Introduction

Conventional arms transfers are among the most sensitive issues for the international community, and the question of supplying arms to non-state actors is especially difficult.\(^1\) For many states, providing weaponry to any recipient other than a state is a mistake to be avoided and discouraged. To others it is a fundamental right of statehood and a useful tool of global influence and moral assertion.

Under Article 51 of the UN Charter, all UN Member States have a right to self-defense, which usually is interpreted to mean states can legitimately trade in military equipment vital to their national security. This means there is nothing wrong with the arms trade generally, so long domestic and international law is followed. Arms deals many not seem moral or reasonable, but so long as the recipient is banned by the UN proper documentation like export licenses (official approvals) are in hand, and the money gets paid, they are not illegal. The illegal trade usually involves prohibited technologies (state secrets) or transfers to banned recipients (like Iran or North Korea).

The 193 UN Member States generally agree on the right to buy and sell military equipment to other Member States, but transfers to non-state actors (NSAs) are something else altogether. Whether they are ethnic insurgencies, secessionist rebels, religious or sectarian purists, regional militias or groups plotting the violent take-over of a government, non-state actors are not Member States. They are not recognized as sovereign under international law.

Current UN Security Council Arms Embargoes, 2017

<table>
<thead>
<tr>
<th>Country</th>
<th>Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central African Republic</td>
<td>2013-</td>
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<tr>
<td>Democratic Rep. of Congo</td>
<td>1993-1994</td>
</tr>
<tr>
<td>Ivory Coast</td>
<td>2004-</td>
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<tr>
<td>Eritrea</td>
<td>2010-</td>
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<tr>
<td>Iran</td>
<td>2006-</td>
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<tr>
<td>Libya</td>
<td>2011-</td>
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<tr>
<td>North Korea</td>
<td>2006-</td>
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<tr>
<td>Lebanon</td>
<td>2006-</td>
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<tr>
<td>Somalia</td>
<td>1992-</td>
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<tr>
<td>Sudan</td>
<td>2004-</td>
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</tbody>
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For a state to send arms to an NSA does not violate international law, unless there is a specific UN embargo on supplying arms to the receipt, or the supplier is banned under a Security Council resolution. Those exceptions cover a lot of cases. But that generally leaves states free to assist sub-state groups as they chose.

While arms transfers to NSAs always are controversial, most major powers and many middle sized or smaller states make them standard practice. Typically they supply groups who serve their interests by attacking enemy governments, or groups that share an ethnic, ideological or revolutionary affinity.

Because international law is first and foremost the law of sovereign states, arms transfers to non-state actors are always controversial. They violate the assumption that states work

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\(^1\) Enomoto, Tamara, Controlling Arms Transfers to Non-State Actors: From the Emergence of the Sovereign-State System to the Present’, *The Journal of Research Institute for the History of Global Arms Transfer*, no. 3 (January 2017), http://www.kisc.meiji.ac.jp/~transfer/paper/pdf/03/1.
exclusively with other states, that legitimacy is the key to international action and normative principles. Arms for sub-state groups usually means interfering in the domestic affairs of another state, implicitly challenging its authority, violating its domestic law, probably challenging its right to rule. Sending arms to an NSA is not a necessarily tantamount to a declaration of war against a state, but it is easy to see why a state might confuse it for that.

It is no surprise that many UN Member States are strongly opposed to anything that weakens their sovereignty over their territory, and seek to eliminate arms transfers to non-state actors.

Another, very diverse groups of states want to preserve the right to supply weaponry and military assistance as they themselves see fit, to maximize their freedom of action. This makes for very strange bedfellows and unlikely alliances. For example, Iran, Russia and the United States all want to preserve the right to help sympathetic and favored non-state groups. Their insistence brings them into sharp conflict with their traditional allies, including states receiving their support.

More and more of the world’s armed conflicts involve non-state actors. War increasingly is a synonym for rebellion, revolt, insurgency or terrorism, conflicts fought with at least one side a non-state group. This alone makes controlling their access to weapons and military assistance more important than ever.

### Specific technologies

NSA arms transfer controversies focus especially on specific technologies, which usually are small arms: hand grenades, firearms, machine guns and small unguided rockets (rocket-propelled grenades, RPGs). The UN created a regime in 2001 to deal with this problem, the *UN Programme of Action on the Illicit Trade in Small Arms* (the PoA), which calls on Member States to prevent illicit arms transfers, such as arms supplies for crime, terrorism or guerrillas. The PoA leaves the definition of what is illicit up to each Member State. They are expected to apply their own domestic law. The document does not ban transfers to NSAs, nor does it try to define what they are and are not.²

This leads to major insistencies. For example, anyone bringing a gun from Egypt to Sudan, for example, without an official export licenses is guilty of a felony. That is the international norm. But a United States citizen who brings a gun across the border from Arizona to Mexico probably has not broken any US laws, unless the gun was stolen. An estimated 250,000 firearms are transferred this way every year from the United States to Mexico, mostly arming organized crime, and contributing greatly to Mexican armed violence. The issue is a major controversy between the two countries.³

Any technology used by non-state fighters is of concern. Careful studies have found that insurgents and terrorists rely not just on conventional firearms, but improvised weapons (especially improvised explosive devices, IEDs) made from legally available parts that are not normally subject to control. Components commonly found in IEDs include commercially available parts such as nitrate fertilizer, telephones, cables, electrical components and containers, as well as restricted


items like detonating cord. An important advance would be improving export controls—such as customs and immigration inspections—to apprehend such legal technologies when suspected of illegal use.\(^4\)

The technology that gets the most attention is Man-Portable Surface Air Missiles (MANPADs), short-range anti-aircraft weapons like the Russian SA-7 Strella (Arrow) from the 1970s and it’s much more advanced cousin, the SA-18 Igla (Eagle), or the US FIM-92 Stinger. MANPADS are not cheap or easy to use, but they are easy to hide and very dangerous, especially against smaller and slower aircraft and helicopters. Civilian aircraft are especially vulnerable. The global inventory is estimated at 500,000 to 1 million, mostly under control of state authorities, but there is leakage to the black market and non-state actors.\(^5\) At least 84 non-state actors have had MANPADS at some point in recent years.\(^6\)

Transfers of MANPADS to non-state groups started in the early 1970s when the Soviet Union provided SA-7s to the Viet Cong for their fight against the government of South Vietnam and the United States. The United States famously provided them to the Afghan Mujahedeen fighting against the Soviet Union in the mid-1980s. Since then the United States reverred its polices and now works to keep such weapons out of the hands of non-state actors, buying them from the black market when possible and helping government to destroy their surplus stocks. More recently, the United States appears to have flipped its policy again. The United States is suspected of supplying Soviet-style MANPADS to rebel groups fighting Syria beginning roughly in 2014, especially Kurdish groups.

While many governments share intelligence and cooperate to intercept illicit MANPADS transfers, and some governments have made all transfers of MANPADS to non-state actors illegal under their domestic law, there is no international prohibition on supplying them to non-state actors.


Specific suppliers

During the Cold War, virtually all arms transfers were organized through the two rival blocs. Although the Soviet Union and United States did not make all arms transfers to non-state actors themselves, they often worked through sympathetic allies. The Soviet Union often relied on Cuba or East Germany, for example. China was the only major supplier directly involved in the trade to revolutionary groups. Today many other states have emerged as major regional powers, supplying non-state actors they support politically.

The United States almost certainly is the biggest supplier of arms to non-state groups, especially since the 2003 invasion of Iraq. The largest of these transfer may have been inadvertent, the result of poorly designed and incompetently administered polices, not deliberate choice. The United States supplied at least 1.45 million small arms to government security services and sympathetic militias in Afghanistan and Iraq, and a large proportion of these were lost.

According to a prominent report, ‘the Pentagon provided more than 1.45 million firearms to various security forces in Afghanistan and Iraq, including more than 978,000 assault rifles, 266,000 pistols and almost 112,000 machine guns. These transfers formed a collage of firearms of mixed vintage and type: Kalashnikov assault rifles left over from the Cold War; recently manufactured NATO-standard M16s and M4s from American factories; machine guns of Russian and Western lineage; and sniper rifles, shotguns and pistols of varied provenance and caliber, including a large order of Glock semiautomatic pistols, a type of weapon also regularly offered for sale online in Iraq.’ Their fate remains unknown to this day, but these weapons are widely suspected of fueling violence throughout the Middle East and South
The biggest non-state recipient of American-supplied military equipment today appears to be Kurdish militias in Iraq. Other Kurdish groups in Syria received American assistance during the fight against Islamic State.⁸ The United States said it started distributing arms to Syrian Kurdish militia battling to help retake the city of Raqqa from Islamic State, moving ahead with a plan that angered Turkey, which strongly opposes strengthening Kurdish groups which seek control over Turkish territory and commit acts of terrorism there.

Washington’s support for the Syrian Kurds, in particular, has been a major thorn in U.S.-Turkish relations for several years, given Turkey’s concerns about the Kurds’ territorial aspirations. In particular, Turkey has feared the establishment of a contiguous, Kurdish-held canton in northern Syria that runs along the Turkish border. As the fighting against Islamic State declined in November 2017, the United States appears to have reduced its support of Syrian Kurdish groups, but maintained it assistance to Iraqi Kurds.⁹

Russia is a much smaller supplier to non-state groups, active exclusively in neighboring territory of Ukraine, where Russia is widely suspected of supplying military and intelligence guidance, weaponry and probably military personnel (the so-called ‘little green men’ in anonymous uniforms) fighting against the foes for the Government of Ukraine for separation in Eastern Ukraine, especially the Donetsk region. The most famous Russian supplied weaponry was the Buk (SA-11) surface-to-air missile system that destroyed Malaysian Airlines flight 17 on 14 July 2014, killing all aboard.¹⁰

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Iran has emerged as a leading supplier for non-state groups in the Middle East and North Africa. Iran supplies small arms and ammunition, some from its own production, but also re-exporting weaponry it received from China or North Korea. The most prominent recipient for Iranian armaments are Shi’ite groups who share a religious identity with Iran, especially Hezbollah and the Houthi insurgency in Yemen. Hezbollah is a political party that control the southern region of Lebanon. It also is part of the country’s governing coalition. Hezbollah fought a major war against Israel in 2006 and fights today in Syria, where it is an ally of the Syrian government of Bashar al-Assad.

In Yemen, the northern Shi’ite Houthi rebelled against the government in 2014 and soon took control, of much of the country. Many arms shipments to the Houthi have been intercepted by NATO naval patrols in the Arab Sea and Indian Ocean, most famously a shipment of some 4500 rifles and machine guns. But a lot of weaponry has gotten through, including large ballistic missiles, capable of reaching targets throughout the region. Iranian-supplied small arms increasingly are found in North Africa as well, sometimes arming UN Member States, other times their insurgent adversaries.

The United Nations expressed concern to the Security Council that Iran may have violated an arms embargo by supplying weapons and missiles to Lebanese Shi’ite group Hezbollah, according to a confidential report. Israeli officials maintain that Iran has sent Hezbollah more than 120,000 missiles and rockets, some with ranges over 300 km, capable of targeting all of Israel. Saudi Arabia also has called on the UN Security Council to put an end to Iranian weapons smuggling to the Houthi militia in Yemen as the clandestine shipments continue despite a UN resolution forbidding it. Getting resolutions specifically condemning Iran through the Security Council is tricky, because China and Russia usually will use their vetoes to defend the sovereign rights of Member States to act in their own interests.


**Turkey** is a leader against illicit arms transfers, and vigorously opposed arms transfers to Kurdish militias that complicate its southern border. But Turkish arms keep showing up where they are not appreciated by everyone. Among the most common handguns in Libya and Chad are Turkish handguns. Usually these are converted blank firing guns, sold as non-lethal but easily converted—no mechanical work is necessary—to fire lethal ammunition.\(^{16}\) Weapons from Turkey also have been found by UN investigators in the hands of militias fighting in Libya.\(^{17}\)

The trickiest arms transfers are those that appear to violate the law and policy of the country they come from. For example, China is not widely suspected of aiding revolutionary groups or insurgents today, but Chinese weaponry is seized by authorities, especially in Africa. For example, the government of Nigeria was embarrassed repeatedly in 2017 when smuggled weapons were intercepted by the Nigeria Customs Service (NCS). In January, six hundred and sixty-one (661) pump action rifles illegally imported from China were seized at in Lagos. In June four hundred and forty (440) pump action rifles which originated from Turkey were seized there. In both cases, illegal trading, not government policy, seemed to be at work. But the seizures left no doubt the governments of China and Turkey can do more.\(^{18}\)

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As destabilizing as illicit transfers are, and even legal transfers to non-state actors, it would be a mistake to see controls on this trade as a solution to all insurgent and terrorist violence. In Palestinian Gaza, military equipment is smuggled from Iran. However, Palestinian terrorists on the West Bank do not have the same kind of support. They appear to receive very little military equipment from foreign sources. Instead, they rely more on garage-made firearms and improvised explosive devices (IEDs). A series of Palestinian attacks against Israelis in 2016 in the West Bank used much simpler, improvised equipment, killing 34 people and wounding hundreds more. At first, the knife was the weapon of choice. Modern firearms are beyond the reach of most Palestinians, especially the unorganized young people. An M16 assault rifle, stolen from an Israeli soldier, for example, can cost USD 15,000 on the black market. So the attackers are buying home-made guns. Many of these are versions of the Carl Gustav submachine gun, a Swedish design from the Second World War. A simple ‘Carlo’, based on an 80-year-old design, can be had for as little as USD 500. Garage-made guns have reputation for being unreliable. They are not much use for fighting an insurgent war. But for raiding and terrorist attacks, they can be deadly enough.\(^{19}\)

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The Question of Arms Transfers to Non-State Actors

Arms Trade Treaty (ATT)

The most important effort to control arms transfers to non-state groups came in the negotiations that lead to the 2013 Arms Trade Treaty (ATT). The ATT establishes humanitarian standards for arms trades, so that arms will not be sold that lead to grievous violations of human rights or genocide. But it leaves interpretation of these standards up to each Member State. Many negotiators sought a ban on transfers to NSAs, but encountered enough opposition to kill the proposal. Major problems were which NSAs. Everyone can agree on the need to stop weapons from reaching terrorists, but definitions proved impossible.

A strong advocate of restrictions was Syria. Syrian U.N. Ambassador Bashar Ja'afari said his government opposes the arms trade treaty because it does not ban the sale of weapons to non-state actors and “terrorists” like those it says are active in Syria. The treaty does not ban transfers to armed groups, but says all arms transfers should be subjected to rigorous risk and human rights assessments first. Indeed, the ATT does not stop arms from reaching even Islamic State, if they are approved by a sympathetic government, or a government is unwilling to stop them.

At the ATT negotiations, opposition to a ban on arms transfers to non-state groups was led by the countries of the Arab League. With their support of Palestinians in mind, they agree on the need to preserve the right to offer all forms of assistance—humanitarian, economic and military—to Palestinian liberation organizations and humanitarian groups. Even governments working to stop the flow of arms to specific Palestinian groups—like Egypt, which works aggressively to close its border with Gaza to keep arms from reaching Hezbollah—were opposed to an outright ban.

Country and Bloc Positions

The following countries and blocs made statements supporting a prohibition on arms transfers to non-state actor during the negotiations for the Arms Trade Treaty (ATT):

Member States

- **Brazil:** ‘The instrument must contain (…) a clear prohibition of transfers to unauthorized non-State actors’.
- **China:** ‘The arms trade should be strictly limited to transactions between sovereign states and transfers of arms to non-State actors should be prohibited, so as to effectively combat and curb illegal trafficking and misuse of weapons’.
- **Cote d’Ivoire:** ‘specified that the transfer of arms to non-state actors

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should be specifically banned by an ATT.

- **Cuba**: ‘Cuba believes that a conventional arms trade treaty will be effective only if it expressly prohibits arms transfers to non-State actors’.

- **India**: ‘It is important for my delegation, and indeed for many others, that there be a clear reference prohibiting transfers to non-state actors’.

- **Indonesia**: ‘The arms trade treaty should provide provisions to prevent diversion and prohibit transfers that are likely to be used in conflicts by non-State actors or negatively affect the regional security’.

- **Liberia**: ‘There must be prohibition of all arms transfers to non-State actors that are not explicitly authorized under international law’.

- **Mali**: ‘Member States should prohibit, without exception, all transfers of arms to non-State actors if such transfer is not authorized by the importing Member State’.

- **Nigeria**: An ATT needs to contain ‘a clear prohibition of transfer to unauthorized non-State actors’.

- **Turkey**: ‘The main focus of the arms trade treaty should be prevention of the acquisition of arms and weapons by non-State actors’.

- **Zimbabwe**: ‘The proposed Treaty should be one that seeks to consolidate States and prevent the transfer of arms into the hands of rebels and some other such groups that seek to destabilize and or unconstitutionally remove legitimate governments’.

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**Bloc**

- **African Group**: ‘A future ATT should contain a clear requirement that all transfers of conventional weapons and SALWs must be expressly authorized by competent government authorities of the importing state, as well as a clear prohibition of transfers to unauthorized non-State actors’.

- **CARICOM (The Caribbean Community)**: ‘The proposed treaty should prohibit from participation in the trade in conventional arms non-State actors that may be acquiring them for purposes that are hostile to the interests of peace, security and stability’.

- **ECOWAS (Economic Community of West African States)**: stated that arms transfers should not be made to non-State actors without the express authority of the State in which they are located.

- **Latin America**: Argentina, Chile, Colombia, Guatemala, Jamaica, Mexico, Peru, Trinidad and Tobago and Uruguay: ‘The ATT should make clear that only transaction among states are permitted. Permission of entry of arms to any State must be based on the permit given by the Government of such State’.
Bibliography


The Question of Arms Transfers to Non-State Actors


