



ICRC

6th CONFERENCE OF STATES PARTIES TO THE ARMS TRADE TREATY (held by written procedure)

Statement of the International Committee of the Red Cross (ICRC) Geneva, 14 August 2020

The Sixth Conference of States Parties to the Arms Trade Treaty (ATT) is overshadowed by the COVID-19 pandemic. This regrettably prevents us from meeting face-to-face and has complicated the preparatory process. The ICRC expresses its appreciation to Ambassador Villegas, President of the Conference, ATT office holders and the ATT Secretariat whose efforts have enabled progressing the important work of this Treaty despite challenging circumstances.

Even as the COVID-19 pandemic brings many activities to a standstill, armed conflict and other situations of armed violence continue to exact a heavy toll on vulnerable communities. To people already living with volatile security conditions, the spread of this disease poses an additional threat to their lives. Health facilities that are already overwhelmed with people injured in clashes will likely be unable to accommodate influxes of sick patients.

The pandemic underscores the need for the international community to jointly mitigate and prevent health risks by addressing underlying vulnerabilities. Respecting and ensuring respect for IHL and IHRL protects people from the impacts of armed violence and shields them against additional shocks, whether health, economic or environmental. The ATT – designed to reduce human suffering from the widespread and poorly regulated availability of arms and prevent violations of IHL and IHRL – can make an essential contribution to this end.

Universalization

Important progress has been made in recent years towards universalization of the ATT. The ICRC congratulates Afghanistan, China, the Maldives, Namibia, Niue and São Tomé and Príncipe on joining the Treaty in 2020.

We encourage the remaining 31 signatories to swiftly proceed with ratification and call on all remaining States to join this important Treaty at the earliest opportunity. We acknowledge and welcome efforts made by States that are taking steps at the national level to enable their adherence to the Treaty and are pleased to work with a number of States bilaterally and in collaboration with regional and sub-regional organizations to promote adherence to the ATT.

For instance, in February, the ICRC held a workshop on the ATT with the National IHL Committee of Papua New Guinea. Due to the COVID-19 pandemic, the ICRC was forced to postpone some of its other activities but continued its bilateral dialogue with States. It is important not lose momentum now: The ICRC delegation to the United Nations in New York, the ICRC's Advisory Service on IHL, and

the ICRC Arms Unit in Geneva stand ready to offer technical assistance to States for their adherence to and implementation of the Treaty.

The growing and diverse membership of the ATT attests to its universal relevance. And the participation of major arms exporters and importers shows that the pursuit of responsible arms trade is not incompatible with economic, foreign policy and security objectives. However, the ATT's capacity to deliver on its promise to reduce human suffering, ultimately, hinges on how States Parties translate their Treaty obligations into practice.

Effective treaty implementation

States Parties' faithful interpretation and implementation of the ATT's provisions is critical to fulfilling the Treaty's promise of reducing human suffering. States Parties must do so in a consistent, objective and non-discriminatory manner, as required by Article 5.1, and bearing in mind their obligation to respect and ensure respect for IHL in all circumstances – an obligation included among the Treaty's Principles.

The ICRC attaches great importance to the Working Group on Effective Treaty Implementation (WGETI) and expresses its appreciation to Ambassadors Jang-keun Lee and Sang-beom Lim of the Republic of Korea for chairing the Working Group.

For the ICRC, Articles 6 and 7 are at the very heart of the Treaty: Article 6 prohibits arms transfers in the knowledge that they would be used to commit war crimes or other international crimes or violations of international law, and Article 7 requires a risk assessment and prohibits authorizing exports if there is an overriding risk that the arms could be used to commit or facilitate serious violations of IHL or IHRL or serious acts of gender-based violence.

The ICRC thanks Ambassador Sánchez de Lerín of Spain for preparing documents in support of the WGETI Sub-working Group on Articles 6 and 7. We look forward to consideration of the revised draft elements of a Voluntary Guide to implementing Article 6 and 7 and the outcome of the exercise involving the methodology template for unpacking key concepts during the first series of WGETI meetings in 2021.¹

In the ICRC's view, the WGETI Sub-working Group on Articles 6 and 7 should aim to enhance States Parties' ability to implement these provisions to the highest possible standard, so as to effectively prevent serious violations of IHL and IHRL and serious acts of gender-based violence. We believe that work on Articles 6 and 7 should be informed by States Parties' national experiences and geared toward addressing practical aspects of implementation.

In particular, the ICRC encourages States to use the Sub-working Group meetings to exchange views and address issues relating to:

- how risks of serious IHL and IHRL violations and serious acts of gender-based violence are assessed in practice, including what factual indicators of risk are examined in relation to Articles 6.3 and 7, how risk is assessed in situations where information is scarce or disputed, and how the threshold of 'overriding risk' in Article 7.3 is implemented.
- what effective, practical and feasible measures can be taken to mitigate the risks in accordance with Article 7.2, and how these are considered in the risk assessment and decision-making process.

¹ ATT/CSP6.WGETI/2020/CHAIR/606/Conf.Rep, §15.

- what new information would trigger a re-assessment of the risk in accordance with Article 7.7, and possibly require that an export authorization be cancelled or suspended.

The ICRC is of the view that these practical aspects should be part of future discussions on key concepts and the development of the Voluntary Guide. The ICRC would welcome more clarity on how States Parties envisage the Voluntary Guide to assist them in practically implementing their Treaty obligations.

In line with its preference for a practice-oriented approach, the ICRC recommends that the multi-year work plan of the WGETI Sub-working Group on Articles 6 and 7 includes exploration of the practicalities, requirements and challenges associated with the implementation of Articles 6 and 7, and provide for the open exchange of views and elaboration of good practices, including best practices for risk assessment of gender-based violence, as decided by the Fifth Conference of States Parties.² An approach geared towards elaborating practical guidance to States Parties on how to implement the ATT to the highest possible standard would benefit from holistic consideration of issues arising under Articles 6 and 7, and in connection with other provisions of the Treaty, notably, Article 9 on transit or trans-shipment and Article 11 on diversion.

The draft work plan of the WGETI Sub-working Group on Articles 6 and 7 also makes reference to “expert kick-off presentations”, including on what constitutes ‘a serious violation of international humanitarian law’.³ The ICRC stands ready to support the Sub-working Group with expert advice on this topic. We have previously shared our understanding of ‘serious violations of IHL’ within the framework of the ATT,⁴ and made recommendations for the interpretation of the Treaty’s provisions from a humanitarian perspective.⁵

Transparency and reporting

Sharing of good practices and open discussion on addressing implementation challenges are not only an effective means for States Parties to collectively promote the faithful implementation of the ATT. They are also essential to meeting the expectation of transparency set out in Articles 1 and 13 of the Treaty and building confidence that its provisions are being applied to prevent human suffering. This, in turn, is vital to the universalization and effectiveness of the Treaty.

The ICRC welcomes the draft report prepared by the Co-chairs of the Working Group on Transparency and Reporting (WGTR), Tom de Nijs (Belgium) and Alejandro Alba Fernández (Mexico).⁶ The ICRC is concerned by their finding of a “continuous downward trend in compliance with the annual reporting obligation”, delayed submission of and failure to update initial reports and a significant number of States opting to not make their reports publicly available.⁷

Failure to report erodes the Treaty’s credibility. This disincentivizes States from joining the Treaty and, ultimately, hinders the fulfilment of its objectives. Data on arms transfers and on measures

² ATT/CSP5/2019/SEC/536/Conf.FinRep.Rev1, § 22(c).

³ ATT/CSP6.WGETI/2020/CHAIR/606/Conf.Rep, Annex A, p. 5.

⁴ *What are “serious violations of international humanitarian law”?* - Explanatory Note, ICRC, 2012, <https://www.icrc.org/en/doc/assets/files/2012/att-what-are-serious-violations-of-ihl-icrc.pdf>.

⁵ *Understanding the Arms Trade Treaty from a Humanitarian Perspective*, ICRC, 2016, <https://www.icrc.org/en/publication/4252-understanding-arms-trade-treaty-humanitarian-perspective>.

⁶ ATT/CSP6.WGTR/2020/CHAIR/607/Conf.Rep.

⁷ ATT/CSP6.WGTR/2020/CHAIR/607/Conf.Rep, §§20 and 23.

taken by States Parties to implement the Treaty is key to assessing its effectiveness. Transparency and exchange of information between States are also “fundamental tools in preventing diversion”, as the President explains in his working paper.⁸ More broadly, transparency facilitates cooperation and assistance among States Parties and fosters a culture of responsibility and accountability in the international arms trade.

The ICRC urges all States Parties to comply with their reporting obligations under the Treaty. The ICRC encourages States Parties to report, as comprehensively as possible, on all measures taken to implement the Treaty, and to make all reports publicly available. The provision of detailed, accurate and consistent data that is comparable over time is critical to achieving the ATT’s humanitarian objective.

Robust, straight-forward and user-friendly reporting templates are an essential tool for supporting effective Treaty implementation. The ICRC looks forward to contributing to discussions aimed at finalizing the revisions of the reporting templates during the CSP7 cycle.

The ICRC supports the WGTR Co-chairs’ recommendation to CSP6 to reiterate that “transparency is a key purpose of the Treaty” – and in this respect, the CSP6 should recall that this purpose is enshrined in Article 1. With this objective in mind, the ICRC welcomes the inclusion of exchanges on the fulfilment of reporting obligations, broader issues of transparency, including the public availability of annual and initial reports and the aggregation of data in annual reports in the proposed mandate of the WGTR,⁹ and encourages States Parties to privilege inclusive and open formats for their deliberations.

⁸ ATT/CSP6/2020/PRES/611/Conf.TranspInfExch.Rev1, p. 1.

⁹ ATT/CSP6.WGTR/2020/CHAIR/607/Conf.Rep, Annex A.