



*“We all want an Arms Trade Treaty”*

International  
Humanitarian Law



ICRC

## A Strong IHL Criterion for the Arms Trade Treaty

### The human cost of the poorly regulated global arms trade

In the course of its work providing humanitarian assistance to war victims, **the International Committee of the Red Cross (ICRC) has witnessed the increasingly devastating effects of the poorly regulated, global trade of conventional military weapons on civilian populations.** Inadequate controls on arms transfers too often lead to these weapons falling into the hands of those likely to use them to commit abuses against civilians in violation of international humanitarian law (IHL). Furthermore, disease, starvation, and abuse increase when humanitarian agencies such as the ICRC are the object of attacks by individuals or groups with access to these weapons, and are then forced to suspend operations or leave a country.

**The absence of binding international standards regulating the global arms trade often results in widespread availability of military weapons for abusive actors in conflict-ridden regions, which in turn can increase tensions, heighten civilian casualties, and prolong the duration of conflicts.** Human suffering continues, often for years after hostilities are over, as the widespread availability of arms and their ammunition engenders a culture of violence, undermines the rule of law, and threatens efforts at reconciliation among former warring parties.

### The need for a comprehensive international ATT

Given the grave human cost resulting from the currently under-regulated global arms trade, the ICRC strongly supports the adoption of a comprehensive, legally binding Arms Trade Treaty (ATT) that establishes common international standards for the responsible transfer of conventional weapons and their ammunition. **A robust and**

**effective ATT can close key loopholes in the current system of patchwork controls,** and ensure that all states are using the same criteria in their arms transfer decision-making processes. The ICRC welcomes the start of formal negotiations on an ATT at the United Nations in July 2010, and encourages all states to negotiate the most robust and comprehensive ATT possible.

### The need for a strong IHL criterion in the ATT

**For a future ATT to effectively prevent weapons from falling into the hands of those likely to use them to commit abuses, it must include a strong and comprehensive IHL criterion.** IHL regulates the conduct of armed conflict and requires that states party to the conflict protect civilians and other classes of persons who are not participating in the conflict. Common Article 1 of the Geneva Conventions of 1949 requires all states to “respect and ensure respect” for IHL. States Parties understand Common Article 1 as holding them responsible to refrain from encouraging a party to an armed conflict to violate IHL, avoid actions that would assist in such violations, and take all appropriate measures possible to end IHL violations.

Because conventional military weapons and their ammunition are transferred with the purpose of enabling the recipient to engage in armed conflict, an ATT must include an IHL criterion that requires states parties to a) assess the likelihood of IHL violations with the arms or ammunition being transferred, and b) refrain from transferring arms or ammunition if there is a clear risk that they will be used to commit serious violations of IHL. States that produce and export arms and ammunition have a key role to play in “ensuring respect” for IHL due to their ability to provide or withhold weapons with which violations may be committed. States must therefore exercise particular caution to ensure that the weapons

and ammunition they are authorizing for transfer are not likely to be used to commit serious violations of IHL.

In addition, **this IHL criterion must be strictly applied by each transferring state.** Strict application means that if a transferring state determines that there is in fact a clear risk that the weapons or ammunition will be used to commit serious violations of IHL, then it must deny the transfer. A less strict application, such as one that takes into account the existence of a clear risk but allows for the transfer to take place anyway, will undermine both an ATT and a state's existing obligations under IHL.

The ICRC's Practical Guide on applying IHL criteria in arms transfer decisions provides specific guidelines for implementing IHL as a criterion in national decision-making. **It proposes the following indicators to assess the risk that transferred arms will be used in the commission of serious violations of IHL:**

- **Whether a recipient which is, or has been, engaged in an armed conflict has committed serious violations of IHL;**
- **Whether a recipient which is, or has been, engaged in an armed conflict has taken all feasible measures to prevent violations of IHL or cause them to cease, including by punishing those responsible;**
- **Whether the recipient has made a formal commitment to apply the rules of IHL and taken appropriate measures for their implementation;**
- **Whether the recipient country has in place the legal, judicial and administrative measures necessary for the repression of serious violations of IHL;**
- **Whether the recipient disseminates IHL, in particular to the armed forces and other arms bearers, and has integrated IHL into its military doctrine, manuals and instructions;**

- **Whether accountable authority structures exist with the capacity and will to ensure respect for IHL;**
- **Whether the arms requested are commensurate with the operational requirements and capacities of the stated end-user;**
- **Whether the recipient maintains strict and effective control over its arms and their further transfer.**

For an ATT to mitigate the human cost associated with the poorly regulated global arms trade, it must include a strong criterion that requires states to withhold weapons and ammunition transfers if there is a clear risk that the weapons or ammunition will be used to commit serious violations of IHL. If an ATT fails to include such a vital criterion for states to apply strictly in their arms transfer decision-making, then the treaty will do little to prevent weapons and ammunition from falling into the hands of those likely to use them to commit abuses. The ICRC urges all states to participate in ATT negotiations and support the strongest and most comprehensive criteria possible. ■

*For more information on the ICRC position on an Arms Trade Treaty, the ICRC Practical Guide on applying IHL in arms transfer decisions, and the ICRC's 1999 study on arms availability, please visit [www.icrc.org](http://www.icrc.org).*

### ICRC

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 Geneva Conventions and the International Red Cross and Red Crescent Movement. It directs and coordinates the international activities conducted by the Movement in armed conflicts and other situations of violence.