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The Arms Trade Treaty: RC/RC Movement action in advance of the UN negotiation



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Geneva, 19 April 2012



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Why an issue for the Movement?

At the request of States, ICRC's 1999 arms availability study: impacts on civilians and IHL based on ICRC's field experience

Widespread availability of weapons can:

- increase tensions and civilian casualties
- hamper delivery of assistance
- make violations of international humanitarian law (IHL) more likely



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Why an issue for the Movement?

ICRC's 2011 "Health Care in Danger" report gives examples of impacts of armed violence on health care, including attacks on:

- Health-care facilities.
- The wounded and sick.
- Health-care personnel.
- Medical vehicles.



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The duty to ensure respect of IHL

States have the duty to **respect and ensure respect** for international humanitarian law.

(Common article 1 GC, API, Rule 144 CIHL)



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This entails:

- a) an obligation **not to encourage** violations;
and
- b) an obligation to **take all possible steps to put an end to and prevent violations.**



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Arms Transfers: Ensuring Respect

- Before authorizing an arms transfer, States must **assess the likelihood of serious IHL violations in the recipient State.**

- States should not authorize a transfer of arms if there is a **clear risk that they will be used to commit serious violations of IHL.**



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2003 – 28th International Conference of the Red Cross and Red Crescent

"States should make respect for international humanitarian law one of the fundamental criteria on which arms transfer decisions are assessed. They are encouraged to incorporate such criteria into national laws or policies and into regional and global norms on arms transfers."



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2007 – 30th International Conference of the Red Cross and Red Crescent

"in light of the obligation of States to respect and ensure respect for international humanitarian law, adequate measures to control the availability of arms and ammunition are required so that they do not end up in the hands of those who may be expected to use them in violation of international humanitarian law".



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2011 – 31st International Conference of the Red Cross and Red Crescent

“States should make respect for international humanitarian law one of the important criteria on which arms transfer decisions are assessed. States are encouraged to make efforts to incorporate such criteria into national laws or policies and into regional and global norms on arms transfers.”



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Historical importance of an ATT

- First global effort to regulate trade in all conventional weapons
- First global negotiation to link respect for international humanitarian and human rights law to arms transfers
- Would create a framework of responsibility and accountability
- Tremendous potential for protecting civilians



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Key objectives of an ATT

- Strong IHL criteria for all transfers
- Broad scope: all conventional weapons and ammunition
- Denial when clear risk of serious violations of IHL



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The Arms Trade Treaty process

"A legally binding instrument on the **highest possible** common international standards for the **transfer of conventional arms.**"

UN GA Resolution 64/48, 2010



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The Arms Trade Treaty process

UN GA Resolution 64/48 (2010):

- 2012: UN Conference on the ATT to elaborate a “legally binding instrument on the highest possible common international standards for the transfer of conventional arms”.
- 2010, 2011, 2012: Preparatory Committee sessions on Elements, Principles, Goals and Objectives, Scope, Criteria, Assistance and Cooperation, Implementation, Procedural issues.
- (2011: Chairman’s draft paper.)



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Goals and Objectives

"(...) preventing international transfers of conventional arms that contribute to or facilitate: human suffering, **serious violations of international human rights law and international humanitarian law**, violations of United Nations Security Council sanctions and arms, embargoes and other international obligations, armed conflict, the displacement of people, organized crime, terrorist acts (...)"



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Scope

- Weapons & ammunition (categories of weapons, ammunition, components, technology, etc.)
- Transactions ("transfers" and transactions such as import, export, transit, trans-shipment, leases, loans, etc.)



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ICRC position: a broad scope

- All conventional weapons and their ammunition.
- All transfers, including import, export, transit, trans-shipment, leases, loans, gifts, etc.



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Transfer criteria

Transfer criteria are the standards that States should apply when determining whether to authorize a transfer of arms.



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Categories of transfer criteria

- Based on existing express international obligations prohibiting transfers, such as UN Security Council arms embargoes.



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- Based on potential consequences of the transfer of weapons (e.g. risk of use in violation of international law).



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IHL-related criteria in Chairman's draft

“A State Party shall not authorize a transfer of conventional arms if there is a substantial risk that those conventional arms would: (...)

2. Be used to commit or facilitate serious violations of international humanitarian law.

3. Be used to commit or facilitate serious violations of international human rights law.

4. Be used to commit or facilitate serious violations of international law, including genocide, crimes against humanity and war crimes.

(...)

6. Be diverted to unauthorised end users for use in a manner inconsistent with the principles, goals, and objectives of the Treaty, taking into account the risk of corruption.

(...)

8. Be used to support, encourage, or perpetrate terrorist acts.”



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ICRC position: a strict IHL criterion

➤ Before authorizing an arms transfer, States must **assess the risk of serious IHL violations in the recipient State.**



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➤ States should **not authorize** a transfer of arms if there is a **clear risk that they will be used to commit serious violations of IHL.**



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Criteria in arms transfer instruments today

- EU Common Position on Arms Exports (2008).
- ECOWAS Convention on SALW (2006).
- Central Africa Convention for the Control of SALW (2010).
- Nairobi Protocol Best Practice Guidelines (2005).
- Wassenaar Arrangement Best Practice Guidelines for SALW Exports (2002).
- OSCE Document on SALW (2000).
- Code of Conduct of the Central American States on the Transfer of Arms (2005).
- OAS Model Regulations for the Control of Brokers of Firearms (2003).



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**EU Common
Position on
Arms Exports
(December
2008)**

Having assessed the recipient country's attitude towards relevant principles established by instruments of international humanitarian law, Member States shall:

- (c) deny an export licence if there is a **clear risk that the military technology or equipment to be exported might be used in the commission of serious violations of international humanitarian law.***

(Article 2(c))



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**ECOWAS
Convention
on Small
Arms and
Light
Weapons (...)
(June 2006)**

A transfer shall not be authorised if the arms are destined to be used:

- a) for the **violation of international humanitarian law** or infringement of human and peoples' rights and freedoms, or for the purpose of oppression;*
- b) for the **commission of serious violations of international humanitarian law**, genocide or crimes against humanity;*

(Articles 6(3)(a) and (b))



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Procedural Matters

- Consensus.
- Chairman's Draft Paper.
- NGO participation.
- President of the Diplomatic Conference.



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Questions?



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What can you do?

Encourage States to:

- Participate actively in the 2012 United Nations Conference on the Arms Trade Treaty;
- Ensure that the Arms Trade Treaty applies to transfers of all conventional weapons and their ammunition;
- Recognize their obligation to ensure respect for IHL by including a requirement in the treaty to **a)** assess the likelihood that serious violations of IHL will be committed with the arms being transferred and **b)** deny transfers if there is a clear risk that the arms will be used to commit serious violations of IHL;



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What can you do?

Some examples of current efforts by delegations and National Societies:

- Analyze government positions and write tailored letters to Ministers of Foreign Affairs
- Organize open meetings of government representatives, NGOs and journalists
- Organize closed meetings for government representatives
- Share ICRC position at national and regional events
- Media interviews



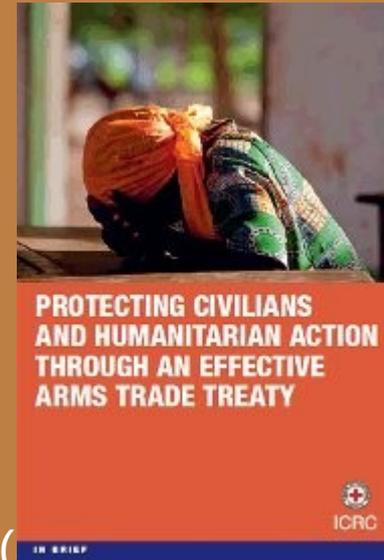
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Tools

- This PowerPoint presentation
- Humanitarian Diplomacy Cable for delegations and Briefing Note for National Societies
- ICRC Leaflet on the ATT
- ICRC "Practical Guide" on IHL in arms transfer decisions
- Op-Ed for National Societies (mid-May)



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- NGO publications on the scope of weapons (Amnesty International), human rights transfer criteria (Amnesty International)

<http://www.saferworld.org.uk/smartweb/resources/view-resource/399>

<http://controlarms.org/wordpress/wp-content/uploads/2011/02/Applying-Human-Rights->



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ARMS TRANSFER DECISIONS

Applying international
humanitarian law criteria

PRACTICAL
GUIDE



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- Defines “clear risk” and “serious violations”.
- Proposes indicators for rigorous risk assessments.
- Proposes sources of information.



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What are serious violations of IHL?

Serious violations of IHL include grave breaches found under the four Geneva Conventions of 1949 and under Additional Protocol I of 1977.

Serious violations of IHL are also considered war crimes.

Examples include:

- wilful killing,
- torture or inhuman treatment,
- taking of hostages,
- extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly.



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Assessing the risk that arms will be used to commit serious violations requires examining:

- The recipient's **record of respect** for IHL.
- The recipient's **formal commitments**.
- The recipient's **capacity** to ensure that the arms or equipment transferred are used in a manner consistent with IHL and are not diverted or transferred to other destinations where they might be used to commit serious violations.



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Questions?



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