

Mr Facilitator

At the outset, the State of Palestine would like to thank you for your excellent work as facilitator of this group.

We believe that this exercise encourages much-needed information sharing among ATT stakeholders and exemplifies one of the key purposes of the ATT, that is, to promote transparency.

We reiterate that national interpretations must be compliant with ATT commitments, and with well-established international legal standards.

ATT provisions complement existing limits on arms transfer that stem in particular from the obligation to respect and ensure respect for IHL under article 1 common to the 1949 Geneva Conventions, a key principle of the treaty.

As weapons continue to flow to some of the most brutal armed conflicts, responsible arms transfer is a humanitarian imperative, and imposing restraints on such transfers is an essential element of any humanitarian response.

Mr Facilitator,

In this spirit, we would like to make comments on the updated version of Chapter 1 's draft of the Elements of a voluntary guide to implementing

articles 6 and 7 of the ATT'

1. First, under the ' Contents' section, we recommend including "the general rules of interpretation under international law", as the third theme right after the background and the Treaty's text. As the purpose of this exercise is to provide clarity on how states parties approach the key concepts in articles 6 and 7, we consider it critical to include here the general rule on the interpretation of treaties, as codified in article 31 of the (Vienna Convention on the Law of Treaties), which provides that a treaty has to be interpreted in **good faith** in line with the ordinary meaning of its terms, in their context, and in the light of its object and purpose.
2. Second, with regard to (the treaty's text: paragraph 4 of the guideline) , we recommend inserting the ATT's preamble and article 1 into this theme, right before articles 6 and 7. This is because the faithful interpretation and implementation of the ATT requires an understanding of the Treaty's underlying aims and objectives. These are set out in the ATT's preamble and article 1, which constitute the basis on which to interpret the Treaty's obligations.
3. Third, we recommend including references to the legal studies issued by neutral international bodies, in particular, the international committee of the Red cross studies on the ATT, mainly: *understanding the ATT from a humanitarian perspective* of 2016 and ICRC, *International Humanitarian Law and Gender Based Violence in the Context of the*

Arms Trade Treaty, 2019. Such studies are much needed as they contribute to the development of international humanitarian law and promote respect for it by governments and all arms bearers. And they will give states parties a fuller picture and better understanding of the legal background of these key concepts under international law.

4. Fourth, we recommend sharing the inputs of the 20 states that participated in the exercise on the ATT website. This is needed to ensure transparency and to give an overall picture that will encourage much-needed information sharing among ATT stakeholders.
5. Fifth, with regard to “Paragraph 8 , Page 9 of the guideline”, we believe that the sentence, I quote : ‘the inclusion of the reference in this document is not intended to apply criminal law standards regarding individual criminal responsibility to these ATT provisions’ should be removed from the guideline. Indeed, this statement contradicts the views expressed by some States Parties, will be counterproductive, prejudices the decision of states parties in this regard given that it does not reflect a common understanding by all states parties.
6. Sixth, moving on to “paragraph 16 Page 13| under the “serious violation of international human rights law”. We insist on the importance of referring to the international convention on the elimination of all forms of racial discrimination and the apartheid convention within the list of the international instruments. They cannot be left behind.
7. Seventh, with regard to paragraph 17 on the same page :

Violations of IHRL cover a wide range of rights. In accordance with their obligations under international law, States should refrain from transferring arms that affect the enjoyment of fundamental human rights protected under international treaty and customary law, especially *jus cogens* norms, such as, the right to life; the right to freedom from torture and other forms of cruel, inhuman, or degrading treatment; the rights to liberty and security of person; the right to freedom of religion; the rights to freedom of assembly; the rights to freedom of assembly and of expression

In addition, the State of Palestine stresses that situations involving human right violations should be assessed by the manner in which they were violated and their severity.

We believe that the summary should either quote all the examples, the *jus cogens* norms , that have been provided by states or otherwise keep speaking in general terms. The current listing is not adequate to address the obligations that are required by the law.

Accordingly, the State of Palestine has provided a non-exhaustive list of violations that are “serious, including but not limited to “gross” and “systematic” human rights violations.

We reaffirm the importance of adding to the list at least the following:

1. Apartheid

2. Discrimination on racial, national, ethnic, linguistic, or religious grounds
3. Violations of the right to self-determination (exemplified by illegal occupation)
4. Deliberate targeting of civilians and civilian objects in situations of armed conflict.
5. Indiscriminate attacks in situations of armed conflict.
6. Forced and large-scale population displacement (exemplified by illegal settlements)
7. Violations of the right to life, including murder and massacres, and extrajudicial and summary executions.
8. Excessive use of force.
9. Violations of the right to property, including the destruction of houses and infrastructure.
10. Arbitrary arrests and detention.
11. Enforced disappearance.
12. Blockades.
13. Discrimination.
14. Forced evictions.
15. Restrictions on movement.
16. Attacks on human rights defenders and journalists
17. Excessive use of force during peaceful demonstrations
18. Direct targeting of civilians and civilian infrastructure (wastewater, plants and sewage facilities)
19. Refusal to evacuate wounded.
20. Firing live bullets at peaceful demonstrations.

8. With regard to page 15 paragraph 25, the State of Palestine supported the International Criminal Court’s office of the Prosecutor position on its Policy Paper on Sexual and Gender based Crimes, in which it identifies GBV as violence against persons, whether male or female, because of their sex and /or socially constructed gender roles.¹ In this context , we also referred to the ICRC explanation of what forms GBV , in particular its study entitled“ *International Humanitarian Law and Gender Based Violence in the Context of the Arms Trade Treaty*, 2019”, in which it provides GBV is not always sexual in nature; it is broader than but includes sexual violence.² Unlawful killing is a serious violation of IHL and constitutes serious act of gender based violence, for example, in some conflicts, military age males are the victims of mass killings to prevent them from participating in hostilities. Therefore , we reiterate the importance of including this aspect, which should not be left out of the guideline.

9. With regard to Paragraph 34 + 35 page 17 of the guideline, could you please clarify if the wording “generally” means that most of the 20 states supported the actual knowledge theory ?

¹ ICC, Office of the Prosecutor, *Policy Paper on sexual and Gender–Based Crimes*, 2014, p.3.

² ICRC, *International Humanitarian Law and Gender Based Violence in the Context of the Arms Trade Treaty*, 2019, p.4.

Here we must remind that if we take a look back to the historical background of the treaty we will see that the other opinion supporting the constructive knowledge approach has been supported by the international court of justice and the international committee of the red cross and several states , while the actual knowledge approach has been supported by fewer states.

In any case, Article 6 (3) refers to knowledge that the weapons “would” be used to commit the listed crimes, indicating a lower burden of evidence to deny the transfer than knowledge that the weapons “will” be used for such ends. In other words, the level of knowledge required to prohibit a transfer under Article 6 (3) is not one of absolute certainty.³

A parallel can be drawn with the User’s Guide to [EU] Council Common Position : 2008/944/CFSP defining common rules governing the control of exports of military technology and equipment (COARM 172 CFSP/PESC 393, 20 July 2015), which notes that the language “might be used” in Article 2, Criterion Two (a), of the Common Position “requires a lower burden of evidence than a clear risk that the military technology or equipment will be used for internal repression”.

ATT States Parties would need to take this interpretation into account in implementing Article 6 (3) in relation to all the listed crimes, as a matter of advancing the Treaty’s humanitarian purpose and principles, including ensuring respect for IHL.

Therefore, we recommend to delete the word “generally” to describe the first opinion because it would give an impression that it is more reliable than the other opinion

10. Finally, there is a repetition of the list is indicative both in paragraph 16, Page 13, and in the citation below the page, therefore we think this sentence is not needed in this page as it has already been clarified in paragraph 2 page 9 of the guideline

Thank you.

³ International Committee of the Red Cross , *Understanding the Arms Trade Treaty from a humanitarian perspective*, p.28

