

10th VIRTUAL MEETING OF THE ATT EXPERT GROUP

Arms transfers and Russia's invasion of Ukraine

25 May 2022

Key takeaways

The meeting generated a lively conversation about the way states are approaching arms exports to Ukraine and the risk calculus in which they are engaging. This debate potentially raises questions as to whether it might be beneficial to organise a discussion on this subject within the context of the formal Arms Trade Treaty (ATT) process.

Ukraine's response to the Russian invasion appears to be a clear-cut case of self-defence and it is arguable that it is both legitimate and necessary to provide at least some types of arms to the Ukrainian government. At the same time Ukraine should be reminded of the importance of adhering to International humanitarian law (IHL) and should be encouraged to take steps to join the ATT.

ATT States Parties that are considering exporting arms to Ukraine must comply with the provisions of the ATT (notably Articles 6, 7 and 11) irrespective of how urgently required the weapons are. In so doing, it is vital that exporting States Parties consider the long-term risks of the arms exports – not just the immediate ones.

There are a number of risks associated with arms transfers to Ukraine:

- Arms (especially small arms, light weapons and ammunition) may be widely distributed among civilians who are untrained vis à vis IHL and where there is little oversight or accountability.
- In a fluid and unstable situation, arms will be particularly prone to diversion, with different types of weapons associated with different diversion-related consequences, for example sophisticated or sought-after weapons (such as MANPADS) may be taken out of the country by foreign fighters.
- Weapons may be used in abuses of international law, for example through revenge attacks against pro-Russian civilians in Ukraine.
- Weapons may fuel and enable violent crime, including gender-based violence, within the country.
- Some weapons, such as high-explosive weapons, may have indiscriminate effects or may be used indiscriminately in violation of IHL. Particular consideration should be given to their use in densely populated areas.
- Some weapons may be old and pose a higher risk of contributing to unexploded ordinance; a rapid influx of new arms and ammunition may also expose stockpile management issues such as a lack of planning.
- Arms transfers could fuel or further escalate the conflict and lead to increased civilian harm, for example if they lead to an escalation of the conflict, which manifests through the use of biological, chemical or even nuclear weapons.
- In the longer term, the possible spread of weapons to civilians through diversion and other means will likely present socio-economic challenges and barriers to sustainable development, in both Ukraine and neighbouring countries.

It is difficult to see how risk mitigation measures can be effectively implemented given the current situation in Ukraine; however certain steps must be taken, for example:

- guidance and training on IHL should be provided to the Ukrainian army
- insistence on the Ukrainian authorities providing written no-re-export reassurances
- proper marking and record-keeping of all arms transferred
- effective tracing of illicit weapons
- information exchange with partners on the ground to promote robust and effective risk assessments
- budgeting for the delivery of assistance to the recipient after conflict, for example on proper weapons and ammunition management, DDR initiatives, and so on
- destruction or return to the original exporter of weapons no longer required

Prior to 14 April 2022, the Russian military build-up was supported, in part, by exports to Russia of dual-use goods by European Union (EU) member states and by their fulfilling existing contracts under arms deals concluded prior to the adoption of the embargo in 2014.

This is an obvious loophole, which should be closed by ensuring that, in the future, embargoes apply to existing arrangements or, at the very least, include a cut-off date for fulfilling extant contracts.

The situation on the ground in Ukraine and the use of weapons by armed personnel need to be continually monitored and decisions to provide arms should be periodically reviewed, as provided for by Article 7.7 of the ATT. Transfers under the European Peace Facility will be subject to on-site inspection where possible.

The US is now the largest exporter of arms to Ukraine and there are concerns regarding the lack of US oversight of the use of the arms being transferred and little consideration of the long-term implications of transferring such large quantities of weapons. The concern remains that at least some will not remain in Ukraine permanently and that the US has not learned the lessons from past experience in Iraq and Afghanistan.

The ATT is only as good as its implementation; it is an integral part of the 'rules-based international system' that Russia is trying to undermine. It behoves ATT State Parties to ensure that they themselves fully adhere to the rules-based international system and put their own houses in order (for example, in respect of arms transfers to the warring parties in Yemen). Mechanisms such as continuous risk assessments under Article 7.7 and the EU embargo (mentioned above) do exist; however states must take it upon themselves to properly implement them.