

Background Paper: Scope

Breakout Session: Cambridge Room, Park Plaza Hotel

29 September 2010

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The UN Register as a basis for the ATT?

One of the most challenging aspects in the development of an ATT is determining the scope of the Treaty – what it will actually cover and include. This has two parts – the weapons included and the activities covered. To date, discussion on scope has focused on the potential for the ATT to be based on the seven categories of major conventional arms in the UN Register of Conventional Arms, plus Small Arms and Light Weapons (SALW) – what we've come to know as "7+1". An alternative package including Ammunition has also been discussed, referred to as "7+1+1". At first sight this appears to be logical, convenient and relatively comprehensive. But this is not entirely the case.

This paper considers each of the Categories from the UN Register: providing their current UN definition (*in Italics*) and suggesting obvious omissions that are potentially relevant to an ATT. The paper also briefly lists other articles (e.g. parts and components, ammunition/munitions) that would not fit within 7 expanded categories, but where their omission might undermine the purpose of the treaty. In addition, the paper provides a list of types of transfers, looking beyond the scope of the Register's current definition and, where these are less easily understood, a brief explanation is provided (e.g. Foreign Licensed Production). The final section proposes an option for handling the complex issue of categories of equipment and definitions (posing a question for implementation and transparency discussions). In this context, the paper also assumes that the categories would be defined broadly under a chapeau e.g. "specially designed or modified for military use."

Does the UN Register go far enough?

The UN Register, mandated in 1991, is the only global transparency instrument for transfers (exports and imports) of seven categories of major conventional arms:

- I. Battle Tanks;
- II. Armored Combat Vehicles;
- III. Large-caliber Artillery Systems,
- IV. Combat Aircraft,
- V. Attack Helicopters;
- VI. Warships (including submarines);
- VII. Missiles and Missile-Launchers.

At a secondary level, the Register also seeks a range of *Additional Background Information* including information on SALW transfers, using a standardized reporting form similar to the existing 7 Categories. ***Background on the origins of the UN Register and its subsequent development is provided at Annex A.***

It is logical and convenient to look to the UN Register for inspiration, as it has been accepted within the UN and has a 20 year history of serving as a transparency and confidence building mechanism. But the scope of the Register, by virtue of its original focus on offensive systems, falls short of what would be required for an ATT to be effective and useful.

What's Missing from the Register?

The Register is an excellent starting point to develop the scope of the ATT. However, in general, the Register does not have an obligation to report on entire groups of conventional arms, including: 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 submarines below 500 tons (without organic missiles of more than 25km range) and ammunition relevant to these systems and parts and components. In short, examining each category in greater detail allows us to identify the deficiencies in the Register categories. And, with this fuller understanding of the Register categories inclusions and omissions, we can identify ways in which the categories could be expanded to better fit the needs of the ATT.

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.*

Omissions:

None, assuming other military vehicles would be captured under Category II.

Recommendation: In order to clarify the scope of the category the title should simply be amended to **'Tanks'**.

II. Armored Combat [Military] 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.*

Omissions:

- **Recovery vehicles, tank transporters, amphibious and deep water fording vehicles; armored bridge-launching vehicles;**
- **Tracked, semi-tracked or wheeled self-propelled vehicles, with or without armored 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.**

Major weapons systems cannot effectively operate without the associated Combat Support and Logistics capabilities. The effectiveness of combat equipment (e.g. Main Battle Tanks) is increased significantly by the ability to move them quickly to the battlefield; bridge-laying equipment and deep-water fording vehicles can allow physical barriers to deployment, such as rivers to be easily crossed. Recovery vehicles are

essential if heavy armored fighting vehicles become unserviceable through mechanical failure or physical obstruction: allowing them to be quickly recovered and returned to action. Although many of these systems are not 'high-tech', they can be of equal significance to the main weapon systems themselves.

The acquisition of systems specially designed or modified and equipped to conduct reconnaissance, target indication, command and control and/or transportation can add significantly to the operational effectiveness of existing combat capabilities. These systems may not be capable of transporting a squad of four or more infantrymen, nor be equipped with an integral weapon of more than 12.5mm (many such vehicles will merely be equipped with heavy machine guns for self-defense purposes only, e.g. 7.62mm General Purpose Machine Gun - GPMG) or nothing at all, but their acquisition significantly assists main weapon systems on the battlefield.

Recommendation: In order to capture a wider range of relevant equipment, the Category name could be amended to **'Military Vehicles'** and include the range of weapons described above.

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.*

Omissions:

- **Artillery systems between 50-75mm**

Significant weapon types with offensive capability within the ranges 50-74, e.g. 60 mm mortars and 70mm Multiple Rocket Launchers are not currently included in the Register. If the Category was further reduced to include systems below 50mm, anti-aircraft guns and 40mm light support weapons would be included. However, lowering the threshold below 50mm would require examination of the relationship with SALW. It's also important to note that systems between 50-75mm will not primarily deliver 'indirect fire', this caveat from the Register definition would need to be removed.

- **Gun carriers and tractors specially designed for towing artillery;**

The ability to move artillery systems quickly to and around the battlefield is increasingly seen as a significant factor in the moves towards maneuver warfare. Gun carriers and tractors allow for more effective use of artillery by getting it to the right place at the right time, and, with high-mobility vehicles often through difficult terrain. The relationship with vehicles in Category II (Military Vehicles) should be examined.

Recommendation: In order to capture a wider range of relevant equipment, the Category name could be amended to **'Artillery Systems'**, and include the weapon systems described above, as in most cases militaries do not consider 50mm as 'Large Caliber'.

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.*

Omissions:

- **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;**

The UN Register definition prescribes versions of combat aircraft that perform specialized electronic, suppression of air defense and reconnaissance missions. In this case, not all but only versions of combat aircraft are included and air refueling aircraft are specifically excluded. Similar problems apply to the definition of Attack Helicopters (Category V).

Aircraft, whether versions of combat aircraft or not, which carry out reconnaissance, command or transport of personnel, electronic warfare etc. could add considerable offensive capabilities to armed forces. The acquisition of aircraft designed or modified to airdrop troops or military equipment allows rapid deployment and insertion of armed infantry. Military transport aircraft enable front-line forces to be rapidly reinforced or supplied with munitions and equipment.

Aircraft designed or modified to fly aerial refueling missions enhance the effectiveness of existing aircraft assets: enabling increased range and duration of missions, and by increasing the weapons payload that may be carried. Greater aircraft range can increase not only the number of strategic military objectives available to an aggressor in a neighboring territory, but possibly also the number of countries which can be targeted.

Primary trainer aircraft of any kind would need to be included if they are designed, equipped or modified to perform missions as described above.

These definitions would also include UAVs, where these are not versions of combat aircraft, but perform the specialized military roles defined above. Under the present Register definition, UAVs designed, equipped or modified to engage targets by employing guided missiles, unguided rockets, bombs, guns, cannons or other weapons of destruction, so-called Unmanned Combat Aerial Vehicles (UCAVs) would be caught.

Recommendation: in order to capture a wider range of relevant equipment, the Category name could be amended to **'Military Aircraft'** and include weapons described above.

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.*

Omissions:

- **Rotary-wing aircraft, including UAVs, which are designed, equipped or modified to perform reconnaissance, target acquisition (including and-submarine warfare), electronic warfare and communications;**
- **Rotary-wing aircraft which are designed, equipped or modified to perform command and control, mine laying missions, or transport of personnel.**

Military helicopters, whether versions of Attack Helicopters or not, which carry out reconnaissance, command and control, electronic warfare etc. could add considerable offensive capabilities to armed forces. Although they have a shorter range than larger aircraft, similar reasons for inclusion apply to helicopters equipped to perform transport tasks. Acquisition of such a capability allows rapid deployment and insertion of personnel. In addition, transport helicopters equipped to perform transport tasks allow rapid movement and deployment of personnel, associated vehicles and lightweight artillery pieces into areas unsuitable for fixed-wing aircraft.

A refined category could also include rotary wing UAVs, where these are not versions of combat helicopters, but perform the specialized military roles. Under the present Register definition, only UAVs 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, UCAVs would be caught. Category VII captures Remotely Piloted Vehicles (RPVs) designed or modified specifically for launching missiles and rockets in Category VII.

Recommendation: in order to capture a wider range of relevant equipment, the Category name could be amended to **'Military Helicopters'** and include the weapons described above.

VI. Warships [Naval Vessels]: *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.*

Omissions:

- **Vessels or submarines with a standard displacement of 150 metric tons or more;**
- **Surface effect vessels (fully skirted) – e.g. Hovercraft;**
- **Surface effect vessels (rigid sidewalls);**
- **Naval vessels, inflatable craft and submersible vehicles.**

Vessels below 500 tons are increasingly more capable than their predecessors and in some cases possess or exceed the firepower of larger combatants of an earlier generation. Although these “smaller” vessels may not have the extreme range capability of the blue water’ vessels held by some of the world’s established navies, within their own regions they still have the capacity to project significant naval power. This can be a threat both to coastal regions and narrow straits, endangering both naval and commercial/civilian shipping, within this context it is worth noting that most naval conflicts that have occurred since 1900 have been within 90 nautical miles of land.

Many smaller vessels would be included, because of the range of their missiles or torpedoes, but this will not always be the case. Many capable missiles e.g. Sea Skua have a range of only 15km. Vessels of this type would thus not be captured by the existing UN category. Moreover, a vessel can be manufactured first without missiles, delivered, and then armed with them at a later date: ‘fitted for but not with’.

Minehunters and minesweepers also possess unique capabilities. These vessels, often below the 500 ton threshold, have both a defensive and offensive role and can be used

either to clear sea channels of an aggressor's mines in coastal waters or those laid by a defensive party in advance of offensive operations.

With advances in technology, a competitive market and the increasing effectiveness of fast attack craft of much lower tonnage, the trend of procuring smaller more capable units (hovercraft, lightweight inflatable and smaller submersible vessels) is expected to continue.

Recommendation: In order to capture a wider range of relevant equipment, the Category name could be amended to '**Naval Vessels**' and include the systems described above.

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).

Note: For reporting purposes MANPADS are broadly defined as surface-to-air missile systems designed to be man-portable and carried and fired by a single individual and; other surface to air missile systems designed to be operated and fired by more than one individual acting as a crew and portable by several individuals. MANPADS should be reported if the MANPAD system is supplied as a complete unit, i.e. the missile and launcher/Grip Stock form an integral unit. In addition, individual launching mechanisms or grip-stocks should also be reported. Individual missiles, not supplied with a launching mechanism or grip stock need not be reported.

Omissions:

- **Missiles of below 25km range;**
- **Ground-to-air missiles (note: MANPADS are already covered by the Register definition).**

Missile systems of all ranges and types can provide a key combat capability for air, ground or naval support to offensive operations. Unmanned airborne vehicles, including RPVs, can increase the effectiveness of all parts of a military force by facilitating long-range reconnaissance, target acquisition, designation and weapons guidance (including artillery). Such a capability potentially enables enemy assets and troops to be attacked at greater ranges before they themselves can be used effectively.

Recommendation: The weapons described above should be included in the category.

Small Arms and Light Weapons (SALW):

The UN Register does not currently include SALW as part of its official reporting requirements. From 2003, information on transfers of SALW was requested as part of Additional Background Information and, following the review of the Register in 2006, States in a position to do so were encouraged to provide SALW data in a standardized form similar to the seven categories.

Under the Register framework, there is no agreed definition for SALW. However, a useful starting point for States is the UN ODA Guidelines for reporting SALW transfers, which states:

....it is for each State to decide what to report according to their own situation. In order to fulfill the purposes of the Register, however, and bearing in mind its focus on military weapons, man-portable weapons made or modified to military specification for use as lethal instruments of war should be reported. With regard to **Small arms**, this can include those weapons intended (i.e. transferred) for use by individual members of armed forces, such as revolvers and self-loading pistols; rifles and carbines; sub-machine guns; assault rifles; and light machine guns. With regard to **Light Weapons**, this can include those weapons intended for use by several members of armed forces serving as a crew, such as heavy machine guns; hand-held under-barrel and mounted grenade launchers; portable anti-tank guns; recoilless rifles; portable launchers of anti-tank missile and rocket systems; and mortars of calibers less than 75mm.

Recommendation: SALW should be included as a separate category in the scope of the ATT using the ODA reporting guidelines as a basis.

What additional elements should be considered?

During the July 2010 ATT Prepcom, the Facilitator's summary of the discussions on Scope identified the following additional items to be considered in the Scope of an ATT:

- *Parts and Components*
- *Ammunition and Munitions*
- *Explosives*
- *Other military systems(electronics, computers, telecommunications, information security, sensors and lasers, transportation and training devices)*
- *Dual-Use Items*
- *Defence Services (to develop, manufacture, repair the above systems)*
- *Technology to Manufacture, modify or repair the above systems)*

In order for States to consider these elements in the scope of the ATT, they must be examined and, in some cases, described in greater detail.

Parts and Components: Three scenarios must be considered for the movement of parts and components.

1. Through the supply chain for manufacture (machining and finishing) toward incorporation into a final defense product.
2. Through the supply chain for incorporation into a final defense product under a collaborative defense program.
3. Through the supply chain for repair, overhaul and upgrade of existing defense products;

These three movements represent the vast majority (by volume) of licensable defense products – far more than the main equipment themselves. An ATT cannot ignore the possibility of parts and components for conventional arms being shipped for subsequent assembly, without their transfer being scrutinized and authorized in the same way the final item. However, where a defense program exists between partner nations, where the transfer of main equipment has already been authorized, or the supply chain is in support

of a national program, clearly there should be significant relief from overly burdensome licensing processes. However, under an ATT Governments could be required to maintain control, and the ability to stop such transfers if circumstances change and the transfer would breach the provisions of an ATT. An ATT must, however, allow for Global/General licensing provisions, including between ATT Parties, in order that the global supply chain is not seized.

States will also have to consider whether it is possible to provide sufficient clarity of definition for parts and components, avoiding the prospect of every nut and bolt being subjected to detailed scrutiny. The term 'specially designed for' as a chapeau to the section on Scope may provide a solution.

Ammunition and Munitions: Guided and unguided rockets and MANPADS are included within the existing Register definition in Category VII. A broader ATT-specific definition requires clarification as the terms tend to be used interchangeably. **"Military munitions"** could be taken to mean all ammunition, including confined gaseous, liquid and solid propellants, explosives, pyrotechnics, smokes and incendiaries, including bulk explosives, rockets guided and ballistic missiles, bombs, warheads, shaped charges, mortar rounds, artillery ammunition, bomblets, minelets and terminally guided projectiles (including dispensers), small arms ammunition, grenades, mines, torpedoes, depth charges, demolition charges and devices thereof (fuzes, sensors and initiation devices). This would not normally include ammunition crimped without a projectile (blanks), dummy ammunition with a pierced powder chamber, cartridges for signaling, bird scaring or lighting of gas flares at oil wells.

Explosives can, in this context, also be considered to be part of Munitions. More broadly, distinguishing between civil and military explosives is particularly difficult.

Types of Transfers

Once the items to be covered by an ATT have been agreed upon, we can turn our attention to the ways in which those items are transferred. Looking to the Register for inspiration can in this case be problematic as well. Agreement on a common definition of a transfer in the context of the UN Register has been complicated by differing national practices regarding implementation of rules, regulations and procedures for exports and imports. Therefore, the description of a transfer contained in the report of the 1992 Panel of Governmental Technical Experts, reaffirmed by subsequent Groups of Governmental Experts, remains the guideline for reporting transfers (Resolution A/49/316, para. 42). Under the Register, international arms transfers involve, in addition to the physical movement of equipment into or from national territory, the transfer of title to and control over the equipment.

In the context of discussions during the Open-Ended Working Group (OEWG) and PrepCom the following activities have been identified as potentially falling into scope:

Import, Export, Re-export, Temporary Re-export, Transshipment, Transit, Brokering, Artisanal Manufacture, Technology Transfer, Manufacture under Foreign License, Leases, Loans, Gifts, Technical Assistance, Promotion and, Research, Financing, Training.

Whilst some of these concepts have already been discussed in depth it is worth providing a brief insight into Manufacture under Foreign License.

Foreign Licensed Production: Often defined as: *A direct commercial arrangement between a company in one country and a foreign government, international organization,*

or foreign company, providing for the transfer of production information which enables the foreign government, international organization, or commercial producer to manufacture, in whole or in part, an item of defense equipment. A typical license production arrangement would include the functions of production engineering, controlling, quality assurance and determining of resource requirements. It may or may not include design engineering information and critical materials production and design information. A licensed production arrangement is normally accomplished under the provisions of a license agreement, commonly judged against similar or the same criteria as the transfer of the defense equipment itself.

The practice of foreign licensed production is not uncommon and, for the purposes of an ATT could be considered to have the same effect as the transfer of the equipment itself. Indeed the effect can be greater if the foreign manufacturer is unconstrained by government to government assurances on re-export or re-transfer provisions on the equipment and technology. Such assurances may be part of the obligations under an ATT, and could provide additional assurances if foreign licensed production is in an ATT signatory State. Licensed Production could also involve the transfer of technology by intangible means and this would, potentially, need to be within the ATT's scope.

Items not in the Scope of an ATT: The following items and activities have been identified as not being within scope, and therefore should be explicitly referenced as not being within the ambit of the treaty in a section on "Exceptions":

- Internal Transfers
- National ownership and regulation of weapons
- Sporting and hunting rifles for recreational purposes
- Antique weapons

How to reflect Scope of Weapons in an ATT?

Quite simply, attempting to define detailed lists of categories of equipment, parts and components in the body of the treaty text will present enormous challenges for the negotiation process and subsequent review. Whilst it is also a question of implementation, this paper suggests the emphasis might be better on simplicity and clarity. The body of the treaty text dealing with scope could refer to broad categories of equipment and types of transfers. For example:

Scope – arms

1. *For the purposes of this Treaty, arms shall include those items specially designed for military use as follows:*

- *Tanks*
- *Vehicles*
- *Artillery Systems*
- *Aircraft*
- *Helicopters*
- *Vessels*

- *Missiles and Missile Launchers*
- *Small Arms and Light Weapons*
- *Ammunition and Munitions for the above*

This could be supplemented by an Annex where more detailed, illustrative lists of equipment and technology could be provided. Many such lists exist and have been the result of lengthy, multilateral efforts to define export controls.

States would be obliged to exercise appropriate export and import controls over the range of equipment within the broad categories elaborated in the text of the treaty. They would do so according to their national legislation, administrative procedures and practices. The specifics of coverage could be guided by the Annex of illustrative equipment and technology. The Annex would provide a more effective mechanism for regular review to keep pace with developments in technology. Technical adjustments could be made every year through annual meetings of States outside of the formal Treaty review process. Monitoring, verification and transparency mechanisms could assist in guiding States Parties' legislation so they can ensure they have comprehensive coverage and would aid the provision of assistance to states seeking cooperation, and those wishing to adhere to the treaty. States Parties' judgment at review conferences of the effectiveness of the treaty's implementation over time could also guide review of the Annex, which would not, necessarily, demand or suggest amendment to the broader categories in the treaty itself.

ANNEX A

Background: The Origins and Development of the UN Register of Conventional Arms

Since the Register was established soon after the Gulf War of 1991, the overwhelming emphasis at that time was on major conventional weapons. The uncontrolled and non-transparent trade in large weapon-systems had fuelled tension and armed conflict in the region. Specifically, the focus in the late 1980s and early 1990s was on weapon-systems capable of conducting large-scale offensive operations across international borders. The Register was also shaped by the CFE Treaty of 1990, between NATO and the then Warsaw Pact, which dealt with major conventional arms.

This emphasis in the late '80s and early '90s was also reflected in two General Assembly resolutions: the process that led to the agreement to establish a UN Register was triggered by General Assembly resolution A/43/75 I, entitled "International arms transfers", adopted in December 1988. That resolution, calling for "more openness and transparency with regard to world-wide arms transfers", was not specific to any class of weapons. Indeed, its conviction that "arms transfers **in all their aspects** deserve serious consideration by the international community" serves as a useful reminder as to the arguments case made for an Arms Trade Treaty. Resolution A/46/36 L of December 1991, under which the Register was established, also reiterated this specific point.

The General Assembly clearly had a view to addressing the broadest range of conventional arms, but consensus was only achievable on a more limited selection. In this context and, looking to the future, the so-called "founding-fathers" of the Register acknowledged that the Register's scope should be subject to regular review so that issues of expansion, or further technical adjustments to its existing categories, could be examined in order to enhance its confidence-building role.

The review process has continued to examine the issue of expansion of scope in relation to major conventional weapons. It was not until small arms and light weapons began to impact significantly on the global disarmament agenda in the late 1990s that the subject also became an important part of the Register's review process. From 2003, information on transfers of SALW was also requested as part of Additional Background Information and, following the review of the Register in 2006, States in a position to do so were encouraged to provide SALW data in a standardized form similar to the seven categories. The 2009 Group of Governmental Experts, established to review the Register was unable to reach consensus on the inclusion of an eighth category.

Other provisions of the 1991 resolution have provided a basis for reviewing the Register's scope to consider other types of conventional arms. Perhaps the most relevant part of that resolution in this regard is its operative paragraph 4, which reiterates the 1988 conviction that arms transfers **in all their aspects** deserve serious consideration by the international community, inter alia, because of:

- (a) Their potential effects in further destabilizing areas where tension and regional conflict threaten international peace and security and national security;
- b) Their potentially negative effects on the progress of the peaceful social and economic development of all peoples; and
- (c) The danger of increasing illicit and covert arms trafficking.

Clearly, the foregoing criteria apply not only to **major** conventional weapons as currently defined in the Register, but also to other systems used by the states including small arms and light weapons.

This demonstrates the international community's attention to the issue of arms transfers and how, arguably, the UN Register, despite modest expansion of its scope over the last three reviews, has yet to encompass the full range of conventional arms that are relevant to the international community's concerns.

It has been said that: ***“The focus is on weapons indispensable for surprise attacks and large-scale offensive military actions. These weapons systems are relatively easy to identify, define, record and monitor”***. In this case, the current scope of the UN Register reporting categories would appear to be too narrow to fulfill the purposes of an ATT, which would be broader than preventing ***“surprise attacks and large-scale offensive military actions”***. There is potentially a large gap.

Background Paper: Parameters

Breakout Session: Stuart Room, Park Plaza Hotel

29 September 2010

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Introduction

In the last few years, discussions on an Arms Trade Treaty (ATT) have raised a variety of questions on the criteria that States should apply when deciding whether to authorize arms transfers. Much guidance already exists on arms transfer criteria and how they can be applied. This background paper aims to explore the kinds of criteria that could be appropriate for an ATT, possible frameworks for their development, and considerations on how they would be implemented.

I. Which criteria should be applied in an ATT?

First, it is important to understand what is meant by "criteria". Criteria are the standards that States should apply when determining whether to authorize a transfer of arms. During the 2009 Open-ended Working Group (OEWG) and 2010 Preparatory Committee (PrepCom) discussions, States expressed the need for objective and non-discriminatory criteria.

Through both written submissions and oral statements made in recent ATT discussions, States and other interested actors have put forward many criteria, some more frequently than others. Below is a list of the most commonly proposed criteria for an ATT. The criteria below have been separated into three categories to allow for better understanding: criteria relating to express international obligations, criteria relating to likely post-transfer events and effects, and criteria relating to the expected user. Some criteria overlap or belong in more than one of these categories. The criteria and wording proposed are for purposes of illustration and do not mean to prejudice any decision reached by States during ATT negotiations.

A. Criteria relating to the transferring State's express international obligations

Express prohibitions on transfers of weapons in certain circumstances can already be found in the UN Charter and other treaties, and in customary international law. Criteria based on these existing express prohibitions could be formulated as follows:

"A State Party shall not authorize a transfer of arms that would violate its obligations under international law. These obligations include those arising under or pursuant to:

- a. the Charter of the United Nations (UN), including pursuant to decisions of the UN Security Council¹;
- b. international and regional treaties by which the State Party is bound²;

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¹ Pursuant to article 25 of the UN Charter, decisions of the UN Security Council are binding on all UN Member States. These can include decisions imposing arms embargoes. Article 2(4) of the UN Charter provides another example of an obligation that could preclude an arms transfer: A transfer of arms from one State to another or to persons in the territory of another State without that State's consent could amount to a violation of the prohibition of the "threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations."

² Obligations under international and regional treaties would include embargoes adopted by other international, regional and sub-regional organizations established pursuant to a treaty (for example by the European Union, the Organization of American States, ECOWAS). They can also arise from treaties that prohibit the transfer of certain weapons, such as the protocols to the 1980 Convention on the Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, and the 2008 Convention on Cluster Munitions.