

A Critical Study of the Iraqi Weapons Law

Assistant Professor Dr. Qaid Hadi Dahash, Head of the Department of Criminal Law,
College of Law, University of Baghdad, Iraq.

qaid.h@colaw.uobaghdad.edu.iq

دراسة نقدية لقانون الأسلحة العراقي

الأستاذ المساعد الدكتور قائد هادي دهش

رئيس قسم القانون الجنائي، كلية الحقوق، جامعة بغداد، العراق.



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Abstract

The spread and exploitation of firearms is one of the most alarming and growing security issues after 2003 in Iraq. For many reasons, controlling the spread of firearms is very difficult. Given the serious nature of the firearms issue, States have sought to find solutions to address various firearms problems. One of the proposals is to enact a new law, accommodating the developments that have taken place. Therefore, the Iraqi Parliament enacted the Weapons Law No. (51) of 2017. Although there are governmental efforts to control over firearms, unfortunately, the Law is relatively weak. The purpose of this Article is to analyse and assess the Weapons Law to identify gaps and loopholes. To make the Weapons Law more accurate and more efficient, a set of recommendations has been introduced.

Keywords: Firearms; Law; Government; Illicit; Offences.

الملخص يُعدّ انتشار الأسلحة النارية واستغلالها من أكثر القضايا الأمنية إثارة للقلق وتفاقمًا في العراق بعد عام ٢٠٠٣. ولأسباب عديدة، تُعدّ السيطرة على انتشارها أمرًا بالغ الصعوبة. ونظرًا لخطورة مشكلة الأسلحة النارية، سعت الدول إلى إيجاد حلول لمعالجة مختلف مشاكلها. ومن بين المقترحات المطروحة سنّ قانون جديد يواكب التطورات الحاصلة. ولذلك، أصدر مجلس النواب العراقي قانون الأسلحة رقم (٥١) لسنة ٢٠١٧. ورغم الجهود الحكومية المبذولة للسيطرة على الأسلحة النارية، إلا أن القانون، للأسف، ضعيف نسبيًا. وتهدف هذه المقالة إلى تحليل قانون الأسلحة وتقييمه لتحديد الثغرات. لجعل قانون الأسلحة أكثر دقة وفعالية، قُدمت مجموعة من التوصيات. الكلمات المفتاحية: الأسلحة النارية؛ القانون؛ الحكومة؛ غير المشروعة؛ الجرائم.

1. Introduction

The Weapons Law (hereinafter as the 'Law') has currently formed the legal core of national firearms policy in Iraq. Parliament passed the Law designed to control firearms because of the proliferation of firearms in the country. Although the Law seems to impose strict provisions on possessing and carrying firearms, it has proven ineffectual in controlling the collection of the disappearing firearms. This Article analyses the Law and attempts to show gaps and loopholes in it. The study is of possible interest for two reasons. First, it is an endeavor to understand the governmental efforts to control firearms. After 2003, the uncontrolled proliferation of firearms and the use of them in

violence have managed to grow to alarming proportions. The Law reflects a variety of purposes, including accommodating the developments that have taken place, putting in place new regulations for the possession and carrying of firearms, the technical qualification of the citizen to carry a firearm, determining the age of the person authorised to possess or carry firearms and regulating the devolution of the firearm that the court decides to forfeit. Second, the study is an effort to carry out a comprehensive assess of the Law. The Law reflects the government's most recent attempt to establish objective criteria for control of firearms.

2. Methodology This Article's methodology relies on doctrinal legal research, using a 'black-letter law' approach. It uses the analytical research and can therefore be categorised as doctrinal research. McConville and Chui commented that 'the black-letter research aims to systematise, rectify and clarify the law on any particular topic by a distinctive mode of analysis to authoritative texts that consist of primary and secondary sources.'¹ Given the fact that the Weapons Law is relatively ineffective, there should be consistency of it with international guiding instruments in the area. Using the black-letter approach has enabled us to analyse the Law and find gaps and loopholes between it and international tools in respect of firearms. It has also enabled us to provide the legislative assessment and then recommendations for legislative amendments.

3. Understanding the Factors Driving Firearms Proliferation in Iraq

Many factors have led to the proliferation of firearms in Iraq. From a political view, after the occupation of Iraq in April 2003, Iraq has witnessed the widespread availability of weapons. According to the Amnesty International Report of 2015, 'During the US-led occupation of Iraq and its aftermath (2003 to 2011), arms proliferation and dispersal from the armed forces to armed groups became a major issue.'² The Report went on to state that, 'Not only did the occupying forces fail to secure the existing weapons stockpiles or adequately disarm the estimated 400,000 Iraqi security forces members [...] they also injected huge quantities of additional arms and ammunition into the country with minimal oversight or controls in place.'³ It reported that tens of thousands of tonnes of ammunition were being looted by the truck-load and fed a thriving illicit market, supplied by soldiers of the disintegrated Iraqi army or looted by private individuals. Further, from January 2008 to September 2009, the United States documented 30,000 small arms and light weapons and related ammunition that had been seized by the US Army from illicit arms caches across Iraq. Some of which seem to have been trafficked from Iran to Iraq after 2003.⁴ When the Islamic State (hereinafter as the 'ISIS') seized nearly a third of Iraq in June 2014, it captured a huge number of firearms during major offensives against Iraqi armed forces. Moreover, ISIS acquired arms and ammunition from illicit trading or

¹ Mike McConville and Wing Hong Chui, Introduction and Overview in Mike McConville and Wing Hong Chui (eds), *Research Methods for Law* (Edinburgh University Press 2007) 4.

² Amnesty International, *Taking Stock: The Arming of Islamic State*. (7 December 2015). Available at: <https://www.amnesty.org/en/documents/mde14/2812/2015/en/> (last visited August 2, 2025).

³ *Ibid.*

⁴ *Ibid.*

transfers. The UN Security Council Sanctions Monitoring Team noted 'an extensive informal economy in the region has evolved to smuggle arms' enabled by the existence of huge amounts of government stocks and a longstanding tradition of private gun ownership in both Iraq and Syria.¹ From a legal view, Article 4 (2) of the former Weapons Law of 1992 permitted citizens to possess and carry firearms, requiring a licence issued by the Minister of Interior or his authorised representative. Furthermore, firearms can be lawfully sold in shops, contributing to the high rate of firearms ownership in the country. With regard to social factors, firearms can be seen as a symbol of power and are used to obtain social leverage. It states that 'firearms are used to gain political influence, particularly during elections.'²

4. The Law

In 2017, the Iraqi Parliament enacted the Weapons Law in an effort to toughen its weapons control legislation. The Law establishes qualitative standards for control over firearms. Article 4(1) prohibits the import and export of firearms, their parts and ammunition, or manufacture, except for the security and the military agencies. Therefore, the Law does not contain provisions that require import and export permits for civilians or private entities. However, the Law provides for basic measures for the provisional import of firearms and ammunition when Article 21 of the Law states that the Minister of Interior or an authorised representative can permit scientific researchers, who come to Iraq with the intention of hunting for the purposes of scientific research, or sport shooters to participate in shooting matches that is held in the Republic of Iraq to temporarily bring in, carry and use hunting and shooting weapons. They are obliged to inform the nearest police station and register their items.

According to Article 4(2), the Law does not permit the possession and carrying of firearms or the selling or repairing of them without a licence from the Minister of Interior or its authorised representative, who has only the power to grant all types of firearms licences. However, the Law permits the opening of special shops for the local selling of firearms and ammunition between civilians with a licence from the Minister of Interior or an authorised representative. Individuals licensed to possess firearms can sell them to other licensed civilians in these shops.³ Furthermore, the Law prohibits importing or exporting military weapons, their parts, or ammunition, or possessing, acquiring, carrying, manufacturing, repairing, transferring, delivering, receiving, or trading them, except for the security and military agencies.⁴

¹ Amnesty International, *Taking Stock: The Arming of Islamic State*. Ibid.

² Nadia Joubert, *The Correlation Between the Proliferation of Small Arms and Light Weapons in Iraq and Rates of Violence Against Women: Presenting effective recommendations to advocates and policymakers*, Report, ASUDA (2021). Available at: https://www.wilpf.org/wp-content/uploads/2021/04/Smalls_arms_and_violence_against_women_Iraq_Web.pdf (last visited August 3, 2025).

³ Article 4(3) of the Law.

⁴ Article 3 of the Law.

The Law regulates the conditions for the possession of firearms by civilians. The Minister of Interior may grant a special licence for the ownership of one or more firearms to a legal person, whether Iraqi or foreign, or grant more than one firearm to a person to preserve money or life. The legal person and its legal representative must indicate the type of the firearms for which a special licence is requested.¹ According to Article 28, the commander-in-chief of the armed forces has the power to grant a licence to possess or carry automatic rifles in accordance with the provisions of the Law. In Article 14(1), the Law excludes from the licence to possess and carry firearms and their ammunition a number of individuals, for instance, the President of the Republic and his deputies, the Speaker of Parliament, his two deputies, and members of Parliament.

Looking at Article 15(4), shows that the Law grants the Minister of Interior the power to lend firearms to any person outside of the public service without any licence, if necessary and in the public interest. Lent weapons shall be retrieved upon termination of the justifying reasons.

The Law allows the Minister of Interior, after the approval of the Council of Ministers, to suspend granting licences to possess and carry firearms throughout or in part of the Republic of Iraq for the period specified in the decision when there are reasons to take this action. However, the Law does not explain the justifying reasons for the decision.² In Article 19(1), the Law obligates the issuing authority, sellers, repairers and the police to keep a register of firearms. Additionally, the Law obligates the issuing authority to request the police to conduct an investigation when the licenced person claims the loss or damage of his licence, or the loss of the firearm for which the license was granted.³

Article 20 shows that the Law permits a foreigner to carry a firearm and ammunition in Iraq. Where the foreigner fails to submit the firearm to the police station upon entering the country or to obtain a licence, the competent authorities have the power to forfeit the items. As will be seen later, the Law contains a number of criminal offences. Some offences provide for the death penalty. The Law criminalises illicit trafficking, but lacks some of the elements, namely the unauthorised import and export. The Law also criminalises illicit manufacturing and forbids the manufacture of firearms by way of business, trade, and in a private capacity. In Article 26(2), the Law establishes the power to forfeit firearms in the possession of convicted persons, if a court imposes a sentence for one of the penalties stipulated in Article 24(1) or (2). In this case, the court must order the forfeiture of the firearm, its licence, ammunition, and the means of transportation used in committing the crime, taking into account the good faith of the vehicle owner.

5. Structural Issues

5.1. Definitions

A fundamental deficiency in the Law resulted from the failure to define the term 'firearms' in accordance with the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing

¹ Article 11 of the Law.

² Article 17 of the Law.

³ Article 16(1) of the Law.

the United Nations Convention against Transnational Organised Crime (the Protocol).¹ The Law defines, 'firearms' as a pistol, rapid-fire automatic rifle, rifle and hunting rifle, excluding pistols that are used in sports and that make a sound to launch and start matches.² Looking at the legally binding definition of firearms in the Protocol, it observes that Article 3(a) defines firearms by their specifications, rather than counting an exclusive list of specific types of firearms as the Law does. It provides that a firearm is '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.' It observes that the definition 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 also excludes antique firearms or their replicas and emerging technologies, such as directed energy weapons, for instance lasers, and electromagnetic projectile accelerators, railguns and coilguns.³ One of the main arguments in favour of the definition of firearms in the Protocol is that it extends to the whole of kinds of firearms, which are not covered by the definition of firearms in the Law, such as revolvers, and handcrafted firearms, and thus closes gaps in the current arms control regime. Additionally, it clearly observes that there are absent elements in the definition of firearms in the Law. This includes the elements 'portable', 'designed to expel', and 'maybe readily converted.' The element of 'designed to expel' is particularly important because it extends to the definition of provisionally non-functional firearms, which could, nevertheless, simply be repaired. Moreover, the definition of firearms in the Law does not include 'convertible firearms.' Hence, the Law does not extend to the firearms that 'can be readily converted' to expel or discharge a bullet. Although converted weapons pose critical challenges to the regulation of firearms,⁴ there is one advantage of including them, which is to evade the uncontrolled circulation of weapons such as certain air or gas, which at the time of manufacture is incapable of expelling any shot, nonetheless, can be simply manipulated to do so. While the Law does not define the term 'parts and components' it however refers to firearm parts in certain Articles. For instance, Article 4(a) prohibits the import or export of firearms or their parts. In addition, Article 24(a) criminalises the smuggling of firearms or their parts. It is necessary that the Law includes a separate definition for 'parts and components' that reflects the language used in the Protocol. As Article (3)(b) of the Protocol defines 'parts and components' 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, and any device designed or adapted to diminish the sound

¹ The Protocol was adopted by the United Nations General Assembly, in its resolution 55/255 of 31 May 2001. (Entered into force 3 July 2005).

² Article 1(1) of the Law.

³ Andrew Clapham, Stuart Casey-Maslen, Gilles Giacca, and Sarah Parke, *The Arms Trade Treaty: A Commentary*, (1th edn, Oxford University Press 2016) 2.231.

⁴ Benjamin King, "From Replica to Real, An Introduction to Firearms Conversions." Issue Brief, no. 10 (2015) 1-12.

caused by firing a firearm. Along with the definition of firearms, the Law introduces a clear and enforceable definition of ammunition as 'gunshots and cartridges used in the firearm and every part of it.'¹ One main disadvantage of the Law is defining 'military weapons'² and their ammunition³ in the same Law, which clearly regulates civilian firearms. It is necessary to exclude military weapons and their ammunition from the Law and, instead, regulate them in a separate law because the control systems for both types of weapons significantly differ. In addition to the above, the Law defines 'antique weapons' as weapons that are 'acquired without ammunition for decorations, souvenirs, or symbols, including weapons that are bestowed on or located in holy places and public museums.'⁴ However, Article 2 shows that the Law excludes antique weapons from the provisions of the Law. Hence, they are not covered by the preventive and security measures that apply to other firearms.

5.2. Destruction of Firearms Forfeited firearms or ammunition that cannot legally be sold should be entirely destructed to prevent the danger of unexpected explosions of them. However, the Law does not address the destruction and its means, which are utilised to dispose of seized or forfeited firearms, their parts, components, and ammunition. It is only provided for depositing them with police depots or the Ministry of Interior.⁵ Furthermore, they can be given to State Offices upon request.⁶ If there is no request, the Ministry of Interior has the power to sell forfeited firearms, their parts and ammunition in accordance with the provisions of the Law of Sale and Lease of State Funds of 2013.⁷ However, the Law should give priority to the destruction of forfeited firearms, their parts and components to improve security and safety and to prevent the danger that they may land in the wrong hands.

5.3. The Licencing Regime The objective of firearms licencing is to ensure that the holder is a suitable person and, in the case of firearms, that he or she has a good reason for the possession of a firearm and ammunition.⁸ Therefore, it is very important that the governance, processes and systems related to firearms licencing are strong and rigorous, while being cost effective, efficient and fair.⁹ The Law establishes a licencing regime for

¹ Article 1(3) of the Law.

² According to Article 1 (2) of the Law , 'military weapons' are used by the armed forces and internal security forces.

³ According to Article 1 (3) of the Law, 'military ammunition' is used in the military weapon and every part of it.

⁴ Article 1(5) of the Law.

⁵ Articles 23(1) and 26(3) of the Law.

⁶ Article 26(3)(d) of the Law.

⁷ Ibid.

⁸ Home Office, Firearm and shotgun certificates in England and Wales: Financial Year Ending (March 2016). Available at: <https://www.gov.uk/government/statistics/firearm-and-shotguncertificates-in-england-and-wales-financial-ending-march-2016-year> (last visited August 3, 2025).

⁹ College of Policing, Major investigation and public protection- Firearms licencing. Available at: <https://www.app.college.police.uk/app-content/major-investigation-and-publicprotection/firearms-licencing/> (last visited March 3, 2025).

firearm possession and puts various criteria, which persons must fulfil before obtaining a firearm. To apply and obtain licences to possess firearms, Article 6(1) of the Law requires that the applicant have to be Iraqi and, at minimum, (25) years old, with the exception of bodyguards for a member of parliament, Ministers, and those of their rank. Additionally, the applicant has to be of good morals, good reputation, and behavior. Further, the applicant must not be convicted of a non-political felony or a misdemeanour involving moral turpitude. Furthermore, the applicant should not suffer from a physical disability or mental or psychological illness preventing the applicant from using a firearm. Moreover, the applicant should be technically qualified to carry a firearm or to practise the profession of selling or repairing firearms according to a test conducted by the issuing authority.

Legal persons can also apply and obtain licences to possess firearms. Article 11 of the Law states that the Minister of Interior may grant a special licence for the ownership of one or more firearms to a legal person, whether Iraqi or foreign, or grant more than one firearm to a person to preserve money or life. The legal person and its legal representative must indicate the type of the firearms for which a special licence is requested. This type of licence should include the number and type of firearms and their ammunition. It seems that the licensing requirements only apply to firearms and ammunition, not to the parts and components of firearms. Hence, firearm parts may circulate without any governmental control over them. Article 5 of the Law provides for all licence types, which are licence to possess and carry a firearm and its ammunition, licence to repair firearms, special license for possession of one or more firearms, special licence for owning one or more firearms, and special licence to open a shop selling firearms. The Law excludes from the licence to possess and carry firearms and their ammunition:

- a. The President of the Republic and his deputies.
- b. Speaker of the Parliament, his two deputies, and members of the Parliament.
- c. The Prime Minister, his deputies, ministers and those of similar rank.
- d. President of the Supreme Judicial Council, judges and members of the public prosecution.
- e. Members of the diplomatic and consular corps working in Iraq according to the reciprocity rule.¹

Moreover, when the issuing authority refuses to grant a requested licence, the Law does not stipulate whether the person can apply again or how the applicant can appeal the decision of the issuing authority. The Law grants the Minister of Interior power to lend firearms to any individual outside of the public service, if it is necessary and in the public interest. When the justifying reasons are ended, lent firearms should be retrieved.² It observes that the lending of firearms poses the risk of weakening the arms control and licensing regime. However, the Law does not clearly define the circumstances under

¹ Article 14(1) of the Law.

² Article 15(4) of the Law.

which firearms can be lent to individuals. This is necessary to prevent the circumvention of the licensing regime in the Law. The Minister of Interior can, after the approval of the Council of Ministers, suspend granting licences to possess and carry firearms throughout or in part of the Republic of Iraq for the period specified in the decision when there are reasons to take this action. However, the Law does not clarify the justifying reasons for the decision.

Notably, the Minister of Interior or an authorised representative can allow opening special shops with a licence, for the local selling of firearms and ammunition between civilians.¹ Individuals licensed to possess firearms are able to sell them to other licensed civilians in these shops.² Since only the State is authorised to import firearms for the use of the security forces, the legal purchase of firearms through the special shops is limited to firearms that are already in circulation within Iraq. On the one hand, this provision may help to curb illegal firearms sales, but on the other hand, it can encourage the smuggling of firearms if the demand for modern foreign firearms is not met by the legal supply through the special shops.

5.4. Prevention Measures The Law provides for many measures that can be used to control firearms. These measures will be examined below.

5.4.1. Record-Keeping Firearms record-keeping has become an essential part of limiting the illicit proliferation of firearms. The State is thus accountable for conducting effective firearms record-keeping in continued backing of a regime, which will make tracking illegal firearms possible in the future.³ Therefore, the Law obligates the issuing authority and those authorised to sell or repair firearms to keep records in the form specified by the Minister of Interior, and they must be submitted to the competent licencing authority. However, the Law does not specify how long records are to be kept by the issuing authority, sellers, repairers, or the police. Further, according to the Regulations on Keeping Records of Disclosures, records of firearms and ammunition should be available in each office belonging to the Ministry of Interior.

While there is no legal basis in the Law regarding information related to international transfers of small arms and light weapons being maintained, the National Report of the Republic of Iraq on the Implementation of the Programme of Action on Small Arms and Light Weapons (PoA) and the International Tracing Instrument of 2022 shows that Iraq requires that exporters and importers of Small Arms and Light Weapons (hereinafter known as the 'SALW') keep records of their activities. The information that must be recorded includes (a) the quantity of SALW traded, (b) the types or models of SALW traded, (c) markings appearing on transferred SALW, and (d) for transactions, the identity of the buyer and seller, the country, where the SALW are to be delivered to or

¹ Article 4(3) of the Law.

² Article 4(3)(b) of the Law.

³ Lourdes Rincón, "Promoting Firearms Marking in Latin America and the Caribbean." *The Journal of ERW and Mine Action*. Vol. 18 (2) 3 (2014) 20-23.

purchased from and the date of delivery.¹ It seems currently that the requirements of record-keeping only apply to entirely assembled firearms and ammunition, not to their parts and components. Further, the Law appears not to be required the maintenance of information on the methods of disposal of forfeited firearms.

5.4. 2. Marking of Firearms Marking firearms is a significant step in combatting illicit firearms trafficking.² It is also a fundamental part of an efficient and effective record-keeping and tracking tool.³ However, it observes that the Law does not contain any provisions regarding marking that would establish a compulsory legal basis for the marking procedure. It also does not require that forfeited firearms that are disposed of by other means than destruction is marked. Therefore, it is necessary that the Law providers mark firearms at three different times: at the time of manufacture, at the time of import, and at the time of transfer of firearms from government stocks to permanent civilian use. Furthermore, the Law should provide for the marking of deactivated firearms. Moreover, it should include the minimum marking requirements, including the name of the manufacturer, the country or place of manufacture, the serial number, and the country and year of import.

5.4.3. Deactivation of Firearms From the definition of firearms in Article 1(1) of the Law, it shows that it only contains such firearms that can expel a shot or bullet, which is not the case for deactivated firearms. Thus, the Law does not recognise deactivated firearms as firearms. To prevent the reactivation of deactivated firearms, the Law should include them in the scope of application of the Law. It also applies the same preventive measures to them as to functional firearms, including by establishing relevant criminal offences (for instance, illicit reactivation or insufficient deactivation); ensuring that deactivation involves rendering all essential parts permanently inoperable and incapable of reactivation; and formally verifying that the firearm has been deactivated and that the firearm is marked in a way that confirms it has been deactivated.⁴

5.4. 4. Security and Preventive Measures The Law establishes measures that ensure the security of firearms, their parts, and ammunition. Article 16(1) states that in the case of a reported loss or damage of licences or firearms, the issuing authority must inform the police about the case so that the police can investigate the loss. If it is proven that the licence has been lost or damaged, the holder shall be granted a new licence as a lost replacement, bearing the same serial number as the previous licence.⁵ If it is proven that the firearm has been lost or damaged, the owner must hand the licence to the issuing authority to invalidate it, and thereafter may be granted a new licence for another

¹ Programme of Action on Small Arms and Light Weapons. Available at <https://unoda-poa.s3.amazonaws.com/reports/IRO-English-1212-SUBMITTED.pdf> (last visited August 3, 2025).

² Lourdes Rincón, *ibid*, 20.

³ Giacomo Persi Paoli, "The Method behind the Mark: A Review of Firearm Marking Technologies." Issue Brief, no. 1(2010) 1-12.

⁴ Sarah Parker and Marcus Wilson, *A Diplomat's Guide to the UN Small Arms Process (Small Arms Survey 2012)* 39.

⁵ Article 16(2) of the Law.

firearm.¹ If the claim of loss or damage to the licence or the loss of the firearm is found to be false, the issuing authority shall refer its owner to the investigating judge to take legal measures, and the court shall, upon conviction, notify the issuing authority.² Furthermore, the Law regulates the storage of recovered firearms. Article 26(4) states that recovered firearms, their parts and ammunition should be deposited at the nearest police station in the area where they have been found.

5.4.5. Information Exchange; Tracing

It is obvious that firearms tracing can provide law enforcement agencies with comprehensive information, which will permit them to link a firearm to a particular suspect. It can also identify crime gun suppliers and identify trends within an area and be used as a tool to focus enforcement efforts.³ However, the Law does not contain provisions with respect to tracing. In order to cooperate in the tracing of firearms, their parts and ammunition, it is necessary that the Law adopts statutory measures that regulate the process through which foreign authorities are able to submit tracing requests and under which legal conditions the information will be transmitted to them. Therefore, it is also necessary that the Law follows the provisions set out in the International Tracing Instrument.

6. Offences Related to Firearms

The Law establishes a series of offences relating to the illicit manufacturing of and trafficking in firearms, their parts and ammunition, as well as the illicit carrying, possession, sale, or repair of firearms. These offences will be explained below.

6.1. Illicit Manufacturing

The Law criminalises the manufacturing of firearms, their parts and ammunition without a licence from the issuing authority.⁴ This includes the manufacturing by way of business or trade and in a private capacity. The offence of the illicit manufacturing of firearms is punished with imprisonment. The penalty should be death or life imprisonment if the offence is committed with the intent of spreading terrorism, or disturbing public security, or supporting any armed rebellion against the Government.⁵ However, the Law does not criminalise the offences of assembling firearms from illegally trafficked parts and components nor the manufacturing of unmarked firearms. It is necessary that the Law provides for the two latter offences to lock loopholes, which might emerge when personnel of the Military Industrialisation Authority (that can only manufacture firearms in Iraq) manufacture firearms without the required markings.

6.2. Illicit Trafficking

The obligation to criminalise the illicit trafficking in firearms, their parts or ammunition, is set out in the Law. It clearly prohibits importing or exporting firearms, their parts or

¹ Article 16(3) of the Law.

² Article 16(4) of the Law.

³ John P. Malone, "Firearms Tracing" USA Bulletin, Vol. 50 Issue. 1. (2002) 48-49.

⁴ Article 24(1) of the Law.

⁵ Ibid.

ammunition except for the security and the military agencies.¹ Furthermore, it prohibits importing or exporting military weapons, their parts, or ammunition, or possessing, acquiring, carrying, manufacturing, repairing, transferring, delivering, receiving, or trading them, except for the security and military agencies.² Therefore, Article 24(1) then criminalises the smuggling of or trafficking in firearms, their parts or ammunition without a permit from the issuing authority. The offence of the smuggling of or illicit trafficking in firearms is punished with imprisonment. In both cases, the penalty should be death or life imprisonment if the offence is committed with the intent of spreading terrorism, disturbing public security, or supporting any armed rebellion against the Government.³ It observes that Article 24(1) of the Law mentions to legal terms, for instance, trafficking and smuggling. They are, however, not further defined. This led to an ambiguous explanation, which does not allow for the proper application of the criminal offence to actual conducts because it cannot understand what is illicit trafficking or illicit smuggling. Therefore, it is necessary that the Law criminalises all elements of what constitutes illicit trafficking, namely the unauthorised 'import, export, acquisition, sale, delivery, movement or transfer of firearms, their parts and components and ammunition.' Moreover, the Law does not criminalise the transfer of unmarked firearms.

6.3. Illicit Carrying, Possession, Sale, Repair, or Use of Firearms

The Law makes it a criminal offence for whoever carries, sells, or repairs firearms or their ammunition without a licence.⁴ In this case, the penalty should be imprisonment for a period not exceeding one year. Furthermore, the same Article states that anyone who possesses firearms or their ammunition without a licence should be fined between 500,000 and one million dinars.⁵ According to Article 24(4), anyone who is licenced to carry a firearm and carries it while participating in demonstrations or gatherings against the Government should be punished with imprisonment for a period not exceeding three years and a fine of between one million and five million dinars. The penalty should be imprisonment if the firearms were carried without a license. According to Article 25, the holder of a firearm who has not renewed the licence within 30 days from the date of expiry should be punished with a fine of between 100,000 and 250,000 dinars. The Law needs to review all penalties for their proportionality and sufficient deterrence, in particular the offence of illicit possession.

6.4. Failure to Keep Firearms Records

The Law makes it a criminal offence to fail to comply with the requirement of Article 19 of the Law, namely to keep records of firearms and submit them to the competent licence-issuing authority for checking.⁶ It states that anyone who violates the provisions of this Law or the regulations or statements issued is punished by imprisonment and a fine of no

¹ Article 4(1) of the Law.

² Article 3 of the Law.

³ Article 24(1) of the Law.

⁴ Article 24(3) of the Law.

⁵ Article 24(3) of the Law.

⁶ Article 24(5) of the Law.

less than (100,000) one hundred thousand dinars and not more than (250,000) two hundred and fifty thousand dinars, or either of these two penalties.

7. Administrative Sanctions

In addition to criminal sanctions, the Law includes financial administrative penalties and personal administrative penalties. Article 26(1) allows for customs departments to impose fines in accordance with the Customs Act. Additionally, Article 12 sets out certain circumstances in which firearm licences are withdrawn. For instance, when the court decides to forfeit firearms, or when the legal requirements for granting licences are lacking.

8. Conclusion

The present study was intended to assess the Weapons Law. The Law is passed to address the proliferation of firearms in Iraq that is generally associated with conflict and post-conflict situations. While the role of government in enacting the Law is clear, the Law should be reconsidered with a view to improving its effectiveness, if this is possible, in consistency with international instruments related to controlling firearms. The Law should consider providing accurate definitions of firearms, their parts and components and convertible firearms. It should also regulate the marking of firearms at the time of manufacturing and import, the marking of deactivated firearms, and the marking of confiscated firearms. While the Law imposes the duty to keep a register of firearms, it does not include parts and components of firearms in the record-keeping requirements, and this can lead to challenges regarding the tracing of firearms, which have been illegally assembled from parts and components.

It may be right in saying that the Law provides a comprehensive regulation of the licencing regime. However, it is time that the Minister of Interior issue new regulations with respect to firearms licence that regulates the safe handling and storage of firearms and ammunition. The study examines several offences relating to the illicit possession and use of firearms and ammunition. Nonetheless, the Law should cover parts and components of firearms in order to prevent offenders from exploiting gaps in the Law by dismantling firearms into their parts and components, rather than possessing, selling or carrying completely assembled firearms. Although the Law establishes a number of criminal offences, it should consider adding other offences such as illicit reactivation of deactivated firearms. Moreover, the current penalties regime should be reconsidered, as it seems to be ineffective and disproportionate with respect to the criminalised conduct. In particular, the possession of firearms without a licence presently only results in a very tolerant penalty.

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