



ICRC

Towards the March 2013 Diplomatic Conference on the Arms Trade Treaty



ICRC Webinar, Geneva, 5 March 2013

UN Process towards the Arms Trade Treaty (ATT)

- July 2012 Diplomatic Conference led to the first draft ATT
(You can find the 2012 draft ATT here:
<http://www.un.org/disarmament/ATT/>)
- Final Diplomatic Conference on the ATT, 18-28 March 2013



ICRC

ICRC Action since July 2012

- Since July 2012 Diplomatic Conference, ICRC has participated in meetings to **develop thinking and strengthen** draft ATT
- ICRC held **meeting of legal and political experts** in February 2013 to explore key issues in the draft treaty (*aide-mémoire*)
- The ICRC sent Ambassador Peter Woolcott, ATT Conference President-Designate, **analysis** of key provisions in the draft treaty with suggested formulations
- The ICRC will soon make public (online) a short document setting out its **position** on IHL aspects of the draft ATT
- Very soon: ICRC note to all delegations and National Societies with **key messages**
- In March, the ICRC will be engaging in **public communications** (e.g. press releases and an online interview) in favour of a strong and comprehensive ATT



ICRC's key objectives from a humanitarian perspective

- Broad scope: all transfers of all conventional weapons and ammunition
- Strong transfer criteria based on international humanitarian law (IHL) and international human rights law



ICRC

Draft Arms Trade Treaty (2012)

Ø Scope of weapons and transactions (Art. 2)

Ø Prohibitions (Art. 3) and transfer criteria (Art. 4)



ICRC

Scope of weapons

Art. 2(A): "This Treaty shall apply to all conventional arms within the following categories at a minimum: Battle Tanks; Armoured combat vehicles; Large-calibre Artillery systems; Combat aircraft; Attack helicopters; Warships; Missiles and missile launchers; and Small Arms and Light Weapons"



ICRC

Scope of weapons

Art. 6(4) and (5): "Each State Party shall establish and maintain a national control system to regulate the export of ammunition / parts and components, to the extent necessary, for conventional arms under the scope of this Treaty, and shall apply article 3, and paragraphs 1, 2, 3, 4, and 5 of article 4 prior to authorizing any export of ammunition / those parts and components."



ICRC

Scope of transactions

Art. 2(B)(3): "This Treaty shall apply to those activities of the international trade in conventional arms" (set out in articles 6, 7, 8 and 9: export, import, brokering, transit and trans-shipment)



ICRC

Prohibition under Article 3(3)

“A State Party shall not authorize a transfer of conventional arms (...) for the purpose of facilitating the commission of *genocide*, crimes against humanity, war crimes constituting grave breaches of the Geneva Conventions of 1949, or *serious violations of Common Article 3* of the Geneva Conventions of 1949”.



ICRC

Article 3(3): “for the purpose”

“For the purpose”

vs.

International Law Commission's Draft Articles on State Responsibility, Article 16:

"A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) that State does so with knowledge of the circumstances of the internationally wrongful act; and
(b) the act would be internationally wrongful if committed by that State."



ICRC

Possible improvement to "for the purpose"

"if the transfer aids or assists"

or

"if the State party knows that the arms will be used to facilitate..."



ICRC

Article 3(3): war crimes

Some war crimes not covered in art. 3(3):

Intentionally directing attacks against:

- civilians
- civilian objects
- personnel, installations, material, units or vehicles involved in a humanitarian assistance mission
- hospitals
- buildings dedicated to religion, education
- undefended towns, villages, dwellings

Possible improvement to Article 3(3)

"war crimes"

or

"war crimes, including grave breaches ... and serious violations of common article 3..."

or

"grave breaches of the Geneva Conventions of 1949 or serious violations of the laws or customs of war"

or

"war crimes that violate its obligations under international law"



ICRC

Article 4: National Assessment/Criteria

4(1): peace and security

4(2): risk assessments

4(4): risk mitigation measures

4(5): "overriding"

4(6): other criteria

Arms transfer criteria based on IHL and international human rights law

Article 4(2): “Prior to authorization and pursuant to its national control system, the State Party shall assess whether the proposed export of conventional arms could:

- be used to commit or facilitate a serious violation of international humanitarian law;
- be used to commit or facilitate a serious violation of international human rights law; (...)"

Arms transfer criteria based on IHL and international human rights law

Article 4(5): “If, after conducting the assessment called for in paragraph 1 and 2 of this article, and after considering the mitigation measures provided for in paragraph 4 of this article, the State Party finds that there is an overriding risk of any of the consequences under paragraph 2 of this article, the State Party shall not authorize the export.”



ICRC

What you can do

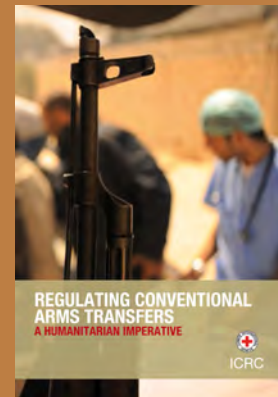
- **Promote** ICRC position with focus on human cost of poorly regulated conventional arms transfers.
- **Intervene** with national authorities to encourage:
 - active participation in the March 2013 Diplomatic Conference on the ATT
 - support for a treaty that contains **strict transfer criteria** based on respect for IHL and covers **all transfers of all conventional arms**, ammunition, parts and components

Interventions with senior political level contacts are desirable when possible.

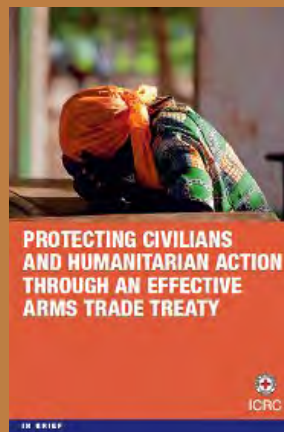
Tools

- ICRC Film

www.icrc.org/eng/arms-trade-treaty-film



- ICRC Leaflet



- ICRC "Practical Guide" on IHL criteria in arms transfer decisions





ICRC

Questions?

