

Statement by the International Committee of the Red Cross (ICRC)
Arms Trade Treaty Working Group on Effective Treaty Implementation (WGETI)
Sub-working Group on Current and Emerging Implementation Issues
“Ad hoc discussions on current and emerging implementations issues: Impact of
arms transfers on the Israel – Palestine conflict”

Geneva, 21 February 2024

Thank you, Ms Facilitator,

The ICRC is present in Israel and the occupied territories where we witness a catastrophic humanitarian situation. The suffering we have seen unfold in Gaza and Israel is intolerable: the tragic loss of many people and of so many children. The destruction of people’s homes. The deep and recurrent traumas. The hostages still held captive and their families in anguish.¹

In this and every conflict, international humanitarian law (IHL) is the most complete and practical tool at our disposal to ensure the protection of civilians and to pave the way for de-escalation. The ICRC urges the international community to ensure its respect and full implementation – in words and action.

Reducing human suffering is also the express purpose of the Arms Trade Treaty (ATT). The Treaty holds out the promise of saved lives, unhindered delivery of medical and humanitarian assistance, and strengthened compliance with IHL and international human rights law.

To facilitate the full realization of this aim, the ICRC and many others have long encouraged greater focus on practical questions and challenges of treaty implementation. We therefore welcome the opportunity to discuss “current and emerging implementation issues” in this formal setting. And we commend those States and others who have shared their views as part of our collective endeavor to promote the effective implementation of this landmark humanitarian instrument.

To fulfil the ATT’s live-saving role, States Parties must implement their obligations faithfully, in accordance with the treaty’s humanitarian purpose and in a consistent, objective and non-discriminatory manner.

From a humanitarian perspective, Articles 6 and 7 are at the heart of the ATT. They impose obligations to subject the transfer of conventional arms, ammunition and parts and components within the ATT’s scope to strict requirements with the aim of ensuring that these arms and items do not end up in the hands of those who would use them to commit serious violations of IHL or international human rights law, or other serious crimes.

One of the most significant aspects of the treaty is its absolute prohibition of arms transfers under Article 6(3) whose aim is to prevent the commission of war crimes, crimes against humanity and genocide. In our view, a State Party must deny a transfer if it has substantial grounds to believe, based on information in its possession or that is reasonably available to it, that the weapons or items

¹ “ICRC president tells Gaza forum: civilians must be protected, hostages must be released unharmed”, *News Release*, 9 November 2023: <https://www.icrc.org/en/document/icrc-president-tells-paris-conference-gaza-immediate-imperative-is-to-save-lives>.

would be used to commit such crimes.² A denial is required even in the absence of absolute certainty.

As draft chapters 2 and 3 of the Voluntary Guide to Articles 6&7, discussed yesterday morning, correctly point out: “the prohibitions in Article 6 are absolute, which means that when a State Party establishes that one of [them] is applicable, it needs to simply halt the export. There is no question of taking into account certain other considerations or considering mitigating measures [...]”³

The State Party must also deny an export under Article 7 when there is an overriding risk that arms or items “could be used to commit or facilitate” a serious violation of IHL or other serious violations of international law. Again, denying an export only if there is certainty that serious violations ‘will’ be committed would not be consistent with the ATT’s humanitarian purpose nor with the ordinary meaning of the provision. In our view, an export must be denied where the risk is clear or substantial (or more likely than not to materialize) that weapons are either directly implicated in serious violations or ‘facilitate’ them.

To effectively prevent serious violations of IHL, the ICRC has recommended that the State Party carefully consider the recipient’s past and present record of respect for IHL, among other indicators.⁴ Draft chapter 3 of the Voluntary Guide points to the need to exercise “[s]pecial caution [...] when there is a conflict situation in the recipient country”.

The “List of Possible Reference Documents to be Considered by States Parties in Conducting Risk Assessment Under Article 7”⁵ which States Parties may draw from in conducting this risk assessment mentions the United Nations, the ICRC, international agencies operating in the recipient State, media reports and reports by NGOs on country situations, as well as judgements.

Any proposed risk mitigation measures under Article 7.2 should be assessed cautiously in terms of what is realistically achievable in the circumstances to offset the risk of serious violations. Such measures must be assessed against the recipient’s policies and practices. As discussed yesterday morning, draft chapter 3 of the Voluntary Guide recommends in this regard that “[a recipient’s commitments] should [...] be confirmed by actual State practice in order for the exporting State Party to consider such commitments as risk mitigation.” The Voluntary Guide also recalls the importance of monitoring the impact of the measures and processes in question and look at tangible outcomes in order to accept them as risk mitigation. We consider this key to the faithful implementation of Art 7.

² *Understanding the ATT from a Humanitarian Perspective*, ICRC, 2016, p. 29:

<https://www.icrc.org/en/publication/4252-understanding-arms-trade-treaty-humanitarian-perspective>.

³ 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. 22 (para. 41),

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.

⁴ *Arms Transfer Decisions - Applying International Humanitarian Law and International Human Rights Law Criteria – a Practical Guide*, ICRC, 2016: <https://www.icrc.org/en/publication/0916-arms-transfer-decisions-applying-international-humanitarian-law-criteria>.

⁵ ATT/CSP5.WGETI/2019/CHAIR/529/Conf.Rep, [https://thearmstradetreaty.org/hyper-images/file/ATT_CSP5_WGETI%20List%20of%20Possible%20References%20for%20Article%207%20\(Annex%20B%20to%20WGETI%20Report%20to%20CSP5\)/ATT_CSP5_WGETI%20List%20of%20Possible%20References%20for%20Article%207%20\(Annex%20B%20to%20WGETI%20Report%20to%20CSP5\).pdf](https://thearmstradetreaty.org/hyper-images/file/ATT_CSP5_WGETI%20List%20of%20Possible%20References%20for%20Article%207%20(Annex%20B%20to%20WGETI%20Report%20to%20CSP5)/ATT_CSP5_WGETI%20List%20of%20Possible%20References%20for%20Article%207%20(Annex%20B%20to%20WGETI%20Report%20to%20CSP5).pdf).

Ms Facilitator,

A critical element in the treaty is the explicit recognition of each State's duty, notably under the four 1949 Geneva Conventions, to respect and ensure respect for IHL.⁶ States Parties must bear this responsibility in mind when implementing the ATT. In the ICRC's view, this entails keeping already issued licenses under review. Even after an export has been authorized, States Parties should continuously monitor the situation and cancel the authorization if new information comes to light indicating a clear or substantial risk.

As the ICRC has underlined on other occasions, States that supply weapons to a party to an ongoing armed conflict shoulder a special responsibility to leverage their particular influence with a view to preventing and stopping violations of IHL committed by arms recipients and reducing harm to civilians and other victims of war. Failure to act with the diligence that is due in such circumstances has a dire human cost and compromises the international norms that aim to preserve a measure of humanity in war.

We hope that today's exchange contributes to reinforcing the humanitarian spirit underpinning the ATT and the faithful implementation of its live-saving requirements. The promotion of responsible action and restraint in the international arms trade remains a pressing humanitarian imperative.

Thank you, Ms Facilitator

⁶ ATT, Preamble.