

Definition of Firearms, their Parts and Components and Ammunition: Concepts and Controversies

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Consistent, clear and comprehensive definitions of firearms, their parts and components and ammunition in international instruments are necessary for states to effectively address the complex transnational problem of firearms trafficking. Frequently linked with organised crime, firearms trafficking has significant consequences for society and the economy at large. This article looks at the current international legal regime on gun control and the definitions contained within. An analysis of their scope and a comparison with regional definitions provides a critical look at the current landscape of definitions addressing firearms trafficking. Controversies in the terminology of the definitions themselves, and the broader structure of definitions in the international legal regime, undermine the international response to global firearms trafficking. A more comprehensive regime and definitions that allow for consistent implementation by states is necessary to address this phenomenon.

Table of Contents

| | |
|--|----|
| I. Introduction | 2 |
| II. Background and Context | 4 |
| 1. Role of Definitions | 4 |
| 2. The International Legal Regime on Arms Control | 5 |
| 2.1. Legally Binding Treaties | 5 |
| 2.2. Political Instruments | 6 |
| 3. Regional Instruments | 8 |
| III. Firearms | 9 |
| 1. Definitions within The International Regime | 9 |
| 2. Elements of the Definitions | 11 |
| 2.1. Elements | 12 |
| 2.1.1. Portable | 12 |
| 2.1.2. Barrelled Weapon | 13 |
| 2.1.3. Expels a Projectile by the Action of an Explosive | 13 |
| 2.2. Special Categories | 13 |
| 2.2.1. Antique Firearms and Replicas | 13 |
| 2.2.2. Emerging Technologies | 14 |

| | |
|---|----|
| 2.2.3. Convertible Weapons | 14 |
| 2.2.4. Artisanal, Additively Manufactured and Modified Firearms | 16 |
| 2.3. Distinction between Firearms and Small Arms and Light Weapons | 16 |
| 2.4. Regional Approaches to Firearms and Small Arms and Light Weapons | 18 |
| 2.4.1. Approach One | 18 |
| 2.4.2. Approach Two | 19 |
| 2.4.3. Approach Three | 19 |
| IV. Parts and Components | 21 |
| 1. Definitions within The International Regime | 21 |
| 2. Elements of the Definitions | 22 |
| 2.1. Specifically Designed | 23 |
| 2.2. Essential to the Operation | 23 |
| 2.3. Regional Approaches | 24 |
| 2.3.1. Approach One | 24 |
| 2.3.2. Approach Two | 24 |
| 2.3.3. Approach Three | 24 |
| V. Ammunition | 26 |
| 1. Definitions within The International Legal Regime | 26 |
| 2. Elements of the Definitions | 28 |
| 3. Regional Approaches | 28 |
| 3.1. Approach One | 29 |
| 3.2. Approach Two | 29 |
| 3.3. Approach Three | 29 |
| VI. Conclusion | 30 |
| Bibliography | 33 |
| Appendix A | 37 |
| Appendix B | 40 |
| Appendix C | 41 |

I. Introduction

The trafficking of firearms threatens both human security and development. It is a transnational problem often linked with organised crime that requires coordinated international, regional and national action to address.¹ A poorly or underregulated international arms industry undermines economic, social and political stability, while also fuelling armed violence and conflict.² Firearms, unlike many other illegal commodities, are durable long-lasting

1 UN Office on Drugs and Crime, *Comparative Analysis of Global Instruments on Firearms and Other Conventional Arms: Synergies for Implementation* (2016) 1.

2 Ibid.

goods leading to their episodic rather than constant movement.³ The fact that they are relatively inexpensive, portable, concealable, durable, widely available and extremely lethal makes their regulation both essential and challenging.⁴

Over the past three decades, the response by the international community to this problem has resulted in the development of a number of treaties and agreements under the auspices of the United Nations forming a broad international legal regime on arms control.

This paper primarily focuses upon the definitions of firearms, their parts and components and ammunition contained within this international legal regime. It provides an overview of the definitions within the regime and critically analyses the concepts and controversies of the definitions that impact the regime's effectiveness in addressing firearms trafficking. The challenge is achieving globally agreed consistent international definitions that empower states to comprehensively address the trafficking of firearms, their parts and components and ammunition.

To provide an analysis of the definitions within the regime, after introducing this paper, part II. will provide an outline of the role of definitions generally and their importance within the regime, an overview of the relevant international legal regime and of relevant regional instruments. Parts III., IV. and V. of this paper will individually focus upon firearms, their parts and components and ammunition respectively. Each section will provide an overview of the definitions in the regime, an analysis of the language used in the definitions, and also consider examples of regional approaches to defining the terms while highlighting particular concepts and controversies of the definitions.

In evaluating definitions in the regime addressing firearms trafficking, it is also necessary to consider definitions in the regime on parts and

3 UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Challenges and good practices in the criminalization, investigation and prosecution of illicit firearms trafficking, and measures to enhance international cooperation in criminal matters, including through effective tracing of firearms in ongoing investigations*, UN Doc CTOC/COP/WG.6/2014/2 (11 April 2014) 6.

4 Aaron X. Fellmeth, 'Part II UN Core Conventions on Transnational Organised Crime, 10 The UN Protocol against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components, and Ammunition 2001' in Pierre Hauck and Peterke Sven (eds), *International Law and Transnational Organised Crime* (2016) 197, 198.

components and ammunition for firearms, acknowledging that for the effective regulation of firearms, the regulation of their parts and components and ammunition is essential. Data from the World Customs Organization revealed that in seizures across 2016–2017 involving weapons and related material, 54 per cent involved ammunition or parts thereof, while 43 per cent involved firearms/[small arms and light weapons], and 14 per cent involved parts and components. Some seizures involved more than one element⁵.

II. Background and Context

1. Role of Definitions

Definitions are critically important, especially in an international legal context. The diverse political, cultural and economic influences of states and individuals makes legal rules at an international level complex.⁶ Clear definitions are vital for the consistent and harmonious development and enforcement of international law.⁷ Definitions provide the opportunity to establish a clear terminology to avoid ambiguity and provide parameters and boundaries for consistent legislating to avoid opportunities to circumvent regulations. Internationally agreed definitions also facilitate information exchange and analysis, as well as strengthen international cooperation.⁸ They also facilitate the ability to have precise and meaningful reporting,⁹ resulting in accurate analysis of the trends and patterns in the flow of these arms, so that effective policy can be crafted.

In the firearms context, the security and humanitarian concerns, amongst others,¹⁰ make clear definitions even more desirable.¹¹ ‘Countries apply

5 UN Office on Drugs and Crime, *Global Study on Firearms Trafficking 2020* (2020) 30.

6 Zeray Yihdego, *The Arms Trade and International Law* (2007) 20.

7 Ibid.

8 UN Office on Drugs and Crime, *UNODC Study on Firearms 2015* (2015) ix.

9 N.R. Jenzen-Jones and Matt Schroeder, ‘Chapter 1, Small Arms Identification’ in N.R. Jenzen-Jones and Matt Schroeder (eds), *An Introductory Guide to the Identification of Small Arms, Light Weapons, and Associated Ammunition* (2018) 25, 27.

10 Ove Bring, ‘Regulating Conventional Weapons in the Future – Humanitarian Law or Arms Control?’ (1987) 24(3) *Journal of Peace Research* 275, 275.

11 Yihdego (n 6) 20.

different definitions [...] depending on their legal, cultural, historical and linguistic traditions and practices”¹². Having unanimous and clear definitions is the first step to establishing a legal regime to counter firearms trafficking. Imposing regulations and restrictions on manufacturing and transferring this material is ineffective if the arms remain undetermined¹³ or there is an inconsistent interpretation and implementation by states parties. Encompassing broad overarching definitions are necessary when legislating, especially when considering that advances in technology have created grey areas in identification where weapons may not fit into existing categories.¹⁴

Therefore, clear definitions within the regime are critical to the successful and effective implementation of regulations on arms to counter firearms trafficking.

2. The International Legal Regime on Arms Control

The regime consists of three legally binding treaties and two political instruments with an international scope focussed on creating global standards on arms control.

2.1. Legally Binding Treaties

The *United Nations Convention against Transnational Organized Crime* (‘Organized Crime Convention’),¹⁵ its supplementary *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* (‘Firearms Protocol’),¹⁶ and the *United Nations Arms Trade Treaty* (‘Arms Trade Treaty’),¹⁷ are multilateral treaties that are legally binding and contain mostly mandatory provisions.

¹² UN Office on Drugs and Crime (n 8) 79.

¹³ Yihdego (n 6) 20.

¹⁴ UN Office on Drugs and Crime (n 8) 79.

¹⁵ Opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003).

¹⁶ Opened for signature 31 May 2001, 2326 UNTS 208 (entered into force 3 July 2005).

¹⁷ Opened for signature 3 June 2013, 3013 UNTS 1 (entered into force 24 December 2014).

The *Organized Crime Convention* entered into force on 29 September 2003 and the *Firearms Protocol* on 3 July 2005. The *Firearms Protocol* is particularly relevant for discussion in this paper, as it contains the definitions necessary for inquiry. The purpose of the Protocol is to 'promote, facilitate and strengthen cooperation among states parties in order to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition'¹⁸.

In April of 2013, the *Arms Trade Treaty* was endorsed and entered into force on 24 December 2014. With broader objectives than the *Firearms Protocol*, the *Arms Trade Treaty* seeks to 'establish the highest possible common international standards for regulating or improving the regulation of the international trade in conventional arms [and to] prevent and eradicate the illicit trade in conventional arms and prevent their diversion'¹⁹. These standards regulate the international transfer of conventional arms and provides measures to prevent diversion.

2.2. Political Instruments

The United Nations *Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects* ('Programme of Action')²⁰ and the *International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons* ('International Tracing Instrument')²¹ are not legally binding treaties, but rather soft law instruments that call upon a political commitment. They do not require the formal accession process necessary under the multilateral treaties and do not enforce the same legal obligations as the Treaties.

¹⁸ *Firearms Protocol*, art 4.

¹⁹ *Arms Trade Treaty*, art 1.

²⁰ UN, *Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, New York 9–20 July 2001, UN Doc A/CONF.192/15 (20 July 2001) 7–17.

²¹ UN General Assembly, *Report of the Open-ended Working Group to Negotiate an International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons*, UN Doc A/60/88 (27 June 2005) 6–13.

The *Programme of Action* was agreed to by the United Nations Assembly in July 2001. Considered a voluntary policy framework²², it addresses preventing the illicit trade in small arms and light weapons with commitments being open-ended.²³ In reviewing the *Programme of Action* in 2005, the *International Tracing Instrument* was developed and adopted. The *International Tracing Instrument* introduced voluntary commitments in marking, recording and tracing small arms and light weapons²⁴ to a greater extent than the previously existing instruments.²⁵

This plurality of legally binding treaties and political instruments reflects the complex and multi-dimensional nature of the firearms problematic and the potential for contradictions and a lack of clarity.²⁶ The United Nations Office on Drugs and Crime ('UNODC') dictates that states parties when developing and implementing national frameworks should not view the instruments in isolation.²⁷ It is recommended that states become party to all legally binding instruments 'to afford full implementation to all international instruments as complementary and mutually reinforcing building blocks of a single comprehensive framework'²⁸. It is also recommended that states take in relevant regional instruments to which they are also party.²⁹ In practice, these recommendations face actionable roadblocks, such as diverging approaches to terminology and definitions utilised by various instruments.

In 2016, the UNODC released a paper³⁰ comparing these instruments to highlight the differences, yet synergies between them to assist states parties in implementing provisions at a national level.³¹ In a working group on the implementation of the *Firearms Protocol*, it was

22 UN Office on Drugs and Crime (n 1) 4.

23 Ibid.

24 Ibid.

25 Sarah Parker and Marcus Wilson, *A Guide to the UN Small Arms Process, 2016 Update* (3rd ed, 2016) 58.

26 UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Good practices, gaps and challenges in countering the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and measures to facilitate the implementation of the Firearms Protocol*, UN Doc CTOC/COP/WG.6/2012/3 (28 March 2012) 4.

27 UN Office on Drugs and Crime (n 1) 2.

28 Ibid 58.

29 Ibid.

30 UN Office on Drugs and Crime (n 1).

31 Ibid ix.

acknowledged that adopting an integrated approach that takes into account the instruments to which each state is party to establish a comprehensive national control regime is challenging.³² Therefore, assisting states parties to implement comprehensive and consistent national control regimes is critical to countering firearms trafficking.

The definitions of firearms, their parts and components and ammunition contained within the various instruments in this regime and the challenges faced by states in their implementation will be examined.

3. Regional Instruments

A number of regional instruments exist that also provide guidance on implementing provisions on arms control. Key regional instruments will be used throughout this paper to analyse the perspective at a regional level and how this relates to the international regime. Regional approaches can both help and hinder progress towards consistent national regulation. It is important to acknowledge that states may be party to one or more international instruments, as well as one or more of the regional instruments.

The regional instruments that will be considered are:

- The *Directive (EU) 2021/555 of the European Parliament and of the Council of 24 March 2021 on control of the acquisition and possession of weapons (codification)* ('Firearms Directive')³³ codified *Directive 91/477/EEC* and its amendments;
- The *Protocol on the Control of Firearms, Ammunition and Other Related Materials in the Southern African Development Community (SADC) Region* ('SADC Protocol');³⁴

³² UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Good practices, gaps and challenges in countering the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, and measures to facilitate the implementation of the Firearms Protocol*, UN Doc CTCOC/COP/WG.6/2012/3 (28 March 2012) 4.

³³ Opened for signature 24 March 2021, PE/56/2020/REV/1 (entered into force 26 April 2021).

³⁴ Opened for signature 14 August 2001, Registration Number 52885 (entered into force 8 November 2004).

- The *ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials* ('ECOWAS Convention');³⁵
- 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* ('Nairobi Protocol');³⁶
- The *Central African Convention for the Control of Small Arms and Light Weapons, Their Ammunition and All Parts and Components That Can Be Used for Their Manufacture, Repair and Assembly* ('Kinshasa Convention');³⁷ and
- The *Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and other Related Materials* ('The Inter-American Convention').³⁸

III. Firearms

1. Definitions within The International Regime

Two terms that emerged in the 1990 s in work by the United Nations on arms control are 'firearm' and 'small arms and light weapons'. The *Organized Crime Convention* and the *Firearms Protocol* utilise the term 'firearm', while The *Arms Trade Treaty*, the *Programme of Action* and the *International Tracing Instrument* use the term 'small arms and light weapons'.

The *Firearms Protocol* contains a definition of firearm in Article 3(a). Deemed by Fellmeth to be the most important term of the treaty,³⁹ it defines that:

'Firearm' shall mean 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. Antique firearms and their

35 Opened for signature 16 July 1991, 2373 UNTS 233 (entered into force 29 September 2009).

36 Opened for signature 21 April 2005 (entered into force 5 May 2006).

37 Opened for signature 30 April 2010, Registration Number 54327 (entered into force 8 March 2017).

38 Opened for signature 14 November 1997, 2029 UNTS 55 (entered into force 1 July 1998).

39 Fellmeth (n 4) 207.

replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899.⁴⁰

Of the three instruments concerning small arms and light weapons, the *International Tracing Instrument* provides a definition in Article 4 that,

'Small arms and light weapons' will mean any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899.⁴¹

It further provides more narrow specific definitions of both small arms and light weapons separately that provide non-exhaustive lists of material captured by the terms,⁴²

'Small arms' are, broadly speaking, weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub-machine guns, assault rifles and light machine guns;⁴³

'Light weapons' are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted 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.⁴⁴

This definition was subsequent to the definition of small arms and light weapons developed by the 1997 report of the United Nations Panel of Governmental Experts on Small Arms⁴⁵ and the examples of both small arm and light weapons are the same as the Panel.⁴⁶

The *Arms Trade Treaty*, the legally binding multilateral treaty that utilises the term 'small arms and light weapons' does not contain a definition of the

40 *Firearms Protocol*, art 3(a).

41 *International Tracing Instrument*, art 4.

42 Ted Seay and Stuart Casey-Maslen, 'National control lists' in Sarah Parker (ed), *The Arms Trade Treaty, A Practical Guide to National Implementation* (2017) 39, 42.

43 *International Tracing Instrument*, art 4(a).

44 *Ibid* art 4(b).

45 UN General Assembly, *General and complete disarmament: small arms*, UN Doc A/52/298 (27 August 1997).

46 *Ibid* [26].

term. The scope of the Treaty extends to the seven categories of weapons on the United Nations Register of Conventional Arms, as well as small arms and light weapons.⁴⁷ National definitions of these terms should not cover less than the definitions provided for in the Register.⁴⁸ However, as small arms and light weapons are not a formal category on the Register, national definitions must at least cover descriptions from relevant United Nations instruments at the time of the Treaty's entry into force.⁴⁹ The relevant description being the definition from the International Tracing Instrument,⁵⁰ thereby endorsing the definition from the soft law instrument.

The Programme of Action, which was initiated prior to the *International Tracing Instrument*, also does not contain a definition of 'small arms and light weapons', despite early attempts in the drafting process.⁵¹

2. Elements of the Definitions

The definition of a firearm under the *Firearms Protocol* consists of three elements: that a firearm is portable; that it is a barrelled weapon; and that it expels a projectile by the action of an explosive. It is not a requirement that the definition be replicated in national legislation, but other provisions must cover the full scope of firearms specified by the Protocol.⁵² It is in considering each of these elements that an understanding of the scope of material that is captured by the definition can be grasped.

In considering each element, a comparison will be made to elements in the *International Tracing Instrument's* definition of small arms and light weapons. This is to aid in an understanding of the overlap between the definitions and where the two terms diverge.

The language utilised by the definition provides certain qualifications that establish limitations on what material constitutes a 'firearm'. It is these

47 *Arms Trade Treaty*, art 2(1).

48 *Ibid* art 5(3).

49 *Ibid*.

50 Jenzen-Jones and Schroeder (n 9) 28.

51 Glenn McDonald, 'Locking onto Target: Light Weapons Control Measures' in Eric G. Berman and Keith Krause (eds), *Small Arms Survey 2005* (2005) 122, 126.

52 UN Office on Drugs and Crime, *Legislative Guides for the Implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto* (2004) 414.

limitations that result in the definition in the *Firearms Protocol* encompassing small arms, but only a narrow range of light weapons.⁵³

2.1. Elements

2.1.1. Portable

The use of the word ‘portable’ in the definition of ‘firearm’ in the *Firearms Protocol* was clarified as encompassing firearms ‘that could be moved or carried by one person without mechanical or other assistance’.⁵⁴ In comparison, the definition of small arms and light weapons in the *International Tracing Instrument* uses the term ‘man-portable’⁵⁵, while the definition of firearm in the *Firearms Protocol* more specifically defines small arms as being weapons for individual use⁵⁶ and therefore ‘portable’. Light weapons are ‘weapons for use by two or three persons serving as a crew’,⁵⁷ therefore not satisfying the definition of firearm under the Protocol.

The definition of small arms and light weapons also imposes the qualification of ‘lethality’, as they are a ‘man-portable lethal weapon’⁵⁸. In the Ad Hoc Committee discussing the *Firearms Protocol*, the word ‘lethal’ was originally included in the definition, however delegations expressed concern over scope of interpretation of the term.⁵⁹ Its inclusion in the *International Tracing Instrument* is thus a further distinction.

53 McDonald (n 51) 126.

54 UN General Assembly, *Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its first to eleventh sessions, Addendum, Report of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime on the work of its twelfth session, Interpretative notes for the official records (travaux préparatoires) of the negotiation 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*, UN Doc A/55/383/Add.3 (21 March 2001) [3].

55 *International Tracing Instrument*, art 4.

56 *Ibid* art 4(a).

57 *Ibid* art 4(b).

58 *Ibid* art 4.

59 UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime, *Revised Draft 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*, UN Doc A/AC.254/4/Add.2/Rev.5 (5 May 2000) 6–7.

2.1.2. Barrelled Weapon

The definition of firearm contained within the *Firearms Protocol* requires the weapon to be 'barrelled'. In the definition of small arms and light weapons in the *International Tracing Instrument*, there is no requirement of the weapon being 'barrelled'. Therefore, light weapons that utilise a tube or rail,⁶⁰ such as man-portable air defence systems, would not constitute a firearm.

2.1.3. Expels a Projectile by the Action of an Explosive

The *Firearms Protocol* provides that a firearm can 'expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive'⁶¹. This element of the definition would exclude self-propelled projectiles, such as missiles or rockets,⁶² captured by the definition of small arms, and light weapons can expel or launch the projectile.⁶³

2.2. Special Categories

Further elements can be drawn from the definitions regarding certain categories of firearms.

2.2.1. Antique Firearms and Replicas

Antique firearms and their replicas are explicitly excluded from the definitions of firearms and small arms and light weapons contained within the *Firearms Protocol* and *International Tracing Instrument*.⁶⁴ Both provisions only qualify an antique firearm as those manufactured up to and during 1899. There was argument for the earlier date of 1870, which would have excluded all automatic and semi-automatic weapons.⁶⁵

60 UN Office on Drugs and Crime (n 1) 21.

61 *Firearms Protocol*, art 3(a).

62 UN Office on Drugs and Crime (n 1) 21.

63 *International Tracing Instrument*, art 4.

64 *Firearms Protocol*, art 3(a); *International Tracing Instrument*, art 4.

65 UN Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime (n 59) 7 n 32.

Defining antique firearms and their replicas has therefore been largely left to national legislating, allowing significant variances in definitions.⁶⁶ The UNODC *Guide for Legislative Implementation of the Firearms Protocol* suggests that when defining antique firearms and their replicas, the criteria should focus upon the capability of these weapons, as opposed to their appearance.⁶⁷ This would ensure that a firearm that may superficially resemble an antique firearm, but has ‘substantial capabilities, owing to new technology not available at the time of manufacture of the original’⁶⁸ would not be excluded as a replica or antique. The *travaux préparatoires* to the *Firearms Protocol* documented suggestions raised by participants in the Ad Hoc Committee that a more precise definition was required of the term ‘antique firearm’ in order to prevent their illicit trafficking.⁶⁹

2.2.2. Emerging Technologies

Both definitions in the *Firearms Protocol* and *International Tracing Instrument* exclude emerging technologies such as directed energy weapons, for example lasers, and electromagnetic projectile accelerators, railguns and coilguns.⁷⁰

2.2.3. Convertible Weapons

In defining firearms and small arms and light weapons, the *Firearms Protocol* and *International Tracing Instrument* attempt to make the proactive step of capturing arms that may be ‘readily converted’. This is because converted weapons pose critical challenges to the regulation of firearms.⁷¹ The

66 See eg UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *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: consolidated information received from States, Report of the Secretariat*, UN Doc CTOC/COP/2006/8/Rev.1 (12 August 2008) 4–5.

67 UN Office on Drugs and Crime (n 52) 417.

68 *Ibid.*

69 UN Office on Drugs and Crime, *Travaux Préparatoires of the negotiations for the elaboration of the United Nations Convention against Transnational Organized Crime and the Protocols thereto* (2006) 610

70 Andrew Clapham et al, *The Arms Trade Treaty: A Commentary* (2016) [2.231].

71 Benjamin King, *From Replica to Real, An Introduction to Firearms Conversions*, Issue Brief Number 10 (2015) 1.

accessibility of convertible weapons on the legal market in many countries, with minimal control mechanisms and their ease of conversion into firearms capable of firing live ammunition, ‘creates important opportunities for the illicit manufacturing of and trafficking in firearms’.⁷² Two examples relevant for consideration are blank-firing guns and pneumatic weapons.

Blank-firing firearms, also referred to as alarm weapons, typically produce a flash and a noise,⁷³ for example, starting pistols for track and field events. Depending on the specific models, these weapons are capable of easy conversion into firearms,⁷⁴ although they are considered less of a concern because they are generally composed of weak materials.⁷⁵

Without the qualification of being ‘readily converted’ in both definitions, these weapons would not meet the key elements required to be captured by either definition, as they utilise gas or air pressure to expel the projectile, rather than an explosive. However, the term ‘readily’ indicates that not all weapons capable of conversion would necessarily be captured by the definitions. There is also no internationally recognised definition, nor even technical guidelines on what constitutes a ‘convertible weapon’.⁷⁶

Approaches to what is readily convertible vary.⁷⁷ In January 2019, the European Union introduced technical specifications for alarm weapons to improve understanding of what weapons are capable of conversion into firearms.⁷⁸ Having found that leaving it to national legislating resulted in incomplete or improper implementation⁷⁹ that aided the proliferation of

72 UN, Conference of the Parties to the United Nations Convention against Transnational Organized Crime, *Responsiveness of the Firearms Protocol and national legislation to new and emerging threats relating to the illicit manufacturing of and trafficking in firearms, their parts and components and ammunition Background paper prepared by the Secretariat*, UN Doc CTOC/COP/WG.6/2020/2 (14 January 2020) 4.

73 King (n 71) 2.

74 UN Office on Drugs and Crime (n 5) 41; King (n 71) 4.

75 Nicolas Florquin and Benjamin King, *From Legal to Lethal, Converted Firearms in Europe* (2018) 18, 20.

76 UN (n 72) 5.

77 European Commission, *Study to support an Impact Assessment on a possible initiative related to improving rules on deactivation, destruction and marking procedures of firearms in the EU, as well as on alarm weapons and replicas* (2014) 5.

78 UN (n 72) 4.

79 Christian Ponti, ‘An Appraisal of the European Union Legal Framework on Illicit Firearms Trafficking after Directive 2017/853/EU’ (2018) 4(2) *Rivista di Studi e Ricerche sulla Criminalità Organizzata* 13, 27.

converted alarm pistols,⁸⁰ clear agreed international guidance on what constitutes a readily convertible firearm would be beneficial.

However, the argument for a greater regulation of alarm and pneumatic weapons could be countered by concerns over limiting and restricting their legitimate use.

2.2.4. Artisanal, Additively Manufactured and Modified Firearms

Craft or artisanal weapons, 3D Printed (or additively manufactured) firearms and modified firearms⁸¹ all likely satisfy the key three elements of a firearm once assembled, made, or modified. Since they are often manufactured or modified into a portable barrelled weapon that expels a projectile by action of an explosive, they do not pose concerns to the definitions of these respective terms themselves, yet largely pose questions for tracing and enforcement.⁸²

Nonetheless, this could be seen as a reactionary approach that sees the emergence of illicit weapons which are difficult to trace and regulate. This reactionary response is likely a by-product of not over-regulating material that has legitimate uses. ‘Readily converted’ appears to be an attempt at a more proactive definition to capturing these arms.

2.3. Distinction between Firearms and Small Arms and Light Weapons

Firearms are often considered synonymous to small arms, but in analysing the elements of the definition, it is evident that ‘firearms’ do not include all light weapons.⁸³ The terms are therefore not synonymous.

The term ‘small arm’ is more commonly referred to in a military or conflict context, as opposed to firearm often used to describe civilian arms used in

80 Florquin and King (n 75) 51.

81 If the weapon that was altered constituted a firearm at the outset, the alteration is considered a modification. If the weapon that was altered did not constitute a firearm before the alteration but does so afterwards then the alteration is considered a conversion. UN (n 72) 8.

82 UN (n 72) [50]–[51].

83 UN Office on Drugs and Crime, *The Firearms Protocol and the Arms Trade Treaty: Divergence or Complementarity?* (2016) 3.

crime.⁸⁴ Utilising the different terms in these distinct contexts is no longer practicable when in reality arms are not isolated to being used in either 'conflict' or 'crime'.⁸⁵ Organised crime groups that arm 'criminals' may also arm combatants and in some cases, traffic arms to rebels and terrorists. 'Dichotomous distinctions often breakdown when applied to concrete situations and such terms may be used almost as synonyms'.⁸⁶ However, it is necessary that states understand the distinction between the terms to ensure national legislative provisions reflect the scope of the definitions to avoid inconsistent regulation across states.

In this paper, the term 'firearms' will be used synonymously with small arms. However, as the instruments refer to small arms and light weapons as a collective term, the term firearm will be used, and instruments on small arms and light weapons are relevant and utilised for their application in a small arms context.

These two terms create challenges for consistent regional and national understanding and implementation. For the most effective regulation, the intention is for adoption of the entire international regime, therefore both terms. In a paper comparing global instruments on firearms and other conventional arms, the UNODC recommended that states either develop one comprehensive law combining provisions from the *Firearms Protocol* and the *Arms Trade Treaty* or have separate laws.⁸⁷ Although the UNODC provides that a combined approach would 'contribute to higher levels of harmonization at the national and international levels between the various instruments',⁸⁸ arguably resulting in a more effective regime for addressing firearms trafficking.

This 'recommendation' does not address concerns of the challenges in consistently and effectively implementing the provisions, including the definitions, into regional and national instruments and legislation. The section of this paper looking at regional approaches to defining these terms provides examples of varied approaches to adopting and reconciling these terms and definitions. Further guidance on implementing the

84 UN Office on Drugs and Crime (n 8) 77.

85 Ibid.

86 Ibid 79.

87 UN Office on Drugs and Crime (n 1) 59.

88 Ibid.

definitions may be necessary to avoid inconsistencies that may threaten the effectiveness of the provisions.

2.4. Regional Approaches to Firearms and Small Arms and Light Weapons

No regional approach directly reflects the definition of ‘firearm’ from the *Firearms Protocol*. They can instead be categorised into three broad approaches. The first approach is definitions that closely resemble the definition of ‘firearm’ from the *Firearms Protocol*. The second approach is identical to the definition of ‘small arms and light weapons’ from the *International Tracing Instrument*. The third approach contains definitions that have attempted to integrate the terms ‘firearm’ and ‘small arms and light weapons’. The full definitions discussed are contained within appendix A of this paper.

2.4.1. Approach One

Two instruments that provide definitions of firearms similar to the *Firearms Protocol* are the *Inter-American Convention* and the *Firearms Directive*. The definition in the *Inter-American Convention*⁸⁹ is almost identical to that of the *Firearms Protocol*, with two of the three key elements being a barrelled weapon that expels a projectile by the action of an explosive. The term ‘portable’, the first element, is absent from the definition. The similarity is not as a result of the implementation of the definition from the Protocol, but rather the Convention serving as a basic template for the drafting of the *Firearms Protocol*. The United Nations General Assembly made specific recommendation to the Ad Hoc Committee drafting and negotiating the *Firearms Protocol* to take the *Inter-American Convention* into account.⁹⁰

89 *Inter-American Convention*, art I.3.

90 UN General Assembly, *Resolution adopted by the General Assembly on 17 December 1999: Activities of the Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime: illicit manufacturing of and trafficking in firearms, their parts and components and ammunition, as well as consideration of the need to develop an instrument on the illicit manufacturing of and trafficking in explosives*, UN Doc A/RES/54/127 (26 January 2000) [2].

In the European Union, the *Firearms Directive* implemented the definition of a firearm from the *Firearms Protocol*, containing all three key elements, although substituting ‘action of an explosive’ with ‘action of a combustible propellant’.⁹¹ The definition also provides a definition for what constitutes an object capable of conversion.⁹²

2.4.2. Approach Two

The *Kinshasa Convention* contains a definition of small arms and light weapons that is equivalent to the definition from the *International Tracing Instrument*, being a ‘man-portable lethal weapon’, that ‘expels or launches [...] by the action of an explosive’⁹³.

2.4.3. Approach Three

A third regional approach appears, which attempts to reconcile the terms firearm and small arms and light weapons. The *SADC Protocol*, *ECOWAS Convention* and *Nairobi Protocol* all contain definitions that use a combination of the terms firearm and small arms and light weapons.

The *SADC Protocol* definition takes an approach that is a mix of both definitions. In defining ‘firearm’, the *SADC Protocol* utilises a definition akin to that from the *Firearms Protocol*, touching on all three key elements, although replacing ‘explosive’ with ‘burning propellant’ and also including the word ‘lethal’.⁹⁴ The *SADC Protocol* then extends the definition of firearm as including small arms and light weapons, providing a list of weapons under each term.⁹⁵ Yihdego viewed this definition as a good compromise encompassing elements of both a technical and descriptive definition.⁹⁶ However, it is a broader definition of firearms than at the international level, which only encompasses some light weapons implicitly.

91 *Firearms Directive*, art 1.1(1).

92 *Ibid* art 1.1(1)(a) and (b).

93 *Kinshasa Convention*, art 2.

94 *SADC Protocol*, art 1(a) and (b).

95 *Ibid* art 1(c) and (d).

96 Yihdego (n 6) 31.

The *ECOWAS Convention* defines light weapons and small arms separately.⁹⁷ The definitions substantially contain lists of weapons under each term, and the qualification of being portable by several persons or one. The attempt to reconcile the definitions is made by stating that firearms are an example of small arms, reflecting an interpretation of the international perspective. Under Article 1.11 it explicitly states that small arms and light weapons includes ammunition and other related material, an approach sometimes inferred from international instruments, particularly the *Arms Trade Treaty*.

Both the *SADC Protocol* and the *ECOWAS Convention* utilise lists of weapons satisfying each term as a definition with the added qualification of 'portability'. They adopt definitions in the style of the more narrow definitions from the *International Tracing Instrument* under Articles 4(a) and (b), lacking the broad and flexible approach of overarching definition in Article 4.

The *Nairobi Protocol's* combined definition first defines light weapons and small arms in a similar manner to the narrow definitions from the *International Tracing Instrument*, as done in both the *SADC Protocol* and the *ECOWAS Convention*.⁹⁸ It goes a step further however, by providing that small arms also includes firearms and defines firearms similarly to the *Firearms Protocol*,⁹⁹ containing all three key elements. It additionally includes explosives.¹⁰⁰

These regional approaches demonstrate varying attempts to define and use the terms firearm and small arms and light weapons. They provide a practical example of the various ways the definitions in the regime can be implemented and the inconsistency that can result from attempting to reconcile these two almost synonymous definitions. Alternate attempts at a regional level to define these terms may create confusion for states also party to one or more of the international instruments, creating loopholes by taking an inconsistent approach and undermining the implementation and effectiveness of the regime.

⁹⁷ *ECOWAS Convention*, art 1.

⁹⁸ *Nairobi Protocol*, art 1.

⁹⁹ *Ibid* art 1(a).

¹⁰⁰ *Ibid* art 1(b).

IV. Parts and Components

As parts and components can be used to replace elements of firearms, illegally modify and even assemble arms entirely, their international regulation is necessary to address the problem of firearms trafficking.¹⁰¹ Replacing or fixing parts and components provides the ability to prolong the life of the weapon.¹⁰² As parts and components are usually smaller than assembled arms, they can be easier to traffic.¹⁰³ This ease of trafficking is aided by inconsistencies in domestic legislation¹⁰⁴ that leads to grey trafficking, which is where a legal purchase in one country can illegally supply parts and components in another.¹⁰⁵

Including parts and components in international instruments is essential to ensuring that regulations halting the trafficking of such material cannot be circumvented by disassembling the firearms into their parts.¹⁰⁶ Attempts to avoid restrictions have also been made by selling 'kits' of parts that provide the capability to assemble a functioning device.¹⁰⁷

1. Definitions within The International Regime

The regime provides an indeterminate approach to defining parts and components.

Within the regime, the *Firearms Protocol* is the only instrument that provides a definition of 'parts and components' or reference to one. In Article 3(b) it provides that,

'Parts and components' shall mean 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, and any device designed or adapted to diminish the sound caused by firing a firearm.¹⁰⁸

101 UN Office on Drugs and Crime (n 5) 27.

102 Yihdego (n 6) 20 part 2.2.4.

103 UN Office on Drugs and Crime (n 5) 27.

104 Ibid.

105 Ibid.

106 UN Office on Drugs and Crime (n 52) 419.

107 Ibid 422.

108 *Firearms Protocol*, art 3(b).

Article 4 of the *Arms Trade Treaty* does provide that states parties are required to:

Establish and maintain a national control system to regulate the export of parts and components, where the export is in a form that provides the capability to assemble the conventional arms covered under Article 2 (1) and shall apply the provisions of Article 6 and Article 7 prior to authorising the export of such parts and components.¹⁰⁹

Rather than defining parts and components, the provision regulates parts and components that provide the capability to assemble the conventional arms covered under Article 2(1).

In the context of small arms and light weapons, Yihdego claims that some national legal systems view parts and components ‘as constituent elements of a weapon’¹¹⁰. resulting in a separate definition not being the prevailing exercise.¹¹¹ This means that all components and accessories are considered to be covered by small arms and light weapons. Yihdego additionally states that for various reasons they could be defined as a sub-category of small arms and light weapons,¹¹² which would appear to be a rational approach. Without a definition, there is no established or referenced definition of parts and components in the small arms and light weapons context, and this approach provides no guidance.

A definition would assist in ensuring that parts and components are being regulated adequately in national legislative frameworks.

2. Elements of the Definitions

The language used in the definition of parts and components limits the potential scope of application and also excludes material that could enhance the lethality of a firearm.

In the definition of ‘parts and components’ in the *Firearms Protocol*, there are two elements to the definition. It must be an element or replacement element specifically designed for a firearm and the element must be essential to the operation of the firearm. The use of the conjunctive ‘and’

¹⁰⁹ *Arms Trade Treaty*, art 4.

¹¹⁰ Yihdego (n 6) part 2.2.4.

¹¹¹ *Ibid.*

¹¹² *Ibid.*

has consequences for the scope of the definition; material must satisfy both elements to be a part and component.¹¹³ The definition further includes a non-exhaustive list of parts and components for clarity.¹¹⁴ Member states have flexibility on whether to include the indicative list or utilise the general description only.¹¹⁵

2.1. Specifically Designed

Standard items that may be used in firearms, but also other devices, such as springs or machine-screws, are not considered parts and components under the protocol, as they are not specifically designed for firearms.¹¹⁶ Nevertheless, standard items can easily and effectively replace essential parts specifically designed for a firearm, such as a nail replacing a firing pin.

2.2. Essential to the Operation

The requirement that parts and components be indispensable to a firearm's operation excludes accessories and components, such as gun cases and carrying slings from the definition.¹¹⁷

By excluding parts and components that are not essential for the function of firearms, the definition also omits silencers or mufflers. This was noted during the drafting of the Protocol and 'any device designed or adapted to diminish the sound caused by firing a firearm'¹¹⁸ was a specific effort to include these items in its scope.¹¹⁹ The intention to include silencers and mufflers in the scope of the definition can be traced to concerns regarding the additional threat they pose once attached to a firearm.¹²⁰ Other

¹¹³ Fellmeth (n 4) 207.

¹¹⁴ UN Office on Drugs and Crime (n 52) 420.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ *Firearms Protocol*, art 3(b).

¹¹⁹ Fellmeth (n 4) 207.

¹²⁰ UN Office on Drugs and Crime (n 52) 420.

accessories, such as sights, continue to not be captured by the definition, despite the fact that sights arguably enhance a weapons lethality.¹²¹

2.3. Regional Approaches

Regional approaches to defining parts and components are varied, demonstrating a further level of inconsistency to effective implementation. Three different terms are used by regional instruments; they are ‘parts and components’, ‘essential component’ and ‘other related materials’. The full definitions discussed are contained within appendix B of this paper.

2.3.1. Approach One

The *Kinshasa Convention* contains a definition of parts and components for small arms and light weapons.¹²² It is interesting to note that an instrument on small arms and light weapons utilises the definition in the *Firearms Protocol* replacing ‘firearm’ in the definition with ‘small arms or light weapons’.

2.3.2. Approach Two

The *Firearms Directive* adopts a definition of ‘essential component’.¹²³ The term contains a list of components similar to those mentioned in the non-exhaustive list contained within the *Firearms Protocol* definition. However, the definition is restricted to this list of components, not including either of the elements contained within the *Firearms Protocol* definition.

2.3.3. Approach Three

The remaining regional instruments considered within this paper, the *SADC Protocol*,¹²⁴ the *ECOWAS Convention*,¹²⁵ the *Nairobi Protocol*,¹²⁶ and the *Inter-*

¹²¹ Matt Schroeder, *Accessories for Small Arms and Light Weapons* (2013) 3–4.

¹²² *Kinshasa Convention*, art 2(i).

¹²³ *Firearms Directive*, art 1.1(2).

¹²⁴ *SADC Protocol*, art 1.

¹²⁵ *ECOWAS Convention*, art 1.4.

¹²⁶ *Nairobi Protocol*, art 1.

*American Convention*¹²⁷, use the term ‘other related materials’. The term ‘other related materials’ was the original term proposed and debated in the Ad Hoc Committee of the *Firearms Protocol*.¹²⁸ The definitions in these instruments stipulate that ‘other related materials’ are components, parts and spare or replacement parts for firearms or small arms and light weapons.

The *SADC Protocol* and the *Nairobi Protocol* do qualify that these components and parts must be essential to the weapons operation. The *ECOWAS Convention* states that these components and parts must be necessary for the arms function, reflecting the element of essentiality from the *Firearms Protocol* definition. The *Inter-American Convention* is arguably broader, with other related material being any component, part, replacement part or accessory that can be attached to a firearm.

These definitions are a departure from the more descriptive approach of the *Firearms Protocol*, failing to provide any understanding or context as to what a part or component is. Notably only the *Inter-American Convention* addresses accessories such as silencers, which would appear to be excluded by the other definitions.

The *ECOWAS Convention* is an example of a regional instrument that despite viewing the term ‘small arms and light weapons’ as encompassing other related material,¹²⁹ includes a definition, in spite of viewing this inclusion as a novelty.¹³⁰ This could be interpreted as a reiteration of the importance of defining these terms to aid their effective regulation.

The various terms used at a regional level regarding parts and components and a reliance on a proscriptive list, as opposed to a more descriptive definition such as from the *Firearms Protocol*, is evidence of inflexible and inconsistent regional approaches. There is no definitive harmonious approach to defining terms across the international and regional levels, making implementation for states unclear, confusing and inconsistent. The definition in the *Firearms Protocol* appears to be the more encompassing approach containing a list of examples of parts and components, as well as a descriptive definition.

127 *Inter-American Convention*, art I.6.

128 UN Office on Drugs and Crime (n 69) 613.

129 *ECOWAS Convention*, art 1.1.

130 Ilhan Berkol, *Analysis of the ECOWAS Convention on Small Arms and Light Weapons and recommendations for the development of an Action Plan* (2017) 3.

V. Ammunition

To date, as with parts and components, the implementation of international control measures on ammunition have been less precipitous than those on firearms.¹³¹ This demonstrates a weakness in the regime, for ammunition is the tool that delivers the lethality of firearms. Although the fact that firearms are durable goods is concerning, the fact that ammunition is a consumable good is equally alarming.¹³² The dispensable nature of ammunition creates a high level of demand and thereby supply, resulting in large-scale flows of ammunition around the world.¹³³ As ammunition has a relatively short shelf life, users require stockpiles to be frequently replenished.¹³⁴ Unlike many arms, ammunition itself, especially for light weapons, poses a threat to public safety if not stored correctly or disposed of before expiration.¹³⁵

In the past, ammunition was relegated ‘to a somewhat peripheral rank in [small arms and light weapons] discussions and negotiations’¹³⁶. The reluctance to address ammunition, largely due to the scale of such an endeavour, has plagued developments in international efforts.

1. Definitions within The International Legal Regime

Similar to the regime’s approach to parts and components, the *Firearms Protocol* is the only instrument that provides a definition of ammunition. The Protocol provides that “[a]mmunition’ shall mean 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 authorisation in the respective state party”¹³⁷.

131 UN Office on Drugs and Crime (n 5) 29.

132 *Ibid.*

133 *Ibid.*

134 Parker and Wilson (n 25) 23.

135 Glenn McDonald, ‘Measures: informing diplomacy – the role of research in the UN small arms process’ in Peter Batchelor and Kai Michael Kenkel (eds), *Controlling Small Arms* (2014) 150, 160.

136 Parker and Wilson (n 25) 44 citing Christophe Carle, ‘Small Arms Ammunition: Light at the End of the Barrel?’ (2006) 1 *Disarmament Forum* 49, 50.

137 *Firearms Protocol*, art 3(c).

The *Firearms Protocol* defines ammunition to establish a clear meaning for the term under the Protocol, but does not impose a requirement to define the term, as is required in domestic law.¹³⁸ Rather it dictates that states should include or amend an existing definition that at a minimum is in compliance with the definition provided for by the Protocol.¹³⁹

As with parts and components, the *Arms Trade Treaty* provides that '[e]ach State Party shall establish and maintain a national control system to regulate the export of ammunition/munitions fired, launched or delivered by the conventional arms covered under Article 2 (1)¹⁴⁰. This provision neglects to provide a detailed definition of ammunition/munition.

The drafting of the *International Tracing Instrument* by the Open-Ended Working Group included extensive discussion on whether its scope should cover ammunition. The European Union was the greatest advocate for its inclusion, with the United States the most vocal opponent.¹⁴¹ It was argued that the scale of ammunition and the large volume traded internationally would make implementing the standards and restrictions costly and impractical.¹⁴² Ultimately ammunition was excluded from the scope of the *International Tracing Instrument*. The recommendation was instead made to develop technical guidelines that could be used voluntarily,¹⁴³ which only provides guidance on stockpile management.

Similar disagreement exists regarding the *Programme of Action's* coverage of ammunition. There is uncertainty as to whether ammunition is actually covered by the Programme. The United States consistently purports that ammunition is not covered, however other states include information regarding ammunition in their reports on implementation of the *Programme of Action*.¹⁴⁴

As a result, the only guidance on defining ammunition in the regime is provided by the *Firearms Protocol*. International efforts generally reflect a reluctance to address the regulation of ammunition.

138 UN Office on Drugs and Crime (n 52) 423.

139 Ibid.

140 *Arms Trade Treaty*, art 3.

141 Seay and Casey-Maslen (n 42) 43.

142 Parker and Wilson (n 25) 54.

143 International Ammunition Technical Guidelines were established under the UN SaferGuard Programme. Available at <<https://unsafeguard.org/un-safeguard/guide-lines>>.

144 McDonald (n 135) 152.

2. Elements of the Definitions

The definition in the *Firearms Protocol* has the ability to provide extensive regulation of ammunition. It provides two options; regulating the complete round or the complete round and its component parts, if subject to regulation by the state party. The definition also provides a non-exhaustive list of examples of ammunition. The definition restricts ammunition to being ammunition or components used in a firearm.

The language in the definition reflects the dichotomy of regulating ammunition. On the one hand, there is a need to regulate the basic components of ammunition to regulate it effectively due to the ability for components to be transferred and assembled at destination.¹⁴⁵ On the other hand, the regulatory burden of doing so, considering that components alone without assembly may not constitute a risk, is too onerous.¹⁴⁶ Some states consider this burden to be too heavy and as a result, many only regulate assembled cartridges.¹⁴⁷

Fellmeth counters concern of over regulation, supplying that an extensive definition of ammunition is necessary regardless due to ‘the ease of manufacturing ammunition with minimal, low-technology equipment from prepared components’¹⁴⁸. It is important to note that states may already regulate primers and propellants as explosive material under regional instruments.¹⁴⁹

The definition in the *Firearms Protocol* reflects the conflicting perspectives to regulating ammunition, adopting a broad definition.

3. Regional Approaches

Unlike firearms and parts and components, regional approaches to defining ammunition are mostly comparable, although three approaches could be

¹⁴⁵ UN Office on Drugs and Crime (n 52) 422.

¹⁴⁶ Ibid.

¹⁴⁷ UN Office on Drugs and Crime, *Model Law against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition* (2011) 5.

¹⁴⁸ Fellmeth (n 4) 207.

¹⁴⁹ UN Office on Drugs and Crime (n 147) 5.

extracted from the instruments. The full definitions discussed are contained within appendix C of this paper.

3.1. Approach One

The definition of ammunition from the *Firearms Protocol* is reflected in many of the regional approaches. The *Firearms Directive*,¹⁵⁰ *Nairobi Protocol*,¹⁵¹ *Kinshasa Convention*,¹⁵² and the *Inter-American Convention*¹⁵³ all reflect the definition from the *Firearms Protocol*, regulating the complete round and/or its components, and providing the same list of components. Notably however, the *Nairobi Protocol* uses the term ‘small arm or light weapon’ compared to the rest of these regional approaches and the *Firearms Protocol* that uses the term ‘firearm’.

3.2. Approach Two

The *SADC Protocol* provides a very similar definition to the definition from the *Firearms Protocol*, although only opting to regulate the complete cartridge.¹⁵⁴

3.3. Approach Three

The *ECOWAS Convention* takes a distinctly different approach to defining ammunition. As with parts and components, the *ECOWAS Convention* includes a definition of ammunition, despite this being a novelty,¹⁵⁵ with ammunition captured by the term ‘small arms and light weapons’.¹⁵⁶ Despite the Convention using the term ‘small arms and light weapons’, it defines ammunition as ‘devices destined to be shot or projected through

150 *Firearms Directive*, art 1.1(3).

151 *Nairobi Protocol*, art 1.

152 *Kinshasa Convention*, art 2(d).

153 *Inter-American Convention*, art I.4.

154 *SADC Protocol*, art 1.

155 Berkol (n 130) 3.

156 *ECOWAS Convention*, art 1.11.

the means of *firearms*.¹⁵⁷ The provision then provides ammunition for light weapons as an example of these devices shot or projected through firearms, despite defining firearms as an example of small arms under Article 1.2. Notably, this definition does not appear to cover the components of ammunition either. The definition contained in the *ECOWAS Convention* is a further example of the varied approaches taken in regional instruments to defining these terms and the inconsistencies that can arise.

Whilst the approaches to defining ammunition are more consistent than with firearms and parts and components, the strength of definitions is arguably undermined by a reluctance to commit to regulating components of a round as well as the complete round of ammunition

VI. Conclusion

It is evident that the international legal regime on arms control provides definitions of firearms, their parts and components and ammunition that present minimum standards for implementation by their respective states parties, which in turn offers guidance for consistent national legislating, contributing to the global effort to combat firearms trafficking.

The *Firearms Protocol* contains definitions of firearms, their parts and components and ammunition. The *International Tracing Instrument* defines small arms and light weapons, and this definition was later endorsed by the multilateral legally binding *Arms Trade Treaty*. The term ‘small arms’ is relevant for discussion, as it is synonymous with firearms, and therefore instruments on small arms contribute to efforts addressing firearms trafficking. There is no requirement for the definitions to be replicated in national legislation, but provisions must apply to material that at a minimum would be captured by the definitions.

However, controversies regarding these definitions impact the effectiveness and implementation of the international regime in countering firearms trafficking.

¹⁵⁷ Ibid art 1.3 (emphasis added).

When considering firearms, controversy first lies with the structure of the regime, containing definitions of both 'firearm' and 'small arms and light weapons'. The overlap in the scope of material covered by the definitions, requires definitive guidelines for 'best practice implementation' in either reconciling the definitions or crafting separate laws.¹⁵⁸ Inconsistent definitions globally risk the efficacy of the regime in countering the trafficking of such material. Guidance on reconciling the definitions, and a greater continuity between international and regional definitions, would be beneficial for consistent national implementation.

International guidelines on what is capable of being 'readily converted' are also necessary to ensure convertible firearms are being captured by the definitions. As well as action on the continual ways, the definitions can respond to emerging technologies and other classes of weapons in a more proactive manner.

On parts and components and ammunition, controversy exists with the *Firearms Protocol* being the only UN instrument providing definitions.¹⁵⁹ In instruments on small arms and light weapons, there are no definitions of parts and components or ammunition, nor is there any reference to definitions in other instruments.¹⁶⁰ This is of particular concern to the scope of this paper as, states that are not also party to the *Firearms Protocol* have no consistent instrument from which to consistently define these terms in the scope of small arms. Shortly after the introduction of the *Arms Trade Treaty*, the Small Arms Survey did highlight that the absence of these definitions is something that states could revisit.¹⁶¹ Regional definitions also vary, particularly with parts and components. A clearer comprehensive approach at the international level is required, as is a greater synergy between international and regional approaches for consistent national implementation.

Within the definitions themselves, the requirement that parts and components have to be specifically designed and essential for a firearm establishes a restrictive definition, albeit excluding accessories. The definition of ammunition allows states to regulate either the complete

158 UN Office on Drugs and Crime (n 1) 59.

159 Sarah Parker, 'Breaking New Ground? The Arms Trade Treaty' in Glenn McDonald et al (eds), *Small Arms Survey 2014: Women and Guns* (2014) 76, 82.

160 Ibid.

161 Ibid.

round or also its components, arguably undermining the potential of the regime to comprehensively regulate this material.

What is consistent among these controversies is the need for guidance in defining these terms to create consistent implementation at a national level. The impact of regional definitions should not be overlooked. A greater level of harmony amongst international approaches and also with those at a regional level is necessary, so that states who are party to multiple instruments can more easily implement consistent definitions.

The controversies with the terminology of the definitions themselves appears to be a by-product of the balancing act between underregulating and overregulating the material. This is an inherent difficulty when striving to achieve internationally agreed definitions. Drafting and implementing effective definitions and provisions more broadly in this context involves the setting aside of economic and strategic interests, and instead committing to prioritising human rights, development and security.¹⁶² The effectiveness of the regime is reliant on a global response. This requires consideration of these economic interests, resulting in compromises for the adoption of the regime on the necessary scale. However, many of these also serve practical advantages that may result in a greater adoption of provisions, such as not making the regulation of components of ammunition a requirement.

The Implementation Review Mechanism for the *Firearms Protocol*, due to be operational from 2021, presents an opportunity to see whether states are implementing the definitions under the Protocol, in what form and to what extent.

A clear and comprehensive international approach to defining firearms, their parts and components and ammunition is necessary to create consistent and comprehensive regional and national implementation to assist the global response to countering firearms trafficking.

¹⁶² Susanne Therese Hansen and Nicholas Marsh, 'Normative power and organized hypocrisy: European Union member states' arms export to Libya' (2015) 24(2) *European Security* 264, 265.

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Appendix A

Firearms and Small Arms Light Weapons: Regional Approaches

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| Approach 1 | |
| Inter-American Convention | <p>Article I(3) 'Firearms': a. Any barreled weapon which will or is designed to or may be readily converted to expel a bullet or projectile by the action of an explosive, except antique firearms manufactured before the 20th Century or their replicas; or b. Any other weapon or destructive device such as any explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system, or mine.</p> |
| EU Firearms Directive | <p>Article 1(1)(1) (1)'Firearm' means any portable barrelled weapon that expels, is designed to expel or may be converted to expel a shot, bullet or projectile by the action of a combustible propellant, unless it is excluded from that definition for one of the reasons listed in Part III of Annex I. An object shall 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;</p> |
| Approach 2 | |
| Kinshasa Convention | <p>Article 2 (a) Small arms and light weapons: any man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas shall be defined in accordance with domestic law. In no case shall antique small arms and light weapons include those manufactured after 1899; (b) Small arms: weapons designed for individual use. They include, inter alia, revolvers and self-loading pistols, rifles and carbines, sub machine guns, assault rifles and light machine guns; (c) Light weapons: weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns; hand-held under-barrel and mounted 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;</p> |

| Approach 3 | |
|-------------------|--|
| SADC Protocol | <p>Article 1.2</p> <p>'Firearm' means:</p> <p>a) Any portable lethal weapon that expels, or is designed to expel, a shot, bullet or projectile by the action of burning propellant, excluding antique firearms or their replicas that are not subject to authorisation in the respective state parties;</p> <p>b) Any device which may be readily converted into a weapon referred to in paragraph a);</p> <p>c) Any small arm as defined in this Article; or</p> <p>d) Any light weapon as defined in this Article;</p> <p>'Light weapons' include the following portable weapons designed for use by several persons serving as a crew: heavy machine guns, automatic cannons, howitzers, mortars of less than 100 mm calibre, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder fired rockets, anti-aircraft weapons and launchers and air defence weapons (some).</p> <p>'Small arms' include light machine guns, sub-machine guns, including machine pistols, fully automatic rifles and assault rifles and semi-automatic rifles;</p> |
| ECOWAS Convention | <p>Article 1.1</p> <p>Light Weapons: Portable arms designed to be used by several persons working together in a team and which include notably:</p> <ul style="list-style-type: none"> · Heavy machine guns; · Portable grenade launchers, mobile or mounted; · Portable anti-aircraft cannons; · Portable anti-tank cannons, non-recoil guns; · Portable anti-tank missile launchers or rocket launchers; · Portable anti-aircraft missile launchers; · Mortars with a calibre of less than 100 millimetres; <p>Article 1.2</p> <p>Small Arms: Arms used by one person and which include notably:</p> <ul style="list-style-type: none"> · Firearms and other destructive arms or devices such as an exploding bomb, an incendiary bomb or a gas bomb, a grenade, a rocket launcher, a missile, · A missile system or landmine; · Revolvers and pistols with automatic loading; · Rifles and carbines; · Machine guns; · Assault rifles; · Light machine guns. |

Definition of Firearms, their Parts and Components and Ammunition

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| <p>Nairobi Protocol</p> | <p>Article 1</p> <p>'Light weapons' shall include the following portable weapons designed for use by several persons serving as a crew: heavy machine guns, automatic cannons, howitzers, mortars of less than 100 mm calibre, grenade launchers, anti-tank weapons and launchers, recoilless guns, shoulder-fired rockets, anti-aircraft weapons and launchers, and air defence weapons;</p> <p>'Small arms' are weapons designed for personal use and shall include: light machine guns, sub-machine guns, including machine pistols, fully automatic rifles and assault rifles, and semi-automatic rifles.</p> <p>'Small arms' shall also include: 'firearms', meaning:</p> <p>(a) 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. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899;</p> <p>(b) Any other weapon or destructive device such as an explosive bomb, incendiary bomb or gas bomb, grenade, rocket launcher, missile, missile system or mine</p> |
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Appendix B

Parts and Components: Regional Approaches

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| Approach 1 | |
| Kinshasa Convention | Article 2(i) Parts and components that can be used for the manufacture, repair and assembly of small arms and light weapons and their ammunition: any element or replacement element specifically designed for small arms or light weapons and essential to their operation, including a barrel, frame or receiver, slide or cylinder, bolt or breechblock, and any device designed or adapted to diminish the sound caused by firing a such a weapon, and any chemical substance serving as an active material and used as a propellant or explosive agent; |
| Approach 2 | |
| Firearms Directive | Article 1(1)(2) 'Essential component' means the barrel, the frame, the receiver, including both upper and lower receivers, where applicable, the slide, the cylinder, the bolt or the breech block, which, being separate objects, are included in the category of the firearms on which they are or are intended to be mounted; |
| Approach 3 | |
| SADC Protocol | Article 1.2 'Other related materials' means any components, parts or replacement parts of a firearm that are essential to the operation of the firearm; |
| Nairobi Protocol | Article 1 And 'other related materials', meaning any components, parts or replacement parts of a small arm or light weapon, that are essential to its operation. |
| ECOWAS Convention | Article 1.4 'Other Related Materials': all components, parts or spare parts for small arms or light weapons or ammunition necessary for its functioning; or any chemical substance serving as active material used as propelling or explosive agent; |
| Inter-American Convention | Article I(6) 'Other related materials': any component, part, or replacement part of a firearm, or an accessory which can be attached to a firearm. |

Appendix C

Ammunition: Regional Approaches

| Approach 1 | |
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| Nairobi Protocol | Article 1 'Ammunition', meaning the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a small arm or light weapon, provided that those components are themselves subject to authorisation in the respective state party; |
| Inter-American Convention | Article I(4) 'Ammunition': the complete round or its components, including cartridge cases, primers, propellant powder, bullets, or projectiles that are used in any firearm. |
| Kinshasa Convention | Article 2(d) 'Ammunition': 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 authorisation in the respective state party; |
| Firearms Directive | Article (1)(1)(3) 'Ammunition' means the complete round or the components thereof, including cartridge cases, primers, propellant powder, bullets or projectiles, that are used in a firearm, provided that those components are themselves subject to authorisation in the member state concerned; |
| Approach 2 | |
| SADC Protocol | Article 1.2 'Ammunition' means the complete cartridge including the cartridge case, unfired primer, propellant, bullets and projectiles that are used in a firearm, provided those components are themselves subject to authorisation in the respective state parties; |
| Approach 3 | |
| ECOWAS Convention | Article 1.3 Ammunition: Devices destined to be shot or projected through the means of firearms including among others: <ul style="list-style-type: none"> · Cartridges; · Projectiles and missiles for light weapons; · Mobile containers with missiles or projectiles for anti-aircraft or anti-tank single action systems; Article 1.11 Small Arms and Light Weapons In this Convention, this shall be deemed to include ammunition and other related materials. |