



Amnesty International's ideas for States' submissions to the Secretary General on the elements of the Arms Trade Treaty

In its Report of 17 February 2012, the Preparatory Committee for the United Nations Conference on the Arms Trade Treaty invited “those participating States wishing to do so to submit focused views, of no more than 1,500 words, on the elements of an Arms Trade Treaty, such as those enumerated in paragraph 17 of this report, by 31 March 2012. This would be done without prejudice to their right to put forward additional proposals during the Conference”.

Using the UN Office of Disarmament Affairs' (ODA) suggested structure for these submissions, the following are Amnesty International's views for the consideration of States to include in their submission.

I. Preamble

The preamble of the ATT should underline the primary intention of the ATT, emphasising the concerns of the international community that the ATT seeks to address. Most important is:

- *Recognising* the absence of commonly agreed international standards for the transfer of conventional arms and their diversion to the illicit market are contributory factors to armed conflict, serious violations of international human rights law and international humanitarian law, gender-based violence, the displacement of people, transnational organized crime, and terrorist acts, thereby undermining peace, reconciliation, safety, security, stability and sustainable social and economic development.

II. Principles

Some key principles are:

- *Guided by* the purposes and principles enshrined in the Charter of the United Nations, and reaffirming State Parties respect for and commitment to their obligations under international law;
- *Recalling* the obligations of all States to comply with United Nations Security Council decisions, in particular arms embargoes and sanctions;
- *Reaffirming* the rights and obligations of States under international law, including international human rights law and international humanitarian law.

III. Goals and Objectives

The ATT should seek to:

- *Create* high common international standards for the import, export and international transfer of conventional arms;
- *Prevent* international trade and transfers of conventional arms that provoke or prolong armed conflict, violate UN arms embargoes, and that contribute to serious violations of

- international human rights law and international humanitarian law, the displacement of people, organized crime, terrorist acts and poverty;
- *Contribute* to regional and international security and stability, by promoting transparency and greater responsibility in the trade and transfer of conventional arms;
 - *Create* controls to prevent the diversion of conventional arms from legal markets and uses to illicit markets and authorized uses and users.

IV. Scope

The ATT should cover all types of international trade, transfers and transactions in “conventional arms.”

Conventional Arms

“Conventional arms” should be defined in the Treaty as all weapons, munitions, armaments and related material, including parts, components and technologies, used for military and internal security operations, including:

- a. Tanks
- b. Military vehicles
- c. Artillery systems
- d. Military aircraft (manned or unmanned)
- e. Military helicopters (manned or unmanned)
- f. Naval vessels (surface and submarine vessels armed or equipped for military use)
- g. Missiles, missile systems and projectiles (guided or unguided)
- h. Small arms
- i. Light weapons
- j. Munitions and ammunition for use with weapons defined in subparagraphs (a) – (i).
- k. Parts or Components specially and exclusively designed for any of the categories in subparagraphs (a)-(j).
- l. Technology and Equipment specially and exclusively designed and used to develop, manufacture, or maintain any of the categories in subparagraphs (a) - (k).

A primary obligation in the ATT should be the requirement that States Parties establish or maintain a national publicly available control list.

Transfers, transactions and activities to be covered by the Treaty

The ATT should cover all types of international trade, transfers and transactions in conventional arms: this includes exports, imports, re-exports, re-imports, transits, transshipments, temporary imports, State-to-State transfers, re-transfers, gifts, sales, loans, and leases. International transfer should mean the physical movement of equipment and the tangible or intangible movement of technology into or from national territory and includes the transfer of title to and control over the equipment and technology. Controls on arms brokering, arms transport and arms finance activities should also be included in the ATT.

The ATT should not apply to:

- a. the regulation of the movement or possession of conventional arms within the territory of a State Party;
- b. to the physical movement, sending in any manner, or transfer of title, control or ownership of conventional arms from a State's territory to that State's own armed forces or other official personnel within another State's territory;
- c. the physical movement or sending in any manner of conventional arms from one State to a storage facility in another State's territory which remains under the title and control of the first State.

V. Criteria and parameters

Decisions on international transfers should remain under national control, but a central tenant of the ATT must be that States ensure that all international transfers of conventional arms relevant to their jurisdiction are subjected to strict control and authorized according to internationally agreed standards.

Each State Party shall assess on a case-by-case basis, applications or proposals to authorize an export or international transfer of conventional arms, undergoing a risk assessment of the potential use of the conventional arms and the end-user and end-use.

A State Party shall not issue an authorization where the export or international transfer under assessment:

- a. would violate any measure adopted by the Security Council acting under Chapter VII of the Charter of the United Nations, including UN arms embargoes;
- b. would violate any arms embargo adopted by a regional or sub-regional organization to which it is a party;
- c. would violate any treaty obligation on non-proliferation, small arms and light weapons or other arms control and disarmament agreement to which it is a party;

The ATT should require States Parties not to export or international transfer conventional arms internationally where there is a substantial risk that the conventional arms will be used to commit or facilitate serious violations of international human rights law or international humanitarian law (including gender based violence and sexual violence against women), perpetuate a pattern of or facilitate high levels of homicides with firearms, or seriously undermine poverty reduction objectives. Where this is the case, the export or transfer authorization should be denied until there is clear evidence that the substantial risk has been removed and mitigated.

In undertaking a risk assessment as part of the decision making process of an export or international transfer authorization, the ATT should require States to consider, *inter alia*:

- a. the compatibility of that export or international transfer with its international, regional or sub-regional commitments or decisions on non-proliferation, small arms and light weapons, arms control and disarmament;
- b. whether the export or international transfer would adversely affect regional security and stability, or contribute to the excessive and destabilizing accumulation of arms;
- c. whether the export or international transfer would undermine peace-building or post-conflict reconciliation and reconstruction initiatives;
- d. the desirability that States should meet their legitimate security and defence needs with the least diversion for arms of human and economic resources;
- e. the record of compliance by the recipient State with end-use undertakings and transparency in the field of conventional arms control;
- f. the ability and willingness of the recipient State to implement stockpile management and security procedures and to protect against unauthorized transfers, loss, theft and diversion.

VI. Implementation

National authorization systems:

To implement the ATT States Parties must take measures to establish or maintain a comprehensive system to control the export, import and transfer of conventional arms. An underlying principle of such a system should be that conventional arms cannot be imported, exported or internationally transferred without the awareness and consent of all States involved.

The ATT should require a State Party to:

- designate competent national authorities, define their respective duties and responsibilities, and ensure adequate coordination at the national level between those authorities to have a transparent and effective national control system;
- take measures to ensure the authenticity of authorisation documents;
- require valid export and international transfer authorizations to be issued in writing, containing minimum disclosure requirements, prior to export and transfer;
- require a certified end-use/user certificate or assurance, where necessary, prior to issuing an export authorization;
- establish a clear legal framework for arms brokering, arms transport and arms financing activities that includes registration of such actors, licensing of such activities; the disclosure of all brokers and their location in any export or import authorisation application and the disclosure of transport and financial service providers;
- adopt legislative and other measures as necessary to establish as criminal offences the import, export, transit, trans-shipment or other international transfer of conventional arms, or the brokering, transporting or financing of conventional arms, which are not authorised in accordance with the terms of the Treaty;

In an effort to prevent the diversion of conventional arms, including small arms and light weapons, from the legal into illicit transfers, the ATT should require each State party to take appropriate measures, including:

- a. to ensure the physical security and lawful management of conventional arms at the time of import, export, transit, trans-shipment or any other form of international transfer through its territory;

- b. to ensure and if necessary increase the effectiveness of national controls of the import, export and other international transfer of conventional arms, including, where appropriate, border controls, and of police and customs transborder cooperation.

National record keeping

- The ATT should require that all States keep records of the international arms transfers that the national authorities have authorised and that have been cleared by customs. Records should be kept for 20 years.

International reporting obligations

The ATT should require:

- Annual public national reports by States covering all generic types of conventional arms and forms of international transfer defined under the ATT;
- Reports detailing national implementation of obligations under the ATT.

VII. International Cooperation

The ATT should set out general provisions to enhance international cooperation amongst States Parties, including:

- States Parties shall exchange relevant case-specific information, consistent with their respective domestic legal and administrative systems, on matters such as authorised importers, exporters and brokers of conventional arms and ammunition;
- For the purpose of law enforcement and upholding the purposes of the Treaty, exchange among States Parties relevant information on matters, for example, case-specific information on agents, brokers and other actors that are suspected or known to be involved in the illicit trade;
- States Parties will, when appropriate, afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the violations of the provisions of this Treaty.

International assistance

Provisions for strengthening capacity and building national capabilities are essential elements for the implementation of the Treaty, including provisions relating to:

- Each State Party may request the United Nations system, regional organisations, other States Parties, or other competent intergovernmental or non-governmental institutions for information and assistance to fully implement their obligations under this Convention.
- Consistent with their respective legal and administrative systems, State Parties may exchange relevant information and best practices on exports, imports and other international transfers of conventional arms.
- States Parties will designate one or more national points of contact to facilitate cooperation and information exchange between State Parties, and to act as a liaison on all matters relating to the implementation of the ATT.