



PROTECTING CIVILIANS AND HUMANITARIAN ACTION THROUGH THE ARMS TRADE TREATY



ICRC



AVAILABILITY OF ARMS: THE HUMAN COST

Every year, because of the widespread availability and misuse of weapons, hundreds of thousands of civilians are displaced, injured, raped, or killed. In many parts of the world, weapons are so easy to obtain and armed violence so prevalent that even after an armed conflict has ended, civilians face many of the same threats that they did during the conflict.

In most of the countries in which it works, the International Committee of the Red Cross (ICRC) deals with the effects of inadequate control over transfers of conventional weapons. Every year it supports the treatment and

rehabilitation of tens of thousands of victims of conventional arms. ICRC operations are frequently suspended or delayed because of security threats, hampering delivery of assistance to victims. A 1999 ICRC study concluded that the widespread availability of arms facilitated violations of international humanitarian law (IHL) and had damaging consequences for civilians during armed conflicts. As long as weapons are too easily available, serious IHL violations will be made more likely and the provision of humanitarian assistance endangered.



THE ARMS TRADE TREATY AND ITS HUMANITARIAN OBJECTIVE

In 2006, the United Nations began a process to explore the feasibility, and the elements, of an “Arms Trade Treaty,” recognizing that the absence of common international standards for the transfer of conventional arms contributes to armed conflict, crime, acts of terrorism and the displacement of people, which, in turn, undermine peace, reconciliation, safety, security, stability and sustainable social and economic development. Two diplomatic conferences were held in 2012 and 2013 with the aim of elaborating a legally binding instrument on the highest possible common international standards for the transfer of conventional arms. On 2 April 2013, the UN General Assembly voted by a large majority in favour of adopting the Arms Trade Treaty (ATT).

The explicitly humanitarian concerns of the ATT may be discerned in many of its provisions. The preamble recognizes the consequences, in humanitarian terms, of the illicit and unregulated trade in conventional arms, as well as the fact that the vast majority of persons adversely affected by armed conflict and other forms of armed violence are civilians. It acknowledges the challenges that victims typically face and their need for care, physical rehabilitation and social and economic inclusion. The treaty also makes a crucial reference to States’ determination to act in accordance with the “principle” of respecting and ensuring respect for IHL and human rights. All these affirmations support the treaty’s express purpose: to reduce human suffering.



Roland Sidler/ICRC

Prohibitions based on IHL and international human rights law

Under the Geneva Conventions and customary IHL, all States have an obligation to ensure respect for IHL. The ICRC takes the view that this entails a responsibility to make every effort to ensure that the arms and ammunition they transfer do not end up in the hands of persons who are likely to use them to violate IHL.

The ATT reflects this responsibility in two ways. First, it prohibits a State from transferring conventional arms, as well as parts, components and ammunition for them, if it knows that they would be used to commit genocide, crimes against humanity, or certain war crimes. Second, even where a State does not have such knowledge, the ATT requires it to a) assess the potential that a serious violation of IHL or international human rights law could be facilitated or committed with the arms or items to be exported, and b) not authorize the export of the items in question when there is an overriding risk of these violations happening.

‘Serious violation of IHL’ is another term for ‘war crime’ and encompasses grave breaches of the 1949 Geneva Conventions and of Protocol I of 8 June 1977 additional to the Geneva Conventions, as well as the other war crimes listed in the Rome Statute of the International Criminal Court and those defined under customary IHL. Serious violations of IHL include wilful killing, torture or inhuman treatment, taking of hostages, pillage, rape, directing attacks against civilian objects or civilians not taking direct part in hostilities, and directing attacks against hospitals, ambulances, or medical staff using the distinctive emblems of the Geneva Conventions. The ICRC has published a *Practical Guide* for applying IHL criteria in arms transfer decisions. The *Guide* sets out a range of indicators that can be used for making risk assessments, suggests sources of pertinent information, and provides a list of grave breaches and other war crimes. It can be ordered or downloaded via the ICRC’s website (www.icrc.org).



Scope of the ATT

The ATT encourages States to apply its provisions to the broadest range of conventional arms. At a minimum, the treaty applies to the seven categories of conventional arms already included in the UN Register of Conventional Arms,¹ as well as small arms and light weapons. The core provisions of the treaty also apply to ammunition and parts and components for these conventional arms. This will help ensure that transfers of these items do not enable the misuse of weapons already in circulation. In addition, the ATT regulates “activities of the international trade” including export, import, transit, trans-shipment, and brokering.

Implementing the ATT

The ATT was opened for signature on 3 June 2013. It will enter into force 90 days after the deposit of the 50th instrument of ratification, acceptance, or approval. If a State submits its instrument of ratification, acceptance, approval or accession after this date, the treaty will enter into force for it 90 days after the date of submission.

A State Party for which the treaty has entered into force must establish and maintain a national control system and designate national authorities and points of contact to oversee the implementation of the treaty. The ATT leaves it up to each State Party to determine the form, structure and legislative underpinning of its national control system. In practice, implementation will require a series of legislative, administrative and practical measures and States Parties will need to assess whether new measures are required to comply with the obligations set out in the treaty.

The ATT requires States Parties to maintain national records of authorized or actual exports of conventional arms, and to submit reports to the treaty’s secretariat on these exports and on imports as well. States Parties must also report on the domestic laws, control lists and other administrative measures that they have adopted to implement the treaty. Each State Party involved in a transfer of conventional arms must also take measures to prevent their diversion.

¹ The seven categories of conventional weapon are as follows: battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers.



REGULATING ARMS TRANSFERS: THE INTERNATIONAL CONFERENCE OF THE RED CROSS AND RED CRESCENT

States party to the Geneva Conventions first expressed alarm at the rapid expansion of the arms trade and the uncontrolled proliferation of weapons during the 26th International Conference of the Red Cross and Red Crescent in 1995, at which the ICRC was asked to conduct a study on the implications for IHL and civilians.

Since the publication of its study in 1999, the ICRC has been calling for stricter regulation of international transfers of weapons and ammunition as a means to reduce the suffering caused by the absence of such oversight.

At the 27th International Conference in 1999, States adopted a plan of action that included commitments to “enhance the protection of civilians in armed conflict and post-conflict situations by seeking to strengthen controls on the availability of arms, in particular small arms and ammunition, at the national, regional and international levels, including by improving national export regulations.” States were also asked to examine ways to incorporate respect for IHL in domestic decision-making on transfers of arms and ammunition, and, where relevant, in codes of conduct.

In the Agenda for Humanitarian Action adopted at the 28th International Conference in 2003,

States again moved to reduce the human suffering resulting from the poorly controlled availability and misuse of weapons by strengthening transfer controls. In recognition of their obligation to respect and ensure respect for IHL, States decided that controls on the availability of weapons had to be strengthened so that weapons would not end up in the hands of those who may be expected to use them to violate IHL. One of the action points was therefore to incorporate respect for IHL criteria in domestic laws or policies and in regional and global norms on arms transfers.

The 30th International Conference in 2007 also addressed the issue, stressing in a resolution that, “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.” In 2011, States at the 31st International Conference reaffirmed this view and added that “States should make respect for international humanitarian law one of the important criteria on which arms transfer decisions are assessed.”



John Moore/Getty Images

TOWARDS EFFECTIVE IMPLEMENTATION OF THE ATT

The adoption of the ATT has created an historic opportunity to reduce the human cost of the widespread and poorly regulated availability of conventional arms.

States, National Red Cross and Red Crescent Societies and civil society all have a role to play in promoting public awareness of the consequences, in human terms, of insufficiently regulated arms transfers and in encouraging all States to implement the ATT.

States must be urged to:

- sign, ratify, and implement the ATT as quickly as possible
- apply the treaty's obligations to international transfers of all conventional arms, and of ammunition, parts and components for them
- recognize their obligation to ensure respect for IHL by making certain that these arms and other items are not transferred to people who may be expected to use them to commit serious violations of IHL or international human rights law
- incorporate such requirements in existing and future domestic, regional and sub-regional regulations on transfers of these arms and related items.

MISSION

The International Committee of the Red Cross (ICRC) is an impartial, neutral and independent organization whose exclusively humanitarian mission is to protect the lives and dignity of victims of armed conflict and other situations of violence and to provide them with assistance. The ICRC also endeavours to prevent suffering by promoting and strengthening humanitarian law and universal humanitarian principles. Established in 1863, the ICRC is at the origin of the International Red Cross and Red Crescent Movement. It directs and coordinates the international relief activities conducted by the Movement in armed conflicts and other situations of violence.



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