

Statement by the International Committee of the Red Cross (ICRC)
Arms Trade Treaty Working Group on Effective Treaty Implementation (WGETI)
Sub-working Group on Articles 6 & 7
20 February 2024

Thank you, Mr Chair,

The International Committee of the Red Cross (ICRC) welcomes the latest draft chapter of the Voluntary Guide on Articles 6 & 7 of the Arms Trade Treaty (ATT)¹ and commends the present and previous office holders and the Secretariat for their work in compiling this text.

As previously indicated in our comments on chapters 1 and 2 of the Voluntary Guide, the ICRC considers that the guidance offered can best facilitate progress towards the realization of the ATT's humanitarian objective to reduce human suffering by describing practical questions and challenges and providing practice-oriented direction to States Parties on how to address these in their implementation of Articles 6&7.²

We are pleased with many aspects of draft chapter 3:

- For example, the section on the structure that States Parties use for export risk assessment and decision highlights the importance of ensuring officials entrusted with such decisions have the required knowledge and training including specialized expertise in international humanitarian law (IHL) (§8) – a field of international law that is distinct from international human rights law.
- The draft chapter also notes that the assessment entity tends to be an administrative body, whereas the decision-making entity is often a political authority (§7). In this respect, the ICRC recalls the importance of ensuring that IHL is given due consideration in export decision-making at all levels, and that considerations of respect for IHL are not overridden by security or foreign policy, economic or other considerations, including at the highest political level.
- In respect of procedures for assessing export applications, §10 makes reference to simplified procedures and relationships of trust among States involved in a transfer. In this regard the ICRC recalls that the ATT must be implemented in a consistent, objective and non-discriminatory manner (Art 5.1, ATT), and that conducting a robust IHL risk assessment under Art 7 is paramount to achieving the humanitarian purpose of the ATT, including when exporting to close trading partners and trusted political or military allies.
- Concerning the substantive aspects of the risk assessment, the chapter points to “special caution” being exercised when there is a conflict situation in the recipient country (§24). In

¹ ELEMENTS OF A VOLUNTARY GUIDE TO IMPLEMENTING ARTICLES 6 & 7 OF THE ARMS TRADE TREATY Draft Chapter 3 – Article 7 (Export and Export Assessment), Annex A-2, ATT/CSP10.WGETI/2024/CHAIR/775/LetterSubDocs, p. 8: https://www.thearmstradetreaty.org/hyper-images/file/ATT_WGETI_CSP10_Chair%20Letter%20and%20Sub-WG%20Documents%20for%2020-21%20February%202024_EN/ATT_WGETI_CSP10_Chair%20Letter%20and%20Sub-WG%20Documents%20for%2020-21%20February%202024_EN.pdf.

² Comments by the ICRC on “Elements of A Voluntary Guide to Implementing Articles 6 & 7 of the Arms Trade Treaty: Draft Chapter 1 – Key Concepts”, April 2022.

this connection, we welcome the reference to the obligation to respect and ensure respect for IHL, which States Parties to the ATT must take into account in the implementation of their obligations under Articles 6 & 7 (§27).

- In the context of risk mitigation, the ICRC welcomes the recognition that States Parties should conduct a proactive and realistic assessment of the likely impact of such measures (§53). Formal assurances, in particular, should be confirmed by “actual State practice in order for the exporting State Party to consider such commitments as risk mitigation” (§47).
- Finally, regarding the integration of export assessment criteria into national systems, we welcome the reminder in several places of draft chapter 3 that, even if a State Party combines the requirements of Arts 6 and 7 in its national laws or regulations, an export must be halted if it falls under Art 6 (§17). This obligation is absolute and does not allow for mitigation measures (§41).

Thank you, Mr Chair.