

CHAPTER 3.2: ARMS WITHIN THE SCOPE OF THE ATT

The scope of the Arms Trade Treaty (ATT) is central to its effectiveness in reducing human suffering. This chapter seeks to clarify the extent to which certain arms and ammunition/munitions are regulated under a strict interpretation of the Treaty.¹ It takes in turn each of the categories of conventional arms as laid out in Article 2.1 of the ATT, and analyses the descriptions for each one provided by the UN Register of Conventional Arms (UNROCA). Although certain weapons may not formally come within its purview, a provision on general implementation of the Treaty explicitly calls on States Parties to apply its provisions 'to the broadest range of conventional arms'.² The evidence so far is that many of them have heeded this call and are using pre-existing international lists whose scope is wider than the Treaty in their export-control decisions, notably the Munitions List of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies.³

The ATT is intended to regulate specifically conventional arms, as set out in Article 1 (object and purpose), Article 2 (scope) and Article 5 (implementation). Conventional arms are understood to include all arms other than weapons of mass destruction.⁴ In turn, weapons of mass destruction have been defined by the US Department of Defense as 'chemical, biological, radiological, or nuclear weapons capable of a high order of destruction or causing mass casualties'.⁵ The definition implies, for instance, that chemical agents that do not generally inflict

mass casualties (such as riot-control agents) are not weapons 'of mass destruction' and should therefore be considered as conventional arms. In contrast, the formal use of the term 'arms' is narrower than 'weapons', referring to factory-manufactured items and not those of artisanal production or adaptation.⁶ Cyber-attacks, such as computer network attacks, are thus outside the purview of the Treaty.

The arms and ammunition/munitions that States Parties to the ATT are bound to regulate are described in Articles 2.1, 3, and 5.3.⁷ These provisions must be considered as a whole in order to reflect the scope of the Treaty. As is well understood, the arms covered in sub-paragraphs (a) to (g) of Article 2.1 (i.e. battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, and missiles and missile launchers) were derived from the seven categories used in the UNROCA and are regulated, at a minimum, consistent with the descriptions set out in the Register at the time of the ATT's entry into force (i.e. 24 December 2014).⁸ It should be borne in mind, however, that the UNROCA's scope is largely 'limited to particular items deemed of importance in interstate conflicts', and the Register has struggled to keep pace with technological developments in armaments.⁹

Further, all small arms and light weapons [Article 2.1(h)] defined in 'relevant' UN instruments at that time [Article 5.3] similarly fall within the ATT's scope, while any ammunition/munitions that are 'fired, launched or delivered' by any of the conventional arms covered under Article 2.1 also fall within the Treaty's purview [Article 3].

1 The analysis draws on Parker, S. (2016). "Commentary on Article 2". in Clapham, A., Casey-Maslen, S., Giacca, G. and Parker, S. (2016). "The Arms Trade Treaty: A Commentary". Oxford: Oxford University Press. Technical input to that commentary on the scope of the UNROCA was provided by Paul Holtom.

2 Arms Trade Treaty, Article 5.3 (adopted 2 April 2013, entered into force 24 December 2014)_UNTS_(ATT) Art 5(3). <https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/06/English7.pdf>

3 Formal agreement to establish the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, a successor to the Cold War-era Coordinating Committee for Multilateral Export Controls, was reached among a self-selected group of states at a meeting on 19 December 1995 in the Dutch town of the same name. The first Munitions List was promulgated the following year; the list was last amended in December 2015. Other regional lists, such as the EU's Common Military List are largely based on the Wassenaar Arrangement's Munitions List.

4 See, for example, US Department of Defense (2009). "Department of Defense Dictionary of Military and Associated Terms, (as amended through 31 October 2009)". p. 122.

5 But not 'the means of transporting or propelling the weapon where such means is a separable and divisible part from the weapon'. US Department of Defense (2016). "DOD Dictionary of Military and Associated Terms, 8 November 2010 (as amended through 15 February 2016)". p. 258. http://www.dtic.mil/doctrine/new_pubs/jp1_02.pdf. This and the previous edition of the dictionary no longer include a definition of the term 'conventional arms'.

6 Casey-Maslen, S. (2016). "Introduction", in Clapham et al (2016). "The Arms Trade Treaty". p. 1.

7 The Treaty also provides a description of parts and components in Article 4, but this chapter does not explicitly address this Article.

8 See United Nations Register of Conventional Arms (UNROCA) <https://www.unroca.org/about>

9 Holtom, P. and Bromley, M. (2010). "The International Arms Trade: Difficult to Define, Measure, and Control". Arms Control Association, 2 July 2010. https://www.armscontrol.org/act/2010_07-08/holtom-bromley

BATTLE TANKS

The description of battle tanks used in the UNROCA at the time of entry into force of the ATT was:

Tracked or wheeled self-propelled armoured 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 millimetres calibre.¹⁰

Very few tanks are not covered by this description. One example of a tank that falls outside this category is the French GIAT AMX-13 light tank, which has a 90 millimetres gun and is tracked, but has an unladen weight of 13 metric tonnes that would cause it to fall outside this definition of a battle tank.¹¹ This does not mean that it falls outside the scope of the Treaty altogether, however, since it comes within the parameters of the description provided for armoured combat vehicles.¹²

ARMoured COMBAT VEHICLES

The description of armoured combat vehicles (ACVs) used in the UNROCA at the time of entry into force of the ATT was:

Tracked, semi-tracked or wheeled self-propelled vehicles, with armoured 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 millimetres calibre or a missile launcher.¹³

This is a broad description that encompasses many but not all of ACVs used today. The Wassenaar Arrangement's definition¹⁴ is broader than the UNROCA description as it would also cover:

- Recovery vehicles, tank transporters, amphibious and deep-water fording vehicles; armoured bridge-launching vehicles;

- Tracked, semi-tracked or wheeled self-propelled vehicles, with or without armoured protection and cross-country capability, specially designed, or modified and equipped:
 - With organic technical means for observation, reconnaissance, target indication, and designed to perform reconnaissance missions,
 - or with integral organic technical means for command and control,
 - or with integral organic electronic and technical means designed for electronic warfare,
 - or for the transport of personnel.¹⁵

In accordance with Article 5.3 of the ATT, States Parties should be encouraged to use the broader Wassenaar Arrangement definition of ACVs. Thus, for example, France's VBL armoured scout car would fall outside the parameters of the UNROCA description, though in 2011 for example, France reported to the Register under category II (armoured combat vehicles) its export of one VBL Mk2 to Mexico, one VBL Gavial to Germany, two VBR/VBL Mk2s to the United Arab Emirates and one VBL Mk2 to Russia.¹⁶

LARGE-CALIBRE ARTILLERY SYSTEMS

The description of large-calibre artillery systems used in the UNROCA at the time of entry into force of the ATT was:

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 calibre of 75 millimetres and above.¹⁷

While the Register does not include artillery systems with a calibre lower than 75 millimetres, many such weapons would be covered by the category of light weapons [Article 2.1(h)].

10 UN Disarmament Commission, Department for Disarmament Affairs. "Categories of equipment and their definitions". <http://www.un.org/Depts/ddar/Register/Categories.html>

11 See Parker, S. (2016), "Commentary on Article 2", in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary". §2.52.

12 UN Secretary General (2000). "Report on the continuing operation of the United Nations Register of Conventional Arms and its Further Development". A/55/281, 9 August 2000, §51. <http://www.un.org/documents/ga/docs/55/a55281.pdf>

13 UN Disarmament Commission, Department for Disarmament Affairs. "Categories of equipment and their definitions". <http://www.un.org/Depts/ddar/Register/Categories.html>

14 See Wassenaar Arrangement Munitions List, Category 6.a. <http://www.wassenaar.org/control-lists/>

15 Wood, A. (2010). "Background Paper: Scope", The Boston Symposium on the Arms Trade Treaty, 29 September 2010, cited in Parker (2016). "Commentary on Article 2", in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary". §52.70ff.

16 UN Secretary General (2012). "United Nations Register of Conventional Arms, Report of the Secretary General". A/67/212, 30 July 2012, p. 12. http://www.un.org/ga/search/view_doc.asp?symbol=A/67/212

17 UN Disarmament Commission, Department for Disarmament Affairs. "Categories of equipment and their definitions". <http://www.un.org/Depts/ddar/Register/Categories.html>

While some anti-tank and anti-aircraft guns could be captured by the category of small arms and light weapons,¹⁸ States Parties could argue that a very narrow interpretation of the UNROCA category description would mean they would not need to include direct-fire artillery. For example, the arms-transfers database of the Stockholm International Peace Research Institute (SIPRI) records France delivering CAESAR 155 millimetres self-propelled howitzers to Saudi Arabia in 2010 and 2011, but its submissions to the UNROCA for those years do not contain information on the transfer.¹⁹ However, the reference to 'primarily' indirect fire should encompass all howitzers even though they can also be used for low-angle fire, a trajectory that is typically associated with direct fire at a target.

COMBAT AIRCRAFT

The description of combat aircraft used in the UNROCA upon entry into force of the ATT was:

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 defence or reconnaissance missions. The term 'combat aircraft' does not include primary trainer aircraft, unless designed, equipped or modified as described above.²⁰

This does not encompass military aircraft that are 'designed, equipped or modified to perform command and control, air-to-air refuelling, transport of personnel or airdrop missions', even

though these 'could add considerable offensive capabilities to armed forces.'²¹ This excludes many military aircraft recorded in SIPRI's Arms Transfers database, which defines military aircraft as 'all fixed-wing aircraft and helicopters, including unmanned aircraft (UAV/UCAV) with a minimum loaded weight of 20kg. Exceptions are microlight aircraft, powered and unpowered gliders and target drones.'²²

The specific exclusion of primary trainer aircraft in the UNROCA is also regrettable given that aircraft used in some counterinsurgency or military operations include trainer aircraft that are subsequently equipped as combat aircraft. Indeed, many trainer aircraft are also available in combat variants. The Hongdu L-15, for instance, is a twin-engine supersonic jet trainer/light attack aircraft produced by China's Hongdu Aviation Industry Group.²³

ARE DRONES COVERED BY THE ATT?

An unmanned aerial vehicle, commonly known as a drone, is, according to the Wassenaar Arrangement 'Any 'aircraft' capable of initiating flight and sustaining controlled flight and navigation without any human presence on board.'²⁴ They are further 'typically airbreathing vehicles which use aerodynamic lift to fly (and thereby perform their entire mission within the earth's atmosphere)'.²⁵ It had been suggested, prior to the adoption of the ATT, that armed drones would not be covered by it.²⁶ Although this was already in all likelihood inaccurate at the time, given discussions in the UNROCA Group of Governmental Experts (GGE),²⁷ it is clearly so now. The UNROCA definition does not require that aircraft be 'manned' and so armed drones are clearly covered by the ATT.

18 Parker, S. (2016). "Commentary on Article 2", in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary". §2.92.

19 UN Secretary General (2012). "United Nations Register of Conventional Arms, Report of the Secretary-General". A/66/127/Add.1, 18 June 2012, p. 9. http://www.un.org/ga/search/view_doc.asp?symbol=A/66/127/Add.1; UN Secretary General (2012). "United Nations Register of Conventional Arms, Report of the Secretary-General". A/67/212, 30 July 2012, p. 12. http://www.un.org/ga/search/view_doc.asp?symbol=A/67/212

20 UN Disarmament Commission, Department for Disarmament Affairs. "Categories of equipment and their definitions". <http://www.un.org/Depts/ddar/Register/Categories.html>

21 Wood, A. (2010). "Background Paper: Scope". in Parker (2016), "Commentary on Article 2". in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary". §2.120. These are, though, covered by the Wassenaar Arrangement's Munitions List, see Category 10.

22 Stockholm International Peace Research Institute (SIPRI), "Arms Transfers database - "Coverage". <https://www.sipri.org/databases/armstransfers/background#Coverage>

23 "Hongdu L-15 Supersonic Trainer/Attack Aircraft, China", airforce-technology.com, Accessed 30 June 2016.

24 The Wassenaar Arrangement (2016). "List of Dual-Use Goods and Technologies and Munitions List". 4 April 2016, p. 223. <http://www.wassenaar.org/wp-content/uploads/2016/04/WA-LIST-15-1-CORR-1-2015-List-of-DU-Goods-and-Technologies-and-Munitions-List.pdf>

25 Missile Technology Control Regime (2010). "Missile Technology Control Regime (MTCR) Annex Handbook - 2010." p. 1-6. http://www.mtcr.info/english/MTCR_Annex_Handbook_ENG.pdf

26 Brück, T. and Holtom, P. (2013). "Will the arms trade treaty be stuck in the past?". Stockholm International Peace Research Institute (SIPRI) 26 March 2013. http://www.sipri.org/media/newsletter/essay/brueck_holtom_March13

27 The 2006 Group of Governmental Experts (GGE) observed that 'category IV already covered those unmanned platforms that were versions of combat aircraft or that otherwise fell within the existing definition but not specially designed UAVs'. UN Secretary General (2006). "Report on the continuing operation of the UNROCA and its Further Development". A/61/261/, 15 August 2006, §96. The 2013 GGE recommended that UN member states that had transferred unmanned aerial vehicles report items that met the requisite description ('Unmanned 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'). Though the category description was not changed by the 2013 GGE, it did recommend member states report armed unmanned aerial vehicles in a manner consistent with this description. UN Secretary General (2013). "Continuing operation of the United Nations Register of Conventional Arms and its further development". A/68/140, 15 July 2013, §45.



THE UNROCA DEFINITION DOES NOT REQUIRE THAT AIRCRAFT BE 'MANNED' AND SO ARMED DRONES ARE CLEARLY COVERED BY THE ATT.

It is contested, though, whether it is only armed drones and not also reconnaissance ones that fall within the ATT's scope. The UN Office for Disarmament Affairs, based on discussions in the 2013 GGE, suggests that unarmed drones do not fall within the UNROCA.²⁸ The text of the description for this category shows otherwise. In any event, where a reconnaissance version of a drone is transferred in a separate transaction to munitions that it could fire (e.g. Hellfire missiles or Paveway bombs), the ability to fix those munitions to the wings of the drone means that this would fall within Article 4 (Parts and Components) of the Treaty.

ATTACK HELICOPTERS

The description of attack helicopters used in the UNROCA at the time of entry into force of the ATT was:

Rotary-wing aircraft designed, equipped or modified to engage targets by employing guided or unguided anti-armour, 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.²⁹

Already in 1994 it was questioned why armoured personnel carriers were covered by the UNROCA but their aerial equivalents were not.³⁰ In addition, the same arguments for expanding the description for combat aircraft can be made with regard to attack helicopters owing to their contribution to combat and offensive operations by engaging in communications command and control or by transporting personnel. States Parties to the ATT should not interpret the category in overly narrow terms and omit helicopters that perform such military and combat support roles.

MISSILES AND MISSILE LAUNCHERS

The description of missiles and missile launchers used in the UNROCA at the time of entry into force of the ATT was:

- (i) Guided or unguided rockets, ballistic or cruise missiles capable of delivering a warhead or weapon of destruction to a range of at least 25 kilometres, and means designed or modified specifically for launching such missiles or rockets, if not covered by categories I through VI. Including: remotely piloted vehicles with the characteristics for missiles as defined above but does not include ground-to-air missiles.
- (ii) Man-portable air-defence systems (MANPADS).³¹

Three broad categories of missiles are not covered by this description: air-to-air and air-to-surface/ground missiles with a range below 25 kilometres, guided anti-tank missiles and rockets with a range below 25 kilometres, and ground-to-air missiles.³² The 25 kilometres range threshold excludes from the category modern and new generations of short-range air-to-air missiles and air-to-surface guided and unguided rockets.³³ Some missiles have different ranges depending on which version is acquired or how they are used.³⁴ Of course,

²⁸ 'Combat aircraft includes manned and unmanned aerial vehicles as defined below:

(a) Manned 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 defence or reconnaissance missions;

(b) Unmanned 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.' UN Register of Conventional Arms (UNROCA). Accessed 30 June 2016. <https://www.unroca.org/about>

²⁹ UN Disarmament Commission, Department for Disarmament Affairs. "Categories of equipment and their definitions". <http://www.un.org/Depts/ddar/Register/Categories.html>

³⁰ Chalmers, M and Greene, O. (1994). "The Development of the United Nations Register of Conventional Arms: Prospects and Proposals". In *Nonproliferation Review*, No 3, p. 7. See Parker (2016), "Commentary on Article 2", in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary". §2.138.

³¹ UN General Assembly (1991). "Resolution 46/36L". A/RES/46/36, 6 December 1991, Annex, §2(a).

³² Parker, S. (2016), "Commentary on Article 2". in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary". §§2.172–2.174.

³³ For example, the Chinese PL-9 short-range air-to-air missile (SRAAM) is reported to have a range of 22 kilometres, while the Israeli Python-4 air-to-air missile has a range of 15 kilometres. Parker (2016), "Commentary on Article 2" in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary". Oxford: Oxford University Press.

³⁴ Parker notes, for example, that the Russian R-73 SRAAM R-73E model has a range of 20 kilometres, while the R-73M1 has a range of 30 kilometres, and the R-74 a range of 40 kilometres. Parker, S. (2016), "Commentary on Article 2". in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary".

many short-range missiles and projectiles, such as short-range guided anti-tank missiles and rockets and rocket-propelled grenades, are covered by the category of small arms and light weapons. In contrast, point (ii) of the definition of missiles and missile launchers explicitly includes MANPADS in the scope of this UNROCA category.

SMALL ARMS AND LIGHT WEAPONS

At the time of entry into force of the ATT only one UN instrument explicitly defined small arms and light weapons: the International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons (ITI), a soft-law instrument adopted by UN member states in 2005.³⁵ Section II of the ITI provides that:

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

(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 100 millimetres.³⁶

The broad nature of this definition would capture, for example, the short-range missiles and rockets that would not meet the UNROCA definition of missiles and missile launchers.³⁷

ARE SHOTGUNS COVERED BY THE ATT?

As the lists of types of small arms and light weapons included in the ITI definition are illustrative, not exhaustive, certain small arms and light weapons are not included in the lists but are nonetheless covered by the general provision in the chapeau of the description, which comprehends any 'man-portable lethal weapon that expels or launches, is designed to expel or launch, or may be readily converted to expel or launch a shot, bullet or projectile by the action of an explosive'.³⁸ Foremost among these are shotguns, which are omitted from the categories or examples of small arms and light weapons specifically listed in the ITI definition but which are encompassed by the chapeau. As noted,

This is significant, since shotguns constitute a type of small arm that is frequently encountered in conflict zones. Recent conflicts in the Middle East have witnessed even major armies acquiring modern shotguns for their short-range effectiveness. For example, in 2009 the British Army procured and issued the Benelli M4 Super 90 semi-automatic 12 gauge shotgun under the designation L128A1. Beyond commercially produced weapons, many improvised ('craft produced') firearm designs, which are also in use worldwide, are smooth-bore weapons.³⁹

³⁵ The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime (the Firearms Protocol) defines a 'firearm' but not small arms and light weapons. Thus, Article 3(a) of the Firearms Protocol defines a firearm as 'any portable barrelled weapon that expels, is designed to expel or may be readily converted to expel a shot, bullet or projectile by the action of an explosive, excluding antique firearms or their replicas. Antique firearms and their replicas shall be defined in accordance with domestic law. In no case, however, shall antique firearms include firearms manufactured after 1899'. The Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the UN Convention against Transnational Organized Crime, (adopted 31 May 2001, entered into force 3 July 2005)_2326_UNTS_208, Article 3(a).

³⁶ International Instrument to Enable States to Identify and Trace, in a Timely and Reliable Manner, Illicit Small Arms and Light Weapons, S. IV.4. <http://www.poa-iss.org/InternationalTracing/InternationalTracing.aspx>

³⁷ See similarly Articles 1(1) and (2) of the 2006 ECOWAS Convention on Small Arms and Light Weapons, Their Ammunition and Other Related Materials (adopted 14 June 2006, entered into force 29 September 2009). <http://www.poa-iss.org/RegionalOrganizations/ECOWAS/ECOWAS%20Convention%202006.pdf>

³⁸ Parker, S. (2016). "Commentary on Article 2". in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary". §§2.229–2.230.

³⁹ Ibid.



**155MM HIGH EXPLOSIVE
AMMUNITION FOR THE
105MM LIGHT GUN BEING
USED DURING AN EXERCISE
STEEL SABRE.**

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ADDITIONAL CATEGORIES

There are additional categories of weapons that do not fall under the definition of the ITI such as: flamethrowers, directed-energy weapons including lasers, and electro-magnetic projectile accelerators such as railguns and coilguns. Compressed air/gas-operated weapons of all types, including Tasers and other conducted electrical weapons, as well as crossbows, knives and similar weapons also do not meet the ITI definition.⁴⁰ In accordance with Article 5.3, States Parties are encouraged to apply the ATT provisions to all additional categories of weapons.

AMMUNITION/MUNITIONS⁴¹

The obligation on States Parties under Article 3 of the ATT is to regulate the export of ammunition or munitions that are, or can be, fired, launched or delivered by battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles or missile launchers, and small arms or light weapons. The term 'fired, launched or delivered' excludes explosive devices either laid by hand or that are thrown, such as manually emplaced landmines or hand grenades. But it does not exclude remotely delivered mines or rocket-propelled grenades, both of which fall within the scope of the Treaty. All cluster munitions are covered, whether delivered aerially or from artillery.⁴²

IS TEAR GAS COVERED BY THE ATT?

It has been suggested that chemical riot-control agents or plastic or rubber bullets do not fall within the scope of the ATT.⁴³ This is not persuasive. Plastic and rubber bullets are not 'non-lethal' but 'less lethal', and are therefore covered by the Treaty. Tear gas dispersed by canister and the metal canister itself have potentially lethal consequences, so they fall within the scope of the chapeau definition of small arms and light weapons in the ITI in accordance with Article 5.3. In turn, they are 'fired, launched or delivered' by small arms, so are within the purview of Article 3.

⁴⁰ See, though, UN Secretary General (1997). "Report of the Panel of Governmental Experts on Small Arms". §24, annex to UN doc. A/52/298, 27 August 1997. <http://www.un.org/depts/ddar/Firstcom/SGreport52/a52298.html>. This report was used as the basis for the ITI definition.

⁴¹ This section is based on Parker, S. (2016). "Commentary on Article 3". in Clapham, A. et al (2016). "The Arms Trade Treaty: A Commentary".

⁴² States Parties to the 2008 Convention on Cluster Munitions (CCM) would be prohibited under that treaty and also under Article 6(2) of the ATT from transferring these weapons. The scope of the ATT would be slightly wider than the CCM, however, since Article 1(3) of the CCM explicitly excludes all landmines (anti-personnel and anti-vehicle) delivered from a munitions dispenser from its purview.

⁴³ With respect to tear gas see, for example, Crowley, M. (2015). "Chemical Control: Regulation of Incapacitating Chemical Agent Weapons, Riot Control Agents and their Means of Delivery". London: Palgrave Macmillan.

THE APPROACH OF STATES PARTIES TO THE ATT IN NATIONAL CONTROL LISTS

States Parties have, by and large, not adopted specific control lists that are narrowly tailored to the scope of the ATT. Instead, they have tended to use pre-existing regional or international control lists, such as those propagated by the European Union (EU) or the Wassenaar Arrangement. Participating states in the Wassenaar Arrangement, for example, have largely either adopted wholesale, or have adapted and then adopted as their national control list, its Munitions List. This concerns, among others, Australia,⁴⁴ Germany,⁴⁵ New Zealand,⁴⁶ Norway,⁴⁷ and the United Kingdom.⁴⁸

The Munitions Lists includes shotguns (as smooth-bore weapons),⁴⁹ riot-control agents such as tear gas (other than for personal self-defence use),⁵⁰ submunitions and mines delivered by cluster munition dispenser,⁵¹ grenades and mines (even manually thrown or hand emplaced),⁵² and directed-energy weapons, including blinding laser weapons.⁵³ Plastic baton rounds and rubber bullets are also not excluded from the Munitions Lists.

EU member states and associated European states have, as one might expect, tended to use and apply the EU rules on arms exports. This applies to, among others, Austria, Belgium, Bulgaria, the Czech Republic, Finland, France and Serbia,⁵⁴ as set out in their respective Initial Reports to the ATT Secretariat. The arms to which these rules are applied are set out in the EU Common Military List. But this list, the most recent version of which was adopted by the Council of the EU on 9 February 2015, simply mirrors the Wassenaar Arrangement's Munitions List (even using the same terminology and formatting), making the latter a de facto standard for ATT States Parties.⁵⁵ Thus, as France observes in its Initial Report, the list extends beyond the scope of arms and items dictated by Articles 2 to 4 of the Treaty.⁵⁶ This is a positive development, reflecting the encouragement in Article 5.3 to apply the provisions of the Treaty 'to the broadest range of conventional arms'.

Every State Party should be strongly encouraged to apply the ATT criteria to transfers of all conventional arms, including hand grenades and manually emplaced landmines. Using the Wassenaar Arrangement's Munitions List is a good way to proceed irrespective of whether a State Party participates in the arrangement.

44 See Government of Australia (1996). "Defence and Strategic Goods List – November 1996". last updated 8 April 2015. <https://www.legislation.gov.au/Details/F2015C00310/Download>

45 Germany has stated that its national control list is 'largely identical, to the Munition's List. See Initial Report of the Federal Republic of Germany. http://thearmstradetreaty.org/images/ATT_Initial_Report_Germany.pdf

46 See Ministry of Foreign Affairs and Trade, New Zealand (2013). "New Zealand Strategic Goods List", March 2013. https://www.mfat.govt.nz/assets/_securedfiles/Uploads/NZSGL-2013.pdf, and Initial Report of the Government of New Zealand. http://thearmstradetreaty.org/images/New_Zealand_Arms_Trade_Treaty_national_implementation_report_December_2015.pdf

47 Ministry of Foreign Affairs, Norway (2014). "Vedlegg I til Forskrift om eksport av forsvarsmateriell, flerbruksvarer, teknologi og tjenester, Liste I – forsvarsrelaterte varer", 2014 v.2. <https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/eksportkontroll/liste--ii---flerbruksvarer-2014.pdf> Norway also notes its compliance with the EU Common Military List.

48 United Kingdom ATT Initial Report. http://thearmstradetreaty.org/images/151223_ATT_UK_Initial_Report.pdf §5.

49 Wassenaar Arrangement's Munitions List, ML1(b).

50 Ibid., ML7.

51 Ibid., ML3. Mines are explicitly excluded from the definition of a cluster munition in the 2008 Convention on Cluster Munitions (Article 1(3)).

52 Ibid., ML4.

53 Ibid., ML19.

54 See for example Serbia, "Arms Trade Treaty: Baseline Assessment Questionnaire", §1E. <http://www.armstrade.info/countryprofile/serbia/>

55 In its Initial Report, FYR Macedonia notes that its national control list is 'For conventional arms Wassenaar Arrangement list, for small arms and light weapons United Nations Firearms Protocol [sic]'. FYR Macedonia, "Arms Trade Treaty: Baseline Assessment Questionnaire" http://thearmstradetreaty.org/images/Macedonia_ATT-BAP_Survey.pdf. More positive is the approach taken by Trinidad and Tobago, which announced in its initial report its intention 'to enact legislation to fully implement the ATT and to develop a consolidated national control list for the purposes of the Treaty. Upon completion of this process, the revised national control list will be forwarded to the Secretariat. At present, the national control list is derived from various pieces of legislation.' Initial Report of the Government of The Republic of Trinidad and Tobago. http://thearmstradetreaty.org/images/ATT_Initial_Report_-_Trinidad_and_Tobago.pdf

56 Initial Report of the Government of France, §2.2.1 http://thearmstradetreaty.org/images/TCA_France_Rapportinitial.pdf