



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

Distr.: General  
24 February 2023

Original: English

---

## Working Group on Firearms

Vienna, 3 and 4 May 2023

Item 3 of the provisional agenda\*

**Implementation of articles 3 (Use of terms) and  
4 (Scope of application) of the Firearms Protocol**

### **Implementation of articles 3 (Use of terms) and 4 (Scope of application) of the Firearms Protocol**

**Background paper prepared by the Secretariat**

#### **I. Introduction**

1. The present background paper was prepared by the Secretariat to facilitate discussion by the Working Group on Firearms at its tenth meeting, in line with the multi-year workplan that the Working Group adopted at its ninth meeting ([CTOC/COP/WG.6/2022/4](#)). Using various national examples, the paper addresses the implementation of article 3, on the use of terms, and article 4, on the scope of application, of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. The paper also examines relevant aspects and key concepts of these articles. Although the paper provides an overview of the rationale behind the provisions and examples of national implementation practices, it does not prescribe new norms and standards or reinterpret established definitions.

2. The multi-year workplan takes into account the clustering of articles and the corresponding review timelines in the context of the Mechanism for the Review of the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocols thereto. The findings of the review process can be expected to further inform the discussions of the Working Group at its meeting. In turn, the discussions on the scope and implementation of the provisions of the Firearms Protocol will support and deepen a common understanding of the reviewed provisions.

---

\* [CTOC/COP/WG.6/2023/1](#).



## II. Issues for discussion

3. Delegations may wish to consider the responses of their States to the following issues in preparing for the Working Group's deliberations:

### *Use of terms (article 3 of the Firearms Protocol)*

(a) Given the existence of various regional and international instruments on firearms, how can States create greater synergies in the implementation of these instruments, in particular with regard to the use of harmonized terms and definitions and control lists related to regulated items?

(b) In order to prevent the illicit conversion of weapons into firearms, how do States parties implement the definition of a firearm in the Protocol with regard to convertible weapons? To what extent can the definition of firearms contained in the Firearms Protocol help to counter this crime?

(c) What regulatory approaches have States adopted in order to prevent the conversion of semi-automatic firearms into automatic firearms through the use of accessories such as auto sears? Does the definition of illicit manufacturing contained in the Firearms Protocol help to address this problem?

(d) How have States parties strengthened their definitions of firearms and their parts and components in order to prevent and counter the illicit manufacturing of firearms from "buy, build, shoot" kits and semi-finished firearm parts?

(e) Would the development by the United Nations Office on Drugs and Crime (UNODC) of voluntary technical guidelines and a standardized nomenclature of terms and definitions help States to effectively implement the Firearms Protocol and better counter the problems of the conversion of weapons into firearms and the illicit manufacturing of firearms using semi-finished parts and components?

### *Scope of application (article 4 of the Firearms Protocol)*

(f) Do States parties apply the preventive measures set out in the Firearms Protocol, in particular its provisions on marking and record-keeping and on import, export and transit, including in relation to State-to-State transfers?

## III. Overview of issues and related topics

4. The provisions on the use of terms (article 3) and the scope of application (article 4) of the Firearms Protocol establish the basis for States parties' efforts in implementing the Protocol.

5. The degree to which the definitions established in the Firearms Protocol are adopted by States parties when they transpose the Protocol into national law determines the extent to which the preventive and enforcement measures will be applicable to different crime modalities and technologies used to manufacture and traffic illicit firearms, their parts and components and ammunition. While definitions that are narrow risk creating legislative gaps and loopholes, broad definitions might lead to significant administrative burdens. The application of the Protocol's definitions must also be considered in the light of technological developments that may require tailored regulatory responses.

6. Similarly, when defining the scope of application of national legal frameworks related to firearms, States parties to the Firearms Protocol can decide to what extent they wish to apply the enforcement and preventive measures of the Protocol with regard to State-to-State transfers.

7. The present section provides an overview of the rationale behind the provisions and some examples of how they are implemented by States. Although the Secretariat

has sought to provide examples from different regions, the exercise was limited by the scope of legislation available to it.

## A. Use of terms (article 3 of the Firearms Protocol)

8. Article 3 of the Firearms Protocol defines key concepts that are used throughout the Protocol, in particular the items that fall within its scope of application, namely, firearm, their parts and components and ammunition. Furthermore, it provides a definition of the criminal offences of illicit manufacturing and trafficking and the concept of tracing.

### 1. Regulatory approaches to defining the items covered under article 3

9. There is no mandatory requirement for terms used in the Protocol to be defined in domestic law. However, the definition of key concepts contained in national firearms legislation may ensure that legislative requirements apply to the full range of issues covered by the Protocol.<sup>1</sup> In fact, the vast majority of national legal frameworks on firearms do include definitions of relevant items and conduct, although the number and level of detail of defined terms varies significantly. Some jurisdictions prefer to include a chapter on definitions in the law itself, either at the beginning or end of the text, while others make use of schedules or annexes to provide definitions.

### 2. Firearms: a technical definition based on forensic characteristics

10. Under article 3 (a) of the Protocol, a firearm is defined as “any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas”. The present section examines some of the key elements of and concepts related to this definition.

#### *Regulatory approaches based on forensic characteristics rather than intended use or legal regime*

11. The definition of a firearm in the Protocol is based on physical or forensic characteristics and not on the intended use for which a particular firearm was designed.

12. However, various countries use qualifying terms relating to the intended use of the weapon, such as “military” or “sporting or recreational”, in order to establish graduated regulatory standards and thresholds for different types of firearm or the legal regime (prohibited, regulated or permitted) related to their intended use. For example, the National Firearms Agreement of Australia sets out a list of 11 genuine reasons and needs that individuals wishing to acquire, possess or use a firearm must demonstrate. These include being a sports shooter, recreational shooter, primary producer, security employee or and collector. A similar categorization is used by the Republic of Korea, where individuals need to demonstrate that they have a specific purpose for possessing a firearm and where different firearms fall into different licensing categories.<sup>2</sup> In contrast, the European Union, in directive 2021/555 of the European Parliament and of the Council on control of the acquisition and possession of weapons, does not require proof of a specific purpose for possessing a firearm, but classifies firearms into the following categories: category A – prohibited firearms; category B – firearms subject to authorization; and category C – firearms and weapons subject to declaration. Different regulatory measures apply to each of these

<sup>1</sup> *Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* (United Nations publication, 2011), p. 4.

<sup>2</sup> South Korea, *Enforcement Decree of the Control of Firearms, Knives, Swords, Explosives, Etc. Act*. Available at [https://elaw.klri.re.kr/eng\\_mobile/viewer.do?hseq=21783&type=part&key=9](https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=21783&type=part&key=9).

categories. Member States of the European Union can go beyond the requirements of the directive and apply additional licensing criteria for category B firearms.

13. If countries apply different levels of control to different categories of firearms, in order to comply with the Firearms Protocol, the lowest level of control must meet the minimum standard set by the Protocol in relation to, for example, international transfers, marking, record-keeping and criminal offences. As long as this is the case and these categories only supplement the basic forensic elements, they are in conformity with the definition of a firearm in the Protocol. In contrast, national definitions that are based purely on such categories will generally not comply with the Protocol.<sup>3</sup>

14. During the negotiation of the Protocol, some delegations had proposed excluding military firearms from the definition of a firearm under the Protocol.<sup>4</sup> This proposal was ultimately not taken up, thus all of the provisions of the Protocol apply to both military and civilian firearms without distinction.

*Regulatory approaches: prohibited firearms and firearms regulation*

15. The Firearms Protocol does not establish different legal regimes for different firearms or prohibit or restrict the possession of certain types of firearms. Such restrictions are left entirely to the discretion of States parties. During the negotiation of the Protocol, most delegations expressed the view that controls on firearms possession were a matter for domestic law and opposed the inclusion of the offence of illicit possession of firearms.<sup>5</sup>

16. A comparison of national legal frameworks on firearms, made on the basis of information published and regularly updated on the website GunPolicy.org, provides an overview of different regulatory approaches that have been taken with regard to the regulation and prohibition of the following groups and types of firearms:<sup>6</sup>

(a) **Long guns:** the civilian possession of long guns is prohibited in 12 jurisdictions,<sup>7</sup> permitted for licensed firearms owners in 194 jurisdictions and permitted for non-prohibited persons of minimum age in 42 jurisdictions;<sup>8</sup>

(b) **Handguns:** the civilian possession of handguns is prohibited in 56 jurisdictions, permitted under licence or authorization in 114 jurisdictions and permitted without a licence in 41 jurisdictions;<sup>9</sup>

(c) **Semi-automatic rifles:** the civilian possession of semi-automatic rifles is prohibited in 58 jurisdictions, permitted under licence or authorization in 116 jurisdictions and permitted without a licence in 9 jurisdictions;<sup>10</sup>

<sup>3</sup> UNODC, *Legislative Guide for the Implementation of the Protocol Against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention Against Transnational Organized Crime* (2005), para. 36.

<sup>4</sup> *Travaux Préparatoires of the Negotiations for the Elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, Part Four (United Nations publication, Sales No. E.06.V.5), p. 610.

<sup>5</sup> *Ibid.*, p. 635.

<sup>6</sup> Classification of firearms groups in accordance with Jonathan Ferguson, Tony Salvo and Anthony G. Williams, *The ARES Arms and Munitions Classification System (ARSC)*, version 1.3, N.R. Jenzen-Jones, ed. (Perth, Australia, Armament Research Services, 2022).

<sup>7</sup> In this overview, the term “jurisdiction” also includes states of the United States of America, given that state laws vary considerably and are independent of existing federal firearms laws in the United States.

<sup>8</sup> Available at [www.gunpolicy.org/firearms/compare/121/gun\\_owner\\_licensing/](http://www.gunpolicy.org/firearms/compare/121/gun_owner_licensing/).

<sup>9</sup> Available at [www.gunpolicy.org/firearms/compare/17/regulation\\_of\\_handguns/](http://www.gunpolicy.org/firearms/compare/17/regulation_of_handguns/).

<sup>10</sup> Available at [www.gunpolicy.org/firearms/compare/292/regulation\\_of\\_semiautomatic\\_assault\\_weapons/](http://www.gunpolicy.org/firearms/compare/292/regulation_of_semiautomatic_assault_weapons/).

(d) **Fully-automatic firearms:** the civilian possession of fully-automatic firearms is prohibited in 145 jurisdictions, permitted under licence or authorization in 43 jurisdictions and permitted without a licence in 4 jurisdictions.<sup>11</sup>

*“Portable barrelled weapon that expels [...] a shot, bullet or projectile”*

17. The definition of a firearm in the Protocol is limited to any weapon that is portable and expels a shot, bullet or projectile. Therefore, a distinction is made between firearms and larger weapons systems, which are included in the definition of “small arms and light weapons” in paragraph 4 of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons.

18. Although the definitions of a firearm and of small arms and light weapons largely match, the latter extends to any weapon that “expels or launches” a shot, bullet or projectile. As explicitly clarified under the definition of light weapons in the International Tracing Instrument, the term also includes grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 100 millimetres, which would not fall under the definition of a firearm. In fact, during the negotiation of the Firearms Protocol, some delegations had proposed the inclusion of such weapons; ultimately, however, they were not included in the final text.<sup>12</sup> Similarly, the term “man-portable”, as contained in the International Tracing Instrument, is in line with the definition of light weapons: “designed for use by two or three persons serving as a crew, although some may be carried and used by a single person”. In contrast, the interpretative notes for the Firearms Protocol indicate that the intended meaning of the term “portable” was to “limit the definition of ‘firearm’ to firearms that could be moved or carried by one person without mechanical or other assistance”.<sup>13</sup>

19. In addition to the International Tracing Instrument, other regional and international instruments use the term “small arms and light weapons”. These include the Arms Trade Treaty, the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, the Economic Community of West African States (ECOWAS) Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials and the Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa. Other instruments that refer to firearms include the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials and the Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community Region.

20. As a result, the use of terms is inconsistent at the national level and depends on whether States follow the definitions of a firearm and of small arms and light weapons in the implementation of applicable regional and international instruments. Furthermore, some countries extend their national legal frameworks on firearms to other types of weapons, such as knives<sup>14</sup> or pepper spray.<sup>15</sup>

21. Firearms are always covered by the definition of small arms and light weapons; in contrast, light weapons are not necessarily considered firearms. This is relevant if countries wish to engage in international cooperation, for instance, if one country is investigating a cross-border case of trafficking in light weapons but the trafficking offence in the other jurisdiction is limited to trafficking in firearms. In addition, the applicability of the requirements related to international transfers in article 10 of the

<sup>11</sup> Available at [www.gunpolicy.org/firearms/compare/204/regulation\\_of\\_automatic\\_assault\\_weapons/](http://www.gunpolicy.org/firearms/compare/204/regulation_of_automatic_assault_weapons/).

<sup>12</sup> *Travaux Préparatoires*, p. 606 ff.

<sup>13</sup> *A/55/383/Add.3*, para. 3.

<sup>14</sup> See, for example, the Weapons Act (WaffG) of Germany.

<sup>15</sup> Trinidad and Tobago, *Firearms (Amendment) Act* (2021), Legal Supplement Part A to the *Trinidad and Tobago Gazette*, vol. 60, No. 109 (July 2021).

Firearms Protocol and marking and record-keeping measures depends on the exact wording of the definitions of a firearm and of small arms and light weapons. In this context, and in order to ensure policy coherence, States may wish to consider extending the scope of their implementing legislation to include larger types of military weaponry or weapons that are not firearms, at least in relation to criminal offences, as discussed extensively during the negotiation of the Firearms Protocol.<sup>16</sup>

*“By the action of an explosive”*

22. The inclusion of the phrase “by the action of an explosive” in the definition of a firearm in the Firearms Protocol excludes weapons that use another form of propulsion, such as compressed gas, to propel the projectile, in particular alarm, gas and acoustic expansion pistols (see below for information regarding the potential convertibility of such weapons). The qualification also excludes airguns from the scope of application of the Firearms Protocol.<sup>17</sup>

23. Airguns or airsoft guns are imitation firearms that are classified as toys or sporting goods in many countries. They fire small plastic pellets using compressed air or gas or a spring drive as the propellant and are generally made from weak plastic materials, making them unsuitable for conversion into live-firing firearms. Although they very rarely cause deadly injuries, an analysis by the Centers for Disease Control and Prevention of the United States of America shows that approximately 250,000 non-fatal injuries were sustained from airguns in the United States from 2001 to 2014.<sup>18</sup> In this context, many countries have laws on airguns that establish different categories of airguns depending on their velocity,<sup>19</sup> muzzle energy<sup>20</sup> and bore,<sup>21</sup> the material of their ammunition<sup>22</sup> or a combination of all or some of those criteria.<sup>23</sup> If the specified thresholds are exceeded, access to the airguns is either restricted or they are considered firearms, with the effect that the full scope of provisions of the respective legal framework on firearms applies to them. In contrast, some jurisdictions consider all airguns to be firearms,<sup>24</sup> while at the other end of the spectrum, some countries do not regulate airguns at all.<sup>25</sup>

*“Weapon that [...] is designed to expel [...]”*

24. The use of the term “designed to expel” was not discussed in detail during the negotiation of the Firearms Protocol. However, its meaning can be derived from the definition of a firearm as a whole, which is based on the description of its functioning mechanisms. While the first part of the definition (“expels [...] a shot, bullet or projectile”) can be understood to refer to fully functional firearms, the inclusion of

<sup>16</sup> UNODC, *Legislative Guide*, p. 417 and *Travaux Préparatoires*, p. 606 ff.

<sup>17</sup> UNODC, *Legislative Guide*, p. 414.

<sup>18</sup> Timothy Guenther and others, “Fatal cardiac injury sustained from an air gun: case report with review of the literature”, *International Journal of Surgery Case Reports*, vol. 70 (2020), p. 135.

<sup>19</sup> Countries with legislation based on velocity include Canada (Canada Firearms Act (1995). Available at <https://laws-lois.justice.gc.ca/PDF/F-11.6.pdf>).

<sup>20</sup> Legislation based on muzzle energy include the following examples: Poland, Weapons and Ammunition Act of 21 May 1999, and Brazil, Legislação – Armas de pressão. Available at [www.dfpc.eb.mil.br/index.php/ultimas-noticias/2-uncategorised/325-armas-de-pressao](http://www.dfpc.eb.mil.br/index.php/ultimas-noticias/2-uncategorised/325-armas-de-pressao).

<sup>21</sup> Legislation based on different bore include the following examples: South African Police Service, “Implementation of the Firearms Control Act, 2000 (Act No. 60 of 2000): Understanding when an airgun is considered to be a firearm”. Available at [www.airrifle.co.za/library/FCA\\_60\\_of\\_2000\\_Circular\\_regarding\\_the\\_understanding\\_when\\_an\\_airgun\\_is\\_considered\\_to\\_be\\_a\\_firearm.pdf](http://www.airrifle.co.za/library/FCA_60_of_2000_Circular_regarding_the_understanding_when_an_airgun_is_considered_to_be_a_firearm.pdf); and Czechia, Act No. 119 on Firearms and Ammunition (8 March 2002). Available at [www.zakonyprolidi.cz/cs/2002-119](http://www.zakonyprolidi.cz/cs/2002-119).

<sup>22</sup> Countries with legislation based on materials or ammunition include the United Kingdom of Great Britain and Northern Ireland (Home Office, “Air gun owners: new legislation”, 31 January 2004. Available at [www.gov.uk/government/publications/air-gun-owners-new-legislation](http://www.gov.uk/government/publications/air-gun-owners-new-legislation)).

<sup>23</sup> India, *The Gazette of India: Extraordinary*, No. 494, Part II, sect. 3 (i) (15 July 2016). Available at [https://dpiit.gov.in/sites/default/files/Notification\\_ArmsRule\\_26May2017%20\(2\)%20\(1\).pdf](https://dpiit.gov.in/sites/default/files/Notification_ArmsRule_26May2017%20(2)%20(1).pdf).

<sup>24</sup> Australia, Council of Australian Governments, “National firearms agreement” (February 2017).

<sup>25</sup> Chile, Ministerio de Agricultura, Servicio Agrícola y Ganadero, División de Protección de los Recursos Naturales Renovables, *Legislación sobre fauna silvestre* (August 2015).

the term “designed to expel” extends the definition to firearms that might be temporarily dysfunctional owing to, for example a technical defect or missing part.

25. The interpretation and implementation of the term is of particular relevance in jurisdictions that have not explicitly regulated deactivated firearms. Although a deactivated firearm can no longer expel a shot, it was originally designed to do so. Therefore, when the Protocol’s definition of a firearm is transposed into national law, it can be interpreted as including deactivated firearms as long as the deactivation is not permanent in nature and irreversible, and as long as deactivated firearms are not explicitly excluded from the national firearms control regime.

26. Furthermore, the term is relevant in the context of items whose production is not fully complete but that were manufactured with the intention of becoming a functional firearm. This also applies to “80 per cent receivers” and to “buy, build, shoot” kits, which contain all or almost all of the parts needed to quickly build a firearm (see section III (A) (3), Parts and components). In both cases, the items have been designed to expel a shot after a few minor and simple manipulations.

*“Weapon that [...] may be readily converted to expel [...]”*

27. The UNODC *Global Study on Firearms Trafficking 2020* reveals that on average, 15 per cent of firearms reported as seized by Member States in 2016 and 2017 were seized in non-factory condition, which includes converted, modified, assembled and reactivated firearms, as well as artisanal firearms.<sup>26</sup>

28. Of particular interest are alarm weapons, which are defined as “any portable device not designed to fire solid projectiles”<sup>27</sup> and include gas-operated, acoustic expansion and blank-firing weapons. Traditionally, alarm weapons have not been considered firearms as they are not intended to fire live ammunition. In many countries, they are accessible on the legal market with minimal or no control mechanisms. However, by modifying or changing individual components of such weapons, most commonly their barrel, they can be transformed into firearms capable of firing live ammunition. Such changes can often be made with basic tools and a rudimentary technical understanding of weapons.

29. The provisions of the Firearms Protocol do not apply only to fully operational firearms but, pursuant to article 3 (a), to “any portable barrelled weapon that [...] may be readily converted to expel a shot, bullet or projectile by the action of an explosive”. Consequently, States parties are required to consider readily convertible weapons such as alarm weapons and gas pistols to be firearms, with the effect that they fall under the same legal regime as any other firearm.<sup>28</sup>

30. There are currently no international technical guidelines in place that determine when a weapon may be considered to be “readily convertible” or that provide other guidance on the implementation of the more technical provisions of the Protocol. However, some jurisdictions have started to introduce into their regulatory frameworks technical specifications that clearly define the standards that must be met for alarm weapons to be excluded from national firearms control regimes.

31. In 2022, in an attempt to tighten regulations on privately made firearms, the Bureau of Alcohol, Tobacco, Firearms and Explosives of the United States established a definition of the term “readily”, which encompasses eight criteria that determine whether a weapon is “readily convertible”. These are: (a) the time it takes to complete the process; (b) how difficult it is to do so; (c) what knowledge and skills are required; (d) what tools are required; (e) whether additional parts are required, and how easily they can be obtained; (f) how much it costs; (g) the extent to which the subject of the

<sup>26</sup> United Nations publication, 2020.

<sup>27</sup> Nicolas Florquin and Benjamin King, *From Legal to Lethal: Converted Firearms in Europe* (Geneva, Small Arms Survey, Graduate Institute of International and Development Studies, 2018), p. 19.

<sup>28</sup> For more information on the responsiveness of the Firearms Protocol to the threat posed by convertible weapons, see [CTOC/COP/WG.6/2020/2](#).

process must be changed to finish it; and (h) whether the process would damage or destroy the subject of the process, or cause it to malfunction.

32. The European Union is one example of a jurisdiction in which significant and ongoing legislative efforts have succeeded in reducing some sources of converted firearms.<sup>29</sup> In 2008, the European Union harmonized its definition of firearms with the definition provided in the Firearms Protocol and, going beyond the definition, further clarified that an object should be considered to be capable of being converted to expel a shot, bullet or projectile by the action of a combustible propellant if (a) it has the appearance of a firearm; and (b) as a result of its construction or the material from which it is made, it can be so converted.<sup>30</sup> Conversion was also a key topic of the amendment of 2017 to directive 91/477/EEC on control of the acquisition and possession of weapons of the European Union, which acknowledged that the risk of acoustic weapons and other types of blank-firing weapons being converted into real firearms was high and underscored the importance of including those weapons in the scope of application of the directive. The directive required member States to classify convertible weapons as firearms and to establish measures to prevent such devices from being converted into firearms.<sup>31</sup> In accordance with the newly inserted article 10a, paragraph 3 of the directive, in January 2019 the European Union adopted technical specifications for alarm and signal weapons, aimed at ensuring that they were not capable of being converted.<sup>32</sup> In order for such devices not to be considered a firearm, the cumulatively reinforcing technical specifications require, inter alia, the following:

- (a) Devices must not be capable of being modified through the use of ordinary tools;
- (b) All essential components of the devices must be such that they cannot be fitted or used as essential components of firearms;
- (c) Barrels of the devices must not be capable of being removed or modified without significantly damaging or destroying the device;
- (d) Barrels must incorporate irremovable barriers such that a shot, bullet or projectile is not able to pass through the barrel;
- (e) All such barriers must be permanent and incapable of being knocked out without destroying the chamber or barrel of the device.

33. Member States are also required to ensure that alarm and gas weapons manufactured in or imported into the European Union are subject to checks in order to determine their compliance with the technical specifications.<sup>33</sup> In October 2022, the European Commission announced a tightening of technical standards and import regulations for alarm and signal weapons. The new rules are aimed at ensuring that any potentially convertible weapons that do not comply with the standards would always be classified as firearms in accordance with customs nomenclature.<sup>34</sup> In the case of the European Union, as a supranational union with an internal single market, consistency in the practices of national customs authorities in relation to the classification of such devices upon import requires specific attention. In this regard,

<sup>29</sup> Florquin and King, *From Legal to Lethal*, p. 9.

<sup>30</sup> Article 1, paragraph 1 (a) of Directive 2008/51/EC of the European Union Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons (*Official Journal of the European Union*, L 179/5).

<sup>31</sup> See Directive 2017/853 of the European Union Parliament and of the Council amending Council Directive 91/477/EEC on control of the acquisition and possession of weapons *Official Journal of the European Union*, L 137/22).

<sup>32</sup> Commission Implementing Directive (EU) 2019/69 laying down technical specifications for alarm and signal weapons under Council Directive 91/477/EEC on control of the acquisition and possession of weapons (*Official Journal of the European Union*, L15/22), annex.

<sup>33</sup> Commission Implementing Directive 2019/69, paras. 2, 3 and 5.

<sup>34</sup> European Commission, "Firearms: updated rules to increase security and facilitate legal trade", 27 October 2022 and European Union, document COM(2022) 480 final, recital 19, draft article 8, paras. 1–2.



the proposed regulatory amendments would require Member States to provide a biannual report on the alarm and signal weapons classified as non-convertible. In case of diverging national practices, the Commission would establish a list of non-convertible alarm and signal weapons.<sup>35</sup>

34. The evolution of the legal framework on convertible weapons in the European Union over the past 15 years illustrates that the definition of a firearm in the Firearms Protocol is sufficiently broad to remain valid despite technological developments in relation to weapon conversion, but that the Protocol requires technical implementation at the national level. However, technical specifications and guidelines on non-convertibility standards and an internationally agreed and updated nomenclature of non-convertible alarm weapons may support States in preventing the proliferation of convertible weapons.

*“[...] excluding antique firearms or their replicas”*

35. The definition of a firearm in the Protocol explicitly excludes antique firearms and their replicas from the scope of application of the Protocol. Under article 3 (a), antique firearms and their replicas should be defined in accordance with domestic law but should not include firearms manufactured after 1899. Prior to 1899, firearms were often muzzle-loading, single-shot weapons that were limited to low bullet velocities owing to the use of black powder instead of modern smokeless powder. In contrast, firearms developed after 1899 were typically designed to use metal cartridges, which made reloading much faster and easier. Because of these technological advancements, a cut-off date of 1899 is commonly used in international treaties and agreements to distinguish antique firearms from modern firearms.

36. Firearms legislation that defines antique firearms by making reference to a specific number of years as opposed to a date in time does not conform to the definition set out in the Protocol, as the cut-off date would shift over time and would eventually exclude firearms that were manufactured later than 1899. For instance, where a country defines antique firearms as those that are 100 years old, by the time of adoption of the Firearms Protocol, this would exclude all modern trigger-actuated automatic and semi-automatic firearms.

37. Some jurisdictions also apply less restrictive control measures to collector firearms, which are determined by criteria such as historical value, age, design and other characteristics. In jurisdictions where firearms manufactured after 1899 can be considered as collector firearms, States parties to the Firearms Protocol are required to apply at least the minimum regulatory standards of the Protocol to them.

### **3. Parts and components**

38. Under article 3 (b) of the Firearms Protocol, parts and components are defined as “any element or replacement element specifically designed for a firearm and essential to its operation, including a barrel, frame or receiver, slide or cylinder, bolt or breech block”. These items were included in the Protocol to ensure that the requirements for firearms being moved across borders could not be circumvented by simply disassembling the firearms into their constituent parts. Furthermore, silencers (“any device designed or adapted to diminish the sound caused by firing a firearm”) are included in the definition of parts and components, on the basis that muffled or silenced firearms could pose an additional threat to public safety when added to a firearm.<sup>36</sup>

*“Element specifically designed for a firearm” – exclusion of standard components*

39. The definition of parts and components in the Protocol excludes all parts and components that are not both designed specifically for a firearm and essential to its

<sup>35</sup> European Union, document COM(2022) 480 final, draft article 8, paras. 3–4.

<sup>36</sup> UNODC, *Legislative Guide*, p. 419.

operation. Thus, for example, a small part such as a spring or machine screw would be excluded if that screw were a standard item used in devices other than firearms.<sup>37</sup>

*“Element [...] essential to its operation” – exclusion of accessories*

40. Accessories, apart from the expressly mentioned silencers, are also excluded from the definition, as a firearm can be operated without them. This is particularly relevant in relation to conversion devices known as auto sears or auto switches, which transform semi-automatic firearms into automatic firearms capable of emptying an entire magazine with a single movement of the trigger. During the negotiation of the Firearms Protocol, the definition of parts and components originally included reference to “accessories that can be attached to a firearm and that enhance its lethality”; however, that reference was deleted at a later stage.<sup>38</sup>

41. The impact of such devices on public security can be observed in the United States, where the import or manufacture of any new automatic firearms has been prohibited since 1986, limiting the pool of legally available weapons and resulting in the high price of the automatic firearms that are still in circulation. However, incidents of machine gun fire have rocketed by about 1,400 per cent, from about 400 incidents in 2019 to 5,600 incidents in 2021. Between 2017 and 2021, the seizure of conversion devices by the Bureau of Alcohol, Tobacco, Firearms and Explosives spiked by a similar amount, from fewer than 100 seizures in 2017 to more than 1,500 seizures in 2021.<sup>39</sup>

42. Although auto sears are not considered parts and components under the Protocol, some jurisdictions have made legislative or regulatory efforts to include them in their regulatory regimes on firearms. For example, in 1981, the Bureau of Alcohol, Tobacco, Firearms and Explosives ruled that auto sears would be considered machines guns, with the effect that the conversion device itself is subject to the same restrictions as automatic firearms.<sup>40</sup> The equal legal status given to automatic firearms and the conversion device is also relevant with regard to manufacturing and trafficking offences, which would also apply to the unauthorized manufacturing or import of auto sears.

*“Element specifically designed for a firearm and essential to its operation” – semi-finished components and “buy, build, shoot” kits*

43. As mentioned in the *Legislative Guide for the Implementation of the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime*, in some countries attempts have been made to avoid firearms restrictions by producing and selling kits containing parts that can easily be assembled into a finished device. In many cases, these “buy, build, shoot” kits consist of semi-finished firearms components that are not regulated in some jurisdictions. The concept of semi-finished components was not discussed during the negotiation of the Firearms Protocol.

44. In the context of the Firearms Protocol, the way in which semi-finished components are classified is of particular relevance to cross-border transfers of such components. If they are considered to be firearms or their parts and components as defined in article 3 of the Protocol, their transfer would require authorizations or licences pursuant to article 10 of the Protocol. In the absence of such authorizations, their transfer would constitute the offence of trafficking. Furthermore, if they are

<sup>37</sup> UNODC, *Legislative Guide*, p. 420.

<sup>38</sup> UNODC, *Travaux Préparatoires*, pp. 605 ff.

<sup>39</sup> The data are derived from <https://edition.cnn.com/2022/08/30/us/automatic-machine-gun-fire-invs/index.html>.

<sup>40</sup> United States, Bureau of Alcohol, Tobacco, Firearms and Explosives, “ATF Ruling 1981-04”. Available at [www.atf.gov/](http://www.atf.gov/).

considered to be firearms, such components would have to be marked at the time of their manufacture and import, in accordance with article 8 of the Protocol.

45. Worldwide, jurisdictions that regulate parts and components of firearms have adopted different thresholds with regard to the inclusion of semi-finished components in national firearms control regimes. Recent regulatory developments in the European Union and the United States indicate that some jurisdictions may be tightening control over semi-finished components of firearms.

46. In the United States, there was a period in which firearms receivers were not regulated as firearms or their parts and components unless they were more than 80 per cent complete. This prompted the sale of “80 per cent receivers”, including as part of “buy, build, shoot” kits. The kits, which individuals could buy without a background check, could be assembled into a working firearm in as little as 30 minutes using easily accessible equipment. A recent report by the Bureau of Alcohol, Tobacco, Firearms and Explosives found that recoveries of ghost guns — privately made firearms without serial numbers that are often assembled from such kits and semi-finished components — increased by 1,000 per cent from 2016 to 2021. A total of 45,000 such firearms were recovered in that period; nearly 700 were linked to homicides or attempted homicides.<sup>41</sup> In an effort to crack down on ghost guns, the United States Department of Justice issued a final rule in April 2022, clarifying that “buy, build, shoot” kits are considered firearms under the Gun Control Act, and that commercial manufacturers of such kits must therefore become licensed and include serial numbers on the kits’ frame or receiver.<sup>42</sup>

47. The definition of a firearm in the United States Code of Federal Regulations was amended to include a weapon parts kit that is designed to or may readily be completed, assembled, restored or otherwise converted to expel a projectile by the action of an explosive. In turn, the definition of a frame and receiver was amended to include a partially complete, disassembled or non-functional frame or receiver, including a frame or receiver parts kit, that is designed to or may readily be completed, assembled, restored or otherwise converted to function as a frame or receiver.<sup>43</sup> As clarified in the final rule, in conformity with the new definitions of a firearm and a frame or receiver, parts kits must also be marked as any other firearm and records must be maintained.<sup>44</sup> Lastly, as noted above, the final rule defined the meaning of the term “readily”.<sup>45</sup>

48. In 2022, in a proposed update to a regulation to implement article 10 of the Firearms Protocol, the European Commission identified unclear rules that enable the import of unmarked semi-finished firearms and components as one of two main risks at import. The Commission proposed stricter rules on semi-finished firearms components, which would permit only licensed dealers and brokers to import such components, with the aim of reducing the threat of home-made firearms without marking or registration.<sup>46</sup> The proposal also contains definitions of key concepts related to semi-finished firearms and components: “Semi-finished firearms’ mean firearms that are not ready for direct use and have the approximate shape or outline of the finished firearms, and which can only be used, other than in exceptional cases, for completion into the finished firearm”; and “semi-finished essential components’ mean essential components that are not ready for direct use and have the approximate shape or outline of the finished essential component, and which can only be used, other than in exceptional cases, for completion into the finished essential

<sup>41</sup> United States, Bureau of Alcohol, Tobacco, Firearms, and Explosives, “ATF, releases national firearms in commerce and trafficking assessment report on privately made firearms, imports, export statistics provided”, 18 May 2022.

<sup>42</sup> United States, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice, “Definition of ‘Frame or Receiver’ and identification of firearms”, *Federal Register*, vol. 87, No. 80 (April 2022).

<sup>43</sup> *Ibid.*, sects. 478.11 and 478.12.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*, sect. 478.11.

<sup>46</sup> European Commission, document COM(2022) 480 final, recital 20, article 9 (3).

component”.<sup>47</sup> The Commission has also been requested to set out the technical characteristics of semi-finished firearms and essential components.<sup>48</sup>

#### **4. Ammunition**

49. The Firearms Protocol defines ammunition as “the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorization in the respective State party”. Ammunition generally consists of a cartridge case into which a primer, propellant and projectile (or projectiles) have been inserted. The language of the definition recognizes that transactions involving the import, export or other transfer of ammunition cannot be controlled effectively without some degree of regulation of the basic components of ammunition, since these can, in some cases, easily be transferred for assembly at their destination. At the same time, the regulatory burdens and other factors relating to the control of components that are inert and that do not, without assembly, constitute a risk have led most States to avoid the regulation of all components and many States to regulate only assembled cartridges. The definition in the Protocol requires States parties in which ammunition components are subject to authorization to apply the same controls to the components than to full rounds of ammunition.<sup>49</sup>

50. Where States parties to the Firearms Protocol implement other applicable regional or international instruments in conjunction with the Protocol, they may have to extend the scope of the definition of ammunition beyond the one used in the Protocol in order to cover ammunition that is used in other weapons systems, in particular light weapons. While the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and the International Tracing Instrument do not include provisions on ammunition for small arms and light weapons, the scope of the Arms Trade Treaty extends to ammunition and munitions fired, launched or delivered by the conventional arms covered under the Treaty, including small arms and light weapons. Similarly, the ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials applies to projectiles and missiles for light weapons and to mobile containers with missiles or projectiles for anti-aircraft or anti-tank single-action systems.

51. The topic of ammunition was extensively addressed at the ninth meeting of the Working Group on Firearms<sup>50</sup> and, therefore, will not be elaborated on further in the present background paper.

#### **5. Other definitions: illicit manufacturing, trafficking and tracing**

52. Article 3 of the Firearms Protocol contains definitions of illicit manufacturing, trafficking and tracing. The Protocol is the only legally binding global instrument that includes the offences of illicit manufacturing and trafficking. Their definitions in article 3 outline the mandatory elements that must be included in national provisions criminalizing them. Those elements include unauthorized manufacturing and cross-border transfer, and manufacturing and cross-border transfer if the firearms are not marked in accordance with the Protocol.

53. As these definitions relate directly to the criminal offences in article 5 and the tracing provision in article 12, paragraph 4, of the Protocol, they will be discussed in more detail by the Working Group on Firearms at a future meeting devoted to addressing these articles.

---

<sup>47</sup> Ibid., art. 2, paras. 4–5.

<sup>48</sup> Ibid., art. 35, para. 1 (b).

<sup>49</sup> UNODC, *Legislative Guide*, p. 422.

<sup>50</sup> See [CTOC/COP/WG.6/2022/2](#) and [CTOC/COP/WG.6/2022/4](#).

## B. Scope of application (article 4 of the Firearms Protocol)

54. Article 4 determines the scope of application of the Firearms Protocol. Paragraph 1 establishes the full scope of application of the Protocol, while paragraph 2 sets out exclusions relating to certain State and national security-related transactions and transfers. Under article 4, the Protocol applies to the prevention of illicit manufacturing of and trafficking in firearms, their parts and components and ammunition and to the investigation and prosecution of offences established in accordance with article 5 of the Protocol where those offences are transnational in nature and involve an organized criminal group. It does not apply to State-to-State transactions or to State transfers in cases where the application of the Protocol would prejudice the right of a State party to act in the interest of national security consistent with the Charter of the United Nations.

### 1. Full scope of application (paragraph 1)

55. Article 4, paragraph 1, differentiates between the prevention, on the one hand, and the investigation and prosecution, on the other hand, of the offences under the Protocol.

*“Prevention of illicit manufacturing of and trafficking in firearms [...]”*

56. The Protocol recognizes that, in order to prevent illicit manufacturing and trafficking, a State must establish a legal regime on firearms with broad application. To identify illicit transactions, all transactions must be subject to scrutiny in order to determine which of them are legitimate and which of them are not. For this reason, the qualifiers “transnational in nature” and “involve an organized criminal group” apply only to the investigation and prosecution of offences established in accordance with article 5 of the Protocol, but do not limit the application of the Protocol’s control measures.<sup>51</sup>

*“Investigation and prosecution of offences [...] where those offences are transnational in nature and involve an organized criminal group”*

57. With regard to the investigation and prosecution of offences under the Protocol, article 4, paragraph 1, states that the Protocol applies only where those offences are transnational in nature and involve an organized criminal group. However, article 34, paragraph 2, of the Convention clarifies that neither of these two elements must be included as elements of the offences in domestic law.<sup>52</sup> In other words, the offences of illicit manufacturing, trafficking and tampering with markings do not require for their commission the involvement of organized criminal groups or any transnational element.<sup>53</sup>

58. Analysis of national legal frameworks on firearms confirm that the vast majority of jurisdictions that criminalize the Protocol’s offences do so without requiring the involvement of an organized criminal group or any transnational element (except for the offence of trafficking, which is transnational by nature). The involvement of an organized criminal group is instead usually considered as an aggravating circumstance.<sup>54</sup>

### 2. State-to-State transactions and State transfers in the interest of national security

59. Article 4, paragraph 2, excludes from the scope of application of the Protocol State-to-State transactions and State transfers in the interest of national security in cases where the application of the Protocol would prejudice the right of a State party

<sup>51</sup> UNODC, *Legislative Guide*. p. 426.

<sup>52</sup> [A/55/383/Add.1](#), para. 59.

<sup>53</sup> UNODC, *Legislative Guide*, p. 11 and 410 f.

<sup>54</sup> See, for example, Mexico, Federal Law on Firearms and Explosives, art. 83 and Jamaica, Firearms (Prohibition, Restriction and Regulation) Act (2022), sect. 99, para. 1 (c).

to take action in the interest of national security consistent with the Charter of the United Nations.

60. During the negotiation of the Protocol, there was a lengthy discussion on whether firearms manufactured exclusively to equip a State party's own army or security forces should be excluded from the Protocol's scope of application.<sup>55</sup> Ultimately, it was decided not to exclude such firearms, as some delegations were concerned that not requiring marking and record-keeping in relation to military firearms would make them untraceable in the case of diversion from stockpiles of military or security forces. Moreover, the exclusion could have been interpreted to mean that in cases where diverted service weapons were subsequently trafficked, the trafficking offence would not apply. In the view of most delegations, information on military firearms could be kept separate from information on civilian firearms, provided that all the basic record-keeping requirements of the Protocol were met.

*"This Protocol shall not apply to State-to-State transactions [...]"*

61. During the negotiation of the Protocol, there was general support for excluding State-to-State transactions from its scope of application on the grounds that such transactions were more closely related to arms control than to crime control. However, some delegations expressed concern about the precise meaning of the words "State-to-State transactions". Most delegations were of the view that this should exclude transfers from one Government to another, but not transfers between entities owned or operated by Governments in a commercial capacity, such as State-owned arms manufacturers.<sup>56</sup> Accordingly, an interpretative note was added that clarified that the words "State-to-State transactions" referred only to transactions made by States in a sovereign capacity.<sup>57</sup>

62. Nevertheless, the exclusion leads to a similar problem as that identified in the discussion held on firearms manufactured exclusively to equip a State party's own army or security forces. Where a State party imports firearms, their parts and components and ammunition from another State in order to equip its own army or security forces, article 4, paragraph 2, seem to suggest that the Firearms Protocol does not apply. That interpretation results in the same concerns that were formulated with regard to the inclusion of an exemption for firearms manufactured solely to equip domestic security forces, namely, that such firearms would be untraceable in the case of diversion from national stockpiles after they had been transferred from one State to another.

63. In accordance with article 34, paragraph 3, of the Organized Crime Convention, States parties are free to adopt more strict or severe measures than those provided for by the Convention and the Protocols thereto. Therefore, although States parties to the Firearms Protocol are not obliged to do so, they may consider applying the preventive measures of the Protocol, in particular its marking and record-keeping requirements, to State-to-State transfers of firearms and ammunition in order to ensure their full traceability. This is of particular relevance in fragile security contexts, where firearms are supplied to national security forces that may not necessarily have adequate capacity to properly manage firearms and ammunition stockpiles and to prevent diversion. For instance, between 2001 and 2015, allied forces, coordinated by the United States, supplied at least 1.45 million firearms to various security forces in Afghanistan and Iraq. Records were available for only 48 per cent of these supplies.<sup>58</sup> In order to prevent and monitor incidents of diversion and permit post-conflict

<sup>55</sup> *Travaux Préparatoires*, p. 628.

<sup>56</sup> *Ibid.*, p. 627.

<sup>57</sup> *A/55/383/Add.3*, para. 4.

<sup>58</sup> Nicolas Marsh, "Preventing diversion: a challenge for Arms Trade Treaty States Parties", *Journal of the Research Institute for the History of Global Arms Transfer*, No. 8 (2019), p. 62; Special Inspector General for Afghanistan Reconstruction, "Afghan national security forces: actions needed to improve weapons accountability", *SIGAR 14-84 Audit Report* (2014), p. 4; and Inspector General, United States Department of Defense, *Assessment of the Accountability of Arms and Ammunition Provided to the Security Forces of Iraq*, Report No. SPO-2008-001 (July 2008), pp. 1 and 27 ff.

recovery and collection campaigns, it may be advisable to adopt basic accountability measures during State-to-State transfers, in close coordination with final governmental recipients. Such measures may include the proper marking of and maintenance of records regarding the transferred firearms and ammunition, through voluntary application of the requirements set out in articles 7 and 8 of the Firearms Protocol.<sup>59</sup>

*“This Protocol shall not apply [...] to State transfers [...] in the interest of national security [...]”*

64. During the negotiation of the Protocol, many delegations expressed concern with regard to the exclusion of State transfers in cases where the application of the Protocol would prejudice the right of a State party to take action in the interest of national security. Most delegations agreed that the exclusion was intended to cover situations where military forces or personal protection officers and bodyguards protecting senior officials travelled across borders with their firearms.<sup>60</sup>

65. The exclusion is reflected in various national legal frameworks. In Australia, for instance, foreign Governments of certain countries can import military goods, including firearms, their parts and components and ammunition, without requiring an import permit.<sup>61</sup>

66. In specific relation to the activities of armed forces during a period of armed conflict, Belgium made a reservation upon ratification of the Firearms Protocol, stating that such activities were governed by international humanitarian law, not by the Firearms Protocol.

## IV. Conclusions

67. The Working Group on Firearms may wish to recommend that States parties consider taking the following actions to strengthen the implementation of articles 3 and 4 of the Firearms Protocol:

(a) In order to ensure policy coherence, States may wish to consider extending the scope of their national legal frameworks on firearms, in particular provisions on marking, record-keeping and international transfers, as well as criminal offences, to all small arms and light weapons;

(b) In view of the serious level of non-lethal harm caused by air weapons, States may wish to establish technical specifications for such weapons, on the basis of which particularly dangerous air weapons would be included in the national legal framework on firearms;

(c) States may wish to ensure that devices that make it possible to convert semi-automatic firearms into fully automatic firearms and semi-finished firearm parts and components are included in their firearms control regimes;

(d) States may wish to consider the adoption of technical specifications for manufacturing and importing alarm weapons, in order to ensure that such weapons cannot be readily converted into firearms;

(e) States may wish to reinforce dialogue and cooperation with manufacturers, dealers, importers and exporters, in order to prevent illicit manufacturing of firearms through the conversion of alarm or gas weapons and manufacturing from semi-finished firearm parts;

<sup>59</sup> Lauren Pinson, “*Addressing the linkages between illicit arms, organized crime and armed conflict*” (n.p., United Nations Institute for Disarmament Research (UNIDIR) and UNODC, 2022), p. 27.

<sup>60</sup> *Travaux Préparatoires*, p. 629.

<sup>61</sup> Australia, Customs (Prohibited Imports) Regulations 1956, sects. 3A and 4F (2).

(f) States may wish to request UNODC to develop voluntary technical guidelines and a standardized nomenclature for the full implementation of the Firearms Protocol, in the light of technological developments related to the conversion of weapons into firearms and the illicit manufacturing of firearms from semi-finished parts and components;

(g) In State-to-State transfers of firearms and ammunition, States parties may wish to voluntarily adopt basic accountability measures by applying the marking and record-keeping requirements of the Firearms Protocol, in order to prevent and monitor diversion incidences and permit post-conflict recovery and collection campaigns.

---