



Frequently Asked Questions on the Arms Trade and the Arms Trade Treaty

1. Is Control Arms calling for a complete ban on arms?

No. What is vital is to regulate the arms trade to prevent weapons falling into the hands of those who would use them for serious abuses and unlawful acts. While a few types of weapons and munitions are prohibited (e.g. landmines), most arms can have a legitimate use under international law for national self-defence and law enforcement. However, this use must be strictly controlled in order to protect human rights and respect international agreements on the protection of non-combatants in armed conflict.

2. How would an ATT work?

An effective ATT would be based on a simple principle: no transfers of weapons likely to be used for violations of international law. It would establish common binding standards that must be applied to assess international weapons transfers. These standards should be based on existing international law including international human rights and humanitarian law. In practice, this should mean that a transfer of weapons or munitions will be stopped if there is evidence that the weapons are likely to be used for grave violations of international human rights, humanitarian law, or will adversely affect sustainable development.

Control Arms' proposal for an ATT has several key elements that would ensure consistency between international transfers of conventional arms and existing international law:

- Arms transfers that violate existing international law should not be authorised by states.
- Before any transfer can occur, it subject to assessment and authorisation every state – this includes the state where the weapons will end up.
- No states should authorise arms transfers if the weapons are likely to be used to commit serious violations of international human rights or humanitarian laws.
- When assessing and authorising an arms transfer, the exporting state must take into consideration a number of additional factors relating to the risk of diversion, the impact on sustainable development or regional security, the likely use of the arms to facilitate terrorist acts and involvement in corruption.
- States should agree on common standards for national control mechanisms, for example the controls needed on arms brokering and the foreign licensed production of weapons.

3. What weapons and munitions would the Arms Trade Treaty cover?

An Arms Trade Treaty should cover all conventional weapons and ammunition – including small arms and light weapons, heavy weapons, military support equipment, components and parts, technology for making arms and “dual use” items which have both civil and military applications.

4. What are conventional weapons?

Conventional weapons is a broad category that includes small arms, light weapons, ammunition, explosives, bombs and heavy weapons and military equipment such as missiles, tanks and military vehicles, military aircraft and helicopters and naval ships, as well as components for all these weapons. This category does not include weapons of mass destruction, chemical or biological weapons which are already covered by treaties.

5. What regulations and agreements currently exist on conventional arms transfers?

There is no **global** system of law that deals with the international transfer of all conventional weapons. A few treaties and agreements address a limited aspect of the trade. For example, the Landmines Treaty bans the production, transfer and use of anti-personnel mines and the Conventional Weapons Treaty and its Protocols prohibit and limit the use of certain weapons and munitions considered to have inhumane effects, such as blinding laser weapons, certain fragmentation devices and incendiary devices. The UN Conventional Arms Register is an agreement designed to increase transparency of the arms trade, it has two major problems in terms of its scope and effectiveness:

- States submit reports on arms transfers on a voluntary basis – but only about 80 states report regularly to the Register and it's not enough to ensure effective control of the trade
- The Register is not comprehensive – it only includes six types of large weapon systems but doesn't include some heavy weapons, dual use items or small arms and light weapons.

At the **regional** level, some strong agreements pertaining to arms transfers have been developed and implemented over the past five years. However, as yet, very few states have incorporated the agreements into their national law and practice. The agreements include:

- Central American (SICA) Code of Conduct on Arms Transfers (2006)
- West African (ECOWAS) Convention on Small Arms and Light Weapons (2006)
- East Africa – Best Practice Guidelines for the Nairobi Protocol on Small Arms (2005)

So far, through these and other agreements, 118 states have committed themselves to the principle that arms transfers likely to be used for serious violations of human rights and war crimes should be prevented. But such commitments are often not legally binding.

When the international arms trade is considered from a **national** perspective, the need for a globally binding treaty is particularly clear. The current patchwork of national arms controls is riddled with loopholes and poorly enforced.

6. How do arms dealers and brokers exploit national arms control loopholes and how will an ATT help to prevent this?

The impact that an ATT will have is perhaps best explained by giving a specific example: Between 1999 and 2002, thousands of weapons and millions of rounds of ammunition were supplied from Ukraine, Serbia and China to Sierra Leone and Liberia, even though these countries were under UN arms embargoes. Many of these weapons were supplied via third (non-embargoed) countries like Burkina Faso or Guinea using false paperwork. Arms brokers, including some operating from Western Europe and Israel, skillfully exploited weaknesses in various national control systems to facilitate these deals. If agreement had been reached internationally on a set of common binding standards – the basis of an ATT – and the ATT had been ratified by governments involved at any stage of the weapons supply, this would have helped prevent those arms transfers by making all governments accountable for thoroughly checking paperwork during all stages of the weapons' transit. Even if these governments had not ratified the ATT, the very existence of a Treaty endorsed by the majority of countries would make it much more difficult for governments to openly endorse such deals, leaving them at risk of isolation by the international community.

7. How will the Arms Trade Treaty be enforced?

The Arms Trade Treaty proposed by Control Arms and other NGOs would be incorporated into the national law and regulations of every ratifying nation, and reinforced through rules and procedures such as regular public reporting and crosschecking of cargoes and licenses. Therefore it would be illegal for any supplier government to ignore the Treaty's provisions when supplying arms. Any decisions that break the terms of the Treaty could then be challenged and potentially overturned in the national courts.

Under the proposed Treaty, governments would be required to report their conventional arms transfers in an open and transparent way, which would lead to greater public and parliamentary scrutiny. As with any treaty, there would be international controls ranging from diplomatic pressure to legal action, potentially right up to the International Court of Justice. A mechanism for the settlement of disputes could also be built into the treaty itself.

8. Who will decide which countries, armed groups or companies can/can't be sold to?

Currently, the responsibility in most national laws for authorising arms transfers lies with both the exporting and importing governments, and with any government exercising control over the arms in transit or the activities of brokers and other intermediaries involved. This will still be the case under an ATT, but states will have standardised obligations and control mechanisms as well as being liable for failing to fulfill these obligations and implement such mechanisms.

Under an effective ATT, these obligations and standards will be formalised in international law so that all states concerned with the transfer (export, import, transit, brokering) must agree that the transfer is legitimate and carry out certain basic checks. They will have to decide on a case-by-case basis whether a sale or transfer or brokered deal would violate the Arms Trade Treaty's criteria or principles and whether the control mechanisms have been implemented to ensure legitimate delivery and uses. These criteria or principles and the standards for control mechanisms will be objective, non-discriminatory and based upon universal principles of international law, so all countries would benefit.

The criteria or principles and the standards for control mechanisms would be legally enforceable and therefore open to legal challenge under most legal systems. Also, under the treaty, governments would be required to report on their arms transfers in an open and transparent way to an international register, which would lead to greater public and parliamentary scrutiny and confidence. In this way civil society, industry and the judiciary would have a role to play in monitoring the performance of their government in fulfilling its obligations under the treaty. Legal recourse would be open to those who want to challenge licensing decisions (either denials or grants).

9. How will an ATT work if key exporter countries don't support it?

There is ample evidence to suggest that creating an international norm modifies the behaviour of states if a sufficient number of states support that norm, even if some major states have not signed up to a particular treaty. For example, some influential states have remained outside the convention banning anti-personnel landmines, yet not a single government has openly endorsed the trade in anti-personnel mines since the convention came into force and the world is a safer and more humane place for it. An effective and fair ATT would increasingly attract states who would not want to be left outside the dominant conventional arms trading system.

There is a powerful legal argument for moving towards an instrument like the Arms Trade Treaty. The fact that some states may not be willing to accept their responsibilities to respect international human rights and humanitarian law, or to apply these explicitly to the trade in weapons, does not make these responsibilities any less real or binding.

10. How would an ATT affect weapons and munitions transfers for countries' self-defence?

The Arms Trade Treaty should be designed to effectively regulate the legal trade in conventional arms to drastically reduce illegal and irresponsible arms trading and uses. The UN Charter outlines the right of states to self-defence if attacked and, under international law, states also have a duty to protect their populations and enforce the law, including in the face of an imminent threat to life. Thus, governments will not stop the supply of weapons and munitions for the legitimate use in self-defence or policing – we have to ensure that the Treaty will require states to abide by the relevant laws and standards when carrying out self defence and policing, rules that are often

contained in international human rights and humanitarian laws. This will greatly improve the regulation of these transfers.

The right of states to use force is not unlimited and this must be reflected in an ATT. Two of the most significant bodies of international law seek to protect the individual. International human rights law protects the right to life and security, and it applies at all times in all locations. Police and law enforcers may only use lethal force to prevent an imminent threat of death or very serious injury. International humanitarian law (mainly the Geneva Conventions) protects applies in situations of armed conflict; its aim is to regulate the conduct of war, prevent inhumane weaponry and reduce the suffering of civilians. These laws are designed to protect people and they must be incorporated into the Arms Trade Treaty alongside respect for other relevant treaties and international customary laws.

11. What would an Arms Trade Treaty mean for civilian gun ownership?

The Arms Trade Treaty on international transfers of conventional arms will hopefully have a provision to restrict the transfer of small arms to countries where the transfer would contribute to a pattern of violent crime, but it would most likely not affect national laws allowing private citizens to be properly licensed to own and lawfully use a firearm in cases where they have a compelling reason to use a firearm and can do so safely.

12. How long will it take to develop and implement an Arms Trade Treaty?

Work will begin in earnest early in 2008 as the UN Group of Government Experts is established. The GGE must report on its findings by October 2008 when the First Committee of the General Assembly meets to consider the matter again, and then it is likely that there will be a further process to develop the actual text of the ATT arising from the General Assembly in December 2008.

Background to the Treaty

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| 1995 | Amnesty International and several other Nobel Peace Laureates and NGOs thought of the idea of globally binding rules on arms transfers. |
| 1998-2001 | An ATT proposal was prepared with the help of lawyers from Cambridge University's Lauterpacht Centre. |
| 2003 | Amnesty International, Oxfam and the International Action Network on Small Arms joined forces to launch the Control Arms campaign to focus on an Arms Trade Treaty. |
| 2006 | The resolution 'Towards an Arms Trade Treaty' was tabled for voting at the UN General Assembly in 2006. The Resolution was passed at the UN First Committee (Disarmament and International Security) in October. 139 countries voted for the Resolution, 24 abstained and only the United States voted against it. The Resolution then went to vote at the General Assembly in December 2006. The number of Yes votes there increased to 153; the number of abstentions was unchanged (24) and only the US voted No again. |