

5 URGENT QUESTIONS ABOUT ARMS TRANSFERS TO UKRAINE

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The provision of military aid to the Ukrainian government has been a key pillar of Western efforts, led by the United States, to counter the 2022 Russian invasion of Ukraine. To bolster the ability of Ukrainians to defend their country, Western states have authorized unprecedented levels of military aid to Ukraine, with remarkable rapidity.

This assistance has been consequential. After a year of fighting, Ukraine continues to mount a formidable resistance, while Russia has so far failed to achieve its military objectives. Moreover, the prevailing sentiment in Western capitals remains one of solidarity with the Ukrainian cause and resistance, as Ukrainian President Volodymyr Zelenskyy advocates not only for continued military assistance to Ukraine but for a qualitative improvement in the weaponry provided. Increasingly he frames his country's struggle as key in the defence of the international order from Russian aggression.

Since February 2022, the United States has committed \$26.7-billion USD in military aid to Ukraine. According to available estimates, as of August 2022, the next top providers of military aid by value were the United Kingdom, the European Union, Germany, Poland, Canada, and Norway. With the notable exception of the United States, all the states that have pledged any significant level of military aid to Ukraine are states parties to the Arms Trade Treaty (ATT).

The increasing pace and value of military transfers to Ukraine raise questions about the effective application of domestic and international export controls—and about the broader impact of those weapons on the direction of the conflict. Here are five questions that merit attention:

1 Is military aid to Ukraine being assessed with the same rigour that should inform all other military exports, in particular by states parties to the Arms Trade Treaty?

Article 7(1) of the ATT obliges states parties to assess the potential risks associated with all exports of military goods. If any such transfers present an overriding risk of leading to any of the negative consequences listed in the Treaty text, an export cannot be authorized. This assessment must be undertaken in an “objective and non-discriminatory manner,” even if such transfers take the form of military aid.

The sheer speed and volume with which military aid has been provided to Ukraine, as well as the atypical situation this crisis presents, have led to concerns that some aspects of the ATT’s risk assessment criteria may have been relaxed.

2 Has the risk of diversion been effectively assessed and addressed?

Arms diversion threatens peace and security and can undermine the legitimacy of conflict-affected states. Non-state armed groups and organized criminal organizations are often the beneficiaries of both the deliberate and inadvertent diversion of weapons from their legitimate end-users or uses. Preventing diversion is a core objective of the ATT; it is mentioned in the Treaty’s preamble and is specifically addressed under Article 11.

Few substantiated reports of arms diversion have come out of the conflict in Ukraine over the last year. However, because of the volume of arms being provided to Ukraine and the possibly hampered capacity of the Ukrainian government to manage those arms, a clear and present risk of diversion to illegitimate third parties exists – either during the conflict or following it.

3 How is military aid being monitored after its transfer?

Post-shipment control (PSC) measures, while not explicitly required under the ATT, have been identified as good practice in monitoring for, and thereafter preventing, the potential diversion of weapons systems. The conflict in Ukraine is an obvious scenario in which PSC measures could and should be effectively implemented by those states providing military aid.

Some states have reportedly established ad hoc post-shipment control mechanisms to monitor for the potential diversion of military aid provided to Ukraine. However, not all states providing military aid have joined in these efforts; as well, the status, reach, and effectiveness of the methods currently being employed are unclear.

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What precedent is being set for applicable arms control regimes?

There has been no armed conflict of the magnitude of the one in Ukraine since the ATT came into effect. Not in living memory has there been such a volume of arms transferred to a single recipient from multiple suppliers in so short a span of time. In this singular situation, the extent to which states providing military assistance to Ukraine are abiding by their domestic and international export controls obligations remains unclear.

What is quite clear, however, is that the legal regime intended to regulate the international transfer of conventional weapons does not exempt states parties from practising the usual rigour over export authorizations and risk assessments during times of conflict.

States' compliance with arms control obligations during the conflict in Ukraine will set a precedent. If it is determined that rigour in risk assessments has been compromised to provide speedy aid to Ukraine, the question then becomes: At what point do states parties return to full compliance?

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What other risks could the provision of military assistance to Ukraine carry?

The provision of military aid to Ukraine has wide-ranging implications for the course of the conflict. Although NATO insists that its members are not parties to the conflict, their continuing provision of military assistance increases the likelihood that NATO will be drawn in. This could be precipitated if Russia were to take action against the supply lines to Ukraine, directly targeting NATO equipment, personnel, or territory.

A conflict with the United States and other NATO members on the Ukrainian side and Russia on the other would in fact involve parties that possess more than 95% of the world's nuclear weapons. A prime scenario under which nuclear weapons might be utilized involves escalation from conventional warfare, which is inevitably prolonged by the ready availability of arms.

Beyond nuclear risks, the impact of military assistance to Ukraine has led President Zelenskyy and others to declare that a decisive military victory over Russia is possible—a belief that could significantly hinder or delay a negotiated settlement to the conflict.



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