
Towards an Arms Trade Treaty

The international proliferation of conventional arms – the evolving nature of the problem and possible responses

A round table discussion with government experts, academics, industry and civil society


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This round table discussion brought together governmental representatives, members of civil society, legal experts and academics to consider the current state of play in attempts to regulate the international transfer of conventional arms. It aimed to identify:

- the central drivers of the current proposal for an Arms Trade Treaty (ATT);
- the challenges facing such a proposal;
- the current challenges facing the Group of Governmental Experts (GGE) and possible future treaty negotiations; and
- points of consensus about how to resolve outstanding issues and move forward towards an international agreement.

This report summarises the presentations made by the workshop participants, including academic experts on the international arms trade and senior diplomats; it then builds on these by drawing out the core themes that drove subsequent group discussion. It concludes by drawing attention to areas that may warrant further research, elaboration, and discussion.



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Framing the Issues

This session examined the dimensions of the current arms trade; reflected on its social, political and economic impacts; identified the key weaknesses in the current regulatory regime; and considered current best practices in arms transfer controls. It presented the legal, political and moral rationale for an arms trade treaty (ATT), in the context of the dramatic restructuring of the global arms trade over the past two decades.

It was noted that the irresponsible trade of conventional arms fuels conflict, exacerbates poverty and underdevelopment, is intimately connected with human and drug trafficking, and facilitates human rights abuses and violations of international humanitarian law. Further, it was argued that the negative effects of the arms trade create global problems, for which a global solution is necessary.

The current state of play

The current nature of the global arms trade both facilitates and hinders the emergence of an effective ATT.

Factors working towards a global ATT:

- 1) Expenditure:** Global military expenditure has increased significantly in the decade since 1998, with the vast majority of spending concentrated among relatively few (predominantly Western) states. This suggests that even narrow agreement among a limited number of states can nevertheless result in broad coverage of the global arms trade. However, it was noted that it might be the unregulated minority that is associated with the most irresponsible practices.
- 2) Production:** Global arms production has been progressively concentrated in just a few defence companies, which should facilitate effective monitoring and regulation.

Factors working against a global ATT:

- 1) Structure of the arms trade:** Both the financing methods and the identities of defence companies have become more diffuse, making the defence industry more multinational in character (with intra-firm movement of technology and ideas) and therefore more difficult to regulate through a system reliant solely on national controls.. Further, the trade itself has become more diffuse, characterised by the transnational nature of production chains, and complicated by the increase in dual-use technology.
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- 2) **Production:** While the production of major conventional weapons has become more concentrated, the production of small arms remains highly diffuse, with a large number of companies manufacturing light weapons in many states throughout the world.
- 3) **Supply:** The diffusion of shadow trading routes is a significant obstacle to the detection of illicit arms transfers.

Weaknesses in the current regulatory regime

The inability of the current regulatory regime to effectively prevent the negative effects of the arms trade, and to establish norms for responsible arms transfers, was a topic of extensive discussion. It was argued that a key challenge for the design of effective arms regulation was to reconcile the need for global regulation with the political and pragmatic requirement for authority over transfer decisions to remain at the national level.

- **National Controls:** There are two types of weaknesses that limit the effectiveness of the current system of national controls:
 - i) Content of rules: both the scope and clarity of regulation are inadequate, creating loopholes in national control systems (this is especially true for importing states);
 - ii) Regulatory process: failures to adopt and/or implement controls; lack of clarity and consistency of decision criteria; the capture of the regulatory agenda by special interests; and inadequate capacity for assessing end use.
- **International Controls:** Current international controls exist in a diverse body of international legal agreements, which do not cover all regions. These range from the broad framework of rights and responsibilities provided by the UN Charter to specific obligations set out in arms control treaties, e.g. the conventions on landmines and cluster munitions. While an international regime does exist for the regulation of the trade in conventional weapons, it is nonetheless ineffective in establishing the parameters of acceptable, 'responsible' arms trade, and in constraining 'irresponsible' transfers. Specifically, current international controls:
 - i) Lack sufficient clarity on the rights, roles and responsibilities of exporting, importing, transit, transshipment and broker states; and
 - ii) Lack appropriate mechanisms and/or forums for consultation and cooperation between exporting, importing, transit and broker states.

Features of an effective ATT

Based on existing best practices, an effective ATT should include the following elements:

- A licensing system based on legal principles drawn from the UN Charter and other sources of international law, implemented and monitored by national authorities, operating on the basis of case-by-case assessment, with controls targeting the end-use and potential misuse of arms, including their re-transfer;
- Clarity of rights and responsibilities, understood by actors and adopted in national law;

- The articulation of regulatory norms congruent with existing obligations under international law;
- The application of rules with uniformity and transparency, including clear and accurate reporting of exports and imports.
- An effective monitoring system to minimise the risk of the improper diversion of arms.

The use of export controls in the nuclear non-proliferation regime was suggested as a good example of such regulation. It was also noted that there are certain things an ATT should *not* strive to do – namely impose production controls or create a remote, supranational authority to bring about compliance.

Governmental Perspectives

Why Now? Structural shifts, normative change and momentum

Current diplomatic efforts to negotiate an ATT are being driven by:

- 1) **Structural shifts** in the global arms industry, including the global interconnectedness of production processes and the restructuring of the industry towards private financing; both shifts raise accountability concerns which the current regulatory regime is ill-suited to address.
- 2) **Normative change** in the security priorities of states, particularly the post-Cold War concern with human security, development, and the threats to international peace and security arising from civil conflicts. The under-regulated trade in conventional weapons, especially in small and light weapons, is held to exacerbate these security threats. Further, as states seek to respond to such security issues through international intervention or development assistance, they are thwarted by increasingly well-armed opponents who benefit from the illicit transfer of conventional arms. Thus, there has been a change in focus particularly in the realm of export control: regulation is less about preventing adversaries from securing weapons (a preoccupation in the past) and more about protecting commercial investments and preventing threats to social and human development.
- 3) **Momentum** generated by the successful conclusion of other global agreements, the activism of global NGOs committed to the issue, and the need to capitalise on the consensus reached by the 153 states who voiced support for the proposed ATT in the UN General Assembly

Reservations: what an ATT should and should not do

Power concerns: a North-South divide?

Diverging views were offered on the question of a power imbalance underlying the current ATT proposal.

It was argued by one governmental representative that the ATT represented a Western agenda, and was linked to the broader effort to promote 'good governance'. This particular developing country perspective highlights three areas of concern:

- 1) **Political motives behind the ATT:** There is a perception that the ATT will be designed and/or used by powerful states to further their foreign policy interests under the guise of arms control, while at the same time creating a system that would not limit the freedom of action of those powerful states. In particular, the involvement of Western ATT proponents in the conflicts in Afghanistan and Iraq – in which local people are made insecure through the use of conventional weapons resulting in ‘collateral damage’ – is argued to undermine the moral case for regulating arms transfers.
- 2) **Commercial motives of the ATT:** There is a concern that the negotiation of an ATT is being pursued to safeguard the current market share of Western producers against rising competition from Russia, China and other developing countries.
- 3) **Erosion of developing country sovereignty:** Concern was expressed that an ATT could function as an illegitimate constraint on the right of developing countries to the development of indigenous production capacity.

Another governmental representative argued that an ATT is in the interests of developing countries, since irresponsible arms transfers fuel the insecurity which seriously undermines the stability of developing countries, their economic development, and the welfare of their people. The prevalence of these negative effects illustrates the inadequacies of relying on the current system of national controls, and highlights the necessity of global solutions.

Through the process of negotiating an ATT, states – especially developing countries – would become more aware of the nature and scope of their obligations with regard to arms transfers. An effective ATT would therefore be expected to:

- Establish an international regime of monitoring, regulation and verification;
- Prevent irresponsible flows to states suffering conflict and human rights abuses;
- Help to create the conditions for the responsible trade in arms that would enhance democracy and accountability;
- Create a level playing field to benefit industry through a system of clear, consistent controls; and
- Provide technical assistance to those states which lack the capacity to comply with their obligations.

Feasibility: political will and capacity

Inadequate political will and domestic capacity were highlighted as two key obstacles to the agreement and implementation of an ATT.

- 1) It was argued by one government representative that the inadequate implementation and enforcement of existing controls on arms transfers are not due to the nature of these regimes, but rather to a lack of **political will**. In this view, the attention should be focused on fully implementing and strengthening the existing system, in particular the system of national controls, rather than negotiating an ATT.

- 2) The **lack of capacity** to monitor and regulate arms transfers on the part of many developing countries was highlighted as a key obstacle to implementing both the current system of controls and any future ATT. Given that much of the illicit transfer activity involves actors in developing countries, an ATT would have to include the provision of technical assistance.

One developing country representative advocated an ATT that aims for the highest standards, not the lowest common standards, arguing that states not ready for those standards must endeavour to attain them (with external help, if necessary), and those that already have them must not abuse them. It was also suggested, in subsequent discussion, that a treaty would enhance the likelihood that Western, developed states would focus on capacity-building, as new legal obligations would create a stronger argument for national finance ministries to donate resources to such an activity.

Harnessing the drivers of self-interest

One governmental representative strongly advocated the need for a regulatory regime to incentivise compliance through economic drivers which targeted the cost-benefit calculations of states as rational actors, rather than through legal norms which diverged too far from the immediate self-interests of actors. The regulation of the trade in 'blood' diamonds and sustainable forestry provide good examples of this. In particular, an ATT needs to develop and utilise the relationships and networks between suppliers, producers and consumers.

Discussion themes

The final session began with a series of questions posed by the chair and other participants, which framed the subsequent discussion:

- 1) What are the aims of the ATT? What should we expect of an ATT?
- 2) Will the proposed ATT meet the need – identified in the morning session – for better regulation of the global arms trade? That is, what promise does the ATT hold:
 - a. To address the negative impacts associated with the 'irresponsible' trade in arms?
 - b. To improve on the existing regime of regulatory controls?
- 3) Is the proposed ATT politically feasible? That is, is there sufficient extant or potential political will for the conclusion and implementation of the ATT? What specific mechanisms would the ATT need to have to achieve the necessary political will?
- 4) Is the proposed ATT sufficiently legitimate internationally to ensure both the conclusion of the treaty and its effective implementation? Can the proposal address the concern that the ATT is inappropriately weighted towards the global North? What specific provisions would be needed to allay or mitigate concerns about a Northern agenda and the exclusion of Southern voices?
- 5) What is 'responsible' vis-à-vis arms trading? What is 'irresponsible'?

The Aims of an ATT

It was noted that the aims of an ATT need to be carefully specified, for two key reasons. First, the objectives of cooperation on the global arms trade need to be laid out in detail and agreed so that the regulatory regime can be designed accordingly. Second, specifying the aims of an ATT will help to guide expectations and evaluations of the negotiations and the regime itself.

Participants noted a number of possible aims:

- To promote a responsible arms trade, akin to recent moves towards a responsible diamond trade or forestry trade.
- To promote better decision-making at the national level, so that decisions on arms transfers truly reflect the interests of an entire country (and not just sectional interests).
- To provide a better regime to limit the proliferation of conventional weapons.
- To protect human rights and strengthen the international human rights regime.
- To provide greater clarity of trading rules and more stable trading expectations.
- To help address weaknesses in existing regimes.
- To act as a forum for resolving normative debates about what is legitimate and responsible viz. arms trading.

It was also noted that an ATT could support the broader aim of better global governance in general.

Much of the discussion on the ATT's aims focused on the need for realistic expectations rather than overly ambitious goals. Many participants warned of the fallacy of thinking this could be a 'silver bullet', cautioning against expectations that political consensus will be easily secured and that any ATT would resolve all of the problems associated with the arms trade. Several participants noted the difficulties inherent in global regulation, particularly in this issue area, including: the difficulty of proving intent; the weaknesses of international law enforcement; and the difficulty of coordinating diverse international actors.

It was advocated by some that the ATT should aim to provide the broad normative 'framework' for cooperation on conventional arms trading. That is, it should aim to be a focal point to facilitate the progressive deepening of cooperation on the issue, rather than to have strict regulative effect. Following this approach, the ATT would be seen as a 'keystone in the arch' rather than a 'magic bullet'. Further, this would allow the ATT to 'house many objectives', allowing for the inclusion of states with different interests, rather than requiring a prior convergence of interests around a narrow set of objectives. Finally, it would allow the ATT to be a forum for resolving normative disputes, argued to be a key obstacle to effective regulation. In this view, the ATT would be seen as part of the process of defining what the international community thinks is responsible behaviour, rather than the end-point codification of it. The gradual process of negotiating the Law of the Sea treaty was suggested as an example of how the negotiation of an international agreement can help to define the normative consensus underlying it. It was argued by some that the ATT should allow those states who want to be 'responsible' to move forward with global regulation and the standardisation of good practices, even if all of the 'irresponsible' actors cannot be immediately brought on board.

An ATT vs. the existing regime

There was some division about whether efforts should focus on strengthening the existing system of controls, or on negotiating a new ATT. In favour of the existing system, it was argued that the key obstacles to effective regulation were political will and domestic

capacity, and that these would continue to obstruct efforts under an ATT. In this view, international efforts should aim to assist developing countries to improve their implementation capacity, rather than introducing new controls. An ATT, it was argued, might be appropriate further down the road, once capacity is built.

Most participants noted that the existing regime, even if widely implemented, would not be adequate. In addition to the weaknesses raised in the morning sessions, participants noted that existing regional regimes do not provide for universal coverage; for example there are no relevant regional agreements in parts of the Middle East and the Asia-Pacific region. It was noted that the proposed ATT would build on existing rules, rather than starting from scratch.

What is 'responsible' with respect to the trade in conventional weapons?

Participants noted the need to engage seriously with normative questions about what defines 'responsible' and 'irresponsible' trade in conventional weapons. While the discussion did not lead to any clear conclusions on this topic, participants raised the following considerations:

- Given the deep ambiguities in a value-laden concept such as 'responsibility', the ATT should be based on the 'thin' moral principles of human rights rather than 'thick' political values such as democracy or a particular balance in civil-military decision-making;
- 'Responsible' also refers to process, including the transparency of transfers and the consistent application of clearly identified decision-making criteria;
- The assessment of whether a transfer is responsible must be based on the expected end-use of arms; and
- The process of defining 'responsible' should give serious consideration to the concerns expressed by those with reservations about the ATT.

Scope: all conventional arms or SALW?

Participants diverged over whether the ATT should cover all conventional arms, or focus on small and light weapons (SALW). In favour of limiting the ATT to SALW, it was argued that this would reflect the greatest need; that is, the priority ought to be on SALW because it is these weapons that present the greatest immediate threat to human rights and human security. Others, however, argued that narrowing the scope would undermine the effectiveness of the regulatory regime, as it is difficult to define the category of SALW and determine how to distinguish these from other conventional arms. A regime with broader coverage – to include all conventional arms – was argued to provide greater clarity and facilitate consistency in implementation. Further, it was argued that narrowing the scope to SALW would limit the value-added of an ATT compared to, for example, the current UN Program of Action on SALW.

It was also noted that the issue of dual-use weapons and the question of how to distinguish between trade for military and for civilian purposes posed problems that would need to be addressed in negotiations.

Legitimacy Issues

Concerns were raised that the proposed ATT was too Western and represented the agenda of the global North. In particular, questions were raised as to whether the current proposal is sufficiently representative of global aspirations for a regulatory regime such that:

- i) political consensus can be reached to facilitate agreement; and
- ii) the agreement will be perceived to be sufficiently legitimate to facilitate effective implementation.

The central legitimacy concerns focused on whether an ATT mechanism would simply serve the interests of the most powerful international actors and institutionalise or 'freeze' the current, unequal distribution of global power. Concerns were raised as to whether some governments are advocates of the ATT because they want to avoid the negative effects of illicit arms trading, or because they want to preserve power in the international system. In particular, several participants noted the need for an ATT to avoid becoming (or being perceived to become) a political instrument of exclusion to use against states 'we don't like'. It was argued that the ATT should aim to be a broad and inclusive multilateral regime, not a UN Security Council-style 'club'.

Two strategies for building the legitimacy of an ATT were noted:

- 1) Making the motives and objectives of an ATT transparent, and engaging in a dialogue of reassurance with concerned states regarding those motives and objectives; and
- 2) Demonstrating the benefits of an ATT to improve the quality of governance decisions even within the current distribution of global power, e.g. by insulating decision-making from capture by powerful special interests.
- 3) Emphasising that the ATT is not designed to shift the balance of power away from national governments, but rather to enhance the quality of national decision-making.

It was also noted that some of the ATT's strongest advocates are developing countries, and that a better global regulatory regime offers significant benefits for these states, particularly by enabling them to exercise greater control over the transfer of arms into their territories.

Foreseeable obstacles to reaching agreement

Participants noted that, while there is momentum towards reaching political consensus on an ATT, serious divisions remain and are likely to make negotiations long and agreement difficult. Several participants cautioned against viewing negotiations as a process of technical coordination or polite dialogue, instead emphasising the likelihood of interest groups and political disputes hampering agreement.

Participants discussed the scope of acceptable compromise, and considered what degree of compromise might be possible, and what provisions, if included, would undermine the basic aims of the ATT. Several participants cautioned against making the ATT too specific or complex, and instead advocated an approach that would bring clarity to existing and developing norms in international law and practice. However, it was also noted that too much ambiguity is likely to create uncertainty that would limit the effectiveness of the ATT.

Participants reached agreement that the ATT must not include 'externalities', or provisions unrelated to trade in conventional arms. Further, participants agreed that the primacy of

domestic jurisdiction in decision-making must be preserved and embedded as the foundation of an ATT.

What an ATT should include

Linked to discussions on the aims of an ATT, and the potential obstacles to international agreement, participants discussed what features would be desirable in a new regulatory regime. The institutional features suggested included:

- Clear criteria for distinguishing responsible from irresponsible trading behaviour.
- Capacity building initiatives, for states that require it, given that the diffusion of the arms trade makes supplier regulation more difficult. The ECOWAS Moratorium model was suggested as exemplary.
- A role for NGOs/civil society in assisting with verification which would ideally engage public participation and require states to justify their arms transfer decisions (the Landmines Monitors was referred to as an example of civil society engagement).
- The preservation and formalisation of expert panels to monitor implementation, including UN sanctions. It was noted that the ATT should have a formal institutional legacy.
- The preservation of domestic decision-making as the bedrock of the regime.

It was also suggested that the regime should include a mechanism to engage public participation and require states to justify their arms transfer decisions.

Areas for future attention

Two notable issue areas were raised in the presentations or discussion, but were not able to be adequately addressed on the day. These were:

- 1) What specific mechanisms would the ATT need to be *effective* in implementation?
- 2) What is the magnitude of the 'limited capacity' problem? What are the critical capacities that governments would need to effectively implement at ATT?

Additionally, participants noted that the question of how to define and distinguish 'responsible' behaviour viz. the trade in conventional arms, though widely discussed, remains an issue of further consideration, given *inter alia* its normative connotations.