

Assessing the feasibility, scope and parameters of an **Arms Trade Treaty (ATT)**: an NGO perspective

Executive Summary

On 6 December 2006, 153 Member States of the United Nations General Assembly reached a landmark decision, voting overwhelmingly in favour of taking first steps towards a legally-binding Arms Trade Treaty (ATT), to ensure comprehensive and effective regulation of international transfers of conventional arms. States are now requested to submit their views to the UN Secretary-General by 30 April 2007 on the feasibility, scope and parameters for a legally-binding ATT.

The irresponsible and poorly regulated trade in arms is fuelling conflict, serious human rights abuses and gross breaches of international humanitarian law (IHL), destabilising countries and regions and undermining sustainable development. For many years, NGOs from around the world have raised awareness of the devastating impacts of poorly regulated arms transfers and have initiated a campaign for a global ATT based on international law. States must build on the agreement in December and adopt a global approach to regulating international arms transfers that results in an effective international legally-binding instrument.

This Executive Summary highlights the main views of the NGOs with regard to these issues.

In order for an ATT to be effective, it must be based upon the full range of States' existing responsibilities under international law, including ensuring respect for international human rights law, international humanitarian law and sustainable development.

A more detailed document, entitled 'Assessing the feasibility, scope and parameters of an Arms Trade Treaty (ATT): An NGO perspective', as well as the 'Compilation of Global Principles for Arms Transfers' are available at: www.controlarms.org/sgconsultation.

Feasibility of an ATT

An ATT is feasible, as it would build on principles for international transfers of conventional arms that are now firmly established in a range of sub regional, regional, multilateral and international instruments. These include, for example: ECOWAS Convention on SALW (2006); SICA Code of Conduct (2005); Best Practice Guidelines Associated with the Nairobi Protocol (2005); OAS Model Regulations for the Control of Brokers of Firearms (2003); Wassenaar Arrangement Best Practice Guidelines for Exports of SALW (2002); SADC Protocol (2001); OSCE Document on Small Arms and Light weapons (2000); EU Code of Conduct (1998); OAS Model Regulations (1997); and

CIFTA Convention (1997). Collectively, these instruments represent vital building blocks for a future ATT.

These existing instruments designed to more effectively control international arms transfers address a range of common concerns, including the need to: i) establish clear national procedures for regulating international transfers of arms ii) prevent and combat illicit arms transfers; iii) respect UN embargoes iv) prevent diversion to proscribed groups, such as those who commit terrorist acts; v) prohibit transfers that contravene international legal obligations; vi) prohibit transfers that are likely to be used in serious breaches of human rights or international humanitarian law or acts of genocide; vii) prohibit transfers that are likely to adversely affect internal or regional security or sustainable development.

Most States agree that the proliferation and misuse of conventional arms can only be effectively addressed through international cooperation. There is also increasing recognition amongst States that the control of arms transfers between states must be rooted in the international law and emerging norms highlighted above. Given this increasingly global consensus, it is equally clear that such an ATT is achievable.

Scope of an ATT

An ATT should reflect the inherent right of all States to self-defence under Article 51 of the UN Charter and acknowledge the right of all States to acquire legitimate arms for self-defence and security needs in accordance with international law and standards. An ATT must also reflect the obligation under the UN Charter of States to promote and observe human rights and fundamental freedoms – including civil, political, economic, social and cultural rights – all of which are necessary for sustainable development. There is also a universal obligation on States to ensure respect for the rules of international humanitarian law. Without the inclusion of these elementary principles an ATT will simply not be effective.

An ATT should crystallise, in the context of international arms transfers, commitments already assumed by States inter alia under the United Nations Charter, the Geneva Conventions of 1949, the two International Covenants on human rights, other widely supported international conventions, and established principles of customary international law as reflected, for example, in the UN International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts.

Using existing international law as its foundation, an ATT needs to set out clearly the conditions that States must apply when

considering any international transfers of conventional arms. It is through this codification of States' existing responsibilities under international law that the government-sanctioned trade can be clearly distinguished from the illicit trade and thus be effectively regulated. This will help prevent irresponsible transfers of conventional arms and the diversion and persistent misuse of such arms from the 'grey market'.

To be effective, an ATT should contain a comprehensive system to control the cross-border movement of all conventional weapons, munitions and associated parts, technology and equipment. This should cover the import, export, transit and trans-shipment and brokerage of all conventional arms including: heavy weapons; small arms and light weapons; parts and components for the afore mentioned; munitions including ammunition and explosives; technology used for manufacturing conventional arms; weapons used for internal security; and dual-use goods intended for military, security or policing purposes.

Parameters of an ATT

NGOs advocating the establishment of an ATT have proposed a set of core 'Global Principles for Arms Transfers'. The Global Principles include obligations based on relevant international treaties and international customary law, principles recognised by the United Nations, including international human rights law and international humanitarian law, and the Articles on the Responsibilities of States for Internationally Wrongful Acts. Accordingly these Global Principles outline the conditions under which arms transfers should or should not be permissible and they provide the foundation for an effective and comprehensive ATT.

The Global Principles can be summarised as:

1. States are responsible for and must regulate all arms transfers that are relevant to their jurisdiction.
2. States must assess all international transfers of arms according to three categories of restrictions under existing international law:
 - Express prohibitions where States must not transfer arms in certain situations based on existing prohibitions on the manufacture, possession, use and transfer of arms;
 - Prohibitions based upon the likely use of the weapons, in particular whether the arms are likely to be used to commit serious violations of international human rights law or international humanitarian law;
 - Criteria and emerging norms that must be considered when assessing arms transfers.
3. States must agree a monitoring and enforcement mechanism providing for prompt, impartial and transparent investigation of alleged violations of an ATT, and appropriate penalties for offenders.

Conclusion

A comprehensive ATT based upon relevant principles of international law and standards should be the cornerstone of a global effort to prevent irresponsible transfers of conventional arms. Only a global Treaty will put an end to the current piecemeal approach of national and regional arms control and provide all states with the strong common international standards to ensure a responsible arms trade.



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