



INTERNATIONAL COMMITTEE OF THE RED CROSS

**Report to the Second Biennial Meeting of States to Consider the
Implementation of the United Nations Programme of Action to
Prevent, Combat and Eradicate the Illicit Trade in Small Arms
and Light Weapons in All Its Aspects**

New York, 11-15 July 2005

1. INTRODUCTION

Through its humanitarian work in some 80 countries worldwide, the International Committee of the Red Cross (ICRC) has witnessed how the unregulated availability and widespread misuse of weapons can lead to a direct deterioration in the situation of civilians during and after armed conflict and in other situations of violence. The end of an armed conflict seldom means an end to violence if large quantities of arms and ammunition remain at large. The presence of armed insecurity makes the delivery of humanitarian assistance more difficult and dangerous. Ensuring that arms bearers use their weapons in accordance with the relevant norms contained in international humanitarian law and human rights law becomes even more difficult when weapons of war are widely dispersed and easily accessible. This phenomenon thus has direct implications for the ICRC's ability to fulfill its mandate of assisting the victims of conflict and promoting respect for international humanitarian law.

Based on the conclusions of the ICRC study *Arms availability and the situation of civilians in armed conflict*,¹ the ICRC has engaged in efforts to raise public awareness of the human costs of unregulated arms availability and to promote stricter controls. The ICRC prepared a comprehensive report to the First Biennial Meeting of States on its activities that contribute to the implementation and objectives of the UN Programme of Action. The current report is intended to provide a brief update on further progress and experiences since July 2003.

2. ARMS TRANSFER REGULATIONS AND LAW

Developments since July 2003

States undertake "to assess applications for export authorizations according to strict national regulations and procedures (...) consistent with the existing responsibilities of States under international law (...)"
(UN Programme of Action, Section II, para. 11)

"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." (Agenda for Humanitarian Action, Final Goal 2.3, Action 1)

A notable achievement during this period was the commitments made by States Parties to the Geneva Conventions and all Red Cross and Red Crescent Societies at the **28th International Conference of the Red Cross and Red Crescent in December 2003** (see Annex 1). This included a recognition in the Conference's Agenda for Humanitarian Action, which was adopted by consensus, that in order to "reduce the human suffering resulting from the uncontrolled availability and misuse of weapons", and "in recognition of States' obligation to respect and ensure respect for international humanitarian law, controls on the availability of weapons are strengthened – in particular on small arms,

¹ Submitted in 1999 to the Red Cross and Red Crescent Movement's Council of Delegates and to States Parties to the Geneva Conventions at the 27th International Conference of the Red Cross and Red Crescent.

light weapons and their ammunition – so that weapons do not end up in the hands of those who may be expected to use them to violate international humanitarian law."

Furthermore, States, National Societies and the ICRC committed to a range of practical measures in order to reduce the human cost of the uncontrolled availability and widespread misuse of weapons. These included: making international humanitarian law one of the fundamental criteria on which arms transfer decisions are assessed; ensuring that armed forces, police and security forces receive systematic training in international humanitarian and human rights law; striving to reduce the demand for and misuse of weapons; and strengthening efforts to record and document the impact of armed violence on civilians. The Agenda also calls on States to urgently enhance their efforts to prevent the uncontrolled availability and misuse of small arms and light weapons, taking into account the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects and other relevant instruments.

By addressing the issue of small arms proliferation from a strictly humanitarian perspective, **these commitments serve to underline that the ultimate goal of the current efforts to improve small arms control is to enhance the protection of civilians and reduce the human suffering** resulting from the uncontrolled availability and misuse of these weapons. They also reaffirm that one of the **existing responsibilities of States**, as part of their obligation to "respect and ensure respect" for international humanitarian law under Article 1 common to the Geneva Conventions of 1949, is **to ensure that violations of international humanitarian law are not facilitated by unregulated access to arms and ammunition.**

The ICRC has encouraged States to introduce stricter controls on the availability of weapons as a means of preventing easy access to these weapons by those who violate international humanitarian law. At the global level, this has included presenting our views to the Open-Ended Working Group negotiating a new instrument to enable States to **effectively identify and trace illicit small arms and light weapons**. The ICRC has also highlighted the urgent need for further steps to **prevent illicit arms brokering** during the broad-based consultations undertaken by the UN Department for Disarmament Affairs.

In addition, the ICRC has worked, through national and regional structures, to encourage States to strengthen their arms transfer regulations. In particular, it has urged the inclusion in regional arms transfer documents, as well as national laws and policies, of **requirements to assess the recipient's respect for humanitarian law and to deny transfers when there is a clear risk that the proposed transfer will be used for serious violations of this law**. With respect to humanitarian law criteria, **notable regional developments** in the period 2003-2005 included the *OAS' Model Regulations for the Control of Brokers of Firearms, their Parts and Components and Ammunition*, the development of *Best Practice Guidelines for the Import, Export, Transfer and Transit of Small Arms and Light Weapons* for the Great Lakes Region and Horn of Africa and the review of the 1998 *EU Code of Conduct on Arms Exports*.

The OAS Model Regulations, adopted in December 2003, include a list of prohibitions on brokering activities and the granting of brokering licenses when there is reason to believe that these activities will lead to or seriously threaten to lead to the perpetration of war crimes. If incorporated into national laws, these regulations can contribute significantly to ensuring that compliance with humanitarian law is duly considered by OAS Member States when assessing brokering licences.

Having urged EU Member States to clarify and strengthen the existing humanitarian law criterion during the Code of Conduct review process in 2004-05, the ICRC is pleased to note that an amendment to this effect is expected to feature among the main improvements in the revised EU Code. Before the revision, the record of compliance with humanitarian law was a factor that EU Member States merely had to take into account. The new EU Code is expected to contain an express requirement not to authorize exports when there is a clear risk that the military equipment to be exported might be used in the commission of serious violations of humanitarian law. The revised Code establishes that the same criteria should be applied when considering license applications for brokering, licensed production, transshipment and intangible technology transfers.

The recently adopted Guidelines for the Great Lakes Region and the Horn of Africa contain a similar explicit requirement not to authorize transfers likely to be used for serious violations of international humanitarian law. Once again, the ICRC was pleased to note that some of the comments it had provided on a draft of the Guidelines were reflected in the final version adopted by the 3rd Ministerial Review Conference of the Nairobi Declaration on 20-21 June 2005.

Future challenges

While these developments illustrate the progress made in recent years, significant challenges remain. In terms of national legislation, **only a handful of countries have included criteria based on humanitarian law in their arms transfer laws.** Also, **existing regional arms transfer criteria vary** and not all regions have adopted such documents. The gaps created by this divergence in arms transfer criteria among States can increase the risk of weapons ending up where they are likely to be used to violate humanitarian law. **To ensure consistent standards for arms transfer decision-making among States, the ICRC thus supports the development of a global agreement that would affirm States' responsibilities under international law with regard to international arms transfers,** taking due account of their existing obligations under international humanitarian law.

The ICRC considers that the recipient's respect for humanitarian law is one of the most relevant considerations when transferring military weapons, ammunition and equipment. Still, we have noted that references to the recipient's respect for human rights and the risk of weapons being used for internal repression are far more commonly included in arms transfer documents than references to humanitarian law. It is undoubtedly important to assess compliance with both these bodies of law when making arms transfer decisions. However, in our experience it is a common misperception that a separate humanitarian law criterion is unnecessary when a reference to human rights already exists, because this is believed to implicitly cover humanitarian law as well.

While some violations of humanitarian law would be covered by a requirement to consider the risk of human rights violations, many serious violations of humanitarian law would fall outside such a provision. This includes violations related to the conduct of hostilities, which are particularly relevant to the use of weapons. **To fully reflect States' existing obligations under international law, humanitarian law should be accorded the same importance in arms transfer decision-making as compliance with human rights**, and when transferring military weapons may be considered even more relevant. The ICRC will therefore continue to encourage States to include **explicit references to humanitarian law** in their arms transfer criteria to achieve the greatest degree of clarity in this regard.

Finally, now that a considerable number of States have committed on paper to taking respect for humanitarian law into account in their arms transfer decisions, **further efforts must also be made to ensure that these criteria are applied in practice**. The ICRC has proposed that States develop guidelines on how to apply their humanitarian law criteria and it has presented a list of indicators that can be used as a starting point for such exercises (see Annex 2). The ICRC plans to further develop this list in the coming months with the aim of providing a practical tool that can assist States when making such assessments.

3. ARMS BEARERS²

"States and international and regional organizations should seriously consider assisting (...) in building capacities in areas including (...) law enforcement (...).
(UN Programme of Action, Section III, para. 6)

"States, with the support of the ICRC and National Societies, should ensure that armed, police and security forces receive systematic training in international humanitarian law and human rights law, in particular concerning the responsible use of weapons. Where appropriate, similar training should be encouraged for organized armed groups."
(Agenda for Humanitarian Action, Final Goal 2.3, Action 3)

The ICRC strives to **ensure that all levels of armed forces and security and police forces know and apply international humanitarian law and international human rights law in daily operational practice**, and that other bearers of weapons either support, or at least do not disrupt humanitarian action. The ICRC provides practical assistance for the instruction and training of State agents in humanitarian and human rights law. In 2003, more than 30 specialised delegates conducted or contributed to some 424 courses, workshops, roundtables or exercises involving some 21'644 police and military personnel in 141 countries. In 2004, the ICRC took part in further courses and seminars as well as more than 10 military exercises.

Taking into account the nature of contemporary armed conflict and other situations of violence, the ICRC engages all those people and groups who determine the fate of victims or who can obstruct or facilitate ICRC action. Securing respect for humanitarian law by all parties to a conflict, including non-State armed groups, is a key concern in this regard and essential to improving the protection of civilians. The ICRC has also

² See ICRC's report to the First Biennial Meeting of States in 2003 for a more comprehensive overview. The report is available at: http://www.icrc.org/Web/fre/sitefre0.nsf/htmlall/section_ihl_arms_availability

increased its outreach to private military and security companies as a result of their increasing involvement in activities related to armed conflict. As professional arms carriers who are often involved in training and advising foreign police or armed forces, these actors must be made aware of their own responsibilities under international humanitarian law, as well as encouraged to include humanitarian law in their training of others.

Combating illicit small arms trade "simultaneously from both a supply and demand perspective" (Preamble, para. 7) as stressed in the Programme of Action will also require **examining the factors that affect the conduct of weapons carriers in order to reduce misuse of weapons and promote responsible conduct**. The ICRC is engaged in research about the factors that lead combatants to commit violations of humanitarian law with the aim of developing more effective strategies to influence arms bearers and increase respect for humanitarian law. In 2004, the ICRC published two new studies it had commissioned on *The roots of behaviour in war*.³

Interestingly, these studies challenged many pre-conceived ideas about the factors that influence the behaviour of combatants. In particular, they draw a clear distinction between the attitudes on the one hand and the actual conduct of arms bearers on the other. The research conducted indicates that there are three key factors that influence the behaviour of combatants, namely their place within a group, their position within a hierarchical structure and the process of moral disengagement that occurs in a war situation. Among the conclusions the study draws from this is that the most effective levers to obtain respect for humanitarian law include the training of combatants, strict orders and effective sanctions.

Further research on the causes of armed violence and weapons misuse is vital to devising effective preventive strategies. **A comprehensive approach to the prevention of small-arms violence is likely to yield the most significant long-term results**. This will require **strictly regulating the availability of weapons, influencing the behaviour of those who bear weapons and reducing the vulnerability of the victims**.

4. VICTIM ASSISTANCE

"Determined to reduce the suffering caused by the illicit trade in small arms and light weapons in all its aspects" (Programme of Action, Preamble, para. 4)

"Reduce the human suffering resulting from the uncontrolled availability and misuse of weapons" (Agenda for Humanitarian Action, Final Goal 2.3)

In addition to ICRC's preventive efforts to encourage effective controls on the availability of military weapons and to promote respect for humanitarian law among arms bearers, much of ICRC's work in the field seeks to alleviate the effects of armed violence. Most directly, this means **treating those wounded by weapons**. In 2004, the ICRC regularly supported 48 hospitals and 200 other health-care facilities around the world. Community health programmes were implemented in 11 countries, in many cases with National

³ The Roots of Behaviour in War: A Survey of the Literature, by Jean-Jacques Frésard and The Roots of Behaviour in War: Understanding and Preventing IHL Violations, by Daniel Muñoz-Rojas and Jean-Jacques Frésard, available at: www.icrc.org/eng/social-research-on-war

Society participation. An estimated 2,722,000 people benefited from ICRC-supported health-care facilities. The ICRC's Physical Rehabilitation Unit provided support to 68 prosthetic and orthotic centres in 36 countries, enabling patients to be rehabilitated and fitted with 17,805 prostheses and 20,915 orthoses. The institution also provides other types of assistance to victims of armed conflict and other situations of violence, including ensuring **safe access to food, water and other vital necessities**.

5. ACTIVITIES BY NATIONAL RED CROSS AND RED CRESCENT SOCIETIES

As noted in ICRC's report in 2003, a number of National Red Cross and Red Crescent Societies have undertaken activities that support the implementation of the UN Programme of Action. In the last two years, these activities included:

- At the 28th International Red Cross and Red Crescent Conference, several National Societies pledged to work to promote stricter controls on the availability of weapons in order to reduce the human suffering resulting from their widespread availability and misuse. Some of these pledges were undertaken together with their national governments.
- The Belgian Government and the **Belgian Red Cross** pledged to strive to tighten end-user controls and to support the adoption of global instruments on the brokering, marking and tracing of small arms. As part of the Belgian Action Network on Small Arms, the Belgian Red Cross has also been engaged in other national and international efforts to promote stricter small arms and light weapons control.
- The **Bulgarian Red Cross** has organized several meetings on the small arms issue, including a national seminar on small arms proliferation and control in November 2004 and a regional meeting of South-East European National Societies in October 2000. The seminar in 2004 allowed for a broad discussion of national small arms control measures between various government ministries, academic circles, media, the UN Development Programme, NGOs and the ICRC.
- The **Canadian Red Cross** pledged, with the Canadian Government, to promote a comprehensive approach to the problems associated with small arms, including their impact on humanitarian operations, human rights, public health and development. Furthermore, they pledged to promote implementation of the UN Programme of Action, including through measures to control exports, address the needs of children affected by armed conflict and weapons collection, including financial assistance for arms-for-development projects in West Africa.
- Together with the German Government, the **German Red Cross** made a pledge at the 28th International Conference to promote a constructive and result-oriented international process to reduce the devastating effects of small arms accumulation, misuse and proliferation. A key aim was to make sure that weapons do not end up in the hands of those who violate international humanitarian law by advocating consideration of respect for humanitarian law in arms transfer decision-making and support for the destruction of surplus stocks of small arms and light weapons. The German Red Cross participates in discussions on this issue in the national humanitarian law commission and in

discussions between the German Foreign Ministry and civil society representatives. The German Red Cross will also contribute to ICRC's further elaboration of indicators of respect for humanitarian law aimed at assisting in arms transfer decision-making.

- At the 28th International Red Cross and Red Crescent Conference, the Norwegian Government and the **Norwegian Red Cross**, together with the Swedish and Finnish Governments and Red Cross Societies, made a joint pledge "to undertake a review of national legislation and policies on arms transfers, in order to explore the possibilities to take international humanitarian law into consideration as one of the criteria on which arms transfer decisions are made and to examine appropriate ways of assessing an arms recipient's likely respect for international humanitarian law". As a supplement to this governmental process, the **National Red Cross Societies of Finland, Iceland, Norway and Sweden**, in collaboration with the International Peace Research Institute of Oslo, has proposed to conduct a study on national legislation and policies on arms transfers in the respective countries. The study aims at being a first step towards a joint report on the pledge to the 29th International Red Cross and Red Crescent Conference in 2007. It will also include elements which could be incorporated in a model legal instrument concerning respect for international humanitarian law in arms transfers. The Norwegian Red Cross, together with the Government of Norway and the Netherlands, also pledged to support measures aimed at preventing illicit brokering of weapons and to support programs protecting civilians from the effects of easy small arms availability.
- To provide a basis for its domestic work on small arms, the **Swedish Red Cross** commissioned a survey in 2002 examining the attitudes of the Swedish population to the use and availability of small arms. Since then, the Swedish Red Cross Society has carried out a range of activities in this area and it has a continuous dialogue with the Swedish Government on small arms and other weapons-related questions. From May 2004 - June 2005, the Swedish Red Cross, together with the National Defense College in Sweden and the Swedish Fellowship of Reconciliation, undertook an educational project on small arms and light weapons (financed by the Swedish International Development Cooperation Agency). The aim of the project was to educate students and teachers at police colleges, teachers' schools and military academies. During information seminars at respective colleges/schools, volunteers were recruited for a two-day course to become trainers on the topic. The strength of the project was the different competencies and perspectives it brought together both through the three co-operating organizations and the three target groups. Education-material was developed and the Swedish Red Cross is now responsible for providing the trainers with updates, information and education-assignments.
- National Societies in many countries are engaged in **national violence prevention activities** aimed at changing attitudes, preventing the spread of violence and assisting victims. Some of these programmes focus on particular high-risk groups like urban youth. An example is the "Stop the violence" project, originally developed by the Norwegian Red Cross Youth section in response to a brutal murder of a young man in the Norwegian capital Oslo. Several other National Societies proceeded to launch "Stop the Violence" programmes in other countries, including in Guatemala, Colombia, Lithuania and Lebanon.

ANNEX 1

Extract from the Agenda for Humanitarian Action adopted by the 28th International Conference of the Red Cross and Red Crescent, Geneva, 2-6 December 2003

Final Goal 2.3

Reduce the human suffering resulting from the uncontrolled availability and misuse of weapons

In recognition of States' obligation to respect and ensure respect for international humanitarian law, controls on the availability of weapons are strengthened -- in particular on small arms, light weapons and their ammunition -- so that weapons do not end up in the hands of those who may be expected to use them to violate international humanitarian law. Complementary steps are taken to reduce the misuse of weapons through the promotion of respect for this law.

Actions proposed

- 2.3.1 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.
- 2.3.2 States should take concrete steps to strengthen controls on arms and ammunition. In particular, States should urgently enhance efforts to prevent the uncontrolled availability and misuse of small arms and light weapons, taking into account the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, and other relevant instruments, particularly those developed in a regional framework.
- 2.3.3 States, with the support of the ICRC and National Societies, should ensure that armed, police and security forces receive systematic training in international humanitarian law and human rights law, in particular concerning the responsible use of weapons. Where appropriate, similar training should be encouraged for organized armed groups.
- 2.3.4 States, the ICRC and National Societies should strive to reduce the demand for and misuse of weapons by promoting a culture of tolerance and establishing educational programmes or similar initiatives among the civilian population. They will also increase awareness of the risks to safety of small arms and light weapons, especially among children.
- 2.3.5 States, the ICRC and National Societies in a position to do so will strengthen efforts to record and document the impact of armed violence on civilians, contributing to a better understanding of its human costs. The ICRC will also document the impact of armed violence on its operations.

ANNEX 2

Proposed indicators of respect for international humanitarian law

In its report on *Arms availability and the situation of civilians in armed conflict* (1999), the ICRC proposed that all national and international standards for arms transfers should -- in addition to a requirement of respect for international humanitarian law by the recipient -- include **specific indicators of respect for international humanitarian law**. The establishment of specific indicators would facilitate the assessment of a recipients' likely respect for humanitarian law. The points below illustrate the types of **indicators** that could be used:

1. whether the recipient has ratified humanitarian law instruments or made other formal engagements to apply the rules of international humanitarian law;
2. whether the recipient has trained its armed forces in the application of international humanitarian law;
3. whether the recipient has taken the measures necessary for the repression of serious violations of international humanitarian law;
4. whether a recipient which is, or has been, engaged in an armed conflict has failed to punish those responsible for serious violations of international humanitarian law and to cause such breaches to cease;
5. whether stable authority structures capable of ensuring respect for international humanitarian law exist in the area under control of the recipient;
6. whether the recipient maintains strict and effective control over the internal distribution of arms and ammunition and their further transfer across international borders; and
7. whether the recipient is the actual 'end user' of arms and ammunition, will accept verification of this and will undertake not to transfer these to third parties without the authorization of the supplier State.