also to those parts of arms necessary for the use thereof.

(2) Under this Law, ammunition shall be considered as cartridges for firearms, but in the case of military ammunition, also those parts of cartridges necessary for their use.

Section 15

Provisions Concerning Licenses

Licenses required by the present Law shall be granted with discretion. The organ competent to issue licenses may also revoke them, provided there subsequently arises a fear of misuse or the revocation is required in the public interest; if there is a threat of danger, any county people's committee may suspend a license temporarily.

Section 16

Disposal of Unlicensed Arms (Ammunition)

[Not translated.]

Section 17

Supervision

(1) County people's committees may inspect at any time the premises on which arms (ammunition) manufacturers, dealers, or authorized repairmen manufacture, store, deal in, or repair arms (ammunition), as well as premises on which arms (ammunition) belonging to operators of [firing] ranges are kept.

(2) Supervision over the manufacturing of military arms and ammunition shall be exercised only by military authorities to whom the provisions of subsection 1 shall apply.

(3) If there is justified suspicion within the area of the county people's committee that arms (ammunition) for which permits are required outnumber the permits issued for such area, or if there is justified suspicion that in manufacturing arms (ammunition), dealing therein, or repairing arms there has been a gross violation of the present Law or the regulations issued under it, the county people's committee may also search living quarters and other premises in order to discover such arms (ammunition).

(4) In the searching of premises, regulations concerning the protection of personal freedom, the immunity of a dwelling to searches, and the secrecy of the mail shall be observed.

Section 18

Temporary Seizure and Detention

(1) If someone with arms (ammunition) is stopped by a member of the police or another organ of public protection and is unable to show the required permit to carry the same, or if it is discovered that someone possesses arms (ammunition) and does not have the required permit to carry the same, the arms (ammunition) shall be taken from him and turned over to the county people's committee (temporary seizure).

(2) Individuals authorized under the pertinent regulations to repair arms shall require the person who brings in a weapon for repair to produce a license if possession of that weapon is subject to a license. If he cannot comply, those authorized to repair arms shall keep the weapon and notify the county people's committee; the same shall apply if the weapon was left for repair by one who, in the knowledge of the person authorized to make repairs, has been forbidden to possess a weapon.

Section 19

Extraordinary Measures

(1) If it is necessary for the preservation or restoration of public order or public security or other important public interest, the Ministry of the Interior and regional and county people's committees, as far as their area is involved, may order [the filing of] reports on all or certain kinds of arms (ammunition) or the surrender thereof to certain premises for custody, or may limit or forbid the carrying or possession thereof.

(2) If the individual who surrendered the weapon (ammunition) does not claim it within one year following the abrogation of the above measure, the county people's

committee may sell the same; the net proceeds shall go to the State.

Part Six

Sections 20-22

Penal Provisions

[Abolished and replaced by the Law of June 26, 1961, No. 60/61, Sb.; see page 10.]

Part Seven

Temporary and Final Provisions

Section 23

Temporary Provisions Concerning Licenses

(1) Licenses issued under the existing regulations shall remain effective for the period for which they were issued; however, all regulations of the present Law and regulations issued by virtue thereof shall apply to such licenses. Licenses issued on the basis of the existing regulations shall be presented to the authorities who, having jurisdiction under the present Law, shall supplement or modify licenses as far as the present Law or regulations issued thereunder require.

(2) On the effective date of the present Law, those who possess arms (ammunition), which under the present Law may be possessed only by virtue of a permit, must apply for such permit within four weeks, provided they do not possess such a permit under the present regulations. The certificate on the application submitted seasonably shall authorize the applicant to possess arms (ammunition) until the disposition of the application.

Section 24

(1) More detailed regulations to execute the present Law shall be issued by the Ministry of the Interior, and insofar as they deal with military arms (ammunition) together with the Ministry of National Defense, in agreement

with any other ministries concerned. Such regulations shall be promulgated in the official gazette.[5] The executory provisions shall secure, in particular, the records of arms (ammunition) as required for public security.

(2) Security regulations on the transportation of arms (ammunition), [on firing] ranges, the gathering of unexploded military cartridges and disposal thereof, the use of firearms, and additional exceptions and concessions with respect to the present Law may be issued in the manner specified in subsection 1.

Section 25

Relationship to [the Abolition of] the Present Regulations

[Not translated.]

Section 26

Effective Date and Execution

The present Law shall take effect on a day to be determined by the Minister of the Interior in agreement with the Minister of National Defense and shall be implemented by the Ministers of the Interior, National Defense, and Justice in agreement with the members of the cabinet concerned.

The following laws contain criminal provisions for disobeying the Law on Firearms and Ammunition:

1. The Criminal Code of November 29, 1961, ^{6/} made

^{5/} Promulgated as the Ordinance of the Ministry of the Interior of November 7, 1961, No. 124, Sb., as amended.

^{6/} Law of November 29, 1961, No. 140, Sb., as amended.

unauthorized bearing of arms a crime causing common danger. Its Section 185 reads as follows:

Section 185

Unauthorized Arming

(1) Whoever, without being so authorized,

(a) obtains for himself or another person or has in his possession a weapon of mass effect or parts essential for the use of such weapon, or

(b) accumulates, manufactures, or procures for himself or another person weapons, ammunition or explosives, shall be punished by imprisonment for a term of up to three years.

(2) The offender shall be punished by imprisonment for a term of one to five years,

(a) if he commits the act described in paragraph 1 on a larger scale, or

(b) if he commits such act under the state of defense emergency.

2. Section 6(b) of the Law of Misdemeanors of December 18, 1969,^{7/} made any making or obtaining of a firearm for oneself or another person, or having a firearm in his possession, without a license a misdemeanor. Such an act is a misdemeanor against the public order and is punishable by imprisonment for up to 3 months, a fine up to 5,000 koruna, or also forfeiture of the firearm.

^{7/} Law of December 18, 1969, No. 150, Sb., as amended.

3. The pertinent Sections of the Law of June 26, 1961, No. 60/1961, Sb., on the Tasks of People's Committees in Securing the Socialist Order read as follows:^{8/}

Section 17

(1) A petty offense against the public order is committed by whoever

. . .

(d) does not observe the conditions prescribed in matters relating to arms, ammunition, or explosives.

. . .

Section 26

(1) If the hearing of a case by the people's committee, another state authority, or a social organization does not in itself lead to the correction of the citizen [offender], the people's committee shall apply any of these measures [as a penalty for the petty offense].

(a) admonition;

(b) public reprimand; [or]

(c) a fine not to exceed 500 koruna.

(2) In addition, the people's committee may decree forfeiture of an object belonging to [the person] who committed the petty offense and used to commit the petty offense or acquired through the commission of the petty offense, if it is required for the security of humans, property, or some other public interest.

^{8/} Supra note 4.

(3) An object not belonging to the person who committed the petty offense may be seized if the same was used to commit the petty offense and if it endangers the security of individuals, property, or morality. Such an object may be seized even in case it belongs to the person who committed the petty offense if he, however, cannot be called to account.

(4) Forfeiture or seizure of an object cannot be decreed if the value thereof is apparently disproportionate to the nature of the petty offense.

(5) These fines go to the State. The State shall become the owner of the forfeited and seized object.

Because of the fact that the first gun laws in the Czechoslovak territory were enacted over a century ago when comparative statistics were rare, it was impossible to find statistics or studies in the Library of Congress concerning the effectiveness of such laws on criminality or even on the culture of the nation.

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FRANCE

The basic law governing the manufacture, acquisition, possession, and carrying of firearms and the trade therein is the Decree-Law of April 18, 1939.^{1/} The conditions of application were established by four decrees of August 14, 1939.^{2/}

The first decree concerned the classification of arms and war materials. The second related to the regulation of arms control, i.e., declaration, manufacture, commerce, acquisition, ownership, and carrying and was modified by the decrees of August 22, 1962,^{3/} and August 21, 1963.^{4/}

The third decree concerned the organization of fire-arms control and the regulation of private enterprises that manufacture or are engaged in the commerce of arms and war materiel. The fourth decree pertained to the importation of arms and munitions. The provisions for the application of the Law of 1939 were modified by the Decree of March 12, 1973,^{5/} which abrogated these four implementing decrees.

^{1/} Decree-Law of April 18, 1939, Journal officiel [official law gazette of France, hereafter cited as J.O.], June 13, 1939, p. 7463.

^{2/} Decrees of August 14, 1939, Dalloz, Recueil Périodique et critique 441 (Paris, 1939).

^{3/} Decree of August 22, 1962, Recueil Dalloz 299 (Paris, 1962).

^{4/} Decree of August 21, 1963, id., 1963, at 279.

^{5/} Decree of March 12, 1973, id., 1973, at 191.

The Decree-Law of April 18, 1939, divides war materiel, arms, and munitions into eight categories under two main headings. These categories are;^{6/}

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 for protection against poison gas.

II. Arms and Munitions Not Considered War Materiel

- 4th category. Firearms for defense and their ammunition.
- 5th category. Hunting arms and their ammunition.
- 6th category. Sidearms.
- 7th category. Target shooting, shooting gallery and dress uniform arms and their ammunition.
- 8th category. Historical arms and ammunitions, as well as collections of such arms.

The manufacture of the firearms listed in categories 1-4 is subject to advance authorization and State control according to the provisions of Articles 4 and following of the Decree of March 12, 1973 (Art. 2 of the Decree-Law of 1939).

Importation of the firearms named in categories 1-6 is strictly prohibited (Art. 11). Derogations from this provision

^{6/} Supra note 1.

are provided by Article 41 of the Decree of 1973. Ownership of firearms under categories 1 and 4 is prohibited without authorization (Art. 15).

Importation of firearms in disregard of the law will result in a fine from 3,600 to 36,000 francs and imprisonment from 2 to 5 years (Art. 26). Production of firearms not in conformity with the law is punishable by a fine of 1,000 to 2,000 francs (Art. 27). Owning or possessing a firearm without the necessary authorization is punished by imprisonment from 1 to 3 years and a fine from 360 to 3,600 francs (art. 28). Any person maintaining a collection of arms listed in categories 1,4, or 6 in violation of the law is punishable by imprisonment from 1 to 5 years and fined 360 to 3,600 francs (Art. 31). Maintaining a firearm at one's place of residence in disregard of the law is punishable by a fine from 450 to 15,000 francs and imprisonment from 1 to 5 years depending on the classification of the firearm (Art. 32).

The acquisition and storage of arms and munitions classified in categories 5,6,7, and 8 are unrestricted with the exception provided by Article 18 of the Decree of 1939 for persons who have been treated in a psychiatric hospital and

are unable to produce a certificate of acceptability drawn up by a psychiatric physician.^{7/}

The same Article 18 prohibits the unauthorized acquisition and storage of arms and war materiel listed in categories 1-4. Authorization is refused to persons who are subject to the provisions of Article 490 of the French Civil Code and who are under protective custody due to altered mental capabilities^{8/} or who have been committed to an institution under the provisions of Articles L. 333 to L. 353 of the Code of Public Health or Article 1. 355 of that Code relating to dangerous alcoholics.^{9/}

According to one important source of French Law, authorization for the acquisition or storage of firearms specified in categories 1-4 is denied to persons guilty of criminal acts or imprisoned for more than 3 months, with or without probation, for one of the crimes enumerated in Article 13 of the Decree of 1973.^{10/}

^{7/} Art. 16 of the Decree of March 12, 1973, supra note 5 and Art. 18 of the Decree of April 18, 1939, supra note 1.

^{8/} Art. 16 of the Decree of March 12, 1973, id.; Art. 490, Dalloz, Code civil 240 (Paris, 1974-75).

^{9/} Art. L. 333-L. 355, Dalloz, Code de la santé publique 60 (Paris, 1975).

^{10/} Dalloz, Nouveau Répertoire de droit, mise à jour, "armes," 110 (Paris, 1974).

Those persons authorized by law to obtain the firearms listed in categories 1-4 are civil servants and administrative agents attached to the service of the police or others subject to risks of aggression and customs officials. Such persons must declare the acquisition.^{11/}

The authorization prescribed by Articles 19 and 20 extends for a period of 3 years and may be invoked by the same authority that originally grants it.^{12/}

Decree No. 75-947 of October 17, 1975,^{13/} provides that the special register of firearms commerce, as established by Article 14 of the Decree of 1973, shall be delivered to the administrative authorities upon cessation of the commercial activity. Decree No. 75-948 of the same date^{14/} requires persons engaged in trading in the arms and materiel mentioned in categories 5 and 7 to register with the commissioner of police. Furthermore, this legislative act restricts the public display of arms, requires

^{11/} Decree of March 12, 1973, supra note 5.

^{12/} Supra note 9, at 110, No. 24.

^{13/} Decree of October 17, 1975, J.O., October 18, 1975, p. 10779.

^{14/} Id.

76.

France

security precautions, and restrains postal advertising of arms and war materiel listed in categories 1,4,5, and 7 by persons engaged in the trade thereof.

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FEDERAL REPUBLIC OF GERMANY

Matters pertaining to firearms and ammunition were essentially governed by the statutes of the laender until the end of World War I. Federal legislation provided only for the manufacture and sale of firearms.

As the personnel of the defeated German Army returned from the war, large numbers of military weapons and ammunition reached the hands of the civilian population. The temporary ^{1/} government of Germany found it necessary to issue a decree that all arms held by Germans had to be surrendered to the proper authorities.

Shortly thereafter, another decree ^{2/} ordered the immediate surrender of all firearms and ammunition.

These measures apparently did not bring about the expected results because the newly formed National Assembly adopted the Law on the Disarmament of the Population, ^{3/} which

^{1/} Decree on the Return of Arms and Military Properties to the Possession of the Reich of December 14, 1918 (Reichsgesetzblatt [official law gazette of Germany before World War II, hereafter cited as RGBL.]), p. 1425.

^{2/} Decree on the Possession of Weapons of January 13, 1919 (RGBL., p. 31).

^{3/} Law on the Disarmament of the Population of August 7, 1920 (RGBL., p. 1553).

provided that all military weapons had to be surrendered to the authorities and promised immunity from prosecution of violations of the previous decrees for those who complied with the (new) Law. A Commissioner of Disarmament was entrusted with the enforcement of the Law and was authorized to decide what kinds of weapons and ammunition should be surrendered. He was empowered to give rewards for information leading to the seizure of weapons and compensation for the weapons surrendered.

Consolidation of the national and political life made it possible in 1928 for the German legislature to issue a comprehensive regulation on the manufacture, sale, and possession of firearms and ammunition.^{4/}

According to this Law, a "license to obtain firearms" (Waffenerwerbschein) was needed to acquire firearms or ammunition. The holder of such a license was entitled to purchase or otherwise obtain the firearms and ammunition indicated on the license and to keep them in his home, at his place of business, or on his property. However, another license (Waffenschein) was required to carry firearms or ammunition outside the aforementioned places. Both licenses were valid for one year, unless a shorter period was indicated on the license. An annual hunting license was equivalent

^{4/} Law on Firearms and Ammunition of April 12, 1928 (RGBl. I, p. 143).

to a license to obtain and carry hunting guns or small arms, as well as ammunition for them.

Licenses to obtain and carry firearms or ammunition could only be given to persons whose reliability was not in doubt and who proved the need for them. No license could be granted to persons who were:

1. under 20 years of age;
2. under guardianship or feebleminded;
3. gypsies or vagrants;
4. convicted of crimes listed in the Law, unless more than 5 years had elapsed after the sentence was served;
5. under police surveillance or whose civil rights had been suspended.

The implementing decree ^{5/} provided the detailed regulation of registration of firearms by manufacturers and dealers and included the forms for the licenses.

The 1928 Law was in force at the time of the National Socialist takeover in 1933.

No statutory provision could be found in the collection of the Library of Congress which would indicate statutory confiscation

^{5/} Implementing Decree of the Reichsminister of the Interior to the Law on Firearms and Ammunition of July 13, 1928 (RGBl., p. 198), as amended by the Decree of June 2, 1932 (RGBl., p. 253).

of privately owned firearms at the time Hitler came to power. This, of course, does not mean that individual revocations of outstanding licenses or denials of renewals did not take place. In such cases, firearms and ammunition had to be deposited with the competent authorities.

According to a commentary on the German firearms laws:

After the takeover by the Führer, the National Socialist government, through vigorous and decisive measures, allowed the weapons still remaining in the hands of the people inimical to the State to be taken away, and in this way restored peace and order. Therefore, the government of the Reich could afford in a new law, the Law on Firearms of March 18, 1938, certain alleviations of the existing legal situation without danger to the maintenance of public security. 6/

In 1938 the National Socialist Regime decided to regulate anew the acquisition and possession of any kind of firearms, including hunting and sporting weapons. This was accomplished by the Law on Firearms (Waffengesetz) of March 18, 1938 (RGBl., p.265).

Although this Law was enacted during the Nazi Regime, it remained in force as a consequence of Article 123 (1) of the Basic

6/ Fritz Kunze, Das Waffenrecht im Deutschen Reiche 2 (5th ed. Berlin, 1938).

Law for the Federal Republic of Germany of May 23, 1949,^{7/} which provided that laws in force before the first meeting of the Federal Diet (Bundestag) would remain in force, unless such laws conflicted with the Constitution.

The Law on Firearms was implemented by the Decree of March 19, 1938 (RGBl., p.270), as amended by the Decree of March 31, 1939 (RGBl., p. 656) and by the Decree of April 4, 1940 (RGBl., p. 603).

According to the Law, a license was required for the manufacture, assembly, or repair of firearms and ammunition. This could be granted only to German citizens who had permanent residence within Germany and could prove their qualifications as far as merchandising and technical skills were concerned. Similar qualifications were necessary to obtain the license required for firearms or ammunition dealers.

Whoever wanted to obtain handguns or ammunition for them needed a "license to obtain firearms" (Waffenerwerbschein). Handguns or ammunition acquired on the basis of such a license could

^{7/} Generally known and hereafter referred to as the "Bonn Constitution;" published in Bundesgesetzblatt [official law gazette of the Federal Republic of Germany, hereafter cited as BGBl.], p. 1.

be kept in the home, at the place of business, or on the property of the licensee. However, another license (Waffenschein) was required to carry firearms or ammunition.

Firearms and ammunition, as well as swords, daggers, and similar weapons suitable for stabbing or cutting, could not be sold to persons under the age of 18.

Licenses to obtain or carry firearms and ammunition could be issued to persons whose reliability was not in doubt and who proved the need for them.

Neither of the above-mentioned licenses could be granted to persons who were:

- 1) under 18 years of age;
- 2) under guardianship or feebleminded;
- 3) gypsies or vagrants;
- 4) under police surveillance or whose civil rights had been suspended;
- 5) convicted of treason or were, for good reasons, suspected of engaging in anti-Government activities;
- 6) sentenced to imprisonment for more than 2 weeks for the crimes listed in the Law.

The provisions of the Law did not apply to members of the armed forces, police, and various uniformed groups.

A hunting license was equivalent to a license to carry hunting or small arms.

The manufacture, sale, possession, and carrying of concealed weapons, weapons with silencers or searchlights, and certain kinds of ammunition were entirely forbidden.

Violations of the provisions of the Law could be punished by imprisonment for not more than 3 years and a fine.

The implementing Decree, as amended, provided for detailed rules of procedure in granting and repealing licenses and for the keeping of records. It also included a description of certain weapons, the possession and sale of which were exempt from the provisions of the Law.

Article 26(2) of the Bonn Constitution provided that "weapons designed for warfare may only be manufactured, transported, or marketed with the permission of the Federal Government."

The implementing law of this provision ^{8/} lays down the rules pertinent to such production, sale, and transportation. The appendix of this Law refers to, among other things, pistols, revolvers,

^{8/} Law on the Control of Weapons Designed for Warfare of April 20, 1961 (BGBl. I, p. 444), in the version of May 24, 1968 (BGBl. I, p. 503).

rifles, carbines, and their ammunition, with the exception of hunting and sporting rifles as weapons designed for warfare; consequently, their production, sale, and transportation also require a license granted by the Federal Government.

In 1958 the Federal Constitutional Court defined the limits of legislative powers in the field of laws on weapons between the Federation and the laender. ^{9/} According to this decision, the Federation has the power under Article 74(1) of the Bonn Constitution to legislate on the production and import of and trade in weapons, but questions on the obtaining, possession, and carrying of weapons by individual citizens may be regulated only by the laender.

Technical developments in the field of new weapons (e.g., frightening or alarming weapons, gas weapons of self-defense, etc.) which took place after 1945 required a new regulation. This was accomplished on the federal level by the Federal Weapons Act (Bundeswaffengesetz) of June 14, 1968 (BGBl. I, p. 633). This Law and its implementing decree ^{10/} dealt with the detailed definition of all types of weapons and ammunition covered by the Law. They governed the

^{9/} 8 Entscheidungen des Bundesverfassungsgerichts 143 (Tübingen, 1958).

^{10/} Implementing Decree to the Federal Weapons Act of November 26, 1968 (BGBl. I, p. 1199).

manufacture, assembly, repair, import, and export of, and trade in, weapons and ammunition. The Law provided that a license was required for all these activities. This Law entered into force on December 1, 1968.

As a consequence of the aforesaid decision of the Federal Constitutional Court, the federal legislature had no power to regulate the obtaining, possession, and carrying of firearms and ammunition by individual citizens because such a regulation was within the jurisdiction of the laender.

The subcommittee of the conference of the Ministers of the Interior of the laender adopted a draft of a land law and an implementing decree thereto which would regulate these questions in harmony with the new federal legislation. The full conference of these Ministers approved and recommended these drafts to the governments and legislatures of the laender for adoption. However, there is no material available in the collections of the Library of Congress which would confirm that any of the laender have adopted this or any similar measure.

This, however, does not mean that a legislative vacuum existed on this problem. Two of the laender, Bavaria and North Rhine-Westphalia, adopted laws in 1968 which expressly kept in force, as a land law, those provisions of the 1938 Law and its implementing decrees dealing with individual citizens. The other laender, which did not expressly provide for such continuance, must have deemed the 1938 Law to be in force

as a land law because on several occasions amendments to this law and these decrees were adopted by almost all of the laender. ^{11/}

Since the Federal Government and the Federal Diet wished to eliminate the duality of regulations created by the decision of the Federal Constitutional Court, an amendment to the Bonn Constitution ^{12/} was enacted which extended the concurrent legislative power ^{13/} of the Federation and the laender to "matters pertaining to weapons." ^{14/}

Soon after the enactment of this constitutional amendment, the Federal Diet in concurrence with the Federal Council adopted a comprehensive Weapons Act (Waffengesetz) of September 19, 1972 (BGB1. I, p. 1797). This Law repealed the 1968 Federal Weapons Act and all other statutory provisions dealing with the same subject. However, the effect of the Weapons Act does not extend to West Berlin, where the provisions of the 1938 Reich-Law remain in effect as the law of the Land Berlin.

^{11/} An English translation of the 1938 Law on Firearms and its implementing decree is available upon request.

^{12/} Thirty-first Law to Amend the Basic Law of July 28, 1972 (BGB1. I, p. 1305).

^{13/} Under concurrent legislative power, the laender have the right to legislate only if the Federation did not use its legislative power.

^{14/} Supra note 16, Sec. 74(4a).

The most important feature of the new Law is that, apart from the Law on the Control of Weapons Designed for Warfare, the entire field of the production, transportation, export-import, possession, and use of and trade in all types of weapons, including firearms and ammunition, is regulated by a single, comprehensive piece of legislation. The provisions pertaining to the manufacture, export and import of, and trade in weapons are almost the same as those in the 1968 Federal Weapons Act, but the organization of the provisions is much better and clearer in the new Law.

The Weapons Act of 1972 provides in the first chapter the definition of the most important terms used in the Law.

Section 1 defines weapons in the following manner:

(1) Firearms in the meaning of the present Law are devices which are designed for attack, defense, sport, play, or hunting and from which projectiles are driven through a barrel.

(2) Portable devices which are designed for firing off ammunition shall be regarded as firearms.

(3) The characteristics of firearms cease to exist only if all essential parts are altered to such an extent that they cannot be restored to usefulness with generally available tools.

(4) Handguns in the meaning of the present Law are:

1. firearms in which hot gasses are used to drive the projectiles;
2. devices defined in paragraph (2).

(5) Automatic weapons in the meaning of the present Law are firearms in which further shots may be fired through the same barrel by merely setting the trigger in motion after the first shot.

(6) Shooting implements in the meaning of the present Law are devices which are designed for industrial or technical purposes and in which ammunition is used as the power source.

(7) Stabbing and cutting weapons in the meaning of the present Law are weapons which by their nature are designed to stab, cut, or puncture through the direct use of muscle power. Devices which by their nature are designed to cause wounds through corporal movement by the use of other than mechanical energy are regarded as stabbing or cutting weapons.

The Law also provides the detailed definitions of essential parts, ammunition, and projectiles, acquisition, transfer, carrying a weapon, and trustworthiness. The first chapter ends with establishing the scope of the Law and the authorizations given to certain federal ministers for the implementation of the Law.

In the following chapters, the Law provides for the licensing requirements for different industrial and commercial activities with respect to weapons, and for the conditions under which such licenses may be granted, denied, or revoked.

Chapters V, VI, and VII deal with provisions pertaining to individuals with respect to the acquisition, possession, carrying, and sale of weapons and ammunition. The Law requires a special license for each of these activities and also sets up the conditions under which

they can be granted, as well as the reasons for which they must or may be denied. The Law makes a distinction between a weapon possession permit [Waffenbesitzkarte], an ammunition acquisition license [Munitionerwerbschein], and a license to carry weapons [Waffenschein].

The weapon possession permit and the ammunition acquisition license entitle the holder to acquire and keep in his possession the weapon or weapons and ammunition indicated therein, and to keep the same within the confines of the home, business premises, or other legal possession, but not to carry the weapon outside these places, especially in public.

The competent authorities must deny these licenses to a person who is under 18 years of age; who does not have the required trustworthiness, expertise, or physical ability; or who cannot prove a need to have a weapon. These licenses may be denied to aliens or persons who have not had their permanent residence for at least 3 consecutive years within the Federal Republic of Germany or West Berlin.

A license to carry weapons is required for the possession and use of a firearm outside the holder's home, business, or other property. A valid hunting permit is regarded as such a license with respect to a hunting weapon.

Such a license must be denied for the same reasons as stated in the case of the other licenses and permits. In addition, an applicant must prove that he has valid liability insurance up to 250,000 Deutsche

marks for personal injuries, and up to 25,000 Deutsche marks for property damage.

The Law includes a list of firearms, ammunition, and other weapons for which production, sale, and use are prohibited. Participants in public events are also prohibited from carrying weapons; however, the competent authorities may grant exceptions to this rule in individual cases. The competent authorities also have the right to ban the carrying or use of firearms, ammunition, or pyrotechnical fireworks in individual cases, if it may be assumed that these objects may be misused.

The Law also provides that the acquisition or gaining of possession of a firearm, or of ammunition requiring a permit or license, must be reported to the competent authority. This provision covers, among others, heirs, administrators, receivers, and guardians.

Violation of the Law's provisions pertaining to the production, sale, acquisition (for the purpose of sale) of, or trade in weapons, that require a license or are included in the list of prohibited objects is punishable by imprisonment from 6 months to 5 years. Other violations by illegal acquisition or possession of firearms, ammunition, or prohibited objects are punishable by imprisonment not to exceed 3 years. Minor infractions of the rules and regulations are punishable by a fine up to 10,000 Deutsche marks. Confiscation of the weapon involved in the violation is mandatory.

CONTINUED

1 OF 3

The Law entered into force on January 1, 1973. After the promulgation of the Weapons Act, a series of decrees were issued by the Federal Government and several of the federal ministers which dealt with the implementation of the Law, procedural questions, and establishing competency in matters pertaining to weapons.^{15/}

Two minor amendments to the Weapons Act were adopted in the Introductory Law to the Criminal Code of March 2, 1974 (BGBl. I, p. 469). which entered into force on January 1, 1975. These deal with the definition of trustworthiness and the confiscation of weapons involved in the commission of a violation.

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^{15/} Rolf Hennig, Das neue Waffenrecht in der Bundesrepublik Deutschland (München, 1973).

GREAT BRITAIN

Firearms in general are governed in England by the Firearms Act, 1968, c. 27.^{1/} They are defined by § 57(1) as follows:

(1) In this Act, the expression 'firearm' means a lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged and includes--

(a) any prohibited weapon, whether it is such a lethal weapon as aforesaid or not; and

(b) any component part of such a lethal or prohibited weapon; and

(c) any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon;

Handguns are not referred to as such and the act appears to apply to all types of firearms.^{2/}

A general restriction is provided by § 1 of the act on the possession and handling of firearms and ammunition. It requires a valid certificate to be possessed by anyone purchasing, acquiring or possessing a firearm or any ammunition. These certificates are granted by the chief officer of the police in the area and are provided when he is satisfied that the applicant has a good reason for

^{1/} Firearms Act, 1968, c. 27, as amended by the Courts Act, 1971, c. 23, § 56; the Criminal Damage Act, 1971, c. 48, § 11(8); the Criminal Justice Act, 1972, c. 71, §§ 28(6), 29, 64(2), and 66(7); and the Theft Act, 1968, c. 60, § 33(3).

^{2/} R. v. Titus, 1971 Crim. L. Rev. (Eng.) 279-280 (1971), held that the water pistols (involved in the charge of possessing an imitation firearm with intent to commit an indictable offense) were not weapons designed or adapted for discharging noxious liquids and were, therefore, capable of being an imitation firearm within the definition of § 57(4) of the Firearms Act, 1958.

possessing a firearm. The officer must be satisfied also that there is no consequent danger to the public safety or peace.

The only firearms exempted from the requirement of a certificate are:

- (a) a shot gun (that is to say a smooth-bore gun with a barrel not less than 24 inches in length, not being an air gun); and
- (b) an air weapon (that is to say, an air rifle, air gun or air pistol) . . .

Ammunition not requiring a certificate includes:

- (a) cartridges containing five or more shot, none of which exceeds 36 inches in diameter;
- (b) ammunition for an air gun, air rifle, or air pistol; and
- (c) blank cartridges not more than 1 inch in diameter measured immediately in front of the rim or cannellure of the base of the cartridge.

"Possession" of a firearm has been construed in its popular sense by numerous court cases, ^{3/} rather than in a narrow way.

Section 6 makes it an offense to sell or transfer any firearm and ammunition within the United Kingdom to anyone except a registered dealer unless the vendee possesses a certificate of authorization to buy. ^{4/} Moreover, the same section makes it an offense for a repair to be made on a firearm or ammunition, or shotgun for anyone

^{3/} Warner v. Metropolitan Police Commissioner [1968] 2 All E.R. 356 (H.L.) held that a person cannot be said to be in possession of some article which he does not realize is, or may be, in some place over which he has control.

^{4/} Section 58(2) exempts antique firearms possessed or sold as ornaments or curiosities.

not possessing a certificate. It is an offense to falsify certificates.

A special distinction is made by § 5 of "any firearm so designed that pressure on the trigger, causes missiles to be discharged until the pressure is removed from the trigger--or the magazine is empty." Also included are weapons designed for discharging any noxious liquid, gas, etc., as well as ammunition containing any noxious thing. These are "prohibited firearms and ammunitions" and it is an offense to possess, manufacture, sell, or transfer them without the written authority of the Defense Council,^{5/} subject to the conditions it lays down. The conditions are tailored to the particular case in relation to public safety or the peace and they are subject to written revocation. Failure to comply with the conditions so provided, or with a letter requesting the return of a revoked authorization within 21 days, is an offense. The terms of the firearms certificates may also be varied from time to time and a holder is required to return a certificate for amendments within the same number of days.

The Secretary of State may prohibit the movement of firearms and ammunition within Great Britain, from Great Britain

^{5/} Duties were transferred to the Secretary of State by the Transfer of Functions (Prohibited Weapons) Order, 1968, Stat. Instr. 1968, No. 1200.

to Northern Ireland, or from general export, under § 6. The chief officer of the police may authorize such movement, however.

A police permit authorizes one in his area, without any other certificate, to possess a firearm and ammunition according to the terms of the permit.

Authorized dealers and their servants are not required to have certificates to possess, purchase or acquire firearms or ammunition in the ordinary course of their business. Firearm dealers are listed on a police register in their area and are given a certificate of registration which is renewable each year. The dealers, in turn, are required to keep a register of their transactions in firearms and ammunition and each sale must be entered within 24 hours. This register must be open for inspection by police who possess written authorization to do so. It is an offense to fail to comply with, or to knowingly falsify, any required entry on the register. Persons convicted of offenses under these provisions are subject to having their dealers' registrations revoked.

Certain businesses, such as licensed slaughterers of animals, carriers, auctioneers, warehousemen, or the servants of each, are not required to have certificates to possess firearms in the ordinary course of their businesses. Sporting activities, theater and drama activities, ships for the purposes of signaling, etc., are also exempted from the need for certificates to use firearms relating to their work.

The prevention of crime and the keeping of public safety provisions are in § 16 et seq. of the act. It is an offense to possess any firearm or ammunition with the intent to endanger persons or property, regardless of whether any injury has been caused.^{6/}

To resist an arrest by any use whatsoever of a firearm, or imitation firearm, is an offense under § 17. The same section refers to a list of offenses for which it is an offense for the accused to have in his possession a firearm or imitation firearm. The defendant is permitted, however, to show that he had the firearm for a lawful reason. The offenses^{7/} mainly fall within the Malicious Damage Act, 1861, 24 & 25 Vict., c. 97; the Offenses Against the Person Act, 1861, 24 & 25 Vict., c. 100; and offenses under § 1 of the Criminal Damage Act, 1971, c. 48.^{8/}

^{6/} R. v. Bentham; R. v. Baillie; R. v. Simpson, [1972] 3 W.L.R. 398 (C.A.) dismissed the appeals, holding that a charge of possessing a firearm with the intent to endanger life, requires only the showing of possession of the firearm with a view to using it if and when the occasion should arise. Defendants, on appeal, contended that prosecution must show a present and unconditional intention to endanger life.

F. v. Faulkner, [1972] 56 Crim. App. 594 (C.A.) held that where a defendant is convicted of carrying a firearm with intent to commit an offense, the sentence should be consecutive to the sentence for the offense.

^{7/} § 17, Schedule 1.

^{8/} Before a prisoner can be convicted of an offense under this section, it must be shown that one of these specified offenses set out in Schedule 1 has been committed by him. R. v. Baker, [1961] 3 All E.R. 703 (C.C.A.) so held, adding that the arrest must be lawful and that the accused committed an offense of the nature specified in the Schedule.

The Theft Act, 1968, c. 60, § 10 makes one guilty of aggravated burglary if such an offense is committed with a firearm or an imitation firearm. The firearm is defined in that section as follows:

(a) 'firearm' includes an airgun or air pistol, and 'imitation firearm' means anything which has the appearance of being a firearm, whether capable of being discharged or not; . . .

A person found guilty of aggravated burglary is liable to imprisonment for life.

The Firearms Act, §§ 18, 19, and 20, make it an offense to carry a firearm with criminal intent to commit an indictable offense; to carry a firearm in a public place (without a lawful authority or reasonable excuse);^{9/} or to trespass with a firearm in a building.

Persons previously convicted of crimes fall within special provisions under § 21. They are prohibited from having a firearm or ammunition in their possession at any time until the expiration of a period of 5 years from the date of their release from prison.

Minors, under 17, are prohibited by § 22 from acquiring or possessing firearms. There are special saving provisions which allow certain minors, accompanied and under the supervision of an adult, to have air weapons and ammunition within certain premises.

^{9/} R. v. Cugullere, [1961] 2 All E.R. 343 (C.C.A.), held that the accused must "knowingly have with him in any public place," a firearm in connection with committing an indictable offense.

Evans v. Wright, 1964 Crim. L. Rev. (Eng.) 466-467 (1964) held that a "reasonable excuse" must cover the particular moment at which a weapon is carried in connection with an offense.

It is an offense to supply minors, under 17, with firearms or ammunition by either gift, loan, or otherwise. The younger the minor, the more restrictive are the rules concerning firearms. It is an offense to supply firearms to a drunk or insane person.

Section 52 of the Firearms Act provides for disposal of firearms and cancellation of certificates by a convicting court where a person is convicted of an offense under the act, or of a crime for which he is imprisoned, or for certain other less serious offenses involving the use of firearms.

Schedule 6 sets out, section by section, the punishment for each offense in the act.

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GREECE

The control of firearms in Greece is regulated by Legislative Decree 542/70 (hereafter referred to as the Law), which defines them as any device that can propel a missile capable of causing injury to a person, damaging property, or setting fire from any distance. The same Law specifies the circumstances under which the importation, manufacture, trade in, possession, bearing, and use of weapons are allowed.

I. Importation of Weapons

With only two exceptions, the importation of weapons of any kind, including hunting guns and explosive devices or substances, without prior permission is prohibited. The permit for importation is granted by the Ministries of Public Security and National Defense (Art. 2 of the Law). Violation of the above provision is punishable by imprisonment up to 3 months and a fine of not less than 10,000 drachmas.

Foreign travelers to Greece can import one hunting gun per person without a prior permit. However, they must make a statement to the customs authorities of such importation, which is then forwarded to the forest authorities for issuance of the provided paper. Likewise, Greek citizens coming from abroad can import one hunting gun per person without a prior permit.

II. The Manufacture of Weapons

The manufacture of weapons and explosive devices or substances is permitted only after a license is granted by the Ministries of Public Security and National Defense, and the manufacture of hunting guns only after a permit is issued by the Ministry of Public Security (Art. 3 of the Law). Violations of the above provisions are punishable by imprisonment up to 3 months and a fine of not less than 5,000 drachmas.

III. Trade in Weapons

Trade in weapons of any kind, or in explosive devices or substances, is permitted only with a license granted by the Ministries of Public Security and National Defense (Art. 4 of the Law). Importers, manufacturers, and dealers of the above-mentioned items are obligated to store them in warehouses especially approved for that purpose.

Trade in certain weapons, or in explosive devices or substances, as well as the manufacture or importation thereof, can be prohibited by a decision of the Ministries of Public Security and National Defense.

The sale of or making available in any manner the items mentioned above to persons without a license to possess, carry, or transport arms is prohibited. Moreover, dealers in the above-mentioned items must keep records of all sales and also must indicate on the license the items sold and their particulars in the manner specified by the Law.

Violators of the above provisions are punishable by imprisonment for 2 months to 2 years and a fine of not less than 10,000 drachmas.

IV. Possession

The possession of weapons, cartridges, and explosive devices or substances without a permit by the police authorities is prohibited (Art. 5 of the Law). However, officers of the armed forces can have weapons and other devices in their possession in accordance with the decision of the Minister of National Defense. Also persons or associations engaged in target practice as a sports activity can be granted a permit to possess weapons. In the case of an association, the permit is granted in the name of the person in charge. Police ordinances regulate the manner in which shooting galleries are operated, and violators are punished by detention or a fine.

V. The Carrying of Weapons

The carrying of weapons and explosive devices or substances is prohibited except for those who serve in the armed forces, the police, and other public functionaries for whom carrying weapons is necessary for the exercise of their duties (Art. 6 of the Law). Violators are punishable by imprisonment for not less than 6 months. The carrying of weapons constitutes a particularly aggravating case in the following circumstances: at conventions, festivals, or other gatherings; in

places of public entertainment or places where games take place; in liquor stores; or in vehicles used for transporting passengers.

A permit to carry pistols or revolvers is granted by the police to Greek citizens who have reached their 21st year of age in the following cases:

(a) for their personal security, if agreed to by the public prosecutor of the area in which the requester resides;

(b) for the security of enterprises that benefit the public or are necessary to the national defense or of other establishments of significant value or importance;

(c) for target practice with weapons within a designated area, provided that the requester is a member of an association designed to advance that sport, as well as for the transportation of weapons from place to place for participation in official target practice games.

A permit for carrying weapons is granted by the police. In case such a permit is denied by them, the Committee on Public Security has authority to reverse that decision.

Requirements for granting a permit to carry weapons are specified in laws enacted on the proposal of the Minister of Public Security.

The possession of weapons of any kind, or of explosive devices or substances, by an association with political aims is prohibited.

Members of such associations and members of the board who are aware of illegal possession are punishable by imprisonment from 5 to 20 years. Weapons illegally manufactured, possessed, or transported are subject to forfeiture.

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HONG KONG

The law of Hong Kong relating to the control of handguns is contained in the Arms and Ammunition Ordinance, No. 2 of 1933, as amended up to 1974.^{1/}

The definition of "arms" given in this ordinance includes firearms of every description, air guns, every other kind of gun from which a shot, bullet or other missile can be discharged, and every gun, pistol or other propelling or releasing instrument or mechanism, from or by which any shell, cartridge, bomb, grenade, or projectile, containing any gas or chemical, can be discharged (Section 2).

The ordinance prohibits the carrying or having in one's possession or under one's control of any arms or ammunition without a license. Arms or ammunition on the body, or in the custody of any person, will be deemed to be in his possession. To carry is defined as to carry on the person, but does not include transport or conveyance from one place to another in the Colony in the ordinary course of business for storage or other business purposes.

Exempted from this prohibition are members of Her Majesty's armed forces, of the Royal Hong Kong Regiment or of the Royal Hong Kong Auxiliary Air Force, of the police force, of the Preventive Service, and district watchmen, in respect only of arms

^{1/} 12 Laws of Hong Kong ch. 238 (rev. ed. 1964), p. 1-16, and 21 Laws of Hong Kong, Minor Amendments (rev. ed. 1974), p. 293.

issued to them for the execution of their duty. Also outside the scope of this prohibition are arms or ammunition in the possession of or the property of the Government of Hong Kong or Her Majesty's Government, or in the possession or under the control of some person on behalf of either Government.

Arms or ammunition consigned to a place outside the Colony and in transitu on any vessel as bona fide cargo and entered on the manifest are exempted. So also are arms or ammunition on board a ship of war or a military aircraft of any foreign nation, or on board any vessel licensed by the Director of Marine under the Merchant Shipping Ordinance, provided in all the above cases that the Commissioner of Police has consented that the arms and ammunition are reasonably necessary for the protection of the vessel and has enumerated the arms and ammunition on the vessel's license.

It is the function of the Commissioner of Police to grant licenses to carry arms and ammunition, or to have arms and ammunition in one's possession, or both, subject to such conditions as he may deem fit. It is also his function to renew such licenses, and to cancel them (Section 3). Licenses are issued or renewed for a limited period only, are made out in the name of the grantee, and bear a number and the dates of issue, or renewal, and expiry. They are not transferable, and must specify the arms and ammunition covered thereby. Any person may be issued a written exemption, at the discretion of the Commissioner of Police, from the provisions of

this ordinance, which may be confined to a particular weapon or ammunition to be specified therein, may be subject to conditions, may be included in some other form of license, authority or document issued by him, and will also be subject to cancellation at his discretion.

Section 5 governs the sale of arms or ammunition in Hong Kong. If for use in the Colony, the purchaser, if not an excepted person, must present a valid license either to carry or to have in his possession the arms or ammunition. He must also have a removal permit, made out in the prescribed form. If for removal from Hong Kong, the purchaser must present a removal permit endorsed with the words "permitted to remove from the Colony". A removal permit endorsed in this fashion will be deemed equivalent to a license to carry or possess arms or ammunition up to the time named in the permit for the return thereof.

When the arms being removed from the Colony exceed twenty-five Hong Kong dollars in value, the person must obtain a receipt for them from the master or mate of the vessel named in the permit and must return this receipt together with the removal permit at the time and place specified (Section 6). The moving or causing to be moved of arms or ammunition within Hong Kong or its waters is prohibited unless a removal permit has first been obtained (Section 7). Exempted from this provision are arms or ammunition belonging to or for

issued to them for the execution of their duty. Also outside the scope of this prohibition are arms or ammunition in the possession of or the property of the Government of Hong Kong or Her Majesty's Government, or in the possession or under the control of some person on behalf of either Government.

Arms or ammunition consigned to a place outside the Colony and in transitu on any vessel as bona fide cargo and entered on the manifest are exempted. So also are arms or ammunition on board a ship of war or a military aircraft of any foreign nation, or on board any vessel licensed by the Director of Marine under the Merchant Shipping Ordinance, provided in all the above cases that the Commissioner of Police has consented that the arms and ammunition are reasonably necessary for the protection of the vessel and has enumerated the arms and ammunition on the vessel's license.

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the use of Her Majesty's forces or the Government, property of an exempted person and for his personal use, or consigned to a port not in the Colony in transitu as bona fide cargo duly entered on the manifest of the vessel.

Every importer of, dealer in, or vendor of arms or ammunition must, according to Section 10, take out a license annually from the Commissioner of Police, and must register, at the office of the Commissioner, his name and place of business and any warehouse or other place in which he stores or intends to store arms or ammunition. Every such importer, dealer, or vendor must also, according to Section 12, keep a stock-book showing the particulars of his stocks of arms and ammunition, and must furnish on a quarterly basis returns showing the exact quantity and description of arms and ammunition remaining in his possession. He must also keep a record of all arms or ammunition sold, as well as the name, occupation and address of every purchaser, the particulars of the arms and ammunition sold, the date of the sale, and number and date of the license presented or the date of the export permit, the name of the vessel by which the purchaser stated his intention to export the arms or ammunition, and the port of destination (Section 13). These stock-books or books of sales must be produced whenever required by any inspector of police, or by any officer of police bearing a written order from the Commissioner of Police. The whole of his stock must also be permitted to be inspected and counted (Section 14).

It is an offense under this ordinance to fail or refuse to make the returns called for in Section 12, and any person convicted of this offense is liable not only to the punishment prescribed in Section 30, but also to forfeiture of any arms or ammunition found upon his premises (Section 15). A purchaser of arms or ammunition who knowingly furnishes false information to an importer, dealer or vendor concerning any particulars which the latter is required to record under Section 13 is liable to the same punishment. Any person who contravenes or attempts to contravene any of the provisions of this ordinance, or any of the conditions of licenses or permits issued thereunder, is liable on summary conviction to a fine of two thousand Hong Kong dollars and imprisonment for three years, and on conviction on indictment to imprisonment for ten years (Section 30).

The ordinance prohibits, in addition to the above, the use or possession of firearms or imitation firearms with intent to resist or prevent lawful apprehension or detention of self or of any other person. The penalty prescribed on indictment is imprisonment for fourteen years. Anyone committing an offense under this section is liable to this penalty in addition to any penalty which he may incur for the offense on account of which he is liable to lawful apprehension or detention (Section 31). Subsection 2 of the same section provides that if any person has in his possession a firearm or imitation firearm at the time of his committing, or at the time of his apprehension for, any offense under certain other Hong Kong ordinances, he is liable to

a further penalty of seven years' imprisonment. These, listed in the Fourth Schedule to the ordinance, are the Theft Ordinance, the Crimes Ordinance, the Offences Against the Person Ordinance, the Protection of Women and Juveniles Ordinance, and the Summary Offences Ordinance.

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INDIA

No person is allowed to possess or carry a firearm (including handguns) unless he holds a license for it.^{1/} However, a licensee may authorize anyone in writing to carry a gun on his behalf for the purpose of renewing his license or repairs to the firearm. A license is also required to manufacture, deal or repair, etc., a firearm, and such dealings must be carried out in accordance with the provisions of the act and the terms and conditions of the license. Shortening of gun barrels or conversion of an imitation firearm into a firearm is, unless a license is granted for the purpose, prohibited. Firearms without the manufacturer's identification marks cannot be sold or transferred and anyone obliterating those marks is liable for prosecution and punishment. Import or export of firearms, except when accompanied by a tourist bringing them for purposes of sport, is not allowed.

A license can be granted by a licensing authority in accordance with the provisions of the act and rules. But no license can be granted to a person -

- (i) below 16 year of age; or
- (ii) of unsound mind; or
- (iii) who was convicted for a criminal offense for 6 months' imprisonment at any time during the period of 5 years following the imprisonment; or

^{1/} The Arms Act, 1959, No. 54; as amended by the Arms (Amendment) Act, 1971, No. 55.

- (iv) whom the licensing authority considers granting of license would be a risk to public security or safety.

A license granted, unless revoked or its conditions varied earlier, is valid for 3 years. An order of suspension, revocation or refusal to grant a license or varying its conditions is subject to review by an appellate authority.

A police officer may demand production of a license from anyone found carrying a gun, and upon his failure to give his identity or the authority to carry the firearm, may arrest the person without a warrant. A person suspected to be transporting arms for unlawful purposes may also be arrested. Anyone possessing a firearm, possession of which subsequently becomes unlawful, must deposit it with the nearest police station or an armory. A magistrate may order the search of premises or arrest of a person suspected of having arms for unlawful purpose.

Possession, acquisition, or sale of firearms in contravention of the legal provision may lead to imprisonment which may extend to 3 years or a fine or both. A violation of the act with an intention to conceal it from becoming known to any public servant is even a more serious offense punishable with up to 7 years' imprisonment or a fine or both. Failure to give information regarding the contravention of the provisions of the act is also an offense.

ISRAEL

Legislation relating to firearms control in the State of Israel is embodied in three major legislative acts: the Firearms Law, 5709 - 1949,^{1/} the Criminal Code Ordinance of 1936,^{2/} and the Defence (Emergency) Regulations of 1945.^{3/}

The Firearms Law^{4/} is the most comprehensive and the most widely applied of the aforementioned three laws. Under its provisions, a "firearm" is defined as being: "...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...."^{5/} This definition also includes "...a weapon adapted to project any substance intended to harm a person, and

^{1/} Firearms Law, 5709 - 1949, 3 Laws of the State of Israel (hereafter cited as L.S.I.) 61, as amended; 8 L.S.I. 124; 9 L.S.I. 278; 16 L.S.I. 57; and 25 L.S.I. 161 (1971).

^{2/} Criminal Code Ordinance, 1936, as amended: Palestine Gazette of 1936, Suppl. I, p. 285 (English edition); 4 L.S.I. 159; 5 L.S.I. 172; 6 L.S.I. 34, 50; 8 L.S.I. 45, 48, 63, 211; 9 L.S.I. 79; 11 L.S.I. 39, 90, 166, 195; 13 L.S.I. 153; 14 L.S.I. 47; 15 L.S.I. 20; 16 L.S.I. 27, 69; 17 L.S.I. 104, 156; 18 L.S.I. 41, 49; 19 L.S.I. 10, 48, 113, 186, 188, 260; 20 L.S.I. 56; 22 L.S.I. 225; 23 L.S.I. 37; 25 L.S.I. 78; 26 L.S.I. 153; 27 L.S.I. 155, (1973) Sefer Ha-Chukkim, No. 43.

^{3/} Defence (Emergency) Regulations, 1945, Palestine Gazette of 1945, Suppl. II, No. 1442 (English edition), as amended. Note: Israel also has the Explosives Law, 5714 - 1954, 8 L.S.I. 57, which regulates manufacture of, storing, and trading in explosives. Some of these weapons classified as explosives, however, might also be regarded as firearms (e.g., rockets).

^{4/} Supra note 1.

^{5/} Id., Sec. 1.

includes any part of, accessory to and ammunition for such a weapon and a container containing or adapted to contain any such substance." Under this law, the manufacture, import, and export of firearms are forbidden, save under a license from the State.^{6/} Dealing in firearms or repairing them also requires a special license, and a dealer or repair shop may not accept a firearm unless it is from a licensed holder.^{7/}

Licenses are also specifically required in a number of other instances.^{8/} These include:

a) carrying and/or transporting firearms; ^{9/}

b) possession of firearms with the exception of dealers and those otherwise licensed (e.g., military personnel) and the heirs of deceased persons who had licenses (such heirs are exempt from licensing requirements for a period of thirty days from the death of the person who held a valid permit); ^{10/}

c) buying or selling a firearm; ^{11/}

^{6/} Id., Sec. 2.

^{7/} Id., Sec. 3.

^{8/} In 1972, Israel reportedly had 74,000 licensed weapons, 18,000 of which were licensed in the names of institutions, border settlements, security firms, and related companies. At that time, Israel had a population of about three million persons. See the Los Angeles Times, July 19, 1972, p. 1.

^{9/} Supra note 1, Sec. 4.

^{10/} Id., Sec. 5.

^{11/} Id., Sec. 6.

- d) operating a shooting gallery; 12/
- e) transporting or forwarding a firearm by post, rail, or other means. 13/

Licenses, other than for the import, export, or manufacture 14/ of firearms, may be obtained from a special licensing officer acting on the recommendation of the District Superintendent of Police or his representative. In times of emergency, a "General Officer Commanding" 15/ must concur in the recommendation. Licenses are personal, non-transferable, and may be subject to restrictions or conditions imposed by the licensing officer. 16/ The holder of a license shall produce it when requested to do so by any police officer, and a person is prohibited from carrying or transporting a firearm unless he also transports a license with him.

In instances in which a police officer believes that an offense against the firearms law has been committed, he may seize the firearm in question and retain it until a court decides how it shall

12/ Id., Sec. 7.

13/ Id., Sec. 8.

14/ Id., Sec. 11. The Minister of Defence grants the license for firearms intended for the Defence Army of Israel, and the Minister of the Interior, acting on the recommendation of the Minister of Defence, grants the license for other firearms.

15/ Id., Sec. 11.

16/ Id., Sec. 12.

be disposed of.^{17/} Furthermore, in instances in which a permit to possess may have expired, an individual is required to hand in the firearm to his neighborhood police station.^{18/} When firearms are lost or destroyed, the owner is required to notify a police station within 48 hours.^{19/} Loss or destruction of licenses must also be reported. Should an owner with a license want to have a firearm stored in the custody of a licensed dealer, the law permits him to do so.^{20/}

The Israeli Law places heavy emphasis on the need for good health, both mental and physical, of applicants who are granted firearms licenses. Applications received by licensing officers are forwarded to the Ministry of Health to ascertain whether the applicant has suffered or is suffering from a mental illness.^{21/} Such information is required to be kept confidential, and its divulgence for reasons other than to implement this law shall result in a penalty of a prison term of up to one year.^{22/} In addition, the licensing officer may require an applicant to appear before him to clarify the particulars

^{17/} Id., Sec. 13.

^{18/} Id., Sec. 14.

^{19/} Id., Sec. 15.

^{20/} Id., Sec. 14 C.

^{21/} Id., Sec. 11.

^{22/} Id., Sec. 12 A.

of his application, or to appear before a designated physician for the purpose of undergoing a health examination.^{23/}

This law appears to be unique in that it incorporates a requirement to ascertain the safe operation of a weapon prior to the issuance of a license for it.^{24/}

Penalties for cases of non-compliance with the provisions on licenses to manufacture, import, and export firearms include up to 2 years in prison and/or fines.^{25/} In addition, lighter penalties are prescribed for all other violations of the law, including unlicensed possession or sale of firearms and violations of restrictions contained in existing permits.^{26/} Penalties may be as much as doubled in times of emergency or in cases of violations involving military firearms, several firearms, or a firearm not capable of being carried by a person.^{27/} Forfeiture of firearms in places where contravention of the law has taken place may be ordered by a court.^{28/} In a criminal

^{23/} Id., Sec. 13.

^{24/} Id., Sec. 5. Note: Nothing in the law requires that a ballistics print be kept of each weapon so tested, but if weapons are going to be tested anyway, the additional effort of keeping such information might prove minimal when compared to the benefit such records might provide in assisting law enforcement agencies.

^{25/} Id., Sec. 16 (a).

^{26/} Id., Sec. 16 (b), (c) (i.e., unlicensed possession could result in up to 6 months in jail and/or a fine).

^{27/} Id., Sec. 17.

^{28/} Id., Sec. 18.

action in which an accused is charged with violating license requirements the burden rests on him to prove the existence of a license.^{29/}

Special rules are set forth on the use of firearms in films, performances, and shows.^{30/} In addition, "farmer's traps" and "work implements" for use only in work processes are exempt from licensing requirements.^{31/} Implementation of the law and establishment of fee schedules is assigned to the Minister of the Interior after consultation with the Minister of Finance.^{32/}

The second major piece of legislation relating to firearms control in the State of Israel is the Criminal Code Ordinance (Amendment No. 34) Law, 5732 - 1972.^{33/} This law amends the Criminal Code Ordinance of 1936 and establishes new penalties for the illegal possession of weapons. Under the provisions of this law, a weapon is defined as:^{34/}

(1) an instrument from which can be discharged any bullet, projectile, shell, bomb or the like capable of killing a person and includes any part or accessory of or ammunition for such an instrument;

^{29/} Id., Sec. 20.

^{30/} Id., Sec. 10 B.

^{31/} Id., Sec. 24.

^{32/} Id., Sec. 21.

^{33/} Criminal Code Ordinance, 1936, supra note 2, as amended, at 26 L.S.I. 153.

^{34/} Supra note 33, Sec. 66 A (c).

(2) an instrument designed to emit any substance intended to injure a person and includes any part or accessory of or ammunition for such an instrument and also includes any container containing or designed to contain any such substance;

(3) any ammunition, bomb, grenade or other explosive article capable of killing or injuring a person and includes any part or one of these.

Persons who cannot prove that they are lawfully in possession of a weapon are subject to imprisonment for 7 years, and a person who carries or transports a weapon without a permit is subject to 10 years of imprisonment.^{35/} The concept of constructive possession applies in that the person in possession of a place where a weapon is found is deemed to be in possession of the weapon unless he can prove the contrary.^{36/} A certificate signed by a police officer of the rank of inspector or above shifts the burden to the accused to prove that a certain object is in fact not a weapon under the meaning of the law.^{37/} A later amendment to this law, Criminal Code Amendment Law of April 1973,^{38/} provides for a marked stiffening of penalties for offenses committed while the offender carries a firearm.

^{35/} Id., Sec. 66 A (a), (b).

^{36/} Id., Sec. 66 A (d).

^{37/} Id., Sec. 66 A (e).

^{38/} (1973) Sefer Ha-Chukkim, No. 143, 27 L.S.I. 155.

Finally, the Defence Emergency Regulations of 1945,^{39/} originally promulgated by the British to combat terrorism during their mandatory rule over what was then Palestine, may also be regarded as a means of firearms control. The law is today still considered a military provision but has on occasion been invoked.^{40/} These regulations, as amended, impose rather severe sanctions in contrast to those listed in the two laws cited above. Discharging or carrying firearms or ammunition may result in the death penalty or such lesser punishment as the court may order.^{41/} In addition, under these regulations, unlicensed possession or manufacture of a firearm or ammunition may result in a life sentence or less.^{42/} A prison term of up to 5 years in jail is prescribed for providing weapons to persons who have been or are engaged in an activity prejudicial to the public safety.^{43/}

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^{39/} Supra note 3.

^{40/} Note: Notably in the indictment of Kozo Okomato, the Japanese terrorist involved in the Lod Airport massacre.

^{41/} Supra note 3, Art. 58. Note: To date, the Israeli authorities have not executed anyone under this provision.

^{42/} Id., Art. 59.

^{43/} Id., Art. 64.

ITALY

Introduction and Legal Sources. Italian legislation subsequent to the enactment of the Criminal Code of October 19, 1930, has consistently and progressively resorted to more stringent measures governing the possession, manufacture, and sale of firearms. Said legislation has culminated with Law No. 110 of April 18, 1975, which in essence regulates the entire subject matter without explicitly or implicitly repealing previous enactments, except for a few articles thereof. Consequently, all of the following legal sources are applicable to firearms control in Italy:

- 1) Criminal Code of October 19, 1930, Articles 585, 678-680, and 697-704;
- 2) Royal Decree No. 733 of June 18, 1931, promulgating the Consolidation Act on Public Security Laws, Articles 28-45;
- 3) Royal Decree No. 635 of May 6, 1940, promulgating the Regulation for the Enforcement of the Consolidation Act on Public Security Laws, Article 44;
- 4) Law Decree No. 1274 of November 22, 1956;
- 5) Law No. 895 of October 2, 1967;
- 6) Presidential Decree No. 641 of October 26, 1972;
- 7) Ministerial Decree of August 2, 1973;
- 8) Ministerial Decree of October 18, 1973;
- 9) Law No. 497 of October 14, 1974, Articles 9-16;

10) Law No. 694 of December 23, 1974;

11) Law No. 110 of April 18, 1975.

Definition and Classification of Firearms. Article 585 of the Criminal Code considers as arms "...firearms and all other weapons whose natural purpose is to injure persons [and] ...all other instruments capable of injuring, the carrying of which is either absolutely forbidden by law or subject to justification..." Article 704 of the same Code further classifies as arms "...bombs, any device or wrapper whatsoever containing explosive materials, and asphyxiating or blinding gasses."

The term "war weapons" is first used in Article 28 of the Consolidation Act on Public Security Laws, which forbids "the collection and possession, in the absence of authorization by the Interior Minister, of war weapons and weapons analogous thereto, national or foreign, or parts thereof, ammunition ... intended for the armament of national or foreign armed forces." The actual definition of "war weapons" is, however, given by Article 33 of the Regulation for the Enforcement of the Consolidation Act aforesaid, which states:

Art. 33. Pursuant to the Law [on Public Security], "war weapons" are weapons of any kind capable of piercing, cutting, or firing, which are or can be designated for the armament of national or foreign troops or for any military employment.

"War-type weapons" are those having characteristics analogous to "war weapons."

"War ammunition" includes cartridges, rounds, bombs, powder, casings, and any other material for the loading of combat firearms or for combat employment.

Article 44 of the same Regulation, in providing a listing of "common firearms," implicitly distinguishes the latter from "war weapons."

The same distinction is ultimately made by the most recent applicable statute, Law No. 110 of April 18, 1975, which reiterates and amplifies the two basic distinctions:

Art. 1. War weapons, war-type weapons, and war ammunition. ...war weapons are firearms of any type which, because of their clear potentiality to injure, are or can be designated for the modern armament of national or foreign troops for war employment, as well as 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.

Art. 2. Common firearms and ammunition. ... [the following] are common firearms:

- 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 having one rifled barrel, even semiautomatic;

- e) ...
- f) revolvers;
- g) semiautomatic pistols;
- h) replicas of antique muzzle-loading arms prior to 1890.

Article 2 also classifies as common firearms rifles and carbines which can be loaded with "war ammunition," but which essentially reflect at the same time hunting and/or sporting characteristics. Air pistols and rifles fall within this category as well.

Although Article 7 of the same statute provides for the establishment of a National Catalogue of Common Firearms for purposes of classification, this provision has not as yet been implemented, thus causing some doubt for the time being as to the appropriate classification of certain firearms.

General Licensing Provisions. The licensing provisions of previous enactments are confirmed and/or expanded by Article 8 of Law No. 110 of April 18, 1975. While Article 35 of the Consolidation Act on Public Security Laws prescribes police clearance for the acquisition and transfer of arms, Article 8 additionally requires that the grounds for the acquisition and transfer be specified. Article 8 also reiterates the provision of Article 31 of the Consolidation Act, which makes industrial repair and maintenance of arms contingent upon licensing. Article 8 further subjects to administrative control (or examination,

as appropriate) the technical competence of individuals who apply for the authorization to manufacture, collect, deal in, store, and repair arms, pursuant to Articles 28, 31, 32, 35, and 42 of the Consolidation Act and Article 37 of Royal Decree No. 635 of May 6, 1940.

Possession of Firearms. Article 10 of Law No. 110 of April 18, 1975, categorically bars further granting of licenses to private persons for the possession of war weapons, war-type weapons, parts thereof, and war ammunition. Only individuals (or their heirs and devisees) who already hold such licenses may retain the firearms aforesaid. The same Article, as interpreted by Interior Ministry circulars, limits possession of common firearms to two handguns and six hunting or sporting rifles and shotguns per person. In order for a collector to obtain a waiver to said limitations, he must apply for an additional license for this specific purpose with the provincial chief of police (Questore). Possession of ammunition for the extra firearms is, however, forbidden. Obviously the limiting rules on common firearms are not applicable to licensed dealers.

Carrying of Firearms. Article 4 of Law No. 110 explicitly confirms the provisions of Article 42 of the above-mentioned Consolidation Act on Public Security Laws, which requires specific licensing respectively for the carrying of handguns and hunting rifles or shotguns outside of the owner's dwelling. Special procedures are set forth in Law No. 694 of December 23, 1974, for the carrying of firearms aboard aircraft.

Criminal Sanctions. Recent enactments have introduced stiffer penalties to curb offenses against firearms control legislation. As a rule, criminal sanctions include the simultaneous application of confinement terms and fines, the severity of which varies in accordance with the offense. Law No. 497 of October 14, 1974, imposes particularly severe penalties upon the perpetrators of crimes of violence committed with weapons, obviously including firearms.

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JAPAN

In Japan, the question of gun control is governed by the Law Controlling the Possession of Firearms and Swords,^{1/} the Enforcement Order of the Cabinet,^{2/} the Enforcement Regulation of the Prime Minister's Office,^{3/} and the Registration Regulation of the Cultural Properties Protection Commission.^{4/} These laws and regulations, which are concerned mainly with the possession of a gun, are enforced by the police.

The manufacture and sale of firearms, however, are regulated by the Minister of International Trade and Industry under the Weapon Manufacture Law,^{5/} the Enforcement Order of the Cabinet,^{6/} and the Enforcement Regulation of the Ministry of International Trade and Industry.^{7/} Bullets, cartridges, and blank cartridges are also subject

^{1/} Law No. 6, March 10, 1958, came into force on April 1, 1958; last amended by Law No. 48, April 20, 1971. This Law superseded the Ordinance Concerning Firearms and Swords (Ordinance No. 334, 1950) which was issued pursuant to the general directives of the Supreme Commander for Allied Powers (SCAPIN 2099). This Ordinance prevailed as law by virtue of Law No. 13, 1952, after the Peace Treaty came into force on April 28, 1952, until the enactment of the present law.

^{2/} Cabinet Order No. 33, March 17, 1958, as last amended by Order No. 131, April 20, 1971.

^{3/} Regulation No. 16 of the Prime Minister's Office, March 22, 1958, as last amended by Regulation No. 25, April 22, 1971.

^{4/} Regulation No. 10 of the Ministry of Education, March 10, 1958, as last amended by Regulation No. 31, December 26, 1968.

^{5/} Law No. 145, August 1, 1953, as last amended by Law No. 48, April 20, 1971.

^{6/} Cabinet Order No. 198, August 15, 1953, as amended by Order No. 216, July 28, 1954.

^{7/} Regulation No. 43 of the Ministry of International Trade and Industry, September 1, 1953, as last amended by Regulation No. 47, May 1, 1971.

to the control of the same Minister, but under a different set of legislation, including the Explosive Control Law,^{8/} the Enforcement Order of the Cabinet,^{9/} and the Enforcement Regulation of the Ministry of International Trade and Industry.^{10/} In addition, the Order Concerning Transportation of Explosives issued by the Prime Minister's Office^{11/} is in force.

This dual control by police (possession) and the Ministry of International Trade and Industry (manufacture, sale, cartridges, etc.) results in the inefficient administration of gun control legislation. This group of laws has been the target of constant criticism by those who advocate the enactment of uniform gun control legislation under the exclusive control of the police. Many argue that the possession of firearms, which is the most important aspect of the gun control, is so closely connected with the problems of import, sale, and transfer of guns that the uniform administration of a law which covers both aspects of firearms control is urgently needed.^{12/}

^{8/} Law No. 149, May 4, 1950, as last amended by Law No. 80, June 7, 1966.

^{9/} Cabinet Order No. 323, October 31, 1950, as amended by Order No. 261, July 21, 1966.

^{10/} Regulation No. 88 of the Ministry of International Trade and Industry, October 31, 1950, as amended by Ordinance No. 41, June 20, 1974. ...

^{11/} Order No. 65 of the Prime Minister's Office, December 28, 1960, as amended by Order No. 44, December 1, 1969.

^{12/} Isao Koike, "Jūhō tōken nado shoji torishimarihō no ichibu o kaiseisuru hōritsu," [Partial Amendment to the Law Controlling the Possession of Firearms and Swords], Toki no hōrei, No. 536 (June 1965), p. 9.

An increase during the 1960's in the number of crimes committed with unauthorized firearms, as revealed by government statistics, ^{13/} gave impetus to the argument for a revision of the 1958 law which would strengthen the methods of control of possession of firearms. A 1965 amendment to the Law Controlling the Possession of Firearms and Swords was aimed at curtailing illegal possession of firearms as a measure to prevent the use of such weapons in crimes of violence. The amendment provided for an overall increase in the punishment of offenders, ^{14/} in addition to incorporating a new provision placing further prohibitions on the importation of firearms. In 1971, the 1958 Law was further amended, stricter standards being imposed upon the possession of rifles and the safe keeping of firearms in general.

The following is a summary of the Law Controlling the Possession of Firearms and Swords. The Law consists of five chapters:

(I) general provisions, (II) permission for the possession of firearms or swords, (III) registration of the matchlock-type firearms or swords, (IV) miscellaneous provisions, and (V) penal provisions. Under Chapter I (Articles 1 to 3-2), the purpose and definition of the above law are set forth:

Article 1. The purpose of this Law is to provide control measures necessary for the prevention of danger and injury arising from the possession of firearms, swords, etc.

^{13/} Ibid., p. 2.

^{14/} Ibid., p. 3-5.

Article 2. In this Law "firearms" shall mean pistols, rifles, machine guns, guns, hunting guns, and other powder charging firearms which project a metal shell and air guns (including those using compressed gas) that have mechanism of shooting metallic bullets.

The possession of firearms is prohibited with the following exceptions:

Article 3. No person shall possess firearms or swords, except for such cases as falling under any one of the following items:

(1) In case of possession for the purpose of performing a duty in accordance with laws and orders;

(2) In case of possession by the state officials or by officials of the local public body with the intention of test or research, or of exhibition to the public...;

(3) In case of possession by any person who has obtained permission in accordance with the provisions of Articles 4 and 6...;

(3-2) In case of possession by any person who has been entrusted with a firearm [to be used for an international athletic game] under Article 10-2, paragraph 1...;

(4) In case of possession of a firearm which has been registered in accordance with the provisions of Article 14;

(5) In case of possession by any firearms or hunting gun manufacturer as provided in the Weapon Manufacture Law (Law No. 145, 1953) or by any person who has obtained permission under the proviso to Articles 4 or 18 of the above Law in order to carry on business...;

(6) In case of possession by any dealer of hunting guns, mentioned in the Weapon Manufacture Law, who has obtained from any manufacturer of hunting guns, from any dealer of hunting guns, or from any person who possesses the same with permission under Article 4 ... or [in the case of possession] by the said dealer who has imported the same for the purpose of business.

(7) - (10) [Omitted.]

Article 3-2. No person shall import pistols, rifles, machine guns, or guns (cannons) with the following exceptions:

(1) - (5). [Omitted.]

Chapter II (Articles 4 to 13) is concerned with procedure for obtaining permission to possess and restrictions on the possession of firearms. Any person who wishes to possess firearms, in accordance with the procedure prescribed by the Regulation of the Prime Minister's Office, must obtain the permission of the Public Safety Commission of the To, Do, Fu or Ken prefecture ^{15/} controlling possession of firearms and swords in his place of residence.

Under Article 4, 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 the extermination of harmful birds and beasts; (2) firearms necessary for butchery, life saving, fishery, and industrial construction; (3) firearms necessary for research and experimentation; (4) pistols to be used in international athletic games upon recommendation by the person designated by Cabinet Order; and (5) firearms necessary to the giving of signals by the umpire in international or national athletic games upon recommendation by the person designated by Cabinet Order.

Under Article 5, the following persons, however, may not possess the firearms mentioned above: (1) a person less than 18 years of age (in the case of a hunting gun, less than 20 years of age); (2) a mentally deranged or mentally dissipated person or one poisoned

^{15/} 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).

by narcotics or "taima" [cannabis sativa]; (3) a person without fixed abode; (4) a person with respect to whom three years have not elapsed since the day his permission [to possess firearms] was withdrawn in accordance with Article 11; (5) any person who, for the violation of Article 3, paragraph 1, has been sentenced to punishment more severe than a fine, during the three years prior to the date of his application for permission; and (6) any person (taking into consideration also relatives living with him) who there is reasonable cause to suspect may be dangerous to other persons' lives or properties or to public peace.

An exception will be made to the prohibition stated in the first item above under the following circumstances: (1) in the case of an air gun to be used in a national athletic game, a person over 14 years of age may be given permission for possession upon recommendation by a person designated by Cabinet Order, and (2) in the case of a hunting gun to be used for this purpose, a person over 18 years of age may be given permission upon recommendation by the designated person.

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 contingent also 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 courses are concerned with the

laws and regulations related to the possession of hunting or air guns, and the method of their use and custody. Upon completion of the course, a certificate is issued by the Commission. In the case of a rifle to be used for hunting or the extermination of harmful birds and beasts, permission shall not be given unless the person is a professional hunter who will use the rifle in the course of his occupation or 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 also shall be granted to athletes who will use the rifle to participate in a rifle shooting game. (Articles 5-2 and 5-3).

Aliens who enter Japan in order to use firearms in international athletic games to be held in Japan must obtain permission from the local Public Safety Commission having jurisdiction over the ports of entry and exit.

When a Public Safety Commission gives permission to possess a firearm, a permit certificate must be issued. However, such permit shall be invalidated in the following instances: (1) when the possession of firearms has become impossible within 3 months from the time the permit was granted; (2) when a person who had permission has died; (3) when a person has transferred the said firearms and no longer has them in his possession at his voluntary will; (4) when the firearms have been lost or stolen or destroyed; (5) when the firearms have been recalled by the Public Safety Commission or confiscated by the same Commission; (6) when the recommendation required for permission

to use a pistol in an international athletic game, for permission for a person less than 18 years of age to possess an air gun for use in a national athletic game, and for permission for a person less than 20 years of age to use a hunting gun in a national athletic game, has been withdrawn; and (7) when the permit has expired.

Under Article 10, the carrying, transporting, or discharging of firearms, other than that specifically permitted by law (Articles 4 and 6), is prohibited with certain exceptions. The person who has been authorized to possess a firearm must himself keep it in a gun locker. The person who has obtained permission to possess firearms for the purpose of participating in international games must have the said firearms 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 holdings, hearings, and inspection by the competent Public Safety Commission.

Chapter III (Articles 14 through 21) is exclusively devoted to the problems arising from the registration of the matchlock-type firearms and swords, which have an artificial value, with the Cultural Property Protection Commission.

Chapter IV (Articles 21-2 through 30) sets forth miscellaneous provisions. The manufacturer of firearms, hunting guns, signal guns for whaling, or the dealer in hunting guns or signal guns for whaling shall not transfer the said gun to an assignee unless the former has confirmed

that the latter is authorized to possess the gun under the provisions of Article 3 or unless he has displayed the permit under Article 7.

Any person who has found or picked up firearms must report this promptly to the nearest police station. The person authorized to possess a firearm must report his lost or stolen firearm 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.

Under Article 24-2, the possessors of firearms are subject to police inspection and temporary custody of the firearms. When there is a reasonable suspicion that a person carrying or transporting firearms is dangerous to other persons' lives or properties or to public peace judging from his unusual behavior or from the surrounding circumstances, a police official may compel him to show the said firearms for inspection. When it is deemed necessary, such firearms may be withheld by the police. They will be returned to the original possessor within 5 days from the time of their surrender to the police, unless the police official deems that such return is not proper and that the firearms should be returned to relatives of the original possessor or to other persons. When the firearms are in the possession of persons not having permission, the firearms in question may 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 5 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 6 months from the time at which the public notice was made, ownership of the said firearm would be assumed by the state or local government.

Under Article 25, the provisions on inspection and temporary custody of firearms are stated. These provisions are applicable to persons who enter Japanese ports carrying firearms.

In a case where a Public Safety Commission clearly deems that the delivery, transportation, and carrying of the firearms for which a permit has been obtained under Articles 4 and 6 and which have been registered under Article 14 are directly dangerous to the maintenance of public order due to the existence of a disaster or disturbance to local tranquility, the following actions may be taken: (1) the Commission may prohibit or limit these actions to a fixed district and period by means of a notice in the form of an announcement; (2) the Public Safety Commission may, in a case where the above notice has been made, retain firearms provisionally; (3) the notice given by the Commission must be approved by the deliberative assembly of the local public body convened within 7 days from the day of notice; (4) when the above approval has not been obtained, the notice shall lose its effect thereafter; and (5) when the fixed period has expired or the notice has become invalid, the Commission shall immediately return the firearms provisionally held.

Under Chapter V of the same Law (Articles 31 to 37), any person who possesses firearms in contravention of Article 3 or fails to obtain permission is subject to a maximum punishment of penal servitude not exceeding 5 years or a fine not exceeding 200,000 yen. Any person who imports firearms in violation of Article 3-2 is subject to penal servitude not exceeding 5 years or a fine not exceeding 300,000 yen. If any person so imports firearms for the purpose of profit, he is subject to penal servitude not exceeding 7 years or a fine not exceeding 500,000 yen. For a minor violation, a minimum punishment of a fine not exceeding 10,000 yen or confiscation of the firearms may be imposed.

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MEXICO

Among the individual guarantees granted by article 10 of the Constitution of Mexico is the right of Mexican nationals to have arms of any kind in their possession for self-protection and legitimate self-defense, except such as are expressly forbidden by law, or which the nation may reserve for the exclusive use of the army, navy, or national guard. However, Mexican nationals may not carry arms within inhabited places without complying with police regulations.

Two recent enactments govern this matter in Mexico, to wit, the Federal Law on Firearms and Explosives of December 29, 1971^{1/} and its regulations of May 4, 1972.^{2/}

Regarding handguns, the Law provides that semiautomatic pistols of a caliber not larger than 38 (excluding 38 Super and 38 Comando pistols and Mausser, Luger, Parabellum, and Comando pistols) and revolvers of a caliber not exceeding 38 (except Magnum 35.7 may be possessed or carried by individuals, provided these weapons are registered with the Department of Defense. Collector's items or those that may be used in target contests or for hunting are also included in this group.

Each household will be permitted handguns. Each gun shall be duly registered with the Department of National Defense. Clubs, sportsmen's associations, and arms collectors shall also be subject to registration with the Department.

^{1/} Diario Oficial [D.O.] Jan. 11, 1972.

^{2/} D.O. May 6, 1972.

The carrying of handguns requires previous licensing. Private individuals are entitled to licenses provided: a) they are clean-living individuals; b) they have fulfilled their obligations in the national military service; c) they do not have physical or mental limitations for handling handguns, and d) they prove their need to carry a handgun because of their employment or profession, any special circumstance concerning the place where they live, or any other justified reason, as stated before the Department of National Defense.

Aliens are also entitled to be licensed to carry handguns only when, in addition to the fulfillment of the cited requirements, they prove their immigrant status. Temporary licenses may be issued to tourists who visit the country to partake in target contests.

A license may be cancelled when: a) its holder abuses his privilege or the terms of his license; b) the holder of a license alters his license; c) a handgun is used outside the place or jurisdiction where its use was authorized; d) the handgun covered by a license changes its characteristics; e) the issuance of a license was based on fraud, or when the Department of National Defense believes the reason for the issuance of a license is no longer valid; f) there is resolution of competent authority; g) the licensee changes his address without notifying the Department of National Defense, and h) the licensee does not abide by the provisions of this law or its regulations.

The importation of handguns is subject to the issuance of the corresponding permit. The granting of an exportation permit is subject to proof that the exporter is authorized to export handguns to the country of destination. Importation or exportation of handguns is subject to control by the Department of National Defense by means of inspectors at the customs office.

Licenses for carrying handguns must state the jurisdiction where the carrying of arms is authorized. Individuals licensed to carry handguns are forbidden to carry them in public demonstrations or celebrations, or in any place where a deliberative assembly is gathered, or in any other kind of gathering of people where opposing ideas may be expressed.

Licensing is also required for the transportation of handguns within the national territory. Auction of firearms is forbidden except in those cases where they are made by administrative or judicial authorities, in which case they are under obligation to notify the Department of National Defense.

Violation of the provisions of this law brings about the following penalties: A fine of from 50 to 500 pesos or, in default of payment thereof, arrest not exceeding 15 days for possessing handguns in places not authorized or in a place other than the licensee's domicile; or for possessing arms in the domicile of the individual without the corresponding license or for possessing them, or for carrying handguns in public demonstrations or where people are gathered. Handguns carried without a license shall be

confiscated, or when the licensee does not carry his license with him, or if the licensee has abused the terms of his license.

A penalty of from two months to two years of imprisonment or a fine of from 100 to 2,000 pesos shall be imposed upon those persons carrying handguns without a license.

A penalty of from two months to two years of imprisonment or a fine of from 200 to 2,000 pesos shall be imposed upon those persons who for the first time sell, donate, or barter, without the corresponding license, the property of a handgun to another person.

Transportation of two or more handguns or their transfer for two or more times without the corresponding license carries a penalty of from six months to six years of imprisonment and a fine of from 100 to 2,000 pesos.

The importation of concealed weapons in the Republic shall be subject to a penalty of from one to 15 years of imprisonment and a fine of from 100 to 100,000 pesos.

Any other violation of the law not specifically punished by this Law may be punished with a fine of from 50 to 10,000 pesos.

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THE NETHERLANDS

The legislation on weapons in the Netherlands is handled in three laws with their implementations. They are the following:

- The Weapon Law;^{1/}
- The Firearms Law of 1919;^{2/}
- The Law to Ban Undesirable Hand Weapons.^{3/}

The Weapon Law is a general law prohibiting anyone from carrying arms in public except for those persons who are authorized to do so.

The Law to Ban Undesirable Hand Weapons covers those weapons which are not covered in the Firearms Law and, as such, is not included in the following discussion.

The Firearms Law covers handguns and is dealt with in this report. A change of this law is presently under consideration in the Netherlands, but no draft of any projected changes is available in the Law Library.

^{1/} Wapenwet, Law of May 9, 1890, Staatsblad van het Koninkrijk der Nederlanden [official law gazette of the Netherlands, hereafter cited as Stb.] 81, as amended.

^{2/} Vuurwapenwet 1919, Law of June 7, 1919, Stb. 310, as amended.

^{3/} Wet tot Wering van Ongewenste Handwapenen, Law of April 7, 1965, Stb. 141, as amended.

Article 2 of the Firearms Law provides that the import, transit and transportation of firearms and ammunition may be regulated by a general administrative measure (decree) which has been done in several cases.

Article 3 prohibits the manufacturing, repairing or keeping of firearms or ammunition, unless authorized. An authorization to have a firearm may be granted by the head of police of the requester's place of residence or by the Governor of the Province (Commissaris van de Koningin) where the requester's residence is located. It will be granted only when there is a reasonable interest and when there is no fear of misuse of the authorization of the firearm. The authorization may be limited to certain times and places, and other conditions may be attached to it. An example of a reasonable interest is a desire to hunt, but the possession of firearms heavier than those needed for hunting is not a reasonable interest under this particular authorization. The personality of the applicant comes into consideration when the fear of misuse of the authorization or the firearm is in question. As an example of the other conditions that may be

attached to the authorization, the following is illustrative.

If pistols are used only to decorate a room, one of the conditions may be that the pistols should be fixed so that they cannot be fired anymore.^{4/}

The authority to keep a firearm includes the authority to keep the ammunition for that particular firearm (Art. 3, par. 7).

Persons whose business or profession it is to supply firearms or ammunition to individuals must keep a continuous record thereof. These records shall include the names and addresses of those who are involved in the transaction, the date and place of issue of the authorization, etc., or any other information required by the head of the local police.

Article 6 generally forbids delivery of a firearm in the continental Netherlands to anyone unless authorized.

This law is not applicable to firearms which have been rendered unfit for firing, or those which are of an antique nature.

^{4/} Wapenwetgeving, as compiled by S.J. Alma and J.H.M. Hoeneveld. Nederlandse Staatswetten, editie Schuurman en Jordens. 74 (8th ed. Zwolle, 1972).

Violation of the Firearms Law is punished by penalties that may go as high as 4 years of imprisonment or fines up to f12,000. All violations of this Law are considered felonies.

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NORWAY

Trade in firearms and ammunition and their acquisition and use, as well as their import and export, are regulated by the Law on Firearms, Ammunition, etc. (Lov om skytevåpen og ammunisjon m.v.) of June 9, 1961, Law No. 1, which replaced all earlier laws dating back to 1891. According to this Law, any person who desires to purchase firearms, parts thereof, or ammunition must obtain a license from the chief of police of his place of residence or sojourn (Arts. 7 and 13). The same applies to the possession of firearms, parts thereof, or ammunition in any manner whatever (Arts. 8 and 13).

A license for the purchase or possession of firearms, parts thereof, or ammunition may be granted only to sober and reliable persons who have reasonable grounds for the possession of firearms. A license may not be granted to persons under 16 years of age, and the King may raise the age requirement to 21 years of age (Arts. 7 and 8).

The license shall be presented for inspection upon the request of police authorities. If the license cannot be shown immediately, the police may order it to be presented within a certain time limit and may impound the firearm until that time. If a license concerns a revolver or pistol, the possessor must carry the license with him. If he cannot

* Norsk Lovtidend (Norwegian Law Gazette) of June 30, 1961; Norges Lov 1682-1965 2340-2344 (Oslo, 1966).

present the license for inspection, the police must impound the revolver or pistol (Art. 9).

The police authority may revoke a license if the possessor misuses intoxicants or narcotics, or if his mental condition or behavior gives reason to expect the misuse of the firearm, or if the user has been careless in using it. In such cases, the firearm and license shall be confiscated by the police (Art. 10).

The King may issue regulations relating to the acquisition of firearms, parts thereof, or ammunition for gun clubs and their members, as well as other corporations (Arts. 7 and 13).

This Law defines firearms as weapons which by means of gunpowder or other propellants, or as arms or devices for firing, discharge explosive substances, gas, signal lights, rockets, and the like, including flame throwers (Art. 1).

The term "parts of firearms" is understood to mean lock and breach mechanisms and barrels (Art. 2). The law defines the following as ammunition: cartridges consisting of projectiles; cases; means for igniting and propulsion; projectiles of all types; gunpowder; explosives and igniting means of all types, including fireworks, hand grenades, bombs, rockets, mines, and the like; containers of illuminating gas, flame gas, poisonous gas, and tear gas; flares; and smoke and fire compounds (Art. 3).

This Law does not apply to shotguns with only smoothbore

barrels, air and spring rifles, air and spring pistols, devices for slaughtering, signal pistols, and lifesaving and harpoon guns, or to their parts and ammunition, if they are used for the stated purposes and permitted by the proper ministry. The King may permit other exceptions (Arts. 5 and 6).

A license granted by the proper ministry is necessary for trade in firearms, parts thereof, and ammunition (Art. 16). The import and export of firearms, parts thereof, and ammunition are subject to a license granted by the proper ministry (Art. 23).

Any violation of the provisions of this Law, or of regulations or orders issued on the basis of this Law, is punishable by a fine or imprisonment for a period up to 3 months, unless the perpetrator is subject to punishment in accordance with other criminal provisions. The firearms, parts thereof, and ammunition may be confiscated (Art. 33).

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NORWAY AND THE OTHER SCANDINAVIAN COUNTRIES

SUPPLEMENTARY REPORT

The above-discussed Norwegian Statute of June 9, 1961,^{1/} resembles rather closely the corresponding Danish Statute No. 16 of January 20, 1965 (Våbenloven).^{2/} It should be noted that the exception referred to in the earlier report with respect to shotguns is understood in practice to apply only to shotguns suitable for hunting purposes. A Danish court decision reported in 1965 Ugeskrift for Retsvaesen, page 704 ff., has held that a shotgun (barrel 78.5 cm., smoothbore, 9 mm diameter) camouflaged as a walking stick was not included under the exception because this weapon was not suitable for hunting purposes. The police ordinances of densely populated areas usually have additional regulations that apply to shotguns, for instance, a prohibition against the discharge of any firearms without specific permission by the police.

The corresponding Swedish Statute (Vapenlag) of December 14, 1973,^{3/} and Regulation (Vapenkungörelse) of March 1, 1974,^{4/} are

^{1/} The cited Statute is still in force, and it is translated into English in Section XXI-4 of Norwegian Laws, etc. (Oslo, 1963-). (Looseleaf).

^{2/} Karnovs Lovsamling 1742 (8th ed., Copenhagen, 1972). The provisions for the administration of the Statute are found primarily in the Regulation No. 349 of June 25, 1973, on Weapons. This Regulation is reprinted (in Danish) on p. 3096 of the 1973 Supplement to Karnovs Lovsamling.

^{3/} 1973 Svensk Författningssamling 1176.

^{4/} 1974 Svensk Författningssamling 123.

based on the same principles as the Danish and Norwegian legislation, but the Swedish provisions include shotguns also in their general prohibitions. However, Swedish practice is not very different from Danish and Norwegian practice. In any of these countries it is extremely difficult to obtain a permit to carry a handgun or to possess an automatic weapon, whereas it is rather easy for a person of good reputation to obtain a permit to possess and carry a bona fide hunting weapon. Rifle associations and the like are normally required to place their more dangerous weapons in safe storage facilities. The members are allowed to use such weapons, but normally not to take them home.

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POLAND

All legislative acts relating to firearms enacted after November 1918 when Poland regained her independence were based on the principle of strict control of firearms and ammunition. The first legislation on this subject was the Decree of January 25, 1919,^{1/} on acquisition and possession of firearms. The Decree was repealed by the Decree of the President of the Republic of October 27, 1932, on arms and ammunition which entered into force on January 1, 1933.^{2/}

According to both of these decrees, firearms could be acquired, possessed and carried only upon the obtaining of a permit issued by the competent government agencies. The issuance of permits was left to the discretion of the issuing agency. Only persons who guaranteed that they would not use firearms for purposes inconsistent with the state or public security, peace or public order could obtain a permit. The 1932 decree had forbidden the issuance of permits to: minors under 17 years of age, the mentally unsound, alcoholics and drug addicts, vagabonds, or to persons who had been punished for violation of the law concerning firearms twice in the past.

1/ Dziennik Praw (Journal of Laws), No. 9, 1919, text 123.

2/ Dziennik Ustaw (Journal of Laws, hereafter cited as Dz. U.) No. 94, 1932, text 807.

The 1932 decree remained in force until February 10, 1961, when the Law of January 31, 1961, on firearms, ammunition and explosives ^{3/} became effective.

The new law not only reaffirmed the principle of strict gun control adopted by the preceding legislative acts, but made the control even stricter.

Firearms within the meaning of the law are small caliber weapons (revolvers, pistols and so forth) as well as hunting and sport guns. Ammunition is understood to be that which pertains to small caliber weapons as well as hunting and sport guns (Art. 1).

Firearms may be legally possessed with a permit issued to a person at least 18 years of age by the competent agency of the Citizens' Militia (hereafter referred to as police). Such a permit authorizes one to acquire, possess and carry the firearm specified therein. It may stipulate that the weapon

^{3/} Dz. U. No. 6, 1961, text 43.

for which the permit has been issued may not be carried but only possessed and kept in a specified location. The law forbids the issuance of permits to minors under 18 years of age, unless they are over 16 years old and their parents or guardians submit a request for a permit on the minor's behalf. However, such minors may obtain a permit only for sport guns.

Permits may not be issued to the mentally unsound, to alcoholics and known drug addicts, to persons not possessing a permanent residence or an established source of income and, finally, to persons who may use firearms for purposes inconsistent with the security of the state or of public order.

The firearms permit for members of the Armed Forces is issued by the competent military authorities.

The following persons are not required to obtain a permit:

1. members of the Armed Forces insofar as the firearms belonging to their equipment are concerned;
2. persons who by virtue of the character of their service and in conformity with the law are entitled to possess firearms of a specified category;
3. persons using firearms for sporting purposes and for target practice on a shooting range as permitted by government agencies and when the firearms involved are used only within

the shooting range.

In addition, the Minister of Internal Affairs is authorized to specify by regulation categories of persons other than those listed above who may possess firearms without a permit issued by the police as well as categories of firearms other than those specified above which may be in their possession without such a permit.

No permit is required for the possession of firearms of any kind manufactured prior to 1850.

Agencies of the police issue permits if the factual circumstances presented in the application warrant the issuance.

Issuance of a permit is left to the discretion of the police. The permit may be granted "if the factual circumstances specified by the applicant justify the issuance of a permit." However, no factual and legal grounds for refusal to grant a permit need be given if the issuing agency decides that the refusal will be in the interest of the security of the state or public order.

A firearms permit is valid throughout the entire country. The implementing regulations determine the duration

of a permit which generally is 1 year, and for hunting and/or sport firearms from 1 to 5 years.^{4/} The same permit also covers the possession of ammunition for firearms.

The police agency which issued a firearms permit is authorized to revoke it at any time if the factual circumstances supporting the issuance of the permit cease to exist. Revocation becomes mandatory if it has been shown that a person to whom a permit was issued belongs to a category of persons barred from obtaining such permits.

A person having a firearms permit is obliged to report in writing to a police station any change of address within 14 days from the day on which this change took place. Within the same period of time, he is also obliged to submit to a police station of his new abode a copy of the above report, along with the firearms permit, so that the firearm may be registered anew. 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

^{4/} Regulation of the Minister of Internal Affairs of October 19, 1961, concerning the agencies of the Citizens' Militia authorized to issue firearms permits, to determine permit form and to describe basic parts of firearms and ammunition as amended in 1964 (Dz. U., No. 52, 1961, text 289, and No. 3, 1964, text 17).

and ammunition may not be transferred under a chattel mortgage. The loss of a firearm must be reported to a police station without delay. Should the interest of the State so require, the Minister of the Interior may order the deposit of firearms of any or of a certain type at specified places within a specified time. The Minister is also authorized to forbid, for the above reasons, the temporary carrying of any firearms of certain types.

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 firearm permit, must sell his firearm within the period of time prescribed by the police agency. It 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.^{5/} Firearms which are not sold within the prescribed period of time must be surrendered to the police agency for appraisal and sale by an enterprise authorized to trade

^{5/} Resolution of the Council of Ministers of September 12, 1961. Dz. U. No. 42, 1961, text 221.

in firearms. The sum obtained from such a sale is returned to the owner after the commission has been deducted.^{6/}

Firearms and ammunition may be sold by socialized enterprises which have obtained a license from the Minister of Internal Trade issued in agreement with the Minister of Internal Affairs.^{7/} The Law on Firearms provides for strict police supervision of such enterprises. These enterprises are obliged to keep exact records of all transactions (purchases and sales). As a rule, the police are empowered to conduct an annual check of all transactions, but casual, unannounced checks may also be made.^{8/}

Any violation of the provisions concerning firearms, ammunition and explosives is punished by either administrative agencies or the court. The administrative agencies have jurisdiction over the manufacture, possession and transfer

^{6/} Id.

^{7/} Regulation of the Minister of Internal Trade and the Minister of Internal Affairs Concerning the Conditions for Selling, Recording, and Storing Firearms, Ammunition and Gunpowder by Socialized Enterprises of May 18, 1962. Dz. U. No. 31, 1962, text 148.

^{8/} Regulation of the Minister of Internal Trade and the Minister of Internal Affairs Concerning the Rules and Procedures for the Supervision of Enterprises Trading in Firearms by the Police. Dz. U. No. 54, 1962, text 270.

of air guns and over violations, such as carrying firearms without a permit, failure to report a change of residence, failure to comply with the order of the Minister of Internal Affairs to surrender firearms. The penalty shall not exceed detention for 3 months or a fine of up to 5,000 zlotys.

The jurisdiction of the courts extends to any illegal transfer of firearms, ammunition for them and explosive materials. The penalty for such offenses is deprivation of liberty for a term not to exceed 3 years or detention for the same term. In addition, firearms may be declared forfeited. According to the provisions of Article 143 of the Penal Code of 1969, the following also fall under the jurisdiction of the court: illegal manufacture, storing or keeping of explosive materials or devices, or other articles which may cause widespread danger to human life or health or to property of a considerable extent. Such offenses are punishable by deprivation of liberty for from 6 months to 5 years. Pursuant to Article 286 of the Penal Code of 1969 the unauthorized possession and manufacture of firearms or ammunition are punishable by deprivation of liberty for up to 5 years.

ROMANIA

During the period of peace from 1924-1941, the possession, carrying, and use of firearms were governed by the Law of December 12, 1924, on the Possession and Sale of Arms ^{1/} and the Regulation for its ^{2/} implementation.

According to the provisions of the above Law, the possession and use of firearms were permitted when authorized by a license, which generally was issued for an unlimited period of time. The registration of arms took place at the same time that the license to possess them was issued (Art. 6). Persons engaged in selling arms were required to keep a special register of all firearms sold that was subject to strict control by the local police. A complete inventory based upon this register had to be sent yearly to the military authorities and to the local police or government representatives (Art. 29). This situation remained unchanged until the war period of 1941-1945.

Decree No. 142 of January 24, 1941, ^{3/} was confiscatory in its provisions. It stated that "whoever possesses firearms, ammunition and explosives of any kind and under any form, even if such holders have a license for possession and use, shall, within 24 hours after publication

^{1/} Monitorul oficial [until February 1949 the official law gazette of Romania, hereafter cited as M.O.], No. 281 of December 21, 1924.

^{2/} January 14, 1925, Codul General al Romanei. 1922-1925, 1004.

^{3/} M.O., No. 20 bis, January 24, 1941.

of this Decree, surrender them together with the pertinent license" to the government authorities (Art. 1). Offenders were punished by imprisonment with hard labor from 5 to 12 years and deprivation of civil rights from 3 to 5 years, as stated in Decree No. 267 of November 13, 1940. No right of appeal was permitted against such conviction.

Decree No. ~~2~~^{4/} 123 of 1941^{4/} abrogated the Law of December 21, 1924, and restricted the right to possess and use firearms and the necessary ammunition (Art. 6). Any license was valid only for one year, and no one could be allowed to have more than one gun. Under Article 15 strict controls were enacted. Upon the issuance of the license a detailed registration of arms was made (Art. 15, par. 3).

On January 9, 1942,^{5/} the Government ordered that all firearms should be deposited with the government authorities, under penalty of death for offenders against this order. These arms were returned only to those owners who could obtain a new license.^{6/} Foreigners had no right to possess any arms.

^{4/} M.O., No. 173, July 24, 1941.

^{5/} Decree No. 34, M.O., No. 7, January 9, 1942.

^{6/} Law No. 168, M.O., No. 67, March 20, 1943.

In 1959, the Communist Government enacted a Decree on Arms, Ammunition and Explosives ^{7/} that stated rules mainly pertinent to the possession of different kinds of firearms and ammunition. According to it, arms for defense, such as pistols, revolvers (9 mm), and single-shot loading guns, as well as hunting, shooting gallery and display arms, were included in the category of firearms. Article 4 of the Decree stipulated that no person was allowed to possess military arms and ammunition, except guards for government institutions.

This Decree was abrogated in 1971 by a new comprehensive Decree ^{8/} that placed the control and licensing of weapons under the Ministry of Internal Security. According to this enactment, the definition of weapons includes, in addition to military arms, target practice rifles, collectors' guns, hunting guns, and small guns capable of being easily concealed, as well as many other weapons which fire bullets by means of "the expansion of gases [caused] by the explosion of a charge" (Art. 2). No person may possess any gun without a license issued by the competent authority (Art. 6), except for military personnel (Art. 31) and diplomats and foreigners who take part in rifle competitions (Arts. 13 and 14). The manufacture, repair,

^{7/} Decree No. 61, Buletinul oficial [official law gazette of Romania, hereafter cited as B.O.], No. 7, March 6, 1959.

^{8/} Decree No. 367, B.O., No. 135, October 26, 1971.

166.

Romania

import and export of, experimentation with, and trade in weapons is a state monopoly. Violations of the provisions of this Decree are punished in accordance with the penal legislation (Art. 52). This Decree was republished on March 8, 1976.^{9/}

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^{9/} B.O., No. 21, March 8, 1976.

SINGAPORE

The use of handguns in Singapore is controlled by the Arms and Explosives Act of 1913, as amended up to 1973, and the Arms Offences Act, No. 61 of 1973.

The Arms and Explosives Act ^{1/} regulates not only the possession of arms and explosives, but also their manufacture, use, sale, storage, transport, import, and export. Section 8 of the Act provides that a person can have in his possession or under his control, import, export, manufacture or deal in any gun or arms only if he is authorized by license to do so, and only in accordance with the conditions of such license as well as with such other conditions as may be prescribed.

The definition of arms that appears in the Act includes fire-arms, air-guns, air-pistols, automatic guns, automatic pistols, and guns, any other kind of gun from which any shot, bullet or other missile can be discharged or noxious fumes emitted, and any component part of such arms. The definition of gun includes howitzers, mortars, quick-firing guns, machine guns, and other guns of a similar nature.

Certain activities are exempted from the provisions of the Act requiring licenses, such as import and export made by order of the Government. Similarly exempted are certain persons or their equipment when in the course of their duty or employment. These include members

^{1/} 7 Singapore Statutes, Singapore: Law Revision Commission, 1970, ch. 238, p. 367-385; 1973 Supplement to Singapore Statutes, Singapore: Attorney-General, 1974, p. 3.

of the armed forces of Singapore; members of any naval, military or air volunteer forces established under a written law; members of any additional forces established under a written law providing for compulsory service in the defense of Singapore; members of the police force; members of the Special Constabulary; and dog-shooters employed by the Government.

Section 8 stipulates that a person needs authorization by license in order to do any of the following things:

- (a) have in his possession or under his control any gun or arms or poisonous or noxious gas;
- (b) import any gun, arms or explosives or poisonous or noxious gas;
- (c) export any gun, arms or naval or military stores or poisonous or noxious gas; or
- (d) manufacture or deal in guns or arms or poisonous or noxious gas.

When doing these things under license, the person may do so only in accordance with the conditions of the license, and with any other conditions as may be prescribed. The same section provides that any one who in contravention of its provisions imports any gun, arms or explosives or poisonous or noxious gas, or who exports any gun, arms, poisonous or noxious gas or naval or military stores, or who manufactures or deals in guns or arms or poisonous or noxious gas, is liable upon conviction to a fine of up to 3,000 Singapore dollars [U.S.\$ 1,200] and to imprisonment for a term of up to 3 years.

Any person, according to subsection (3) of the same section, who has in his possession or under his control any gun, shall be liable

on conviction to a fine not exceeding 1,000 Singapore dollars [U.S. \$400] for every such gun, and to imprisonment for up to 3 years. Subsection (4) states that any person who, in contravention of this section, has in his possession or under his control any arms shall be liable on conviction to a fine not exceeding 2,000 Singapore dollars [U.S. \$800] and to imprisonment for a term which may extend to 3 years. It adds that if, upon the conviction of any person of an offense under this subsection, it is proved to the satisfaction of the court that the offender had possession or control of the arms for the purpose of committing an offense punishable under the Penal Code, he shall additionally be liable to caning.

Section 12 of the Act also prohibits the purchase of guns or arms from a licensed dealer without having a license to purchase. No person is to take delivery of any guns or arms from a licensed dealer without a license authorizing the purchase of the guns or arms, or beyond the extent permitted to be purchased under that license. Contravention of this section carries with it the penalty, on conviction, of a fine of up to 200 Singapore dollars.

Other offenses and penalties are listed in Sections 18 through 24, including knowingly concealing guns or arms imported unlawfully or without a license, which is punishable on conviction with imprisonment for up to 3 years and a fine of up to 1,000 Singapore dollars.

Sections 30 through 38 deal with search, seizure and arrest. Section 30 authorizes any Magistrate's Court or District Court by warrant to direct a police officer or officers to search, seize, and

arrest whenever the court has reason to believe that a person has in his possession guns or arms without a license, or in contravention of conditions upon which a license has been issued, or for any unlawful purpose. It may also so direct the officer or officers if in its judgment the person cannot be left in possession of any guns or arms without danger to the public peace. The warrant may authorize the officer or officers to enter and search the house or premises occupied by the person, or wherein the court has reason to believe that such guns or arms are to be found; to seize and detain the guns or arms, and to arrest any person found in the house or on the premises who can be reasonably suspected of having committed an offense under this Act.

A licensing authority may also authorize, by writing, a police officer not below the rank of corporal to search a house in any district for guns or arms, or to require any person to produce his license for the possession of guns or arms, and to produce or account for the guns or arms covered by the license. Anyone failing to account satisfactorily for any guns or arms in his possession or under his control during the existence or after the expiry, suspension or cancellation of a license is liable on conviction to a fine of up to 100 Singapore dollars.

If a vessel or aircraft, about to leave any port of Singapore, is suspected of having on board any guns or arms for the exportation of which no license has been given, the Port Master or a licensing authority may issue a search warrant to any boarding officer or police officer not below the rank of corporal, who may, in the execution of the warrant, board the vessel or aircraft, forcibly enter every part

thereof, and arrest any person suspected of being guilty of an offense under the Act.

According to Section 33, any person found carrying or conveying guns or arms in suspicious circumstances may be apprehended without warrant and detained in custody. If such a person is apprehended by a person who is not a police officer, he is to be taken forthwith to the nearest or other police station or be handed over to a police officer.

Further controls are imposed on handguns by the Arms Offences Act of 1973^{2/} and offenses under this Act are subject to even severer penalties. The provisions of the Arms Offences Act are to have effect without prejudice to the provisions of the Arms and Explosives Act discussed above, or the provisions of any other written law in force in Singapore relating to unlawful possession of arms or ammunition, according to Section 11. The Act defines "arm" as meaning any firearm, air-gun, air-pistol, automatic gun, automatic pistol and any other kind of gun or pistol from which any shot, bullet or other missile can be discharged or noxious liquid, flame or fumes can be emitted, and any component part thereof, and includes any bomb or grenade and any component part thereof. "Unlawful possession" is defined as meaning possession or control contrary to the provisions of the Arms and Explosives Act.

^{2/} 1973 Supplement to Singapore Statutes, Singapore: Attorney-General, 1974, p. 727-731.

Under the Arms Offences Act, any person who is found to be in unlawful possession of any arm or ammunition is liable on conviction to imprisonment for a term which may extend to 10 years as well as to 6 strokes with a rattan. Any person who unlawfully carries any arm is liable on conviction to imprisonment for up to 14 years and is also liable to be punished with not less than 6 strokes of the rattan. Any person who has on his person an unlicensed arm at the time of his committing or at the time of his apprehension for any offense listed in the Schedule to the Act is liable on conviction to be punished with imprisonment for life and with not less than 6 strokes of the rattan. If proved to have been previously convicted of a scheduled offense, any person in unlawful possession of any arm or found to be unlawfully carrying any arm shall be liable to imprisonment for life and to not less than 6 strokes of the rattan.

Scheduled offenses are specified as being the following offenses committed under various sections of the Penal Code of Singapore (P.C.), the Kidnapping Act, and the Vandalism Act:

- (1) Being a member of an unlawful assembly (Sections 143-145, P.C.)
- (2) Rioting (Sections 147, 148, and 152, P.C.)
- (3) Offenses against the person (Sections 302, 304, 307, 324-327, 329-333, 356, 357 and 506, P.C.)
- (4) Abduction or kidnapping (Sections 361, 363-367, P.C., and Sections 3-5, Kidnapping Act)

- (5) Extortion (Sections 384-389, P.C.)
- (6) Housebreaking and house-trespass (Sections 448-460, P.C.)
- (7) Robbery (Sections 392-397, 399 and 402, P.C.)
- (8) Preventing or resisting arrest (Sections 224, 225, P.C.)
- (9) Vandalism (Section 3, Vandalism Act)
- (10) Mischief (Sections 435, 436, 438 and 440, P.C.)

Section 4 of the Arms Offences Act provides that, subject to any exception referred to in Chapter IV of the Penal Code which may be applicable, any person who uses or attempts to use any arm shall on conviction be punished with death.

Where any arm is used by a person in committing or in attempting to commit an offense, each of his accomplices present at the scene, who may be reasonably presumed to have known that the person was carrying or had in his possession or under his control such arms, shall, unless he proves that he took all reasonable steps to prevent its use, be guilty of an offense under this Act and shall on conviction be punished with death.

Trafficking in arms is also an offense under this Act, and is punishable with death or imprisonment for life and caning with not less than 6 strokes, according to Section 6(1), while any person proved to be in unlawful possession of more than two arms is, until the contrary is proved, presumed to be trafficking in arms.

A person consorting with, or being found in the company of another person unlawfully carrying or in unlawful possession of any arm,

in circumstances raising the reasonable presumption that he knew the other person was carrying or had in his possession or under his control any such arm, is liable to the like punishment as the other person, unless he can prove he had reasonable grounds for not so believing.

The following are exempted from the provisions of the Act relating to the unlawful possession of arms or ammunition: members of visiting forces lawfully present in Singapore, of the police force, or of a volunteer or local force constituted under any written law; persons who carry arms as part of official or ceremonial dress; any person licensed or authorized to carry or possess an arm by virtue of a written law relating to arms in force in Singapore; members of associations or organizations specially authorized by the Minister, when the arm is carried in connection with the performance of his duty.

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SWITZERLAND

In Switzerland the sale, acquisition, and control of firearms by private citizens are dealt with by the Concordat Concerning the Trade of Arms and Ammunition of July 20, 1944,^{1/} entered into by the individual cantons of the Swiss Confederation. Most of these cantons have also entered into the new Concordat of March 27, 1969.^{2/}

In accordance with these Concordats, every person who sells arms and ammunition as a trade must be in possession of a license issued by the competent authority of the canton where he operates. Such a license is granted only to persons who have a good reputation and the required professional knowledge of arms. However, the sale of arms and other weapons at markets, as well as by peddlers and itinerant merchants, is prohibited. Also, the sale and purchase of submachine guns and machine guns are expressly forbidden.

Small arms may be sold only if the purchaser has obtained a permit for the acquisition of weapons (Waffener-

1/ 5 Bereinigte Sammlung der Bundesgesetze und Verordnungen, 1848-1947, 683. The Concordat was amended and supplemented on February 7, 1968, Amtliche Sammlung der Bundesgesetze und Verordnungen [official law gazette of Switzerland, hereafter cited as AS] 1968, 254.

2/ AS 1970, 447.

werbsschein) issued by the competent cantonal authority with a validity of 3 months and signed by the purchaser.

Permits for the acquisition of firearms are not granted to various categories of persons, such as minors under 18 years of age, persons under guardianship, mentally ill persons, alcoholics placed under supervision, criminals punished for serious crimes and the like.

Dealers in arms and ammunition are under an obligation to keep a register of all their sales, including information on the names of the purchasers and the dates of the sales. The police authorities, Federal and cantonal, are authorized to examine such registers and permits at any time.

The possession of firearms and ammunition by military persons and its control receive particular legislative treatment in Switzerland. Under the Federal Constitution of May 29, 1874,^{3/} military servicemen are given their first equipment, clothing, and arms without charge with the stipulation that the weapon issued remain in the hands of the soldier subject to the conditions determined by Federal legislation. After the end of the first period of training, the conscript must keep his rifle, ammunition

^{3/} The Federal Constitution of Switzerland. Translation and commentary by Christopher Hughes, with German text (Oxford, 1954).

and equipment at home until the termination of his term of service. The issuance and maintenance of clothing and equipment are a cantonal matter, but the cantons are reimbursed for them by the Confederation.

Along this line, the manufacture, purchase, sale, and distribution of arms, munitions, explosives, and other war material and their components are subject to the authorization of the Confederation. This authorization may, as the Constitution prescribes, be granted only to individuals and enterprises "able to provide the guarantees demanded by the national interest" (Art. 41). The regulation implementing these constitutional provisions is subject to ordinances of the Federal Council, in particular, the regulation provides in detail for the granting, duration, and withdrawal of authorizations and the control of licenses. It also determines what arms, munitions and component parts are to be dealt with in the ordinances.

These constitutional provisions are an exception to the general principle of freedom of trade and industry; however, according to a commentary on these provisions, the

motivation for their inclusion was "not gain, but public security and the control of an industry potentially anti-social."^{4/}

In accordance with the Constitution and other related legislative acts, a recent Regulation Concerning the Equipment of Enlisted Men of November 25, 1974,^{5/} provides that all persons called to military service are, as a rule, under an obligation to keep the weapons delivered to them "in their homes" (an ihrem Wohnort). Only persons subject to military service who are unable to take care of their military equipment or who handle it in a negligent manner are denied such. Furthermore, persons who go abroad on vacation, persons incapable of serving, those free from military service, etc., must return their military equipment. The equipment of deceased military personnel must also be returned.

According to the Decree of the Federal Council of September 30, 1966,^{6/} Concerning Delivery of Assault Rifles (Sturmgewehr) Model 1957 (an automatic and semi-automatic weapon),

^{4/} Id., at 47.

^{5/} AS 1974, 1838.

^{6/} AS 1966, 1345.

such arms are given on loan to all recruits as a personal weapon until their discharge from the service. ^{7/} This weapon is then replaced by a bolt-operated rifle after the discharge of the military man, if he has a claim to own a particular weapon.

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^{7/} At the age of 50.

USSR

I. Classification of Weapons and Their Availability

The acquisition and possession of firearms in the Soviet Union are subject to severe restrictions and limitations imposed by the State. A special license may be granted by the proper authority (state security organs) if and when the public interest so requires, and the state security or public order is not thereby endangered.

The basic law ^{1/} concerning this matter was enacted in 1924 and, notwithstanding some changes caused by the renaming of 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 the Decree in pars. 1-5);

Class B - Those which may be used by the Soviet Army and Navy

(items listed in pars. 1-3);

Class C - Those not used by the Soviet Army and Navy

(items listed in pars. 1-4).

Since all of the Class A weapons and the items enumerated in paragraph 1 of Class B are not subject to private ownership or

^{1/} Decree of TSIK and SNK SSSR, i.e., The Central Executive Committee and the Council of Ministers of the USSR of December 12, 1924 (USSR Law Collection 1924, No. 29, item 256).

acquisition (res extra commercium), only the remainder (Class B, pars. 2 and 3, as well as Class C) is 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 which do not belong in Classes B and C;
2. hunting guns, including automatic ones: smoothbore, rifled-percussion, flintlocks, matchlocks and those with recoiling barrel (carbine type); rifled guns with sliding, dropping or rising locks which 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 a type other than those listed in Classes A and B; [and]
4. hunting gunpowder.

Pursuant to the basic law of 1924, the acquisition of the weapons listed above in Class B, paragraphs 2 and 3, and Class C was to be regulated by administrative agencies (e.g. International Affairs and State Security).

Accordingly, pertinent regulations provided that the so-called silent weapons (Class B, par. 2) are permitted only in areas where the carrying of them is connected with special conditions of life or they are a part of a national costume.^{2/} As an example of the implementation of this Law by an individual constituent republic, an RSFSR Decree of September 10, 1935, permitted the population of the Caucasian regions to carry daggers (as part of their national costume), the rural population of the Karelian ASSR to carry Finnish knives, and that of the Far North of the RSFSR to carry hunting knives.^{3/}

Smoothbore hunting guns and ammunition (Class C. pars. 2 and 4) could have been acquired by private individuals from specially licensed and controlled stores upon presentation of a hunting license. Any such acquisition had to be registered within 5 days; a failure to

^{2/} USSR Law Collection, No. 14, 1935, text 146.

^{3/} RSFSR Law Collection, No. 20, 1935, text 193.

do so was to be punished by the militia with an administrative fine up to 30 rubles and, in case of a recurrence, with confiscation of the hunting weapon.^{4/}

While the acquisition, possession and carrying of silent and smoothbore hunting weapons have been regulated by legislative acts available to the public at large, no such regulations or instructions could be located regarding the other weapons listed in Class B, pars. 2 and 3, and Class C. This is in line with the general Soviet practice of not publishing instructions in cases in which security is involved and discretionary power in granting or refusing privileges is to be applied.

The fairly liberal provisions of the basic law of 1924, and the implementing instructions regulating the acquisition, possession and sale of hunting guns led to some abuses. Consequently, it was found necessary to issue, from time to time, regulations tightening gun control and curbing abuses. Thus, an Edict of the Presidium of the Supreme Soviet of the RSFSR of October 20, 1963,^{5/} made punishable by a fine imposed in administrative procedures

^{4/} RSFSR Decree of September 20, 1944 (RSFSR Collection of Decrees, No. 11, 1944, text 69).

^{5/} Vedomosti RSFSR, No. 41, 1963, text 719.

various acts involving weapons, provided the acts are not punishable under provisions of the Criminal Code. These acts include the use of firearms (by persons who have been granted a firearms permit) in populated areas, the lending of rifled firearms to another person, failure to register such firearms, and lending or selling smoothbore hunting firearms to persons who have no hunting permit.

Pursuant to the Edict of the Presidium of the RSFSR of September 25, 1969, hunting guns and other firearms as well as ammunition belonging to persons who are consistently disturbing public order, are alcoholics or are mentally ill may be confiscated by the decision of the local soviets of working peoples' deputies or their executive committees.

It seems that the tightening of gun control in the USSR has failed to bring the expected results, however. In the early 1970's, a Soviet journalist complained that the stores were selling hunting guns to persons who did not have hunting licenses.^{6/} The same author states that in the Sverdlovsk Province (RSFSR) alone approximately 1,500 guns were confiscated from persons who did not have the required hunting license.

^{6/} B. Riabin, "In Whose Hands Are the Guns?" Sovetskaia Rossia (June, 1973).

In view of this it was decided to introduce a nationwide uniform system of gun control. To this effect, the Council of Ministers of the USSR enacted the Decree of July 25, 1975, on Uniform Procedure for the Acquisition, Registration, and Keeping of Hunting Guns.^{7/}

According to the decree, the sale of smoothbore and rifled hunting guns to individuals as well as to enterprises, organizations and institutions can be made only upon simultaneous presentation of a permit issued by the internal affairs agencies and a hunting license. The acquired hunting gun must be registered with an internal affairs agency within one month from the date of its acquisition and reregistered every three years. All hunting guns acquired (regardless of source) prior to the promulgation of the decree must be registered with internal affairs agencies by January 1, 1977.

Supervision over the acquisition, keeping, use and registration of hunting guns and issuance of permits for their acquisition and keeping are under the jurisdiction of the USSR Ministry of Internal Affairs and its local agencies.

^{7/} Sobranie postanovlenii pravitel'stva SSSR (Collection of Decrees of the Government of the USSR), No. 18, 1975, text 110.

CONTINUED

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An implementing instruction relating to the procedure for acquisition, registration, possession, and use of hunting guns and ammunition shall be issued by the USSR Ministry of Internal Affairs in agreement with the USSR Ministry of Defense and the Committee for State Security of the Council of Ministers of the USSR.

Regulations establishing penalties for violations of rules on acquisition, possession, use and registration of hunting guns shall be issued by the council of ministers of the union republics.

As of the date of this report, no implementing instructions or regulations on violations have been received by the Law Library of the Library of Congress.

II. Penalties for Unauthorized Possession of Weapons

Penalties for the unauthorized possession or acquisition of weapons are those imposed by (a) court sentence or (b) an administrative fine.

Although there is no federal criminal code for the whole of the USSR, all the criminal codes of the Soviet constituent republics have provided penalties for the unauthorized acquisition of weapons and other related activities pertaining to weapons.

The present report surveys pertinent provisions of the RSFSR Criminal Code of October 27, 1960, as amended.^{8/} These are as follows:

Art. 218. The carrying, possessing, making or marketing of firearms (except smoothbore hunting guns), ammunition or explosives without proper permit shall be punishable by deprivation of freedom for up to 5 years.

Note. A person who voluntarily surrenders a firearm, ammunition or explosives in his possession without a proper permit shall be relieved from criminal responsibility.

The carrying, manufacturing or marketing of daggers, Finnish knives or other silent weapons without a proper permit, excluding those localities where carrying of silent weapons is an accessory of a national costume or is connected with the hunting trade, shall be punished by deprivation of freedom for up to 2 years or corrective labor for up to 1 year.

The provisions of this Article were amended so that the original penalty for acts defined in paragraph 1 was increased from 2 to 5 years of deprivation of freedom and the penalty of corrective labor was eliminated. The penalty for acts mentioned in paragraph 2 was increased from 1 year to 2 years of deprivation of freedom; the

8/ Ugolovnyi kodeks RSFSR, Moscow, 1975, p. 86.

fine was eliminated. A note calling for surrender of illegally possessed firearms and promising immunity for those who comply with the call was also added.^{9/}

Art. 218-1. Stealing of a Firearm, Ammunition or Explosives. The stealing of a firearm (except a smooth-bore hunting rifle), ammunition, or explosives shall be punished by deprivation of freedom for a term not exceeding seven years.

The same act committed repeatedly, or by a group of persons by previous agreement, or committed by a person to whom the firearm, ammunition, or explosives have been issued for official use or entrusted for safekeeping, shall be punished by deprivation of freedom for a term not exceeding ten years.

The stealing of a firearm (except a smooth-bore hunting rifle), ammunition, or explosives committed by means of an assault with intent to rob or by an especially dangerous recidivist shall be punished by deprivation of freedom for a term of six to fifteen years.

This Article was introduced in the RSFSR Criminal Code by the Edict of the Presidium of the Supreme Soviet of the RSFSR of June 1, 1967.^{10/} According to Article 7-1, added to the Criminal

^{9/} Edict of the Presidium of the Supreme Soviet of RSFSR of July 11, 1974 (Vedomosti RSFSR, No. 29, 1974, text 781), enacted pursuant to the Edict of the Presidium of the Supreme Soviet of the USSR of February 11, 1974 (Vedomosti USSR, No. 7, 1974, text 116).

^{10/} Vedomosti, RSFSR, No. 23, 1967, text 533. Translation by H.J. Berman and J.W. Spindler, 190 Soviet Criminal Law and Procedure. The RSFSR Codes (1972).

Code in 1972, stealing of a firearm, ammunition or explosives constitutes a grave crime for which the penalty of deprivation of freedom up to 15 years may be imposed.^{11/}

Art. 219. Careless Keeping of a Firearm.

The careless keeping of a firearm, thereby creating conditions for use of such weapon by another person, resulting in grave consequences, shall be punished by deprivation of freedom for a term not exceeding ^{12/} one year or by correctional tasks for the same term.

Violations of regulations pertaining to certain hunting weapons which are not punishable under provisions of the Criminal Code are subject to administrative fines. Such violations include failure to obtain a hunting license, or to register a firearm; lending or selling smoothbore and rifled hunting guns to an unauthorized person, etc. In case of a recurrence the firearms may be confiscated. Fines imposed on violators shall not exceed 30 rubles.

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^{11/} Vedomosti RSFSR, No. 26, 1972, text 662.

^{12/} Translation based on Berman 190, supra note 10.

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