



# TAKING STOCK OF THE ARMS TRADE TREATY: SCOPE

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## I. Introduction

The 2013 Arms Trade Treaty (ATT) aims to set the ‘highest possible common international standards’ for the international trade in conventional arms.<sup>1</sup> The scope of the treaty is outlined in its early articles, which describe the conventional arms (Article 2(1)), ammunition/munitions (Article 3), and parts and components (Article 4) that are covered by different aspects of its provisions.<sup>2</sup>

The ATT establishes no specific mechanism to review its scope. The treaty negotiators linked the definitions of the items covered by Article 2(1) with the descriptions of the seven categories of the United Nations Register of Conventional Arms (UNROCA) at the time of the entry into force of the ATT. They hoped that this would give clarity and certainty to the minimum scope of the treaty. However, the scope of UNROCA has changed since the ATT entered into force. This raises several questions for consideration by states parties: Should the ATT’s scope be updated to reflect the changes in the scope of UNROCA? Should an automatic linkage be made between amendments to the scope of UNROCA and the ATT? Should there be a specific ATT mechanism to review its scope?

This paper reviews the ATT states parties’ implementation of the provisions on scope and the efforts within the framework of the Conference of States Parties (CSP) to support aspects of the treaty’s implementation that relate to its scope. It also seeks to inform deliberations on the review and potential amendment of the ATT’s scope.<sup>3</sup> The paper first reviews (in section II) the implementation by states parties of the ATT’s provisions on scope. It does this by examining whether national export control lists contain the items listed in articles 2(1), 3 and 4 in accordance with Article 5(3). It then considers (in section III) the linkage between the ATT and UNROCA. The paper concludes (in section IV) by considering steps to address the issues raised in sections II and III. These include guidance and assistance for states parties

<sup>1</sup> Arms Trade Treaty (ATT), adopted by the United Nations General Assembly 2 Apr. 2013, opened for signature 3 June 2013, entered into force 24 Dec. 2014, Article 1.

<sup>2</sup> While Article 2 is entitled ‘Scope’, the term is applied in this paper to the items covered by articles 2(1), 3 and 4. It does not address the scope of activities contained in Article 2(2) or the exemptions under Article 2(3).

<sup>3</sup> Other aspects of the treaty are discussed in the other papers in this series: Beijer, P., ‘Taking stock of the Arms Trade Treaty: Application of the risk-assessment criteria’, Aug. 2021; Dondisch, R., ‘Taking stock of the Arms Trade Treaty: Processes and forums’, Aug. 2021; Stohl, R., ‘Taking stock of the Arms Trade Treaty: Universalization’, Aug. 2021; and Maletta, G. and Bauer, S., ‘Taking stock of the Arms Trade Treaty: International assistance to support implementation’, Aug. 2021.

## SUMMARY

● The scope of the 2013 Arms Trade Treaty (ATT) refers to the conventional arms, ammunition/munitions, and parts and components that are covered by the treaty. ATT stakeholders are providing guidance and assistance for states parties to implement provisions on scope contained in Articles 2–5 of the Treaty.

ATT Article 17(4) provides for the Conference of States Parties (CSP) to review the treaty’s scope to take into account relevant technological developments in the field of conventional arms. Now is an opportune moment to explore mechanisms to review the scope of the Treaty to keep it in line with, at least, the coverage of the United Nations Register of Conventional Arms (UNROCA).

This is one of a series of five papers that are being produced as part of a wider project aimed at taking stock of specific aspects of the ATT—its scope, the application of the risk-assessment criteria, its processes and forums, universalization efforts, and international assistance to support ATT implementation.

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to implement their obligations with regards to scope; and considerations for a review mechanism for considering amendments to the treaty's scope.

## II. Taking stock of implementation of the ATT in relation to its scope

### **The ATT's provisions on scope**

Article 5(3) of the ATT encourages each state party 'to apply the provisions of this Treaty to the broadest range of conventional arms'. It obliges states parties to adopt national definitions for categories a–g of Article 2(1) that shall 'not cover less than the descriptions used in [UNROCA] at the time of entry into force of [the ATT]', while the definitions for small arms and light weapons (SALW) 'shall not cover less than the descriptions used in relevant United Nations instruments at the time of entry into force'—that is, the 2001 UN Firearms Protocol and the 2005 International Tracing Instrument.<sup>4</sup> In contrast, no such guidance is provided for the provisions of Article 3 on ammunition/munitions or Article 4 on parts and components. Although the UN's voluntary International Ammunition Technical Guidelines (IATG) is not referenced in Article 5(3), its first edition was available in 2011, before the adoption of the ATT. This provides definitions of 'ammunition', 'munition' and 'munitions' that could be used by states parties in support of implementation of Article 3.<sup>5</sup>

During the negotiations, Article 4 was generally regarded as ensuring that the treaty's provisions could not be circumvented by providing conventional arms in disassembled kit form for assembly in the country of import. It was also interpreted to apply to items 'specially designed for military use' in accordance with the practice of those countries that base their national export control lists on the Common Military List of the European Union (EU) or the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technologies.<sup>6</sup> At the same time, because no guidance was provided on Article 4, legal commentators have argued that, 'since States Parties potentially have broad discretion in their interpretation of Article 4, the exact nature and scope of provision—and its practical implementation—could usefully be explored by future Conferences of States Parties and subsidiary bodies'.<sup>7</sup> This specific recommendation has not yet been carried forward, but the CSP's Working Group on Effective Treaty Implementation (WGETI) has already provided some guidance on national control lists in relation to the treaty's scope.

<sup>4</sup> Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition, Supplementing the United Nations Convention against Transnational Organized Crime (UN Firearms Protocol), opened for signature 2 July 2001, entered into force 3 July 2005; and International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (International Tracing Instrument, ITI), adopted by the UN General Assembly in Decision 60/519, 8 Dec. 2005.

<sup>5</sup> UN SaferGuard, *International Ammunition Technical Guideline: Glossary of Terms, Definitions and Abbreviations*, IATG 01.40, 2nd edn (United Nations: New York, 1 Feb. 2015). The definition of 'ammunition' can be found in para. 3.8, of 'munition' in para. 3.176 and of 'munitions' in para. 3.177.

<sup>6</sup> Casey-Maslen, S. et al., *The Arms Trade Treaty: A Commentary* (Oxford University Press: Oxford, 2016), pp.158–59.

<sup>7</sup> Casey-Maslen et al. (note 6), p.163.



## National control lists

Article 5(2) requires every state party to ‘establish and maintain a national control list’. The term ‘national control list’ is not defined, but it is implicit that it should include, at a minimum, the items contained in articles 2(1), 3 and 4. Of the 63 states parties that have made their ATT initial reports publicly available, 53 have indicated that they have a national control list or lists.<sup>8</sup> The control lists of 51 of these states cover all eight categories of conventional arms in Article 2(1), 53 cover ammunition, and 52 cover parts and components.

According to these initial reports, the EU Common Military List is a source for the definitions of items covered by their national control list of 16 parties, 7 parties explicitly refer to the Wassenaar Arrangement Munitions List, while 10 parties refer to both lists for a total of 33.<sup>9</sup> In fact, at least 38 parties can be assumed to use at least one of these multilateral control lists as a key reference point for their national control lists: all 27 EU member states are ATT states parties and they align their national control lists with the EU Common Military List (as do several other European countries); it can also be assumed that the national control lists of the 11 non-EU states parties that participate in the Wassenaar Arrangement are informed by its Munitions List.<sup>10</sup>

In order to assist with implementation of Article 5(2), the WGETI has provided guidance to states parties on the scope of items covered by articles 2(1), 3 and 4. Specifically, during the preparations for CSP4, the WGETI sub-working group on Article 5 provided a forum for the Wassenaar Arrangement to provide an overview of its Munitions List and the process for updating and amending the list, while New Zealand presented a Model Control List for use by Pacific island states.<sup>11</sup> The results of these presentations and the discussion that they stimulated, along with the national control lists provided to the ATT Secretariat prior to CSP4, were used in the preparation of the section on national control lists in the draft ATT Voluntary Basic Guide to Establishing a National Control System that was presented during CSP5.<sup>12</sup>

Thus, a large number of states parties have declared that their national control lists go beyond the minimum requirements of articles 2(1), 3 and 4. Furthermore, the WGETI has provided a forum for sharing national practice and guidance on multilateral export control, as well as for encouraging states parties to establish and maintain national control lists that go above the minimum standard established by ATT articles 2(1), 3 and 4. However, there has not yet been a systematic review of national control lists to assess compliance with Article 5(3) and to identify similarities and differences in

<sup>8</sup> Arms Trade Treaty, ‘Initial reports’, 17 Feb. 2021. As of Feb. 2021, 63 of the 80 ATT initial reports submitted by states parties had been made publicly available.

<sup>9</sup> Arms Trade Treaty (note 8).

<sup>10</sup> All but 1 of the 27 EU member states also participate in the Wassenaar Arrangement.

<sup>11</sup> Arms Trade Treaty, 4th Conference of States Parties, Working Group on Effective Treaty Implementation, Chair’s draft report to CSP4, ATT/CSP4.WGETI/2018/CHAIR/355/Conf.Rep, 20 July 2018, para. 41.

<sup>12</sup> The Voluntary Basic Guide to Establishing a National Control System is annex A of Arms Trade Treaty, 5th Conference of States Parties, Working Group on Effective Treaty Implementation, Chair’s draft report to CSP5, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep, 26 July 2019, pp. 8–47. Article 5(2–4) is covered on pp. 12–16.



definitions of SALW, ammunition/munitions, and parts and components, as well as items that all states parties control but which are beyond the current ‘minimum scope’ of the ATT. Such a review could concretely contribute to fulfilling the call in Article 17(4) for the CSP to ‘Review the implementation of [the ATT], including developments in the field of conventional arms’, and transfer controls and control lists in particular.

### **Annual reports on exports and imports**

Annual reports on exports and imports of conventional arms are another way to assess implementation of the ATT’s provisions on its scope. Even if a national control list is not in place, the act of reporting on exports and imports of conventional arms can show that a national system contains measures to control and regulate the items covered by Article 2(1). Five of the 10 states parties that indicated in their (publicly available) initial report that they do not have a national control list submitted an annual report in 2020.<sup>13</sup>

The CSP’s Working Group on Transparency and Reporting (WGTR) provides guidance in two formats on the content of annual reports—states parties that follow this guidance can reveal some information on the scope of conventional arms covered by their national transfer controls. First, the WGTR has produced a list of frequently asked questions (FAQ) on what to include in the ATT annual report that provides guidance on the scope of items covered by Article 2(1).<sup>14</sup> Second, the reporting template—which was adopted by CSP2 and which is currently under review in the WGTR—also allows states parties to provide national definitions used for reporting purposes.<sup>15</sup> A few states have provided information in their annual reports on ‘voluntary national categories’ and provided definitions of such categories. For example, Sweden has provided information on exports according to the 22 categories of the EU Military List in its annual report, while the Dominican Republic has also reported on other items subject to its national controls. Australia, Austria, Belgium, Japan and New Zealand have also provided information on their definitions of SALW for reporting purposes.

To date, the voluntary national categories and the definitions of SALW provided in annual reports have not been discussed in a CSP format; neither the WGETI nor the WGTR has looked at these issues. Article 17(4) provides grounds for such a discussion, which could be assessed in relation to changes to the scope of UNROCA and definitions for SALW, ammunition/munitions, and parts and components in national control lists.

## III. Considerations for updating the scope of the ATT

### **Changes to the scope of UNROCA**

Article 5(3) requires that the definitions for the first seven categories of conventional arms in Article 2(1) ‘shall not cover less than the descriptions

<sup>13</sup> These 5 states are El Salvador, Jamaica, Panama, Peru and Uruguay. Arms Trade Treaty (note 8); and Arms Trade Treaty, ‘Annual reports’, Feb. 2021.

<sup>14</sup> Arms Trade Treaty, Working Group on Transparency and Reporting, ‘Reporting authorized or actual exports and imports of conventional arms under the ATT: Questions & answers’, Draft, annex B of ATT/CSP5.WGTR/2019/CHAIR/533/Conf.Rep.Rev1, 26 July 2019.

<sup>15</sup> The reporting form is available at Arms Trade Treaty, ‘Reporting requirements’, [n.d.].



used in [UNROCA] at the time of entry into force [of the ATT]'. The category descriptions of UNROCA can be changed: it includes a review mechanism such that every three years a group of governmental experts (GGE) appointed by the UN secretary-general meets to review UNROCA's operation and scope.

The resolution that established UNROCA in 1991 also established a Panel of Governmental Technical Experts to elaborate the technical procedures for UNROCA's operation.<sup>16</sup> Its 1992 report outlines three considerations for expanding the scope of UNROCA: (a) to take account of significant technical developments relating to the weapons within existing categories; (b) to include weapons not covered by existing categories but which should be considered because of their destabilizing potential; and (c) to draw on the experience of the operation of UNROCA.<sup>17</sup> In addition, the panel considered that decisions on expanding UNROCA's scope should ensure the 'widest possible participation' and also 'enhance transparency, without prejudice to the security of [UN] Member States'.<sup>18</sup>

As a result, 10 GGEs have reviewed UNROCA's scope and have recommended several amendments to its descriptions of conventional arms. Prior to the entry into force of the ATT, these amendments tended to be minor; for example, reducing the reporting threshold of artillery systems from a calibre of 100 millimetres to 75 mm, or the tonnage of warships from 750 tonnes to 500 tonnes.<sup>19</sup> The most significant amendment was the inclusion of man-portable air defence systems (MANPADS) in category VII, which otherwise excluded land-based air defence systems and missiles.<sup>20</sup> After endorsement by the UN General Assembly, these recommendations resulted in amendment of UNROCA categories in 2003 and 2006. There was thus an impression that it was difficult to make significant amendments to the scope of UNROCA and it seemed reasonable to base the ATT's scope on the well-established parameters of the categories of UNROCA.

The ATT not only changed the timing of the GGE review cycle—with the GGE due in 2012 rescheduled to 2013—it also increased the pressure on the 2013 GGE to make progress on two key issues discussed during the ATT negotiations: unmanned aerial vehicles (UAVs) and SALW. Previous GGEs had considered the extent to which UNROCA descriptions already covered armed UAVs, while every GGE has discussed the issue of whether to include SALW in the scope of UNROCA.<sup>21</sup>

<sup>16</sup> UN General Assembly Resolution 46/36 L, 9 Dec. 1991, paras 7–8.

<sup>17</sup> United Nations, General Assembly, Report on the Register of Conventional Arms, A/47/342, 14 Aug. 1992, para. 38.

<sup>18</sup> United Nations, A/47/342 (note 17), para. 39.

<sup>19</sup> United Nations, General Assembly, Report on the continuing operation of the United National Register of Conventional Arms and its further development, A/58/274, 13 Aug. 2003, para. 112; and United Nations, General Assembly, Report on the continuing operation of the United National Register of Conventional Arms and its further development, A/61/261, 15 Aug. 2006, para. 124.

<sup>20</sup> United Nations, A/58/274 (note 19), para. 112.

<sup>21</sup> A summary of the issues can be found in reports of the 2016 and 2019 GGEs. United Nations, General Assembly, Report on the continuing operation of the United National Register of Conventional Arms and its further development, A/71/259, 29 July 2016, paras 60–61; and United Nations, General Assembly, Report on the continuing operation of the United National Register of Conventional Arms and its further development, A/74/211, 22 July 2019, paras 62–66.



*Unmanned aerial vehicles*

On the issue of armed UAV, the 2013 GGE repeated the view of the 2006 GGE that such items are covered by category IV (combat aircraft)—that is, armed UAVs are covered by UNROCA.<sup>22</sup> They should therefore be covered by the ATT. Nevertheless, the GGE reviewed proposals for ‘providing greater clarity to category IV’.<sup>23</sup> It also discussed a proposal to amend category V (attack helicopters) and provided potential new category descriptions in its report.<sup>24</sup> In the end, the 2013 GGE changed neither the heading nor the description for the categories IV and V. However, it recommended that UN member states report armed UAVs ‘in a manner consistent with’ the potential descriptions for categories IV and V presented in its report.<sup>25</sup> The UN Office for Disarmament Affairs (UNODA) translated this recommendation into subcategories for the online UNROCA reporting form. Thus, at the time of entry into force of the ATT on 24 December 2014, the UNROCA category titles were the same as they had been since 1992 and the category descriptions were the same as they had been since 2006. However, the new subcategories used in the UNODA online reporting form for ‘unmanned’ combat aircraft and attack helicopters were also used in the ATT reporting form.

The 2016 GGE did succeed in changing the UNROCA heading and description for category IV, which became ‘combat aircraft and unmanned aerial combat vehicles’.<sup>26</sup> This ended the congruence between ATT Article 2(1)(d) and the heading of UNROCA category IV. The 2016 GGE did not recommend changing the heading and description for category V to explicitly include unmanned attack helicopters, calling instead for the next GGE to consider this issue.<sup>27</sup> The 2019 GGE, in turn, passed this decision on to the next GGE (due in 2022), but it did conclude that ‘[UN] Member States should report on imports and exports of remotely piloted or unmanned conventional arms that exhibit the characteristics described in the current categories’.<sup>28</sup> It also took note of the issue of lethal autonomous weapon systems (LAWS).<sup>29</sup> This was an implicit call for future UNROCA GGEs to consider discussions on LAWS taking place elsewhere in the UN.<sup>30</sup>

*Small arms and light weapons*

In the case of SALW, the 2016 and 2019 GGEs moved towards the inclusion of these conventional arms in the scope of UNROCA. The 2003 GGE invited UN member states to provide in their UNROCA submissions background

<sup>22</sup> United Nations, General Assembly, Continuing operation of the United Nations Register of Conventional Arms and its further development, A/68/140, 15 July 2013, p. 2.

<sup>23</sup> United Nations, A/68/140 (note 22), para. 45.

<sup>24</sup> United Nations, A/68/140 (note 22), para. 46.

<sup>25</sup> United Nations, A/68/140 (note 22), para. 69.

<sup>26</sup> United Nations, A/71/259 (note 21), para. 81.

<sup>27</sup> United Nations, A/71/259 (note 21), para. 82.

<sup>28</sup> United Nations, A/74/211 (note 21), paras 102–103.

<sup>29</sup> United Nations, A/74/211 (note 21), paras 52, 103.

<sup>30</sup> On these discussions see e.g. Certain Conventional Weapons Convention, Group of Governmental Experts on Emerging Technologies in the Area of Lethal Autonomous Weapons System, Report of the 2019 session, CCW/GGE.1/2019/3, 25 Sep. 2019; and Peldán Carlsson, M. and Boulanin, V., ‘The group of governmental experts on lethal autonomous weapon systems’, *SIPRI Yearbook 2020: Armaments, Disarmament and International Security* (Oxford University Press: Oxford, 2020), pp. 502–12.



information on international transfers of SALW.<sup>31</sup> The 2006 GGE introduced a standardized form for reporting on SALW, disaggregated into six subcategories for small arms and seven for light weapons.<sup>32</sup> The 2009 and 2013 GGEs deliberated extensively on the issue of creating an eighth UNROCA category for SALW. They could not reach consensus and called for the issue to remain under review by future GGEs. The 2016 GGE introduced for a trial period a '7 + 1 formula' that appealed to UN member states 'in a position do to so' to include in their UNROCA submissions the standardized reporting form on international transfers of SALW 'in parallel' with the seven categories of UNROCA.<sup>33</sup>

The 2019 GGE recommended the continued use of the 7 + 1 formula.<sup>34</sup> More significant for potential discussions in the ATT on the definition of SALW is that the 2019 GGE report was the first to include a potential description for an eighth UNROCA category for SALW:

Small arms and light weapons are any man-portable lethal weapons that expel or launch, are designed to expel or launch, or may be readily converted to expel or launch, a shot, bullet or projectile by the action of an explosive, excluding antique small arms and light weapons or their replicas. Antique small arms and light weapons and their replicas will be defined in accordance with domestic law. In no case will antique small arms and light weapons include those manufactured after 1899:

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

(b) 'Light weapons' are, broadly speaking, weapons designed for use by two or three persons serving as a crew, although some may be carried and used by a single person. They include, inter alia, heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-aircraft guns, portable anti-tank guns, recoilless rifles, portable launchers of anti-tank missile and rocket systems, portable launchers of anti-aircraft missile systems, and mortars of a calibre of less than 75 millimetres.<sup>35</sup>

### **Ensuring a scope that fits the purpose of the ATT**

The object and purpose of the ATT go beyond the criteria introduced above for expanding UNROCA because the ATT aims for 'Reducing human suffering'.<sup>36</sup> During the ATT negotiations, there was a long list of potential items to be covered by the scope of the ATT. One expert who had participated in several GGEs on UNROCA called for the ATT to have a broader scope than UNROCA and cover the following items in order to support the ATT's prospective object and purpose:

small arms and light weapons; mortars and artillery systems below 75mm; missiles below 25km in range; logistic vehicles including bridge layers and tank transporters, some armored fighting vehicles without organic weapons above 12.5mm or a missile launcher, many military aircraft and helicopters which can perform reconnaissance, electronic warfare and command and control missions; many military transport aircraft and transport helicopters; military air-to-air refueling aircraft; warships and

<sup>31</sup> United Nations, A/58/274 (note 19), para. 113.

<sup>32</sup> United Nations, A/61/261 (note 19), para. 125.

<sup>33</sup> United Nations, A/71/259 (note 21), paras 75, 83.

<sup>34</sup> United Nations, A/74/211 (note 21), para. 115.

<sup>35</sup> United Nations, A/74/211 (note 21), para. 64.

<sup>36</sup> Arms Trade Treaty (note 1), Article 1.



submarines below 500 tons (without organic missiles of more than 25km range) and ammunition relevant to these systems and parts and components.<sup>37</sup>

There were also proposals for the ATT's scope to be as broad as that of the Wassenaar Arrangement Munitions List or the EU Common Military List.<sup>38</sup> Even at the start of the ATT negotiating conference, in July 2012, the chair's discussion paper contained 11 categories of 'arms and related material' and explicitly stated that these could be 'manned or unmanned' and 'exported in complete, partially assembled or unassembled form'.<sup>39</sup>

The final ATT negotiating conference settled on a link to the scope of UNROCA at the time of entry into force, with a hope in some quarters that UNROCA could also be expanded to cover a broader range of conventional arms and military equipment, most notably SALW. However, there are regular technical reviews of the scope of the Wassenaar Arrangement Munitions List, which is a key point of reference for national control lists and the EU Common Military List. While UNROCA has a GGE every three years, the Wassenaar Arrangement Munitions List is more regularly reviewed by technical experts from participating states, with amendments announced publicly at the annual plenary meeting of the Wassenaar Arrangement.<sup>40</sup> Article 17(4) of the ATT implicitly calls for such a review mechanism for the ATT, noting that the CSP shall 'review the implementation of this Treaty, including developments in the field of conventional arms'. The final section of this paper includes some suggestions for a process to review the scope of the ATT in the light of existing approaches.

## IV. Conclusions and recommendations

### **Guidance and assistance for states parties**

The WGETI draft ATT Voluntary Basic Guide and the WGTR FAQ document on reporting are two concrete examples of 'living documents' that the ATT CSP framework has provided to support and guide states parties seeking to comply with the provisions on scope contained in ATT articles 2–5.<sup>41</sup> Before the next update of the section of the ATT Voluntary Basic Guide on national control lists is conducted, the CSP should thoroughly review the national control lists submitted to the ATT Secretariat in accordance with Article 5(4). As an interim step, the ATT Secretariat could make available on its website copies of the national control lists that have already been submitted, following the example set by the Wassenaar Arrangement.<sup>42</sup>

The WGETI sub-working group on Article 5 provided a forum for states parties to learn about other multilateral efforts to develop and maintain control lists. This should perhaps remain open as a platform for the Wassenaar Arrangement to provide regular updates on changes to the scope

<sup>37</sup> Wood, A., 'Scope', Background paper, Boston Symposium on the Arms Trade Treaty, 29 Sep. 2010, p. 2.

<sup>38</sup> Casey-Maslen et al. (note 6), p. 61.

<sup>39</sup> UN Conference on the Arms Trade Treaty, Discussion paper, 3 July 2012, pp. 3–4.

<sup>40</sup> E.g. Wassenaar Arrangement, 'Summary of changes: List of dual-use goods & technologies and munitions list', 5 Dec. 2019.

<sup>41</sup> Arms Trade Treaty, ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep (note 12); and Arms Trade Treaty, ATT/CSP5.WGTR/2019/CHAIR/533/Conf.Rep.Rev1 (note 14).

<sup>42</sup> Wassenaar Arrangement, 'Export control documentation', [n.d.].





of its Munitions List. It could also invite the chairs of GGEs on UNROCA and other relevant multilateral processes to present their key findings and recommendations—this would further aid state party understanding of not only the linkages between the scopes of the ATT and UNROCA but also ‘developments in the field of conventional arms’ more generally. For example, the United Nations GGEs on ammunition and LAWS are likely to be of particular interest to CSP participants and could thus also be invited to participate in such CSP sessions.<sup>43</sup>

The ATT Voluntary Trust Fund (VTF) and the EU ATT Outreach Project (EU ATT OP) are available to support state party efforts to establish and maintain a national control list. For example, the EU ATT OP actively promotes the adoption of national control lists with a broad scope, based on the Wassenaar Arrangement Munitions List or the EU Common Military List.<sup>44</sup> The lessons learned and experiences of these efforts should continue to be shared for the benefit of other states parties, as well as for the review of the scope of the ATT.<sup>45</sup>

### **Mechanism to review the scope of the ATT**

The ATT did not establish a mechanism to review its scope. However, Article 17(4) clearly allows for the CSP, or a subsidiary body, to address this issue with the explicit inclusion of ‘developments in the field of conventional arms’. This is a standard practice for instruments relating to international transfers of conventional arms. Commentators on the treaty and its scope certainly expected an exchange of national practice on issues relating to scope in order to explore ‘opportunities for harmonization of such definitions or develop proposals for the addition of categories to Article 2(1)’ as well as understandings regarding articles 3 and 4.<sup>46</sup> In addition to conducting a technical review in line with the developments in the field of conventional arms, it is important to ensure that any review mechanism can also analyse the implications for other treaty provisions. These could include, for example, provisions relating to the reporting burden and capacities for implementing and enforcing transfer controls on a wider spectrum of items.<sup>47</sup>

A first option could be to consider ensuring that the minimum scope of Article 2(1) always matches that of UNROCA. There are at least three ways in which to break the link to the scope of UNROCA at the time of the ATT’s entry into force. First, if there is a desire to update the scope of the ATT every time the scope of UNROCA is amended, this could begin with a presentation

<sup>43</sup> The GGE on ammunition was established by the UN General Assembly in 2020. See e.g. United Nations, Group of Governmental Experts on Problems Arising from the Accumulation of Conventional Ammunition Stockpiles in Surplus, ‘Issue of conventional ammunition under United Nations auspices’, Note by the Secretariat, GGE/PACAS/2020/2, 31 Oct. 2019.

<sup>44</sup> Council of the European Union, Council Decision (CFSP) 2017/915 of 29 May 2017 on Union outreach activities in support of the implementation of the Arms Trade Treaty, *Official Journal of the European Union*, L139, 30 May 2017. SIPRI’s Mapping ATT-Relevant Cooperation and Assistance Activities database contains several examples of assistance activities conducted as part of the EU ATT OP. See e.g. Mapping ATT-Relevant Cooperation and Assistance Activities database, ‘EU-ATT Outreach Project first roadmap activity in Ghana’, 7–8 Jan. 2016.

<sup>45</sup> Maletta and Bauer (note 3).

<sup>46</sup> Holtom, P., ‘Article 2 scope’, eds C. da Silva and B. Wood (eds), *Weapons and International Law: The Arms Trade Treaty* (Larcier: Brussels, 2015), p. 39.

<sup>47</sup> Dondisch (note 3).



to a CSP on the recommendations of the GGE on UNROCA; the CSP could then endorse a recommendation that states parties use the new descriptions for UNROCA categories as the ‘minimum standard’ for their national definitions of items contained in ATT Article 2(1). Second, the same approach could be pursued but with the recommendation to amend Article 2(1) to align with the amendments to UNROCA’s scope. A third approach could be to amend Article 5(3) to remove the clause ‘at the time of entry into force of this Treaty’, so that national definitions of arms covered by categories a–g of Article 2(1) would have to change as the UNROCA definitions evolve. All three approaches could ensure that the CSP does not duplicate the work of the GGE, but the latter two options could still take up time and resources to make small technical adjustments to the ATT’s scope in the light of changes to the scope of UNROCA.

This first option assumes that UNROCA remains a relevant reference point for conventional arms in the 21st century. As noted above, its scope has been amended only to a limited extent and its object and purpose are not identical to those of the ATT. The ATT is now independent of the UN General Assembly and so a second option could be for states parties to determine how best to review and amend the treaty’s scope, as necessary. On one hand, some might interpret the ‘minimum standards’ for the ATT’s scope to be lower than that of UNROCA due to the amendments to UNROCA that followed the 2016 GGE. On the other hand, UNROCA covers neither category h of Article 2(1) nor the elements of the ATT’s scope determined by articles 3 and 4, for which the treaty does not provide guidance.

A first step in this regard could be for an ad hoc working group to prepare a set of criteria or considerations for reviewing the scope of the treaty, building on the work of the UN Panel of Governmental Technical Experts on UNROCA and other relevant experiences. An initial task for this working group could be to review national control lists submitted to the ATT Secretariat to determine common approaches and gaps to be examined further. This working group could also be responsible for providing assistance and guidance in relation to national control lists and questions on scope more broadly, including for the issue of SALW, ammunition, and parts and components. Finally, the states parties could consider giving it a mandate to make recommendations for additional protocols or amendments to the treaty’s scope. Of course, it would take some time before the working group could be expected to be in a position to take this final step.

The ATT seeks to establish the ‘highest possible common standards’ for regulating international arms transfers and preventing diversion in order to reduce human suffering. Technological developments in the field of conventional arms suggest that it is of paramount importance that the scope of the ATT is kept under review if the states parties are to achieve its object and purpose.



## Abbreviations

ATT	Arms Trade Treaty
CSP	Conference of States Parties
EU	European Union
EU ATT OP	European Union Arms Trade Treaty Outreach Project
FAQ	Frequently asked questions
GGE	Group of governmental experts
LAWS	Lethal autonomous weapon systems
SALW	Small arms and light weapons
UAV	Unmanned aerial vehicle
UN	United Nations
UNODA	United Nations Office for Disarmament Affairs
UNROCA	United Nations Register of Conventional Arms
WGETI	Working Group on Effective Treaty Implementation
WGTR	Working Group on Transparency and Reporting

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# **TAKING STOCK OF THE ARMS TRADE TREATY: SCOPE**

PAUL HOLTOM

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