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EIGHTH CONFERENCE OF STATES PARTIES TO THE ARMS TRADE TREATY

22-29 August 2022, Geneva

Statement of the International Committee of the Red Cross on Treaty Implementation

The International Committee of the Red Cross (ICRC) expresses its appreciation to the Chair of the Working Group on Effective Treaty Implementation and to the Facilitators of its Sub-working Groups on Articles 6&7, 9 and 11.

From a humanitarian perspective, Articles 6 and 7 are at the heart of the Arms Trade Treaty (ATT). They impose obligations on States parties to subject the transfer of conventional arms, ammunition, and parts and components to strict criteria with the aim of preventing that they end up in the hands of those who would use them to commit serious violations of international humanitarian law or human rights law.

The faithful implementation of these provisions is not only a legal obligation, it is also a humanitarian imperative, especially in times of heightened international tension and acute crisis. As the President of the ICRC said in his speech on Monday, the question of what constitutes responsible action in the area of arms transfers poses itself with renewed urgency today.

All States must respect and do everything reasonably in their power to ensure respect for international humanitarian law by parties to armed conflict. States that support a party to an armed conflict by supplying the means by which wars are fought assume a special responsibility. They are in a unique position to influence the behaviour of the recipient's forces, and thus to take concrete measures to reduce adverse humanitarian consequences and prevent violations.

For example, where it is reasonably foreseeable that heavy explosive weapons provided to a party to an armed conflict will be used in populated areas, States should give due consideration to the particular risk posed by such use to the civilian population, and consider concrete measures, jointly with the importer, to limit their wide area effects. The ICRC has long called on parties to armed conflict to avoid use of heavy explosive weapons in populated areas due to the significant likelihood of indiscriminate effects. We are heartened by recent political developments aimed at strengthening the protection of civilians from the effects of explosive weapons.

Chair

With the ATT celebrating the 10th anniversary of its adoption in April next year, this is an opportune time to take stock of the Treaty's achievements thus far, and, looking ahead, to identify concrete ways to effectively address outstanding challenges so that the ATT can deliver on its promise of reducing human suffering in practice.

The ICRC commends States that have openly shared information on their arms transfer practices in this forum, at working group sessions and during side-events. The survey of national regulations and practice in the Sub-working group on Articles 6 & 7 this year contributed to exchanges of information on the interpretation and implementation of these key provisions.

The ICRC has offered specific comments on Draft Chapter 1 of a potential Voluntary Guide on Articles 6&7 in April. The ICRC sees value in making such a Guide a 'living document' so that new insights can be added on an open-ended basis. We invite States parties to amend paragraph 37(a) of the Draft Report of the Chair of the Working Group on Effective Treaty Implementation [ATT/CSP8.WGETI/2022/CHAIR/733/Conf.Rep] accordingly to reflect the 'living' character of the document. This would align with paragraph 22 of the draft report which aptly describes the chapter as "work in progress".

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We stand ready to support further work on this Guide, as well as on draft elements for a Possible Voluntary Guide on the implementation of Article 9.

We also look forward to more focused discussions on the relationship between Articles 6 and 9, and other Treaty provisions.

In the view of the ICRC, guidance elaborated in the ATT framework to assist States Parties in implementing the Treaty's provisions should concentrate on:

- identifying the primary questions that arise in the practical application of the Treaty
- offering decontextualized cases-studies, based on real-world experiences, that illustrate typical challenges and questions encountered in the practical application of the provisions
- identifying and promoting concrete measures that States Parties have found effective in addressing common implementation challenges

Within the limits of our mandate and expertise, the ICRC stands ready to support these efforts.