

Possible Scope of the Future ATT and the Implications of the Different Options

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Background and introduction

Scope has been one of the most frequently discussed topics in the context of the Arms Trade Treaty (ATT) debate over the last several years and remains one of the more complicated issues to resolve. The balance between a relevant and comprehensive scope of items versus the manageability of control is difficult, but not impossible, to strike. The recent United Nations Preparatory Committee (Prep Com) meeting held in New York from February 28 to March 4, 2011 discussed the issue at length. In preparing for the meeting Ambassador Roberto Garcia Moritán distributed three short draft papers on the topics chosen for the February/March Prep Com meeting. In addition to the two papers on “criteria and parameters” and “technical assistance and cooperation” there was also a paper on scope. The paper consisted of suggested treaty text that reflected the discussion on scope to date. In addition the text included a list of “arms and related items” with thirteen categories from “a” to “m”, a list of “transactions and activities” with sixteen categories from “a” to “p”, and finally a list of “exceptions”. Further, two annexes were suggested as complementary to the treaty text. Annex A provided detailed definitions for the items under control. Annex B provided a list of mandatory transactions and activities to be covered by the ATT.

During the first few days of the Prep Com national delegations had a chance to discuss the three different topical papers – sharing general views as well as specific comments to the suggested paragraphs. Thursday morning a new text was presented, amalgamating the three into the previously introduced elements of the treaty text that Ambassador Moritán had circulated after the last Prep Com meeting in July 2010. The Chairman’s text will later be revisited when implementation is discussed at the last substantial Prep Com meeting to be held in New York, mid-July 2011.

The discussion on scope made considerable progress during the Prep Com meeting in February/March. Although no text is yet agreed the areas of consensus as well

¹ The author would like to thank Roy Isbister and Elizabeth Kirkham at Saferworld and Oliver Sprague at Amnesty International UK for their kind assistance and advice.

as discourse are more clearly crystallized. Ambassador Moritán's approach of having an inclusive style of discussion on the treaty as such and the text in particular is starting to pay off and the suggested text for the negotiating conference is starting to take shape. This paper will discuss certain aspects of the scope discussion, revisiting topics that perhaps have been overtaken by events and the most recent Chairman's paper, but that are still of interest both in a historic technical review as well as for a future-looking outlook for the negotiating conference in 2012. The paper will look more closely at the items suggested for control, focusing on some of the more contested and challenging areas.

Discussions in New York

The views expressed regarding scope of items for control have some commonalities and some important disparities. A majority of countries are advocating a comprehensive scope that would go beyond the categories represented in the UN Register of Conventional Arms (UNROCA).² Diverging views have been expressed on how broad these categories should be and what additional categories could be included, such as Small Arms and Light Weapons (SALW), Ammunition, Parts and Components, and Technology. Other voices, from national delegations as well as the civil society, have pointed to the necessity of including such categories as: explosives, armor and equipment for law enforcement or internal security equipment.³

The discussion during the recent Prep Com meetings in New York made significant steps forward and started to move away from repeatedly referencing the UN Register of Conventional Arms. At the same time, until now the most common point of departure when discussing what items to put under control in an ATT has been to look at the seven categories of major conventional arms under the UNROCA with the addition of categories such as small arms and light weapons (SALW) and ammunition (the so-called 7+1+1 approach). However, the UN Register was established for entirely different reasons than those that motivate the pursuit of an ATT and for reasons explained below, limiting the scope to such a narrow field of categories would leave out an unacceptable number of items that should be controlled under the ATT and would render the treaty incomplete.

Looking to history - comparing ATT to the UN Register of Conventional Arms (UNROCA)

As a point of reference it is still of value to look closer at the register. In contrast to the future ATT the UNROCA's purpose has been primarily focused on raising transparency on arms transfer on an international scale, not providing guidance on what types of items countries should attempt to control.

2 More information regarding the United Nations Register of Conventional Arms is available at website of the United Nations Office for Disarmament Affairs: <http://www.un.org/disarmament/convarms/Register/HTML/RegisterIndex.shtml>

3 "Scope: Types of equipment to be covered by an Arms Trade Treaty", Control Arms Campaign, Position Paper No, 2 July 2009, available at: <http://controlarms.org/wordpress/wp-content/uploads/2011/02/Scope-Types-of-Weapons.English.pdf>

Additional work on the issue of scope was done by groups within the campaign before the Prep Com meeting in February/March and was presented as a Discussion Paper by Amnesty International on March 2. Copies available on request.

When the UNROCA was established in December 1991 through UNGA resolution 46/36 L⁴ countries were invited to provide an annual report on data related to their export and import of conventional arms according to seven categories. Countries were also encouraged to volunteer information on their military holdings and procurement through national production as well as national policies.⁵ The register was and still is a product of a very different political and technical environment. Still, it has been a fairly successful attempt to provide more transparency to the area of transfers of conventional arms, although there are inconsistencies in the level of reporting. Some countries have reported regularly while others have not reported at all. Few governments report on imports, which makes it difficult to compare with exports from other countries.⁶ Over the last few years a trend has emerged indicating fewer countries reporting on a regular basis.⁷ In addition it has proven very difficult to find consensus for any type of changes to the UNROCA. In the most recent review carried out by a Group of Governmental Experts, concluded in August 2009, no significant proposals for expansion of the scope reached consensus. The most noteworthy was the failed attempt to add an eighth category for Small Arms and Light Weapons (SALW) and thus the UNROCA continues to co-exist with the group of UN initiatives tailored to address SALW and their spread.⁸ Still, regardless of its challenges the Register has proven to be a successful confidence building mechanism on the international stage for the last twenty years.

The subject of incomplete categories

To create a strong and robust ATT the list of items under control must be as comprehensive as possible, but it also has to be manageable. If the starting point for control would be the seven categories under the UNROCA there are valid claims that the categories would be incomplete for control purposes. In the most recent GGE report from August 2009 a wide range of proposals was put forward to expand the categories, thus updating the Register and making it more relevant. Under all categories, with the exception of Category I Battle Tanks, a number of proposals had been reviewed. None of these proposals ever made it through the recommendations and the most significant omission was as previously stated the failed addition of an eighth category for SALW.

In other studies that focus on the relationship between the UNROCA and the ATT, such as the background paper on scope prepared for the informal Boston Symposium on the ATT arranged by the University of Massachusetts September 28-30, 2010 the technical argument was made for other inclusions under the seven categories.⁹ Furthermore,

4 United Nations General Assembly Forty Sixth Session, 46/36 L, page 73, available at : <http://daccess-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/581/24/IMG/NR058124.pdf?OpenElement>

5 GGE report page 10, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/460/80/PDF/N0946080.pdf?OpenElement>

6 Brzoska, Michael "Monitoring and verification of the arms trade and arms embargoes", UNIDIR Disarmament Forum, Three 2010

7 "Transparency in Armaments, Reporting to the United Nations Register of Conventional Arms, Fact Sheet, General Assembly Sixty-Fifth Session First Committee, available at: http://www.un.org/disarmament/convarms/Register/DOCS/2010-11-01_RegisterFactSheet.pdf

8 "Continuing operation of the United Nations Register of Conventional Arms and its further development" Report made by Group of Governmental Experts (page 4), presented to the UN General Assembly Sixty Fourth Session, August 14, 2009 A/64/296, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/460/80/PDF/N0946080.pdf?OpenElement>

9 Wood, Andrew "Background Paper: Scope", The Boston Symposium on the Arms Trade Treaty, arranged by the John W. McCormack Graduate School of Policy and Global Studies at the University of

when comparing the report categories under the UNROCA with the equivalent control categories under multilateral trade control initiatives - such as the Munitions List under the Wassenaar Arrangement on Export Control for Conventional Arms and Dual-Use Goods and Technologies¹⁰ or the Common Military List of the European Union¹¹ - it is evident that for trade control purposes the category definitions under the UNROCA are incomplete at best.

Looking more closely at the seven categories and weighing the views from two specific of the abovementioned documents that have reviewed the expansion of the UNROCA categories, the following conclusions can be made:

UNROCA Cat. I. Battle Tanks:

Tracked or wheeled self-propelled armored fighting vehicles with high cross-country mobility and a high-level of self-protection, weighing at least 16.5 metric tons unladen weight, with a high muzzle velocity direct fire main gun of at least 75 millimeters caliber.

What it does not include that could be relevant for the ATT?

The GGE report from 2009 and the Boston Symposium background paper on scope made no specific statements to include additional items.

UNROCA Cat. II. Armoured Combat Vehicles

Tracked, semi-tracked or wheeled self-propelled vehicles, with armored protection and cross-country capability, either: (a) designed and equipped to transport a squad of four or more infantrymen, or (b) armed with an integral or organic weapon of at least 12.5 millimeters caliber or a missile launcher.

What it does not include that could be relevant for the ATT

The GGE report from August 2009 states that proposals had been reviewed to include:

tracked, semi-tracked or wheeled self-propelled vehicles with armored protection and cross-country capability: (a) designed and equipped to transport a squad of four or more infantrymen; or (b) armed with an integral or organic weapon of at least 12.5-millimetre calibre or a missile launcher; or (c) equipped for specialized reconnaissance, command and control of troops or electronic warfare.

The Boston Symposium Background paper on Scope made, in addition to what the GGE had referenced for this category, such further inclusions as: "Recovery vehicles, tank transporters, amphibious and deep water fording vehicles; armored bridge-launching vehicles;"

Massachusetts, Boston September 28-30, 2010, available at: <http://www.mccormack.umb.edu/documents/Scopebackgroundpaperfinal.pdf>

10 "Munitions List", the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, available at: < <http://www.wassenaar.org/controllists/index.html> >

11 "Common Military List of the European Union", adopted by the Council on 15 February, 2010 (equipment covered by Council Common Position 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment", available at: < <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:069:0019:0051:EN:PDF> >

UNROCA Cat. III. Large-caliber Artillery Systems

Guns, howitzers, artillery pieces, combining the characteristics of a gun or a howitzer, mortars or multiple-launch rocket systems, capable of engaging surface targets by delivering primarily indirect fire, with a caliber of 75 millimeters and above.

What it does not include that could be relevant for the ATT

The GGE report from August 2009 stated that experts had reviewed proposals to include: “artillery with a calibre of 50-75 mm and including gun carriers and tractors specially designed for towing artillery.”

UNROCA Cat. IV. Combat Aircraft

Fixed-wing or variable-geometry wing aircraft designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction, including versions of these aircraft which perform specialized electronic warfare, suppression of air defense or reconnaissance missions. The term “combat aircraft” does not include primary trainer aircraft, unless designed, equipped or modified as described above.

What it does not include that could be relevant for the ATT

The GGE report from August 2009 stated that experts had reviewed proposals to include: “fixed-wing or variable geometry wing aircraft which are designed equipped or modified to perform reconnaissance, command and control of troops, electronic warfare and refueling missions.”

The Boston Symposium Background paper on Scope made a slightly different suggestion of what relevant weaponry would have to be added to this UNROCA category to make it relevant for the ATT.

Fixed-wing or variable geometry wing aircraft, including UAVs, that are not versions of Combat Aircraft, including primary trainer aircraft, which are designed, equipped or modified to perform specialized electronic warfare, suppression of air defense, or reconnaissance missions;

Fixed-wing or variable geometry wing aircraft, including primary trainer aircraft, which are designed, equipped or modified to perform command and control, air-to-air refueling, transport of personnel or airdrop missions;

UNROCA Cat. V. Attack Helicopters

Rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armor, air-to-surface, air-to-subsurface, or air-to-air weapons and equipped with an integrated fire control and aiming system for these weapons, including versions of these aircraft which perform specialized reconnaissance or electronic warfare missions.

What it does not include that could be relevant for the ATT

The GGE report from August 2009 stated that experts had reviewed proposals to include: “rotary-wing aircraft which are designed equipped or modified to perform reconnaissance, target acquisition, command and control of troops, electronic warfare and mine-laying missions. Experts also discussed changing the name of the category to “Combat helicopters or military helicopters”.

The Boston Symposium Background paper on Scope made similar suggestions as what had been reviewed by the GGE but extended its recommendation to include Unmanned Aerial Vehicles under this category.

UNROCA Cat. VI. Warships

Vessels or submarines armed and equipped for military use with a standard displacement of 500 metric tons or above, and those with a standard displacement of less than 500 metric tons, equipped for launching missiles with a range of at least 25 kilometers or torpedoes with similar range.

What it does not include that could be relevant for the ATT

The GGE report from August 2009 stated that experts had reviewed proposals to: “drop the standard displacement of vessels or submarines to 150 tonnes or more and/or altering the definition with regard to the range of torpedoes.”¹²

The Boston Symposium background paper followed a similar line as that of the GGE report in regard to this category.

UNROCA Cat. VII. Missiles and Missile Launchers

(a) Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometers, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI. For the purpose of the Register, this subcategory includes remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles.

(b) Man-Portable Air-Defense Systems (MANPADS).

What it does not include that could be relevant for the ATT

The GGE report from August 2009 stated that experts had reviewed proposals to include: “missiles of below 25 km range and ground-to-air missiles.”

The UNROCA list of categories - not a good fit for the ATT.

The future ATT will have a very different purpose compared to the UN Register. Instead of focusing on improved transparency on an international scale, it will be a globally accepted

12 GGE Report from August 2009

set of criteria and standards for the international trade in conventional arms, and thus a very integral part of countries' day to day trade operations. For those countries that have yet to build a control mechanism as well as for those countries that already have sophisticated systems in place the ATT will be a cornerstone in their national trade control operations.

Many countries refer to the treaty being more a floor to build from than a ceiling to limit the scope of control. Still, using a list for reporting purposes is very different compared to using a list for control purposes. In a licensing situation there is a need for more details regarding the actual product compared to the broader categories under a reporting mechanism. Companies use different designs and technological specifications and when evaluating the transfer, be it an import, export, transit or transshipment situation, the licensing officer need to know exactly what the item is, what it can do and what it is intended to be used for. Only then can a comprehensive evaluation of the risks and benefits of the transfer be made. The UNROCA does not provide the level of technical detail that is needed and is thus an inappropriate point of departure for control purposes.

Although perhaps brilliant at first glance, some good ideas come with an expiration date. The UNROCA has served its transparency purpose, and it has served it well. Still, as exemplified above, suggestions for reform and updates that are generated even within the UNROCA systems - such as the GGE report - have very limited success. Some of the additions suggested and reviewed by the GGE and other experts prove that the technology itself sometimes has overtaken the Register's relevance. The weaponry of today is lighter, smaller, faster and has often far more capacity compared to the weaponry of 1991.¹³ The difficulty of updating the reporting categories under the Register is well illustrated by the fact that none of the proposals cited from the most recent GGE report ever became a recommendation to change the Register. What is more severe is the continued omission of an eighth category for SALW, something that the GGE report states as possibly damaging the efficiency and the relevance of the Register as such.¹⁴ The fact that the UNROCA has not been able to keep up with the technological development is another reason why the Register is a bad fit for the ATT control list.

As we approach the Register's twentieth anniversary, a number of questions arise. First, one must ask how well the information provided by the Register serves the international community. There is an imbalance in the reporting where exporting country data are rarely met by corresponding data from importing countries and comparisons are therefore hard to make¹⁵ One must also wonder if the failed attempt an eighth category for SALW has severely impaired the Register's credibility, this is a conclusion even alluded to by GGE reviewing the Register in 2009.¹⁶ A transparency instrument with its inherently limited level of technological detail cannot effectively be used as a model for a trade control instrument.

13 Wood, Andrew " Background Paper: Scope", (page5)

14 GGE Report from August 2009, page 2

15 Brzoska, Michael "Monitoring and verification of the arms trade and arms embargoes", UNIDIR Disarmament Forum, Three 2010

16 GGE Report from August 2009, page 4

The subject of “missing” categories

Moving on from reviewing the necessity to expand the categories for control beyond the seven mentioned in the UNROCA, there is a need to looking closer at some specific “missing” categories.

Small Arms and Light Weapons

Small Arms and Light Weapons represent a very broad category of conventional weapons that merit special attention. They are widely used in the majority of the world’s different conflict zones and have, compared to many other types of weapon categories a sadly impressive kill rate. They are easy to conceal and transport, cheap, fairly simple to manufacture¹⁷, and with a very long lifespan often are just carried from one conflict to another.

This trans-border nature of the movement of SALW has a deep impact in regions such as West Africa where the Economic Community of West African States (ECOWAS) in 2006 adopted a Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials. The Convention establishes a ban on arms transfers by Member States, with a possible exemption for transfers intended for the legitimate defense and security needs; law enforcement; and participation in peace support operations. Such exemptions are granted by the ECOWAS central organs. However it prohibits, without exception, arms transfer to non state actors without the approval of the importing country.¹⁸ The ECOWAS group of countries has also established a Small Arms Program called ECOSAP to follow the implementation of the convention.¹⁹ Another regional initiative on the African continent is 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, 21 April 2004.²⁰

Another regional group that has focused on SALW is the Organization for Security and Co-Operation in Europe, which in 2003 published a Handbook of Best Practices on Small Arms and Light Weapons, providing a set of best practice guides for all stages of a SALW’s life from production, to transfer to demobilization and reintegration.²¹ Moving on the Americas, another regional initiative is the Organization of American States Firearms Convention. Although this convention awaits ratification from some of its 33 signatories, it still could have a regional impact.²²

17 Sprague, Oliver and Griffiths, Hugh, “ The AK-47 the world’s favourite killing machine” Control Arms Briefing Note, June 26, 2006 <http://www.amnesty.org/en/library/asset/ACT30/011/2006/en/11079910-d422-11dd-8743-d305bea2b2c7/act300112006en.pdf>

18 Dr. Mohammed Ibn Chambas, President ECOWAS Commission, “Declaration by the President of the ECOWAS Commission relating to the entry into force of the ECOWAS convention on Small Arms and Light Weapons, their ammunition and other related materials”, Abuja, November 20, 2009, available at: http://www.ecosap.ecowas.int/index.php?option=com_jotloader&view=categories&cid=0_11910765ecb7da29da3ff7029b829ef0&Itemid=84&lang=en

19 ECOSAP, ECOWAS Small Arms Control Programme, more information available at: http://www.ecosap.ecowas.int/index.php?option=com_content&view=frontpage&Itemid=122&lang=en

20 Nairobi Protocol for the Prevention, Control and Reduction of Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa, 21 April 2004, available at <http://www.recsasec.org/pdf/Nairobi%20Protocol.pdf> ECOWAS

21 “Handbook of Best Practices on Small Arms and Light Weapons”, December 1, 2003, Organization for Security and Co-Operation in Europe, available at: <http://www.osce.org/fsc/13616>

22 The Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Items, November 14, 1997, available at <http://www.fas.org/programs/ssp/>

On an international level, the UN Programme of action has played an important role in highlighting the importance of SALW management and control. One of the three supplementary protocols to the legally binding United Nations Convention against Transnational Crime that was adopted in November 2000 is the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition - the so called Firearms Protocol.²³

The purpose of this 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.

Within a year of the adoption the Firearms Protocol at the 2001 UN Conference on the Illicit Trade of Small Arms and Light Weapons in All Its Aspects, a policy framework to better focus on the small arms and light weapons issue was established. The UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (PoA) has in its ten years of existence led to good results in the area of combating the illicit flow of SALW on an international and regional level. It has among other things led to the 2005 adoption of the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons”, the so called International Tracing Instrument (ITI).²⁴ The ITI has solidified and strengthened existing international standards for record-keeping and marking of small arms, but its adoption was a close call. Diverging views on the instrument’s status as legally or politically binding, import marking, the definition of SALW and ammunition appeared at the end of the negotiations to be the four main breaking points although a solution was found in the end.²⁵

Marking and tracing has been an issue that has influenced every international or multilateral discussion on SALW and their ammunition. In order to track SALW, they need to be able to be identified.²⁶ The Firearms Protocol Article 8, stipulates marking of firearms²⁷, but finding a universally agreed norm of marking between the systems that use numeric, non-numeric or alphanumeric methods has been hard. The difficulties with finding common ground on marking and tracing have also impacted the discussion on how to better improve the network of transfer control for SALW on an international level.

At the moment the Firearms Protocol is the only legally binding global instrument addressing the issue of SALW²⁸ However on the multilateral level there are apart from

asmp/issueareas/oas.html#OAS.

23 “Background to the Firearms Protocol” available at: <http://www.poa-iss.org/FirearmsProtocol/FirearmsProtocol.aspx>

24 International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons”, A/60/88, annex, adopted by (A/DEC/60/519) in 2005, available at the UN Programme of Action Implementation Support System PoA:ISS http://www.un-casa.org/CASAUUpload/ELibrary/ITI_English.pdf

25 McDonald, Glenn. “ Connecting the Dots: The International Tracing Instrument”, Small Arms Year Book 2006 Chapter 4: Unfinished Business, available at: <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2006/en/Small-Arms-Survey-2006-Chapter-04-EN.pdf>

26 McDonald Glenn, “Connecting the Dots: the International Tracing Instrument” page 13

27 Firearms Protocol Article 8, available at: http://www.unodc.org/pdf/crime/a_res_55/255e.pdf

28 “Background to the Firearms Protocol” available at: <http://www.poa-iss.org/FirearmsProtocol/>

the regional initiatives previously mentioned, two export control related instruments that aim to regulate not only the trade in SALW, but the conventional arms market as such. The Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods includes small arms and light weapons under both its control and reporting categories and the organization also has adopted best practice guidelines for Exports of Small Arms and Light Weapons.²⁹ Although the Wassenaar Arrangement is a politically binding instrument for its forty Participating States, a majority of them have chosen to incorporate its decisions into nationally legally binding commitments. The other example is the legally binding European Union “Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment” adopted December 8, 2008 that includes control provisions for SALW.³⁰

All these efforts strive to stem the uncontrolled spread of small arms and light weapons as well as their diversion to the illicit market, thereby diminishing the impact SALW have in conflict areas worldwide. But it is an eclectic mix of instruments with various degrees of legal binding commitment. The lack of consistency, information and congruency makes getting a comprehensive overview very difficult.

The risk of diversion is one of the primary problems as the majority of SALW in existence begins with a legal transfer. In almost all parts of the world the two most important factors that create the risk of diversion of SALW to unauthorized and/or illicit use/users are:

- Diversion of authorised transfers of SALW, due to inadequate arms transfer controls; and
- Diversion from official and authorised holdings of SALW, due to inadequate management or security of such holdings³¹

SALW have been intimately associated with humanitarian suffering and the need for disarmament and destruction and therefore requires special attention. The difficulties with finding a globally agreed way to mark and trace these types of weapons should not stand in the way of finding solutions for the risk of their diversion. To date, despite over ten years of valiant efforts by all the instruments referred to earlier, the spread of SALW has not been stopped, stifled or even slowed. To solve the problem with diversion perhaps a different perspective will be needed?

One could argue that it is the exclusivity of SALW that has prevented a more widespread success in the multilateral and international instruments that over the last ten years have been put in place to curb the uncontrolled and illicit trade in guns. Not seeing SALW as an integral part of the conventional arms market weakens the argument for investing time and money in something that appears to only impact certain areas of the world. On

FirearmsProtocol.aspx

29 “Best Practice Guidelines for Small Arms and Light Weapons” available at: http://www.wassenaar.org/publicdocuments/2007/docs/SALW_Guidelines.pdf

30 “Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment”, available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:335:0099:0103:EN:PDF>

31 Owen Greene and Elizabeth Kirkham, “Preventing diversion of Small Arms and Light Weapons: Strengthening Border Management under the UN Programme of Action” Report – Biting the Bullet, June 2010, University of Bradford and Saferworld, available at: <http://www.saferworld.org.uk/BtB%20border%20controls%20June%202010.pdf>

a broader trade-related scale few countries would be prepared to improve their cross-border management for the trade in SALW only, but would be more inclined if SALW would be seen as one part of a much grander scheme of controlling sensitive and security related trade. Disconnecting the emotional focus on the SALW and linking the discussion more to the practicalities of trade control could possibly make it easier for countries to invest the resources needed, instead of feeling overwhelmed by the immense human suffering caused by the uncontrolled spread of SALW.

To a certain extent SALW is already included in the majority of national export control systems that exists today, but what is needed is a global network of control. This is what the ATT strives to do and that is why SALW need be included as a separate control list category. By creating a better global network of controls for international transfers of these types of weapons the risk of diversion will be clearly diminished.

Ammunition

The topic of including ammunition as a category under the ATT has very vocal opponents as well as defenders. It is however at present difficult to see how much of the sometimes heated debate reflects an issue that is truly divisive, or rather a diversion from the real problematic areas. There has been some speculation that the issue will later be used as a bargaining chip by the few, but very vocal opponents. In the annex to Ambassador Moritán's first scope paper, "Ammunition" and "Munitions" were added as two separate control categories separated by caliber.³² These two categories were later merged in the second Chairman's draft introduced on March 3.³³ The difference between the two categories can be defined as primarily technical. Ammunition can be defined as "projectiles with their fuses, propelling charges, or primers fired from a gun".³⁴ Munitions on the other hand can include ammunition, but can also be referred to as armament³⁵ and would thus indicate a much broader definition than was intended in an ATT context. Munitions can be used as a term for larger caliber weapons but also considered as weapons considered collectively, as the title for the Wassenaar Arrangement conventional arms control list indicate, the so called "Munitions List".

In some ways the discussion regarding ammunition mirrors that of SALW as the two categories are technically linked. However ammunition still lacks an international instrument for marking and tracing similar to the ITI and the two categories have been persistently separated in marking and tracing discussions, due to the perceived, but perhaps misconstrued difficulties regarding marking and tracing for ammunition.³⁶ There are several examples of national marking and tracing systems for ammunition, but still none that is internationally recognized or accepted.³⁷ The majority of initiatives established

32 Chairman Roberto Garcia Moritán - Chair of the Preparatory Committee of the Conference on the Arms Trade Treaty – informal draft paper on scope February 17, 2011

33 Chairman Roberto Garcia Moritán - Chair of the Preparatory Committee of the Conference on the Arms Trade Treaty – informal draft paper on ATT elements March 3, 2011

34 Merriam-Webster definition for *ammunition*: <http://www.merriam-webster.com/dictionary/ammunition>

35 Merriam-Webster definition for *munition*: <http://www.merriam-webster.com/dictionary/munitions>

36 McDonald Glenn, "Connecting the Dots: the International Tracing Instrument" page 2-7, 9

37 Anders, Holger "Following the Lethal Trail: Identifying Sources of Illicit Ammunition", <http://www.smallarmssurvey.org/fileadmin/docs/D-Book-series/book-03%20targeting%20ammunition/SAS-Targeting-Ammunition-12-Chapter-7.pdf>

to curb the illicit flow of Small Arms and Light Weapons, such as the Firearms Protocol³⁸ and others have tried to address the ammunition component at the same time, as the two categories are technically linked, but the discussions have often been complicated to the point of frustration. The fear of arriving at a similar type of debate can perhaps fuel the perceived contention regarding ammunition within the ATT discussion.

Opponents to the inclusion of the category claim that ammunition cannot be controlled for a number of technical reasons and the argument often relates back to the challenges of marking and tracing.³⁹ Ammunition is often exported in large quantities, transferred in bulk and is consumable by nature. The post-shipment verification processes are complicated as governments often have difficulties keeping track of internal transfers – for instance from one army platoon to another during a training exercise - as it would be difficult to hold individuals accountable for potential diversion. Another argument often put forward is that countries would not want to disclose their import or export of this type of product.⁴⁰

At the same time some of the strongest opponents to the inclusion of ammunition in the ATT are also parties to the Wassenaar Arrangement and thus members of the only multilateral trade control regime that has integrated ammunition as one of its control categories. However, so far the ATT debate has rarely discussed how the control of ammunition is actually carried out. In reality the overwhelming majority of exporting states do control ammunition for export, so exempting it from the ATT is not justifiable. What lies at the core of the problem is the perceived link within the ATT that all items under control will also be reported in detail. Some suggestions have started to emerge that one possible way forward, would be to de-link the control and reporting requirements for ammunition. One example of such a construction is the Wassenaar Arrangement, where the Munitions List consists of 22 categories, whereas the reporting list for military items only consists of eight categories.⁴¹

Parts and Components / Technology and Equipment

An ATT that controls only end-products and not the parts, components and technologies that would be used to construct those items would neither be comprehensive nor reflecting reality. Very few conventional weapons or weapon systems are manufactured by one producer or in one country only. The arms trade is global not only in its reach, but also in its structure. The majority of the world's defense companies could be considered weapons integrators rather than weapons producers. If parts and components would be omitted from the control list the conventional arms trade that many countries are involved

38 Article 10 of the UN Firearms Protocol requires each state party to establish or maintain an effective system of export and import licensing or authorization, as well as of measures on international transit, for the transfer of firearms, their parts and components and **ammunition**

39 Stohl, Rachel "U.S. Policy and the Arms Trade Treaty". Page 38, Project Ploughshares Working Paper 10-1, April 2010

40 Goodman, Colby, "The United States and Small Arms Ammunition in an Arms Trade Treaty", Discussion paper for the Prep Com meeting March 1, 2011. An abbreviated version posted by Colby Goodman and Scott Stedjan, Oxfam America in the Arms Trade Monitor Vol. 1, No 3/ 2 March 2011 available at: <http://www.reachingcriticalwill.org/legal/att/prepcom2/monitor/ATTMonitor1.3.pdf>

41 "Specific Information Exchange on Arms Content by Category", Appendix 3 in "Guidelines and Procedures including the Initial Elements", available at <http://www.wassenaar.org/guidelines/docs/Initial%20Elements%20-%202009.pdf>

in today would not be covered. For many states, excluding parts and components would mean that the vast majority of their defense trade would fall outside the Treaty. At the same time controlling parts and components will not be easy as many of the items under this are considered dual-use products and thus also have a civilian use. Identifying the relevant thresholds or cutoff points for what is uniquely military would have to be carefully considered.

The risk of diversion through a globalised supply chain is not the only reason for controlling parts, components and technologies. It is true that in the area of low tech industries items can be built and maintained from parts and components. Many basic types of weapons can be reverse-engineered and re-assembled using parts purchased separately. Already existing equipment can be given a new lease on life or even an upgrade by adding an important part or better technology.

Let us look at aviation. Since its inception the strategic importance and the undeniable civilian application of flight has troubled national authorities wanting to protect military capabilities whilst stimulating growth and development. Today some 118 years later the dilemma remains. Modern day jet planes are used both in air forces and in commercial flight. How can one determine where the cutoff line is between military and civilian use? That question gets even more complicated if one would break down a modern day aircraft into its parts, components and technologies. Steel and similar metals are used in the landing gear. Aluminium and titanium are used for parts of the wings and fuselage. Carbon Composite materials are used in various parts of the plane like the wings, control surfaces and access panels. Since this type of material is lighter, more durable and corrosion resistant it increasingly is used in aircraft manufacturing.⁴² All these items can be considered parts and components to any type of jet plane, but how military significant are they?

Other parts and components such as the engine itself, navigation systems and stealth capabilities are more in the realm of the military significant. When discussing the control of parts and components, as well as of technology and equipment, one needs to take into account the range of technological sophistication. Whether an antiquated automatic rifle or a modern day jetfighter the military advantage and the rationale for control, resides in the nature of the parts, components, technology and equipment. Some parts and components will be deemed more military significant than others. At present it might not be possible to reverse engineer a jet fighter and rebuild it from its parts since the technology is not widely available. However, to do the same with a tank or to boost the military capability of an armored vehicle through an added part is possible. At the lower end of the spectrum the simple parts and components going into the construction of a fully-automatic rifle can be widely available and therefore hard to control. The sliding scale of sophistication will always be present when discussing parts and components and finding the appropriate threshold for control will therefore be very important.

The whole is perhaps greater than the sum of its parts. But without adequate integration of categories for military significant parts and components, and for technology and equipment, the Arms Trade Treaty would be incomplete. The current formulation in

42 Day, Dwayne A. "Composites and Advanced Materials," U.S. Centennial of Flight Commission available at: http://www.centennialofflight.gov/essay/Evolution_of_Technology/composites/Tech40.htm

the most recent Chairman's text from March 3 ties the control of parts and components, as well as for technology and equipment, to what has been "specially and exclusively designed" for the previous subcategories in the treaty text. This suggests a promising way forward.

Still missing

In addition to the "missing" categories that have been described above there are still important areas of items that have been left out of the ATT debate.

- Stealth technology, military data-processing and communication systems can provide significant military capabilities for already existing weaponry.
- Sensing, imaging, optical, fire-control, battle management and countermeasure equipment
- Explosives, as well as being critical to the manufacture of ammunition, are widely used in conflict areas and in terrorist attacks.
- Internal security weapons, ammunition and equipment such as tear gas, baton rounds and electric-shock guns which can be used for military and law enforcement purposes.
- Incendiary, smoke-producing, riot control and incapacitating agents and gases designed for military or law enforcement purposes, as well as other chemical and biological toxic agents.⁴³

An alternative solution for a control list

"Yes-Unless"

An alternative way of approaching the issue of control lists under the ATT is to use a negative list, whereby the requirement of control would rest on the idea that the item would be under control unless it is specifically mentioned as not controlled in a list – the so called "*Yes, unless*" approach. This issue has not yet been discussed in detail or introduced formally other than in national statements. On the one hand it has the potential to provide an elegant and fairly painless solution; on the other hand it could require a level of commonality and agreement among states parties that does not now exist. It would also face the same kind of difficulties in determining what would be on the list, even if it is an exclusionary list. The list would also run the risk of being rather extensive as the conventional weapons that would not require control could easily be as controversial as the items that do require control. The political dimension with its complexity and abundance of differing national perspectives would easily bog down the

43 "Scope: types of equipment to be covered by an Arms Trade Treaty", Control Arms Campaign, Position Paper No, 2 July 2009, available at: <http://controlarms.org/wordpress/wp-content/uploads/2011/02/Scope-Types-of-Weapons.English.pdf>

Additional work on the issue of scope was done by groups within the campaign before the Prep Com meeting in February/March and was presented as a Discussion Paper by Amnesty International on March 2. Copies available on request.

discussion and lead to lengthy technical discussions on why a particular item should not be controlled.

To Annex or not to Annex

Blank slate or existing example?

Could the discussion on equipment scope make use of a blank slate? If such a fresh approach were taken, based upon the perceived requirements of an ATT, this process would perhaps provide the most tailor-made control list. It would also encourage active engagement and buy in from states involved in the negotiations. At the same time, it runs a clear risk of being time-consuming as the development of control lists is a laborious and often rigid process.

On the other hand, if it was agreed that the ATT should draw upon existing practice and experience, there are a variety of pre-existing approaches and lists (for example in relation to UN embargoes and/or in other multilateral instruments) that should be explored. Not looking into existing examples and learning from their experience because they might have originated from smaller regional setting is an unaffordable luxury.

The modalities of linking a control list into the ATT has started to develop. The idea to make a short descriptive reference in the treaty text to a list of controlled items and then provide a longer more elaborated list of examples as an Annex seems to have been the approach in Ambassador Moritán's initial text on scope distributed on February 17, 2011.⁴⁴ The detailed annex provided with this text had taken into many different examples such as the UNROCA, the recent GGE Report from 2009 and the Firearms protocol, but had also taken into account commentary and advice raised outside of these instruments. The detailed annex did not make it to the second draft of the Chairman's text released on March 3, 2011 and what remained was the bare list of categories of goods in the treaty text.

The challenges to creating and maintaining a detailed and relevant list of items for control cannot be denied. Without a relevant and updated list the instrument itself quickly becomes inefficient and loses in credibility. But it is a process that takes time. Similar processes in other fora have special technical review groups dedicated for the very purpose of list maintenance and they spend ample amounts of time each year reviewing proposals for inclusion or omission to the lists. In a consensus orientated context like the ATT – reaching agreement on technical details in a group of over 190 countries is bound to take time if it is possible at all. Still, leaving the list of controlled items only with very brief descriptions will leave too much room for interpretation that will ultimately lead to confusion. Countries would in their implementation of the ATT benefit from more guidance on the items they are supposed to control. Therefore it makes sense to reinstate an annex to the treaty text that would provide more detail, but not an exhaustive list of technical specifications.

44 Chairman Roberto Garcia Moritán - Chair of the Preparatory Committee of the Conference on the Arms Trade Treaty – informal draft paper on scope February 17, 2011, copies provided at the Prep Com in New York, available on request

Conclusion

Finding a suitable list of items to control under an Arms Trade Treaty is one of the most important, but challenging issues the United Nations Member States have to address in the time leading up to the Negotiating Conference in 2012. The discussion on scope of items under control by an ATT is far from over but it has taken a number of important steps forward.

The ATT will be a new type of international instrument that has some similarities with other nonproliferation initiatives, but with an important exception. It is not a disarmament instrument primarily, nor is it a ban. Instead it aims to put forward better regulation of the international trade in conventional arms, and as such it will have to have tools that work in a trade context. One of these tools is a comprehensive and relevant list of items to control.

A comprehensive scope for a strong and robust treaty need to address the issue of international transfers of all conventional arms as a whole, and cannot copy-paste lists from other nonproliferation instruments created for different purposes and perspectives. Lessons can be learned for how the categories under the UN Register of Conventional Arms have been used, but they can provide only one source of inspiration for the ATT process and there are so many more. The categories as they stand under the Register are incomplete, and inadequate for ATT's purposes. Technological advances have made weapons faster, lighter and able to do more with less, changes that are seldom reflected in the Register, but that would be of crucial importance for a trade control instrument such as the ATT. Furthermore from a licensing standpoint a control list as compared to a list for reporting would require more technical details to avoid mistakes and confusion. Therefore the Register can only be one point departure for the discussion, but never the end goal for the ATT control list.

Important categories like Small Arms and Light Weapons and Ammunition will have to be included in the ATT scope of items. SALW rightfully deserve the attention this type of weapons receives, especially since they can bring such havoc with so little means. However tying SALW into the broader perspective of the global trade in conventional arms can make countries more inclined to improve their cross-border management and thus diminishing the risk of diversion. SALW is already controlled by the majority of exporting countries, but including SALW as a control category under the ATT would provide a vehicle that would expand the network of trade control to the much needed global scale.

With regards to ammunition – without the bullet, the gun is useless - having an ATT without a category for ammunition would create a similar situation. The objections to inclusion, that post-export control of ammunition is so daunting as to doom the whole idea, ignores the central purpose of an ATT (regulating international transfers) and would have the great be the enemy of the good.

Controlling the end result, but not the ingredients that go into its creation opens up unacceptable loopholes in the ATT that could and should be avoided. Parts and components as well as technology and equipment as two separate but equally important control list categories are the ingredients the ATT control list needs to create a more comprehensive network of control. At the same time the ATT control list needs to be



manageable to remain relevant for states in their future national implementation of the treaty.

Finally, discussion has to start on those types of weapons and military equipment that have yet to be discussed within the ATT framework. Categories covering items such as explosives, armor and equipment for military and law enforcement or internal security equipment have yet to be addressed in detail covering for example. Yet, as the ongoing unrest and emerging conflict areas in North Africa and the Middle East region unfolds the importance of better control of these types of weapons is of even more pressing urgency than ever.

If the ATT is given the tools it needs to fulfill its mandate only then can the treaty serve its purpose as being an important component to a better regulated trade in conventional arms on a global scale, and ultimately to a safer world.

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The United Nations Institute for Disarmament Research (UNIDIR)—an autonomous institute within the United Nations—conducts research on disarmament and security. UNIDIR is based in Geneva, Switzerland, the centre for bilateral and multilateral disarmament and non-proliferation negotiations, and home of the Conference on Disarmament. The Institute explores current issues pertaining to the variety of existing and future armaments, as well as global diplomacy and local tensions and conflicts. Working with researchers, diplomats, government officials, NGOs and other institutions since 1980, UNIDIR acts as a bridge between the research community and governments. UNIDIR's activities are funded by contributions from governments and donor foundations.