

Underbilag 2

29 May 2003
Ms. A. Arnsted
Ministry of Justice of Denmark
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(By electronic mail)

me/session12/crime_cicp_convention_session_12.html

Similar notes for the parent Convention and other Protocols (A/55/383/Add.1) are also at the same website location. I have quickly reviewed the agreed notes, and there is nothing that bears directly on the issue you raise at this point, but they do provide information on other Protocol provisions which may be of use. The Centre for International Crime Prevention has also produced a series of legislative guides for countries seeking to ratify the Convention and its Protocols. These have not yet been formally released, but draft copies were distributed to delegations at the annual meeting of the UN Commission for Crime Prevention and Criminal Justice last week, and you should be able to obtain a copy from the Danish delegation. We expect to release finalised texts of the guides sometime in the fall.

Turning to the substantive issue you raise, we expect that States Parties will generally take the position that domestic offences adopted pursuant to the Protocol should in some circumstances extend to the mere transportation of firearms, parts, components or ammunition, or as you describe it, to a person whose sole involvement is to provide transportation services. We would give similar advice upon request to States seeking to ratify the Protocol and developing the necessary legislative and other provisions.

There are several reasons why such an interpretation is likely. The first is that the basic principle for the interpretation and application of treaties, given in Article 31, paragraph (1) of the Vienna Convention on the Law of Treaties, is that:

»A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.« The relevant text in Article 3, subparagraph (e) of the Protocol lists as illicit trafficking a series of terms, including »import, export,...delivery, movement or transfer«. The »ordinary meaning« of this formulation will probably be taken by most States as including all degrees of involvement in the trafficking process, ranging from actual transportation or transfer to hiring or engaging someone else to do so.

Several extrinsic matters also support this interpretation. There was, during the course of ne-

Dear Ms. Arnsted:

Your inquiry of 28 May 2003 concerning the criminalisation requirements of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing United Nations Convention against Transnational Organized Crime has been forwarded to me for reply. You had asked about the extent to which the mere transport of firearms, their parts and components and ammunition from one country to another falls within the ambit of the definition of »illicit trafficking« set out in Article 3, subparagraph (e), and hence within the ambit of the criminalisation requirement of Article 5, subparagraph (1)(b) of the Protocol.

The interpretation of the Convention against Transnational Organized Crime and the Protocols thereto is a matter for Member States, and once the instruments are in force, for the appropriate Conferences of States Parties, and not for the United Nations Secretariat, and I am therefore not in a position to provide you with an authoritative interpretation or opinion on this question. We do, however, advise Member States seeking to ratify the instruments with respect to legislative and other issues on request, and I can provide you with some information about how the relevant provisions are likely to be interpreted and applied by States Parties.

The formal Travaux Préparatoires have not yet been produced, but a series of notes for this purpose was drafted and agreed by the open-ended intergovernmental Ad Hoc Committee which produced the Protocol itself. These were submitted to the General Assembly in the same Report as the resolution under which the Protocol was adopted on 31 May 2001, and may be found in UN document # A/55/383/Add.3, Part II. This could formally be obtained through your country's Permanent Mission to the UN in New York, but for convenience, we have also posted it on the ODC website here in Vienna, at: <http://www.unodc.org/pdf/crime/>